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CFTC Proposes a Comprehensive Framework for Prediction Markets: Key Takeaways from the Notice of Proposed Rulemaking

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On June 10, 2026, the Commodity Futures Trading Commission (CFTC) issued a Notice of Proposed Rulemaking (NPRM) entitled *Prediction Markets; Public Interest Determinations*, proposing comprehensive amendments to Commission Regulation 40.11, 17 C.F.R. § 40.11.¹

The Proposal addresses, among other things, two issues of particular importance for the prediction market industry that have been the subject of recent litigation involving designated contract markets (“DCMs”) offering sports, election and entertainment-related event contracts. Specifically, the NPRM addresses: (1) whether DCMs are categorically prohibited from listing contracts involving “gaming” as contrary to the public interest or whether the CFTC retains discretion to allow such contracts on a case-by-case basis; and (2) what constitutes “gaming” for purposes of an event contract. The NPRM also addresses other important issues that are important to understand for those following the legal, regulatory and operational development of prediction markets, which we highlight and summarize below.

Background

DCMs operating prediction markets list “event contracts” for trade on their exchanges. An event contract is a form of swap, which is defined by the Commodity Exchange Act (“CEA”) to include contracts that provide for payment “dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.” 7 USC § 1a(47)(A). In recent years, certain DCMs have listed event contracts for which payment is dependent on the outcome of sports, elections and entertainment events. Under the CEA, the CFTC has “exclusive jurisdiction” over “transactions involving swaps” that are “traded or executed on” a DCM. 7 U.S.C. § 2(a)(1)(A). However, some state regulators and other parties argue that event contracts are “bets” or “wagers” within the meaning of state gaming statutes and have argued that the operation of prediction markets constitutes illegal or unlicensed gambling under state law. This has unleashed a flood of litigation throughout the country regarding the preemptive effect of the CFTC’s “exclusive jurisdiction” over event contract transactions under the CEA.

Event contracts are subject to the “Special Rule” in section 5c(c)(5)(C) of the CEA, 7 U.S.C. § 7a-2(c)(5)(C), which the Commission implemented through § 40.11 in 2011. The Special Rule provides that the Commission “may determine” that an event contract is “contrary to the public interest” if it involves unlawful conduct, “terrorism,” “assassination,” “war,” “gaming,” or “other similar activity” (the “Enumerated Activities”). The Special Rule further provides that no event contract “determined by the Commission to be contrary to the public interest” may be listed.

The current version of 17 CFR § 40.11 provides that a registered entity “shall not list for trading” an agreement that involves the Enumerated Activities (*id.* § 40.11(a)) but further provides that the Commission

¹ See *Prediction Markets; Public Interest Determinations*, RIN 3038-AF65 (CFTC June 10, 2026) (to be codified at 17 C.F.R. pt. 40) (pre-publication version) [hereinafter *NPRM*].

“may” subject an event contract, “which may involve” the Enumerated Activities, to a 90-day review, and, at the conclusion of such review period, issue an order “approving or disapproving” such contract (*id.* § 40.11(c)). Courts and commentators considering legal challenges to event contracts purportedly involving the Enumerated Activities have questioned whether § 40.11(a) (stating that such contracts “shall not” be listed) is a blanket ban on the listing of any event contract involving the Enumerated Activities or whether, when read in conjunction with § 40.11(c) and the Special Rule, should be understood as prohibiting the listing of an event contract involving the Enumerated Activities only where the CFTC has made a discretionary determination that such contract is contrary to the public interest.

A second issue that has arisen in recent litigation involving prediction markets is the definition of “gaming” under the Special Rule and 17 CFR § 40.11. Neither the statute nor the existing regulation provides a definition. Some have questioned whether the trading act itself must be “gamified” in order to trigger the public interest provisions of the Special Rule, or whether a contract involves “gaming” when the event underlying it is a type of “game.” Even if the latter, courts and commentators question what constitutes a “game,” in particular, whether the term should be understood to mean a pure game of chance (such as roulette) or also athletic games and other, similar contests.

In the midst of various litigation considering the proper interpretation of § 40.11, on March 16, 2026, the Commission issued an advance notice of proposed rulemaking, *Prediction Markets; Advance Notice of Proposed Rulemaking*, 91 Fed. Reg. 12516 (Mar. 16, 2026), in response to which it received “approximately 3,500 comments.” *NPRM* at 44. The NPRM follows from that advance notice and recommends amendments intended to provide “additional clarity, greater predictability, and a more focused articulation of the factors that guide the Commission’s evaluation of whether an event contract is within the scope of the Special Rule and, if so, whether the event contract is contrary to the public interest.” *Id.* at 150.

Key elements of the proposed amendments include: (1) providing a definition of the circumstances in which an event contract “involves” an enumerated activity, (2) defining “gaming” in a manner that distinguishes games from contests, (3) setting out a multi-factor framework for determining whether a contract is in the public interest, and (4) providing additional process and procedures that would apply during the 90-day public interest review of certain self-certified contracts. *Id.* at 156-57.

There is No Categorical Prohibition on Contracts Involving Enumerated Activities

The NPRM makes clear that the CFTC does not interpret § 40.11(a) to be a blanket prohibition on the listing of event contracts involving the Enumerated Activities and recommends amendments to the existing rule to clarify that point. The NPRM states that the 90-day review period contemplated under the existing § 40.11(c) “presupposes that whether a particular contract involves [an Enumerated Activity] is a question the Commission resolves through review rather than a determination made on the face of 40.11(a)(1).” The CFTC reasons that such an understanding is “necessary to keep § 40.11(a) within the bounds of the Commission’s statutory authority,” *NPRM* at 36-37, i.e., the Special Rule, which gives the CFTC the discretion, but not the obligation, to prohibit event contracts involving Enumerated Activities. See 7 U.S.C. § 7a-2(c)(5)(C) (the Commission “may determine” that an event contract involving the Enumerated Activities is contrary to the public interest).

The Commission explains that “the principal difference between the current § 40.11 and the [proposed amendment] is that § 40.11(a) would more clearly follow the plain language of the Special Rule by stating that ‘[t]he Commission may determine’ that event contracts subject to the Special Rule are contrary to the public interest.” *NPRM* at 47. This change is intended to “remove uncertainty under the current text of §

40.11(a) regarding whether a finding that event contracts are contrary to the public interest is necessary to prohibit their trading and clearing. *Id.*

The Commission states that it interprets the Special Rule as requiring the Commission to engage in a “three-step inquiry” before determining that an event contract is prohibited by the statute. *Id.* at 19. Under the Special Rule, a contract is prohibited “if the Commission affirmatively finds that (i) the contract is an event contract, (ii) the event contract involves an Enumerated Activity or similar activity, and (iii) the event contract is contrary to the public interest.” *NPRM* at 19. The proposal would allow the CFTC to make the public interest determination using a multi-factor analysis grounded in the CEA, under proposed §§ 40.11(a)(5) and (a)(6), “instead of relying on a single, static public interest test” as it does today. *Id.* at 89-90.

Determinations that a Contract Involves Gaming

With respect to the second prong, the proposed amendments give guidance on what it means for an event contract to “involve” an Enumerated Activity, as provided in the Special Rule. The amendments state that event contracts “involve an activity if their settlement is determined by an occurrence, extent of an occurrence, or contingency in the activity.” *NPRM* at 47 (proposed § 40.11(a)(3)). The Commission explains that “‘involve’ refers to the underlying event and not to trading activity or incidental relationships.” *Id.* at 156.

Proposed § 40.11(b) defines “gaming” 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.” *NPRM* at 76. The Commission rejects the suggestion of some commentators who argued that “‘gaming’ should be defined in terms of elements associated with gambling,” such as “the act of risking something of value . . . for a chance to win a prize.” *NMPPR* at 74. The Commission explains that a definition centered on the risking of value would be “overbroad” and “would apply to all event contracts and render the Special Rule’s ‘gaming’ category limitless.” *Id.* at 74, 228-29.

The Commission further explained that “political elections are not gaming” because “[e]lections typically serve the purpose of selecting political leadership, not recreation or entertainment,” distinguishing elections from other contests as their outcomes “do not turn on the participants’ luck, skill, or athletic ability.” *NPRM* at 78-79. Likewise, the *NMPPR* provides “contests like the Nobel Prize and the Academy Awards are not gaming.” *Id.* at 79. The Commission lists “[r]esults of political elections” and “honor and award contests” among event contracts that “generally fall outside of the scope of the Special Rule and § 40.11.” *Id.* at 85-86.

Sports Event Contracts – Considerations and Proposed Factors

Having concluded that event contracts involving sports events constitute “gaming” within the meaning of the Special Rule, the *NPRM* seeks to provide guidance as to what types of sports-related event contracts are permissible and which may be contrary to the public interest. The *NPRM* describes various “positive public interest factors” that weigh in favor of finding that a contract is in the public interest and “negative public interest factors” that weigh against such a finding. These factors have a heavy focus on whether the contract turns on “aggregate” performances or outcomes rather than discrete events within games or events that are subject to random chance. *NPRM* at 213-15.

The Commission states that it “preliminarily believes that event contracts based on the aggregate outcomes of professional or collegiate sports events, based on objective and verifiable settlement criteria, listed by prediction markets that maintain appropriate surveillance, trading prohibitions, and coordination with relevant sports governing bodies, are . . . unlikely to be found to be contrary to the public interest.” *NPRM* at 117. Favorable factors include settlement on “final scores, point differentials, win-loss results, tournament advancement, individual or team statistical performance or season long performance metrics.” *Id.* at 257.

The Commission also identifies categories of sports event contracts “likely to be found to be contrary to the public interest,” including those settling “solely by reference to” player injuries, “officiating” outcomes, “a discrete action, event, or occurrence in sporting events,” “physical altercation[s],” or games “in which participants are below the collegiate level.” *NPRM* at 119-22 (proposed § 40.11(a)(6)(iii)(B)).

Specific Insights into the CFTC’s Public Interest Determination

Of note, while markets subject to the CFTC’s exclusive jurisdiction are often used for hedging or other price-discovery purpose, the *NPRM* does not require a permissible event contract to have a specific hedging purpose. However, the Commission proposes to incorporate the concept into the public interest review, noting that “a reasonable potential for hedging or pricing function” would be strong evidence that the contract is not contrary to public interest. *Id.* at 238.

Other types of contracts, though not categorically banned, are specifically identified as likely to be contrary to the public interest. For example, the CFTC stated that “it would be highly likely that event contracts involving games that depend entirely on random chance would be found to be contrary to the public interest” because such contracts are “by definition, devoid of informational content.” *NPRM* at 113. The Commission distinguishes games of random chance from other games involving “a high degree of luck” that are also “significantly affected by the participants’ skill.” In doing so, the Commission leaves open the possibility that an event contract involving a game such as poker, particularly when it “is repeated over many rounds, as in organized tournaments,” could be permissible. *NPRM* at 112-13.

In contrast to its more nuanced approach to a public interest review of “gaming” contracts, the Commission indicated that “all event contracts involving terrorism, assassination, and war are highly likely to be against the public interest,” citing national-security, information-leakage, and perverse-incentive concerns. *NPRM* at 112. The Commission also noted its concern that the prices of national-security related contracts “would not necessarily align with the actual likelihood of the underlying terrorism, assassination, or war events” because “the trading public is shielded as a matter of public policy from relevant information about the event.” *Id.* at 109-10. The Commission further explained that it would be “highly likely that event contracts involving activity that is unlawful under federal law would be found contrary to the public interest,” but explains that certain event contracts that do “not incentivize specific criminal conduct,” such as ones that reference generalized crime rates over time, may be permissible. *NPRM* at 108.

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Process and Procedures

The Commission is proposing to amend § 40.11 to establish a procedural framework governing the Commission's exercise of its discretionary authority under the Special Rule. *Id.* at 50. Under the proposed framework, the Commission may commence a review by issuing a "written determination" that there is "a basis to believe" event contracts both "involve an Enumerated Activity and may be contrary to the public interest," and the review "must commence within 10 days of the date of the event contract's listing." *Id.* at 50-51. The framework adds procedural protections, including a written statement of concerns, an opportunity for the prediction market to respond, a staff recommendation, and Commission final action—reflecting the Commission's view that "determinations of this consequence should be made carefully, on a developed record." *Id.* at 131.

The Proposal does not seek to limit the contracts that a prediction market can self-certify under 17 CFR § 40.2 and does not propose to adopt a reading of the Special Rule that would require a public interest determination to be made prior to listing. *NPRM* at 128. It states that the proposed public interest factors "should assist prediction markets in avoiding the self-certification of event contracts that would likely be found to be contrary to the public interest." *NPRM* at 127. However, in response to "marked increase in the number of event contracts that prediction markets have self-certified" under § 40.2, the Commission proposes to amend § 40.11(e)(1)(i) to permit the Commission to "issue an order finding that a group of event contracts that are subject to review are contrary to the public interest." The Proposal would also amend § 40.11(c)(4) to give the Commission the ability to "consolidate review of multiple event contracts that involve the same underlying event or a substantially similar set of underlying events," in which case "the determination to begin the review would include a description of the consolidated group." *NPRM* at 49-50.

Comment Period and Effective Date

Comments are due 45 days after publication in the Federal Register. *NPRM* at 1. The Commission proposes that the amendments "would go into effect 60 days following publication of a final rule in the Federal Register," at which point Commission staff "would begin to review certified event contracts" under the new framework. *Id.* at 144. Until a final rule takes effect, the current text of § 40.11 remains in place.

Market participants should evaluate current and planned event contracts against the Proposal's public-interest factors—particularly negative public interest factors and the treatment of unlawful activity, terrorism, assassination, and war contracts—and should consider submitting comments during the 45-day comment period.

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