



# When Games Look Like Markets

## Legal Risk in Prediction Markets and Social Gaming

### **Ellen Berge**

Partner | +1 202.344.4704 | [etberge@Venable.com](mailto:etberge@Venable.com)

### **Melissa Steinman**

Partner | +1 202.344.4972 | [mlsteinman@Venable.com](mailto:mlsteinman@Venable.com)

### **Chris Boone**

Partner | +1 202.344.4248 | [clboone@Venable.com](mailto:clboone@Venable.com)

**VENABLE** LLP

# Today's Agenda

## Part I:

- Social Sweepstakes and iGaming
- Gambling / Sports Wagering
- Legislation and Recent Developments

## Part II:

- Prediction Markets
- State Enforcement and Jurisdictional Boundaries
- CFTC Advisories and Enforcement

## Part III

- Market Integrity and Intermediary Risks
- Payment Processing Considerations
- Concluding Thoughts

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# **Social Sweepstakes and iGaming**

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# Social Sweepstakes and iGaming

## Sweepstakes Casinos

- Background: Illegal lotteries are games that have three elements:
  1. Prize
  2. Chance
  3. Consideration
- Sweepstakes casinos: Platforms where the operators take the position that they are not regulated by the gambling laws and are lawful sweepstakes because there is no requirement to purchase an entry to enter/compete for a prize
- Typically employ a “dual-currency system,” where there are two distinct types of virtual currency available to users
  - Obtain one kind for free or through promotional activities (cannot be purchased directly), but users can earn real cash and prizes
  - Another type of currency can be purchased, but it cannot be used to earn real cash or prizes and is used solely for gameplay
- “Blurred lines”: Ongoing back and forth over whether whether sweepstakes casinos and similar social gaming applications are lawful sweepstakes or unlawful gambling

# Social Sweepstakes and iGaming (cont.)

## Legislative Proposals

- Several states introduced legislation in **2025** targeting *social sweepstakes*
  - Target unregulated, untaxed, and unlicensed casino-style games and sports wagering
  - Response to growth of “sweepstakes casino” apps and pushback from licensed online and land-based gaming operators
- Bills in Mississippi and Maryland failed (due to more pressing matters)
  - Social and Promotional Games Association: Bills failed because sponsors offered little evidence of consumer harm (i.e., the bills were driven by assertions rather than facts)
- States continue to introduce social sweepstakes legislation in **2026**
  - Maryland SB 112: New push to prohibit “interactive games” that simulate casino-style gaming
  - Tennessee SB 2136 (2026): Targeting “online sweepstakes games” and related conduct
  - Indiana HB 1052 (2026): Includes a sweepstakes-game prohibition with civil penalties
  - Maine LD2007 (2026): Targets online sweepstakes using dual-currency systems

# Proposed Ban on Sweepstakes Casino Models

## Maryland SB 112 (2026)

- SB 112 targets online/mobile “interactive games” that simulate casino-style gaming (e.g., slots, table games, video poker), and simulations of lottery games, bingo, and sports wagering.
  - An “interactive game” includes a game/contest/promotion that is available online and uses multiple/dual-currency systems where players can exchange currency for a prize/award, cash, or cash equivalents (or a chance to win them).
- The bill would make it unlawful to operate, conduct, or promote an “interactive game” in Maryland.
- SB 112 is framed as an anti-illegal markets measure and is a direct legislative response to sweepstakes casino-style products operating outside Maryland’s licensed gaming system.
- Maryland Lottery and Gaming Control Agency (MLGCA) continues to crack down on illegal gambling

# Maryland: Legal vs. Illegal Online Gaming

## Cease-and-Desist Letters



Where the Money Goes

FAQs

Legal vs. Illegal Online Gaming

Agency Timeline

Agency Leadership

Contact Us

Responsible Gambling

Procurement

Publicly Available Records

Casino / Sports Wagering  
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Casinos	Sports Wagering	Commission	Licensing	Ancillary Responsibilities
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### Legal vs. Illegal Online Gaming

#### Legal Operators

Sports wagering via licensed operators and online fantasy competitions offered by registered operators are the only legal online gaming options in Maryland. **No other forms of real-money online/mobile gaming or wagering are operating legally in Maryland.**

Click the headings below to view lists of the currently licensed online/mobile sports wagering operators and the currently registered online/mobile fantasy competition operators.

- ✦ Licensed Online Sports Wagering Operators
- ✦ Registered Online Fantasy Competition Operators

#### Illegal Operators: Cease-and-Desist Letters

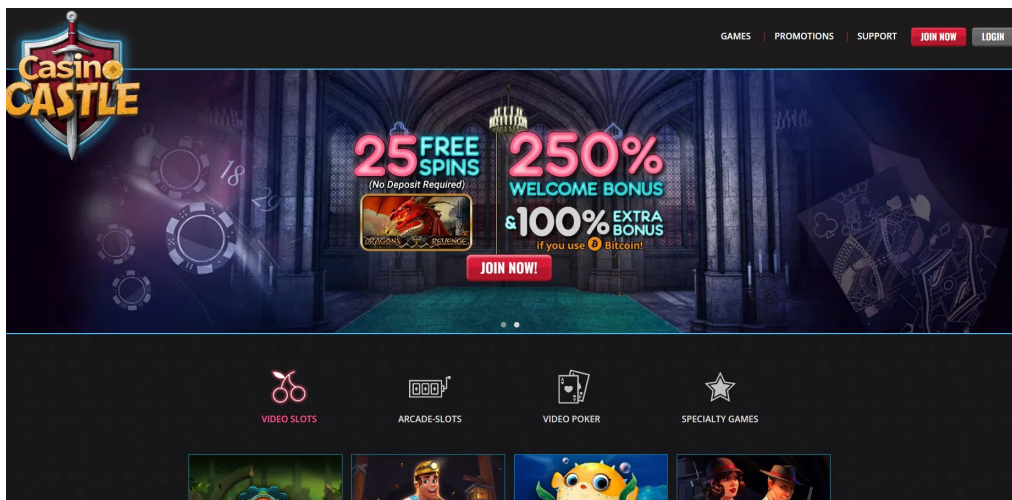
Maryland Lottery and Gaming periodically contacts the operators of online gaming platforms that appear to be operating illegally in Maryland. Such operators are asked to either confirm that they are not operating illegally, or to cease and desist gaming activities that they are not licensed or registered to conduct. Copies of these letters are available to view by clicking the links below.

Note that the list below only represents the operators to which Maryland Lottery and Gaming has issued cease-and-desist letters. **It is not a comprehensive list of illegal online gaming platforms.** Only the operators listed above as being licensed or registered should be considered to be conducting legal gaming activity.

- Cease-and-Desist Letters Issued by Maryland Lottery and Gaming

# Maryland: Legal vs. Illegal Online Gaming (cont.)

## Cease-and-Desist Letters



### Maryland Lottery and Gaming Control Agency

Wes Moore, Governor • John Martin, Director



Montgomery Park Business Center  
1800 Washington Blvd., Ste. 330  
Baltimore, Maryland 21230

Tel: 410-230-8800  
TTY users use Maryland Relay  
www.mdlottery.com

**SENT VIA EMAIL ONLY: [support@CasinoCastle.com](mailto:support@CasinoCastle.com)**

October 31, 2025

**RE: Casino Castle - Notice to Cease and Desist**

To Who It May Concern:

**This is a Notice from the Maryland Lottery and Gaming Control Commission ("Commission") to Casino Castle to immediately cease and desist conducting all unauthorized online gaming activity in Maryland.**

The Commission regulates gaming activity in Maryland, and its decision is the final determination of whether gaming is operated legally in the State. Md. Code Ann. Criminal Law Article, § 12-113. The only forms of real-money online gaming or wagering currently legal in Maryland are mobile sports wagering offered by operators that are licensed by the Commission, and online fantasy sports competitions offered by operators that are registered with the Commission. The 'doing business as' names of the authorized online operators are listed in the attachment and at <https://mdgaming.com/welcome/faqs/>. No other operators or forms of real-money online gaming are currently legal in Maryland.

We have reviewed your site and see that Casino Castle is offering online poker and casino gaming that are available to individuals who are physically present in Maryland. These offerings contain the elements of gaming: consideration, chance and prize; in other words, it is gaming. Under Maryland law, gaming is illegal unless it is expressly authorized. The gaming that is being offered through your site is not legally authorized in Maryland.

Please acknowledge and respond to this Notice, by email, within 10 days from the date of this letter. In your response, please confirm that Casino Castle will cease offering any online poker or casino game in Maryland, and provide the date by which its operations will cease, along with its wind down plan.

Failure to comply with this Notice may jeopardize the qualifications of Casino Castle for any future Commission-issued license, registration, or certification.

I look forward to promptly receiving Casino Castle's acknowledgement and response at [michael.eaton@maryland.gov](mailto:michael.eaton@maryland.gov).

Sincerely,

Michael Eaton  
Managing Director, Gaming

# Social Sweepstakes – Successful Legislation

## California – Effective January 2026

- Targets persons or entities that *knowingly and intentionally* engage in, promote, or facilitate online sweepstakes games with dual-currency systems
  - Excludes ancillary or public services/platforms (e.g., communications carriers, social media platforms, etc.) unintentionally used for such purposes, unless *acting with intent* to further the games
- Cannot use or offer an online method (website, app, or device) to simulate gambling, including:
  - Slot machines, video poker, blackjack, roulette, craps, poker
  - Lottery, bingo, sports wagering, or similar gambling simulations
- Prohibition applies when:
  - The system predetermines sweepstakes cash or prizes of value
  - It connects players to sweepstakes prizes or cash equivalents
  - It uses a dual-currency system allowing participation for direct or indirect consideration (including purchases linked to play) with eligibility for cash prizes

# Social Sweepstakes – Successful Legislation

## Other States

- **Connecticut:** Prohibits conducting or promoting sweepstakes that (1) are not related to the bona fide sale of goods, services, or property; (2) use a simulated gambling device; or (3) allow or facilitate participation in any real or simulated online casino gaming or sports wagering unless appropriately licensed.
- **Montana:** Broadens the definition of prohibited internet gambling to include online casinos that receive gambling information, allow consumers to place a bet or wager using any form of currency, and make payouts in any form of currency; does not require internet gambling platforms to use dual-currency systems to fall within the law's ambit.
- **New Jersey:** Bans any “promotional, advertising, or marketing event, contest, or game, whether played online or in person, in which something of value, such as a prize or prize equivalent, is awarded, either directly or indirectly through means such as a dual-currency system of payment that allows a participant to exchange the currency for a prize or prize equivalent.”
- **New York:** Prohibits (a) online sweepstakes games that use a dual-currency system allowing the player to exchange currency for cash prize, cash equivalent, or any chance to win a same, and (b) online casino-style gaming, slot machines, video poker, table games, lottery games, bingo, or sports wagering. **Makes it unlawful for any financial institution/payment processor to support the operation, conduct, or promotion of online sweepstakes games in the state.**

# Social Sweepstakes: Enforcement/Litigation

- ***Larsen v. PTT, Inc.***: Class action in W.D. Washington in which federal jury awarded plaintiffs \$25 million under WA Recovery of Money Lost at Gambling Act and Consumer Protection Act. High 5 plaintiffs received virtual coins to play upon registration that judge found were “something of value” under state law.
  - Other, similar suits have been filed, including suits against platforms (which defended on, *inter alia*, Communications Decency Act grounds)
- Regulatory enforcement actions: Attorneys general and gaming regulators in **Connecticut, Delaware, Illinois, Louisiana, Maryland, Mississippi, Michigan, New York, Pennsylvania, Tennessee, and West Virginia** have issued cease-and-desist letters or brought actions against sweepstakes casino sites for violations of state gambling laws, shutting them down in their respective states.
  - While some states have also passed new legislative bans/restrictions, others—like Tennessee—have said they do not believe it is necessary, because existing gambling laws can be used to stop the sites’ activities.

# Key Distinction: Sweepstakes vs. Sweepstakes Casinos

## Sweepstakes

- Prize path is central; no cashout
- “No purchase necessary” structure matters
- Risk points—focused on lottery structure and promotional compliance:
  - Purchase linkage
  - Disclosures/official rules
  - Free alternative method of entry/equal dignity of free entry
  - Clear and conspicuous vs. dark patterns
  - Promotional/ancillary to main business

## Sweepstakes Casinos

- Usually no direct cash payout
- Monetized through virtual currency or boosts
- Often main focus of business (not ancillary)
- Risk point—focused on value and consumer protection:
  - “Thing of value”
  - Clarity in virtual currency pricing
  - Disclose states that are excluded (due to passage of laws like those discussed previously)
  - Retention loops

# Sports Betting

## Key Concepts

- **Sports betting is primarily a state-licensed regime:** After *Murphy v. NCAA*, states decide whether and how to legalize sports wagering.
  - Approximately 38 states have legalized sports betting,
- **Primary model:** Operator licensing with suitability investigations, geofencing, age gating regulations, integrity monitoring, advertising restrictions, and consumer protection requirements (plus state taxes/fees).
  - A few states employ a state-controlled/monopoly model (often lottery-run).
  - For example, the Montana Lottery controls sports betting through its Sports Bet Montana platform. Unlike most other states, mobile wagering is restricted to specific licensed locations rather than being available statewide on personal mobile devices.
- **Sports betting vs. event contract:** State regulators often view sports-based event contracts as functionally equivalent to sports wagers (i.e., sports betting without a state license)
  - Who is the counterparty?
    - House/sportsbook = looks like sports betting
    - Market participants / exchange = looks like an event contract

# Mystery Boxes: Developments

Loot or mystery boxes, skins trading, and the use of related mechanics have drawn scrutiny from regulators and created class action risk.

- Some countries have prohibited mystery boxes altogether, or else require a license or regulate (e.g., Belgium, the Netherlands, Slovakia).
- Highest level of scrutiny in such cases occurs where:
  - Children may purchase or earn items;
  - Mystery box items may be ***sold for cash/value***.

*FTC Staff Report (2020)*: Issued after 2019 hearing, calls for meaningful disclosures that allow players to make informed choices, consumer education, and improved industry self-regulation.

## **FTC: *Genshin Impact* (HoYoverse/Cognosphere) settlement (January 2025)**

**FTC filed suit against HoYoverse**, targeting Genshin Impact's confusing purchase system and the misleading of players about the odds of getting the most coveted characters, alleging Genshin illegally targeted children and collected their data. Developer agreed to:

- Pay **\$20 million**
- **Accept restrictions tied to loot box sales to teens under 16 without parental consent**
- **Roll out U.S. age verification and purchase restrictions for younger users**
- Meaningful shift toward adding **consumer protection and children/teen protections**.

# Mystery Boxes

## State litigation

Many cases filed at state level, but most dismissed as courts are skeptical of injury. *See, e.g.:*

- *Tran v. Aniplex of America* (2023)
- *Mai v. SuperCell Oy* (2023)
- *Taylor v. Apple* (2021)
- *Galway v. Valve* (2023): New suits against Valve in WA (class action) and by NY AG.

**State legislative activity** still piecemeal, but “secondary market / buyback” is increasingly targeted

- **E.g., NY A9044 (2025):** Would prohibit offering loot boxes in New York while repurchasing the contents (directly or indirectly) for money/cash equivalents/crypto/other value; focuses less on whether loot boxes are “gambling” in the abstract, and more on the **cashout loop**.

### Focus on:

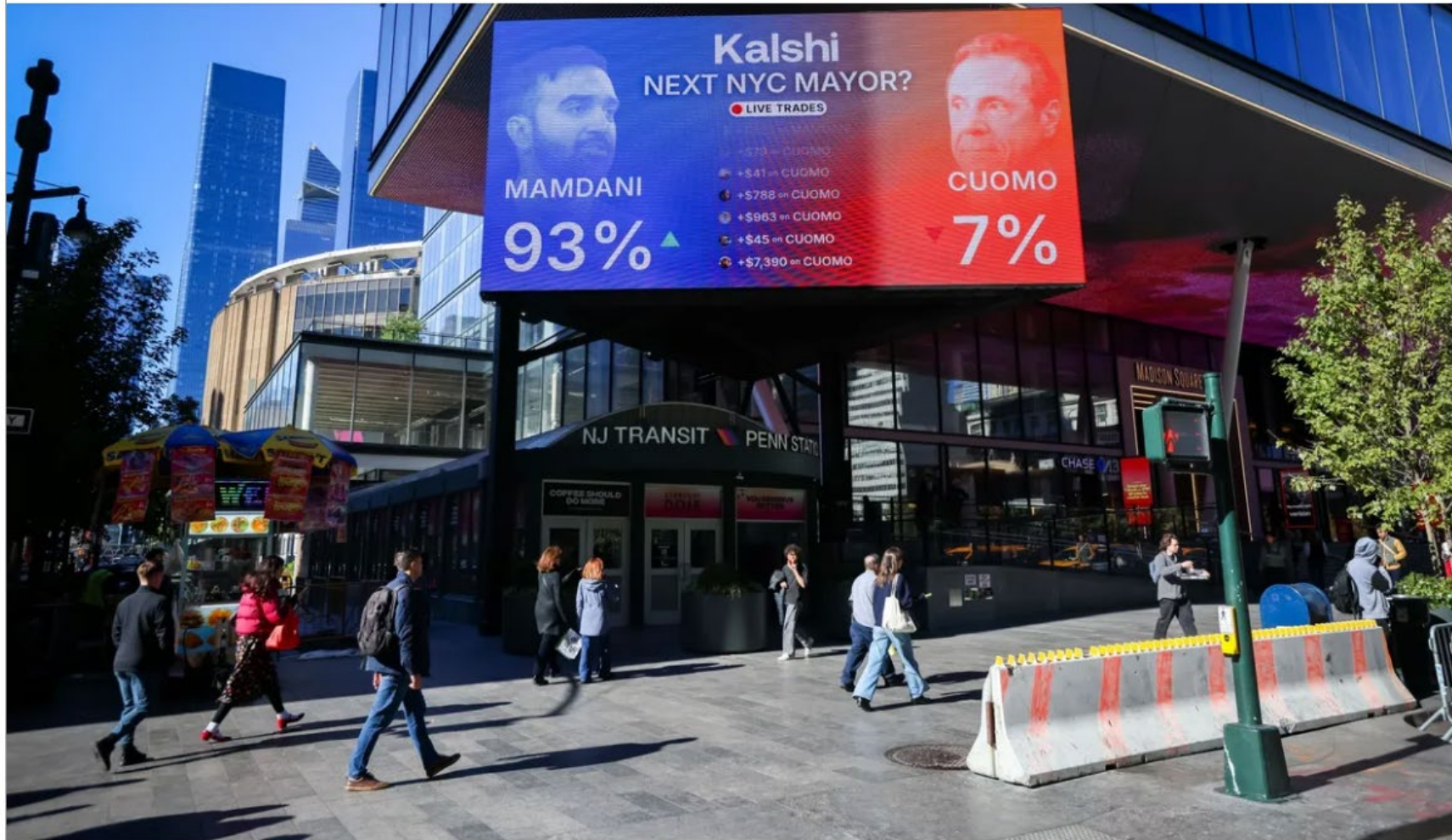
- **Clear disclosures of odds/avoid dark patterns.**
- **Compliance with laws regarding advertising to children (or better yet, exclude kids).**
- **Limit purchase/redemption of items for cash/sale on secondary market.**

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# Prediction Markets

## Enforcement Trends and Jurisdictional Boundaries

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A Kalshi billboard displaying New York City mayoral election odds in New York, on Oct. 27. Photographer: Michael Nagle/Bloomberg

Source: <https://www.bloomberg.com/news/features/2026-01-05/kalshi-and-polymarket-use-sports-gambling-as-entry-point-for-prediction-markets>

# Why This Matters Now

- Rapid growth of political and event-based prediction platforms
- Surge of trading on the platforms
- Convergence between:
  - Regulated gaming
  - Financial derivatives
  - Crypto-based platforms
- Regulators are telegraphing scrutiny and forthcoming rulemaking
- Heightened AML, sanctions, and reputational risk exposure
- Payment rails as a potential enforcement chokepoint
- ***Is this financial innovation, or unlicensed gambling?***



# Compare and Contrast

## Prediction Market

- Event contracts trade between \$0 and \$1
- Price reflects probability of an event occurring
  - Combined investment costs from both sides of an event (yes/no) equal a dollar, with correct position receiving the one-dollar payout after the event occurs
  - Example: Yes - \$0.60 = 60%; no - \$0.40 = 40% likelihood of occurrence
- Market-driven: Participants buy-sell based on price discovery, and price for yes or no position fluctuates
- Platform typically charges a transaction fee (not house edge) for placing buy and sell order
- Contracts finalized and settled (payouts) through a clearing house

## Gambling / Gaming

- Participants wager on uncertain outcomes
- Participant places a wager at posted odds typically set by operator (+150 / -200, etc.)
- Built-in house edge
- Designed primarily for entertainment (sports betting, casino games, event wagers)
- Subject to state licensure, consumer protection, taxation, and gaming compliance



# Are Prediction Markets Gambling?

## Why prediction markets may attract gaming law attention:

- Staking money on uncertain events
- Event-based outcomes
- Retail/app participation


## Key legal questions:

- Who regulates?
- Is it a gaming product, a financial product, or both?
- What consumer protections apply?

## Business risk points:

- Market access
- Licensing mismatch
- Advertising and suitability
- State-by-state friction

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Pro Football  
**Detroit at Philadelphia**

DET 38¢

PHI 65¢


\$100 → \$290
\$100 → \$144

News · Tampa Bay's visit to Buffalo and Los Angeles' trip to Jacksonville stand out in the early window, offering ...

\$12,937,132 +


← Epstein emails tie Trump to victims →

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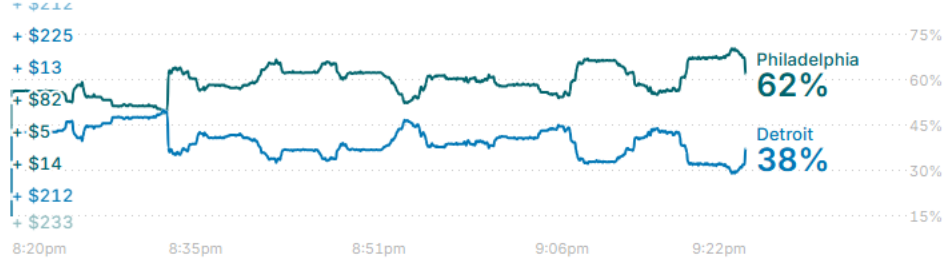


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- 


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Next US Presidential Election Winner?

J.D. Vance	30%	<a href="#">Yes</a> / <a href="#">No</a>
Gavin Newsom	21%	<a href="#">Yes</a> / <a href="#">No</a>



Pro Football Champion?

Los Angeles R	13%	<a href="#">Yes</a> / <a href="#">No</a>
Philadelphia	13%	<a href="#">Yes</a> / <a href="#">No</a>



Fed decision in December?

Fed maintains rate	51%	<a href="#">Yes</a> / <a href="#">No</a>
Cut 25bps	47%	<a href="#">Yes</a> / <a href="#">No</a>

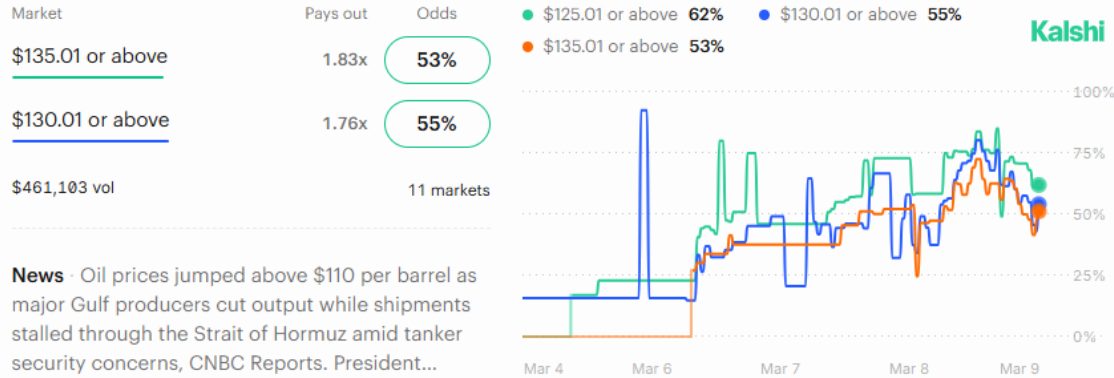


Pro Basketball Champion?

Oklahoma City	33%	<a href="#">Yes</a> / <a href="#">No</a>
Denver	13%	<a href="#">Yes</a> / <a href="#">No</a>

### How high will WTI oil get by Dec 31, 2026?

1 of 7



**News** - Oil prices jumped above \$110 per barrel as major Gulf producers cut output while shipments stalled through the Strait of Hormuz amid tanker security concerns, CNBC Reports. President...

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Tools and tips for trading smart

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Learn how Kalshi prevents insider trading

### Politics >

**POLITICS**

#### How long will the government shutdown last?

Feb 14 @ 10:00AM

At least 60 days	1.93x	49%
At least 55 days	1.73x	56%

**POLITICS**

#### Will members of Congress be banned from trading stocks?

Before Jan 21, 2029	1.47x	68%
Before 2027	6.67x	13%

### Primary Elections

United States 2026



### Trending >

- How long will the government shutdown last? 49% ▲ 10  
At least 60 days
- When will DHS be funded again? 62% ▲ 10  
Before Apr 1, 2026
- When will DHS receive full-year funding? 53% ▲ 4  
Before Apr 1, 2026

### 2026 Primaries >

- How many Senate Republicans will lose their primary this year? 38% ▼ 4  
2
- Democratic Senate primaries combo 49% ▼ 3  
Yes
- Texas Republican Senate nominee? 79% ▲ 1  
John Cornyn

### Top movers >


- WTI oil price today? 10% ▼

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**Fully regulated**  
Sports Event Trading is a CFTC-regulated derivatives product.\*



**Clear market overview**  
View the probability of each outcome based on trading prices.




**Intuitive trading interface**  
Simply select a potential outcome of a sporting event to trade.



**Accessible contract prices**

## The Only Place for Sp



**Fully regulated**  
Sports Event Trading is a CFTC-regulated derivatives product.\*

**VENABLE** LLP

# Who Regulates Prediction Markets?

- **Commodities Futures Trading Commission (CFTC)** – Oversees commodity derivatives (including many binary/event contracts treated as swaps) and regulates Designated Contract Markets (DCMs).
  - Actively asserting exclusive federal jurisdiction / preemption for event contracts listed on CFTC-regulated exchanges.
- **States** – State gaming regulators/AGs challenge sports-based event contracts as unlawful sports wagering under state law.
- **Department of Justice (DOJ)** – Criminal fraud/manipulation enforcement.
- **Securities and Exchange Commission (SEC)** – If a prediction product is structured as (or references) a security-based swap, SEC (or joint SEC/CFTC) jurisdiction may be implicated.

*Regulation and law enforcement have evolved over the last year.*



# Prediction Markets

## State Warning Letters to Gaming Operators – Maryland Example

### Maryland Lottery and Gaming Control Commission

Wes Moore, Governor



Montgomery Park Business Center  
1800 Washington Blvd., Suite 330  
Baltimore, Maryland 21230

Tel: 410-230-8800  
TTY users call Maryland Relay  
www.mdlottery.com

April 7, 2025

Sent via:

U.S. mail restricted delivery  
regular U.S. mail, postage prepaid  
email to: [kevin.dan@nadex.com](mailto:kevin.dan@nadex.com)

Kevin Dan  
Chief Compliance Officer & Chief Regulatory Officer  
The North American Derivatives Exchange, Inc. d/b/a Crypto.com  
200 West Jackson Blvd., Suite 1400  
Chicago, IL 60606

**RE: Notice to Cease and Desist**

Dear Mr. Dan:

**By this notice, The North American Derivatives Exchange, Inc. d/b/a Crypto.com (“Crypto.com”) is directed to immediately cease and desist offering in Maryland its “Event Contract” and any other contract or product that provides an investing opportunity based on predicting the outcome of any sporting league play or any sporting event.**

Under Maryland law, a gaming activity is illegal unless it is expressly authorized in the Annotated Code of Maryland, Criminal Law Article (“Crim. Law”), Titles 12 and 13. The Maryland Lottery and Gaming Control Commission (“Commission”) makes the State’s final determination of whether gaming is operating legally. Crim. Law § 12-113. Sports wagering is an authorized gaming activity in Maryland that is legal only if it is offered and conducted as required by the State’s Sports Wagering Law (State Government Article (“SG”) § 9-1E-01, *et seq.*), under which:

- (1) “Sports wagering” means “the business of accepting wagers on any sporting event by any system or method of wagering, including single-game bets, teaser bets, parlays, over-under, moneyline, pools, *exchange wagering*, in-game wagering, in-play bets, proposition bets, and straight bets.” SG § 9-1E-01(j) (emphasis added). An exchange wager is “a wager in which a bettor wagers with or against another bettor through a sports wagering licensee.” Code of Maryland Regulations (“COMAR”) 36.10.01.02B(24).
- (2) Sports wagering can be legally conducted or offered only by sports wagering licensees (SG § 9-1E-03(b)), that are “mobile sports wagering licensees” (SG § 9-1E-01(e)) or “sports wagering facility licensees” (SG § 9-1E-01(k)), who hold licenses issued by the Commission. The Commission publishes the State’s list of licensed mobile sports wagering and sports wagering facility licensees at <https://www.mdgaming.com/legal-vs-illegal-online-gaming/>.
- (3) “Sporting event” includes most professional, collegiate, Olympic, and international athletic events. SG § 9-1E-01(i).

*“Crypto.com Event Contracts...are based on national sporting leagues seasons and games and are purchased based on a prediction or belief that a specific outcome will occur, i.e., that a certain team will win a certain game, title, etc. ... Crypto.com is operating in Maryland and is offering and conducting what is, in fact, wagering on sporting events. However, Crypto.com does not hold a sports wagering license issued by the Commission....”*

# Prediction Markets (cont.)

## State Warning Letters to Gaming Operators – Michigan Example

Activities that may threaten licensure in Michigan (unless approved by the MGCB and operated pursuant to Michigan law):

- Directly or indirectly operating, offering, or facilitating access to sporting event contracts
- Partnering, coordinating, or associating with an entity that operates, offers, or facilitates access to sporting event contracts

... in Michigan or in any jurisdiction outside of Michigan where a law enforcement agency or government authority has objected to or prevented the offering of sporting event contracts)

**Note:** Michigan’s list of gaming licensees includes payment processors



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
MICHIGAN GAMING CONTROL BOARD  
DETROIT

HENRY L. WILLIAMS, JR.  
EXECUTIVE DIRECTOR

### Memorandum

TO: Commercial Casinos, Gaming-Related Commercial Casino Suppliers, Internet Gaming Operators, Internet Gaming Suppliers, Sports Betting Operators, Sports Betting Suppliers, and Fantasy Contest Operators (Licensees)

FROM: Henry Williams, Executive Director

DATE: October 3, 2025

SUBJECT: Involvement in Prediction Markets

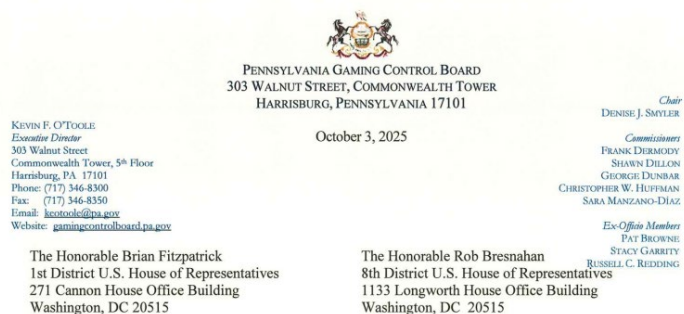
The Michigan Gaming Control Board (MGCB) understands that certain licensees may be considering opportunities to operate, offer, or facilitate access to prediction markets, where individuals can buy, sell, and trade event contracts that are based on a future event, occurrence, or value. The MGCB further understands that many of these prediction markets would offer sporting event contracts – event contracts in which an individual acquires a position on the outcome of a sporting event or other occurrence related to a sporting event – and would not operate in accordance with state gaming laws or pursuant to state-issued gaming licenses. The MGCB writes to make you aware that any involvement in the offering of sporting event contracts, directly or via an affiliate, key person, related business entity, or other association, will have implications relative to your licensure in Michigan.

Under the Michigan Gaming Control and Revenue Act, MCL 432.201 *et seq.*, the Lawful Internet Gaming Act, MCL 432.301 *et seq.*, the Lawful Sports Betting Act, MCL 432.401 *et seq.*, and the Fantasy Contests Consumer Protection Act, MCL 432.501 *et seq.*, and their respective administrative rules, the MGCB is tasked with developing licensing qualifications, standards, and procedures and evaluating a person’s suitability for licensure, both when an application is made and on a continuing basis.<sup>1</sup> It is the burden of a person applying for or holding a license to establish and maintain its suitability as to character, reputation, integrity, business probity, and financial ability, which must be demonstrated by clear and convincing evidence and is impacted by a person’s conduct – including that of its affiliates, key persons, related business entities, and other associates – in both Michigan and other jurisdictions.<sup>2</sup>

# Prediction Markets (cont.)

## State Warning Letters to Gaming Operators – Pennsylvania Example

Pennsylvania Gaming Control Board, October 5, 2025, letter to Members of U.S. Congress



- *“The introduction of these markets operating under purported federal oversight poses a direct threat to the comprehensive regulatory system that Pennsylvania, and many other state jurisdictions, have meticulously constructed for gaming.”*
- The strategy employed by prediction market operators is *“regulatory arbitrage.”*
- State-regulated sports betting operators are subject to fact background checks, licensing fees, state taxation on gross gaming revenue, and mandatory compliance with detailed consumer protection rules.
- *“By seeking classification as financial derivatives, prediction markets aim to sidestep these crucial state-level requirements. This creates an uneven playing field where prediction markets could gain a competitive advantage by exploiting a perceived loophole between federal financial regulation and state gaming law.”*
- *“The CFTC is a financial market regulator, lacking the specific expertise and historical mandate or overseeing consumer gambling activities.”*
- *“We urge you to recognize the state’s role in this area.”*

# Prediction Markets (cont.)

## Jurisdictional Flux

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

KALSHIEX, LLC,  
Plaintiff, :  
v. :  
MATTHEW T. SCHULER, et al., :  
Defendants. :

Case No. 2:25-cv-1165  
Chief Judge Sarah D. Morrison  
Magistrate Judge Chelsey M. Vascura

### OPINION AND ORDER

KalshiEX, LLC operates a futures exchange specializing in event contracts. An event contract is a “form of derivatives contract” that allows “users” across the nation to “trade on the outcome of real-world events.” (Compl., ECF No. 1, ¶¶ 29, 46.) In January 2025, Kalshi listed its first contract allowing traders to take positions on the outcome of a sporting event. Given the sports-event contracts’ resemblance to sports betting, state gaming regulators began knocking on Kalshi’s door; Ohio’s Casino Control Commission was among them. After months of correspondence, the Commission concluded that Kalshi’s provision of sports-event contracts to Ohio consumers violated state law; it threatened to initiate civil and criminal enforcement actions if Kalshi continued.

- A federal district court in Ohio ruled that Kalshi’s sports contracts are sports betting (March 10, 2026).

- Kalshi sought to stop the Ohio Casino Control Commission from regulating its platform as a form of sports betting.
- Kalshi argued that its sports offerings should be treated as federally regulated swaps and that its products were not traditional sportsbooks.
- The Ohio court ruled that the CEA does not preempt state gambling laws and that betting on sports scores does not meet the definition of a financial swap.
- The ruling requires Kalshi to adhere to state regulations on gambling.

*“We respectfully disagree with the Court’s decision, which splits from a decision from a federal court in Tennessee just a few weeks ago, and will promptly seek an appeal.”*

# Prediction Markets

## Jurisdictional Flux

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

KALSHIEX LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:26-cv-00034
	)	Judge Aleta A. Trauger
WILLIAM ORGEL, in his official	)	
capacity as Chairman of the Tennessee	)	
Sports Wagering Council; MARY BETH	)	
THOMAS, in her official capacity as the	)	
Executive Director of the Tennessee Sports	)	
Wagering Council; TENNESSEE	)	
SPORTS WAGERING COUNCIL; and	)	
JONATHAN SKRMETTI, in his official	)	
capacity as Attorney General of Tennessee,	)	
	)	
Defendants.	)	

MEMORANDUM

This case concerns whether state or federal law governs a novel form of sports betting. Plaintiff KalshiEX LLC (“Kalshi”) is a federally designated derivatives exchange on which people bet on sports, among other things. Tennessee permits online sports betting, but operators must be licensed, pay taxes and fees, and abide by various restrictions—requirements with which Kalshi does not comply. Tennessee sent Kalshi a cease-and-desist letter threatening an enforcement action, in response to which Kalshi has sued three Tennessee officials in their official capacities and the Tennessee agency that regulates gambling, seeking declaratory and injunctive relief. Now before the court is Kalshi’s Motion for Preliminary Injunction (Doc. No. 6) which, for the reasons set forth herein, the court will grant as to the individual defendants and deny as to the state agency defendant.



- A federal district court in Tennessee enjoins state enforcement against Kalshi (February 19, 2026).
  - Tennessee issued Kalshi a cease-and-desist asserting Kalshi’s sports contracts violated state sports wagering law.
  - The court granted a preliminary injunction against the state officials, allowing Kalshi to continue offering sports event contracts in Tennessee during litigation.
  - The court concluded Kalshi’s sports event contracts are likely “swaps” under the CEA and that the CEA gives the CFTC exclusive jurisdiction over swaps.

# CFTC Advisories and Enforcement Pivot

- **September 30, 2025:** CFTC Advisory on Legal Risks of Sports Event Contracts **[Withdrawn]**
  - Recognized ongoing state regulatory activity and potential litigation over the legality of sports-related event contracts listed on Designated Contract Markets (DCMs).
  - The CFTC had not taken an official position on the legality of sports event contracts and recognized their legality may ultimately be resolved through federal and state court challenges.
- **February 4, 2026:** CFTC Withdraws Its 2024 Event Contracts Proposed Rule and Withdraws Its 2025 Sports Event Contracts Advisory

*“The 2024 event contracts proposal reflected the prior administration’s frolic into merit regulation with an outright prohibition on political contracts ahead of the 2024 presidential election. The Commission is withdrawing that proposal and will advance a new rulemaking grounded in a rational and coherent interpretation of the Commodity Exchange Act that promotes responsible innovation in our derivatives markets in line with Congressional intent.”*
- **February 25, 2026:** CFTC Issues New Prediction Markets Enforcement Advisory
  - Prompted by disciplinary/enforcement matters involving misuse of nonpublic information.
  - The CFTC reaffirms its jurisdiction to police DCMs.

# CFTC Advisories and Enforcement Pivot (cont.)

- **March 12, 2026:** CFTC Issues New Prediction Markets Advisory
  - Underscores DCMs' statutory obligations to list for trading only derivative contracts that are not readily susceptible to manipulation.
  - DCM must, among other things, conduct real-time monitoring of all trading activity on its trading platform(s) to identify disorderly trading and any market or system anomalies.
  - Reminds DCMs of product submission requirements:
    - To offer a new event contract, a DCM must provide the Commission with a written certification that the contract complies with the CEA, or, alternatively, they may seek prior Commission approval of the contract. In each case, the DCM must submit prescribed information to the Commission, including but not limited to, the contract's terms and conditions.
  - Recommends that DCMs consider engaging in pre-self-certification communications with relevant sports governing bodies or authorities when developing terms and conditions, or compliance and market oversight programs for sports-related events contracts.

# CFTC Asserts Exclusive Jurisdiction

Case: 25-7187, 02/17/2026, DktEntry: 37.2, Page 1 of 41

No. 25-7187  
In The United States Court of Appeals  
for the Ninth Circuit

NORTH AMERICAN DERIVATIVES EXCHANGE, INC.  
D / B / A CRYPTO.COM | DERIVATIVES NORTH AMERICA,

*Plaintiff-Appellant,*

v.

THE STATE OF NEVADA, ET AL.,

*Defendants-Appellees,*

NEVADA RESORT ASSOCIATION,

*Intervenor-Defendant-Appellee.*

On Appeal from the United States District Court for the District of Nevada,  
Case No. 2:25-cv-00978-APG-BNW

AMICUS BRIEF OF COMMODITY FUTURES TRADING  
COMMISSION, A FEDERAL GOVERNMENT AGENCY,  
IN SUPPORT OF APPELLANT AND IN SUPPORT OF REVERSAL

Tyler S. Badgley, *General Counsel*  
Anne Stukes, *Acting Deputy General Counsel*  
Carlin Metzger, *Assistant General Counsel*  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

- CFTC filed an amicus brief asserting exclusive federal jurisdiction over commodity derivatives markets, including event contracts listed on CFTC-regulated venues.
- CFTC argues:
  - Event contracts satisfy the statutory definition of “swap.”
  - The Commodity Exchange Act (CEA) gives the CFTC exclusive jurisdiction over transactions involving swaps.
  - States may not regulate or prohibit event contracts (prediction markets) traded on a CFTC-regulated exchange as gambling.

***Expect continued multi-state actions and appellate litigation, with a potential for a national preemption rule to emerge (or not).***



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# Market Integrity and Intermediary Risks

Fraud, Insider Trading, and Underwriting Guardrails

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# Fraud Enforcement

February-March 2026



SQUAWK BOX

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## Jay Clayton on regulating prediction markets: My prosecutors are looking at what laws we can use

Jay Clayton, U.S. Attorney for Southern District of New York and former SEC chair, joins 'Squawk Box' to discuss the violence outside New York City Mayor Zohran Mamdani's residence, Anthropic's battle with the Pentagon, the case against former Venezuela President Maduro, regulating prediction markets, and more.

MON, MAR 9 2026 - 8:31 AM EDT

VENABLE LLP

- Jay Clayton, U.S. Attorney, Southern District of New York, and former Securities and Exchange Commission Chairman:
  - These are retail markets, not institutional markets, so much deal with retail participation in these types of markets
  - “The thinner the market, the more opportunity for manipulation.” (A single trader can move prices, especially with non-public information.)
  - Potential use of securities insider trading, wire fraud, mail fraud
  - On the “gambling spectrum”

# Market-Integrity Risks: Insider Trading

The screenshot shows the CFTC website header with the logo and navigation menu. The main content area displays a press release titled "CFTC Enforcement Division Issues Prediction Markets Advisory" dated February 25, 2026. The release text describes two enforcement cases involving misuse of nonpublic information and fraud in prediction markets. The first case involves a political candidate trading on his own candidacy on Kalshi in May 2025, resulting in a \$2,246.36 financial penalty and a 5-year suspension. The second case involves an individual trading a prediction market related to a YouTube channel while having an employment relationship with the subject of the contract in August and September 2025.

**CFTC** COMMODITY FUTURE TRADING COMMISSION

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- Press Releases
- Public Statements & Remarks
- Events

**Release Number 9185-26**

**CFTC Enforcement Division Issues Prediction Markets Advisory**

**February 25, 2026**

**WASHINGTON** — The Commodity Futures Trading Commission’s Division of Enforcement today has issued an advisory following public release of two enforcement cases involving misuse of nonpublic information and fraud with respect to certain prediction markets, also known as event contracts, traded on KalshiEX, a Designated Contract Market. These enforcement cases included the following:

- In May 2025, social media posts contained videos that appeared to show a political candidate trading on his own candidacy on Kalshi. Kalshi’s compliance team contacted the candidate that same day, and the trader acknowledged that he knew these trades were improper and violated Kalshi’s rules, which prohibit trading in a contract over which the trader has direct or indirect influence over the outcome. Kalshi imposed a \$2,246.36 financial penalty (disgorgement of \$246.36 related to the improper trading activity, plus a \$2,000.00 penalty) and a 5-year suspension from direct or indirect access to the exchange. Based on this fact pattern, the trader potentially violated Section 6(c)(1) of the Commodity Exchange Act (Act), and Commission Regulation (Regulation) 180.1(a)(1) and (3) for use of a manipulative scheme or artifice to defraud, or engaging or attempting to engage in an act, practice or course of business that operates as a fraud on any other person.
- In August and September 2025, an individual traded a prediction market related to a YouTube channel while having an employment relationship or other formal affiliation with the subject of the contract, through which the trader likely had access to material non-public information related to his trades, in violation of exchange rules. Upon investigating the highly successful trades and the trader responsible, Kalshi discovered that the trader was an editor for a YouTube channel who likely had advanced knowledge of the contents of the channel’s videos prior to the time they

## Example 1 (May 2025):

- A political candidate traded contracts tied to their own election/candidacy
- CFTC violation: Use of a manipulative scheme or artifice to defraud, or engaging or attempting to engage in an act, a practice, or a course of business that acts as a fraud on another person
- Kalshi’s compliance team contacted the candidate the same day; candidate acknowledged trades were improper and violated Kalshi rules; fined the trader

## Example 2 (Aug–Sept 2025):

- An individual took positions related to a YouTube channel while having an employment relationship with the subject of the contract
- CFTC violation: Insider trading (breach of a preexisting duty of trust and confidence to the source of the information)
- Kalshi discovered the relationship and imposed a financial penalty and suspension

# Congressional Pressure on “Sensitive” Event Contracts

## War/Death/Terrorism

- **H.R. 7840 (March 2026):** Members of Congress introduced legislation to explicitly ban event contracts tied to war, death, assassination, and terrorism.
  - Aimed at CFTC-regulated prediction markets.
  - If enacted, this would narrow permissible event contract content regardless of DCM status (i.e., not just “how traded,” but what can be listed).
- U.S. Democratic lawmakers are working on a bill to rein in prediction markets after bets ahead of air strikes in Iran stoked concerns over the legality and ethics of such trades.
- **Takeaway:** Heightened reputational and policy risk even where products are federally regulated.

# Intermediary Liability Concepts

- The CFTC has full authority to police illegal trading practices occurring on any Designated Contract Market (DCM).
- CEA § 13c(a) (aiding and abetting / acts in combination or concert) is the Commission’s core statutory theory for extending liability beyond the principal violator.
- CFTC enforcement against payment intermediaries is uncommon, but risks remain if facts support “knowing assistance” or if engaging in market manipulation / illegal trading practices.
- *“In appropriate cases, the Division will investigate and prosecute violations, as it always has with respect to conduct occurring on DCMs.”* – CFTC Prediction Markets Enforcement Advisory (February 25, 2026).
- **Risk Mitigation:** Sponsors and payment intermediaries should ensure that predication market clients have robust rules and procedures to address and respond to market manipulation and insider trading.

# Payment Processing for DCMs

## Underwriting and Due Diligence Considerations

- Confirm regulatory status (don't rely on marketing).
  - Document what products are being offered (event contracts, options, swaps) and whether anything sits outside the DCM entity.
  - Does the entity have a current legal memo addressing: (i) CFTC status and scope, (ii) state gaming risk, and other federal overlays?
- Map the flow of funds end to end.
- Assess market integrity and misuse-of-information controls.
  - Review the DCM's monitoring and compliance programs, restricted-persons policies (insiders/issuers/event participants), and escalation/referral processes.
  - Ensure the merchant can evidence compliance with DCM regulatory principles (audit trails, monitoring, enforcement) and how it coordinates with the CFTC/DOJ when needed.
- Operationalize ongoing monitoring (not just onboarding).
  - Track enforcement and litigation developments.

# Concluding Thoughts

- Prediction markets and social sweepstakes are evolving faster than the rules, and jurisdictional lines remain in flux.
- State scrutiny is not slowing down. More states are moving from “concerns” to statutes, cease-and-desists, and licensing leverage.
- Expect continued litigation over sports-based event contracts and ongoing state enforcement against sweepstakes and social-casino models.
- Congress is paying attention. Recent legislative proposals reflect a growing focus on sensitive event contracts and the question of what categories should be permitted.
- Market integrity risk is real and hard to spot. Proactive controls are essential.
- The evolving regulatory landscape requires active and continuous legal and compliance monitoring.

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**Thank You**

**Questions?**

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