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Prediction Markets for Those Who Don't Predict (and for Those Who Do)—Part I

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In this two-part article, the authors provide background on, and an overview of, the evolving regulation of prediction markets with a particular emphasis on how these developments may affect other aspects of the derivatives and securities markets. In this first part of their article, the authors introduce the subject, provide background, examine the regulatory framework, and discuss recent initiatives by the Commodity Futures Trading Commission (CFTC). In the conclusion, to be published in the next issue of The Journal of Federal Agency Action, *the authors will discuss the CFTC-Securities and Exchange Commission division of labor and jurisdictional questions, market abuse and insider trading on prediction markets, and perspectives from the United Kingdom and Europe.*

Since the change in administration, both the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) have embraced with gusto the potential for innovation and changes to existing market infrastructure, including a greater focus on retail trading in their markets and facilitation of 24-7 trading, tokenization, and digital assets.

In recent weeks, the CFTC has taken significant steps in furtherance of its oversight over prediction markets. This two-part article provides background on, and an overview of, the evolving regulation of prediction markets with a particular emphasis on how these developments may affect other aspects of the derivatives and securities markets. This first part covers the following topics:

- Introduction, Background, and Regulatory Framework; and
- The CFTC's Recent Initiatives.

The conclusion of this article will cover the following topics:

- The CFTC-SEC Division of Labor and Jurisdictional Questions;

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- Market Abuse and Insider Trading on Prediction Markets; and
- International Perspectives: the United Kingdom and Europe.

Introduction, Background, and Regulatory Framework

What Are Prediction Markets?

"Prediction markets" are markets on which "event contracts" are traded. Currently, prediction markets operating in the United States are registered with the CFTC as designated contract markets (DCMs).[1] The event contracts offered through prediction markets are not typically intermediated, but are traded directly by participants on a fully collateralized basis. A wide array of contracts are traded on prediction markets today, including contracts on economic and financial events, news and culture, weather and climate, sports, political events, technology, and science.

Event contract activity has grown dramatically, from an average of approximately five contracts listed per year between 2006 and 2020, to 131 in 2021, and approximately 1,600 in 2025 alone.[2] Applications for DCM registration have more than doubled over the past year, largely from entities seeking to operate prediction markets, with CFTC staff currently reviewing more than a dozen pending applications and having received multiple additional inquiries from prospective applicants.

What Is an "Event Contract" Under the CEA?

"Event contracts" are described in section 7a-2(c) of the Commodity Exchange Act (CEA) as "agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency . . . by a designated contract market or swap execution facility. . . ."[3] Event contracts are typically structured as swaps with a binary payoff structure, with settlement based on the outcome of an underlying occurrence or event.[4] As amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act,[5] the statutory definition of "swap" in section 1a(47) of the CEA[6] is deliberately broad and can encompass event contracts within multiple sub-definitions. For example, section 1a(47)(A)(i) includes "any agreement, contract, or transaction . . . that is a[n] . . . option of any kind that is for the purchase or sale, or based on the value, of 1 or more . . . quantitative measures, or other financial or economic interests or property of any kind,"[7] and section 1a(47)(A)(ii) includes "any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery . . . that is 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."[8]

The Public Interest Rule: CEA Section 5c(c)(5)(C)

CEA section 5c(c)(5)(C)(i)[9] (the Public Interest Rule) provides that the CFTC *may* determine that event contracts in excluded commodities based on the occurrence, extent of an occurrence, or contingency (other than a change in commodity price, rate, value, or levels) are contrary to the public interest if the agreements involve:

1. activity unlawful under any federal or state law;
2. terrorism;
3. assassination;
4. war;
5. gaming; or
6. other similar activity determined by the CFTC, by rule or regulation, to be contrary to the public interest.

Rule 40.11 likewise provides that the CFTC may initiate a 90-day review of event contracts and require delisting of event contracts that "involve, relate to, or reference" those enumerated activities.[10]

DCM Listing Process and Compliance with Core Principles

Under the typical listing process,[11] a DCM self-certifies compliance with the CEA and applicable regulations.[12] The contract may then be listed for trading after 10 business days unless the CFTC initiates a 90-day review.[13] If the CFTC initiates such a review and finds the contract involves an enumerated activity and is contrary to the public interest, the contract may not be listed.

DCMs are subject to compliance with a number of Core Principles under the CEA and CFTC Regulations thereunder, including Part 38 of the CFTC's Regulations.[14] The CFTC has recently identified Core Principles 3, 4, and 12 as particularly relevant to the integrity of event contracts and prediction market regulation. Core Principle 3 requires each DCM to list for trading only contracts that are not readily susceptible to manipulation. Core Principle 4 requires that DCMs have the capacity to prevent manipulation, price distortion, and disruptions of the cash settlement process through market surveillance, compliance, and enforcement practices and procedures.[15] And Core Principle 12 requires a DCM to establish and enforce rules to protect markets and market participants from abusive practices and to promote fair and equitable trading.[16]

The CFTC's Historic Posture Toward Event Contracts

On two occasions, the CFTC has disallowed the listing of political event contracts on a DCM—both times in situations outside of limited exceptions for certain not-for-profit educational institutions[17]—principally by invoking the Public Interest Rule on the basis that such contracts "involved gaming" and were contrary to the public interest.[18] First, in 2012, the CFTC disallowed the listing of political event contracts by Nadex after initiating a 90-day review.[19] Then, in September 2023, the CFTC disallowed the listing of similar contracts by Kalshi after a 3-2 vote,[20] prompting Kalshi to sue the CFTC under the Administrative Procedure Act.[21] The D.C. District Court held that the CFTC's finding that Kalshi's political event contracts "involved gaming" was arbitrary and capricious, concluding that the enumerated activities in the Public Interest Rule refer to the underlying event itself, not the event contract transaction as a whole.[22] The CFTC appealed to the D.C. Circuit,[23] but withdrew its appeal shortly after the change in administration.[24]

On January 29, 2026, Chairman Michael Selig outlined[25] a four-part agenda regarding event contracts, each element of which has already been implemented or advanced through concrete regulatory action:

1. *Withdrawal of Prior Proposals and Guidance*. CFTC staff were directed to withdraw the June 2024 proposed

rulemaking on event contracts[26] as well as the September 2025 staff advisory cautioning registrants about offering sports-related contracts.[27]

2. *Jurisdictional Defense*. The CFTC committed to asserting its authority and expertise in pending federal litigation where jurisdictional questions are at issue.
3. *Inter-Agency Coordination*. CFTC staff committed to collaborating with the SEC to develop joint interpretations clarifying definitional boundaries under Title VII of the Dodd-Frank Act,[28] in particular distinguishing between commodity options, security options, swaps, and security-based swaps.
4. *New Rulemaking Framework*. The CFTC committed to commencing rulemaking to provide certainty to market participants while supporting lawful innovation.

The CFTC'S Recent Initiatives

On February 17, 2026, the CFTC filed an *amicus curiae* brief in a case before the Ninth Circuit Court of Appeals[29] in support of reversing the district court's decision. The district court had held that sports event contracts traded on a CFTC-registered DCM were not "swaps"—and thus not under the exclusive jurisdiction of the CFTC—on the theory that such contracts turn on the "outcome" rather than the "occurrence" of an event.[30]

The CFTC Amicus Brief and Preemption Litigation: Asserting Federal Preemption in the Ninth Circuit

The CFTC's brief advances two principal positions:

1. The CFTC argued that the event contracts at issue constitute "swaps" within the broad definition of swap under CEA § 1a(47)(A), encompassing any agreement providing for a payment dependent on the occurrence, nonoccurrence, or extent of occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.[31] The CFTC contended that where Congress intended to limit the CFTC's jurisdiction, it did so by expressly embedding narrow exclusions in the

statute itself, and that the district court's event/outcome distinction creates a textual carve-out unsupported by the statutory text and never adopted by any other court.[32]

2. The CFTC argued that CEA § 2(a)(1)(A)'s grant of "exclusive jurisdiction" over swaps traded on CFTC-registered DCMs preempts state gambling laws under both field preemption and conflict preemption. As to conflict preemption specifically, the CFTC noted that a DCM is required by federal law to provide impartial access to all eligible participants nationwide under 17 C.F.R. § 38.151(b),[33] rendering compliance with a state prohibition on such swaps legally impossible.[34]

The CFTC further cautioned that, if permitted to stand, the lower court decision could introduce legal uncertainty well beyond prediction markets, given that over 3,000 event-based contracts self-certified across at least eight DCMs could in principle face state challenge.[35] Related appeals raising the same preemption question are pending in the Fourth[36] and Sixth Circuits,[37] creating the prospect of conflicting circuit court decisions. The Third Circuit has now weighed in on the issue in *KalshiEX LLC v. Flaherty*. It affirmed the district court's grant of a preliminary injunction against New Jersey's enforcement of its state gambling laws against Kalshi's sports-related event contracts, holding that Kalshi had demonstrated a reasonable chance of success on its argument that the CEA preempts otherwise applicable state law.[38] The court held that both field and conflict preemption apply. Circuit Judge Roth dissented, arguing that the strong presumption against preemption in areas of traditional state authority—particularly gambling regulation—should have precluded a finding of either field or conflict preemption.[39]

The CFTC's assertion of exclusive federal jurisdiction over prediction markets has not stemmed state enforcement efforts. On March 17, 2026, Arizona Attorney General Kris Mayes filed a criminal complaint against KalshiEx LLC and Kalshi Trading LLC for operating an unlicensed gambling business in Arizona and for election wagering, including bets on the 2028 presidential race and various 2026 Arizona state races.[40] The action—the first state-level criminal prosecution of a CFTC-regulated prediction market platform—follows Kalshi's preemptive federal lawsuit against Arizona filed on March 12, 2026.[41] The CFTC filed a motion April 8, 2026, in the U.S. District Court for the District of Arizona asking the court for a preliminary injunction and temporary restraining order that would halt Arizona's efforts to apply state criminal and gambling laws to CFTC-regulated prediction markets.[42] On April 10, 2026, the court granted that temporary restraining order, barring Arizona from continuing to pursue criminal charges against DCMs.[43]

Market participants may want to note that there are other market standard derivatives contracts that are commonly understood by the market and regulators[44] to turn on both the occurrence and outcome of an event, such as credit derivatives that require the occurrence of an event, in this example the failure to make a payment, and an outcome, that the failure pertains to a minimum default requirement. The court's reasoning on what constitutes a swap, if upheld, could have far-reaching and unintended consequences in the traditional swaps market, notwithstanding that these cases have focused on sports contracts.

On April 2, 2026, the DOJ and CFTC filed three civil complaints for declaratory and injunctive relief against the governors, Attorneys General, and relevant regulatory authorities of Connecticut, Illinois, and Arizona.[45] Each action seeks to enjoin state enforcement of gambling laws against operators of CFTC-regulated DCMs, on the basis that such laws are preempted by the CEA.[46]

Each complaint advances three preemption grounds.

First, the CEA expressly vests the CFTC with "exclusive jurisdiction" over futures and swaps traded on regulated DCMs.[47]

Second, the scope of the CEA and the long history of Congressional amendments makes clear that Congress intended to occupy the legislative field of commodity derivatives regulation, such that when an instrument is trading on a CFTC-regulated market as a "swap" or "future," state gambling laws do not apply.[48]

Third, compliance with both state regulations and the CEA is impossible, as DCMs are required by federal law to provide "impartial access" to all eligible participants nationwide,[49] and state gambling laws, which typically require local licensing, fees, enforcement, and specific hardware, would create precisely the "patchwork" that Congress enacted the CEA to prevent.

The complaints seek declaratory judgments that the challenged statutes are preempted and a permanent injunction against their enforcement as applied to CFTC-regulated DCMs. These actions sit alongside the broader preemption litigation currently pending in multiple federal circuits.

A bipartisan group of senators introduced the "Prediction Markets Are Gambling Act" on March 23, 2026.[50] The Act would prohibit certain markets that are regulated by the CFTC, including prediction markets, from listing "sporting event[s] or athletic competition[s]" bets or "casino-style" games on their platforms. Sports betting and casino gaming would remain within the purview of state authority.

It is important to monitor developments in the courts, as well as legislative developments, as the outcomes may resolve—or further complicate—both the federal preemption question and the definition of a swap, in each case with consequences that may extend well beyond prediction markets.

The Division of Market Oversight Staff Advisory

On March 12, 2026, the CFTC issued a Division of Market Oversight (DMO) Staff Advisory (the Advisory)[51] directed to all DCMs. The Advisory does not create any new obligations, although it suggests additional steps for DCMs to consider in relation to certain kinds of event contracts, particularly sports contracts.[52]

1. *Anti-Manipulation Obligations and Core Principles*. The Advisory emphasizes DCMs' obligations to prevent fraud, abuse, and manipulation under Core Principles 3, 4, and 12, and reminds DCMs and market participants that CFTC Regulation 180.1[53] makes it unlawful to employ any device, scheme, or artifice to defraud or manipulate the price of any contract listed on a DCM, including through misappropriation of confidential information (insider trading) pursuant to CEA section 6(c)(1)[54] and Regulation 180.1(a)(1) and (3).[55] DCMs must also conduct real-time monitoring of all trading activity to identify disorderly trading and any market or system anomalies.
2. *Heightened Scrutiny for Certain Contracts*. DMO staff 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 warranting heightened scrutiny include those resolving based on

injuries, unsportsmanlike conduct, physical altercations, or officiating actions.[56]

3. *Sports League Engagement*. DCMs listing sports-related event contracts are encouraged to engage in pre-self-certification communications with relevant sports governing bodies when developing contract terms and compliance programs, include in the product submission an explanation of whether the contract is consistent with the relevant league's integrity standards, establish information-sharing and data arrangements with relevant sports integrity monitoring organizations, and rely on official league data as the settlement source.[57]

   On March 19, 2026, the CFTC and Major League Baseball signed a Memorandum of Understanding—the first between the CFTC and a professional sports league—establishing a framework for cooperation and information exchange on matters relating to the integrity of professional baseball and prediction markets referencing it. Chairman Selig described it as "a collaborative step towards promoting the integrity and resilience of the prediction markets relating to professional baseball," adding that it positions the CFTC to deploy additional tools to protect market participants from fraud, manipulation, and other abuses.
4. *Product Submission Requirements*. Self-certified product submissions must include a complete explanation and analysis of the contract's compliance with the CEA and CFTC regulations. A statement that a contract will settle based on a "consensus of yet-to-be-determined sources" may not satisfy Core Principle 3.[58]

The Advance Notice of Proposed Rulemaking

On March 12, 2026—the same day it issued the Advisory—the CFTC published an advance notice of proposed rulemaking (ANPRM) 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, cost-benefit considerations, and other topics.[59] The CFTC could take one or more actions based on the input it receives, including exempting DCMs and event contracts from one or more current rules, creating new rules specific to event contracts and prediction markets, or amending existing rules to tailor their application to event contracts.[60]

The CFTC sought comment on how existing DCM and Derivative Clearing Organization Core Principles[61] apply to prediction markets, including in particular:

- *Market Access and Trading Conduct*. The CFTC asked how prediction markets affect impartial access and abusive trading prohibitions, and how disputes should be resolved where the triggering events underlying a contract are contested.[62]
- *Market Integrity*. The CFTC asked how susceptibility to manipulation should be assessed for event contracts, with particular focus on events controlled by a single individual or small group and the risks of cross-market manipulation, as well as whether prediction markets pose particular surveillance challenges and whether practices from other exchanges would be instructive.[63]
- *Position Management*. The CFTC asked how position limits should be structured and aggregated across similar event contracts.[64]
- *Operational Matters*. The CFTC sought comment on sources of operational risk and the challenges or advantages of applying existing regulations to blockchain-based prediction markets.[65]
- *Transaction Reporting and Trading Practices*. The CFTC sought comment on the application of reporting requirements, prohibitions on prearranged trades and wash sales, and disruptive trading practice prohibitions to event contracts.[66]
- *Margin*. The CFTC asked whether margin trading should be permitted (noting that currently event contracts are cleared on a fully-collateralized basis), and what disclosures, margin calculation methods, and distinctions between retail and institutional customers would be appropriate.[67]
- *Clearing and Execution*. The CFTC asked about clearing implications—including margin, variation margin, and eligible collateral—and how institutional versus retail trading on prediction markets affects swap execution facility obligations and public disclosure requirements.[68]

Given the risk mutualization associated with clearing, clearing participants, including Futures Commission Merchants, may be exposed to event contracts cleared by the same central counterparty, particularly if benefitting from the same guarantee fund, even if they do not clear event contracts for themselves or their customers.

1. *Public Interest*. The CFTC sought comment on the factors that should inform its public interest determination under CEA section 5c(c)(5)(C), including how the objectives in CEA section 3[69]—deterring manipulation, protecting market participants, ensuring financial integrity, and promoting responsible innovation—should be weighed.

   The ANPRM asked whether the former "economic purpose" test—which evaluated whether a contract reasonably could be expected to be used for hedging (i.e., whether the contract could be used for hedging purposes by commercial market participants) and/or price (i.e., whether the contract's prices would be used for price discovery or as a reference price in the underlying cash market) basing on more than an occasional basis, and which was repealed in 2000 with the enactment of the Commodity Futures Modernization Act[70]—should be revived, including whether that analysis should encompass the relationship between event contracts and insurance products and the relevance of insurance availability with respect to a particular event.[71]
2. *Activities Listed in CEA Section 5c(c)(5)(C)*. The CFTC sought comment on the scope of each of the five categories of activity that may render an event contract contrary to the public interest, including with respect to unlawful activity, what types of event contracts could involve unlawful conduct and how conflicts between state laws should be resolved, whether terms such as "terrorism," "assassination," and "war" require further definition, and whether definitions from other contexts (such as insurance) are relevant, and whether cyberterrorism falls within the scope of these terms; how "gaming" should be defined relative to federal and state gambling statutes, including what characteristics—such as entertainment purpose or element of chance—are relevant, how to distinguish between different types of contests (such as sports versus

award competitions), and what responsible gaming standards—including self-exclusion programs, monetary or time limits, and advertising restrictions—should factor into the public interest determination; and what factors should determine whether an activity is "similar" to the five listed categories.

On March 5, 2026, Senators Jack Reed and John Hickenlooper wrote[72] to Chairman Selig urging review of event contracts tied to U.S. military operations, invoking the Public Interest Rule and citing trading activity on Kalshi and Polymarket in connection with the Iran strikes. Whether and how the CFTC will respond to this letter in the context of the ANPRM process, or through other regulatory action, is not yet clear.

3. *Procedural Aspects of CEA Section 5c(c)(5)(C)*. The CFTC sought comment on the procedural framework for its public interest review, including at what point in the listing process a determination should occur, whether determinations could be made on a category-wide basis, what elements are relevant to whether a contract "involves" a listed activity, and how the 90-day statutory time limit should inform the CFTC's procedural approach.
4. *Inside Information*. The CFTC sought feedback to address insider trading, government employee restrictions, product classification, and broader cost-benefit considerations. With respect to inside information and public interest utility, the CFTC asked whether there is public interest utility in permitting persons with an asymmetric information advantage to trade on prediction markets—acknowledging that such trading may improve price discovery and reliability while also carrying risks of manipulation, unfairness, and misuse of material nonpublic information—and what factors the CFTC should consider in evaluating and balancing these competing public interests.

The CFTC also sought comment on the application of CEA section 6(c)(1),[73] including whether prediction markets are more or less susceptible than other derivative markets to manipulative or deceptive devices or contrivances, and how the potential application of CEA section 6(c)(1) should inform the CFTC's regulation of prediction markets.

The CFTC sought comment on how CEA sections 4c(a)(3) and (4)[74]—which prohibit federal government employees and officials from using or imparting nonpublic information for personal gain in connection with futures, options, or swap transactions—are likely to affect prediction markets and should inform the CFTC's regulation of prediction markets. In this regard, the CFTC also sought comment on the role that events controlled by a single individual or small group of individuals should play in the CFTC's regulatory approach to federal government employee and official participation, including whether the risks associated with nonpublic information are heightened where a single individual or small group exercises control or significant influence over the outcome of the relevant event, and how cross-market manipulation should be addressed in that context; for example, where a prediction market position is used to influence, or is itself influenced by, positions in other derivative or financial markets, including securities markets.

5. *Product Characterization*. Finally, the CFTC asked how event contracts should be classified as swaps under CEA section 1a(47)(A), and what distinguishes them from other derivatives.

The ANPRM was published in the Federal Register on March 16, 2026, and the comment period has closed.

* * *

Editor's note: This article will conclude in the next issue of *The Journal of Federal Agency Action*.

Notes

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1. By way of example, KalshiEX LLC (Kalshi) is registered with the CFTC as DCM.

2. See Commodity Futures Trading Commission, Prediction Markets, Advance Notice of Proposed Rulemaking and Request for Comments,

91 Fed. Reg. 12516 (Mar. 16, 2026), https://www.cftc.gov/sites/default/files/2026/03/2026-05105a.pdf.

3. 7 U.S.C. § 7a-2(c)(5)(C)(i).

4. This is not the only form in which a CFTC-regulated event contract may be listed, however. For example, an event contract may also be structured as a futures contract on an "excluded commodity" as defined by 7 U.S.C. § 1a(19)(iv), where the futures contract settles based on an occurrence, extent of an occurrence, or contingency beyond the contracting parties' control, and is associated with a financial, commercial, or economic consequence. Since futures contracts are specifically excluded from the statutory definition of "swap," event contracts structured as futures are not swaps. See 7 U.S.C. § 1(a)(47)(B)(i).

5. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376.

6. 7 U.S.C. § 1a(47).

7. 7 U.S.C. § 1a(47)(A)(i).

8. 7 U.S.C. § 1a(47)(A)(ii). As discussed further below, new product types are emerging and the landscape continues to evolve. Likewise, questions arise as to whether some categories of product are better characterized as securities rather than as commodity interests.

9. 7 U.S.C. § 7a-1(c)(5)(C).

10. 17 C.F.R. § 40.11.

11. 17 CFR § 40.2.

12. 17 CFR § 40.6.

13. 17 CFR § 40.11.

14. 17 CFR § 38.

15. 7 U.S.C. § 7(d)(4).

16. 7 U.S.C. § 7(d)(12).

17. The CFTC has granted narrow no-action relief permitting academic institutions to operate small-scale, not-for-profit prediction markets involving political event contracts without DCM registration, provided that the markets were operated for genuine educational and research purposes, operators received no compensation, and participation and individual investment were capped at low levels. See CFTC No-Action Letter No. 92-04(a) (Feb. 5, 1992) and No-Action Letter No. 93-66 (June 18, 1993) (Iowa Electronic Markets, University of Iowa); CFTC Letter No. 14-130 (Oct. 29, 2014) (Victoria University of Wellington).

18. See CFTC Notice of Proposed Rulemaking, Event Contracts, 89 Fed. Reg. 41,590 (10 May 2024) (Docket No. 2024-12125), which sought to amend CFTC Regulation 40.11 to further specify the types of event contracts, including "gaming contracts," that fall within the scope of section 5c(c)(5)(C) of the CEA and are "contrary to the public interest," such that those contracts would not be eligible to be listed, traded, or cleared on or through a CFTC-registered entity.

19. CFTC Order Prohibiting North American Derivatives Exchange's Political Event Derivatives Contracts (April 2, 2012), CFTC Press Release No. 6224-12, https://www.cftc.gov/PressRoom/PressReleases/6224-12.

20. CFTC Order Prohibiting Listing for Trading of Certified Derivatives Contracts with Respect to Political Control of the U.S. Senate and House of Representatives (Sept. 22, 2023), https://www.cftc.gov/PressRoom/PressReleases/8780-23.

21. KalshiEX LLC v. Commodity Futures Trading Commission, Civil Action No. 1:23-cv-03257 (JMC) (D.D.C.); Administrative Procedure Act, 5 U.S.C. §§ 551-706.

22. KalshiEX LLC v. Commodity Futures Trading Commission, No. 23-cv-3257 (JMC), 2024 WL 4164694 (D.D.C. Sept. 6, 2024) (order on summary judgment); see also the District Court's formal order dated September 12, 2024, vacating the CFTC prohibition (No. 1:23-cv-03257, Doc. 51).

23. KalshiEX LLC v. CFTC, No. 24-5205 (D.C. Cir. Oct. 2, 2024).

24. CFTC Voluntary Dismissal, KalshiEX LLC v. CFTC, No. 24-5205 (D.C. Cir.), filed May 5, 2025.

25. Commodity Futures Trading Commission & Securities and Exchange Commission, CFTC–SEC Harmonization: U.S. Financial Leadership in the Crypto Era (Jan. 29, 2026), https://www.cftc.gov/PressRoom/Events/opaeventcftcsec012926.

26. Press Release, Commodity Futures Trading Commission, CFTC Issues Proposal on Event Contracts, CFTC Release No. 8911-24 (May 10, 2024), https://www.cftc.gov/PressRoom/PressReleases/8911-24.

27. CFTC, Division of Market Oversight, Staff Advisory on Certain Contract Markets, CFTC Staff Letter No. 25-36 (Sept. 30, 2025), https://www.cftc.gov/csl/25-36/download.

28. Dodd-Frank Act, Pub. L. No. 111-203, tit. VII, 124 Stat. 1376, 1641 (2010).

29. CFTC Press Release No. 9183-26, CFTC Reaffirms Exclusive Jurisdiction Over Prediction Markets in U.S. Circuit Court Filing, U.S. Commodity Futures Trading Commission (Feb. 17, 2026), https://www.cftc.gov/PressRoom/PressReleases/9183-26.

30. N. Am. Derivatives Exch., Inc. v. Nevada ex rel. Nev. Gaming Control Bd., No. 2:25-cv-00978 (D. Nev. 2025)).

31. CFTC Amicus Brief, No. 25-7187, at 14-17 (9th Cir. Feb. 17, 2026).

32. Id.

33. 17 C.F.R. § 38.151(b).

34. CFTC Amicus Brief, No. 25-7187, at 21-28 (9th Cir. Feb. 17, 2026).

35. See CFTC Designated Contract Market Products, https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts?Organization=CM.

36. KalshiEX LLC v. Martin, No. 1:24-cv-02313, 2025 WL 2194908 (D. Md. Aug. 1, 2025).

37. KalshiEX LLC v. Schuler et al, No. 2:25-cv-01165 WL 657004 (S.D. Ohio Mar. 9, 2026).

38. KalshiEX LLC v. Flaherty, No. 25-1922, slip op. (3d Cir. Apr. 6, 2026) (affirming No. 25-cv-02152, 2025 WL 1218313 (D.N.J. Apr. 28, 2025)).

39. Id. (Roth, J., dissenting).

40. Press Release, Office of the Arizona Attorney General, Attorney General Mayes Charges Kalshi with Illegal Gambling Operation, Election Wagering in Arizona (Mar. 17, 2026), https://www.azag.gov/press-release/attorney-general-mayes-charges-kalshi-illegal-gambling-operation-election-wagering.

41. KalshiEX LLC v. Johnson, No. 2:26-cv-01715 (D. Ariz., filed Mar. 12, 2026).

42. See CFTC Seeks to Enjoin Arizona Criminal and Civil Enforcement Against Prediction Markets, https://www.cftc.gov/PressRoom/PressReleases/9208-26.

43. See Temporary Restraining Order Blocks Arizona Criminal Enforcement Proceedings on Prediction Markets, https://www.cftc.gov/PressRoom/PressReleases/9211-26.

44. See, e.g., "Further Definition of 'Swap,' 'Security-Based Swap,' and 'Security-Based Swap Agreement'; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule," 77 Fed. Reg. 48208, 48214 (Aug. 13, 2012) (characterizing credit default swaps as "a swap or a security-based swap").

45. See CFTC Sues Trio of States to Reaffirm Its Exclusive Jurisdiction Over Prediction Markets, https://www.cftc.gov/PressRoom/PressReleases/9206-26?utm_source=govdelivery.

46. 7 U.S.C. § 2(a)(1)(A).

47. Id.

48. Altria Grp., Inc. v. Good, 555 U.S. 70, 76 (2008).

49. 17 C.F.R. § 38.151(b).

50. Prediction Markets Are Gambling Act, S.4160, 119th Cong. (2026).

51. DMO Prediction Markets Advisory, Release No. 9193-26 (Mar. 12, 2026).

52. Id.

53. 17 C.F.R. § 180.1.

54. 7 U.S.C. § 9(1).

55. 17 C.F.R. § 180.1(a)(1), (3).

56. DMO Prediction Markets Advisory, Release No. 9193-26 (Mar. 12, 2026).

57. Id.

58. DMO Prediction Markets Advisory, Release No. 9193-26 (Mar. 12, 2026).

59. CFTC Prediction Markets ANPRM, Release No. 9194-26 (Mar. 12, 2026).

60. Id.

61. 7 U.S.C. §§ 7(d), 7a-1(c).
62. 7 U.S.C. §§ 7(d)(2), 7a-1(c).
63. 7 U.S.C. §§ 7(d)(3), 7(d).
64. 7 U.S.C. § 7(d)(5).
65. 7 U.S.C. § 7(d)(20).
66. 7 U.S.C. §§ 6(c).
67. 7 U.S.C. § 7a-1(c)(2)(D)(iv).
68. 7 U.S.C. §§ 7a-1(c), 7b-3(f).
69. 7 U.S.C. § 5.
70. Commodity Futures Modernization Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763.
71. Exactly which kinds of contracts would be precluded by an "economic purpose" test is not clear as even sports or political event contracts may have an economic purpose, including in the context of commercial marketing agreements (which may have success fees based on sports betting venues) may use event contracts to hedge their exposure to pundits, or to particular industries that may be impacted by the outcome of an election.
72. Letter from Sen. Jack Reed & Sen. John Hickenlooper to Michael S. Selig, Chairman, Commodity Futures Trading Commission (Mar. 5, 2026), https://www.hickenlooper.senate.gov/wp-content/uploads/2026/03/letter_to_cftc_re_prediction_markets_on_war_and_assassination_3526.pdf.
73. 7 U.S.C. §§ 6c(a)(1).
74. 7 U.S.C. §§ 6c(a)(3)-(4).