Carl Kennedy Breaks Down the Future of Prediction Markets

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Carl Kennedy, Partner and Co-Chair of Financial Markets and Regulation at Katten, sat down with *Casino Beats* to discuss the legal battles reshaping prediction markets. In the first few weeks, Commodity Futures Trading Commission (CFTC) Chairman Michael Selig withdrew the 2024 event contracts proposal and the 2025 sports-related event contracts advisory. He also directed staff to work on a new event-contracts rule and prepare the commission to step into federal court fights over prediction markets.

Carl noted that this signals that prediction markets are entering a new phase with the CFTC. He observed, "I think what [Chairman Selig's] done is kind of set the table for himself: 'Now that I'm in charge … these are specific acts that I'm taking in furtherance of my view that … we believe that we have exclusive jurisdiction over these contracts. And here is the pathway: withdrawing things, joining in litigation, and now letting you know that our focus is on issuing proposed rules.'"

Insider trading

On the enforcement side, prediction markets have been making news lately regarding insider trading. "We're used to being aware of this happening in securities markets," Carl noted. "Not as much so in derivatives markets, but notwithstanding that, the CFTC has consistently had the authority to go after… bad actors dealing with trading on material non-public information."

Recent headlines in the press demonstrate increased public awareness. On February 25, the CFTC's Division of Enforcement issued an advisory based on two high-profile cases alleging the misuse of non-public information in event contracts. Carl emphasized the CFTC's longstanding authority, "The CFTC has consistently had the authority to go after ... bad actors dealing with trading on material non-public information." He cautioned, "Just because someone makes money [on an event contract transaction] doesn't mean that they're necessarily engaging in insider trading ... You may need to see a pattern." In this regard, that advisory is not claiming new ground; rather, it is calling attention to the existing anti-fraud and anti-manipulation toolkit that already extends to prediction markets.

Self regulation

The advisory affirms the status quo in terms of self-regulation expectations. Carl explained, "In the CFTC markets, each exchange is its own regulator ... one of your roles is also to be a regulator deputized by the CFTC to police your own market," like a "cop on the beat" ensuring no fraud or manipulation.

Event contracts versus betting

Carl helped draw a clear line between betting and event contracts, a frequent concern voiced by state regulators and tribal gaming advocates. "Traditional gambling is a bet against the house, while event contracts are standardized instruments traded between participants on an exchange and routed through a clearinghouse. Functionally, that is very different than you just betting with the house."

Looking forward, Carl expects the forthcoming CFTC proposed rulemaking to provide discuss the Commission's view of its existing authority. For example, the Commission could begin to address the subject of "listing standards on a categorical basis": identifying which contracts are "A-OK" and which require Commission review. On the legal front, he noted recent court rulings could lead to “a circuit-by-circuit sort of view ... which then sets us up for a [US] Supreme Court decision."

In Kennedy's view, it should be up to each individual to decide whether to use a prediction market or a sportsbook. "You can leave it to that person to decide whether they want to gamble for entertainment or if they want to choose these contracts that provide other benefits outside of entertainment," he added. "I think they both can coexist."

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CONTACTS

For more information, contact your Katten attorney or any of the following attorneys.

Carl E. Kennedy
+1.212.940.8544
carl.kennedy@katten.com

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