Survey of Recent CFTC Updates Regarding Crypto Asset Activities and Prediction Markets

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Panel: Where You Trade Your Digital Assets in 2026 (April 16, 2026)

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I. Introduction

The Commodity Futures Trading Commission ("CFTC" or "Commission") continues to play a central role in the regulation of digital asset markets and emerging event-based derivatives, including prediction markets. Over the past year, the Commission has taken a series of actions, including but not limited to, rulemaking and policy actions underscoring its view that many crypto asset activities fall within the scope of the Commodity Exchange Act ("CEA"). In addition, as public attention and interest in events contracts has grown, the CFTC has increased its scrutiny of prediction markets. In particular, recent CFTC actions have focused on events contracts involving political events, sporting events, and other event contracts that may implicate public interest and insider trading concerns.

This paper surveys recent CFTC developments in these areas, with a focus on key developments and agency actions. It is intended to provide a practical overview for legal and compliance professionals navigating evolving regulatory expectations in the crypto asset and prediction markets environments.

II. Regulatory Framework for Crypto Assets Under the CEA

The CFTC has consistently maintained that certain digital assets, including Bitcoin and Ether, qualify as "commodities" under Section 1a(9) of the CEA.[1] As a result, the Commission asserts jurisdiction over derivatives referencing such digital assets, as well as enforcement authority over fraud and manipulation in underlying spot markets.

Under the current administration, the CFTC has undergone a notable shift towards fostering responsible innovation and market growth, moving away from a jurisdiction of regulation by enforcement, particularly regarding digital assets. The innovation agenda has come from the top down, with CFTC Chairman Michael S. Selig delivering remarks at the FIA Boca Raton Global Cleared Markets Conference outlining a broad innovation and digital assets agenda, including:

- Upcoming guidance on CFTC intermediary registration requirements to decentralized finance;
- Clearer oversight of crypto derivatives; and
- Formal rulemaking for event/prediction markets.

More broadly, the Chairman underscored the importance of regulatory clarity and active enforcement while noting enhanced coordination with the SEC as part of the CFTC's evolving oversight landscape.[2] Additionally, the Chairman has discussed his intent to "future-proof" rules to avoid the potential resurgence of regulation through enforcement or staff guidance.

Soon after his remarks, the SEC and CFTC announced a Memorandum of Understanding to deepen coordination across oversight, enforcement, and policy for financial markets, including

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[1] 17 C.F.R. § 1.3.

[2] Chairman Michael S. Selig, Prepared Remarks for Delivery at FIA Global Cleared Markets Conference (Mar. 9, 2026), https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig2.

clearer frameworks for emerging technologies like crypto.[3] The agreement aims to harmonize definitions, streamline reporting requirements, modernize clearing and margin practices, and eliminate duplicative rules that have historically hindered innovation, laying the groundwork for more seamless cross-agency oversight of digital assets.

III. Recent Policy Developments and Enforcement in Crypto Markets

Since the confirmation of Chairman Selig, the CFTC has been active in issuing policy documents and otherwise signaling its intent to foster responsible innovation and end regulation by enforcement within the digital assets markets under the Commission's purview.

A. Innovation Task Force and Crypto/Blockchain FAQs

On March 24, 2026, Chairman Selig announced the launch of a CFTC Innovation Task Force, intended to establish clear rules for the development of innovative products and technologies in U.S. derivatives markets.[4] Working in concert with the CFTC's Innovation Advisory Committee, the Innovation Task Force will lead the charge to develop a clear regulatory framework focused on: (i) crypto assets and blockchain technologies; (ii) artificial intelligence and autonomous systems; and (iii) prediction markets and event contracts. The Task Force will also coordinate across federal agencies and departments, including with the SEC's Crypto Task Force, and will be led by senior advisor to the CFTC Chairman, Michael J. Passalacqua.

In parallel, on March 20, 2026, the CFTC's Market Participants Division (MPD) and Division of Clearing and Risk published a series of FAQs concerning registrant and registered entity activities relating to crypto assets and blockchain technologies.[5] The FAQs address a number of novel questions and activities including:

- Whether Futures Commission Merchants (FCMs) may apply a customer's non-security crypto assets, including payment stablecoins, deposited as margin in futures, foreign futures, or cleared swaps accounts to secure the customer's debit/deficit account balance? (Yes, relying on CFTC Staff Letter 26-05);

- Whether an FCM may deposit its own payment stablecoins into segregated customer accounts as residual interest? (Generally yes, including imposition of a capital charge of at least 2% of the market value of the payment stablecoins);

- Whether an FCM may deposit its own crypto assets, other than payment stablecoins, in segregated customer accounts as residual interest? (No);

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[3] Press Release, SEC and CFTC Announce Historic Memorandum of Understanding Between Agencies (Mar. 11, 2026), https://www.sec.gov/newsroom/press-releases/2026-26-sec-cftc-announce-historic-memorandum-understanding-between-agencies.

[4] Press Release, CFTC, Chairman Selig Announces Formation of New Innovation Task Force (Mar. 24, 2026), https://www.cftc.gov/PressRoom/PressReleases/9201-26.

[5] Press Release, CFTC Staff Issues FAQs Concerning Registrant and Registered Entity Activities Relating to Crypto Assets and Blockchain Technologies (Mar. 20, 2026), https://www.cftc.gov/media/13521/Registrant&RegisteredEntity_FAQs032026/download.

- Whether a swap dealer exchange crypto assets as initial or variation margin for uncleared swaps entered into with a swap dealer or a financial end user? (No); and
- What actions must an FCM take before relying on CFTC Staff Letter 26-05 and what conditions are imposed on FCMs that accept crypto assets as margin collateral under CFTC Staff Letter 26-05?

B. No-Action Letter to Digital Asset Wallet Provider

Additionally, on March 17, 2026, the MPD issued a No-Action Letter to Phantom Technologies, Inc. (Phantom), a developer and distributor of self-custodial digital asset wallet software applications, taking the position that it will not recommend an enforcement action against Phantom for failure to register as an introducing broker (IB) or for its personnel failing to register as associated persons (APs) of an IB.[6]

The No-Action Letter emphasizes that Phantom's software would serve only to passively enable users to transact in derivatives products through registered DCMs, FCMs, and IBs and that at no point would Phantom hold, control, or take into custody user assets, generate express "buy" or "sell" signals, or exercise discretion with respect to the routing or execution of user orders. The No-Action Letter also contains several conditions that Phantom must satisfy, including:

- Entering into, and filing with the CFTC, an agreement with collaborators that it will be jointly and severally liable for any violation of the CEA and CFTC rules by Phantom or its personnel when conducting its proposed activities; and
- Subjecting itself to the CFTC's jurisdiction for any related enforcement action.

Phantom will also have to:

- Provide conflicts of interest and risk-related disclosures to users;
- Maintain policies and procedures relating to public communications and marketing;
- Abstain from engaging in certain types of advertisements and promotions
- Notify the CFTC if it becomes insolvent or enters a bankruptcy proceeding; and
- Maintain records demonstrating compliance with these conditions and CFTC-regulated activities, among others.

Taken together, these developments indicate that the CFTC is deliberately moving away from a regime of regulation by enforcement in favor of building a regulatory environment that fosters responsible innovation and growth to ensure the U.S. market remains at the forefront of digital asset and crypto development and investment.

[6] Press Release, CFTC Staff Issues No-Action Position to Self-Custodial Crypto Asset Wallet Software Provider (Mar. 17, 2026), https://www.cftc.gov/PressRoom/PressReleases/9197-26.

C. Payment Stablecoin Interpretation, Fact Sheet, and Staff Letter

The CFTC has also intensified its focus on crypto assets and payment stablecoins. On March 17, 2026, the CFTC and SEC issued an interpretation and fact sheet clarifying how the federal securities laws apply to certain crypto assets and transactions involving crypto assets.[7] The interpretation establishes categories of tokens, addresses how non-security crypto assets may be subject to an investment contract, and explains when crypto-related activities and transactions fall under the federal securities regime. The CFTC specifically clarified that it would administer the CEA consistent with SEC's Interpretation on Crypto Taxonomy. The CFTC added that "certain non-security crypto assets" could meet the definition of a commodity under the CEA.

Likewise, on February 6, 2026, the CFTC's MPD announced the reissuance of CFTC Staff Letter 25-40, incorporating a revived definition of the term "payment stablecoin," specifying that a national trust bank may be a permitted issuer of a payment stablecoin for purposes of the no-action position.[8] The reissuance of the Staff Letter addressed the unintentional exclusion of national trust banks as issuers of payment stablecoins. MPD's original Staff Letter took a no-action position on certain requirements applicable to FCMs that accepted non-securities digital assets, including payment stablecoins, as customer margin collateral and hold certain proprietary payment stablecoins in segregated customer accounts.

IV. Prediction Markets and Event Contracts

A. Overview of Regulatory Framework

Much has been said in recent years about prediction markets, and the CFTC-jurisdictional products traded on them. In a statement released February 17, 2026, the CFTC reaffirmed its view that the Commission possesses exclusive jurisdiction over all the U.S. commodity derivatives markets, "including event contract markets commonly referred to as prediction markets."[9]

One of many criticisms of prediction markets is the seemingly high potential for fraudulent and manipulative conduct associated with the trading of event contracts therein. CEA Section 6(c)(1) broadly prohibits the use or attempted use of "any manipulative or deceptive device or contrivance," "in connection with" a swap, future or cash contract, in contravention of the CFTC. CFTC Regulation 180.1, which was adopted in 2011, was expressly modeled on SEC Rule 10b-5 and prohibits fraud and fraud-based manipulation, as well as attempted fraud or manipulation, by any person, acting intentionally or recklessly, directly or indirectly, in connection with any swap or cash or futures contract.

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[7] Press Release, CFTC Joins SEC to Clarify the Application of Federal Securities Laws to Crypto Assets (Mar. 17, 2026), https://www.cftc.gov/PressRoom/PressReleases/9198-26.

[8] Press Release, CFTC Staff Reissues Letter 25-40 Updating Payment Stablecoin Definition (Feb. 6, 2026), https://www.cftc.gov/PressRoom/PressReleases/9180-26.

[9] Press Release, CFTC Reaffirms Exclusive Jurisdiction over Prediction Markets in U.S. Circuit Court Filing (Feb. 17, 2026), https://www.cftc.gov/PressRoom/PressReleases/9183-26.

Specifically, Rule 180.1(a) targets manipulative and deceptive devices and contrivances, employed intentionally or recklessly, regardless of whether the conduct in question was intended to create or did create an artificial price. Rule 180.1(b) also provides that the rule may not be construed to require disclosure to another person of material nonpublic information unless disclosure is necessary to make any statement to that person "in or in connection with the transaction" not materially misleading. Unlike Section 10(b), however, these provisions do not require the purchase or sale of a "security," but instead apply to commodities and derivatives transactions.

B. Recent CFTC Actions

Given the CFTC's assertion of jurisdiction over prediction markets and its status as the regulatory body with the most tailored rules to insider trading on prediction markets, it is likely the CFTC will begin enforcing prediction market-related insider trading on these platforms. The CFTC also has explicitly stated that it intends to use all available tools to police misconduct in prediction markets.[10] In an advisory published on February 25, 2026, the CFTC noted that it "has full authority to police illegal trading practices" occurring on any prediction market, including:

- Misappropriation of confidential information in breach of a pre-existing duty of trust and confidence to the source of the information (commonly known as "insider trading") pursuant to Section 6(c)(1) of the CEA, and Regulation 180.1(a)(1) and (3);
- Pre-arranged, noncompetitive trading and wash sales, under Section 4c(a)(1) and (2)(A) of the CEA, and Regulation 1.38(a);
- Other prohibited trading practices including disruptive trading pursuant to Section 4c(a)(5); and
- Fraud and manipulation under various sections of the CEA.

The CFTC also has noted that prediction markets, which are registered as CFTC-jurisdictional designated contract markets (DCMs), themselves have an independent duty pursuant to the core principles of CEA to maintain audit trails, conduct surveillance, and enforce rules against prohibited practices under Section 5(d) of the CEA.

On March 12, 2026, the CFTC issued two noteworthy releases on event contracts and prediction markets: (1) an advisory from the CFTC's Division of Market Oversight (DMO) providing guidance to designated contract markets (DCMs) on the listing and trading of event contracts with particular focus on those related to sports (the "Advisory Letter")[11], and (2) an Advance Notice of Proposed Rulemaking seeking public comment on the need to amend or issue new regulations concerning event contracts trading on prediction markets (ANPRM).[12] These two

[10] Press Release, CFTC Enforcement Division Issues Prediction Markets Advisory (Feb, 25, 2026), https://www.cftc.gov/PressRoom/PressReleases/9185-26.
[11] Press Release, CFTC Staff Issues Prediction Markets Advisory (CFTC Letter No. 26-08), (Mar. 12, 2026), https://www.cftc.gov/PressRoom/PressReleases/9193-26.
[12] Press Release, CFTC Advance Notice of Proposed Rulemaking; Request for Comment, Prediction Markets (Mar. 12, 2026), https://www.cftc.gov/PressRoom/PressReleases/9194-26.

releases come at a critical time as the jurisdictional dispute between the federal government and the states over event contracts and prediction markets continues.[13]

C. The Advisory Letter – A Reminder to DCMs of Their Core Principle Compliance Obligations and a Recommendation that They Engage and Cooperate with Sports Organizations

The Advisory Letter reiterates the Core Principle compliance obligations of DCMs in the context of event contracts and prediction markets. Specifically, the Core Principle compliance obligations provide that DCMs have:

- A duty to conduct real-time monitoring of all trading activity on their trading platforms to identify disorderly trading and any market or system anomalies;
- A responsibility to engage in appropriate inquiries and undertake disciplinary actions when necessary; and
- A duty to prohibit the employment of any device, scheme, or artifice to defraud or attempt to defraud any person or manipulate the price of any contract listed on a DCM.

The Advisory Letter also reminds DCMs that the CFTC retains the authority to investigate and bring civil enforcement actions related to such activity.

Importantly, the Advisory Letter encourages DCMs to consider whether certain categories of event contracts create a heightened potential for manipulation or price distortion. On this note, it focuses on sports-related event contracts that may be susceptible to resolution or settlement based on injuries to individual sports participants, unsportsmanlike conduct, or physical altercations between sports participants.

It also highlights those contracts that resolve or settle based on the action of a single individual or a small group of individuals, such as officiating actions occurring during a sporting event. Relatedly, the Advisory Letter notes that the listing of event contracts should:

- Avoid overly broad or general contract specifications;
- Include, among other things, a description of the settlement methodology that accounts for differing potential permutations of the contract, including identification of the specific data sources on which settlement will be based; and
- Include an assessment of the reliability, objectivity, and manipulation resistance of such data sources.

Notably, the Advisory Letter also recommends that DCMs offering sports-related event contracts consider:

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[13] *See* CFTC Amicus Brief, North American Derivatives Exchange, Inc. et al. v. The State of Nevada on relation of the Nevada Gaming Control Board et al., No. 25-7187 (Feb. 17, 2026).

- Engaging in pre-self-certification communications with relevant sports governing bodies or authorities when developing terms and conditions, compliance, and market oversight programs for sports-related events contracts;
- Including, as part of the self-certified product submission, an explanation of whether the contract is consistent with the relevant league's or governing body's integrity standards, as applicable;
- Establishing information-sharing and data arrangements with the relevant sports integrity monitoring organization; and
- Relying on official data provided by the relevant league or governing body, as applicable, as the settlement source.

D. The ANPRM – An Acknowledgment of the Rise of Prediction Markets and an Attempt to Gain Public Insight to Determine the Best Way to Regulate Them

The ANPRM recognizes that prediction markets have surged in popularity, with event contract listings increasing from approximately five per year between 2006 and 2020 to approximately 1,600 in 2025. As these markets have become more widespread, so have questions regarding the appropriate regulatory entity that is legally authorized to exercise jurisdiction over them. At the center of this dispute is the CFTC and the states, particularly Nevada and Arizona, where sports-related event contracts are especially popular and could be viewed by some as competing with traditional gambling offerings. The state regulatory agencies have grown increasingly vocal in their desire to oversee prediction markets as they do sports betting pursuant to their gambling statutes. However, the CFTC has maintained its position that it holds exclusive jurisdiction over prediction markets, as emphasized in the ANPRM, on the basis that event contracts are either swaps or futures contracts.[14]

In an attempt to broadly regulate prediction markets under its perceived exclusive jurisdiction, the CFTC is requesting public comment in the ANPRM on 40 questions covering a wide range of topics, including the following:

1. The application of DCM Core Principles to prediction markets;
2. The factors to consider in determining whether a contract is "contrary to the public interest";
3. The standards for determining the scope of the five prohibited activities that cannot underlie event contracts under CEA Section 5c(c)(5)(C) (i.e., activities that are unlawful under federal or state law, terrorism, assassination, war, and gaming);
4. The treatment of insider information in the context of prediction markets; and
5. The aspects of prediction markets that make them different from other CFTC-regulated markets.

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[14] The ANPRM notes that certain event contracts could be considered security-based swaps under the jurisdiction of the SEC.

These topics reflect the CFTC's concern with how prediction markets fit (or do not fit) into its existing regulatory framework and whether there are any outstanding risks to the integrity of markets, protection of customers, and vibrancy of the overall financial system that need to be addressed in a future rulemaking. The ANPRM provides a 45-day comment period following its publication in the Federal Register for the public to raise these concerns and provide other insights on prediction markets to the CFTC.

VI. Conclusion

The CFTC's recent actions reflect an increasingly assertive approach to regulating digital asset markets and event contracts. The Commission is actively shaping the regulatory landscape for event contracts, particularly those implicating public interest concerns.

While the law and regulatory landscape evolve, companies should not sit by idly. A proactive approach is recommended to prevent potential situations that could result in employees misappropriating corporate information for their own benefit. Companies should carefully assess the adequacy of their internal policies and procedures and take necessary steps to address potential fraud on prediction markets.

Market participants should expect continued scrutiny and evolving enforcement and regulation from the CFTC, with an emphasis on responsible innovation. Proactive compliance, careful product design, and ongoing monitoring of regulatory developments will be essential in navigating this dynamic environment over the coming years.

This paper is intended for educational purposes and does not constitute legal advice.