ISDA® Safe, Efficient Markets

July 27, 2026

Mr. Christopher Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

<u>Re: Prediction Markets; Public Interest Determinations (RIN 3038–AF65)</u>

Dear Mr. Kirkpatrick:

The International Swaps and Derivatives Association, Inc. (**"ISDA"**)[1] welcomes the opportunity to comment on the Commodity Futures Trading Commission's (**"Commission"** or **"CFTC"**) notice of proposed rulemaking regarding public interest determinations for event contracts, published in the Federal Register on June 12, 2026 ("**Proposal**").[2]

ISDA believes that the continued safe and efficient development of derivatives market requires an emphasis on market integrity as the markets expand to consider new products, including event contracts that are swaps or security-based swaps. Toward this end, we support the thrust of the CFTC's proposed rulemaking regarding public interest determinations for prediction markets.

We believe that safeguarding the integrity of the derivatives markets requires, at a minimum, progress on three fronts:

- Providing greater clarity around defining permissible types of event contracts must begin with a categorical exclusion of contracts that are readily susceptible to fraud and manipulation;
- Achieving clear legal and regulatory certainty regarding the scope of event contracts that are swaps and/or security-based swaps is important and necessary to preserve the integrity of derivatives markets; and

[1] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 79 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org.
[2] Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35806 (June 12, 2026), https://www.govinfo.gov/content/pkg/FR-2026-06-12/pdf/2026-11854.pdf

- Regulatory treatment of new products should be guided by the particular risks they present. This "same risk, same regulation" principle that ISDA has long espoused is fundamental to providing a level playing field for market participants.[3]

Against this backdrop, our comments address two dimensions of these markets: first, the market-integrity protections that event contracts require given how directly their outcomes can be influenced; and second, the risk-management questions that arise in applying the existing swaps framework to event contracts. In each case, our recommendations reflect the principle set out above that regulatory treatment be calibrated to the actual risks these products present.

Market Integrity Considerations

As the Proposal recognizes that certain event contracts are "swaps," the CEA's market-integrity framework already applies to such contracts, including prohibitions on fraud and manipulation and KYC and AML obligations. The appropriate question is therefore not whether market-integrity rules apply to event contracts, but whether the existing rules are sufficient given the distinctive characteristics of these products.

First and foremost, the most directly implicated market-integrity requirement is the prohibition on listing products that are susceptible to manipulation. The Commission's rules place an independent obligation on a DCM to list only contracts that are "not readily susceptible to manipulation,"[4] and ISDA believes certain event contracts present a heightened manipulation risk and, therefore, should warrant the Commission's particular attention.

Unlike traditional swaps, which generally reference observable market inputs measured at specified valuation points and are subject to established valuation and adjustment frameworks, event contracts often settle directly on a discrete outcome that particular participants may be directly positioned to influence, or about which they may possess material non-public information. These features increase the potential for information asymmetry and create the risk of manipulating the underlying event itself, rather than a market price—risks that are not typically present in traditional swaps markets. These concerns are most acute for "mention" contracts, which settle on the number of times a particular word or phrase is stated during a speech, broadcast, or similar event, and whose outcome can be directly influenced by the individuals involved. Contracts of this kind warrant closer scrutiny to confirm that they satisfy the not-readily-susceptible-to-manipulation requirement, and ISDA supports the Commission's efforts to review such contracts to determine whether they should be permitted.

Second, robust customer-integrity safeguards are equally essential. Any exchange listing derivatives contracts must satisfy know-your-customer (**"KYC"**) and anti-money-laundering (**"AML"**) requirements from the first day it is eligible to serve U.S. customers. These obligations

[3] It is important to note, however, that this principle does not mean uniform treatment of all derivatives products; rather it posits that materially different risk characteristics warrant different, but equally risk-appropriate treatment.
[4] *See* Designated Contract Market (DCM) Core Principle 3. Commodity Exchange Act § 5(d)(3), 7 U.S.C. § 7(d)(3); 17 C.F.R. § 38.200.

take on particular importance for event contracts, which are frequently offered directly to retail participants through online platforms and settle in cash—features that may make them attractive vehicles for illicit finance absent effective onboarding and monitoring controls. Venues offering event contracts should therefore be expected to perform customer identification and verification, screen counterparties against applicable sanctions lists, and monitor for suspicious activity on the same footing as comparable intermediaries in traditional markets.

Additionally, a process concern that goes directly to market integrity is the determination of whether the specified outcome of an event contract has, in fact, occurred. Because an event contract settles entirely on that determination, the process by which the outcome is resolved is as important to the contract's integrity as its economic terms. If the resolution source is ambiguous, the governing criteria are subjective, or the determination rests with a party that has a stake in the result, the settlement process itself can become a source of dispute and potential manipulation. The Commission should encourage listing venues to specify, in advance, objective and reliable resolution sources and criteria for each event contract, together with a transparent and well-governed process for resolving disputes. A robust settlement-determination process of this kind would reinforce confidence in these markets and complement the manipulation-related safeguards discussed above.

In short, while existing market-integrity rules apply to event contracts that are swaps, they should be administered with these products' distinctive risks in mind: excluding contracts that are readily susceptible to manipulation, holding the exchanges and platforms that list them to KYC, AML, and sanctions standards from day one, and ensuring robust governance processes for resolving disputes. Calibrated in this way, the existing framework can accommodate responsible innovation in event contracts without compromising the integrity of the derivatives markets.

Margin Model Calibration and Capital Requirements

Margin, for both cleared and non-cleared swaps, is one of the central risk-management tools of the swaps regime, and it is only as effective as the methodology used to determine appropriate margin levels. Margin methodologies developed for traditional swaps may not translate well to the risk characteristics of event contracts, and applying swap-style margin models to event contracts without adjustment could result in under-margining and an underestimation of tail risk. Accordingly, ISDA believes that the Commission should lead efforts to ensure that any framework permitting margined trading of event contracts should require that margin methodologies to be specifically designed, calibrated, and validated for the discrete-outcome risk profile of these products, rather than simply adapted wholesale from existing swap margin models.[5]

[5] We understand that event contracts today are fully collateralized but are also aware that the CFTC has previously asked whether event contracts can be offered on a margined basis. *See* Prediction Markets, 91 Fed. Reg. 12516 (March 16, 2026) (Question (2)(f)), *available at* https://www.cftc.gov/PressRoom/PressReleases/9194-26. Additionally, because DCMs and DCOs are already permitted to offer certain swaps and futures on a margined basis, some may take the view that they are free to offer margined event contracts under the existing framework,

Relatedly, capital requirements are a further pillar of the swaps regulatory framework that warrants attention in this context. Registered swap dealers are subject to minimum regulatory capital requirements designed to ensure that they hold sufficient loss-absorbing resources to meet their obligations, withstand periods of market stress, and wind down in an orderly manner without transmitting risk to their counterparties or the broader market. To the extent dealers make markets in, or take principal positions in, event contracts that are swaps, those exposures should likewise be captured by appropriately calibrated capital charges.

Separate Financial Resources and Default Waterfalls

To the extent central counterparties ("**CCPs**") consider offering event contracts on a margined basis, ISDA believes such contracts generally should be supported by separate guaranty funds and loss-allocation waterfalls from those supporting traditional swaps clearing services. If event contracts were cleared within the same default waterfall as traditional swaps, swaps clearing members, who might not even be involved in event contracts, would be mutualizing the tail risk of event contracts which have a materially different risk profile—one that is driven by discrete, binary outcomes and jump-to-default dynamics that, as noted above, traditional margin models may underestimate. The concern runs in both directions: just as traditional market participants and end users should not be required to mutualize the tail risk of event contracts, those trading event contracts likewise should not have to share a default fund with participants trading products that have materially different risk profiles.

This is not to say that clearing event contracts and swaps at the same institution is, in itself, problematic. Clearing members already participate across multiple CCP services and asset classes today, with exposure limits, margin requirements, and default fund contributions calibrated on a service-by-service basis, and the current scale of event contract markets remains small relative to the swaps market. Having said so, market participants that are not active in event contracts should not have to mutualize losses in these markets and vice versa, and thus separate guaranty funds and loss-allocation waterfalls should be contemplated.

Direct Clearing, 24/7 Trading, and Auto-Liquidation

Where event contracts are fully collateralized, direct clearing without a futures commission merchant ("**FCM**") raises different customer-protection concerns, because a customer's exposure is prefunded rather than dependent on an intermediary.[6] Where event contracts are cleared on a margined basis, however, intermediation becomes more important because the FCM-intermediated model supplies the specific, rule-based customer protections (i.e., suitability of

without further Commission action. ISDA therefore encourages the Commission to address these issues, so that appropriately calibrated rules of the road are in place before such trading develops at scale.

[6] We note that even though FCMs may not be necessary in the flow where products are fully collateralized, gaps remain between FCM customer asset protection and retail DCO member asset protection regimes. The CFTC may want to consider aligning minimum protections so that investors clearing directly have the same regulatory protections that they do when they clear through FCMs.

products, segregation of customer funds, limits on permissible investment of those funds, and residual interest requirements) that were developed over decades and reinforced through the Dodd-Frank reforms. Absent protections offered by the FCM framework, margined direct clearing of event contracts would expose customers to significant risks, and the associated risk management framework and sizing of resources would have to be reviewed. Because there would be no FCM to guarantee a client's performance to the CCP, and as client defaults are not covered by the FCM, CCPs would have to hold resources large enough for a large multiple of defaults as compared to an intermediated world (i.e., "cover-n" compared to "cover-2"). Thus, to ensure sound risk management and customer protection, if event contracts are offered on a margined basis, they should be cleared through the existing FCM-intermediated model.

A distinctive structural feature of these markets sharpens this concern: unlike traditional swaps which trade during defined sessions, event contracts are frequently offered on platforms that trade continuously, including overnight and on weekends. Supporting 24/7 trading would be considerably more challenging for margined event contracts. Whereas fully collateralized positions are prefunded and do not depend on intraday margin flows, transactions cleared on a margined basis would require continuous monitoring of exposures and the ability to issue and meet margin calls at any hour. Any risk-management framework for margined event contracts would therefore need to operate on a continuous, 24/7 basis which may not currently be feasible.

Another aspect of certain direct-clearing models warrants particular scrutiny: the automated, real-time liquidation of a defaulting participant's positions (**"auto-liquidation"**). In contrast to traditional default-management processes that involve a series of inter-related actions, including hedging, portfolio auctions, and the mutualized resources described above, auto-liquidation relies on an automated mechanism that closes out a participant's positions as soon as its collateral becomes insufficient. ISDA is concerned that auto-liquidation may not be an appropriate default-management tool for derivatives markets. In stressed conditions, forced real-time liquidation into a shallow market could crystallize losses at fire-sale prices, amplify price dislocations, and introduce procyclical effects, precisely the outcomes that the deliberate, auction-based default-management frameworks developed under the post-crisis reforms were designed to avoid. Further, where auto-liquidation is employed at an exchange level it runs the risk of creating a cascade of auto-liquidations that can further magnify market participant losses. This, in turn, could lead to auto-deleveraging if there is not sufficient liquidity and capital resources. Because auto-liquidation has not been tested against the range of market conditions that established default-management processes are built to withstand, ISDA believes its suitability for derivatives markets should be further evaluated before it is relied upon as a substitute for traditional default management processes.

Self-Certification Process Considerations

Under the self-certification process, an exchange or clearing organization may list a new product and begin trading it after a short statutory review period, without obtaining prior approval from the Commission. That process works well for incrementally innovative products within an already established asset class, but it may not reliably surface the margin-model and default-resource calibration questions described above in the context of a materially novel, margined product. As the Commission continues to develop its approach to prediction markets, ISDA would encourage a process that ensures these risk-calibration questions are resolved before, rather than after, margined trading in event contracts begins at scale.

*   *   *   *

As the Commission and market participants continue to consider how the swaps market infrastructure should evolve to accommodate prediction markets, ISDA and its members stand ready to serve as a resource, drawing on our experience helping to design, implement, and continually recalibrate the risk-based framework that has made the swaps market safer and more resilient over the past 15 years.

ISDA appreciates the Commission's consideration of these views and would welcome the opportunity to discuss them further. Please do not hesitate to contact Chris Young (cyoung@isda.org) and Nicolette Cone (ncone@isda.org) with any questions.

Sincerely,

Scott O'Malia
Chief Executive Officer
International Swaps and Derivatives Association (**ISDA**)