ALERT MEMORANDUM

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

April 14, 2026

Since the change in administration, both the Commodity Futures Trading Commission (CFTC or, the Commission) 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. In this alert, we 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 particular, this alert covers the following topics:

- **Introduction, Background, and Regulatory Framework**
- **The CFTC's Recent Initiatives**
- **The CFTC-SEC Division of Labor and Jurisdictional Questions**
- **Market Abuse and Insider Trading on Prediction Markets**
- **International Perspectives: the UK and Europe**

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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 (the Dodd-Frank 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]

[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), available at 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.

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 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. 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 ten 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

[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, available at https://www.cftc.gov/PressRoom/PressReleases/6224-12.

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 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.** Commission staff was 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 Commission committed to commencing rulemaking to provide certainty to market participants while supporting lawful innovation.

The CFTC's Recent Initiatives

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

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]

[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 (September 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), available at 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)).

The CFTC's brief advances two principal positions:

— First, 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 Commission'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]

— Second, 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 Commission 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

[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, available at 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).

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 which 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.

We encourage clients to monitor developments in the courts, as well as legislative developments, as the outcomes may resolve — or further complicate — both the federal

[42] *See* CFTC Seeks to Enjoin Arizona Criminal and Civil Enforcement Against Prediction Markets, available at: https://www.cftc.gov/PressRoom/PressReleases/9208-26.
[43] *See* Temporary Restraining Order Blocks Arizona Criminal Enforcement Proceedings on Prediction Markets, available at: 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, available at 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).

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[51] (the Advisory) 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 Commission 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 Commission 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 Commission 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]

[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).

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]

Key areas addressed by the ANPRM include:

(i) Core Principles and Commission Regulations.

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

- Market access and trading conduct. The CFTC asks 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 asks 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 asks how position limits should be structured and aggregated across similar event contracts.[64]
- Operational matters, the CFTC seeks 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 seeks comment on the application of reporting requirements, prohibitions on pre-arranged trades and wash sales, and disruptive trading practice prohibitions to event contracts.[66]
- Margin. The CFTC asks 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 asks 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 themselves do

[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).

not clear event contracts for themselves or their customers.

1. **Public Interest.** The CFTC seeks 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 asks 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 seeks 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 seeks 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

[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.

activity, and how the 90-day statutory time limit should inform the Commission's procedural approach.

4. **Inside Information**. The CFTC seeks 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 Commission asks 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 non-public information (MNPI) — and what factors the Commission should consider in evaluating and balancing these competing public interests.

The CFTC also seeks 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 Commission's regulation of prediction markets.

The CFTC seeks 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 Commission's regulation of prediction markets. In this regard, the Commission also seeks comment on the role that events controlled by a single individual or small group of individuals should play in the Commission'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 Commission asks 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, with the comment period scheduled to close on April 30, 2026.

The CFTC SEC Division of Labor and Jurisdictional Questions

The Memorandum of Understanding

On March 11, 2026, the CFTC and SEC signed a Memorandum of Understanding[75] (MOU) to guide coordination and collaboration between the two agencies across six areas: (1) product definitions, through joint interpretations and rulemakings; (2) clearing and margin frameworks; (3) dual registration frictions for exchanges, trading venues, and intermediaries; (4) crypto assets and emerging technologies; (5) regulatory reporting; and (6) cross-market oversight, including examinations, surveillance, and enforcement.

[73] 7 U.S.C. §§ 6c(a)(1).
[74] 7 U.S.C. §§ 6c(a)(3)–(4).
[75] 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).

In the prediction markets context, the MOU provides the formal interagency mechanism through which the CFTC and SEC have committed to resolving the open jurisdictional questions concerning event contracts. The CFTC acknowledged in its ANPRM that event contracts referenced to events associated with potential financial, economic, or commercial consequences may constitute security-based swaps or other instruments subject to the jurisdiction of the SEC.[76] On March 10, SEC Chairman Atkins similarly acknowledged that some event contracts may be subject to SEC jurisdiction, noting that "it is past time that the [SEC] work with the CFTC to provide clarity on a range of Title VII definitional issues, including whether certain event contracts may be security-based swaps or other types of securities, such as options on securities."[77]

The Jurisdictional Framework

Notwithstanding that prediction market platforms are generally registered with the CFTC as DCMs, an event contract could fall under the SEC's jurisdiction if it is either a "security" or a "security-based swap." A "security-based swap" is defined as a swap that is based on a single security or loan, a narrow-based security index, or an event relating to a single issuer or issuers of securities in a narrow-based security index where such event directly affects the financial statements, financial condition, or financial obligations of the issuer.[78] The analysis turns on a fact-specific, three-part test: whether the contract (i) meets the CEA definition of "swap"; (ii) relates to a single issuer or issuers in a narrow-based security index; and (iii) involves an event directly affecting the issuer's financial statements, financial condition, or financial obligations. The consequences of such a determination are significant: when offered outside of a National Securities Exchange, security-based swaps are only available to "eligible contract participants," and cannot be offered to retail investors.[79] Further, the process for listing security-based swaps on a National Securities Exchange is different from the process for listing a swap on a DCM in ways that may disadvantage National Securities Exchanges in competition with DCMs (for example, it requires a registration statement for the security-based swap and intermediation by a broker-dealer).[80] The process is also untested, as currently security-based swaps are not offered on National Securities Exchanges, but are instead listed on Security-Based Swap Execution Facilities, which do not permit retail trading.[81]

Certain event contracts may also be structured as options on a security, or index of securities (whether broad- or narrow-based), which are excluded from the definition of swap and security-based swap.[82] Accordingly, such options would be regulated exclusively by the SEC as securities options. Unlike security-based swaps, listed options may be offered to retail investors but are still only eligible for listing on a National Securities Exchange and not through a self-certification process.[83] Nasdaq Options Exchange recently submitted a rule proposal to the SEC seeking approval to list binary security options (which it calls "Outcome-Related Options") on the Nasdaq 100 Index and the Nasdaq 100 Micro Index.[84] The proposal is a

[76] CFTC Prediction Markets ANPRM, Release No. 9194-26 (Mar. 12, 2026).
[77] Paul S. Atkins, Chairman, U.S. Securities and Exchange Commission, "Fostering Regulatory Harmony Between the SEC and CFTC," Remarks at the FIA Global Cleared Markets Conference, Boca Raton, Fla. (March 10, 2026), available at https://www.sec.gov/newsroom/speeches-statements/atkins-fostering-regulatory-harmony-between-sec-cftc-031026.
[78] 15 U.S.C. § 78c(a)(68).
[79] 15 U.S.C. § 78f(l).
[80] 15 U.S.C. § 77e(e).
[81] 15 U.S.C. §§ 78c-3(a), 78c-3(g)(1), 78c-4.
[82] 15 U.S.C. § 1(a)(47)(B)(iii).
[83] Notably, the SEC has previously approved listing rules for binary options based on certain categories of securities. See Securities Exchange Act Release Nos. 55843 (June 1, 2007), 72 FR 31636 (June 7, 2007) (Notice); 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (Approval) (SR Amex-2004-27); 57642 (April 9, 2008), 73 FR 20985 (April 17, 2008) (Notice); 57850 (May 22, 2008), 73 FR 31169 (May 30, 2008) (Approval) (SR-CBOE-2006-105). See also Cboe Exchange, Inc. Rules related to Binary Options as described at Rule 4.16 and NYSE American LLC Rules related to ByRDs at Section 17 of NYSE American's Rules.
[84] Notice of Filing of Proposed Rule Change to Adopt New Options Rule 3B to List and Trade Outcome-Related Options, 91 Fed. Reg. 12652 (Mar. 16, 2026), available at

sign of the growing interest in and impact of prediction markets on registrants.[85]

Powers and Limitations on Allocation of Jurisdiction

The question of jurisdictional allocation has significant commercial implications. Several factors are driving interest in resolving the classification of event contracts that may exhibit characteristics of both swaps and securities products. First, the listing venues available to market participants differ materially depending on whether a product is classified as a swap, a security-based swap, or security option and the infrastructure and participant base of existing prediction market DCMs may not be replicable on securities venues. Second, as noted above, security-based swaps cannot currently be offered to retail investors in any practical manner.[86] Third, market participants may want to benefit from the convenience of being able to access all permissible event contracts on a single preferred venue.

The United States is unique among developed markets in bifurcating derivatives jurisdiction in financial markets based on the nature of the underlying reference asset. One rationale for this division, which is primarily historic, is the need to address insider trading risk: where a derivative is referenced to a security or issuer, the potential for misuse of MNPI and the risk of cross-market manipulation are substantially the same as those arising in the underlying securities markets.[87] Company-driven event contracts — such as those settling on corporate actions, earnings outcomes, management decisions, or a company's key performance indicators — may be economically analogous to equity derivatives in this respect, as persons with access to inside information about the issuer may be positioned to trade on that information through the event contract. Moreover, such contracts have the potential to affect not only the prediction market itself but also the related equity markets, as trading activity or price signals in one market may influence participant behavior and pricing in the other.[88]

In practice, options for resolving the classification of event contracts that may have characteristics of both swaps and securities products include: (1) structure such contracts as either securities options or security-based swaps subject to SEC jurisdiction; (2) structure the contracts such that they do not satisfy the statutory definition of security-based swap (or other instrument subject to the SEC's jurisdiction) and ensure they are properly characterized as swaps or futures under the CFTC's exclusive jurisdiction; or (3) permit such contracts to be regulated as swaps notwithstanding potential securities characteristics, utilizing inter-agency mechanisms, such as those established by the Dodd-Frank Act.

Two Dodd-Frank Act provisions may be particularly relevant to the third option above. Section 717[89] permits the CFTC to exempt "securities-related" instruments (a term left undefined) from CEA requirements on the condition that the SEC exercise concurrent jurisdiction, deeming such instruments

https://www.federalregister.gov/documents/2026/03/16/2026-05019/self-regulatory-organizations-nasdaq-mrx-llc-notice-of-filing-of-a-proposed-rule-change-to-adopt-new.

[85] The Chicago Mercantile Exchange has also enthusiastically embraced event contracts. *See* CME Group Announces 100 Million Event Contracts Traded (Feb, 13 2026), available at https://www.cmegroup.com/media-room/press-releases/2026/2/13/cme_group_announces100millioneventcontractstraded.html.

[86] The issue of retail access to security-based swaps has been raised in the past and proposals have been shared with the SEC to facilitate retail access to such products, however, no action has been taken and security-based swaps remain largely out of reach for retail customers. *See* Letter from the Securities Industry and Financial Markets Association to the SEC (Jan. 8, 2020), available at: https://www.sec.gov/comments/s7-27-11/s72711-6633321-203172.pdf.

[87] 17 C.F.R. § 240.9j-1 provides an analogue to 7 C.F.R. § 240.10b-5 in the security-based swap context.

[88] For a more thorough explanation of the considerations surrounding insider trading in event contracts, see infra "Market Abuse and Insider Trading on Prediction Markets."

[89] 7 U.S.C. § 2; 15 U.S.C. § 78c-2; 15 U.S.C. § 78s; 7 U.S.C. § 7a-2.

securities. Section 718[90] establishes a consultation mechanism for novel products with elements of both securities and commodity futures, but does not itself create or transfer regulatory authority. Neither provision offers a straightforward path to jurisdictional reallocation, and the CFTC's broader exemptive authority does not extend to exempting products from the swap definition absent express Congressional authorization. Separately, under CFTC Rule 1.8 and SEC Rule 240.3a68-2,[91] any person may request that both agencies jointly characterize a specific contract within 120 days of the request, although the interpretation would be contract-specific.

To date, there has been limited regulatory appetite to examine more closely whether certain event contracts constitute security-based swaps, and market participants may similarly have limited commercial incentive to pursue such a characterization given the complexity in offering security-based swaps to retail investors. The balance of incentives regarding jurisdictional allocation may shift, however, as market participants develop security options-based structures for event contracts which could offer a more viable path to retail availability under SEC jurisdiction.[92] It remains to be seen whether the agencies will provide joint interpretive guidance clarifying the scope of prediction market event contracts, similar to the recent joint interpretive guidance on the characterization of crypto assets, potentially in context of the ANPR.[93]

Market Abuse and Insider Trading on Prediction Markets The growth of prediction markets has brought into focus the application of the CFTC's anti-manipulation and insider trading framework to a new and rapidly expanding class of contracts. Under CEA section 6(c)(1)[94] and Commission Regulation 180.1,[95] which was modeled on, but distinct from, SEC Rule 10b-5,[96] it is unlawful for any person to employ any device, scheme, or artifice to defraud, or to manipulate the price of any contract listed on a DCM, including through the misappropriation of confidential information obtained in breach of a pre-existing contractual, legal, or regulatory duty. CFTC Regulation 180.1 expressly acknowledges that the mere possession of and trading on asymmetric information is not, by itself, unlawful.[97] Liability under the misappropriation theory requires that the information have been obtained in breach of a pre-existing contractual, legal, or regulatory duty.

The CFTC signaled that enforcement in this area is both within its purview and a priority through the simultaneous publication of the February 25, 2026 advisory and two enforcement cases involving event contracts traded on Kalshi. In the first, a political candidate traded on his own candidacy in breach of exchange rules, resulting in a $2,246.36 penalty and a five-year trading suspension. In the second, a YouTube channel editor traded a contract related to that channel while likely in possession of MNPI, resulting in a

[90] 15 U.S.C. § 8306.
[91] 17 C.F.R. § 1.8 (2024); 17 C.F.R. § 240.3a68-2.
[92] *See*, *e.g.*, the discussion of Nasdaq's proposal to list binary security options on the Nasdaq Options Exchange *supra*. Relatedly, very recently, event contracts have been embedded in certain structured securities in the form of principal-protected structured notes — sometimes referred to as "Binary Bonds" —pairing a discount bond with a contingent upside tied to a specified event outcome. Because the derivatives exposure is fully embedded in the note itself or in an ETF wrapper, such products may broaden retail access to prediction market economics through traditional securities distribution channels.
[93] Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release Nos. 33-11412; 34-105020, available at https://www.sec.gov/files/rules/interp/2026/33-11412.pdf.
[94] 7 U.S.C. § 9(1)
[95] 17 C.F.R. § 180.1.
[96] 17 C.F.R. § 240.10b-5.
[97] *See* 17 C.F.R. § 180.1(b).

$20,397.58 penalty and a two-year suspension.[98] While the penalties are modest, the cases are significant as the first public recognition by the CFTC of enforcement actions in this space. While these matters were handled through Kalshi's internal enforcement program, the CFTC noted that the conduct also fell within its own enforcement authority under the Commodity Exchange Act, confirming that the Commission views Regulation 180.1 as fully applicable to prediction market trading and may act on violations of exchange rules prohibiting participants from trading on contracts over which they have direct or indirect influence over the outcome.

Exposure to enforcement may extend beyond CFTC action alone. Employee misuse of MNPI on prediction markets may attract platform-level sanctions, including profit disgorgement and trading bans, as well as potential Department of Justice action, including wire fraud charges,[99] where platform terms of service are violated. The Department of Justice has used the federal wire fraud statute to prosecute insider-trading-like schemes in digital-asset contexts involving alleged misappropriation of confidential information, including in NFT marketplace and crypto-exchange listing cases.[100] Where prediction market activity could be shown to influence or manipulate a related securities market, the SEC may also assert jurisdiction[101] notwithstanding the CFTC's primary oversight role.

Looking ahead, the ANPRM raises the broader policy question of whether persons with an information advantage should be permitted (or even encouraged) to trade on prediction markets, on the basis that such trading may improve price discovery and reliability. The Commission has invited comment on how to balance that potential public interest benefit against the risks of manipulation, unfairness, and misuse of MNPI.

In light of the DMO Advisory and the February enforcement advisory, we recommend that clients review existing compliance programs and employee policies, in particular insider trading and code of conduct policies, as further discussed in our March 23 alert memo.[102] The Preventing Real-time Exploitation and Deceptive Insider Congressional Trading (PREDICT) Act has been introduced in the House. If enacted, the legislation would prohibit certain government officials from entering into any contract "that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of a specific political event."[103]

[98] Press Release, Commodity Futures Trading Commission, CFTC Enforcement Division Issues Prediction Markets Advisory, Release No. 9193-26 (Mar. 12, 2026), https://www.cftc.gov/PressRoom/PressReleases/9193-26.
[99] 18 U.S.C. § 1343.
[100] *See* Former Employee Of NFT Marketplace Charged In First Ever Digital Asset Insider Trading Scheme, U.S. Attorney's Office, Southern District of New York Press Release No. 22-180 (June 1, 2022), available at https://www.justice.gov/usao-sdny/pr/former-employee-nft-marketplace-charged-first-ever-digital-asset-insider-trading-scheme?utm_source=openai; Three Charged In First Ever Cryptocurrency Insider Trading Tipping Scheme, U.S. Attorney's Office, Southern District of New York Press Release No. 22-232 (July 21, 2022), available at https://www.justice.gov/usao-sdny/pr/three-charged-first-ever-cryptocurrency-insider-trading-tipping-scheme?utm_source=openai.
[101] 15 U.S.C. § 78j(b).
[102] 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.
[103] Preventing Real-time Exploitation and Deceptive Insider Congressional Trading Act. H.R. 8076, 119th Cong. (2026).

International Perspectives: The UK and Europe

While the United States moves towards a more permissive federal framework for event contracts, the position in the United Kingdom and the European Union reflects different structural and regulatory approaches. In both jurisdictions, the regulatory treatment of prediction markets turns principally on the nature of the underlying event — and in particular on whether a given contract references a financial variable so as to engage financial services regulation, or a non-financial outcome so as to fall within the scope of gambling legislation. The following sections set out the current position in each jurisdiction in turn.

United Kingdom

The UK regulatory position currently turns on the distinction between a binary financial and non-financial product. In transposing the Directive 2014/65/EU on markets in financial instruments (MiFID II) into UK law, HM Treasury extended the financial services regulatory perimeter to include binary options relating to underliers such as financial instruments or indices, economic statistics, commodities, interest rates, or climate variables.[104] Firms arranging or operating trading venues for such instruments in the UK require appropriate authorization from the Financial Conduct Authority (FCA). In contrast, contracts referencing non-financial outcomes - such as sports results or political events - likely fall within the remit of the Gambling Commission under the Gambling Act 2005, which establishes the statutory licensing regime for commercial betting and gambling. The Gambling Commission has indicated that, depending on the precise business model, a prediction market operator offering non-financial event contracts to UK customers would likely be characterized as a "betting intermediary" — broadly analogous to a UK "betting exchange."[105] In those circumstances, the operator would require the appropriate Gambling Commission license, absent alternative compliant structuring arrangements.

The FCA has taken a notably interventionist approach where the potential for retail harm is concerned. In 2019, it imposed a permanent ban on the sale of financial binary options to retail consumers.[106] That prohibition applies to FCA-authorized firms. However, cross-border marketing and sale of regulated contracts to UK retail clients may still engage UK licensing and financial promotion restrictions, creating practical access constraints for overseas providers.

The UK's regulatory boundary reflects a risk-based allocation of supervisory responsibility, rather than a view about the economic similarity of products. The FCA's framework is designed around risks inherent in financial markets — market integrity, transparency, leverage and counterparty exposure. By contrast, sports and political spread bets reference events that in the FCA's view have no intrinsic connection to financial markets and the FCA considers the risk profile to be fundamentally different: the core concerns are gambling-related harms (addiction and behavioral vulnerability), rather than market conduct or systemic financial risk. Those risks sit within the competence of the Gambling Commission.

All that said, the UK perimeter is not immutable. HM Treasury retains the power to amend the regulated activities framework, and perimeter issues are periodically reviewed in joint FCA–HMT discussions.

[104] Article 85(4A) and (4B) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
[105] Gambling Commission, "Prediction markets - here's what you need to know" (posted February 4, 2026), available at https://www.gamblingcommission.gov.uk/blog/post/prediction-markets-heres-what-you-need-to-know.
[106] FCA Conduct of Business Sourcebook (COBS) 22.4 (Prohibition on the retail marketing, distribution and sale of derivative contracts of a binary or other fixed outcomes nature).

At present, however, there is no clear indication of an imminent shift that would bring non-financial prediction markets within the FCA's remit.

European Union

In the EU, the regulatory framework applicable to event contracts traded in prediction markets depends on how those contracts are classified, which in turn depends on the nature of the underlying event. Where a contract references a non-financial event — such as political elections or sports results — it typically falls within the scope of national gambling regulations, which are not harmonized at the EU level. For example, in Italy, gambling is a state monopoly. Organizing or facilitating the collection of bets (including by digital means) is subject to licensing and public concession requirements, which, if breached, may result in criminal liability (including for individuals participating in illegal games). In October 2025, the Italian Customs and Monopolies Agency blocked access from Italy to a major prediction markets platform due to its alleged non-compliance with Italian gambling regulations.

Conversely, event contracts based on financial variables (*e.g.*, stocks, ETF indices, digital assets) may fall within the definition of "derivatives" under MiFID II. The provision of investment services linked to derivatives constitutes a reserved activity that may be carried out only by authorized investment firms, banks and certain other financial institutions, in compliance with conduct of business requirements aimed at ensuring investor protection.

Event contracts that qualify as derivatives may further qualify as "binary options" (*i.e.*, options where the investor either receives a predetermined cash pay-out if the specified condition is met, or loses the entire amount invested if it is not, generally within a short timeframe). In 2018, EU regulators began restricting the offer of binary options to retail clients. First, on 22 May 2018 (effective 2 July 2018), the European Securities and Markets Authority (ESMA) adopted a temporary ban on binary options for retail clients under Article 40 of Regulation (EU) No. 600/2014 on markets in financial instruments (MiFIR), pursuant to which ESMA may impose temporary product-intervention measures and, subject to ESMA's favorable opinion, national competent authorities (NCAs) may impose permanent measures.[107] Following the expiry of ESMA's temporary ban (1 July 2019), nearly all EU NCAs have adopted permanent national product intervention measures pursuant to Article 42 MiFIR prohibiting the marketing, distribution or sale of binary options to retail clients. Those measures were adopted following ESMA's favorable opinions, as detailed in a 2020 report to the EU Commission on the effects of these product intervention measures.[108]

Accordingly, the marketing, distribution or sale to retail investors of prediction markets contracts linked to financial variables meeting the requirements to be classified as binary options is currently prohibited across nearly all of Europe.

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[107] ESMA Decision (EU) 2018/795 of 22 May 2018 to temporarily prohibit the marketing, distribution or sale of binary options to retail clients in the Union in accordance with Article 40 of Regulation (EU) No 600/2014 of the European Parliament and of the Council, available at: https://eur-lex.europa.eu/eli/dec/2018/795/oj/eng.

[108] ESMA, "Final Report - ESMA's Technical Advice to the Commission on the effects of product intervention measures" (February 3, 2020 | ESMA35-43-2134), available at https://www.esma.europa.eu/sites/default/files/library/esma35-43-2134_technical_advice_to_the_ec_on_product_intervention.pdf.