Proskauer

CFTC Proposes New Framework for Event Contracts

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On June 10, 2026, the Commodity Futures Trading Commission ("CFTC") issued a Notice of Proposed Rulemaking (the "Proposal") related to event contracts traded on prediction markets, seeking public comments on proposed amendments to Rule 40.11 and the proposed addition of a new appendix. The Proposal outlines the framework through which the CFTC will involving enumerated categories and assess whether they are contrary to the public interest. The Proposal builds on the CFTC's earlier Advanced Notice of Proposed Rulemaking, which more broadly considered issues related to prediction markets, and comes amid the CFTC's continuing efforts to assert exclusive jurisdiction in litigation involving event contracts.

Background

Currently, designated contract markets ("DCMs") registered with the CFTC are permitted to list event contracts after self-certifying that they comply with the Commodity Exchange Act ("CEA") and applicable CFTC rules. Section 5c(c)(5)(C) of the CEA ("the Special Rule") authorizes the CFTC to prohibit an event contract from being listed or cleared if it involves an "Enumerated Activity," namely, an activity that is unlawful under any Federal or State law, or relates to terrorism, assassination, war, gaming, or other similar activities determined by the CFTC to be "contrary to the public interest."

The CFTC has implemented the Special Rule through Rule 40.11, which has been applied as a case-by-case, discretionary review process, rather than as a categorical prohibition. The Proposal reflects the CFTC's view that additional clarity is needed regarding both the scope of contracts subject to review and the process by which such determinations are made.

Overview of Proposed Framework

The Proposal, if adopted, would establish a formal three-step inquiry to guide the CFTC's determination of whether an event contract involving an Enumerated Activity should be prohibited as contrary to the public interest:

1. **Event Contract Determination**

As a threshold matter, the Proposal clarifies what constitutes an "event contract." Event contracts are generally understood as agreements, contracts, transactions, or swaps in excluded commodities that are based on the occurrence, extent of an occurrence, or contingency of a specified event, that is, where the contract's value or settlement depends on whether (or to what degree) a particular event takes place. At the same time, the Proposal narrows the scope of contracts subject to heightened scrutiny by clarifying that the Special Rule is not intended to apply to contracts based on changes in the price, rate, value, or levels of financial or economic measures, indices, and instruments.

2. **"Involves" an Enumerated Activity**

The Proposal clarifies that an event contract "involves" an Enumerated Activity where the settlement of that event contract is determined by the occurrence, extent of an occurrence, or a contingency in that activity. The CFTC emphasizes that the analysis focuses on the underlying activity driving settlement, rather than whether the contract itself constitutes an Enumerated Activity. The CFTC's Proposal provides additional guidance as to how this standard is applied across the different categories of "Enumerated Activities."

Unlawful Activity. The Proposal distinguishes between contracts that settle on the occurrence of unlawful conduct (like someone committing murder), and those that settle on lawful outcomes related to that conduct (like a specific person being convicted of a crime). The latter contract would not involve an Enumerated Activity because the contract settles on a court conviction, which is a lawful judicial act, not on the crime itself.

Terrorism, Assassination, and War. The Proposal interprets these terms broadly, such that a facially neutral event contract to involve an Enumerated Activity if the outcome could occur through terrorism, war or assassination, unless those pathways are expressly excluded in the event contract's terms. For example, a contract based on whether a particular leader would no longer hold office by a specific date would need to specifically state that only natural death, and not assassination, would result in the contract resolving to yes.

Gaming. The Proposal adds to Rule 40.11(b) a definition of "gaming" as an activity typically engaged in for recreation, governed by rules and dependent on the participants' luck, skill, or athletic ability. The CFTC clarifies that not all wagering constitutes "gaming," and distinguishes "contests" (such as elections or awards based on merit over time) as outside this definition. The CFTC also seeks comments on whether game shows, reality competitions, pageants and similar events should be considered "gaming."

Additional Similar Activities. The Proposal does not address any additional categories of activities beyond the Enumerated Activities. However, the CFTC reaffirmed that it retains authority under the Special Rule to identify other similar activities that may warrant review as contrary to the public interest.

3. **Public Interest Determination**

For event contracts involving an Enumerated Activity, the Proposal introduces a non-exhaustive, multi-factor analysis to guide the CFTC's evaluation of whether an event contract is contrary to the public interest. The framework includes both general factors and additional factors tailored to the specific Enumerated Activity involved.

Public Interest Factors Applicable to All Enumerated Activities:

- Whether the event contract serves a meaningful hedging or price basing utility, or whether settles based on purely random events;
- Whether the event contract presents a risk of manipulation or market disruption;
- Whether the event contract exhibits "integrity deficits" in its settlement, or whether the criteria for settlement are clear, objective and publicly verifiable;
- Whether the event contract creates a risk of information leakage or exploitation of material non-public information by insiders; and
- Whether trading or clearing the event contract would strain compliance or self-regulatory frameworks.

Public Interest Factors Specific to the Enumerated Activities:

- Whether the event contract involves a specific unlawful activity, or whether, for example, it simply references generalized crime rates over time in a manner that does not incentivize specific criminal conduct;
- Whether the event contract involves "terrorism, assassination, or war," which can present national security risks, incentivize violence, and is vulnerable to settlement

ambiguity due to limited access to reliable information during such events; and

- Whether the event contract settles on games of random chance, on a player's injury or fights between players, on officiating decisions, on a discrete occurrence in the sporting event (like a specific play executed by a specific player), or on pre-collegiate sporting events.

CFTC Discretionary Review Process

The Proposal clarifies how the CFTC's 90-day review process will operate in practice, including a timeline for commencement of the review (within 10 days of the date of the event contract's listing) and providing DCMs with an opportunity to present their rationale. The Division of Market Oversight must provide the DCM with a written statement of concerns, to which the DCM may respond with supporting analysis and any proposed modifications to the contract to address the concerns. The Division of Market Oversight may then submit a recommendation to the CFTC, to which the DCM may also respond. If the CFTC does not issue an order at the end of the 90-day review period, the review will be deemed concluded and the event contracts may be, or continue to be, listed for trading and accepted for clearing.

In addition, the Proposal would allow the CFTC to consolidate review of similar contracts, whether self-certified under Rule 40.2 or submitted for approval under Rule 40.3. This reflects the CFTC's efforts to respond to an increase in the number of event contracts that prediction markets have self-certified for listing under Rule 40.2. The CFTC also recently announced the implementation of a streamlined self-certification process in which exchanges may submit a single set of certification documents for multiple closely related contracts.

Next Steps

Comments on the Proposal will be due 45 days after publication in the Federal Register.

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