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Panel: Trade Surveillance Man vs. Machine

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Trade Surveillance: Keep Your Eye on the Shiny Object

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On March 16, 2026, the Commodity Futures Trading Commission ("CFTC" or "Commission") published an Advanced Notice of Proposed Rulemaking on Prediction Markets (hereinafter the "ANOPR").[2] While the ANOPR sought information and public comment regarding a wide variety of legal and policy considerations related to event contracts traded on prediction markets, this paper focuses on one topic raised in the ANOPR: surveillance.

At the outset, it should be acknowledged that event contracts are not new. The Commission approved the first designated contract market ("DCM") dedicated to trading event contracts in 2004.[3] However, the growing number, popularity, and variety of event contracts can substantially impact regulators' ability to conduct effective surveillance.

The Commission described "event contracts" as "derivative contracts, typically with a binary payoff structure, based on the outcome of an underlying occurrence or event."[4] Event contracts also tend to be fully collateralized, meaning the total maximum potential loss or payout is already secured by cash at the time of the trade.[5] Therefore, for purposes of this discussion, we will define an "event contract" as a fully collateralized contract with a binary payoff structure, , the settlement of which is based on the occurrence, non-occurrence, or outcome of specified event. We also observe that market participants in prediction markets are predominantly retail customers and not commercial end users.

As the Commission noted in the ANOPR, Core Principle 4 states that a DCM ''shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures."[6] With this context, the Commission asked the following questions:

a) "Do any aspects of prediction markets pose challenges to compliance with this Core Principle or, on the other hand, facilitate compliance?"

b) "Are there market surveillance, compliance, or enforcement practices on which the Commission should focus?"

c) "Are there existing surveillance practices for detecting suspicious activity in other types of exchanges and platforms that would be useful in prediction markets?"[7]

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2 Prediction Markets, 91 Fed. Reg. 12516 (Mar. 16, 2026); see also, CFTC Press Release No. 9194-26.

3 See CFTC Order of Designation for HedgeStreet, Inc. (Feb. 20, 2004), https://www.cftc.gov/sites/default/files/opa/press04/opa4894-04.htm.

4 ANOPR at 12,517.

5 *Id.* at 12,519.

6 *Id.*; see also, CEA section 5(d)(4), 7 U.S.C. 7(d)(4).

7 *Id.*

In short, yes, yes, and yes. However, while the answers to these questions are relatively simple, the solutions to the problems highlighted by the questions will likely require substantial investment in surveillance sources and methods that the futures industry has not previously employed.

1) Compliance with Core Principle 4

In many ways, challenges related to monitoring trading in event contracts are not materially different from the challenges associated with surveillance related to many "traditional" futures contracts (e.g., those that are margined, fixed-price contracts tied to the future delivery of *actual* "commodities," as that term is commonly understood, where the futures contract references a physical or financial commodity that can be bought and sold in an underlying cash market). However, event contracts can present special challenges related to monitoring for fraud and distortions in the final settlement of the contracts that are different in character from traditional futures contracts, and even defining the scope of market activities that could be considered harmful to market integrity presents a new challenge for prediction markets.

In most instances, the surveillance tools used to detect manipulative and disruptive trading practices, wash sales, and fictitious trades are likely to be just as effective for monitoring prediction markets as they are for monitoring traditional futures contracts. Trade monitoring software that analyzes order flow and detects patterns associated with disruptive trading has become increasingly sophisticated and effective at identifying potential trading violations, and many of those tools may be equally applicable in prediction markets. Aspects of prediction markets, such as full collateralization, conceivably may even mitigate the risk of certain types of manipulative or disruptive practices. For example, unlike margined positions, fully collateralized contracts are not susceptible to forced liquidation based on price movements alone; this difference may reduce the likelihood that the impacts of disruptive trading will be exacerbated by triggering involuntary trades.

Although existing surveillance practices may be effective at identifying many types of problematic behavior, prediction markets may be subject to fraud and market manipulation risks that are fundamentally different from the fraud and market manipulation schemes flagged by traditional surveillance practices. Specifically, fraud and manipulation in traditional futures contracts typically involve controlling deliverable supply and/or cross-product schemes whereby a market participant holds a related position that will benefit from movements in price or other financial motivations. With respect to event contracts, particularly those related to elections and political events, market participants may be motivated by non-financial objectives, such as establishing a front-runner in a race or influencing a consensus view. In such cases, there may be no related position to serve as evidence of a potential scheme.

Moreover, even where suspicious activity is financially motivated, event contracts pose special challenges to identify potentially improper trading by insiders and/or distortion of the underlying event in favor of insiders' trading positions. In the context of traditional futures contracts (and securities), insider trading can be discovered ex post by identifying unusual trading immediately preceding and following the disclosure of material non-public information. With respect to event contracts that predict the outcome of a specific event (e.g., the winner of a public sports contest), the timing and volume of insider trading just prior to the event may go undetected because it is entirely consistent with and not readily distinguishable from the legitimate trading that may be occurring.

This challenge may be further complicated by the prolific nature of event contracts, which is likely to prevent the type of ex-post review that can occur with respect to traditional futures contracts (and securities) following major announcements or other events such mergers and acquisitions that are few enough to permit some level of scrutiny. Ex-post reviews also may face challenges identifying wrongdoers due to the retail nature of prediction markets and the multiplicity of different types of participants who might be involved in the underlying events. Across the thousands of event contracts being traded, almost all of which are unique and short-lived, how will the government be able to identify insiders and cheaters and perceive their connections?

Cheating in the gambling markets traditionally has been exposed through criminal investigations that focus on suspected or known criminal organizations or that employ sting operations.[8] Even then, connecting the dots is difficult without whistleblowers.[9] Those investigations can sometimes require years to mature into indictments. That model would not seem to serve the needs of real-time surveillance in derivatives markets.

Finally, unlike traditional futures where the settlement price is principally determined based on fundamentals of supply and demand and the volume weighted average price of the transactions in the close, event contracts are often resolved based on the occurrence or non-occurrence or outcome of a single event, which in many cases is controlled by a single individual or a small group of individuals. The Commission recognized this concern and specifically sought comment on the use of "inside information" in prediction markets. Noting that the outcomes of some events "are under the control of a single individual or small group of individuals," the Commission questioned whether there are "particular challenges related to cross-market manipulation."[10]

While this risk implicates Core Principle 3, which states that DCMs may only list "contracts that are not readily susceptible to manipulation,"[11] concerns about the use of inside information and control over the outcome of a contract likely presents the greatest challenge to surveillance in prediction markets. The futures industry simply does not have experience policing such issues as the performance of athletes, testing the genuineness of their reported injuries, or tracing

8 For example, six defendants from six separate states were indicted for allegedly engaging in a conspiracy with twelve unnamed co-conspirators to commit wire fraud and money laundering in connection with sports betting using material non-public information in connection with the National Basketball Association. DOJ Press Release: "Current and Former National Basketball Association Players and Four Other Individuals Charged in Widespread Sports Betting and Money Laundering Conspiracy," Oct. 23, 2025, available at: Eastern District of New York | Current and Former National Basketball Association Players and Four Other Individuals Charged in Widespread Sports Betting and Money Laundering Conspiracy | United States Department of Justice.

9 For example, in recent criminal indictments related to allegations of point shaving in the National Collegiate Athletic Association and the Chinese Basketball Association, the alleged wrongdoing involved more than two dozen individuals from more than twelve different states and, in some cases, were connected only by the alleged scheme. DOJ Press Release: "26 People Charged in Alleged Bribery and Point-Shaving Scheme to Fix NCAA, CBQ Men's Basketball Games," Jan. 15, 2026, available at: Eastern District of Pennsylvania | 26 People Charged in Alleged Bribery and Point-Shaving Scheme to Fix NCAA, CBA Men's Basketball Games | United States Department of Justice.

10 *Id.* at 12,522.

11 CEA section 5(d)(3), 7 U.S.C. 7(d)(3).

relationships between traders and individuals participating in and potentially controlling the outcome of events.

2) Market Surveillance Practices

Possibly recognizing that current surveillance practices likely fail to adequately address the unique risks associated with prediction markets, the agency has signaled the need for coordination with authorities and private enterprises to address the risk of distortions in the events that are the subjects of event contracts. For example, on March 12, 2026, the Commission's Division of Market Oversight ("DMO") issued guidance regarding the listing of events contracts.[12] In that guidance, DMO recommended substantial engagement with sports leagues to share information and data in an effort to police the underlying activity and associated trading:

> "DMO staff therefore recommends that DCMs consider … establishing information-sharing and data arrangements with the relevant sports integrity monitoring organization …. DCMs are also encouraged to look to, among other items, any league integrity standards or guidance around markets, contracts, and restricted or insider participants lists, in order to protect against manipulation and insider trading, and to protect the integrity of the relevant league or governing body, as applicable, and the sporting events which it administers. DMO staff also recommends that DCMs cooperate with any league-run investigations into potential manipulation or insider trading investigations. In the view of DMO staff, engagement with the sports leagues and other sports governing bodies may further a DCM's ability to comply with their obligations under DCM Core Principle 3 with respect to sports-related event contracts by enhancing access to information about the nature and dynamics of underlying events (e.g., information about categories of individuals who should be restricted from trading in certain sports-related event contracts as an informed participant)."[13]

Consistent with this recognition of a need for enhanced surveillance and information sharing, on March 19, 2026, the CFTC announced that the agency has entered into a Memorandum of Understanding with Major League Baseball ("MLB") that "establishes a framework for the CFTC and MLB to discuss, cooperate, and exchange information concerning issues of common interest including protecting the integrity of professional baseball and the relating prediction markets."[14]

The MOU is noteworthy for the breadth of cooperation called for, including imposing obligations on the CFTC that are greater than the obligations it has taken on in MOUs with other federal regulators, such as the Securities Exchange Commission ("SEC"). For example, the CFTC and the MLB agreed to "endeavor to meet as needed, but *at least monthly*, to identify and

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[12] CFTC Staff Letter No. 26-08, CFTC Press Release No. 9193-26, available at: https://www.cftc.gov/PressRoom/PressReleases/9193-26.

[13] Letter No. 26-08 at pp. 5-6.

[14] Memorandum of Understanding between the Commodity Futures Trading Commission and Major League Baseball ("MOU"); see CFTC Press Release 9199-26 available at: https://www.cftc.gov/PressRoom/PressReleases/9199-26.

discuss issues that may impact the integrity of professional baseball and the event contract markets related thereto."[15] The MOU also provides the parties mutual rights to use the information and restricts the CFTC's ability to disclose information shared by the MLB, generally prohibiting disclosure without written approval without making exception for disclosures in the context of investigations.[16]

3) Surveillance Practices from Other Markets

Considering the greatest challenge to compliance with Core Principle 4 (as well as with Core Principle 3) seems to relate to insider activity, including potentially the use of asymmetrical information in trading or, worse, the risk that insiders will distort the underlying event, lessons may be taken from the SEC's experience monitoring for insider trading.[17] In particular, the Financial Industry Regulatory Authority ("FINRA") has an insider trading detection program it uses to monitor trading in stocks, options, and bonds to identify suspicious activity around material news events. Of course, as noted above, the volume of event contracts and the number of individuals who might have an opportunity to misappropriate non-public information about the underlying events or, worse, distort the outcome of the underlying event, creates a challenge distinct from the FINRA experience. Nevertheless, prediction markets may benefit from lessons learned by FINRA.

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[15] MOU at Para. 4 (*emphasis added*).

[16] *Id.* at Para. 9 ("All Information transferred from the Providing Party to the Receiving Party remains the record of the Providing Party and shall not be disclosed by the Receiving Party except as provided for in this MOU, unless and until the Providing Party designates otherwise in writing").

[17] We note that the CFTC has to date only prohibited "trading on the basis of material nonpublic information in breach of a pre-existing duty (established by another law or rule, or agreement, understanding, or some other source), or by trading on the basis of material nonpublic information that was obtained through fraud or deception." *Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation*, 76 Fed. Reg. 41398, 41403 (July 14, 2011). The Commission's ANOPR poses questions about the possible utility of people taking advantage of material non-public information in prediction markets. ANOPR at 12,522-12,523. Of course, the prohibition in CEA section 4c(a)(3) against personnel of the federal government and judiciary trading in futures, options on futures, options on commodities or swaps on the basis of confidential information held by the federal government or judiciary would seem to apply to trading in event contracts unless they are ultimately determined not to be futures, options or swaps. Regardless of the applicability of any sort of general insider trading prohibition, prediction markets have tended to prohibit insiders from participating in the events markets.