KPMG

Regulatory Alert

Regulatory Insights



October 2026

Prediction Markets: CFTC Proposal, Interim Final Rule on Event Contracts

KPMG Regulatory Insights:

Jurisdictional distinctions: *Coordinated releases affirm the CFTC position that it is the primary regulator with exclusive jurisdiction over event contracts; distinguish federal vs. state oversight authorities for "gambling".*

Primary consideration: *Cites the "potential economic consequences" associated with sports-, politics-, cultural-, and weather-related events as the main support for finding event contracts predicated on those events are swaps.*

Litigious environment: *Ongoing and conflicting federal-state jurisdictional disputes/lawsuits/court rulings amidst high-profile state enforcement activity; potential for Supreme Court to weigh in.*

The Commodity Futures Trading Commission (CFTC) has issued two related rulemakings that respond to "the ongoing debate regarding the scope of the [CFTC's] jurisdiction under the Commodity Exchange Act (CEA), particularly as it relates to event contracts." The rulemakings include a(n):

- Notice of Proposed Rulemaking (Proposal) that would amend the definition of "swap" to expressly include event contracts.
- Interim Final Rule that expressly excludes casino-style gambling products from the "swap" definition.

Comments on each of the releases are due to the CFTC no later than November 18, 2026.

Background

Acknowledging recent state actions and conflicting court rulings related to event contracts, the CFTC is taking steps to address "confusion and disuniformity" about the definition of "swap" under the CEA and federal vs. state jurisdiction over event contracts.

Proposal to Include Event Contracts

The CFTC proposes adding event contracts to the definition of a swap under CFTC jurisdiction, with sports-, politics-, cultural-, and weather-related events to be specifically named in a non-exhaustive list of covered events contracts.

The CFTC states that event contracts fall within the definition of swaps under existing federal law, are "commonly known to the trade [derivatives markets] as swaps," and have long been supervised and regulated by the CFTC (e.g., through designated contract markets). In addition, the CFTC asserts its statutory authority through the Dodd-Frank Act, to "further define" the term "swap" and to "adopt such other rules regarding such definitions as the [CFTC and SEC] determine are necessary and appropriate, in the public interest, and for the protection of investors."

Note:

- The CFTC retains jurisdiction under the law to determine whether event contracts, including event contracts based on non-financial commodities, are contrary to the public interest, as stated within the Special Rule (i.e., Section 5c(c)(5)(C) of the CEA). The CFTC recently issued a proposal on public interest determinations, including "sports" events and the definition of "gaming," (see the KPMG Regulatory Alert here).
- The SEC has sole jurisdiction over security-based swaps, which are not covered by the proposed rule.

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Interim Final Rule to Exclude Casino-Style Gambling

The CFTC states the interim final rule "affirms and codifies [its] longstanding position" that casino-style gambling products, including wagers placed on sportsbooks and casino games, are not swaps and do not fall within the CFTC's jurisdiction. The CFTC adds that gambling products are typically conducted as bilateral transactions between a casino or bookkeeper, are not priced through market forces, and, as such, are not inherently tradeable (which is a material consideration in determining whether a financial instrument has the legal status of a derivative within CFTC jurisdiction).

To "remove regulatory ambiguity" and clarify the boundaries between the CFTC's jurisdiction over the derivatives markets and state and tribal jurisdiction over casino-style gambling, it has adopted the interim final rule to set out a new exclusion confirming that traditional gambling products do not qualify as swaps under the CEA. The exclusion has two components:

- **Provider Test:** the relevant agreement, contract, or transaction must be provided by a person that is subject to supervision by the gaming commissioner (or similar official or agency) of any state or by a tribe, and such agreement, contract, or transaction is regulated as gaming or gambling under applicable state or tribal law.
- **Product Test:** the agreement, contract, or transaction must not be traded on a board of trade, an organized exchange, a swap execution facility, or any other market in which trades are executed multilaterally or subject to individual negotiation.

Relevant agreements, contracts, or transactions expressly called out in the new exclusion include sports wagers, casino games (e.g., wagers in connection with a casino table game, slot machine, or other electronic gaming device), and licensed games of chance (e.g., bingo, pool wagering, lotteries, and raffles).

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