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CLIENT ALERT

CFTC Addresses Domestic Geographic Restrictions on DCM Access

Compliance date: December 5, 2026. DCMs must cease domestic geographic access restrictions that violate the requirements or explain to DMO why compliance is not feasible.

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On November 5, 2026, the CFTC issued an interpretation of the impartial access requirements applicable to DCMs under CFTC Regulation 38.151(b) (the "Interpretation"). The CFTC states that the CEA and its regulations generally do not permit a DCM to restrict access by otherwise eligible participants based on their location within the United States. This alert summarizes the Interpretation and outlines the next practical steps for DCMs and intermediaries.[1]

The Interpretation press release gives DCMs 30 days to cease domestic geographic restrictions that violate these requirements, and to take reasonable steps to ensure that their intermediaries comply with those requirements, or to explain to the Division of Market Oversight ("DMO") why compliance is not feasible. DCMs and their intermediaries should promptly review state-by-state access limitations, including restrictions embedded in

[1] CFTC, DCM Impartial Access Requirements, 91 Fed. Reg. 72,407, 72,409–10 (Nov. 10, 2026), available here.

onboarding, trading interfaces, and customer terms. The review should identify which restrictions can be removed and which require discussion with DMO because of legal or operational constraints.[2]

Regulatory Background[3]

DCMs must comply with the CEA's statutory core principles and applicable CFTC regulations. The Interpretation draws principally on the following requirements:

- **Core Principle 2 (Compliance with Rules).** DCMs must establish and enforce their rules, including access requirements, and have the capacity to investigate violations and impose appropriate sanctions.
- **Core Principle 9 (Execution of Transactions).** DCMs must provide a competitive, open, and efficient market and execution mechanism that protects price discovery.
- **Core Principle 12 (Protection of Markets and Market Participants).** DCMs must protect markets and market participants from abusive practices, including those committed by a participant's agent, and promote fair and equitable trading.

Regulation 38.151(b) requires impartial access for members, persons with trading privileges, and independent software vendors, including transparent, nondiscriminatory access criteria and comparable fees for equal access or services.[4] Regulation 38.151(c) requires impartial enforcement of rules governing access denials, suspensions, and revocations. These obligations do not eliminate eligibility standards: the CFTC has long stated that access should turn on financial and operational soundness, rather than discriminatory barriers to entry.[5] The Interpretation adds that, once objective and transparent financial and operational eligibility requirements are met, DCMs have an obligation to grant access without bias.

Domestic Geographic Restrictions

The CFTC concludes that domestic geographic access restrictions are inconsistent with the CEA and its regulations because they differentiate among similarly situated participants based solely on location. The Interpretation identifies several related market integrity concerns. A participant who establishes a position where access is permitted and then travels to a restricted location may be unable to manage that position or meet margin calls, potentially resulting in forced liquidations and losses for futures commission merchants and clearing organizations. In addition, excluding particular states or regions may reduce liquidity, fragment a national pool of liquidity, impede

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2 CFTC, CFTC Issues Impartial Access Requirements Interpretation, Press Release No. 9323-26 (Nov. 5, 2026), available here. Such legal constraints may include a court order requiring geofencing of participants located in a particular state, as issued by certain courts in ongoing nationwide litigation regarding sports event contracts listed by DCMs. In these lawsuits, states assert that offering those contracts violates state gambling laws, while the DCMs argue that federal law preempts state enforcement.

3 CEA § 5(d)(2), (9), (12), 7 U.S.C. § 7(d)(2), (9), (12); 17 C.F.R. §§ 38.150, 38.500, 38.650–38.651.

4 The Interpretation does not address fee structures, but cites CFTC Letter No. 26-23 (Aug. 12, 2026), available here, as prior CFTC guidance on comparable fee structures in DCM incentive programs. For a discussion of CFTC Letter No. 26-23, see Client Alert "CFTC Advisory on Incentive Programs for Prediction Markets" (Aug. 24, 2026), available here.

5 17 C.F.R. § 38.151(b)–(c), available here; Core Principles and Other Requirements for Designated Contract Markets, 77 Fed. Reg. 36,612, 36,625 (June 19, 2012), available here.

arbitrage and hedging, and weaken price and information discovery. The Interpretation illustrates these effects with sports, weather, energy, and election contracts.[6]

Intermediary Oversight

In footnote 15, the Interpretation cites Core Principle 2 as a basis for concluding that DCMs must take reasonable steps to ensure that intermediaries subject to DCM membership rules do not impose geographic restrictions that violate impartial access requirements. Accordingly, a DCM's review should extend beyond its own access controls to restrictions imposed through futures commission merchants and other intermediaries. An exchange-level change may be insufficient if customers remain blocked through those channels.

Practical Next Steps

DCMs and intermediaries should consider the following steps:

- **Inventory geographic restrictions and their basis.** Identify state- or region-based limitations in eligibility rules, customer onboarding, geolocation controls, and product-level permissions. Record which contracts and customers each restriction affects, and whether it reflects a court order, other legal constraint, or an internal business policy.
- **Coordinate with intermediaries.** Review membership rules, access agreements, and customer-facing controls with relevant intermediaries. Identify differences between direct and intermediated access, assign responsibility for changes, and obtain confirmation of implementation.
- **Align documents, systems, and testing.** Where restrictions are to be removed, update the relevant exchange rules, customer terms, disclosures, and system settings consistently. Test both onboarding and trading access, including the treatment of existing positions when a customer travels. Preserve eligibility controls that are objective, transparent, and uniformly applied (the focus is domestic geographic restrictions, not unrestricted access for every applicant).
- **Engage DMO promptly where compliance is not feasible.** Prepare a specific explanation identifying the restriction, its legal or operational basis, the affected access channel, and the steps taken or proposed. Supporting materials and a proposed implementation timetable may help DMO assess the circumstances. The release does not prescribe the form or content of an explanation.

[6] The Interpretation identifies election markets as particularly sensitive because in-state participants may supply much of the relevant trading volume and information.

- **Legal constraints require case-specific review.** Where a restriction reflects a court order or another legal constraint, firms should assess the competing obligations with counsel and raise the issue with DMO rather than assume the Interpretation alone permits removal. An explanation to DMO should not be treated as an automatic extension or exemption: the CFTC states that it will consider the facts and circumstances of each case in connection with potential action.

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The immediate priority is a coordinated review of domestic access restrictions across the DCM and its intermediaries, followed by implementation of necessary changes or a timely, supported explanation to DMO.

If you have any questions regarding this client alert or if we can assist you in evaluating access restrictions or engaging with CFTC staff, please contact one of the authors, any member of our CFTC team listed below, or the Willkie attorney with whom you regularly work.

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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