

Prediction Markets for Those Who Don't Predict (and Those Who Do) – The CFTC Proposes Rules in Connection With the Special Rule

June 23, 2026

For over two decades, the Commodity Futures Trading Commission (the Commission or CFTC) has exercised regulatory authority over prediction markets, which, in the U.S., are generally registered with the CFTC as Designated Contract Markets (DCMs). But the recent proliferation and growth of prediction markets in the U.S. has surfaced questions about the oversight of prediction markets, including the types of event contracts DCMs should be allowed to offer and the appropriate process for review and approval of such contracts. On June 12, 2026, the CFTC published in the Federal Register a Notice of Proposed Rulemaking (NPRM)¹ aimed at addressing some of these questions. Specifically, the NPRM proposes amendments to the CFTC's Part 40 regulations to address the special rule for review and approval of event contracts under Section 5c(c)(5) of the Commodity Exchange Act (CEA) (the Special Rule).² The Special Rule as outlined by the CEA provides the CFTC discretion to determine

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¹ See Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35,806 (June 12, 2026) (to be codified at 17 C.F.R. pt. 40), available at: <https://www.federalregister.gov/documents/2026/06/12/2026-11854/prediction-markets-public-interest-determinations>; CFTC press release available at: <https://www.cftc.gov/PressRoom/PressReleases/9249-26>.

² 7 U.S.C. § 7a-2(c)(5)(C).

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whether event contracts listed on DCMs are contrary to the public interest if the contract involves unlawful activity, terrorism, assassination, war, gaming, or another activity that the Commission has determined by rule or regulation to be similar to those “Enumerated Activities.” Part 40 of the CFTC’s regulations governs the submission of new products, rule changes and requests for approval by registered entities to the CFTC. The NPRM proposes three principal changes, to the Part 40 regulations. First, it would define when event contracts “involve” an activity enumerated in the Special Rule. Second, it would define “gaming” for purposes of the Special Rule. Third, the Commission proposes public-interest factors to guide its public interest review and more details on how the CFTC’s 90-day review process would proceed. This alert memorandum describes the primary features of the NPRM and its implications for DCMs listing event contracts, prediction-market operators, market participants, and firms whose employees may trade event contracts. In particular, we examine the Commission’s proposed interpretations of “involve” and “gaming” in the context of the Special Rule, the public-interest factors that would apply to different categories of event contracts, and the process the Commission proposes for reviewing event contracts under the Special Rule. We also consider how the NPRM would implement changes to the Commission’s prior position on political event contracts. It follows our prior alert memoranda, *Prediction Markets for Those Who Don’t Predict (and Those Who Do)*³ and *Betting on Company Information: Prediction Market Considerations for Public Companies*,⁴ which provided an overview of the regulatory framework applicable to prediction markets and addressed recent developments.

³ See North, Deborah, et al., *Prediction Markets for Those Who Don’t Predict (and Those Who Do)*, Cleary Gottlieb Alert Memo (Apr. 14, 2026), available at: <https://www.clearygottlieb.com/news-and-insights/publication-listing/prediction-markets-for-those-who-dont-predict-and-those-who-do>.

⁴ See Grannis, Helena K., et al., *Betting on Company Information: Prediction Market Considerations for Public Companies*, Cleary Gottlieb Alert Memo (Mar. 23, 2026), available at: <https://www.clearygottlieb.com/-/media/files/alert-memos-2026/betting-on-company-information-prediction-market-considerations-for-public-companies.pdf>.

Background and Regulatory Landscape

On June 12, 2026, the CFTC published in the Federal Register the NPRM titled *Prediction Markets; Public Interest Determinations*, proposing amendments to 17 C.F.R. Part 40, principally CFTC Regulations 40.7 and 40.11. The NPRM follows several prior Commission initiatives, including an earlier joint statement by Securities and Exchange Commission (SEC) Chairman Atkins and CFTC Acting Chairman Pham signaling a coordinated approach to the regulation of prediction markets,⁵ the Commission's earlier Advance Notice of Proposed Rulemaking (ANPRM), published on March 16, 2026, in which the Commission solicited broad public comment on the regulation of prediction markets⁶ and the Commission's withdrawal in February 2026 of its 2024 event-contract proposal.⁷ While the ANPRM covered a wide range of topics — including market integrity, participant protections, margin and risk, and the treatment of various categories of event contracts — the NPRM addresses only a subset of those topics, focusing specifically on the Special Rule framework. We expect further rulemaking will follow to address other aspects of the

prediction market landscape raised in the ANPRM.⁸ The proposal sets out, for the first time, a structured analytical framework for determining whether any particular event contract involves an Enumerated Activity and is contrary to the public interest under the Special Rule.⁹

Event contracts have rapidly increased in popularity, with total trading volume across DCMs exceeding \$25 billion in 2025,¹⁰ which the Commission has identified as a dramatic increase in both the number of event contracts listed for trading and the diversity of events underlying those contracts.¹¹

The NPRM is the latest in a series of recent CFTC initiatives directly relevant to the prediction markets, including the Division of Market Oversight Staff Advisory on Prediction Markets (March 12, 2026),¹² the ANPRM (March 16, 2026),¹³ the CFTC civil complaints for declaratory and injunctive relief against certain state gambling authorities in Arizona, Connecticut, Illinois, New Mexico, Minnesota, New York, Rhode Island, and Wisconsin, and amicus briefs in Massachusetts and Nevada asserting exclusive CFTC jurisdiction and federal preemption.¹⁴ For

⁵ Joint Statement from the Chairman of the SEC and Acting Chairman of the CFTC, CFTC Press Release No. 9115-25 (Sept. 5, 2025), available at:

<https://www.sec.gov/newsroom/speeches-statements/joint-statement-atkins-pham-090525>.

⁶ CFTC Prediction Markets ANPRM, Release No. 9194-26 (Mar. 12, 2026); 91 Fed. Reg. 12516 (Mar. 16, 2026), available at:

<https://www.cftc.gov/PressRoom/PressReleases/9194-26>.

⁷ CFTC Withdraws Event Contracts Rule Proposal and Staff Sports Event Contracts Advisory, Release No. 9179-26 (Feb. 4, 2026), available at:

<https://www.cftc.gov/PressRoom/PressReleases/9179-26>.

⁸ For example, on June 18, 2026, the SEC and CFTC jointly published a Request for Comment on the Further Definition of “Swap” and “Security-Based Swap” and on Alternative Compliance (the Joint RFC), which solicits public comment on the characterization of innovative products that may implicate both SEC and CFTC regulatory oversight. *See* Joint Request for Comment on Further Definition of “Swap” and “Security-Based Swap” and on Alternative Compliance, Release No. 33-11424; 34-105735; File No. S7-2026-21; RIN 3038-AF71 (June 18, 2026), available at:

<https://www.cftc.gov/PressRoom/PressReleases/9258-26>.

The Joint RFC is discussed further below.

⁹ 7 U.S.C. § 7a-2(c)(5)(C).

¹⁰ 91 Fed. Reg. at 35,807–08.

¹¹ *Id.*

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

<https://www.cftc.gov/PressRoom/PressReleases/9193-26>.

¹³ CFTC Prediction Markets ANPRM, Release No. 9194-26 (Mar. 12, 2026); 91 Fed. Reg. 12516 (Mar. 16, 2026), available at:

<https://www.cftc.gov/PressRoom/PressReleases/9194-26>.

¹⁴ *See* CFTC Reaffirms Exclusive Jurisdiction over Prediction Markets in U.S. Circuit Court Filing, CFTC Press Release No. 9183-26 (Feb. 17, 2026), available at:

<https://www.cftc.gov/PressRoom/PressReleases/9183-26>;

CFTC Sues Trio of States to Reaffirm its Exclusive Jurisdiction Over Prediction Markets, CFTC Press Release No. 9206-26 (Apr. 2, 2026), available at:

<https://www.cftc.gov/PressRoom/PressReleases/9206-26>;

CFTC Sues New York Over Prediction Markets Amid Ongoing Efforts to Preserve Jurisdiction, CFTC Press

additional background on these earlier developments, see our April 14, 2026 alert memorandum.¹⁵

In a related development, on June 18, 2026, the SEC and CFTC jointly published a Request for Comment on the Further Definition of “Swap” and “Security-Based Swap” and on Alternative Compliance (the Joint RFC), which solicits public comment on characterization of innovative products that may implicate both SEC and CFTC regulatory oversight, and the potential for application of an alternative compliance framework to such products. The Joint RFC expressly notes that market participants are raising questions about whether certain event contracts are swaps, security-based swaps, mixed swaps, or the types of instruments that fall within statutory exclusions from the “Swap” definition.¹⁶ The Joint RFC follows the Memorandum of Understanding between the SEC and CFTC Regarding Harmonization in Areas of Common Regulatory Interest (MOU), signed on March 11, 2026, which committed the agencies to coordinate in areas of common regulatory interest, including by clarifying product definitions through joint interpretations and rulemakings and by

providing a fit-for-purpose regulatory framework for emerging technologies.¹⁷

The Special Rule - CEA Section 5c(c)(5)(C)(i)

CEA Section 5c(c)(5)(C)(i)¹⁸ provides that the Commission may determine that event contracts in excluded commodities based upon 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: (I) activity unlawful under any Federal or State law; (II) terrorism; (III) assassination; (IV) war; (V) gaming; or (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest. The NPRM and the proposed appendix refer to those categories as “Enumerated Activities.”¹⁹

CFTC Regulation 40.11, which currently implements the CEA Special Rule, 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” Enumerated Activities.²⁰ Notably, when the Commission adopted the Part 40 regulations in 2011, it

Release No. 9218-26 (Apr. 24, 2026), available at: <https://www.cftc.gov/PressRoom/PressReleases/9218-26>; CFTC Reaffirms Exclusive Jurisdiction Over Prediction Markets in Massachusetts Supreme Judicial Court Filing, CFTC Press Release No. 9219-26 (Apr. 24, 2026), available at: <https://www.cftc.gov/PressRoom/PressReleases/9219-26>; CFTC Sues Wisconsin to Reaffirm its Exclusive Jurisdiction Over Prediction Markets, CFTC Press Release No. 9220-26 (Apr. 28, 2026), available at: <https://www.cftc.gov/PressRoom/PressReleases/9220-26>; CFTC Sues Minnesota to Block State Law, CFTC Press Release No. 9233-26 (May 19, 2026), available at: <https://www.cftc.gov/PressRoom/PressReleases/9233-26>; CFTC Sues to Block State Enforcement in Rhode Island Amid Ongoing Efforts to Preserve Jurisdiction, CFTC Press Release No. 9238-26 (May 28, 2026), available at: <https://www.cftc.gov/PressRoom/PressReleases/9238-26>; CFTC Sues New Mexico as the State Becomes the Latest Attempting to Infringe on Federal Jurisdiction, CFTC Press Release No. 9251-26 (June 12, 2026), available at: <https://www.cftc.gov/PressRoom/PressReleases/9251-26>.

¹⁵ See North, Deborah, et al., Prediction Markets for Those Who Don’t Predict (and Those Who Do), Cleary Gottlieb Alert Memo (Apr. 14, 2026), available at <https://www.clearygottlieb.com/news-and-insights/publication-listing/prediction-markets-for-those-who-dont-predict-and-those-who-do>.

¹⁶ See Joint Request for Comment on Further Definition of “Swap” and “Security-Based Swap” and on Alternative Compliance, Release No. 33-11424; 34-105735; File No. S7-2026-21; RIN 3038-AF71 (June 18, 2026), available at: <https://www.cftc.gov/PressRoom/PressReleases/9258-26>.

¹⁷ Memorandum of Understanding Between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Regarding Harmonization in Areas of Common Regulatory Interest, Release No. 2026-26 (Mar. 11, 2026), available at: <https://www.cftc.gov/PressRoom/PressReleases/9192-26>.

¹⁸ 7 U.S.C. § 7a-2(c)(5)(C).

¹⁹ 7 U.S.C. § 7a-2(c)(5)(C)(i); 91 Fed. Reg. at 35,809, 35,861.

²⁰ 17 C.F.R. § 40.11.

acknowledged that it was leaving key terms—including “gaming”—undefined, and directed DCMs either to seek pre-approval under CFTC Regulation 40.3 or to self-certify event contracts that may implicate the Special Rule and await any 90-day review the Commission might initiate.²¹ If the Commission makes such a determination, the CEA prohibits the event contract from being listed for trading or accepted for clearing on or through a registered entity.²²

As a threshold matter, the CFTC clarifies in the NPRM that a “very wide variety of measures and occurrences” can underlie an event contract, and that the scope of event contracts is not limited to those based on economic, commercial, or financial indices.²³ The Special Rule, however, is designed to apply to event contracts other than those based on such indices—that is, event contracts based on the occurrence, extent of an occurrence, or contingency in an Enumerated Activity.²⁴ This distinction is significant because it means that the Special Rule review process is directed at a specific subset of event contracts, rather than at the full universe of event contracts that DCMs may list.²⁵

The NPRM emphasizes that the Special Rule operates in addition to other CEA and CFTC requirements, including that DCMs and swap execution facilities (SEFs) must list only contracts that are not readily susceptible to manipulation and maintain appropriate surveillance, compliance, and enforcement practices.²⁶

Overview of the NPRM

The proposed amendments would provide guidance on the types of event contracts that may be subject to a

determination that they are contrary to the public interest, and would set out the factors the Commission would apply in making that determination within the CEA’s statutory framework.²⁷

The key proposed changes include:

- A proposed new CFTC Regulation 40.11(a)(3) defining when event contracts “involve” an Enumerated Activity, adopting an event-focused standard that looks to the settlement-determining occurrence rather than to the trading activity or market participation.²⁸
- A proposed new CFTC Regulation 40.11(b) defining “gaming” as an activity that participants typically engage in for recreation or entertainment, governed by rules, with measurable outcomes dependent on luck, skill, or athletic ability during the activity.²⁹
- Public-interest factors in proposed CFTC Regulation 40.11(a)(5) and 40.11(a)(6) providing detailed guidance on the considerations the Commission will weigh in determining whether event contracts involving Enumerated Activities are contrary to the public interest.³⁰
- A procedural framework in proposed CFTC Regulation 40.11(c) through 40.11(f) establishing a 90-day review process with specific milestones, notice requirements, response rights, and limits on delegation.³¹

The NPRM clarifies the Commission’s view that CFTC Regulation 40.11(a), even as currently written, does not operate as a per se prohibition of event contracts that involve an Enumerated Activity.³² Some

²¹ Provisions Common to Registered Entities, 76 Fed. Reg. 44,776, 44,785–86 (July 27, 2011); 91 Fed. Reg. at 35,818–19.

²² 7 U.S.C. § 7a-2(c)(5)(C)(ii).

²³ 91 Fed. Reg. at 35,818–20.

²⁴ See CEA Section 5c(c)(5)(C)(i); 7 U.S.C. § 7a-2(c)(5)(C).

²⁵ 91 Fed. Reg. at 35,810, 35,858–59.

²⁶ 7 U.S.C. § 7a-2(c)(5)(C)(ii); 91 Fed. Reg. at 35,810–11. See also 7 U.S.C. § 7(d)(3); 7 U.S.C. § 7b-3(f)(3); 91 Fed. Reg. at 35,809–11.

²⁷ 91 Fed. Reg. at 35,806, 35,818–19, 35,858–61.

²⁸ 91 Fed. Reg. at 35,821–22; proposed CFTC Regulation 40.11(a)(3), 91 Fed. Reg. at 35,858–59.

²⁹ 91 Fed. Reg. at 35,824–27; proposed CFTC Regulation 40.11(b), 91 Fed. Reg. at 35,860.

³⁰ 91 Fed. Reg. at 35,828–37; proposed CFTC Regulation 40.11(a)(5)-(6), 91 Fed. Reg. at 35,859–60.

³¹ 91 Fed. Reg. at 35,837–42; proposed CFTC Regulation 40.11(c)-(f), 91 Fed. Reg. at 35,860–61.

³² 91 Fed. Reg. at 35,818–20.

states have argued in litigation that Regulation 40.11(a) categorically prohibits the listing of event contracts—such as sports event contracts—that involve an Enumerated Activity, without any public interest determination. The Commission rejects that reading, explaining that in its view interpreting Regulation 40.11(a) as a blanket prohibition would contravene the CEA’s express requirement that the Commission make a public interest determination before an event contract may be prohibited under the Special Rule.³³ The NPRM proposes to amend Regulation 40.11(a) to make this clarification explicit.³⁴

This clarification establishes the broader analytical framework of the NPRM and seems to place greater emphasis on the public interest analysis than on the threshold question of whether an event contract involves an Enumerated Activity.³⁵ While the NPRM redefines terms like “involve” and “gaming,” it also bolsters the role of the public interest factors and revives an economic purpose test, albeit in the context of the public interest factors.³⁶ The practical effect is that even where an event contract does involve an Enumerated Activity, the Commission’s determination as to whether the contract is contrary to the public interest turns on a multifactor balancing analysis rather than a categorical prohibition.³⁷

As a practical matter, prediction markets seeking to list implicated event contracts under the framework contemplated by the NPRM will want to consider two principal strategies: first, structuring event contracts so that they do not involve an Enumerated Activity under the proposed definition;³⁸ and second, building a strong record demonstrating that a new event contract

serves the public interest even if it does involve an Enumerated Activity.³⁹ The public interest factors set out in the proposed rule offer a detailed roadmap for that analysis, and there are a number of ways that DCMs can leverage the proposed factors to support their product listings.

Comments on the proposed rule must be in writing and received by July 27, 2026. If adopted, the proposed amendments would become effective 60 days after publication of a final rule.⁴⁰

The Proposed Event-Focused Definition of “Involve”

The Commission proposes to adopt CFTC Regulation 40.11(a)(3), which would provide that agreements, contracts, transactions, or swaps “involve” an activity if their settlement is determined by an occurrence, extent of an occurrence, or contingency in that activity.⁴¹

This definition reflects what the Commission describes as an “event-focused” interpretation of the Special Rule. The inquiry centers on the underlying event or activity — not on the trading activity, venue mechanics, market participation, or the fact that market participants are staking value on a contingent outcome.⁴² In the Commission’s view, the Special Rule’s “based upon” and “involve” language describe complementary aspects of a single event-focused concept, *i.e.*, the event contract is based upon an occurrence, and that occurrence must be *in* an Enumerated Activity.

The Commission illustrates this principle through several examples. An event contract involves an

³³ See 7 U.S.C. § 7a-2(c)(5)(C)(ii); 91 Fed. Reg. at 35,818–19.

³⁴ 91 Fed. Reg. at 35,819–20; proposed CFTC Regulation 40.11(a), 91 Fed. Reg. at 35,858–59.

³⁵ 91 Fed. Reg. at 35,828–33.

³⁶ While the NPRM redefines terms like “involve” and “gaming,” it also bolsters the role of the public interest factors and revives an economic purpose test. See 91 Fed. Reg. at 35,811–13, 35,828–29.

³⁷ See proposed CFTC Regulation 40.11(a)(5)-(6), 91 Fed. Reg. at 35,859–60; 91 Fed. Reg. at 35,828–29.

³⁸ See proposed CFTC Regulation 40.11(a)(3), 91 Fed. Reg. at 35,858–59; 91 Fed. Reg. at 35,821–22.

³⁹ See proposed CFTC Regulation 40.11(a)(5)-(6), 91 Fed. Reg. at 35,859–60; 91 Fed. Reg. at 35,828–37.

⁴⁰ 91 Fed. Reg. at 35,806, 35,842.

⁴¹ 91 Fed. Reg. at 35,821; proposed CFTC Regulation 40.11(a)(3), 91 Fed. Reg. at 35,859.

⁴² 91 Fed. Reg. at 35,821.

Enumerated Activity where the contract pays out based on whether the Enumerated Activity itself occurs — for example, whether a specified terrorist attack takes place, whether an identified individual is assassinated, whether an armed conflict erupts in a particular region, or whether an attack on shipping occurs during a specified period. In each case, the settlement-determining occurrence is the discrete act of terrorism, assassination, or war-related conduct itself, and the contract therefore involves the relevant Enumerated Activity.⁴³

By contrast, a contract does not involve war or terrorism merely because external military or geopolitical conditions could affect the commercial fact on which the contract settles. For example, an event contract that settles on the volume of a commodity moving through a specified route impacted by armed conflict during a specified period turns on a commercial shipping metric, not on whether war or terrorism occurs.⁴⁴

The CFTC explains that this approach is designed to avoid overbroad interpretations that would render the Special Rule vulnerable to arbitrary or inconsistent application. If the “involve” inquiry were directed at the contract or the act of trading, rather than at the underlying event, any event contract could potentially be characterized as involving gaming, because every event contract involves a participant staking value on a contingent outcome. The Commission preliminarily believes that such an interpretation would effectively collapse the distinction between the first element (event contracts based upon an occurrence or

contingency) and the second element (that “involve” an Enumerated Activity), rendering the latter superfluous. The NPRM also addresses facially neutral settlement conditions that can be satisfied through multiple causal pathways: if one pathway falls within terrorism, assassination, or war, the Commission would treat the contract as involving that Enumerated Activity unless the contract terms specify the qualifying pathways in sufficient detail to exclude the Enumerated-Activity pathway. As a practical matter, this suggests that prediction markets seeking to avoid Special Rule review for facially neutral contracts may need to draft explicit settlement carve-outs or qualifying-pathway language where an Enumerated Activity could otherwise trigger settlement.⁴⁵

The NPRM’s event-focused approach has significance beyond prediction markets. The Commission’s proposed interpretation avoids treating all contingent-payoff trading as “gaming” merely because value is staked on uncertainty. This reasoning is relevant to the broader derivatives market: credit default swaps, weather derivatives, catastrophe bonds, and other instruments that provide for payment contingent on non-price occurrences share structural similarities with event contracts. The Commission notes that its proposed interpretation would not require examining the activity of trading itself.

The Commission had previously taken a different approach in its Orders attempting to prevent Nadex in 2012 and Kalshi in 2023 from listing political event contracts on the basis that such contracts were “gaming” under the Special Rule.⁴⁶ The CFTC

out of office by a certain date, without specifying the qualifying mechanisms, would involve assassination if assassination is one of the pathways by which the settlement condition could be satisfied. The same contract would not involve assassination if redrafted to settle only where the person leaves office “by reason of electoral defeat, resignation, constitutional removal, negotiated departure, or natural death.”

⁴⁶ CFTC Order Prohibiting North American Derivatives Exchange’s Political Event Derivatives Contracts (April 2, 2012), CFTC Press Release No. 6224-12, available at: <https://www.cftc.gov/PressRoom/PressReleases/6224-12>,

⁴³91 Fed. Reg. at 35,821.

⁴⁴ 91 Fed. Reg. at 35,821. A contract does not involve war or terrorism merely because military or geopolitical conditions could affect the commercial fact on which the contract settles. The Commission gives the example of an event contract that settles on whether a specified volume of crude oil transits the Strait of Hormuz during a specified period: even if military conditions affect oil flows, the settlement-determining occurrence is a commercial shipping metric, not an occurrence within war or terrorism.

⁴⁵ 91 Fed. Reg. at 35,821–22, 35,824, 35,863. For example, an event contract that settles on whether a foreign leader is

preliminarily believes that the Nadex and Kalshi Orders were incorrect in reasoning that event contracts involve an Enumerated Activity when the event contracts themselves, viewed as a whole, relate to or equate to an Enumerated Activity. The proposed standard would instead require that the *settlement-determining* occurrence be within the Enumerated Activity — a distinction that aligns with the reasoning of the U.S. District Court for the District of Columbia in *KalshiEX LLC v. CFTC*, which held that the term “involve” in the Special Rule “refers to the event being offered and traded under an event contract, not the event contract itself.”⁴⁷

The NPRM also has implications beyond prediction-market operators. Swap-market participants should monitor the Commission’s event-focused interpretation of “involve” and “gaming,” particularly because an overbroad reading could affect other contingent-payoff instruments, including bilateral swaps, even though the NPRM does not purport to amend the general swap definition.

The Proposed Definition of “Gaming” and the Treatment of Elections, Award Contests, and Sports

The Commission proposes to define “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.⁴⁸ Under the Commission’s prior

CFTC Order Prohibiting Listing for Trading of Certified Derivatives Contracts with Respect to Political Control of the U.S. Senate and House of Representatives (September 22, 2023), available at:

<https://www.cftc.gov/PressRoom/PressReleases/8780-23>.

⁴⁷ *KalshiEX LLC v. CFTC*, No. 23-cv-3257, 2024 WL 4164694, 2024 U.S. Dist. LEXIS 163925, at *29 (D.D.C.

Sept. 12, 2024), appeal dismissed, No. 24-5205, 2025 U.S. App. LEXIS 11094 (D.C. Cir. May 7, 2025).

interpretation, “gaming” was read broadly to include staking value on a contingent event, including election outcomes.⁴⁹ Consistent with the event-focused approach to the definition of “involve” discussed above, the Commission explains that it rejects a broad “gaming equals gambling” approach because a wagering-centered definition could cause *all* event contracts to involve gaming. If “gaming” encompassed the act of staking value on contingencies, the CEA’s enumeration of specific activities would be rendered meaningless because every event contract involves a market participant staking value on a contingent outcome.⁵⁰ The Commission’s proposed definition therefore treats “gaming” as limited to the underlying game or activity itself, not the act of trading an event contract.⁵¹

The Distinction Between Games and Contests

The Commission draws a distinction between “games” — which are gaming under the proposed definition — and other types of contests or selection processes that are not games. The key limiting phrase in the proposed definition is the “during the activity” qualifier that confines the definition to activities whose outcomes are determined by in-game performance rather than by evaluative judgments, political processes, or external determinations.⁵²

Under the proposed definition, political elections, awards contests, and similar merit-based determinations would not be “gaming” because their outcomes are not determined by participants’ luck, skill, or athletic ability during a recreational or

⁴⁸ 91 Fed. Reg. at 35,824; proposed CFTC Regulation 40.11(b), 91 Fed. Reg. at 35,860.

⁴⁹ 91 Fed. Reg. at 35,821.

⁵⁰ 91 Fed. Reg. at 35,825.

⁵¹ 91 Fed. Reg. at 35,821 n.182.

⁵² 91 Fed. Reg. at 35,825–26.

entertainment activity.⁵³ By contrast, contracts settling on athletic outcomes — such as strikeouts, touchdowns, or Olympic medals would involve gaming because settlement turns on performance within a sporting contest.⁵⁴ The NPRM also distinguishes contracts referencing activity adjacent to sports from contracts settling on the sporting contest itself: attendance at a football game and Olympic host-city selection would not involve gaming because those outcomes are driven by external commercial, political, or economic decisions rather than occurrences during the game or athletic event.⁵⁵

Public-Interest Factors for Event Contracts Involving Enumerated Activities

Once an event contract is determined to involve an Enumerated Activity, the Commission proposes to evaluate whether the contract is contrary to the public interest using both general factors applicable to all such contracts and activity-specific factors tailored to the particular Enumerated Activity involved.

General Public-Interest Factors

The Commission proposes general public interest factors in CFTC Regulation 40.11(a)(5) that apply to all event contracts subject to Special Rule review.⁵⁶ These factors fall into three broad categories:

- **Price discovery, information aggregation, and hedging utility.** The Commission proposes to consider whether the event contracts provide meaningful hedging or price-basing utility,

provide economically useful or meaningful information or serve an information-aggregation function, or represent responsible innovation and promote fair competition among registered entities. These factors weigh against a contrary-to-public-interest finding.⁵⁷

- **Manipulation, market disruption, settlement-integrity deficits, and information leakage.** The Commission proposes to consider whether the event contracts are unduly susceptible to manipulation or may cause undue disruption to regulated markets; whether they present settlement-integrity concerns (such as subjective or non-verifiable settlement criteria, contested data pipelines, or unclear resolution criteria); and whether they create risks of information leakage or exploitation of material non-public information. These factors weigh in favor of a contrary-to-public-interest finding.⁵⁸
- **Compliance and self-regulatory capacity.** The Commission proposes to consider the prediction market's compliance infrastructure, surveillance capabilities, customer-identification procedures, dispute-resolution processes, and information-sharing arrangements. A prediction market with robust self-regulatory capacity may mitigate public-interest concerns raised by a contract's design or underlying event, while deficiencies in

⁵³ 91 Fed. Reg. at 35,826.

⁵⁴ 91 Fed. Reg. at 35,826–27, 35,864–65.

⁵⁵ 91 Fed. Reg. at 35,826–27.

⁵⁶ Proposed CFTC Regulation 40.11(a)(5), 91 Fed. Reg. at 35,859; *see also* 91 Fed. Reg. at 35,828–33.

⁵⁷ 91 Fed. Reg. at 35,829–31, 35,834–37, 35,870–71; proposed CFTC Regulation 40.11(a)(5)(i), 91 Fed. Reg. at 35,859. The Commission proposes that event contracts with meaningful hedging or price-basing utility, economically useful or otherwise meaningful information, information-aggregation value, or features supporting responsible innovation and fair competition weigh against a contrary-to-public-interest finding. By contrast, event contracts

involving pure games of chance — such as roulette or a random-number generator — are likely contrary to the public interest because they lack meaningful informational utility, price-discovery value, or hedging function.

⁵⁸ 91 Fed. Reg. at 35,831–33, 35,868–69; proposed CFTC Regulation 40.11(a)(5)(ii), 91 Fed. Reg. at 35,859. Contracts tied to player injuries, officiating-only decisions, discrete in-game actions, physical altercations, or pre-collegiate sports are more likely to raise public-interest concerns because they present heightened risks of manipulation, insider information, harmful incentives, settlement-integrity deficits, or participant exploitation.

that capacity may weigh in favor of a contrary-to-public-interest finding.⁵⁹

The Commission proposes to weigh the factors on balance, and a determination that an event contract is contrary to the public interest must be supported by written findings that identify and analyze the relevant factors, weigh competing considerations, and explain consistency with prior Commission decisions or provide a reasoned justification for any departure.⁶⁰

Activity-Specific Factors by Enumerated Activity

In addition to the general public-interest factors discussed above, the Commission proposes activity-specific factors for each Enumerated Activity. These factors would apply once an event contract is determined to involve an Enumerated Activity and would guide the Commission's assessment of whether the contract is contrary to the public interest.

Unlawful Activity: Specific Acts and Aggregate Crime Measures

For event contracts that involve activity that is unlawful under any federal or state law, the Commission proposes additional factors for determining whether those contracts are contrary to the public interest.⁶¹ The Commission distinguishes between two types of contracts:

- **Specific unlawful-act contracts** such as an event contract settling on whether a particular identified individual commits a specified crime during a specified period are likely to raise public-interest concerns, including concerns about incentives for criminal conduct, law-enforcement sensitivity, manipulation, and insider information.⁶²

- **Aggregate crime-rate contracts** such as event contracts settling on overall crime rates in a particular jurisdiction over a specified time period are distinguished from specific unlawful-act contracts because they may have price-basing or information utility and generally do not create the same incentives to engage in specific unlawful acts.⁶³

Terrorism, Assassination, and War: National Security, Information Leakage, and Violence Incentives

For event contracts involving terrorism, assassination, or war, the Commission proposes activity-specific factors that generally weigh in favor of finding the contracts contrary to the public interest.⁶⁴ The Commission identifies several specific concerns:

- **National security risk:** event contracts settling on specific acts of terrorism, assassinations of identified individuals, or military operations may create opportunities for adversaries to profit from or signal advance knowledge of attacks.⁶⁵
- **Information leakage:** trading activity and market prices in such contracts could reveal or disseminate sensitive national-security information, potentially compromising intelligence sources and methods.
- **Settlement uncertainty and “fog of war”:** armed conflicts, terrorist attacks, and assassination attempts frequently involve disputed facts, uncertain timelines, incomplete information, and propaganda — conditions that undermine settlement integrity.
- **Misleading market signals:** prediction-market prices on terrorism and war could be manipulated to create false impressions of threat levels,

⁵⁹ 91 Fed. Reg. at 35,833, 35,869–71; proposed CFTC Regulation 40.11(a)(5)(iii), 91 Fed. Reg. at 35,859–60.

⁶⁰ 91 Fed. Reg. at 35,828–29, 35,841–42; proposed CFTC Regulation 40.11(e)(2), 91 Fed. Reg. at 35,861.

⁶¹ 91 Fed. Reg. at 35,822–23, 35,833–34, 35,861–62.

⁶² 91 Fed. Reg. at 35,833, 35,869–70.

⁶³ 91 Fed. Reg. at 35,833–34.

⁶⁴ 91 Fed. Reg. at 35,823–24, 35,834–35, 35,862–63.

⁶⁵ 91 Fed. Reg. at 35,834–35, 35,870.

potentially affecting public behavior, government decision-making, or financial markets.

- **Incentives to facilitate or profit from violence:** contracts that would pay off upon the occurrence of violent events could create financial incentives — however attenuated — to facilitate or fail to prevent such events.

Gaming and Other Activities

The Commission also proposes activity-specific public interest factors for event contracts involving gaming.⁶⁶ For gaming-related contracts, the Commission proposes to consider, among other things, whether the event contracts would be difficult to administer because their settlement is determined by in-game performance requiring real-time officiating, whether the contracts present heightened risks of manipulation due to the ability of individual participants or officials to influence discrete outcomes, and whether the contracts raise concerns regarding the exploitation of pre-collegiate athletes or other participant-protection issues.⁶⁷ For other activities that the Commission may determine to be similar to the Enumerated Activities under the catch-all provision, the Commission proposes to consider factors analogous to those applicable to the specifically enumerated categories, tailored to the particular characteristics and risks of the activity in question.⁶⁸

The NPRM does not address bilateral event contracts but for market participants considering whether to make markets in, hedge, or take exposure to bilateral event contracts, the proposed factors may provide a useful guide to evaluate risk associated with the event contract,

particularly where products depend on narrowly controlled outcomes, ambiguous settlement conditions, sensitive information, or events involving Enumerated Activities.

Manipulation, Settlement Integrity, and Existing Anti-Manipulation Frameworks

The Commission reiterates that, apart from the Special Rule, existing CEA requirements independently require that DCMs and SEFs list only contracts that are not readily susceptible to manipulation.⁶⁹ The Commission may also stay a self-certified contract under CFTC Regulation 40.2(c) during the pendency of proceedings if Commission staff identify concerns that a contract may be readily susceptible to manipulation, or if a self-certification raises questions about compliance with applicable Core Principles.⁷⁰ The Commission's manipulation-susceptibility inquiry focuses on whether outcomes are unduly controllable by a small group or depend on subjective, unverifiable, or contested criteria; aggregate outcomes and objective, non-discretionary settlement terms may reduce those concerns.⁷¹

Note that while factors addressed in the context of event contracts involving Enumerated Activities may overlap with, the general manipulation and compliance inquiries that apply to all derivatives listed on a DCM or SEF, the Commission's Special Rule analysis is distinct from the ordinary core-principles analysis that DCMs and SEFs must undertake under the CEA and related Commission regulations, including their obligations to list only contracts that are not readily susceptible to manipulation and to maintain

⁶⁶ 91 Fed. Reg. at 35,834–37; proposed CFTC Regulation 40.11(a)(6), 91 Fed. Reg. at 35,859–60.

⁶⁷ 91 Fed. Reg. at 35,834–37, 35,864–69.

⁶⁸ See proposed CFTC Regulation 40.11(a)(6)(vi), 91 Fed. Reg. at 35,860; 91 Fed. Reg. at 35,837, 35,869.

⁶⁹ Under Core Principle 3, DCMs and SEFs must list only contracts that are not readily susceptible to manipulation. See 7 U.S.C. § 7(d)(3) (DCMs); 7 U.S.C. § 7b-3(f)(3) (SEFs). Under Core Principle 4, a DCM must have the capacity to prevent market manipulation, price distortion,

and disruption of the delivery or cash-settlement process. See 7 U.S.C. § 7(d)(4). Under Core Principle 12, a DCM must establish and enforce rules to protect markets and market participants from abusive practices, including fraud, manipulation, and disruptive trading. See 7 U.S.C. § 7(d)(12).

⁷⁰ 17 C.F.R. § 40.2(c); 91 Fed. Reg. at 35,809–11.

⁷¹ 91 Fed. Reg. at 35,831–33, 35,868–69.

surveillance, compliance, and enforcement programs designed to prevent manipulation, price distortion, and settlement disruption.⁷² The proposed public-interest factors in CFTC Regulation 40.11(a)(5) and 40.11(a)(6) are designed to address concerns *particular to the types of event contracts that are subject to the Special Rule*—that is, event contracts involving Enumerated Activities. Nevertheless, because the NPRM highlights susceptibility to manipulation as a core consideration in the public interest determination under the Special Rule⁷³ — and because manipulation susceptibility is also a fundamental principle that applies broadly to all contracts traded on a DCM—DCMs should consider how the NPRM’s analytical framework may bear on the manipulability analysis for non-event contract derivatives they list as well.

Economic Purpose, Hedging Utility, and Price Discovery Under the Public-Interest Factors

Before the Commodity Futures Modernization Act of 2000 (CFMA), the CEA required a DCM to obtain Commission approval before listing a futures contract for trading, and the Commission applied an “economic purpose” analysis as part of determining whether the contract would not be contrary to the public interest. The CFMA eliminated that prior approval framework and replaced it with the current self-certification regime.⁷⁴ The Special Rule, added by the Dodd-Frank Act in 2010, does not incorporate the economic-purpose test, and the Commission preliminarily believes that the legislative history does not indicate Congressional intent to revive it.⁷⁵

The Commission proposes to treat reasonable potential for hedging, pricing, price discovery, and information aggregation as significant factors *against* a contrary-

to-public-interest finding.⁷⁶ The Commission frames these as considerations that may affirmatively support permitting event contracts that would otherwise fall within the Special Rule’s scope.

The Commission frames event contracts within the CEA’s traditional public-interest rationale for derivatives markets in that event contracts may help market participants manage risk, discover prices, and generate pricing information, rather than viewing them solely as speculative or wagering products.⁷⁷ The NPRM suggests that event-contract prices may provide useful information or hedging value where market participants have economic exposure to the relevant outcome, including sports, regulatory, legislative, or policy events that may not be readily addressed through traditional markets.⁷⁸

Similar considerations may be applied in support of bilateral over-the-counter event contracts, as they similarly serve a strong risk-transfer or hedging function, and although they do not necessarily generate the same public, predictive, price-discovery function, real-time public reporting under CFTC Regulations Part 43, would serve to provide pricing information on bilateral event contracts to the market.

Market Abuse and Insider Trading

The Commission proposes to make information leakage and exploitation of material non-public information (MNPI) risks part of the Special Rule public-interest analysis, in addition to their treatment under existing anti-manipulation authority. Proposed CFTC Regulation 40.11(a)(5) includes among the general public-interest factors whether event contracts create risks of “information leakage” or present

⁷² 91 Fed. Reg. at 35,831, 35,868.

⁷³ 91 Fed. Reg. at 35,831–33; proposed CFTC Regulation 40.11(a)(5)(ii), 91 Fed. Reg. at 35,859.

⁷⁴ Commodity Futures Modernization Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763.

⁷⁵ 91 Fed. Reg. at 35,811–13, 35,829.

⁷⁶ 91 Fed. Reg. at 35,829–31; proposed CFTC Regulation 40.11(a)(5)(i), 91 Fed. Reg. at 35,859.

⁷⁷ 91 Fed. Reg. at 35,847–49, 35,856; 7 U.S.C. § 5(a).

⁷⁸ 91 Fed. Reg. at 35,830–31.

opportunities for exploitation of MNPI.⁷⁹ This connects the product-level review under the Special Rule to the market-conduct concerns that have traditionally been addressed through contract certification and enforcement.

Contracts involving national security information (where intelligence officials or military personnel may have advance knowledge), officiating decisions (where officials can control the outcome), player injuries (where team medical staff possess non-public injury information), discrete actions (where a single participant can determine the outcome), and other narrowly controlled outcomes may create heightened insider-information and manipulation risks.⁸⁰ The Commission's inclusion of these concerns in the public-interest factors suggests that prediction markets may consider proactively addressing MNPI risk in their self-certification submissions, settlement-data sourcing, and surveillance programs.

Manipulation and information-risk controls may need to operate across product design, settlement criteria, surveillance, information-sharing arrangements, exchange rules, customer identification, and restrictions on trading by persons with relevant non-public information. Firms should consider how employee trading and MNPI policies fit within that broader control framework, rather than treating event-contract risk solely as a personal-trading issue.⁸¹ The Joint RFC reinforces these concerns, specifically asking how the Commissions could best deter manipulation and MNPI trading in the context of an alternative compliance regime and ensure robust cross-

market surveillance — consistent with the MOU's commitment to joint risk identification and data-sharing.

The Proposed 90-Day Review Process and Procedural Framework

The Commission proposes a structured procedural framework governing the exercise of its discretionary authority under the Special Rule to ensure that a prediction market's position is fully presented and considered before the Commission acts, and to calibrate procedures to the significant consequences of a contrary-to-public-interest determination.⁸² The proposal does not displace the ordinary Part 40 product-submission framework. Event contracts would continue to be listed through the ordinary CFTC Regulation 40.2 self-certification process, or submitted voluntarily for prior approval under CFTC Regulation 40.3. The proposed CFTC Regulation 40.11 process would operate as a separate Special Rule review mechanism after a contract has been submitted, and in many cases after a self-certified contract has already begun trading.⁸³

- **Initiation of Review:** The Commission may commence a review only by issuing a written determination that there is a basis to believe that submitted event contracts both (1) involve an Enumerated Activity and (2) may be contrary to the public interest under the factors in proposed CFTC Regulation 40.11(a)(5) and 40.11(a)(6). The review must commence within 10 days after the date of the event contract's listing.⁸⁴
- **Consolidation:** The Commission proposes to permit consolidation of the review of multiple

⁷⁹ Proposed CFTC Regulation 40.11(a)(5)(ii), 91 Fed. Reg. at 35,859; 91 Fed. Reg. at 35,831–33, 35,868–69.

⁸⁰ 91 Fed. Reg. at 35,831–33, 35,868–69.

⁸¹ In this regard, it is worth noting that Kalshi has begun collecting information regarding the employers of its participants (https://www.law360.com/fintech/articles/2487766?nl_pk=6e9594ed-8405-4024-bbef-9ef8c0d651b5&utm_source=newsletter&utm_medium=ema

[il&utm_campaign=fintech&utm_content=2026-06-10&read_main=1&nlsidx=0&nlaidx=0](https://www.law360.com/fintech/articles/2487766?nl_pk=6e9594ed-8405-4024-bbef-9ef8c0d651b5&utm_source=newsletter&utm_medium=ema)).

⁸² 91 Fed. Reg. at 35,837–42; proposed CFTC Regulation 40.11(c)-(f), 91 Fed. Reg. at 35,860–61.

⁸³ 91 Fed. Reg. at 35,810–11, 35,818–19, 35,838–40; proposed CFTC Regulation 40.11(c)(1), 91 Fed. Reg. at 35,860.

⁸⁴ Proposed CFTC Regulation 40.11(c)(1), 91 Fed. Reg. at 35,860; 91 Fed. Reg. at 35,838–39.

event contracts that involve the same underlying event or a substantially similar set of underlying events, including submissions by more than one registered entity. In that case, the written determination initiating review would include a description of the consolidated group.⁸⁵

- **Suspension During Review:** The Commission proposes to retain the current authority to request that the registered entity suspend listing or trading of event contracts under review. However, because the Special Rule does not provide statutory authority to *require* suspension, the Commission acknowledges that some prediction markets may not abide by such requests. This means that event contracts found to be contrary to the public interest may continue to trade during the period of the Commission’s review.⁸⁶ As a practical matter, DCMs should consider whether their rules and contract terms adequately address how a requested suspension, adverse Commission order, delisting, cancellation, refund, or close-out would be implemented.

Market participants and hedgers should account for regulatory-review risk when entering event contracts that may implicate an Enumerated Activity. The NPRM contemplates that a contract may be listed and trading during Special Rule review, but may later be prohibited if the Commission determines that it is contrary to the public interest. That creates potential delisting, close-out, hedging-loss, and operational-risk considerations for both market operators and end users.

Procedural Timeline

Within the 90-day statutory review period, the proposed framework establishes the following procedural sequence, which is specific to Special Rule

⁸⁵ Proposed CFTC Regulation 40.11(c)(4), 91 Fed. Reg. at 35,860; 91 Fed. Reg. at 35,839–40.

⁸⁶ 91 Fed. Reg. at 35,840.

review and does not replace the ordinary Part 40 self-certification process for event contracts outside that scope:⁸⁷

- **By day 15:** The Director of the Division of Market Oversight provides the prediction market with a written statement of concerns identifying the specific bases for the Commission’s preliminary view that the event contracts may be contrary to the public interest.
- **By day 30:** The prediction market may submit a written response to the statement of concerns, including proposed contract modifications and/or mitigating safeguards.
- **By day 60:** The Director of the Division of Market Oversight, with the concurrence of the General Counsel, may submit a recommendation to the Commission, provided simultaneously to the prediction market.
- **By day 70:** The prediction market may submit a response to the recommendation.
- **By day 90:** The Commission may issue an order finding that the event contracts are contrary to the public interest.

The NPRM does not steer prediction markets away from the continued use of the expedited CFTC Regulation 40.2 self-certification process; rather, it proposes a more structured framework for Commission review where a self-certified or voluntarily submitted event contract appears to involve an Enumerated Activity and may be contrary to the public interest. That approach sits alongside a broader recent CFTC focus on using Part 40 processes to provide more developed review for novel or potentially higher-risk products. For example, in a contemporaneous policy statement concerning perpetual contracts, the Commission stated that,

⁸⁷ Proposed CFTC Regulation 40.11(d), 91 Fed. Reg. at 35,860–61; 91 Fed. Reg. at 35,840–41.

given the unique characteristics of perpetual contracts and variation across underlying asset classes, the case-by-case approval process under CFTC Regulation 40.3 may be more appropriate for novel perpetual contracts.⁸⁸

Federal Register.⁹² Comments on the Joint RFC must be received within 60 days of its publication in the Federal Register.⁹³

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Final Order and Safe Harbor

A final order finding event contracts contrary to the public interest must be supported by written findings that identify and analyze the factors on which the Commission relied, weigh the relevant factors, and explain the determination's consistency with prior Commission decisions or provide a reasoned justification for any departure.⁸⁹ If the Commission does not issue an order by the end of the review period — or if 100 days have passed since the date of listing and any agreed extension has concluded — the event contracts may be, or continue to be, listed for trading and accepted for clearing, and the review is deemed concluded.⁹⁰

New entrants and DCM applicants should build settlement, surveillance, data-integrity, customer-identification, and dispute-resolution infrastructure with the NPRM's proposed factors in mind. For contracts that may involve Enumerated Activities, early engagement with CFTC staff may help identify product features that could trigger a 90-day review or otherwise raise public-interest concerns.

Comment Period

Comments on the proposed rule must be in writing and received by the Commission by July 27, 2026.⁹¹ If adopted, the proposed amendments would become effective 60 days after publication of a final rule in the

⁸⁸CFTC Issues Policy Statement Concerning the Listing of Perpetual Contracts, Press Release No. 9242-26 (May 29, 2026), available at:

<https://www.cftc.gov/PressRoom/PressReleases/pr-9242-26>.

⁸⁹ Proposed CFTC Regulation 40.11(e)(2), 91 Fed. Reg. at 35,861; 91 Fed. Reg. at 35,841–42.

⁹⁰ Proposed CFTC Regulation 40.11(e)(1)(ii), 91 Fed. Reg. at 35,861; 91 Fed. Reg. at 35,841–42.

⁹¹ 91 Fed. Reg. at 35,806.

⁹² 91 Fed. Reg. at 35,842.

⁹³ Joint RFC at 1.