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Prediction Markets: Policy Issues for Congress

Prediction markets are exchange platforms that specialize in offering event contracts. Event contracts refer to contracts with a binary payoff structure tied to the occurrence or non-occurrence of a specific event. Users purchase and sell these event contracts, continuously establishing prices. The price of event contracts may offer informational value on the probability of a given event occurring. Event contracts have been regulated by the Commodity Futures Trading Commission (CFTC) and have traditionally been constrained in their scope and volume. Recent changes driven by litigation and the CFTC’s regulatory posture have led to the rapid expansion of consumer-facing CFTC-regulated event contracts from markets like economic indicators and weather, into politics and sports. This issue has sparked certain jurisdictional issues. Specifically, the question of whether sports-specific markets conflict with state-level gambling laws and national laws governing gaming on tribal lands is currently being litigated and has led some stakeholders and observers to question whether such markets are more similar to and should be regulated as traditional derivatives markets (specifically, swaps), gambling, or some combination of the two. The popularity, regulation, and range of prediction markets introduce various policy issues including regulatory arbitrage and insider trading.

Background

Prediction markets operate on a quote-based system, where the underlying price for an event contract is determined by participants’ continuous buying and selling reaching an equilibrium. This is unlike legalized sports gambling (LSG), where the gaming company controls gambling odds, with resolution at the end of the event, and where the odds are adjusted by the gambling firm, because of underlying bets by users or relevant events.

Kalshi and Polymarket are two dominant actors, although there are hundreds of different operational prediction markets with various structures. Firms that operate in this space vary in terms of their specific business models, the way they accept deposits, fee structure, integration with other aspects of their business, and various trading rules. They typically express contracts in percentage terms and operate on a fee-based model on a transaction basis. Among their differences, Kalshi runs a CFTC-regulated exchange, while Polymarket’s largest prediction market exchange is domiciled offshore and claims to block U.S. users. As a result, Polymarket’s offshore exchange is not effectively subject to CFTC rules. (Polymarket has, however, acquired a smaller CFTC-approved exchange available to U.S. customers, amounting to a dual exchange structure.) Robinhood, DraftKings, and FanDuel also offer event contracts, with slightly different business practices.

Sports are the most popular event contract type by volume. Sports markets have generally been offered by CFTC-regulated exchanges since early 2025, because of changes in CFTC posture that allowed such markets, discussed below. As of February 2026, roughly 87% of Kalshi’s \$39.7 billion traded in the past year was on sports. Such percentages are lower for the \$36.2 billion traded in the last year on Polymarket (38%), but sports event contracts are still the largest singular category. Sports event contracts often involve equivalent outcomes as LSG bets, with certain differences previously discussed and less of an emphasis on certain kinds of bets. Prediction market exchanges offer a wide array of event contracts. By volume, the largest categories outside of sports include cryptocurrency, culture, and politics, including event contracts on federal legislation and congressional hearings.

Regulatory Structure and History

The CFTC is a federal financial regulator that administers the Commodity Exchange Act (CEA, 7 U.S.C. §§1 et seq.), the primary statute governing derivatives markets, which consist mainly of futures, options and swaps. The CFTC’s current leadership has taken a more expansive position that many types of event contracts—including “sports event contracts”—fall within CEA’s definition of a swap. The CFTC under current leadership asserts that it has “exclusive jurisdiction” over derivatives markets (including event contracts on registered designated contract markets) and that as a result such sports event contracts are not subject to state or tribal regulation over LSG. Several states have challenged these conclusions in court, and this overarching issue is currently being litigated.

The CEA permits registered derivatives exchanges to “self-certify” that new derivatives products comply with CEA and CFTC regulations, thereby bypassing the need for prior CFTC approval. The CFTC can, however, review listed products for compliance with the CEA and its regulations. The CEA prohibits registered exchanges from listing certain event contracts that the CFTC has deemed contrary to the public interest. Pursuant to Section 5c(c)(5)(C) of the CEA, the CFTC may determine that event contracts are contrary to the public interest if they involve activity that is unlawful under any federal or state law, terrorism, assassination; war; or gaming. Under past leadership, the CFTC concluded the event contracts involving political elections could not be listed on registered exchanges because such contracts involved unlawful activity (as many states criminalize wagering on elections); gaming; and were against the public interest. A federal district court, however, rejected that conclusion, allowing certain event contracts involving political elections to trade.

With a change in leadership in January 2025, the CFTC changed their stance towards event contracts. The CFTC took a more permissive stance towards allowing a range of prediction markets, as signaled by then-Acting Chair Caroline Pham’s February 2025 press release stating that the “current Commission interpretations regarding event contracts are a sinkhole of legal uncertainty and an inappropriate constraint on the new Administration.” Kalshi and other prediction markets began offering sports-related markets in January 2025. The CFTC stated in a staff advisory in September 2025 that sport event contracts listed were “pursuant to self-certifications” and that the CFTC had not made a determination if such contracts “involve an activity enumerated or prohibited under CEA.”

CFTC Chair Michael Selig announced in January 2026 that the CFTC would move forward with a prediction markets rulemaking. In February 2026, the CFTC withdrew the June 2024 notice of proposed rulemaking and September 2025 staff advisory. In March 2026, the CFTC issued a staff advisory. This advisory stated among other things that event contracts generally shall not be “readily susceptible to manipulation” and that exchanges had an obligation to “conduct real-time monitoring.” In March 2026, the CFTC also published an Advance Notice of Proposed Rulemaking requesting comments related to prediction markets. Absent a novel regulatory structure enacted by Congress or clarity from courts, it is possible that future CFTC leadership could perceive the regulation of event contracts differently from the current CFTC Chair and modify the current approach.

Regulatory Arbitrage

Under the current regulatory structure and relative to LSG, sport event contracts arguably create a form of *regulatory arbitrage*, where prediction markets exchanges offer certain similar, but not equivalent products to LSG. CFTC jurisdiction may have preemptive effects; however, that issue is currently being litigated.

Before 2018, sports gambling was illegal in most states. In 2018, the Supreme Court held in *Murphy v. National Collegiate Athletic Association (NCAA)* that the Professional and Amateur Sports Protection Act (PASPA, P.L. 102-559) was unconstitutional, and absent that act states have been able to legalize and regulate sports gambling. Today, 39 states and the District of Columbia have LSG in some form. Prediction market exchanges’ regulatory structure may circumvent remaining state-level bans on LSG (enabling access to markets in Texas, California and nine other states) and the Indian Gaming Regulatory Act (25 U.S.C. §§2701 et seq.). In states with LSG, these exchanges currently avoid certain state-level restrictions on LSG, such as restrictions on particular kinds of bets or additional age restrictions (LSG is generally 21+, while event contracts are 18+). Certain research has argued that prediction market bettors are losing money at a greater rate than LSG bettors. Such research is nascent. Exchanges also are not subject to the sports gambling taxes paid by casinos and other LSG firms at the state and federal level.

These recent changes in regulatory structure, particularly with a more permissive sports event contract landscape, have intensified jurisdictional friction between federal

regulators and state gaming authorities, as reflected by numerous lawsuits by state and tribal entities. In February 2026, the CFTC filed an amicus brief opposing Nevada’s attempts to regulate sports event contracts, arguing that such efforts would upend the CFTC’s “exclusive jurisdiction” over event contracts traded on derivatives exchanges. Such litigation is ongoing.

Members of Congress have contemplated how to regulate event contracts and if further clarification of the CEA is necessary to reduce regulatory arbitrage or further clarify the range of allowed event contracts. Certain Members signaled support for the recent changes by the CFTC and with others voicing opposition. Legislation in the 119th Congress would directly prohibit certain types of event contracts, including (1) sports and casino-style games (H.R. 7477), (2) contracts related to terrorism, assassination, war, or similar activities (S. 4035), and (3) contracts related to activity that is unlawful under any federal or state law, terrorism, assassination, war, gaming, elections, government activity, and activities determined by the CFTC to be in contrary to the public interest, with a state opt-out for gaming (H.R. 7840). Another bill would exclude event contracts from the CEA, delegate regulation to the states, and impose new standards, for example, that users should be above 21 (S. 4060).

Insider Trading

One commonly discussed policy intervention involves restrictions on the type of individuals that can trade event contracts, limiting individuals with nonpublic confidential information or individuals directly affiliated with the event. Because certain event contracts (words on an earnings call or geopolitical actions) may be more likely to have pre-determined outcomes relative to sports, risks of individuals trading with such material nonpublic information in such markets may be elevated. Some have contended that policymaking limiting insider trading on prediction markets could decrease the information value that, in their view, underlie the overall concept of such markets. For more on how insider trading law applies to prediction markets and exchanges’ rules, see CRS Legal Sidebar LSB11406, *Prediction Markets and Insider Trading Law*, by Jay B. Sykes. Certain exchanges already have rules that may cover some aspects of such issues and certain existing CFTC regulations (17 C.F.R. § 180.1) may already prohibit limited forms of insider trading involving event contracts—for example, if an employee of a prediction market exchange trades on information obtained through working at the exchange. The degree to which such provisions are being or practically can be adequately enforced with respect to prediction markets is an open question. The CFTC recently acknowledged enforcement cases undertaken by Kalshi against two individuals for insider trading and issued a related advisory opinion outlining the CFTC’s existing authorities in this area. Legislation in the 119th Congress would prohibit certain individuals in government roles from trading certain event contracts (S. 4017, H.R. 7004).

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