

CLIENT ALERT

Prediction Markets Get a New Playbook **CFTC proposal defines when event contracts “involve” restricted activities, narrows “gaming,” and establishes structured public interest reviews**

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The Commodity Futures Trading Commission continues to develop rules to govern the burgeoning market for event contracts and the platforms on which they trade. The Commodity Exchange Act authorizes the CFTC to prohibit an exchange from listing certain types of event contracts. Specifically, the CFTC may prohibit contracts that it deems contrary to the public interest because they involve unlawful activity, terrorism, assassination, war, gaming, or other similar activity (each, an “Enumerated Activity”).

The CFTC has proposed to revise Rule 40.11, which implements the “Special Rule” for event contracts in Section 5c(c)(5)(C) of the CEA.¹ The Proposal would define when an event contract “involves” an Enumerated Activity, adopt a definition of “gaming,” add a new Appendix F to Part 40, and apply the special rule to all excluded commodities under CEA Section 1a(19). The Proposal focuses the inquiry on the occurrence or contingency that

¹ *Prediction Markets; Public Interest Determinations*, 91 Fed. Reg. 35,806 (proposed June 12, 2026) (to be codified at 17 C.F.R. pt. 40) (the “Proposal”).

determines settlement—making contract drafting and product design central to whether the contract is subject to the Special Rule.

Key Takeaways

- **“Involve” Would Be Defined by Settlement Terms.** The Proposal would define when an event contract “involves” an Enumerated Activity by looking to the occurrence or contingency that determines settlement, not to external events that merely influence the value of a contract—making contract drafting especially important for outcomes that may be reached through multiple causal pathways.
- **“Gaming” Would Mean Games, Not Wagering Generally.** The proposed definition of “gaming” would cover rule-governed activities engaged in for recreation or entertainment—not wagering broadly—meaning political elections, legislative votes, appointments, and award contests would not be subject to public interest review or prohibition under the Special Rule.
- **Public Interest Review Would Be Case-by-Case, Not Categorical.** The Proposal would move away from prohibitions on broad categories of event contracts. Instead, the CFTC would conduct contract-by-contract public interest reviews under CEA Section 5c(c)(5)(C) and revised Rule 40.11.
- **Sports Contracts Receive Conditional Treatment.** Aggregate sports outcomes and statistics may be permissible if objectively settled and supported by integrity controls, while contracts involving player injuries, officiating outcomes, physical altercations outside sanctioned combat sports, and pre-collegiate sports are likely to raise concerns.
- **Rule 40.11 Review Would Become More Structured.** Public interest determinations would follow a defined 90-day process, with written notice, an opportunity for the prediction market to respond, and authority for the Commission to resolve families of similar contracts in a single order.
- **Broader Questions Remain.** The Proposal addresses the Special Rule and Rule 40.11. It does not address the full range of prediction market issues raised in the March 2026 Advance Notice of Proposed Rulemaking, which sought comment on the regulatory treatment of prediction markets generally.² We expect that CFTC proposals in the future will address some or all of these issues.

The Settlement Event Determines Whether the Special Rule Is Triggered

A public interest review under the Special Rule is triggered only if an event contract “involves” one of the Enumerated Activities. The Proposal seeks to define the meaning of “involve” in this context and states that it requires that settlement of an event contract “be determined by an occurrence, the extent of an occurrence, or a contingency in one of the Enumerated Activities.”³ The inquiry therefore looks to whether the settlement-determining occurrence

² J. Christopher Giancarlo et al., *Prediction Markets: CFTC Issues New Advisory and Advance Notice of Proposed Rulemaking*, Willkie Farr & Gallagher LLP (Mar. 23, 2026).

³ *Id.* at 35,821.

is the occurrence of an Enumerated Activity, not to every external circumstance that may affect the probability or economic value of the contract, which may plausibly include an Enumerated Activity.⁴

The Proposal illustrates this with a few examples: a contract that settles on “whether Iran initiates armed conflict in the Strait of Hormuz” squarely triggers the Special Rule. Conversely, a contract that settles on “whether a specified volume of crude oil transits the Strait of Hormuz during a specified period” would not be subject to Special Rule review even if such contract would be significantly affected by armed conflict in the Strait. In that case, the settlement-determining occurrence is commercial shipping activity, not armed conflict.⁵

A few examples illustrate how contract drafting can determine whether the Special Rule is triggered. An event contract that settles on whether a country’s leader is out of office by a certain date, without further specification of qualifying mechanisms, would involve assassination because assassination is among the pathways by which the settlement condition can be satisfied. The same contract, redrafted to settle only on whether the named individual ceases to hold office “by reason of electoral defeat, resignation, constitutional removal, negotiated departure, or natural death,” would not involve assassination because its terms specify qualifying pathways and exclude the Enumerated Activity pathway. Where contract terms do not exclude an Enumerated Activity pathway with sufficient specificity, the Commission may treat the contract as involving that activity. The Proposal does not fully resolve how contracts that are especially susceptible to reacting to an Enumerated Activity—such as oil price contracts affected by armed conflict—could properly exclude acts of war from affecting the outcome, a tension illustrated in the Strait of Hormuz examples presented by the Commission.

This approach accepts that event contracts may provide economic exposure to outcomes influenced by Enumerated Activities, so long as the settlement-determining occurrence is not itself within an Enumerated Activity. Traditional derivatives markets have long permitted participants to profit from geopolitical instability through positions in crude oil, natural gas, agricultural commodities, and other instruments with prices that respond to war, terrorism, and other global events. The 2022 conflict in Ukraine, for example, drove sharp moves in Chicago wheat and European natural gas futures, yet a contract settling on those benchmark prices would not involve war under the Proposal because the settlement-determining occurrence is the commodity price, not the conflict itself. The settlement-focused test in the Proposal is intended to maintain a distinction between these established hedging and speculative activities and contracts that settle directly on the occurrence of an Enumerated Activity.

The Proposed “Gaming” Definition Would Mean Games, Not Wagering Generally

The Proposal defines “gaming,” one of the Enumerated Activities, as “any activity that: (i) one or more participants typically engage in for purposes of recreation or to entertain others; (ii) is governed by rules; and (iii) includes measurable occurrences or outcomes that depend on the participants’ luck, skill, or athletic ability during the activity.”⁶ The Commission explained its view that the staking of money on an uncertain outcome does not automatically amount to “gaming”; rather, such outcome must be contingent on “activities that are games—*i.e.*, have

⁴ *Id.*

⁵ *Id.* at 35,821–24.

⁶ *Id.* at 35,825–27.

a recreational or entertainment purpose.”⁷ This distinction is significant: if “gaming” were defined as merely staking money on a contingent outcome, every event contract would involve gaming by definition, collapsing the requirement under the Special Rule for a distinction between the event contract and the underlying activity. “Games” are also distinguished from “contests.” Activities in which participants compete for a prize, honor, or position based on merit assessed by external judgment—rather than by rules internal to the activity, such as elections and award contests—are contests, not gaming, and fall outside the Special Rule even though people may wager on them.⁸

The recreation-or-entertainment element does much of the work in this definition, and its application can be counterintuitive. The Commission frames “gaming” around activities played for amusement or to entertain others, which keeps casino-style games, sports, and esports within the Special Rule while placing many entertainment events of interest to the public outside it. Contracts on who will win an Academy Award, a Nobel Prize, or a similar honor are contests decided by external judgment rather than games played for recreation, so they would not trigger the Special Rule on a gaming theory even though they are often the subject of public speculation. The same is true of contracts on elections, legislative votes, and appointments. Conversely, a contract on the outcome of a televised poker tournament or a video-game competition would involve “gaming,” notwithstanding the skill involved, because the underlying activity is one in which participants engage for recreation or to entertain others.

To provide greater clarity and predictability, the Proposal would add a new Appendix F to Part 40, which sets forth illustrative guidance on application of the Special Rule by the Commission. Among other things, proposed Appendix F would identify categories of contracts that generally fall outside the Special Rule and Rule 40.11 review, including contracts on economic indicators, financial benchmarks, foreign exchange rates, award contests, political elections, legislative votes, appointments, and other political activity. These contracts would remain subject to generally applicable CEA requirements, but would not face the additional public interest review under the Special Rule.⁹

The Commission also presents for comment an alternative definition of “gaming.” Under this alternative, “gaming” would mean “an activity created by its rules, in which (1) all participants whose conduct determines the outcome operate within the activity itself, and (2) those participants, in their capacity as participants, have purposes that are defined by and internal to the activity itself.” This structural formulation may better capture the features that distinguish games from other activities, though the Commission has not proposed to adopt it at this time.

Public Interest Review Would Be Factor-Based, Not Category-Based

Even if an event contract triggers the Special Rule by involving an Enumerated Activity, involvement alone would not be dispositive. The Commission may initiate a 90-day public interest review, but must weigh a range of factors before determining that a contract should be prohibited. The Proposal would conform Rule 40.11(a) to the “may

⁷ *Id.* at 35,822 n.182.

⁸ *Id.* at 35,826–27.

⁹ *Id.* at 35,828.

determine” language in the statute, confirming that the Commission retains discretion over whether to commence a review and, if it does, whether to prohibit the contract.¹⁰

Those factors would include whether the contract provides meaningful hedging or price-basing utility, yields economically or commercially useful information, or promotes responsible innovation and fair competition—including for end users and asset managers with exposure to legislative, regulatory, or policy actions.¹¹ The Commission would also consider market-integrity concerns, such as susceptibility to manipulation, settlement integrity, insider-information leakage, and whether the prediction market can adequately administer the contract. Activity-specific considerations would then sharpen the analysis:

- **Sports.** The Proposal recognizes that event contracts involving sports outcomes present a range of public interest considerations. Contracts on aggregate outcomes and statistics (including scores, win-loss results, tournament advancement, and season-long performance metrics) may be consistent with the public interest if objectively settled and supported by appropriate surveillance and integrity controls. Contracts tied to player injuries, officiating outcomes, discrete in-game actions, physical altercations outside sanctioned combat sports, or precollegiate sports are likely to raise serious concerns. The Proposal does not create a sports safe harbor; all designs remain subject to contract-specific review.¹²
- **Terrorism, Assassination, and War.** The Proposal reads terrorism, assassination, and war broadly and indicates that contracts involving those activities are highly likely to be contrary to the public interest. The Commission cites national security concerns, perverse incentives, information-leakage risks, and settlement uncertainty, particularly where events unfold under conditions of conflict or incomplete information.¹³
- **Unlawful Activity.** For contracts involving potentially unlawful activity, the Commission would survey relevant federal and state law, considering the breadth and consistency of applicable prohibitions and whether the underlying activity is generally recognized as posing public harm. The Proposal distinguishes contracts tied to specific unlawful acts from contracts referencing aggregate crime rates over time, which may have informational or economic-planning utility.¹⁴
- **Games of Chance.** The Proposal distinguishes event contracts on games that involve skill from games of pure chance. Games that do not allow participants to exercise their insight or bring their informed views to a prediction market lack informational value for purposes of the CEA. Thus, the Proposal suggests that random outcome event contracts likely would not be in the public interest.¹⁵

¹⁰ *Id.* at 35,829–31. The economic purpose test was removed from the CEA by the Commodity Futures Modernization Act of 2000, and the Commission preliminarily does not believe the Dodd-Frank Act reinstated it in the Special Rule.

¹¹ *Id.* at 35,831–37 (proposed 17 C.F.R. § 40.11(a)(5)–(6)).

¹² *Id.* at 35,835–36 (proposed 17 C.F.R. § 40.11(a)(6)(iii)).

¹³ *Id.* at 35,834.

¹⁴ *Id.* at 35,833–34 (proposed 17 C.F.R. § 40.11(a)(6)(i)).

¹⁵ *Id.* at 35,853 (proposed 17 C.F.R. § 40.11(a)(6)(iii)(B)(1)).

The Proposal would reinforce these expectations at the submission stage. Where a contract may involve an Enumerated Activity, the submitting entity should explain, consistent with Rule 40.2(a)(3)(v), whether the Special Rule is triggered and, if so, why the contract is not contrary to the public interest. The Commission notes that overly broad or generalized contract specifications may be insufficient for this purpose; prediction markets should address the proposed public interest factors in their submissions for any contract that plausibly implicates an Enumerated Activity. Alternatively, a prediction market may seek prior Commission approval under Rule 40.3, or request informal staff guidance on a draft submission, to obtain greater certainty before listing.¹⁶

Rule 40.11 Review Would Become a Structured 90-Day Process

- The Proposal would replace the current Rule 40.11 review process with a defined sequence:¹⁷
 - **Initiation.** Within 10 days after listing, the Commission could commence review by issuing a written determination identifying the contract, the relevant Enumerated Activity, the contract terms at issue, and the factors warranting review.
 - **Statement of Concerns and Response.** By day 15, the prediction market would receive a written statement of concerns. By day 30, it could respond, including by submitting supporting analysis or proposed contract modifications.
 - **Staff Recommendation and Reply.** By day 60, staff could issue a written recommendation, and the prediction market could reply by day 70.
 - **Resolution.** By day 90, the Commission would either issue a prohibition order or allow the contract to continue trading. Any extension would require consent from the prediction market. The review could also be deemed concluded (and the contract could continue trading) if the Commission issues no order within 100 days after listing of the contract.

The Commission could also review and resolve groups of substantially similar event contracts through a single order. That mechanism could promote consistency and reduce duplicative proceedings, but it also raises the stakes of initial product design: a prohibition order directed at one deficient listing could affect an entire family of contracts tied to the same or substantially similar underlying events.¹⁸

Because self-certified contracts may begin trading as soon as the business day after submission, trading may commence before Rule 40.11 review is complete. The Proposal would allow the Commission to request voluntary suspension during review, but not to compel suspension absent a final public interest determination. If the

¹⁶ *Id.* at 35,839 (discussing the explanation required under proposed Rule 40.2(a)(3)(v) and the alternative of prior Commission approval under Rule 40.3).

¹⁷ *Id.* at 35,841–42.

¹⁸ *Id.* at 35,840.

Commission later prohibits a contract that is already trading, the Proposal contemplates cancellation of open positions and return of amounts paid to establish contracts as well as fees.¹⁹

Broader Prediction-Market Questions Remain Open

This rulemaking is limited to the Rule 40.11 framework for administering the Special Rule. It would not resolve several broader issues raised in the ANPRM, including how event contracts should be classified and regulated as swaps or futures for purposes beyond the Special Rule, how exchange and clearing core principles should apply to prediction markets, or how the Commission should address trading based on nonpublic or asymmetric information. Nor would the Proposal provide advance approval or disapproval for broad classes of contracts; the Commission asks, however, whether alternative approaches could permit pre-listing or class-wide determinations.²⁰ Those issues remain open and may be addressed in future Commission action. For additional background on the ANPRM and the related Division of Market Oversight advisory, see the prior Willkie client alert, [*Prediction Markets: CFTC Issues New Advisory and Advance Notice of Proposed Rulemaking*](#).

Conclusion

Comments must be received by July 27, 2026, and may be submitted through the CFTC Comments Portal, referencing RIN 3038-AF65.²¹ Market participants considering comments should focus on the features of the Proposal that will shape product design: the definition of “involve,” the scope of “gaming,” the Appendix F examples, sports-related public interest factors, and alternative approaches to pre-listing or class-wide determinations on which the Commission seeks comment, and the consequences of a prohibition order for contracts that have already begun trading.

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If you have any questions regarding this client alert or would like assistance in preparing comments, please contact one of the authors, any member of our CFTC team listed below, or the Willkie attorney with whom you regularly work.

¹⁹ *Id.* at 35,838.

²⁰ *Prediction Markets*, 91 Fed. Reg. 12,516, 12,531–32 (Mar. 16, 2026) (seeking comment on “[w]hether and how the CFTC should address class-wide determinations” and “pre-approval” processes for event contracts).

²¹ The Proposal at 35,840–42.

Willkie has a dedicated team of attorneys with extensive knowledge and experience in all aspects of the Commodity Exchange Act and the CFTC regulatory regime. We would be pleased to assist with your matters.

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