The Investment Lawyer
Covering Legal and Regulatory Issues of Asset Management
VOL. 33, NO. 11 • NOVEMBER 2026

REGULATORY MONITOR

CFTC Update

By Jack Habert, Theo Kaminski, and Kris Swiatek

The Next Phase of the Prediction Market Debate May Be Classification Rather Than Permissibility

Prediction markets remain in a relatively early stage of regulatory development. Much of the recent debate has focused on the scope of the Commodity Futures Trading Commission's (CFTC) authority over event contracts as compared to individual states' rights.

The CFTC has asserted jurisdiction over many types of event contracts and is in the process of clarifying its position with respect to others,[1] most typically categorizing them as swaps. Much of the existing federal prediction market regulatory framework and methods by which prediction market participants have been attempting to comply rests on the CFTC's premise. However, on June 18, 2026, the Securities and Exchange Commission (SEC) and CFTC jointly requested public comment (Joint Comment Request) on ways to "further update, clarify, and harmonize" key derivatives product definitions and interpretive issues under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended (Dodd-Frank Act), specifically identifying event contracts as an area raising interpretive questions.[2]

In the Joint Comment Request, the agencies acknowledged that market participants are seeking clarity regarding whether certain event contracts should be treated as swaps, security-based swaps (SBSs), mixed swaps, or products excluded from the swap definition. The Joint Comment Request is directed not at whether event contracts fall within the CFTC's jurisdiction, but at how existing classifications of transactions under the Dodd-Frank Act apply to particular event contracts. It reflects a joint effort by the SEC and CFTC to examine whether additional interpretive clarity may be needed for products that implicate both agencies' regulatory interests. In doing so, it raises a significant question that has not yet been widely addressed: what types of event contracts may fall within the federal securities laws governing SBSs.

Under the Dodd-Frank Act, an SBS includes certain swaps based on the occurrence of an event relating to a single issuer of securities where the event directly affects that issuer's financial statements, financial condition, or financial obligations.[3] As prediction markets increasingly list event contracts tied to specific outcomes of an issuer of securities—including earnings results, revenue targets, production milestones, customer metrics, product launches, debt-related developments, and other

Copyright © 2026 by CCH Incorporated. All Rights Reserved.

issuer-specific events—the SBS regulatory framework may be implicated.

As discussed further below, the significance of these questions is underscored by a series of SEC and CFTC actions involving products alleged, among other things, to constitute SBSs, where regulators focused on the consequences of product classification and the corresponding compliance obligations under the SBS regulatory framework. A separate SEC statement in an adjacent emerging technology context has also emphasized the continuing relevance of the SBS regulatory framework.[4]

The Security-Based Swap Question

Given the proliferation of event contracts tied to specific outcomes of an issuer of securities, the scope of the SBS classification in the event contract context remains unclear. In particular, it is uncertain whether a distinction should be drawn between (1) event contracts tied to earnings results, revenue targets, debt-related developments, and other issuer-specific financial outcomes that may have a more direct connection to an issuer's financial statements, financial condition, or financial obligations; and (2) event contracts tied to operational, commercial, developmental, or strategic milestones. Accordingly, the Joint Comment Request specifically asks whether additional clarity is necessary regarding when an event "directly affects" the financial statements, financial condition, or financial obligations of an issuer and whether the agencies should further address the circumstances when a swap does or does not satisfy that prong of the SBS definition.

Market input will assist the agencies in evaluating whether existing swap and SBS classifications provide sufficiently clear standards for regulators to determine whether their regime applies to a particular event contract.

Why Classification Matters

Congress established a distinct regulatory framework for SBSs, including requirements relating to registration, exchange trading, investor eligibility, and a range of other regulatory obligations.[5] The practical significance of SBS classification therefore extends beyond which regulator has jurisdiction and may determine the regulatory framework governing how the product is offered, traded, and accessed.

As the SEC explained in its action involving Sand Hill Exchange, the Dodd-Frank Act imposed two key requirements for any SBS offering to a retail investor who does not meet the standard of an eligible contract participant (ECP, generally a financially sophisticated institutional or high-net-worth market participant meeting statutory eligibility standards): an effective registration statement must be in place for the offering, and the contracts generally must be sold on a national securities exchange. The SEC explained that these requirements are intended to make material information available to retail investors and to ensure that transactions occur on platforms subject to heightened regulatory oversight.[6]

That framework is central to why classification matters.

If an issuer-specific event contract were ultimately viewed as an SBS, the next question would not simply be which regulator has jurisdiction. It would be whether the product is being offered in a manner consistent with the requirements applicable to SBSs.[7]

The significance of that question is underscored by the SEC's recent action against Netrios LP Ltd. and Red Acre Ltd., which involved contracts-for-difference alleged to constitute SBSs, and the CFTC's contemporaneous action arising from the same conduct. These actions were brought as the agencies were simultaneously seeking public input under the Joint Comment Request.

That juxtaposition is not occurring in a vacuum. For more than a decade, the SEC, often alongside the CFTC, has brought enforcement actions involving products alleged, among other things, to constitute SBSs, creating a substantial body of precedent regarding the consequences of SBS classification. Matters involving Sand Hill Exchange, Forcerank LLC, coordinated SEC-CFTC actions involving

1pool Ltd./1Broker, and XBT Corp. SARL d/b/a First Global Credit, among others, demonstrate that these actions have not been about classification in the abstract, but about the regulatory obligations that follow from classification.[8]

Although the products at issue differed—from fantasy stock-style contracts, security-related event products, online trading platforms, and contracts-for-difference (CFDs)—the matters reflect recurring themes: product classification and the corresponding compliance obligations under the applicable regulatory framework.

The question of whether an event contract is an SBS is particularly important for prediction markets because many platforms currently permit broad retail participation from counterparties who are not ECPs. If certain issuer-specific contracts were determined to be SBSs, one of the practical questions would be whether existing prediction market platforms have procedures and limitations in place to operate within the regulatory framework applicable to SBSs. In particular, a threshold question would be whether platforms maintain procedures designed to identify participants who satisfy the ECP requirement and any other applicable eligibility standards.

The issue also will be relevant to investment advisers, private funds, family offices, and other institutional market participants that transact in event contracts because SBS classification may affect investor eligibility requirements and the regulatory framework governing how such entities may access and trade in such products. For institutional investors, the practical significance is that the classification of particular event contracts may influence whether those products remain broadly available through existing prediction market platforms or instead become subject to a framework focused on ECPs and other SBS-related requirements.

Conclusion

The practical significance of the Joint Comment Request will extend well beyond jurisdictional questions. If a particular issuer-specific event contract were ultimately determined to be an SBS, the more consequential question may be whether that product—and the platform offering it—is operating within the framework Congress established for SBSs.

Viewed against the backdrop of historical enforcement matters brought by the agencies that implicate the regulatory framework applicable to SBS products, the Joint Comment Request may represent the next phase of the prediction market debate, one focused on where the jurisdictional and classification lines should be drawn for issuer-specific event contracts and the regulatory consequences that follow.

Mr. Habert, Mr Kaminski, and Mr. Swiatek are Partners in the Investment Management and Digital Assets Group at Seward & Kissel in New York, NY.

NOTES

1 Notice of Proposed Rulemaking on Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35,806 (June 12, 2026).

2 Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, 91 Fed. Reg. 37,873 (June 24, 2026). This alert focuses on classification questions and the regulatory consequences that may follow if certain issuer-specific event contracts are determined to constitute SBSs. Other questions that may arise in connection with SBSs or issuer-specific event contracts, including issues relating to material non-public information, anti-fraud provisions, market integrity, and related securities law considerations, are beyond the scope of this alert.

3 15 U.S.C. § 78c(a)(68).

4 Statement of Commissioner Hester M. Peirce, Enchanting, but Not Magical: A Statement on the Tokenization of Securities (July 9, 2025).

5 The SBS regulatory framework may also implicate other requirements, including business conduct, documentation, margin, and related obligations,

Copyright © 2026 by CCH Incorporated. All Rights Reserved.

although those issues are beyond the scope of this alert.

[6] *In the Matter of Sand Hill Exchange, Gerrit Hall, and Elaine Ou*, Securities Act Release No. 9809, Exchange Act Release No. 75187, Admin. Proc. File No. 3-16598 (June 17, 2015) (Sand Hill Order).

[7] *See* the Sand Hill Order; *In the Matter of Netrios LP Ltd. and Red Acre, Ltd.*, Securities Act Release No. 11425, Exchange Act Release No. 105803, Admin. Proc. File No. 3-22654 (June 29, 2026).

[8] *See* the Sand Hill Order; *In the Matter of Forcerank LLC*, Securities Act Release No. 10232, Exchange Act Release No. 79093, Admin. Proc. File No. 3-17625 (Oct. 13, 2016); SEC v. 1pool Ltd. a/k/a 1Broker and Patrick Brunner, Complaint, No. 1:18-cv-02244-TNM (D.D.C. Sept. 27, 2018); *In the Matter of XBT Corp. SARL d/b/a First Global Credit*, Securities Act Release No. 10723, Exchange Act Release No. 87428, Admin. Proc. File No. 3-19592 (Oct. 31, 2019).

Copyright © 2026 CCH Incorporated. All Rights Reserved.
Reprinted from *The Investment Lawyer*, November 2026, Volume 33, Number 11, pages 25–27, with permission from Wolters Kluwer, New York, NY, 1-800-638-8437, www.WoltersKluwerLR.com

