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Swaps or Sportsbooks? The CFTC's Expanding Battle Over Prediction Markets

May 28, 2026

Prediction markets have recently emerged as a major focus of both federal and State regulators. With reported daily trading volumes exceeding $100 million - and substantially more during major events such as the Super Bowl and federal elections - these markets have drawn increasing scrutiny over concerns involving insider trading, market manipulation, and consumer protection. Recent enforcement actions underscore those concerns. In April 2026, federal authorities charged an Army Special Forces soldier with using classified, non-public information relating to “Operation Absolute Resolve,” a military operation targeting Venezuelan President, Nicolás Maduro, to generate more than $400,000 in profits through trades placed on a leading prediction market site.

At the same time, regulators remain divided over how prediction markets should be classified and, critically, who should regulate them. Prediction markets offer contracts tied to the outcome of future events, allowing participants to take positions on probabilities across a wide range of topics, including elections, geopolitical developments, and sporting events. These contracts are typically structured as binary instruments that settle at a fixed value, usually $1 or $0, depending on whether the specified event occurs. Participants who correctly anticipate the outcome receive a payout while those on the losing side forfeit their investment.

The Commodity Futures Trading Commission (“CFTC”) has argued that prediction market contracts are correctly categorized as “swaps” or other event-based derivatives because they are binary options linked to economic, financial, or other measurable outcomes, placing them within the CFTC’s exclusive jurisdiction under the Commodity Exchange Act (“CEA”). The CFTC has increased its regulatory focus on this market, issuing proposed rules and interpretive guidance in March 2026 relating to event contracts and prediction markets. Several States, however, have taken the position that these contracts more closely resemble speculative gambling and therefore, fall within traditional State gaming authority. The State regulatory activity was initially triggered by the rapid growth of sports event contracts available on prediction markets, which the States viewed as unlicensed sports betting. Some States, most aggressively Minnesota, have enacted or proposed bans that reach beyond sports into elections, weather, and geopolitical events. The CFTC has pointed to the breadth of laws like Minnesota’s as evidence that States are targeting derivatives markets, not just policing sports gambling.

From Event Contracts to Swaps

Since April 2026, the CFTC initiated a series of lawsuits against six States - Connecticut, Illinois, Arizona, New York, Wisconsin, and Minnesota - seeking to assert exclusive federal jurisdiction over the regulation of prediction markets. In each action, the CFTC alleged that State enforcement efforts and regulations targeting prediction market platforms conflicted with federal law and intruded upon the agency’s authority under the CEA. In some instances, including in Arizona, the CFTC’s position aligned with separate lawsuits filed by prediction market operators themselves challenging State gambling enforcement actions. The CFTC also filed amicus briefs in a number of ongoing lawsuits between prediction markets and States not currently subject to litigation by the CFTC.

In asserting exclusive jurisdiction under the CEA, the CFTC argues that event contracts fall within the CEA's broad definition of "swap," which includes agreements involving payments contingent upon the occurrence or nonoccurrence of future events associated with potential financial, economic, or commercial consequences. Under the Dodd-Frank Act, the CFTC was granted specific statutory authority to prohibit certain event contracts from being listed for trading on a registered exchange, further bolstering the CFTC's arguments. According to the CFTC, prediction markets are also conceptually adjacent to traditional derivatives markets. As participants trade based on independent information and expectations, market prices reflect aggregated beliefs and, in real time, perform price discovery and informational functions similar to those associated with established futures markets.

More broadly, the CFTC has emphasized that prediction markets may serve functions analogous to traditional derivatives products. In recent months, prediction market probabilities have reportedly been used by traders and online speculators to anticipate geopolitical and macroeconomic events before they occur. For example, in February 2026, prediction market activity surrounding the possibility of military strikes on Iran drew attention from oil and shipping markets, illustrating how event contracts may operate as a hedging mechanism for transferring or pricing external risk.

Drawing the Line Between Trading and Wagering

Relying on their traditional authority to regulate gambling and gaming activity, the States argue that Congress did not intend for the CEA to transform the CFTC into the nation's primary gambling regulator. Although prediction markets may share certain structural similarities with derivatives markets, the States contend that they more closely resemble online casinos and sportsbooks, areas historically regulated by State gaming authorities.

States further argue that the price-discovery rationale advanced by the CFTC does not meaningfully distinguish prediction markets from traditional sports wagering. Sportsbooks likewise generate implied probabilities and continuously adjust odds based on collective market sentiment. At a functional level, the States argue both prediction markets and sports betting involve event-based binary contracts in which payment is contingent upon the occurrence or nonoccurrence of a future event. Under the CFTC's proposed framework, the States contend, even traditionally regulated wagering activities, such as betting on the Kentucky Derby, could theoretically be characterized as derivatives trading subject to federal oversight.

States also claim that prediction market contracts lack meaningful commercial hedging utility. Unlike traditional derivatives, which are commonly used to hedge identifiable economic exposure such as commodity prices, interest rates, or currency fluctuations, many prediction market contracts concern speculative positions on elections, sports, entertainment, or geopolitical events and are largely used by retail enthusiasts. In the States' view, recognizing generalized exposure to political or regulatory developments as a sufficient basis for "hedging" risks eliminates any limiting principle to the CFTC's jurisdiction.

The Stakes Beyond Prediction Markets

The outcome of these disputes could significantly affect the future structure of prediction markets in the United States. If courts accept the CFTC's position, federally regulated exchanges may be able to offer a broad range of event contracts nationwide notwithstanding conflicting State gaming laws. If the States prevail, prediction market operators could face a fragmented regulatory landscape requiring State-by-State gaming licensure and compliance.

As the litigation and rulemaking process continue to develop, prediction markets are likely to remain a focal point for both federal and State gaming regulators. Market participants should continue monitoring developments from the CFTC, federal courts, and State enforcement agencies, particularly as regulators further define the boundary between derivatives markets and speculative wagering.

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