

## FinTech, Crypto, Trading & Markets

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### **CFTC Seeks Input on Prediction Markets as Staff Signal Heightened Scrutiny for Sports-Related and Other Event Contracts**

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#### What You Need To Know:

The Commodity Futures Trading Commission (CFTC or Commission) and its staff have issued two significant releases related to prediction markets. The CFTC issued an Advance Notice of Proposed Rulemaking (ANPRM) inviting public comment on issues including how the Commodity Exchange Act (CEA) and CFTC regulations apply or should apply to event contracts and the types of event contracts that may be prohibited as contrary to the public interest. Contemporaneously, the CFTC's Division of Market Oversight (DMO) issued Staff Advisory No. 26-08 (the Advisory), which articulates staff's views on designated contract markets' (DCM) obligations when listing and surveilling event contracts.

- **Comment deadline:** April 30, 2026.
- **What the ANPRM does:** Solicits broad input on how DCM Core Principles, public interest considerations, margin, anti-manipulation/insider trading rules, and reporting requirements should apply to prediction markets.
- **What the Advisory does:** Sets out DMO staff's expectations for DCMs listing event contracts, emphasizing manipulation analysis, settlement data sources, product submission requirements, and engagement with sports leagues and relevant sports governing bodies.
- **We can help:** If you are considering submitting comments or need to assess your compliance posture, reach out to your regular Lowenstein Sandler contact to discuss how we can help.

#### Executive Summary

On March 16, 2026 the CFTC continued its assertion of exclusive jurisdiction over prediction markets<sup>1</sup> by publishing an [ANPRM](#)<sup>2</sup> and [Staff Advisory](#),<sup>3</sup> both related to event contracts. These releases come amid ongoing federal and state litigation between state and tribal authorities on the one hand and CFTC-designated contract markets and registrants on the other over jurisdictional boundaries and a massive spike in interest in event contract trading. As of March 2026, CFTC staff are also evaluating several DCM applications from firms seeking federal oversight as a strategic alternative to the expensive and time-consuming multistate regulatory and licensing framework that historically governs betting markets.

The ANPRM replaces the 2024 proposed rules, which the Commission [withdrew](#) in February 2026 for reconsideration "in light of various forms of state regulatory actions and litigation concerning the Commission's exclusive jurisdiction over event contracts," in order to reevaluate the application of the swap definition under the CEA, and to properly apply the excluded commodity definitions under the CEA.<sup>4</sup> The withdrawal of the prior proposal and the decision to issue the ANPRM underscores the degree to which the regulatory landscape remains unsettled.

Complementing this, the Advisory focuses on the application of DCM Core Principles,<sup>5</sup> laying out DMO staff recommendations regarding DCMs' contract design, surveillance and settlement methodologies, including rigorous settlement protocols and coordination with sports leagues and governing bodies. Although the Advisory is informative rather than binding, it underscores a potential shift toward more active oversight. Furthermore, the possibility of Securities and Exchange Commission (SEC) jurisdiction over security-based swaps necessitates an awareness of jurisdictional lines during product design, although recent cooperation between the CFTC and the SEC (as expressed in their recent

joint [memorandum of understanding](#))<sup>6</sup> has lowered the regulatory stakes for treating event contracts as subject to the jurisdiction of the wrong regulator and not complying with the right regulator’s oversight regime.<sup>7</sup>

## The ANPRM: What the CFTC Wants To Hear About

### *Core Principles*

The ANPRM probes how DCM Core Principles apply to prediction market architecture. Under Core Principle 3 (contracts not readily susceptible to manipulation), the CFTC asks how a determination of whether an event contract is “readily susceptible to manipulation” should be made and what factors should be considered, reflecting the Commission’s awareness of recent manipulation controversies. Under Core Principle 4 (prevention of market disruption), the CFTC asks whether any aspects of prediction markets pose challenges to preventing manipulation and price distortion, and whether existing surveillance practices from other exchange types would be useful. The CFTC also asks what factors should guide DCMs in establishing resolution criteria and dispute resolution procedures for event contracts, as required by Core Principle 2 – a question that reflects the Commission’s awareness of disputes that have emerged regarding how event contracts settle.

The CFTC further asks whether position limits or accountability levels should apply under Core Principle 5 (position limitations or accountability rules) and how position limits across similar event contracts should be aggregated. On financial integrity under Core Principle 11 (establishing and enforcing rules for the financial integrity of transactions), the CFTC asks whether margin should be permitted for event contracts and, if so, how initial and variation margin should be calibrated. Event contracts are currently fully collateralized, and any move toward margin trading would carry significant implications for retail customers and clearing. The CFTC also invites discussion on how blockchain-native prediction markets should be treated under the operational risk framework required under Core Principle 20 (risk analysis and oversight program). The CFTC also solicits input on derivatives clearing organization (DCO)-specific issues, ranging from product eligibility and system safeguards to the implications of margining and cross-margining within DCO risk models, including what clearing silo, if any, would be appropriate for event contracts.

### *Public Interest*

In light of recent controversies, the ANPRM asks how DCMs should construe whether a contract involves any of the activities listed in CEA Section 5c(c)(5)(C) (the Special Rule) – such as terrorism, assassination, or war – and whether guidance on this point should be categorical or case by case.<sup>8</sup> The ANPRM also requests industry guidance on how CEA Section 3’s purposes and the former “economic purpose test” should inform the Commission’s determination, as well as what activities might be construed as sufficiently similar to the express categories and how they might be addressed by a rule. When determining which contracts to permit, the ANPRM also requests industry guidance on whether it should consider economic purpose when weighing public interest. Under a prior version of the CEA repealed in 2000, the CFTC applied an economic purpose test as part of determining whether a DCM could list a contract for trading, and the ANPRM asks whether any elements of this test should inform the Commission’s public interest determination under the Special Rule. A revival of the economic purpose test would set a higher bar for event contracts, with respect to which a DCM would have to demonstrate a reasonable expectation that the contracts will be used for hedging and/or price basing on more than an occasional basis.

### *Inside Information*

The ANPRM explores whether inside information enhances price discovery or poses manipulation and fairness risks. This comes soon after the CFTC’s Enforcement Division issued a [prediction markets advisory](#) discussing two recent insider trading-related DCM disciplinary matters. The ANPRM acknowledges that prediction market prices may be more reliable indicators of probability if informed participants trade on them but recognizes that such trading may also lead to manipulation, unfairness, and misuse of information.<sup>9</sup> The CFTC asks how surveillance should address asymmetric information in markets where outcomes may be controlled by small groups or individuals. This tension – between valuing informed trading for price discovery and preventing abuse – is a familiar one in securities markets but takes on a distinctive character in CFTC-regulated markets, where participants have historically been able to trade on information derived from their own commercial positions (e.g., crop conditions or bond portfolios) without raising insider trading concerns.

## The CEA Special Rule Considerations

The CEA's Special Rule grants the CFTC the authority to prohibit a DCM from listing a contract if the Commission determines it is "contrary to the public interest."<sup>10</sup> The ANPRM explores several categories of potentially prohibited activity, including:

- Unlawful under state laws: The ANPRM asks what types of event contracts could involve such activity, how conflicts among states with differing laws should be resolved, and what steps the Commission should take to assess which laws are implicated – questions that Congress did not provide the CFTC guidance on.
- Terrorism and Assassination: The ANPRM asks whether the meanings of these terms are self-evident or contain ambiguities and whether definitions from other contexts, such as insurance, would be helpful. These questions are less academic than they appear; the CFTC reportedly caused one DCM to delist contracts related to steps in the legal process involving a defendant accused of killing a health care executive, but questions remain about whether they were "assassination" contracts under the Special Rule and whether contracts on legal proceedings following an assassination – where the assassination itself does not determine the contract's settlement – fall within the rule's prohibition.
- War: The ANPRM asks whether "war" encompasses all military actions or is limited to declared conflicts, and what factors distinguish war from civil unrest or other international relations activities.
- Gaming and CEA goals: The ANPRM devotes significant attention to the scope of "gaming," asking whether it is synonymous with gambling, whether different types of contests (e.g., sports competitions vs. award shows) should be treated differently, and how the characteristics of market participants – including that event contract traders may skew younger than those trading other financial instruments – should factor into the public interest determination. The ANPRM also asks what aspects of responsible gaming standards, such as self-exclusion programs and monetary limits, should be considered. These questions are at the core of the prediction markets litigation currently playing out in federal and some state courts.

## The DMO Staff Advisory: Current Expectations for DCMs

### *Scope and Status*

The Advisory communicates current DMO recommendations for DCMs listing event contracts, with a focus on sports-related contracts. The Advisory is not binding and provides no relief from the CEA or CFTC regulations. Nevertheless, its emphasis on avoiding manipulation and settlement issues – and its citation to Regulation 180.1<sup>11</sup> – may signal heightened regulatory attention to issues and controversies that have been raised in the press and by some in Congress and reflects a desire to help DCMs proactively avoid related problems.

### *Contract Design and Settlement*

The Advisory notes that DCMs should recognize incentives to manipulate or influence settlement data and avoid overly broad specifications that impede manipulation analysis across contract permutations. DCMs must specify settlement methodologies, identify data sources, and assess the reliability, objectivity, and susceptibility to manipulation of those sources. Notably, staff indicate that referencing a "consensus" of yet-to-be-determined sources may be insufficient to satisfy Core Principle 3.

Sports-related scenarios flagged as particularly vulnerable include outcomes that hinge on the actions of a single individual or a small group, including those tied to individual injuries, unsportsmanlike conduct, individual performance, or officiating actions. Staff encourage DCMs to engage with the DMO early when designing such contracts to determine if heightened risks exist and whether they can be mitigated. It is also noteworthy that the staff said the Commission has been "discussing issues of settlement integrity with some relevant sports leagues and their governing bodies" and indicated there may be some information-sharing agreements forthcoming to assist in rooting out misconduct.

## Product Submissions

For sports-related contracts, DMO staff recommend pre-certification engagement with relevant leagues and governing bodies, disclosure in product submissions of whether contracts are consistent with league integrity standards, establishment of information-sharing and data arrangements with relevant sports integrity monitoring organizations, and reliance on official data for settlement where appropriate. Staff also recommend cooperation with league-run investigations into potential manipulation or insider trading.

DMO staff observe that overly broad or generalized contract specifications may affect a DCM's ability to analyze the compliance of the contract's various permutations and note that some product submissions have included incomplete explanations of how contracts satisfy applicable requirements. Staff further note that sports-related event contracts have often been shown to be consistent with Core Principle 3 where the settlement outcome depends on the aggregate performance of multiple participants over an extended period, as the breadth of the outcome reduces the ability of any single actor to manipulate the settlement value without material cost or substantial risk of detection. Staff believe that proactive engagement with DMO and relevant sports leagues may increase DCMs' ability to avoid listing contracts readily susceptible to manipulation, including by identifying individuals who should be restricted from trading certain contracts due to their insider knowledge.

## Conclusion

Taken together, the ANPRM and Advisory reflect a Commission that is simultaneously seeking to start over on the fundamental regulatory framework while tightening current expectations through staff guidance. Statements by CFTC Chairman Michael Selig make it clear that the CFTC intends to go forward with a prediction markets rulemaking, notwithstanding extensive current litigation involving the states and various tribes attacking the CFTC's jurisdiction over event contracts. Given the CFTC's determination to proceed despite that backdrop, it's interesting that the Commission is starting with an ANPRM rather than an NPRM.

**We are available to assist with comment drafting, compliance assessments, and product design review. Please reach out to your Lowenstein Sandler contact to discuss how we can help.**

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<sup>1</sup> See Brief for the Commodity Futures Trading Commission as Amicus Curiae in Support of Appellant and in Support of Reversal, *N. Am. Derivatives Exch., Inc. v. State of Nevada*, No. 25-7187 (9th Cir. Filed Feb. 17, 2026).

<sup>2</sup> See 91 Fed. Reg. 12516 (March 16, 2026).

<sup>3</sup> See CFTC Staff Letter No. 26-08 (March 12, 2026).

<sup>4</sup> See Event Contracts; Withdrawal of Proposed Regulatory Action, 91 Fed. Reg. 5386, 5387 (Feb. 6, 2026); see also CFTC Staff Letter No. 26-04.

<sup>5</sup> The DCM Core Principles are 23 mandatory standards set forth in CEA § 5(d), which the CFTC has expanded on in Subparts B through X of the Commission's [Part 38](#) DCM regulations, which exchanges must satisfy to be designated as contract markets and to maintain that designation. These principles require DCMs to maintain rigorous oversight of their markets through active market surveillance, contract listing standards designed to prevent manipulation, and rule enforcement to ensure market integrity.

<sup>6</sup> See also [CFTC and SEC Strengthen Regulatory Coordination Through Memorandum of Understanding](#), Lowenstein Sandler Client Alert (March 13, 2026).

<sup>7</sup> There might still be private right of action liability under CEA § 22 for certain actors and rescission rights and other remedies under federal securities laws.

<sup>8</sup> CEA § 5c(c)(5)(C) authorizes the CFTC to determine that certain event contracts are contrary to the public interest if they involve unlawful conduct, terrorism, assassination, war, or gaming and prohibits DCMs from listing them and DCOs from clearing them if such a determination is made.

<sup>9</sup> CEA § 6(c)(1) and Regulation 180.1 prohibit manipulative devices, and CEA § 4c(a)(3)–(4) bar federal officials from trading on nonpublic information. However, insider trading is treated significantly differently under the CFTC's regime than under the SEC's. The CFTC allows market participants to trade on their own nonpublic business data because commodities markets are built for hedging and price discovery. The SEC, however, operates on a "level playing field" philosophy, where any unfair informational advantage held by a corporate insider is viewed as a fundamental betrayal of the investing public.

<sup>10</sup> See CEA § 5c(c)(5)(C).

<sup>11</sup> See 17 CFR § 180.1. This regulation, which is modeled on SEC Rule 10b-5, broadly prohibits manipulative and deceptive devices and contrivances, employed intentionally or recklessly, regardless of whether the conduct in question was intended to create or did create an artificial price.

## Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

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