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Prediction Markets at the Crossroads:

CFTC Oversight, State Gaming Conflicts, and Manipulation Risk

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Prediction markets have shifted from a niche experiment to a controversial regulatory frontier. Event contracts listed on exchanges regulated by the U.S. Commodity Futures Trading Commission (CFTC) inhabit a maturing federal derivatives framework that the Commission is actively clarifying and enforcing, while state gaming authorities continue to assert jurisdiction over sports-contingent products and federal courts remain split on preemption. The regulatory landscape has evolved rapidly in early 2026: CFTC Chairman Michael S. Selig announced, and the Commission formally effected, the withdrawal of the June 10, 2024 Event Contracts Notice of Proposed Rulemaking and Staff Letter 25-36 (Feb. 4, 2026), directed staff to develop guidance on event contracts, and filed amicus briefs in appellate courts to defend the CFTC's exclusive jurisdiction; the Commission issued an Advance Notice of Proposed Rulemaking on prediction markets (published Mar. 16, 2026); and the CFTC's Division of Enforcement issued an advisory spotlighting manipulative conduct and misuse of material nonpublic information on prediction markets. Additionally, the CFTC recently formalized a Memorandum of Understanding with Major League Baseball (MLB), establishing cooperation to protect both baseball event contract market integrity and the integrity of professional baseball. Together, these developments provide clearer guardrails for platforms and counsel, even as litigation and state-level assertions produce residual uncertainty. This analysis is current as of March 26, 2026.

I. Prediction Markets: Introduction and Overview

Prediction markets have experienced remarkable growth in recent years, emerging as platforms where participants can trade event contracts that depend on the outcomes of real-world events.[1] Participants can take positions (either "yes" or "no") on a variety of events, including elections, sporting events, today's weather in New York City, whether a world leader will mention a certain topic this week, the confirmation of the existence of aliens by the U.S. government, and many other categories that continue to expand.[2] These platforms operate as federally registered exchanges that offer their products to retail and institutional participants alike.[3] Several platforms have emerged as the main operators in this space: Polymarket launched its U.S. operations (Polymarket US/QCX LLC) as a CFTC-registered designated contract market (DCM) and derivatives clearing organization (DCO); Crypto.com operates Crypto.com Derivatives North America (CDNA) as a CFTC-registered DCM, DCO, and futures commission merchant (FCM); and KalshiEx LLC (Kalshi) registered as a DCM and DCO with the CFTC.[4] Robinhood has rapidly

[1] *See, generally, KalshiEx LLC v. CFTC*, No. 1:23-cv-03257, 2024 (D.D.C. Sept. 12, 2024) (discussing prediction markets).

[2] *See* POLYMARKET, https://polymarket.com (global platform) and https://polymarket.com/us (U.S. platform); CRYPTO.COM, https://crypto.com/us/prediction; KALSHI, https://www.kalshi.com; ROBINHOOD, https://robinhood.com/us/en/prediction-markets/.

[3] 7 U.S.C. § 7(a) (providing for registration of designated contract markets).

[4] For Polymarket US, see *Industry Filings: Designated Contract Markets (DCM)*, CFTC (last visited Mar. 25, 2026)(QXC LLC d/b/a Polymarket US; Designated: 07/09/2025),

scaled prediction market offerings through its FCM's partnership with Kalshi and acquired MIAXdx (now Rothera) to operate its own DCM and DCO.[5] The market has also seen strategic consolidation: DraftKings acquired Railbird Exchange (an approved DCM that had not yet launched), Underdog acquired Aristotle Exchange (a designated DCM and DCO), and Fanatics and FanDuel have established introducing broker and FCM relationships to distribute event contracts.[6] When listed on DCMs registered with the CFTC, these instruments are commodity derivatives subject to the Commodity Exchange Act (CEA) and exchange rule books.[7]

However, this expansion has attracted scrutiny from state regulators, many of whom have challenged whether these contracts constitute unlawful gambling under state law.[8] Numerous states have initiated litigation or issued cease-and-desist letters against prediction market operators, raising fundamental questions about the scope of federal preemption under the CEA.[9] At stake is whether event contracts, when listed on federally regulated exchanges, fall under the exclusive jurisdiction of the CFTC and benefit from federal preemption, or remain subject to state gaming laws.[10] Courts across the country are considering whether an event contract on a sports event is a novel derivative subject to federal commodities law or an old-fashioned bet governed by state gaming law.[11] The courts have been split on CEA preemption, and the divergent rulings

https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizations. For Crypto.com, see *Crypto.com Becomes First Major Crypto Platform to Obtain a Full Stack of CFTC Derivatives Licenses*, CRYPTO.COM (Sept. 30, 2025), https://crypto.com/us/company-news/cryptocom-becomes-first-major-crypto-platform-to-obtain-a-full-stack-of-cftc-derivatives-licenses. For Kalshi, see *In re Application of KalshiEX LLC for Designation as a Contract Market*, Order of Designation (Nov. 3, 2020), https://www.cftc.gov/sites/default/files/filings/documents/2020/orgkexkalshidesignation201103.pdf; Olivier Acuna, *Kalshi Valuation Doubles to $22 Billion In Latest Funding Round: Bloomberg*, COINDESK (Mar. 20, 2026), https://www.coindesk.com/business/2026/03/20/kalshi-valuation-doubles-to-usd22-billion-in-latest-funding-round-bloomberg/.

[5] For Robinhood's acquisition of MIAXdx, see *Robinhood Extends Its Prediction Markets Offering through New Joint Venture*, ROBINHOOD (Nov. 26, 2025), https://robinhood.com/us/en/newsroom/robinhood-prediction-markets-joint-venture/; Dustin Gouker, *Robinhood and Susquehanna Complete Prediction Market Acquisition*, EVENT HORIZON (Jan. 22, 2026), https://nexteventhorizon.substack.com/p/robinhood-and-susquehanna-complete-prediction-markets-acquisition.

[6] For DraftKings' acquisition of Railbird Exchange, see *Industry Filings: Designated Contract Markets (DCM)*, CFTC (last visited Mar. 25, 2026)(Railbird Exchange, LLC; Designated: 06/13/2025). For Underdog's acquisition of Aristotle Exchange, *see Industry Filings: Designated Contract Markets (DCM)*, CFTC (last visited Mar. 25, 2026)(Aristotle Exchange, DCM, Inc.; Designated: 09/05/2025); Brant James, *Underdog Buys Aristotle DCM, DCO Spots*, YAHOO! FINANCE (Mar. 9, 2026), https://finance.yahoo.com/news/underdog-buys-artistotle-dcm-dco-144203554.html. For Fanatics' acquisition of Paragon Global Markets, LLC, see *Fanatics Launches Fanatics Markets, the First Prediction Market at the Intersection of Sports, Finance and Culture*, FANATICS (Dec. 3, 2025), https://investor.fanatics.com/news/news-details/2025/Fanatics-Launches-Fanatics-Markets-the-First-Prediction-Market-at-the-Intersection-of-Sports-Finance-and-Culture--2025-g7suBK0gon/default.aspx. For FanDuel's FCM and joint venture with CME Group, see Mike Breen, *Prediction Market Land Grab: DCMs, FCMs, and the Race to Control the Stack*, DEFI RATE (Mar. 23, 2026), https://defirate.com/news/prediction-market-land-grab-dcms-fcms-and-the-race-to-control-the-stack/.

[7] 7 U.S.C. § 2(a)(1)(A) (establishing CFTC exclusive jurisdiction over futures contracts and swaps).

[8] *See, e.g.*, *Commonwealth v. KalshiEx, LLC*, No. 2584CV02525 (Mass. Super. Ct. Jan. 2026).

[9] *See KalshiEx LLC v. Flaherty*, No. 1:25-cv-02152 (D.N.J. Apr. 28, 2025); *KalshiEx, LLC v. Martin*, No. 1:25-cv-01283 (D. Md. Aug. 1, 2025).

[10] 7 U.S.C. § 2(a)(1)(A).

[11] *KalshiEx LLC v. Hendrick*, No. 25-7516, slip op. at *2 (9th Cir. appeal pending Nov. 28, 2025).

have created substantial uncertainty for market participants that may persist unless addressed by the Supreme Court, congressional action, or further CFTC action.[12]

The jurisdictional battle over prediction markets has intensified as litigation proliferates across multiple forums. State gaming regulators across the country have initiated enforcement actions or litigation against prediction market operators, with tribal gaming authorities in California (Blue Lake Rancheria) and Wisconsin (Ho-Chunk Nation) also filing suit under the Indian Gaming Regulatory Act (IGRA).[13] A coalition of 34 state attorneys general has filed amicus briefs supporting state authority, while the courts have reached divergent conclusions: federal district courts in three states issued preliminary injunctions in favor of preemption, while two state courts ruled that state gambling laws remain enforceable.[14] In February 2026, the CFTC filed its first amicus brief in support of prediction markets, defending its "exclusive jurisdiction over CFTC-regulated designated contract markets" and characterizing state enforcement efforts as attempts to "re-characteriz[e] swaps trading on DCMs as illegal gambling."[15] Separately, former federal government officials filed an amici curiae brief in the same appeal, emphasizing that the CFTC has “exclusive jurisdiction” under 7 U.S.C. § 2(a)(1)(A) over derivatives traded on CFTC-regulated exchanges, including event contracts.[16] The Nevada litigation has been particularly closely watched: after the U.S. District Court for the District of Nevada initially granted Kalshi a preliminary injunction in April 2025, it dissolved the injunction in December 2025, finding that certain sports-related contracts "closely resemble" traditional sportsbook bets.[17] As of March 2026, the Ninth Circuit cleared the way for Nevada state court proceedings, and a state court issued a temporary restraining order requiring Kalshi to halt sports, election, and entertainment contract offerings in Nevada.[18] The divergent rulings across federal circuits—with appeals pending in the Third, Fourth, and Ninth Circuits—suggest that the question of federal preemption may ultimately require resolution by the Supreme Court or congressional action.

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[12] *Compare KalshiEx LLC v. Flaherty*, No. 1:25-cv-02152 (D.N.J. Apr. 28, 2025) (granting preliminary injunction based on CEA preemption), *with KalshiEx, LLC v. Martin*, No. 1:25-cv-01283 (D. Md. Aug. 1, 2025) (denying preliminary injunction).

[13] *See, e.g.*, Letter from Mary Beth Thomas, Exec. Dir., Tenn. Sports Wagering Council, to Polymarket (Jan. 9, 2026) (cease-and-desist order related to sports event contracts); *In re N. Am. Derivatives Exch., Inc.* (Conn. Dep’t of Consumer Prot. Dec. 3, 2025) (cease-and-desist order); *State of Arizona v. KalshiEx, LLC* (Ariz. Super. Ct. Mar. 2026); *Blue Lake Rancheria v. Kalshi Inc.*, No. 3:25-cv-06162 (N.D. Cal. July 22, 2025); *Ho-Chunk Nation v. Kalshi Inc.*, No. 3:25-cv-00698 (W.D. Wis. Aug. 20, 2025).

[14] *See* Brief of the States of Nevada, Ohio, et al. as Amici Curiae Supporting Appellee, *KalshiEx LLC v. Flaherty*, No. 25-1922 (3d Cir. June 19, 2025) (joined by 34 state attorneys general); *compare KalshiEx, LLC v. Hendrick*, No. 2:25-cv-00575-APG-BNW (D. Nev. Apr. 9, 2025) (granting preliminary injunction) *with KalshiEx, LLC v. Martin*, No. 1:25-cv-01283 (D. Md. Aug. 1, 2025) (denying preliminary injunction).

[15] Brief for CFTC as Amicus Curiae Supporting Appellant, *N. Am. Derivatives Exch., Inc. v. State of Nevada*, No. 25-7187 (9th Cir. Feb. 17, 2026).

[16] *See* Brief for Former Federal Government Officials and Experts on the Scope of CFTC Jurisdiction as Amici Curiae Supporting Appellant, *N. Am. Derivatives Exch., Inc.*, No. 25-7187 (9th Cir. Feb. 3, 2026) (hereinafter the “Amici Brief”).

[17] *See Hendrick*, No. 2:25-cv-00575-APG-BNW (D. Nev. Nov. 24, 2025) (dissolving preliminary injunction).

[18] *See State of Nevada v. KalshiEx, LLC*, No. 26 OC 00045 1B (Nev. First Jud. Dist. Ct. Mar. 20, 2026) (granting temporary restraining order).

II. Comparison to Traditional Gaming, and Jurisdictional Issues Between the CFTC and the States

From a user's perspective, both a moneyline wager and a binary "yes/no" event contract involve consideration, outcome-contingent risk, and payout; however, the regulatory frameworks and market-structure controls differ materially. A user who purchases a "yes" contract on the Kansas City Chiefs to win the Super Bowl on a prediction market DCM and a bettor who places a moneyline wager on the Chiefs at a Nevada casino are both risking money on an uncertain future sporting outcome, with the payout determined by whether the Chiefs win. This functional equivalence is precisely why state gaming regulators have challenged prediction market operators, arguing that the contracts are sports wagers irrespective of the regulatory label applied.

However, proponents of prediction markets emphasize a fundamental structural distinction between CFTC-regulated designated contract markets and traditional gambling operations.[19] On a DCM, traders transact with each other on a two-way, bilateral market—for every buyer of a "yes" contract, there is a seller taking the opposite position—and price discovery occurs through an open order book where liquidity providers and market makers compete to offer the best prices. In contrast, a traditional sportsbook or casino operates as the "house," taking the opposite side of every customer wager and profiting from the vigorish (the built-in margin on betting lines) regardless of the event's outcome.[20] The DCM's role is limited to operating the exchange infrastructure, providing trade matching, and ensuring regulatory compliance—including adherence to the CEA's 23 "core principles" governing disciplinary procedures, conflicts of interest, customer protection, capital, liquidity, anti-manipulation, market surveillance, trade risk controls, position limits, trade data reporting, transaction financial integrity, recordkeeping, exchange governance, and impartial access—and the DCM does not take proprietary positions against its customers.[21] Beyond these structural requirements, DCMs are subject to ongoing CFTC oversight, including regular examinations, reviews of daily position and trade reporting, and continuous market surveillance to identify and address market disruption, disorderly trading, or suspected manipulation or fraud.[22] This market-structure distinction—peer-to-peer trading on a comprehensively regulated federal exchange versus wagering against a profit-seeking counterparty—is central to the argument that event contracts are commodity derivatives subject to

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[19] *See, e.g.*, Hillary McAfee, *Prediction Markets and Investable Controversy: Opportunity or Overreach?*, CDC GAMING (Mar. 16, 2026), https://cdcgaming.com/prediction-markets-and-investable-controversy-opportunity-or-overreach/ (quoting Dr. Laila Mintas, Founder & CEO, 365Predictions) ("Sports event contracts are not betting. You trade them like a stock exchange. . . . You don't bet against a house that always wins. You trade on an exchange."); Ben Bloom, *Prediction Markets vs. Sports Betting: Similar Mechanics, Different Structures*, SPORTS ILLUSTRATED (Mar. 3, 2026), https://www.si.com/betting/prediction-market/prediction-markets-101/prediction-markets-vs-sports-betting ("On federally regulated exchanges such as Kalshi, contracts trade peer-to-peer through an order book. When one participant buys a 'Yes' contract, another participant is selling it. The platform typically earns revenue through transaction fees rather than taking directional exposure to outcomes.").

[20] *See* 17 C.F.R. § 38 (2026) (setting forth core principles and other requirements for designated contract markets, including trade execution and market participant access requirements); *see also* Amici Brief *supra* note 16, at 8-10.

[21] *See, e.g.*, NEV. GAMING COMM'N REG. 22.120 (governing the operation of sportsbooks as "book" wagering, in which the licensed establishment accepts wagers against the house).

[22] *See* 7 U.S.C. § 7(d) (enumerating the 23 core principles for designated contract markets); Amici Brief, *supra* note 15, at 9-12 (detailing the extensive regulatory, compliance, and market surveillance obligations imposed on DCMs, including self-certification requirements, ongoing CFTC examinations, and coordination with clearinghouses).

the CFTC's exclusive jurisdiction rather than gambling products subject to state gaming commissions.

State regulators have actively asserted jurisdiction over sports-contingent event contracts.[23] As of early 2026, multiple federal lawsuits are pending at various stages involving several prediction market operators, and regulators in numerous states have issued cease-and-desist letters or initiated enforcement actions against DCMs offering event contracts—targeting most major market participants.[24] Several Native American tribes have also filed suit in California and Wisconsin, alleging illegal sports gambling on tribal lands in violation of the IGRA and Tribal-State Gaming Compacts.[25] A California district court denied preliminary relief to the tribal plaintiffs, holding that the Unlawful Internet Gambling Enforcement Act (UIGEA)—which contains an express carve-out for transactions "conducted on or subject to the rules of a registered entity" under the CEA—(rather than IGRA) governs intrastate event contracts.[26] Courts have been divided in applying the CEA's exclusive-jurisdiction clause and traditional preemption doctrines, with some granting injunctions to prevent state interference and others denying relief while emphasizing states' police powers and the CEA's public-interest/gaming carve-out. These splits have set the stage for appellate guidance and, if needed, eventual Supreme Court or congressional resolution.

Courts have evaluated preemption by reference to the CEA's exclusive-jurisdiction clause and traditional preemption categories.[27] Where courts have enjoined state action, they have credited arguments that applying gambling prohibitions to CFTC-regulated event contracts frustrates federal objectives and intrudes on exclusive federal jurisdiction; where courts have denied relief, they have emphasized states' police powers over gambling, the CEA's public-interest/gaming carveout under § 5c(c)(5)(C), and the absence of Commission approval of specific contracts.[28]

III. The CFTC's Recent Regulatory Actions and Emerging Policy Direction

On February 25, 2026, the CFTC's Division of Enforcement issued a Prediction Markets Advisory highlighting two Kalshi disciplinary matters and reiterating that Section 6(c)(1) of the CEA and Rule 180.1 prohibit fraud and misappropriation-based insider trading on event contracts, and that Section 4c(a)(1)-(2)(A) and Regulation 1.38(a) prohibit prearranged, noncompetitive trading, and wash sales.[29] The Division's message emphasized the CFTC's authority to investigate and prosecute "insider trading" and other fraud, as well as manipulation and other prohibited practices, on event contract platforms.[30] The cases were addressed through Kalshi's internal disciplinary committee.[31] In the first case, videos surfaced on social media, showing a political

[23] *See supra* notes 12-18.
[24] *See id.*
[25] *Blue Lake Rancheria v. Kalshi Inc.*, No. 3:25-cv-06162 (N.D. Cal. July 22, 2025); *Ho-Chunk Nation v. Kalshi Inc.*, No. 3:25-cv-00698 (W.D. Wis. Aug. 20, 2025).
[26] *See Blue Lake Rancheria v. Kalshi Inc.*, No. 3:25-cv-06162 (N.D. Cal. July 22, 2025).
[27] 7 U.S.C. § 2(a)(1)(A).
[28] *See supra* notes 13-18.
[29] CFTC Press Release No. 9185-26, CFTC Enforcement Division Issues Prediction Markets Advisory (Feb. 25, 2026).
[30] *Id.*
[31] *Id.*

candidate apparently trading on his own candidacy on Kalshi; Kalshi's compliance team contacted the candidate, who acknowledged that he knew these trades were improper and violated Kalshi's rules prohibiting trading in a contract where the trader has direct or indirect influence over the outcome, and the CFTC identified this conduct as potentially violating prohibitions on misappropriation-based insider trading and fraud under Section 6(c)(1) of the CEA and Rule 180.1.[32] In the second case, an individual traded a prediction market contract related to a YouTube channel while maintaining an employment relationship with the channel; Kalshi discovered that the trader was an editor for the YouTube channel and concluded that the trader likely had access to material nonpublic information related to his trades, and the CFTC identified this conduct as potentially violating prohibitions on misappropriation of confidential information in breach of a preexisting duty of trust and confidence under Section 6(c)(1) and Rule 180.1.[33] The advisory also underscored prohibitions on prearranged noncompetitive trading, wash sales, and other prohibited trading practices tied to Section 4c(a) and Regulation 1.38(a), and emphasized DCMs' independent duty to maintain audit trails, conduct market surveillance, and enforce rules against prohibited practices.[34]

Since taking office in December 2025, Chairman Selig has described a principles-based approach to regulation that emphasizes regulatory clarity and restraint.[35] At a Joint Event on Harmonization held by the CFTC and SEC on January 29, 2026, Chairman Selig announced that the CFTC would withdraw a 2024 proposed rule that would have prohibited certain event contracts tied to sports and politics and would propose new rules designed to support the "responsible development of event contracts markets." [36] Following these statements, on March 12, 2026, the CFTC issued an Advance Notice of Proposed Rulemaking (ANPRM) inviting public comment on how the CEA and existing CFTC regulations should apply to event contracts traded on prediction markets.[37] The ANPRM seeks input on Section 5c(c)(5)(C) public interest determinations—including how to define unlawful activity, gaming, terrorism, and war—and on classifying event contracts as swaps or futures.[38] It further asks whether to amend exchange and clearing core principles for prediction markets and whether trading by persons with asymmetric information serves the public interest.[39] In Chairman Selig's major address at the FIA Global Cleared Markets Conference titled "The Next Era of American Markets Leadership," he stated that the Commission should avoid setting policy through enforcement actions.[40] This commitment to regulatory

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[32] CFTC Press Release No. 9185-26, *supra* note 29; 7 U.S.C. § 9(1); 17 C.F.R. § 180.1.
[33] *Id.*; 7 U.S.C. § 9(1); 17 C.F.R. § 180.1.
[34] 7 U.S.C. § 6c(a); 17 C.F.R. § 1.38(a); 7 U.S.C. § 7(d).
[35] Michael S. Selig, CFTC Chairman, *The Next Era of American Markets Leadership*, Remarks at FIA Global Cleared Markets Conference (Mar. 2026).
[36] Michael S. Selig, CFTC Chairman, *The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance*, Remarks at CFTC-SEC Joint Event on Harmonization (Jan. 29, 2026); s*ee* Event Contracts; Withdrawal of Proposed Regulatory Action, 91 Fed. Reg. 5386 (Feb. 6, 2026).
[37] Prediction Markets, Advance Notice of Proposed Rulemaking (ANPRM), 91 Fed. Reg. 12,516 (Mar. 16, 2026); *see also* Giancarlo et al., *Prediction Markets: CFTC Issues New Advisory and Advance Notice of Proposed Rulemaking*, WILLKIE FARR & GALLAGHER LLP (Mar. 23 2026), https://www.willkie.com/-/media/files/publications/2026/03/prediction-markets-cftc-issues-new-advisory-and-advance-notice-of-proposed-rulemaking.pdf.
[38] *See id.*
[39] *See id.*
[40] *Id.*

constraint has not diminished Chairman Selig's willingness to defend the CFTC's authority over prediction markets.[41]

On the same day that the CFTC published the ANPRM, the CFTC's Division of Market Oversight (DMO) issued a staff advisory to DCMs that sets near-term supervisory expectations for listing and overseeing event contracts.[42] This advisory establishes immediate guidance for DCMs on listing and overseeing event contracts, with particular focus on manipulation risk, sports-related micro-events, resolution criteria, and data sources.[43] It further directs DCMs to Appendix C guidance and flags heightened manipulation risks for sports contracts tied to injuries, unsportsmanlike conduct, officiating, or outcomes controlled by a single individual or small group.[44] For sports-related event contracts, DMO staff recommends pre-submission engagement with relevant leagues and their governing bodies, inclusion of explanations regarding consistency with league integrity frameworks, establishment of information-sharing arrangements with sports integrity monitoring organizations, and reliance on official league data as settlement sources.[45]

IV. The CFTC and MLB MOU

On March 19, 2026, Chairman Selig put into effect some of his comments when the CFTC and MLB signed a first-of-its-kind, nonbinding Memorandum of Understanding (MOU) on integrity and information sharing relating to professional baseball prediction markets.[46] The MOU provides for discretionary, bilateral information sharing; recognizes that information remains the record of the providing party; preserves privileges; and requires handling consistent with the CEA's Section 8 confidentiality provisions.[47] Information sharing must comport with applicable disclosure regimes, including the CEA's Section 8 confidentiality provisions.[48]

The MOU establishes a confidentiality architecture under which information remains the record of the providing party, the receiving party must maintain confidentiality, and each must cooperate to preserve privileges in response to external demands.[49] Permissible uses are delineated: the CFTC will use MLB-provided information solely for CEA-related responsibilities, and MLB will use CFTC-provided information solely to protect baseball integrity.[50] Either party may terminate on 30 days' notice, with confidentiality obligations surviving.[51]

For market participants and exchanges, the MOU signals that the CFTC is institutionalizing relationships with sports leagues to enhance detection of manipulation risks that straddle on-field

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[41] *See* Michael S. Selig, CFTC Chairman, *The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance*, Remarks at CFTC-SEC Joint Event on Harmonization (Jan. 29, 2026).
[42] Div. of Mkt. Oversight, Commodity Futures Trading Comm’n, Prediction Markets Advisory, CFTC Staff Letter No. 26-08 (Mar. 12, 2026).
[43] *See id.*
[44] *See id.* at 3-4; 17 C.F.R. pt. 38, app. C.
[45] *See id.* at 6.
[46] Memorandum of Understanding Between the CFTC and Major League Baseball Concerning Prediction Markets Relating to Professional Baseball (Mar. 19, 2026) (hereinafter, the “MOU”).
[47] 7 U.S.C. § 12(a).
[48] MOU, *supra* note 46 at 2; 7 U.S.C. § 12(a).
[49] MOU, *supra* note 46, at 2-3.
[50] *Id.* at 3.
[51] *Id.* at 4.

integrity and off-field trading.[52] It validates the importance of league-facing channels in surveillance programs and sets expectations for confidentiality safeguards that platforms should mirror in their own agreements.[53]

V. Defending Against Manipulation: The CFTC and State Approaches

A key issue that the CFTC is focused on is the ability for many event contracts to be traded based on insider information and preventing the misuse of such information.[54] The CEA and CFTC Regulations both provide standards for contracts listed on DCMs, requiring the contracts to be not "readily susceptible to manipulation."[55] In addition, Section 5c(c)(5)(C) of the CEA, 7 U.S.C. § 7a-2(c)(5)(C), and Commission Regulation 40.11 inform DCM obligations to refrain from listing contracts "contrary to the public interest" and to address certain enumerated categories (unlawful activity, terrorism, assassination, war, and gaming).[56] These provisions place the burden on DCMs to certify that their contracts satisfy these requirements before listing.[57] Unlike traditional commodity derivatives—where manipulation typically requires control over physical supply or coordinated trading—sports event contracts are susceptible to manipulation by actors entirely outside the market: athletes who can affect game outcomes, coaches who control playing time and strategy, officials who make judgment calls, and insiders with access to injury or lineup information.[58] The CFTC's traditional market surveillance tools—monitoring for wash trading, spoofing, and price manipulation—must evolve in order to better detect match-fixing or the misuse of material nonpublic information held by sports insiders who may never trade on the prediction market themselves but instead share information with others.[59] Further, additional clarity may come through the federal legislature. On March 17, 2026, Senator Chris Murphy (Conn.) and U.S. Representative Greg Casar (Texas-35) introduced the Banning Event Trading on Sensitive Operations and Federal Functions (BETS OFF) Act.[60] The bill would prohibit wagering on specified events including acts of terrorism, assassination, war, and events that are not primarily financial, commercial, or economic in nature where such events are government actions or someone knows or has complete control over the outcome.[61]

The CFTC's anti-manipulation regime is anchored by Section 6(c)(1) of the CEA and Rule 180.1, which prohibit manipulative or deceptive devices, including misappropriation-based

[52] *Id.*
[53] *See* MOU, *supra* note 46, at 2-4.
[54] *See supra* note 29.
[55] 7 U.S.C. § 7(d)(3) (Core Principle 3, requiring that a board of trade "list on the contract market only contracts that are not readily susceptible to manipulation"); *see also* 17 C.F.R. pt. 38, app. C (providing guidance on how designated contract markets may demonstrate that a contract satisfies the "not readily susceptible to manipulation" standard); 17 C.F.R. § 40.2(a)(3)(v)-(vi) (requiring self-certifying DCMs to submit a "concise explanation and analysis" accompanied by documentation demonstrating compliance with the CEA and CFTC regulations, including that the contract is not readily susceptible to manipulation).
[56] 7 U.S.C. § 7a-2(c)(5)(C); 17 C.F.R. § 40.11.
[57] *See* 17 C.F.R. § 40.2. However, applying this standard to sports-contingent contracts presents significant practical challenges.
[58] *See In re Dairy Farmers of Am., Inc., et al.*, CFTC Docket No. 09-02 (Dec. 16, 2008) (traditional commodity manipulation); *cf.* Press Release, U.S. Attorney, E.D. Pa., 26 People Charged in Alleged Bribery and Point-Shaving Scheme to Fix NCAA, CBA Men's Basketball Games (Jan. 15, 2026).
[59] *See* 7 U.S.C. § 9(1); 17 C.F.R. § 180.1; CFTC Press Release No. 9185-26, *supra* note 29.
[60] A Bill to Ban Certain Types of Wagers, S.4115 — 119th Congress (2025-2026).
[61] *See id.* at 1-2.

breaches of duty.[62] In February 2026, the CFTC's Division of Enforcement issued an advisory citing prior enforcement actions as precedent.[63] The advisory emphasized that DCMs must maintain audit trails, conduct surveillance, and enforce rules under Section 5(d) Core Principles.[64] State approaches, by contrast, focus on sporting-event integrity through prescriptive controls over wager types, maximum stakes, responsible gaming mandates, and real-time reporting of suspicious betting activity to licensed sportsbook regulators.[65]

State gaming commissions have different tools and have developed a fundamentally different approach to protecting sporting-event integrity.[66] Under state sports-betting frameworks, licensed sportsbooks must comply with prescriptive regulations that include mandatory reporting of suspicious betting activity to state regulators and sports leagues.[67] As such, sportsbooks often leverage independent integrity monitors (e.g., U.S. Integrity, Sportradar, and Genius Sports) that aggregate cross-market signals and file suspicious-activity reports with regulators and leagues.[68] These frameworks also include know-your-customer requirements triggered when customers open accounts or exhibit suspicious patterns, the authority for the governing bodies of sports leagues to request restrictions on specific wager types that pose heightened integrity risks, and real-time information sharing among operators, regulators, and law enforcement.[69] This framework has produced tangible results: for example, in 2024, DraftKings flagged irregular wagers related to NBA player Jontay Porter, and in 2023, BetMGM flagged a suspicious wager linked to an Alabama baseball game; both matters were escalated to leagues and regulators.[70] These detection capabilities stem directly from state-mandated transparency requirements that do not currently apply to CFTC-regulated prediction markets.[71] We anticipate the industry and the Commission to focus on progressing DCMs' surveillance and compliance techniques and solutions to better suit these evolving risks in the near future.

There is meaningful alignment in surveillance objectives, but the regulatory frameworks diverge significantly.[72] Licensed sportsbooks must comply with state consumer-protection rules including age limits (typically 21 and older), responsible gaming mandates, integrity monitoring,

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[62] 7 U.S.C. § 9(1); 17 C.F.R. § 180.1.
[63] CFTC Press Release No. 9185-26, *supra* note 29; *CFTC v. Clark*, No. 4:22-cv-00365 (S.D. Tex. Jan. 29, 2026) (consent order); *In re Webb, et al.*, CFTC Docket No. 21-09 (June 14, 2021); *In re Khorrami, et al.*, CFTC Docket No. 20-15 (May 7, 2020); *In re Dairy Farmers of Am., Inc., et al.*, CFTC Docket No. 09-02 (Dec. 16, 2008).
[64] 7 U.S.C. § 7(d).
[65] *See, e.g.*, Nev. Gaming Comm'n Reg. 22.040-22.080 (integrity monitoring); N.J. Admin. Code § 13:69N-1.1 (responsible gaming).
[66] *See, e.g.*, Nev. Gaming Comm'n Reg. 22.010-22.220; N.J. Admin. Code § 13:69N; 205 Mass. Code Regs. § 238.18(d) (requiring sportsbooks to report suspicious betting activity).
[67] *See generally* Mass. Gen. Laws ch. 23N, § 11(e); N.C. Gen. Stat. § 18C-914(g).
[68] *See* Katie Ann McCarver, *U.S. Integrity Monitors Sports Wagering For Suspicious Activity*, LAS VEGAS SUN (June 5, 2023), https://lasvegassun.com/news/2023/jun/05/local-business-educates-all-parties-in-sports-worl/.
[69] *See id.*; *see also* Am. Gaming Ass'n, Regulated Sports Betting Protects Game Integrity (2024); 205 Mass. Code Regs. § 238.18(d)(1)-(5).
[70] *See* NBA Press Release, Jontay Porter Banned from NBA for Violating League's Gaming Rules (Apr. 17, 2024); Jacob Lev, *Alabama Head Baseball Coach Brad Bohannon Fired Amid Betting Investigation*, CNN (May 4, 2023), https://www.cnn.com/2023/05/04/sport/alabama-baseball-coach-fired-betting-investigation.
[71] *See* 205 Mass. Code Regs. § 238.18(d); *cf.* DCM Core Principles require robust surveillance, audit trails, and disciplinary programs (*See* 7 U.S.C. § 7(d); 17 C.F.R. Part 38), but they do not prescribe state-style integrity reporting pipelines to leagues.
[72] *See* CFTC Press Release No. 9185-26, *supra* note 29.

and audits—requirements that prediction markets do not currently face.[73] Conversely, prediction markets must ensure that their offerings are not "readily susceptible to manipulation" and, in the case of sports-related event contracts, may need to engage with the governing bodies of major sports leagues.[74] While the tools available to the CFTC differ from those available to gaming commissions, the CFTC retains significant oversight over the market participants to hone its approach to this matter and ensure similar protections for end users.

VI. Practical Strategies for Hardening Event Contracts Against Manipulation

Product design is the first line of defense against manipulation.[75] Exchange rulebooks should bar trading by persons who can influence an event's outcome and require certifications from potentially conflicted participants.[76] The Kalshi disciplinary case involving a political candidate trading on a contract tied to his own candidacy illustrates both the risk profile and the value of clear prohibitions.[77] Where events are particularly susceptible to single-actor influence, exchanges should consider implementing tailored position limits or position accountability under DCM Core Principle 5 and Part 38 consistent with their product risk profile. Exchanges should also consider applying smaller maximum order sizes, enhanced surveillance triggers, and clear halt and cancellation logic implemented via exchange rules pursuant to Core Principles 3, 4, and 12, rather than as prescriptive federal mandates.[78]

Policies addressing material nonpublic information should track the CEA's misappropriation-based framework.[79] Prohibitions should focus on trading on information misappropriated in breach of a duty of trust and confidence.[80] Given the prevalence of social media and media-linked events, traders should be required to disclose affiliations that could create access to nonpublic information.[81] Surveillance should detect tipping chains, correlated accounts, and coordinated trading exploiting confidential knowledge.[82] Surveillance should detect noncompetitive executions and wash trades in line with CEA § 4c(a)(1)-(2)(A) and Regulation 1.38(a), which apply to trading on DCMs, including event contracts.[83]

The CFTC-MLB MOU may set the tone for external engagement and confidentiality that exchanges can mirror in their own league and data-partner agreements.[84] The MOU's framework—addressing permissible uses, confidentiality protections (including protocols for legal process), and internal sharing parameters— offers a template that exchanges may find instructive.[85] Its emphasis on periodic meetings, written information requests, and designated points of contact provides a

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[73] *See supra* note 65.
[74] *See supra* note 49.
[75] *See* 7 U.S.C. § 7(d)(2)-(5).
[76] *Id.*; *see supra* note 42.
[77] CFTC Press Release No. 9185-26, *supra* note 29.
[78] *See* DCM Core Principle 5, 7 U.S.C. § 7(d)(5) (position limits/accountability); 7 U.S.C. § 7(d)(4) (prevention of manipulation). Federal position limits under 17 C.F.R. § 150.2 apply only to specified core-referenced futures.
[79] 7 U.S.C. § 9(1); 17 C.F.R. § 180.1.
[80] *See* 7 U.S.C. § 9(1); 17 C.F.R. § 180.1; CFTC Press Release No. 9185-26, *supra* note 29.
[81] *See* 7 U.S.C. § 9(1); 17 C.F.R. § 180.1; CFTC Press Release No. 9185-26, *supra* note 29.
[82] *See CFTC v. Clark*, No. 4:22-cv-00365 (S.D. Tex. Jan. 29, 2026) (consent order regarding tipping chain).
[83] 7 U.S.C. § 6c(a); 17 C.F.R. § 1.38(a).
[84] MOU, *supra* note 46.
[85] *See id.* at 2-4.

model for how exchanges might structure ongoing dialogue with sports leagues on integrity matters.[86]

Incident response plans should be written and rehearsed.[87] When surveillance flags possible manipulation, exchanges should be prepared to halt trading, publish market notices, and contact the CFTC promptly.[88] If a sports-related outcome is implicated, outreach to league integrity offices should occur in parallel, with documentation framed to preserve privileges consistent with the MOU.[89] Post-incident reviews should memorialize findings, refine analytics, and update rulebooks.[90]

DCMs considering political contracts should address: (i) policy sensitivities flagged in the ANPRM (e.g., events that may be 'contrary to the public interest' under § 5c(c)(5)(C)); (ii) manipulation risk assessments accounting for single-decision actors (certifications, disclosures, and restricted-person lists); (iii) data sources and settlement objectivity (avoiding ambiguous resolution criteria); and (iv) enhanced surveillance around coordinated activity timed to nonpublic decisions.

VII. Key Takeaways and Conclusion

Prediction markets remain in a legally unsettled position at the intersection of federal derivatives regulation and state gambling law. Near-term developments are likely to come from appellate litigation, CFTC product-specific guidance and rulemaking, and cooperative enforcement arrangements designed to address manipulation and misuse of material nonpublic information. As this framework evolves, counsel should:

(1) monitor pending appellate decisions in the Third and Ninth Circuits addressing whether the CEA's exclusive-jurisdiction clause preempts state gambling laws;
(2) prepare for product-specific CFTC guidance and potential rulemaking by participating in the ANPRM comment process;
(3) advise exchange clients to strengthen manipulation controls—particularly participant certifications, MNPI policies, and surveillance protocols—given the Commission's enforcement emphasis;
(4) track tribal litigation and the interplay among the CEA, UIGEA, and IGRA, where courts continue to define the boundaries of federal versus state and tribal authority;[91]
(5) interested parties may submit comments to the ANPRM via the CFTC's Public Comments Portal by April 30, 2026. Meaningful and early engagement provides the best opportunity to influence implementation details that will shape the prediction markets industry for years to come; and
(6) monitor legislative developments related to prediction markets, such as the BETS OFF Act and any newly introduced legislation.

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[86] *Id.*
[87] *See* 7 U.S.C. § 7(d)(18) (DCM recordkeeping and reporting).
[88] 7 U.S.C. § 7(d)(4), (17)-(18).
[89] MOU, *supra* note 46, at 2-4.
[90] *See* 7 U.S.C. § 7(d)(18).
[91] *See* Parts II-VI.