

Carl Kennedy Breaks Down the Future of Event Contracts on *Prediction News Podcast*

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Carl Kennedy, Partner and Co-Chair of Financial Markets and Regulation, appeared on the *Prediction News Update* podcast to discuss the Third Circuit's landmark ruling in favor of Kalshi, the future of Commodity Futures Trading Commission (CFTC) rulemaking on event contracts, and the growing debate over insider trading in prediction markets.

The Third Circuit Ruling and What Comes Next

The Third Circuit recently delivered a significant win for Kalshi, concluding that event contracts traded on its exchange and cleared through its clearinghouse are properly classified as swaps under the Commodity Exchange Act. Characterizing the ruling as an important data point for the derivatives industry, Carl notes that the decision affirms that the federal framework governing these instruments are within the CFTC's exclusive jurisdiction. However, the story is far from over, "I think it's a significant data point, but I don't think it's the end of the story." With oral arguments pending in the Fourth and Ninth Circuits, Carl expects we might ultimately see a circuit split requiring Supreme Court intervention. "I think that this ultimately will go to the Supreme Court," he said, adding that leaving the issue unresolved across circuits "could be quite harmful for this market and for the derivatives market in general."

State Challenges and the Federal Framework

Carl addressed the broader conflict between state regulators and federally-regulated derivatives markets, observing that derivatives markets have operated under a well-established federal regulatory regime for over a century. He noted that for derivatives market participants, the suggestion that event contracts should be recharacterized as gaming is "somewhat troubling," as it could have unintended consequences for the entire derivatives ecosystem. "To suggest that what has operated for decades as a system for the regulation and oversight of derivatives markets ... now [should be] characterized or recharacterized as anything other than derivatives contracts is troubling," he said.

Carl also acknowledged the legitimate concerns of the gaming industry, including potential impacts on state revenues and consumer protections, while maintaining that those concerns can be addressed without undermining the federal derivatives framework.

Clarifying Rule 40.11

A significant portion of the conversation focused on Regulation 40.11, the CFTC's special rule governing event contracts. Carl noted that this specific regulation, adopted in 2011 as part of one of the several Dodd-Frank rulemakings, was not a top priority at the time of adoption and now requires revision. He identified several areas where the forthcoming CFTC rulemaking could bring clarity: defining undefined terms such as “gaming” and “assassination”; establishing a test for evaluating public policy considerations; and imposing more stringent listing standards for contracts that fall within enumerated categories. Creating a two-track submission framework with a self-certification track for contracts meeting certain criteria and a formal approval process for those that do not could help. “I think all these things are on the table,” Carl said. “I do think that the three points I just made are quite likely.”

Insider Trading in Fast-Moving Markets

Carl addressed the growing debate over insider trading in prediction markets, explaining that the CFTC's approach differs meaningfully from the securities law framework. Under the Commodity Exchange Act, a violation requires not merely the possession of material non-public information, but the misappropriation of that information by someone with a duty not to disclose it. “You need more than just having the material nonpublic information,” he explained, drawing an analogy to farmers who trade on knowledge of their own harvest without violating any duty.

Carl emphasized that exchanges are already deploying surveillance technology and third-party screening tools to identify and restrict participants with potential access to material non-public information. When red flags are identified, exchanges can act swiftly, flagging transactions, demanding information from participants, and banning bad actors. “The process does exist, and it has existed and worked well in financial markets beyond just the CFTC's markets,” he said.

He also noted that the CFTC's Division of Enforcement director has made insider trading a top priority, alongside Chairman Selig, signaling that the Commission intends to demonstrate that prediction markets are not rampant with manipulation. “They're going to devote resources to that,” Carl said.

[“The Future of Event Contracts with Carl Kennedy,”](#) *Prediction News Update*, April 13, 2026

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