



# Milbank Insights

## **White Collar Defense and Investigations**

### CFTC Issues Parallel Actions on Prediction Markets — Key Takeaways for Designated Contract Markets

March 13, 2026

By Josh Sterling, Amanda Olear and Carmit Patrone



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## I. Introduction

On March 12, 2026, the Commodity Futures Trading Commission (“CFTC”) issued two significant pronouncements regarding prediction markets. First, the Commission’s Division of Market Oversight (“DMO”) issued a Staff Advisory providing guidance to Designated Contract Markets (“DCMs”) on the listing and trading of event contracts, with a particular focus on sports-related contracts (the “Advisory”).<sup>1</sup> Second, the CFTC published an Advance Notice of Proposed Rulemaking (the “Proposal”) seeking public comment on a wide range of issues concerning the regulation of prediction markets, including the types of event contracts that may be prohibited as contrary to the public interest, applicable Core Principles, and other topics.<sup>2</sup>

Taken together, these documents signal both the CFTC’s intent to focus its comprehensive regulatory framework more squarely on certain aspects of prediction markets and DMO staff’s ongoing expectations of DCMs to act, in the words of the CFTC Chairman, as the first line of defense in addressing the potential for market misconduct. In doing so, the CFTC leaves no doubt that—as said in a recent amicus brief in the Ninth Circuit—it has exclusive jurisdiction over event contracts and means to regulate that space comprehensively.<sup>3</sup>

## II. Background

In recent years, event contract activity on prediction markets has increased dramatically. From 2006 to 2020, DCMs listed an average of approximately five event contracts per year. That number surged to 131 in 2021, and in 2025, DCMs certified approximately 1,600 event contracts for listing. These contracts span financial indices, economic indicators, weather events, political events, international events, cultural events, and sporting events. The number of applications for DCM registration has more than doubled over the past year, largely from entities interested in primarily or exclusively operating prediction markets.

The sustained growth of these markets has garnered the attention of states and others seeking to stake their claim by arguing event contracts, especially sports event contracts, constitute illegal gambling. Despite assertions to the contrary, event contracts are exclusively regulated by the CFTC. As part of this comprehensive regulatory framework, DCMs listing event contracts must comply with the Core Principles under the Commodity Exchange Act (“CEA”) and CFTC regulations promulgated thereunder.

Under the leadership of Chairman Michael Selig, the CFTC has taken a number of steps to both reinforce its exclusive authority over event contracts and foster the growth and development of these markets.<sup>4</sup> The Advisory and Proposal are among the most significant of these actions to date. Under the leadership of Chairman Michael Selig, the CFTC has taken a number of steps to both reinforce its exclusive authority over event contracts and foster the growth and development of these markets. The Advisory and Proposal are among the most significant of these actions to date, alongside the CFTC’s

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<sup>1</sup> CFTC Staff Advisory No. 26-08, *Prediction Markets Advisory* (Mar. 12, 2026), <https://www.cftc.gov/PressRoom/PressReleases/9193-26>.

<sup>2</sup> CFTC, *Advanced Notice of Proposed Rulemaking Relating to Prediction Markets* (Mar. 12, 2026), <https://www.cftc.gov/PressRoom/PressReleases/9194-26>.

<sup>3</sup> Press Release, CFTC, *CFTC Reaffirms Exclusive Jurisdiction over Prediction Markets in U.S. Circuit Court Filing* (Feb. 17, 2026), <https://www.cftc.gov/PressRoom/PressReleases/9183-26>.

<sup>4</sup> See e.g., Michael S. Selig, *States Encroach on Prediction Markets*, WALL ST. J. (Feb. 16, 2026), [https://www.wsj.com/opinion/states-encroach-on-prediction-markets-6eb43af9?mod=hp\\_opin\\_pos\\_2](https://www.wsj.com/opinion/states-encroach-on-prediction-markets-6eb43af9?mod=hp_opin_pos_2); Michael S. Selig, Chairman, CFTC, Remarks at the FIA Global Cleared Markets Conference: The Next Era of American Markets Leadership (Mar. 9, 2026), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig>.

forementioned amicus brief. These three pieces should be considered together, as they collectively support the twin propositions that the CFTC has exclusive jurisdiction over event contracts traded on DCMs – and fully intends to exercise that authority.

### III. Prediction Markets Advisory

In this context, the Advisory offers the DMO staff's perspective on the listing and trading of event contracts within the existing legal framework under the CEA and CFTC regulations thereunder.

The Advisory emphasizes the importance of innovation and growth in prediction markets, while reaffirming the role of DCMs as the “front-line regulators” of their markets. As part of this role, the CFTC staff invite DCMs to “take proactive steps” to ensure their markets – including product design, surveillance systems, and compliance structures – “continue to evolve in a manner that complies with the CEA and Commission regulations.”<sup>5</sup>

The Advisory does not create any new obligations, although it suggests some additional steps for DCMs to consider taking as to certain kinds of event contracts. It is largely consistent with informal guidance provided by the staff in recent years.

#### A. Anti-Manipulation Obligations

The Advisory emphasizes that DCMs must comply with all 23 statutory Core Principles and specifically reminds DCMs of their obligations under Core Principles 3 (listing only contracts not readily susceptible to manipulation), 4 (preventing manipulation through surveillance), and 12 (protecting markets from abusive practices). The Advisory also reminds DCMs and market participants that Commission Regulation 180.1 makes it unlawful to employ any device, scheme, or artifice to defraud or manipulate the price of any contract listed on a DCM, including misappropriation of confidential information (insider trading). To comply with these anti-manipulation obligations, DCMs must conduct real-time monitoring of all trading activity to identify disorderly trading and any market or system anomalies.

These reminders are especially timely as Chairman Selig has recently emphasized a back-to-basics enforcement policy, in which the CFTC will go back to its “core purpose of policing fraud, abuse, and manipulation rather than setting policy.”<sup>6</sup> The CFTC has already put this approach into action. Notably, the Advisory itself cites a recent press release highlighting two insider trading cases on a prediction platform, in which the platform alleged misappropriation of nonpublic information in violation of CEA section 6(c)(1) and Commission Regulations 180.1(a)(1) and (3).<sup>7</sup> This signals that misuse of nonpublic information in prediction markets may become an enforcement priority for the agency.

#### B. Heightened Scrutiny for Certain Event Contracts

DMO staff also encourage DCMs to consider whether certain categories of event contracts create a heightened potential for manipulation or price distortion, especially where contracts settle on the action of a single person or small group of persons. In the sports context, contracts that may warrant heightened scrutiny include those that resolve based on injuries to individual participants, unsportsmanlike conduct, physical altercations, or officiating actions during a sporting event. DMO staff recommend that DCMs engage with staff in the early phases of designing such contracts and suggest that coordination between DCMs and the sports industry could be a valuable component of a proactive self-regulatory regime.

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<sup>5</sup> Press Release, CFTC, *CFTC Staff Issues Prediction Markets Advisory* (Mar. 12, 2026), <https://www.cftc.gov/PressRoom/PressReleases/9193-26>.

<sup>6</sup> Michael S. Selig, Chairman, CFTC, Remarks at the FIA Global Cleared Markets Conference: The Next Era of American Markets Leadership (Mar. 9, 2026), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig2>.

<sup>7</sup> Press Release, CFTC, *CFTC Enforcement Division Issues Prediction Markets Advisory* (Feb. 25, 2026), <https://www.cftc.gov/PressRoom/PressReleases/9185-26>.

## C. Engagement with Sports Leagues and Governing Bodies

DMO staff recognize that sports-related events contracts may be more susceptible to insider trading and manipulation risks which could then implicate the interests of professional sports leagues and their integrity units. To address these concerns, DCMs listing sports-related event contracts are encouraged to:

- Engage in pre-self-certification communications with relevant sports governing bodies when developing terms, compliance, and market oversight programs;
- Include in the self-certified product submission an explanation of whether the contract is consistent with the relevant league's integrity standards;
- Establish information-sharing and data arrangements with the relevant sports integrity monitoring organization; and
- Rely on official data provided by the relevant league or governing body as the settlement source.

DCMs are also encouraged to look to league integrity standards, guidance around restricted or insider participant lists, and to cooperate with any league-run investigations into potential manipulation or insider trading.

## D. Product Submission Requirements

The Advisory reminds DCMs that self-certified product submissions must include a complete explanation and analysis of the contract's compliance with the CEA and Commission regulations. DMO staff expect product submissions to include, among other things, a description of the settlement methodology that accounts for differing potential permutations of the contract, identification of specific data sources for settlement, and an assessment of the reliability, objectivity, and manipulation resistance of such sources. The Advisory provides that a statement that a contract will settle based on a "consensus of yet-to-be-determined sources" may not satisfy Core Principle 3. In our experience, such a settlement mechanism is more a feature of unregistered, offshore platforms than registered DCMs.

Overall, staff's guidance regarding the requirements for a sufficient self-certification submission indicates the possibility of increased scrutiny of the DCM's supporting analysis. Although given the CFTC's limited ability to stay the listing of a self-certified product, whether that scrutiny would result in an increase in stayed filings is unclear. Additionally, the staff's guidance seemingly encourages increased reliance on DCMs because it directs DCMs to submit more tailored self-certifications, which would necessitate more submissions.

## E. Commission Enforcement Authority

The Advisory reminds DCMs that the CFTC retains authority to stay the listing of a self-certified contract pending proceedings for filing a false certification, including any proceedings relating to a false certification of compliance with Core Principle 3's manipulation requirements. It also suggests that proactive engagement with DMO staff and relevant sports leagues or governing bodies may reduce the likelihood of CFTC action.

## IV. Advanced Notice of Proposed Rulemaking Relating to Prediction Markets

The Proposal solicits comment from the public to inform possible future prediction market-related rulemaking. The CFTC could take one or more actions based on the input received through the Proposal including: exempting DCMs and event contracts from one or more current rules, creating new rules that are specific for event contracts and prediction markets, or amending existing rules to tailor their application to event contracts. Chairman Selig has suggested that whatever action the Commission ultimately takes, his goal is to "deliver the minimum effective dose of regulation."<sup>8</sup>

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<sup>8</sup> Michael S. Selig, *America's Financial Markets Are Ready for a Golden Age*, WASH. POST. (Jan. 20, 2026), <https://www.washingtonpost.com/opinions/2026/01/20/cftc-trump-administration-markets-regulation/>.

The Proposal invites interested members of the public to answer questions concerning the application of the CEA's Core Principles and Commission regulations to prediction markets and the types of event contracts that may be prohibited as contrary to the public interest, among other topics. Those interested in providing feedback should pay particular attention to the following areas, while those who are in, anticipating, or merely observing the ongoing litigation involving prediction markets may be keen to see what proponents for and against event contracts submit by way of comment.

## A. Core Principles and Compliance

The Proposal asks what factors the CFTC should consider in determining whether to provide guidance or amend regulations regarding how the DCM Core Principles apply to prediction markets. Key Core Principles highlighted include:

- **Core Principle 2 (Compliance with Rules).** The CFTC seeks comments on how DCMs provide impartial access and prohibit abusive trading practices in the prediction market context, including whether there are unique risks of abusive trading. The CFTC also asks about DCMs' rules related to resolution criteria for event contracts, including dispute resolution procedures when the occurrence of a triggering event is contested. The attention to dispute resolution could suggest that the Commission is considering whether more formalized transparent resolution mechanisms are needed.
- **Core Principle 3 (Contracts Not Readily Susceptible to Manipulation).** The Proposal asks how DCMs assess whether an event contract is "readily susceptible to manipulation" and what factors should be considered. The CFTC's discussion of Core Principles 3 and 4 highlights a greater interest in market manipulation. Specifically, echoing the DMO Advisory, the Commission appears to be concerned with contracts that are under the control of a single individual or where actors can use prediction markets to influence another market.
- **Core Principle 4 (Prevention of Market Manipulation).** The CFTC inquires whether any aspects of prediction markets pose challenges to compliance with this Core Principle, which requires DCMs to prevent market manipulation, and whether there are existing surveillance practices from other types of exchanges that would be useful.
- **Core Principle 5 (Position Limitations).** The Proposal asks what factors a DCM should consider in adopting position limitations or position accountability for prediction markets, including how position limits across similar event contracts should be aggregated.
- **Core Principle 11 (Financial Integrity).** The CFTC seeks input on whether prediction markets should be permitted to offer trading on margin, and if so, what disclosures and margin calculation methods should apply, particularly with respect to retail versus institutional customers. Currently, event contracts are fully collateralized.
- **Core Principle 20 (System Safeguards).** The Proposal asks about sources of operational risk related to prediction markets. In addition, the CFTC asks what factors it should consider with respect to blockchain-based prediction markets, and whether there are challenges or advantages in applying existing regulations to such platforms.

## B. Public Interest Determination

Under CEA section 5c(c)(5)(C), the CFTC may determine that event contracts are "contrary to the public interest" based on a further review if they involve: (1) activity unlawful under federal or state law; (2) terrorism; (3) assassination; (4) war; (5) gaming; or (6) other similar activity as specified by CFTC rule. The Proposal solicits feedback on how the CFTC should interpret the scope and meaning of all of these categories.

Of particular significance for DCMs listing sports-related contracts, the CFTC poses extensive questions regarding the meaning of "gaming," including whether gaming is synonymous with gambling, whether a sports competition should be treated differently than an award competition, and what aspects of responsible gaming standards (such

as self-exclusion programs, monetary or time limits, or advertising limits) should factor into the public interest determination.

The CFTC also seeks public input on when it should make the determination that a contract may be against public interest during the listing process as well as the process for making such determination.

## C. Inside Information and Manipulation

The Proposal devotes significant attention to the role of nonpublic information in prediction markets. The CFTC asks whether there is public interest utility in allowing people with an asymmetric information advantage to trade on prediction markets, and notes that some events underlying event contracts are under the control of a single individual or small group of individuals.

This set of questions focus on an area in which there has been some confusion, at least among the commentariat and public intelligentsia. To be clear, material non-public information (“MNPI”) is a vital and necessary feature of markets that are designed to discover prices in a fair and efficient manner. That is indeed an animating purpose of the CEA, as Section 3 so specifies. Think about it—if an oil producer or supplier knows more about the current disposition of its supply in various shipping channels, it is expected to and should trade on that information, so that the market can price-in that information. So too then with every commodity, including events.

But the legal problem with using MNPI arises when it is misappropriated, i.e., taken in violation of a preexisting legal duty not to possess or use it. This unlawful misuse of MNPI often results in other behavior that violates the CEA’s clear prohibitions on manipulative, deceptive, and fraudulent misconduct.<sup>9</sup> That trading behavior, by itself, is illegal. So, in a sense, insider trading law is a clear disincentive against that kind of trading and serves as an additional (or even separate) basis for charging such misconduct. It may prove helpful to the CFTC’s deliberation on future rulemakings if commenters to the Proposal propound upon this issue.

## V. Key Takeaways for DCMs

DCMs should take the following steps in response to these parallel actions:

- First, DCMs should evaluate their existing event contract listings and compliance programs in light of the specific Core Principle obligations highlighted in both the Advisory and Proposal, with particular attention to manipulation risks, real-time surveillance capabilities, and product submission documentation. The Advisory’s express reference to the Division of Enforcement’s recent advisory on insider trading underscores how preventing fraud and misuse of nonpublic information is an explicit objective for the CFTC.
- Second, DCMs listing or contemplating sports-related event contracts may consider establishing relationships and information-sharing arrangements with relevant sports leagues and governing bodies, and should review their contract terms and settlement sources for consistency with league integrity standards.
- Third, DCMs should assess whether any of their existing or planned event contracts present heightened manipulation risks — particularly those involving individual-level outcomes or small-group determinations — and should consider proactive engagement with DMO staff before self-certifying such contracts. Additionally, when self-certifying such contracts, DCMs should be prepared to document their analysis that such contracts comply with the applicable Core Principles with a particular focus on susceptibility to manipulation.
- Fourth, DCMs should consider submitting comments on the Proposal to shape the regulatory framework that will ultimately govern prediction markets, including on critical open questions such as the scope of the “gaming” category, the permissibility of margin trading, and the treatment of inside information.

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<sup>9</sup> Commodities Exchange Act §§ 2(a)(1), 3, 4b, 4c, 6(c), 9, 13(a); 7 U.S.C. §§ 2(a)(1), 5, 6b, 6c, 9, 13, 13c(a); see also 17 C.F.R. §§ 180.1-180.2.

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- Finally, DCMs operating blockchain-based prediction markets should monitor developments closely, as the Proposal specifically asks about the challenges and advantages of applying existing regulations to blockchain-based platforms.

The CFTC is interested in hearing from market participants and the public regarding the ongoing implementation of the current comprehensive framework, as well as to inform the development of the next iteration. It is also clear from the topics of focus in these materials that the CFTC has been paying attention to recent events. Additionally, the CFTC emphasizes the central role of DCMs in the broader derivatives marketplace through their own compliance with the Core Principles, but also in their role as self-regulatory organizations — including their active monitoring and enforcement of policies and procedures concerning fraud and settlement procedure.

For further guidance, contact Milbank's team of prediction market experts. We can help you further understand how these releases may impact your business. For those that are interested in participating in the rulemaking process, the public comment period will be open until 45 days after publication in the Federal Register. Milbank's team is well positioned to assist in this process.

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