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Not So Fast: The CFTC Puts Its Stay Authority to Work on Self-Certified Event Contracts

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Key Takeaways

- The CFTC recently took action under CFTC Regulation 40.2(c) and stayed the listing of certain self-certified sports event contracts at two designated contract markets.
- The orders rest on two distinct theories. One addresses certifications the CFTC views as too broad, given the manipulation risks posed by the contracts they cover. The other questions whether the contracts qualify as swaps at all.
- The stays follow a series of 2026 staff advisories on series certifications, marketing practices, incentive programs, and mention markets. Together, they demonstrate that the CFTC reviews self-certifications closely and will, if required, act on deficient filings.

Some market observers have argued that the Commodity Futures Trading Commission (CFTC) has allowed the self-certification process to run on autopilot and has allowed markets to list novel event contracts without meaningful review. Recent CFTC action should put that view to rest. In late October 2026, the CFTC issued orders against two designated contract markets (DCMs). Each order instituted a proceeding to determine whether the DCM's self-certification was false and stayed the listing of the contracts while that proceeding continues. The orders arrive on the heels of several staff advisories that put DCMs on notice of the CFTC's expectations.

The Self-Certification Framework and the Stay Authority

Under CFTC Regulation 40.2(a), a DCM may list a contract by certifying to the CFTC that the product complies with the Commodity Exchange Act (CEA) and CFTC regulations.[1] The DCM must submit a concise explanation and analysis that is complete with respect to the product's terms and conditions and its compliance with the CEA, including the core principles.[2] The certifying DCM bears the burden of demonstrating that compliance. The CFTC may stay the listing of a self-certified product while

proceedings for filing a false certification are pending. Regulation 40.2(d)(2) separately allows the CFTC to require a DCM to withdraw a class certification and resubmit individual contracts for review.[3]

Two Orders, Two Theories

The first order addressed a single certification covering a wide range of contracts on in-game statistics from professional basketball games. The certification spanned contracts from team point totals over a full game to contracts that settle on the sequence of in-game events, such as which player is the first to record a particular statistic (including within a single quarter). The CFTC viewed these contracts as presenting different risk profiles that warranted separate analysis, and it identified settlement on the order of discrete events, single-period time frames, and certain attempted-shot statistics as its primary areas of focus. The CFTC asked the DCM to resubmit the contracts as individual contracts or smaller classes, and it stayed the listing of the reference contracts while it reviews the certifications. The order also offers useful guidance for all DCMs on the relationship between Regulation 40.2(a) and the class certification procedures of Regulation 40.2(d).

The second order raised a threshold legal question: whether a weekly series of contracts on the final scores of professional football games qualifies as a “swap” under CEA Section 1a(47)(A).[4] The contracts would settle based on whether any game in a given week ended with a historically rare final score. The DCM's filing described the contracts' commercial purpose in general terms, and the CFTC sought a more specific discussion of the potential financial, economic or commercial consequences associated with the settlement event. The CFTC stayed the listing while it completes its review. Importantly, the CFTC noted that the order does not resolve whether contracts referencing sports scoring outcomes could satisfy the swap definition.

Neither order is a final ruling on whether the contracts comply with the CEA. The CFTC described each stay as a measure to preserve the status quo while it completes an orderly review. Each order also places the burden on the exchange to demonstrate the compliance it certified. The exchanges must file written answers with the CFTC by November 18 and November 19, 2026, respectively. After reviewing those answers, the CFTC will decide whether the certifications were false and what further action, if any, to take. One order expressly reserves the CFTC's options to withdraw the stay or to permit listing on amended terms.

The Advisories Previewed These Actions

The stays did not come out of nowhere. Over the past several months, the Division of Market Oversight (DMO), at times jointly with the Market Participants Division (MPD), issued advisories that foreshadowed these actions and signaled close attention to how event contracts are listed and marketed.

In July 2026, DMO issued Staff Letter No. 26-22 on the self-certification of event contract series. DMO criticized “Broad Template Certifications” that bundle contract permutations with differing settlement sources or methodologies and advised that DCMs should not submit them under Regulation 40.2(a).[5] DMO also warned that it may recommend a stay under Regulation 40.2(c) or require withdrawal and resubmission under Regulation 40.2(d)(2). In DMO's words, DCMs “should not assume that certifying multiple contracts in a single filing insulates any one contract from individual review.” The first order applies that guidance closely.

Also in July 2026, DMO and MPD issued a joint staff letter to CFTC-regulated entities and their affiliates on misleading or deceptive practices.[6] Staff expressed concern that some event contracts were being marketed in the “American odds” format used by sportsbooks, rather than in nominal or percentage terms that reflect market pricing. In staff's view, bookmaker-style odds are likely to mislead participants about the nature of the transaction and may obscure market depth and the impact on pricing. Staff grounded the letter in CEA Section 6(c)(1) and CFTC Regulation 180.1 and noted that DCMs should ensure their intermediaries, affiliates, and partners also present pricing clearly. Staff asked entities that list, solicit, or accept orders for event contracts to review their pricing displays and marketing materials and to confirm receipt of the letter by August 31, 2026.

In August 2026, DMO issued Staff Letter No. 26-23 on incentive programs, including market maker programs.[7] DMO observed an increase in procedurally or substantively deficient filings and reminded DCMs that the CFTC may request additional information, request modification, or stay the effectiveness of a program. DMO cautioned against payouts structured to guarantee profits or offset losses, rewards based on chance, and preferential arrangements. It also recommended that DCMs review previously certified programs and submit amendments by September 14, 2026.

In September 2026, DMO issued Staff Letter No. 26-27 on mention, attendance, and interaction contracts.[8] DMO stated that it may view such contracts as presumptively readily susceptible to manipulation and expects a heightened showing under Core Principle 3. The advisory cited the CFTC's proposed rulemaking for the view that sports contracts involving discrete player actions are particularly susceptible to manipulation. The first order reflects the same concern about settlement that turns on the conduct of a single individual over a brief moment.

What This Means for Market Participants

Taken together, these developments show a CFTC that reads self-certifications closely and will use the tools provided in Part 40. DCMs should consider the following steps.

- Treat each certification as an analysis specific to the product rather than a template. Identify settlement sources and address the manipulation risks of each permutation.

- Confirm that each class certification under Regulation 40.2(d) references a specific, previously certified contract with identical pricing sources and methodologies.
- For novel contracts, document the financial, economic, or commercial consequence associated with the underlying event. A generic statement of commercial purpose will likely not suffice.
- For contracts that settle on the conduct of individuals, prepare to rebut a presumption of manipulability with robust surveillance, insider controls, and position limits.
- Consider engaging with DMO staff before filing contracts that raise novel questions, as each advisory encourages.

These steps also position DCMs for the CFTC's final rule on event contracts, proposed in June 2026. That proposal identified sports contracts tied to discrete player actions as likely contrary to the public interest.[9] Self-certification remains a streamlined path to market, but the CFTC has shown that it is not a rubber stamp.

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1 17 C.F.R. § 40.2(a).

2 *Id.* § 40.2(a)(3)(iv)-(v).

3 *Id.* § 40.2(d).

4 7 U.S.C. § 1a(47)(A).

5 CFTC Staff Letter No. 26-22 (July 24, 2026).

6 Letter from DJ Hennes, Dir., Mkt. Participants Div. & Acting Dir., Div. of Mkt. Oversight, CFTC, to CFTC-Regulated Entities & Affiliates, *Misleading or Deceptive Practices* (July 30, 2026).

7 CFTC Staff Letter No. 26-23 (Aug. 12, 2026).

8 CFTC Staff Letter No. 26-27 (Sept. 22, 2026).

9 *See* Katten's client advisory on this topic here.

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