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FIA Law and Compliance Division webinar.**

We will begin momentarily.

Gaming and Federal Regulation of Event Contracts

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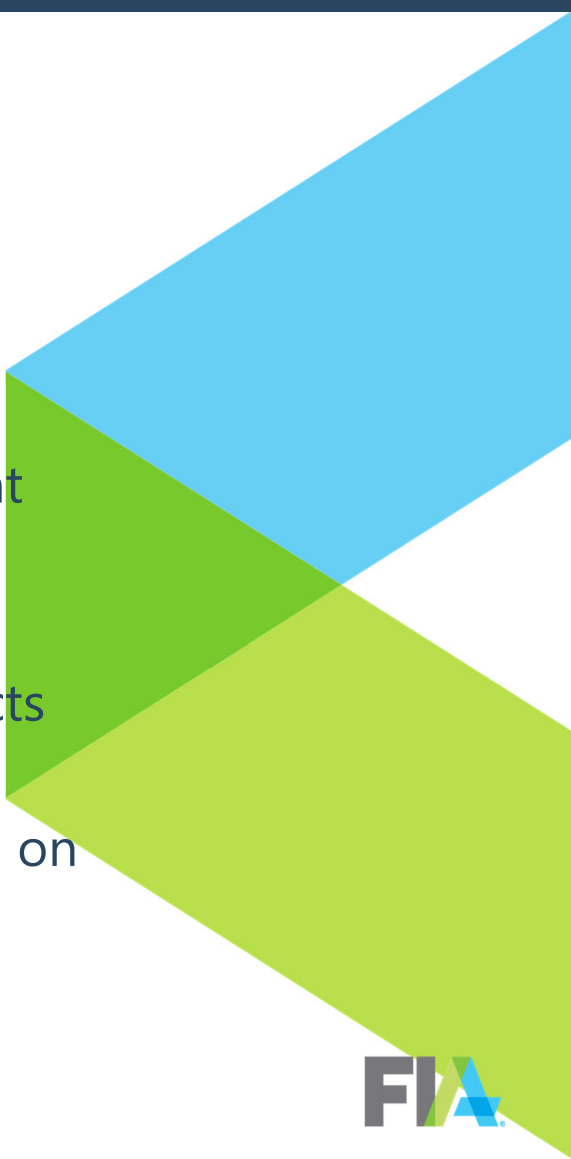


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Overview

- Applicable definitions
 - Rise of prediction markets
 - Receptive Administration, but increased State enforcement
 - The CFTC's authority to review event contracts
 - History of CFTC's authority to review event contracts
 - Recent CFTC enforcement matters involving event contracts
 - SEC regulation of gaming contracts
 - State and tribal litigation against listing of event contracts on registered exchanges
 - Looking ahead
- 



1. Definitions

Definitions Used Today

- **"Gaming"** – staking of money on the result of a game of pure chance, or mixed skill and chance, e.g., casino poker (referred in Rule 40.11(a)(1) and CEA § 12(e)(2), together with "bucket shops")
- **"Gambling"** – same as gaming, but has historically connoted that stakes are excessive or a practice otherwise is reprehensible; most States have Anti-Gambling Acts
- **"Wagering"** – refers to money hazarded on any contingency in which the person wagering has no interest at risk other than the amount at stake
- **"Betting"** – usually connotes wagers on sporting events, horse races or games generally (referred in [Murphy v. NCAA](#))
- **"Event Contracts"** – contracts in excluded commodities based upon occurrence, extent of occurrence, or contingency (other than change in price of a commodity), CEA § 5c(c)(5)(C)(v)
- **"Binary Options"** – "a type of option whose payoff is either...fixed...or zero", i.e., is exercised upon yes / no occurrence (CFTC glossary); event contracts usually take the form of binary options which are "swaps" for CEA regulatory purposes
- **"Excluded Commodity"** – intangible rates, indices, measures, as well as occurrences or contingencies beyond control of the parties and associated with financial, commercial or economic consequence (§ 1a(19) of the CEA)
- The following are license types issued by the CFTC: **"FCMs"** (futures commission merchants), **"IBs"** (introducing brokers), **"SDs"** (swap dealers), **"DCMs"** (designated contract markets, i.e., commodity exchanges), **"DCOs"** (derivatives clearing organizations), **"CTAs"** (commodity trading advisors), **"SDR"** (swap data repository), **"commodity pools"**, **"retail participants"** (i.e., non-eligible contract participants)
- **"CEA"** (the U.S. Commodity Exchange Act), **"CFTC"** (U.S. Commodity Futures Trading Commission)



2. The Rise of Prediction Markets





2025 State of Play: Rise of Prediction Markets

- In 2024, prediction markets entered the mainstream; in 2025, sports event contracts exploded in popularity.
- A number of platforms now list event contracts:
 - KalshiEX
 - PredictIt
 - Polymarket
 - Sporttrade
 - Gemini Titan
 - ForecastEx
 - Robinhood
 - Crypto.com (Nadex)
 - CME Group (FanDuel)
- Of these platforms, some are regulated DCMs, some are FCMs, and some have no status.
- **Sports-related event contracts** are now available for all major professional sports and college sports.
 - During 2025 March Madness, Americans spent over \$500 million in Kalshi's college basketball markets.
- Kalshi recently announced partnerships with Google, CNN, CNBC, and StockX, and the CME with FanDuel, while ICE and others invested in Polymarket.
- **Estimated volume for 2025 in prediction contracts at \$40 billion.**



3. The Federal Pivot



2025 State of Play: the Federal Pivot

- Under the new Trump Administration, the CFTC has sharply curtailed its enforcement activities against prediction markets listing event contracts.
 - During his nomination hearing, new CFTC Chairman Michael Selig repeatedly stated that the question of whether event contracts constitute “gaming” was for the courts to decide, and under his leadership the CFTC would comply with relevant judicial decisions.
- The Securities and Exchange Commission (“**SEC**”) is not taking an active role in regulation and enforcement regarding prediction markets; its friendlier stance toward crypto benefits prediction markets.
- State regulators and State Attorneys General (“**AGs**”) are now prediction markets’ primary challengers.



Key Legal Analysis

- An outcome from an event is a “**commodity**” (e.g., a win of a particular political candidate, or a loss of a sports team or weather hitting a 100F mark).
- The CFTC has **general non-exclusive anti-fraud jurisdiction** over “commodities,” meaning that other regulators and States may also exercise their jurisdiction over contracts in commodities.
- However, if contracts on these commodities are standardized, and trade on a centralized registered DCM and cleared through a DCO, these could be “futures” or “options” or “swaps” – i.e., derivatives.
- Under the CEA, the CFTC will have an exclusive jurisdiction over commodity derivatives, meaning that no other regulator or State may regulate these derivatives – that is **the Federal preemption**.
- DCMs can operate and list commodity futures, options, and swaps (including any event contracts) **anywhere in the U.S.**
- Retail participants are prohibited from trading derivatives unless they are “**listed**” on a DCM.



4. The CFTC's Authority to Review Event Contracts



CFTC Authority to Review Event Contracts

- Under longstanding CFTC rules, a DCM can list new products by one of two methods.
 - Self-certification (CFTC Rule 40.2);
 - Commission review and approval (CFTC Rule 40.3)
- As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**"), Congress gave the CFTC special authority to review "event contracts."
- CEA § 5c(c)(5)(C) authorizes the CFTC to prohibit futures, options or swaps on an excluded commodity that involves **terrorism, assassination, war, gaming, unlawful activity** (under State or federal law) or other "similar activity" if the CFTC determines that the contract is "*contrary to the public interest.*"
- CFTC adopted Rule 40.11(a) in 2011 to implement its new authority. This rule is arguably inconsistent with § 5c(c)(5)(C) of the enabling statute and is vulnerable to legal challenge.



CFTC Authority to Review Event Contracts (cont'd)

- Rule provides for a 90-day review period for contracts that the Commission determines “may involve, relate to, or reference” one of the activities identified in the statute.
- Rule requires the Commission to request suspension of trading during the review period, but does not require the DCM to halt trading while the contract is under review.
- Rule provides that the Commission must approve or disapprove the contract within the 90 days or an agreed upon extended period.
- In adopting the rule, CFTC acknowledges that term “gaming” requires “further clarification,” but that may be accomplished by possible future rulemaking. Also defers identification of activities “similar to” those enumerated in statute.
- CFTC notes that prohibition of gaming contracts in the CEA and in Sec. 40.11(a) of CFTC Regulations is consistent with Congress’s intent to “prevent gambling through the futures markets.” (However, the record on Congressional intent is slim; litigation has focused on this.)



Main Focus for CFTC

- The contract will not violate the law (e.g., promote terrorism)
- Meets legal requirements for “commodity interest contracts” and
- DCM listing the contracts will meet all Core Principles and specifically
 - Core Principle 3 – “***contracts not readily subject to manipulation.***”



5. History of CFTC's Authority to Review Event Contracts



History of CFTC Authority to Review Event Contracts

- The “public interest” determination called for by CEA § 5c(c)(5)(C) is informed by the history of the CEA.
- Statute establishing the CFTC gave the agency authority to review every contract to determine whether a DCM “demonstrate[d]” that the contract “*will not be contrary to the public interest.*”
- Legislative history made clear that the public interest included an economic purpose test for the contract – “*something more than occasional use . . . for hedging or price basing must be established.*”
- Commodity Futures Modernization Act of 2000 (“**CFMA**”) eliminated the CFTC’s broad authority to review and block listing of futures contracts by giving DCMs the ability to self-certify that contracts comply with the CEA.



CFTC's Treatment of Event Contracts – Early Developments

- In 1993, the CFTC issued no-action relief to the University of Iowa to allow a non-profit electronic market for binary options (swaps) contracts involving political events and economic indicators.
- In 2011, the CFTC first invoked the Rule 40.11 review process in response to Nadex's self-certification of political event contracts.
 - The CFTC determined that Nadex contracts involve gaming, noting that many State statutes equate gaming or gambling with betting on elections.
 - The CFTC also determined that the political event contracts are contrary to the public interest because they have neither hedging nor price basing utility and could have adverse effect on elections.
- In 2014, the CFTC issued no-action relief to Victoria University of Wellington to allow a non-profit electronic market for trading binary options (swaps) contracts involving political events and economic indicators (PredictIt).



CFTC's Treatment of Event Contracts – ErisX

- In December 2020, ErisX self-certified futures contracts on various outcomes (moneyline, point spread, total points) of NFL football games.
- These contracts were structured as binary options with winning position receiving settlement price of \$100 and losing position receiving settlement price of \$0. Contracts would have been fully collateralized and available only to ECPs.
- ErisX's submission emphasized hedging purposes – contended sportsbook operators hold unbalanced books arising from in-state customers favouring home team. Also asserted that stadium owners and vendors have need to hedge against poor attendance.
- CFTC determined that NFL contracts triggered Rule 40.11 review.
- In March 2021, ErisX withdrew submission one day before review period would have expired, possibly expecting the contract to be stayed by the Commission as contrary to the public interest.
- After the withdrawal, two (now former) Commissioners (Dan Berkovitz and Brian Quintenz) issued statements about ErisX's submission.



CFTC's Treatment of Event Contracts – ErisX (cont'd)

- Former Commissioner Quintenz disclosed content of proposed order and criticized it. Expressed concerns about:
 - the statute itself, which he claimed gives too much discretion to agency
 - the regulation, which is a per se prohibition of contracts involving the activities identified in the statute
 - the proposed order's placing of burden on the DCM to prove hedging function
- Former Commissioner Berkovitz would have blocked the NFL contracts' listing.
 - Determined that contracts involve "gaming"
 - Concluded that ErisX did not provide sufficient evidence that contracts would provide an effective hedging mechanism (so didn't satisfy public interest test)
 - Also found that contracts, by restricting trading to ECPs, violated two DCM core principles, CP 2 (impartial access to market) and CP 19 (antitrust)



CFTC's Treatment of Event Contracts – 2024 Rule Proposal

- In May 2024, CFTC issued a proposal to amend Rule 40.11(a)(1), in part by defining “gaming,” currently undefined in the regulation, as “the staking or risking by any person of something of value” upon the outcome of any game or contest, including political or award contests, or upon any occurrence in connection with a game or contest.
- Because event contracts involving “gaming” are prohibited by Rule 40.11(a)(1), the amended rule would prohibit all event contracts based on sports, elections, or award contests – effectively banning the majority of event contracts currently traded.
- Then-CFTC Commissioners Summer Mersinger and Caroline Pham (former Acting Chair) dissented from the proposal.
- The comment period ended in August 2024 and the proposal is now in limbo. It is unlikely to be pursued by the new Chair, Michael Selig. During his nomination hearing, Selig stated he would defer to the courts on what constitutes “gaming.”
- The proposed rule was drafted to be consistent with an order the CFTC issued in May 2024 to prohibit certain Kalshi event contracts. In September 2024, in *KalshiEX v. CFTC*, the D.C. District Court rejected the order, negating that rationale for the rule amendment.



6. Recent CFTC Enforcement Matters on Event Contracts



CFTC's Treatment of Event Contracts – PredictIt

- In August 2022, CFTC revoked PredictIt's 2014 no-action letter.
 - Letter did not identify specific instances of noncompliance
 - In verbal discussions with PredictIt, CFTC argued that PredictIt was effectively operated by a for-profit entity, in violation of the 2014 no-action letter's terms
- PredictIt sued to challenge the revocation in *Clarke v. CFTC*.
- In July 2023, the Fifth Circuit sided with PredictIt and enjoined CFTC's revocation of the 2014 no-action letter; litigation continued.
- In July 2025, PredictIt obtained a favorable agreement with CFTC, ending the litigation.
 - CFTC amended the 2014 no-action letter, allowing PredictIt to serve an unlimited number of traders (formerly 5,000) and increasing the market's position limit
 - Acting Chair Caroline Pham thanked for "recognizing the importance of PredictIt"



CFTC's Treatment of Event Contracts – Kalshi

- Designated in 2021, Kalshi, in June 2023, self-certified event contracts based on election outcomes.
- CFTC announced review of these contracts under Rule 40.11 (the second ever Rule 40.11 review after review of Nadex political event contracts in 2011).
- In September 2023, CFTC prohibited Kalshi from listing the contracts, determining:
 - The contracts involved “gaming” because “the term ‘gaming’ includes betting or wagering on elections”
 - The contracts involved unlawful activity under State law, as many States prohibit betting or wagering on elections
 - The contracts were “contrary to the public interest” because they did not have economic utility and could affect election integrity



CFTC's Treatment of Event Contracts – Kalshi (cont'd)

- Kalshi sued the CFTC in D.C. federal court and won. The court held:
 - For an event contract to “involve” one of the activities enumerated in CEA § 5c(c)(5)(C), the activity must be the underlying subject of the contract
 - Thus, the contracts did not “involve” gaming or unlawful activity solely because the CFTC alleged that the contracts themselves constituted gaming or unlawful activity
- CFTC appealed the ruling.
- In May 2025, CFTC voluntarily dismissed its appeal of the ruling, permitting Kalshi to continue listing political event contracts.



Other CFTC Enforcement Actions Against Event Contracts

Previous enforcement actions:

- CFTC v. Ronald Montano and Montano Enterprises LLC (2018)
- CFTC v. Yehuda L. Belsky and Y Trading, LLC (2019)
- BigOption, BinaryBook, and BinaryOnline (2019)
- CFTC v. CIT Investments LLC, Brevspand EOOD, CIT Investments Ltd., CIT Investments Ltd., and A & J Media Partners, Inc. (2019)
- CFTC v. Peter Szatmari (2020)
- CFTC v. Daniel Fingerhut, Itay Barak, Tal Valariola and Digital Platinum Limited (2021)
- Polymarket (2022)
- Super Bowl event contracts (2025)

CFTC's Binary Options Customer Fraud Advisories and "RED" List



7. SEC and Gaming Contracts



SEC Regulation of Gaming Contracts

The threshold issue: whether there is a “security” involved, and the common form of security is an “investment contract” under Howey Test

- For example, in Sept. 2020, the SEC issued a cease-and-desist order to Unikrn, Inc., an operator of an online eSports gaming and gambling platform (SEC File No. 3-20003, In re Unikrn, Inc.).
- Unikrn issued digital tokens that allowed participants to, among other things, “place bets on professional eSports and video game matches....” Subsequently, it started to issue tokens to raise money “to power the most immersive live-betting platform for eSports.”
- SEC found that Unikrn issued securities (i.e., investment contracts) without registration under § 5(a) of the Securities Act.



SEC Regulation of Fantasy Sports Contracts

The other SEC-jurisdictional nexus is whether trading involves “security-based swaps” (SBS) and whether offered to non-ECPs.

- In re Forcerank, SEC File No. 3-17625 (Oct. 2016), the SEC sanctioned Forcerank for illegally offering complex derivatives products to retail (non-ECP) investors through mobile phone games that were described as “fantasy sports for stocks.”
- The SEC stated that Forcerank’s agreements with players were SBS because they provided for a payment that was dependent on an event associated with a potential financial, economic or commercial consequence and based on the value of individual securities.
- The contracts were not registered and not traded on an exchange and not offered to ECPs. Similar SEC cases were Sand Hill Exchange (June 2015) and TradeNet Capital Markets (Oct. 2020).



SEC's Focus

In sum, SEC also focuses on gaming and gambling issues, but from a different, more technical perspective than the CFTC –

- Whether an unregistered securities offering is taking place or whether non-ECPs are participating in the trading of SBS.
- If contracts in all of these cases were properly registered, traded on national exchanges or with respect to SBS offered to ECPs, there will have been no violation of securities laws.

The SEC does not currently have a significant role in regulation and enforcement involving event contracts or prediction markets.



8. State Regulations of Gaming Contracts



State Regulation of Gaming Contracts

- States for centuries have enacted laws defining, prohibiting or regulating gambling.
 - In 1638, the Puritans of Massachusetts enacted America's first law against gambling. It was based on the Idleness Statute of 1633 which outlawed the possession, even in one's home, of cards, dice and gambling devices
- In fact, Board of Trade v. Christie Grain (U.S., 1905) involved allegations of illegal gambling under Illinois law. Court's approach eventually became the 1922 Grain Futures Act – requiring trading of futures to be only on registered exchanges (i.e., DCMs).
 - Christie Grain also introduced public policy / interest considerations that distinguish legitimate derivatives from gambling and wagering and is now in CFTC rule 40.11
- Since then, derivatives have received U.S. federal protection (subsequently CFTC federal preemption in CEA § 12(e)(2)) while the States continued enforcing their anti-gambling laws.



The Murphy Decision

Professional Amateur Sports Protection Act of 1992 (PASPA) prohibited States from allowing sports betting, with very few exceptions (such as for preexisting State laws – e.g., Nevada). The State of New Jersey, desiring to develop its Atlantic City business sued to repeal PASPA on constitutional anti-commandeering grounds.

In 2018, the U.S. Supreme Court repealed the PASPA in Murphy v. NCAA (138 S. Ct. 1461) as an unconstitutional violation of State rights. The decision's implications are:

- States are free to enact laws to allow sports betting;
- States' gambling laws are still in place;
- The Federal Wire Act of 1961 still prohibits interstate wagering and betting, including on sports events;
- Murphy does not supersede application of other federal laws (e.g., CEA or the Wire Act);
- States test the waters to expand Murphy to other event and betting markets;
- Court's anti-commandeering language can be taken to other State laws relating to other commodities, such as cannabis (if indeed it and its related products are a commodity).

As of 2025 – 39 States and the District of Columbia have legalized sports betting, and other States are considering the same.

State Regulation of Prediction Markets: Litigation

Prediction markets have sued states; notably, in federal courts in NV, NJ, and MD

- **KalshiEX LLC v. Hendrick; N. Am. Derivatives Exch., Inc. v. Nevada; Robinhood Derivatives, LLC v. Dreitzer:**

- In spring 2025, the Nevada Gaming Control Board (NGCB) sent Kalshi and Crypto.com cease-and-desist letters alleging that they were illegally operating as unlicensed sportsbooks. Robinhood received a similar letter because of its relationship with Kalshi.
- Kalshi, Crypto.com, and Robinhood sued, seeking injunctions preventing the NGCB from enforcing the letters
- In April, the District of Nevada sided with Kalshi and granted the injunction, holding that the CFTC has exclusive jurisdiction to regulate derivatives exchanges, preempting the NGCB's action
- But in October, the same judge denied Crypto.com's similar motion. This led to the judge reversing course on Kalshi's motion in November and dissolving its injunction. The court also denied Robinhood's motion later in November.
- Kalshi, Crypto.com, and Robinhood have appealed to the Court of Appeals for the Ninth Circuit, which has not yet heard the parties' arguments

State Regulation of Prediction Markets: Litigation (Cont'd)

- **KalshiEX LLC v. Flaherty; Robinhood Derivatives, LLC v. Flaherty:**
 - In March 2025, the New Jersey Division of Gaming Enforcement sent Kalshi and Robinhood cease-and-desist letters
 - Kalshi and Robinhood sued, seeking injunctions preventing New Jersey from enforcing the C&Ds
 - In April 2025, the District of New Jersey sided with Kalshi and granted the injunction, concurring with the District of Nevada's reasoning in its original order in KalshiEX LLC v. Hendrick. The state appealed, and the Court of Appeals for the Third Circuit is considering the state's case.
 - Kalshi's sports-related event contracts remain live in New Jersey while litigation proceeds, and the court has temporarily enjoined the state from enforcing its sports wagering laws against Robinhood



State Regulation of Prediction Markets: Litigation (Cont'd)

- **KalshiEX LLC v. Martin; N. Am. Derivatives Exch., Inc. v. Martin:**
 - In April 2025, the Maryland Lottery and Gaming Control Commission sent Kalshi and Crypto.com cease-and-desist letters
 - Kalshi and Crypto.com sued, seeking injunctions preventing Maryland from enforcing the C&Ds
 - In August 2025, the District of Maryland sided with Maryland and denied Kalshi's request for a preliminary injunction, splitting from the District of New Jersey and holding that the CEA does not preempt state regulation of sports gambling
 - Kalshi has appealed the District of Maryland's ruling to the Court of Appeals for the Fourth Circuit, which has not yet heard the parties' arguments
 - The court has stayed proceedings in Crypto.com's case pending the Fourth Circuit's decision



State Regulation of Prediction Markets: Other

- Other states that have issued cease-and-desist letters to prediction markets include:
 - Arizona, Illinois, Montana, Ohio, New York, Tennessee
- States that have launched investigations into prediction markets include:
 - Connecticut, Massachusetts, Michigan
- In June 2025, **34 states, the District of Columbia and the Northern Mariana Islands** filed a joint amicus brief against Kalshi and in support of New Jersey in KalshiEX LLC v. Flaherty
- On August 5, 2025, **AGs in all 50 states sent a letter to DOJ requesting assistance against “illegal online sports betting and gaming operations”**
 - Highlighted “more than \$4 billion in lost tax revenue for state governments”
 - Noted DOJ’s authority to block access to illegal websites and payment processing mechanisms and/or seize assets of illegal gambling operations



Indian Tribes Litigation

Indian tribes have sued in CA and WI federal courts and supported other litigation

- **Blue Lake Rancheria v. Kalshi Inc.**: Three tribes sued Kalshi and Robinhood in the Northern District of California
 - The tribes raised several claims:
 - Kalshi and Robinhood’s conduct violates the Indian Gaming Regulatory Act (IGRA)
 - Kalshi and Robinhood are violating tribal gaming ordinances and tribal sovereignty, while also interfering with tribal self-governance
 - Kalshi and Robinhood’s concerted activities constitute a civil RICO violation
 - Under the Lanham Act, Kalshi may not advertise that its contracts are legal and accessible nationwide, including to minors
 - In November 2025, the court denied the tribes’ motion for a preliminary injunction as to the IGRA and Lanham Act claims; the tribes have appealed
 - The court found the IGRA does not govern Kalshi’s contracts and that the relevant statute does not prohibit them
 - As for the Lanham Act claim, the court found that Kalshi had not advertised that its contracts were legal sports betting



Indian Tribes Litigation

- **Ho-Chunk Nation v. Kalshi, Inc.**: Another tribe has sued Kalshi and Robinhood in the Western District of Wisconsin, raising claims similar to those in the Northern District of California case
 - Kalshi and Robinhood have moved to dismiss, and the tribe has moved for a preliminary injunction. Briefing will likely conclude in January.
- Additionally, Indian tribes and tribal associations have filed amicus briefs supportive of states
 - For example, in June 2025, a group of tribes and tribal associations filed an amicus brief against Kalshi and in support of Maryland in KalshiEX LLC v. Martin



CFTC Staff Advisory re Event Contacts

- On September 30, 2025, CFTC published CFTC Letter No. 25-36 addressing all registered entities of potential effects of State litigation. Specifically, the CFTC stated that:
- *"The Commission has not, to date, been requested to take or taken any official action to approve the listing for trading of sports-related event contracts on any DCM pursuant to sections 5c(c)(4)-(5) of the CEA and Commission regulation 40.3. 7 U.S.C. § 7a-2(c)(4)-(5), 17 CFR 40.3. " (Ft. 4)*
- *"FCMs, IBs, DCMs, and DCOs should provide customers, market participants, and clearing members with regularly updated information, including information based on any States in which they operate or engage in activity, to ensure that such customers, market participants, and clearing members understand the possible effects should State regulatory actions or ongoing or new litigation, including enforcement actions, result in termination of sports-related event contract positions." (p. 2).*



9. Looking Ahead – Predictions!





Major Issues for Prediction / Event Markets

- Challenges to the Federal Preemption by State regulators / tribal authorities;
- Compliance requirements for DCM-listed swaps (reporting obligations, swap dealer registration, disclosures);
- Potential manipulation and misappropriation of material non-public information (insider trading) concerns under § 180.1;
 - Same rules apply as to e.g., crude oil or silver commodity markets.
- Compliance with Core Principle 3 (susceptibility of manipulation);
- Characterization under CFTC Regulation § 40.11(a).



Looking Ahead – Questions...

- Under the current Administration, the CFTC is unlikely to increase enforcement against prediction markets or tighten regulations regarding event contracts. Will it change any rules to make them more favorable?
- Litigation regarding the scope of CFTC vs. State authority over sports-related event contracts could end up in the Supreme Court. How will the Court approach this issue?
- If this litigation ends up in the Supreme Court, will the Court draw a distinction between trading in commodity contracts for entertainment purposes vs. for an articulated economic business purpose?
- How will increased pressure from vested interest groups (States, tribes, traditional gambling industry) shape developments in policy?
- How will this new and dynamic sector continue to grow and innovate?

The Likely Outcomes of Court Challenges

There are several possible scenarios how current litigation as well as regulatory uncertainty will become resolved:

- 1) **States / Tribal Authorities Win.** The Supreme Court or the appellate courts may rule for the States and will not recognize the Federal preemption; however, the courts will need to clarify which contracts will qualify as “gaming” or “gambling” and not “swaps” or “futures” for purposes of the CEA. Under this outcome, licenses will need to be obtained in each state / tribal territory where traders will be located.
 - a) The result will be similar if Congress amends the CEA to carve out “sports event outcomes” from the definition of “commodity.” These contracts will not be eligible to be traded on the DCMs.
 - b) CFTC’s 2024 proposed rule on event contracts would treat sports event contracts as “gaming” contracts.
- 2) **DCMs Win.** The Supreme Court or the Appellate courts may rule for the DCMs and confirm status quo that a binary option is a swap, regardless of whether it is on a sports event or interest rates. The Federal preemption will remain and sports event contracts would trade nationally.
 - a) The CFTC may also amend its rules for DCMs and officially certify sports event outcome contracts as suitable to be traded on DCMs.
- 3) **Neither States Win nor DCMs Lose.** The final outcome may be some form of a court-created test to differentiate between the gaming contracts that are not allowed under § 40.11(a) from the otherwise legitimate binary options; potentially an entertainment vs. economic substance test.
 - a) Likewise, the CFTC may reach the same conclusion, however, it would be difficult to articulate a dividing line between gaming / gambling and trading for some economic purpose and in the public interest.



Upcoming Webinars

The Criminal Provisions of the Commodity Exchange Act

5 February, 10:00 – 11:00 a.m. ET

- An overview of the criminal provisions of the Commodity Exchange Act and practical insights for firms to avoid liability

Beyond the Limit – Is Anything New in Position Limits?

12 March, 10:00 – 11:00 a.m. ET

- A refresher on position limits on futures and swaps, exemptions and aggregation



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