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CFTC Advisory on Incentive Programs for Prediction Markets

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On August 12, 2026, the CFTC's Division of Market Oversight ("DMO") issued CFTC Letter No. 26-23, a staff advisory addressing submissions under CFTC Regulations 40.5 and 40.6 for market-maker, liquidity, trading, and incentive programs. The advisory signals heightened staff scrutiny of incentive program filings, focusing on procedural and substantive deficiencies in filings relating to event contract products, and provides practical guidance and reminders for designated contract markets ("DCMs").

DCMs should ensure that incentive program submissions provide a complete, program-specific description of the program's material economic, structural, and operational terms. The advisory states that submissions should address the program's purpose and duration, products covered, participant obligations and performance standards, incentives, eligibility criteria, and the DCM's compliance analysis under the Core Principles and Commission regulations. The advisory's Appendix A provides additional detail on the core elements staff expects DCMs to address in incentive program submissions.

DCMs should tailor compliance programs to the specific risks of each incentive program.

- The CFTC expects DCMs to map the specific incentives offered under a program to the particular trading behaviors those incentives may encourage, and then design surveillance parameters responsive to any resulting risks. The DMO recommends review of trading patterns that may exploit threshold- and rebate-based rewards (e.g., through wash trading, pre-arranged trading, or other trading misconduct).
- Real-time automated trading alerts are recommended as an effective tool, though DCMs retain flexibility to demonstrate the effectiveness of alternative monitoring methods.
- Ongoing evaluation and adaptation of compliance controls are essential to demonstrate capacity to prevent manipulation, price distortion, and market disruptions.

DCMs should scrutinize incentive structures that could guarantee profits or offset losses.

- Market-maker programs that guarantee net profits or cover participant losses through stipends and rebates may incentivize artificial strategies or other manipulative trading practices.
- Programs offering compensation beyond what is reasonably necessary to achieve the program's aim, or lacking reasonable limits, are more likely to raise regulatory concerns.
- DCMs should avoid disproportionate or unlimited payouts. "Risk-free" trades or unlimited rebates may raise concerns about artificial trading or effective guarantees against loss.

Incentive programs must provide impartial, transparent, and nondiscriminatory access.

- Rule 38.151(b) requires impartial access to DCM markets and services, including comparable fee structures for members, persons with trading privileges, and independent software vendors receiving equal access to, or services from, the DCM.
- Programs should apply discounts and rebates using disclosed, objective eligibility criteria.
- DCMs should avoid hidden, one-off, or preferential arrangements (such as secret discount codes or non-cash prizes), or offering informal perks like VIP or early access to products without formal disclosures to market participants.
- DCMs should ensure they do not introduce unequal trading conditions through selectively available perks, such as faster market data or enhanced API access.

DCMs must oversee third-party affiliates and intermediaries delivering incentives.

- DCMs should have sufficient oversight and proper safeguards to ensure affiliates or intermediaries comply with program terms, including:

  - Limiting program incentives to non-discretionary customer orders;
  - Requiring affiliates or intermediaries to retain records substantiating qualified customer orders, consistent with Rule 1.31; and
  - Periodically reviewing access and permissions of third-party affiliates or intermediaries to ensure up-to-date records and curtail unauthorized access.

- Where incentives are offered, funded, administered, or delivered through affiliates, FCMs, ISVs, or other intermediaries, DCMs should assess whether the arrangement is part of, implements, or amends a DCM incentive program requiring a Rule 40.5 or 40.6 filing, and should maintain sufficient visibility, controls, and records to demonstrate Core Principle compliance.

Conflicts of interest must be minimized, particularly where affiliated market-makers are involved.

- Core Principle 16 requires DCMs to minimize conflicts of interest in their decision-making processes and implement processes to manage them effectively.
- Arrangements benefiting an affiliated market-maker present heightened conflicts-of-interest and unfair-treatment concerns under Core Principles 16 and 12.

Material changes to certified incentive programs require a new Rule 40.6 filing.

- Material changes to incentive structure, economic terms, participant obligations, product coverage, eligibility requirements, participant limits, and program extensions or renewals must be submitted as a new Rule 40.6 certification—not as a modification or supplement to an existing submission.
- Submissions should include a redlined version showing all deletions and additions.
- Program terms should not reserve unilateral discretion to make material changes without an appropriate Rule 40.5 or 40.6 filing.

<u>Conclusion</u>

In light of this guidance, DMO staff recommend that all DCMs that have previously submitted incentive programs under Rule 40.6(a) review those plans for compliance. Amendments to such programs that are reasonably within the scope of this advisory should be submitted via Rule 40.6(a) or Rule 40.6(d), as appropriate, by September 14, 2026.

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Please let us know if you have any questions, if we can assist you in evaluating how this advisory may impact your incentive programs, or if you would like assistance engaging with CFTC staff in advance of filing.

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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