Prediction Markets – RIN 3038-AF65

Comments of Centers for Better Insurance, LLC

The Centers for Better Insurance, LLC (CBI) is an independent organization committed to enhancing the value the insurance industry delivers to all stakeholders (including policyholders, employees, and society at large). CBI does so by making available unbiased analysis and insights about key regulatory issues facing the industry for use by insurance professionals, regulators, and policymakers. Additional information regarding CBI is available on the web at www.betterins.org or by email request at info@betterins.org.

These comments respond to Treasury's Notice appearing at 91 FR 12516 (March 16, 2026) seeking comments regarding prediction markets. These comments address questions 12, 17 and 18.

12. How do event contracts compare to, or substitute for, insurance contracts? Should the liquidity and availability of insurance with respect to a particular event be a factor in the Commission's public interest determination?

For the last five years, CBI has been raising the alarm that the CFTC and state departments of insurance are on a regulatory collision course over the distinction between event contracts and insurance.[1] Event contracts have the potential to provide non-indemnity risk transfer solutions far more efficiently than insurance-based mechanisms. Yet, over the last decade traditional insurers have been venturing into the sale of retail off-exchange event contracts through products marketed as "parametric insurance." Dodd-Frank places the onus on the CFTC to take the lead in charting a sound course through these mounting regulatory conflicts.

A. Insurance falls within the statutory definition of "swap".

Dodd-Frank defines a swap to include a "contract … that provides for … payment, or delivery … that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence". 7 U.S.C. 1a(47)(A)(ii).

[1] https://jason-schupp.medium.com/the-regulatory-environment-for-parametric-insurance-38e4dc5cedb9#_ftnref46; and https://www.slideshare.net/slideshow/climate-risk-parametric-insurance-and-doddfrank/252103260.

There is no single definition of "insurance". Rather, each state developments its own definition. For example, New York has adopted the following definition of an "insurance contract":

> "Insurance contract" means any agreement or other transaction whereby one party, the "insurer", is obligated to confer benefit of pecuniary value upon another party, the "insured" or "beneficiary", dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such event.
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> NY Ins. Code §1101(a)(1).

California has adopted a more streamlined definition of "insurance":

> Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event.
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> Cal. Ins. Code §22.

The statutory definition of a "swap" clearly encompasses these and other state statutory definitions of insurance. 7 U.S.C. 1a(47)(A)(ii). To the consternation of the insurance industry, 7 U.S.C. 16(h) provides that a swap: (1) shall not be considered to be insurance; and (2) may not be regulated as an insurance contract under the law of any State. Taken literally, Dodd-Frank sweeps up the entirety of the insurance industry.

B. CFTC developed a safe harbor for traditional insurance.

To prevent Dodd-Frank from swallowing state-regulated insurance, the CFTC developed a non-exclusive safe harbor from the definition of "swap" for insurance. 17 CFR § 1.3.

For the insurance safe harbor to apply, the contract must satisfy two tests:

1. *The Product Test*. Applicable law or the terms of the contract must require:
    a. The insured to hold an insurable interest throughout the duration of the contact; and
    b. Loss to be proven and payment to be limited to the value of the insurable interest.

    "Traditional" insurance products are not required to separately prove compliance with the *Product Test*.

2. *The Provider Test*. The contract must be:
    a. Written by an insurance company supervised by a state or federal regulator, listed on the NAIC Quarterly Listing of Alien Insurers, or otherwise eligible as a non-admitted insurer; and
    b. Regulated as insurance under applicable state or federal law.

In practical terms, truly "traditional" insurance products are excluded from the regulatory definition of a "swap". These products consist of indemnity contracts that reimburse an insured for the loss incurred or directly pay the financial losses incurred (e.g., automobile insurance, liability insurance, and fire insurance).

Of relevance here, the CFTC declined to extend the insurance safe harbor to "complex, novel or still evolving products." Instead, any such product would require an individual "facts and circumstances analysis".

C. Parametric insurance emerges as a "non-traditional" insurance product.

Over the last decade, the insurance industry has ventured into a "non-traditional" product marketed as parametric insurance. The National Association of Insurance Commissioners (NAIC) defines parametric insurance as a form of non-indemnity insurance that pays out based on the parameters of an event rather than on the measure of loss resulting from an event:[2]

> The term parametric insurance describes a type of insurance contract that insures a policyholder against the occurrence of a specific event by paying a set amount based on the magnitude of the event, as opposed to the magnitude of the losses in a traditional indemnity policy.

Many of these products have been sold in the non-admitted market, which does not require products to be filed with or approved by any state insurance regulator. Other parametric products have been sold as "inland marine" insurance which is generally exempt from product filing or approval requirements. Still other parametric products have been filed with state insurance regulators with few objections or have taken advantage of "industrial insured" or other large account exemptions from filing or approval requirements.

There is no reliable data on the size of the U.S. parametric insurance market. By all estimates, parametric insurance products represent less than 1% of the $1 trillion (by premium) U.S. property and casualty insurance market.

[2] Parametric Disaster Insurance, NAIC. (www.content.naic.org/cipr_topics/topic_parametric_disaster_insurance.htm)

Parametric products currently marketed to retail consumers (including small business) in the U.S. include payout triggers based on:

- Temperature
- Precipitation
- Flood
- Hurricane
- Earthquake
- Wildfire
- Tornado
- Hail
- Power, internet or platform outage

D. States begin introducing formal regulation of parametric insurance.

State insurance regulation is in the early stages of formally recognizing event contracts as a form of "insurance". **New York** is at the forefront with its 2025 law recognizing "parametric insurance" as a "kind of insurance." NY Ins. Code § 4101(b). Pursuant to NY Ins. Code § 1113(a)(34), parametric insurance is defined as follows:

> "Parametric insurance" means insurance against the occurrence of a weather-related event, such as windstorm, flood, snow, wildfire, tornado, cyclone, or earthquake, where the indemnification is based on the proximity and magnitude of the event as measured and reported by a state or federal government agency.

In 2023, the Commissioner of Insurance of **Puerto Rico** issued Rule 105 recognizing "parametric insurance" as a form of insurance for sale to individuals. The Rule defines parametric insurance as:

> [A] class within the definition of insurance, that does not indemnify an observed or adjusted loss different from traditional insurance but insures the insured against the occurrence of a specific event through the payment or disbursement of a predetermined amount of money as established in the policy based on the occurrence and magnitude of the insured event. The insurable object is verified at the time of contracting and consists of the insured having a reasonable expectation that they would incur an economic loss if the adverse event predetermined in the contract occurs. Parametric insurance may provide for a method of automatic payment or disbursement by the insurer after the catalytic or triggering event has occurred in accordance with the terms of the policy; or a method of payment or disbursement from the insurer once the insured notifies the occurrence of the event.

Maryland recently considered SB 95 (2026) which would have defined "parametric insurance" as "a policy that pays a predetermined benefit when a specified, objectively measurable trigger event occurs, regardless of actual loss." The bill did not proceed.

Other states have introduced parametric insurance laws in connection with the captive insurance companies they license:

- In 2023, **Connecticut** opened the door for captive insurance companies to issue "parametric contracts." Conn. Gen. Stat. § 38a-91bb(a)(9) defines a parametric contract as "any agreement to make a payment upon the occurrence of one or more specified triggering events without proof of loss or obligation to indemnify."

- In 2024, **Tennessee** recognized that captive insurance companies "may provide parametric insurance policies, which are considered contracts of insurance for purposes of this title." Tenn. Code § 56-13-103(a)(10). Tennessee defines parametric insurance as "a type of insurance that does not indemnify the pure loss, but *ex ante* agrees to make a payment upon the occurrence of a triggering event." Tenn. Code § 56-13-102(20).

- In 2025, **Vermont** recognized that captive insurance companies "may accept or transfer risk by means of a parametric contract." VT Stat. § 8 Sec. 6002(a). However, any such contract "shall comply with all applicable State and federal laws and regulations".

- **Iowa** is currently considering a similar law which would permit captive insurance companies to "accept or transfer risk by means of a parametric contract." HF 2766 (2026).

Other state departments of insurance have recognized that parametric insurance is currently being sold to considers:

- The **Alaska** insurance regulator recognizes that parametric insurance may be sold in the state's nonadmitted market as a liability insurance coverage. Order R25-2. Further, Alaska's Consumer Guide to Homeowners Insurance advises residents to "consult a Surplus Lines Broker about this kind of policy."

- **California**'s insurance regulator encourages the use of parametric insurance, described as "a non-traditional product that provides swift, pre-agreed payouts when specific triggers, such as weather conditions, are met. Unlike traditional insurance, it is not tied to physical damage assessments, allowing funds to be used for a wide range of needs such as, emergency preparedness, disaster response, infrastructure repairs, or nature-based solutions."

E. Parametric insurance is outside of the insurance safe harbor.

In its current notice, the CFTC defined "event contracts" as "contracts, typically with a binary payoff structure, based on the outcome of an underlying occurrence or event." The NAIC definition and each of the individual state definitions of "parametric insurance" fit neatly within the CFTC's concept of an "event contract".

Parametric insurance products do not fall within the insurance safe harbor established by the CFTC. First, parametric insurance products are universally regarded as "non-traditional", such that they cannot claim an exemption from the *Product Test*.

An insurable interest is the essence of the *Product Test*. That insurable interest must be held through the duration of the contract, and any payout must be limited to the measure of loss to that insurable interest. The very nature of parametric insurance is that it does not require a *bona fide* insurable interest and does not limit payments to the amount of loss to that insurable interest. Indeed, parametric insurance pays off based on the parameters of the event, rather than the parameters of the loss. Accordingly, parametric insurance (unless equipped with a limitation of payment to no greater than actual loss) fails the *Product Test*'s requirement that "payment to be limited to the value of the insurable interest."

Dodd-Frank is clear that a swap (including an event contract) "shall not be considered to be insurance; and may not be regulated as an insurance contract under the law of any State." 7 U.S.C. 16(h). The CFTC is responsible to draw the line between federally regulated swaps (including event contracts) and state regulated insurance contracts. Since it first did so in 2012, the market for parametric insurance products has taken root and begun to flourish with formal state regulation taking shape. It is time for the CFTC to enforce its existing regulations to bring parametric insurance products into the federal regulatory regime - or articulate some different regulatory construct for parametric insurance contracts.

E. The Case for CFTC Enforcement.

There are a number of sound policy reasons for the CFTC to affirmatively assert its authority over parametric insurance products.

First, the current landscape is ripe for regulatory arbitrage. The tension between state regulated gambling activities and federally regulated event contracts is already coming to a boil. Without decisive CFTC action, state regulation of parametric insurance is likely to be dragged into the mix causing even greater regulatory uncertainty and risk for consumers.

New York is an excellent example of how this three-way tangle is playing out. The New York Attorney General recently filed actions against certain "prediction market" platforms on the grounds that they are engaged in illegal gambling operations. NY Penal Law § 225.00(2) defines "gambling":

> A person engages in gambling when he stakes or risks something of value upon the outcome of ... a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome.

NY Ins. Code § 1113(a)(34), defines parametric insurance as:

> "Parametric insurance" means insurance against the occurrence of a weather-related event, such as windstorm, flood, snow, wildfire, tornado, cyclone, or earthquake, where the indemnification is based on the proximity and magnitude of the event as measured and reported by a state or federal government agency.

Dodd-Frank defines a "swap" to include:

> A contract ... that provides for ... payment, or delivery ... that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.

If a consumer were to purchase a contract in New York for $100 that pays $1000 if it rains more than 2 inches in Central Park on May 1, 2026, that consumer has purchased a contract that meets each of the definitions of:

- A gambling contract under New York law.
- A parametric insurance contract under New York law.
- A swap (event contract) under federal law.

Such regulatory confusion never works to the benefit of consumers. Such complexity is an invitation to sophisticated financial providers to play one regulatory regime off another – or find cracks between them in which they can try to hide.

Second, the CFTC has already clearly articulated a fair and logical insurance safe harbor. It just has not been enforcing that rule while insurance companies and insurance regulators have felt increasingly confident in disregarding it. Parametric insurance is simply a mislabeled swap (or, more specifically, a mislabeled event contract). Insurance is not meant to be a vehicle for potential financial gain. Insurance is meant solely as a vehicle to mitigate potential financial loss. The very essence of parametric insurance is to decouple the payoff from any actual financial loss – thereby introducing the potential for financial gain. The CFTC

does not need to promulgate any new rules. The CFTC just needs to start enforcing the rules already on its books.

Third, the very same logic the CFTC has used to justify its lawsuits against Arizona, Connecticut, and Illinois claiming Dodd-Frank preempts states from regulating event contracts as gambling applies here. In its press release, the CFTC explained:

> Despite the CFTC's clear and longstanding exclusive jurisdiction to regulate event contracts under the Commodity Exchange Act, various states have attempted to outlaw, regulate, or otherwise restrain the activities of DCMs that facilitate trading in lawful event contracts. Congress long ago decided that a national framework for commodity derivatives markets was preferable to a fragmented patchwork of state regulations.
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> "The CFTC will continue to safeguard its exclusive regulatory authority over these markets and defend market participants against overzealous state regulators," said CFTC Chairman Michael S. Selig. "This is not the first time states have tried to impose inconsistent and contrary obligations on market participants, but Congress specifically rejected such a fragmented patchwork of state regulations because it resulted in poorer consumer protection and increased risk of fraud and manipulation."

Event contracts dressed up as "parametric insurance" represents the very same threat to CFTC's claimed exclusive jurisdiction over event contracts.

Finally, prediction markets – or even pure gambling – is magnitudes more efficient than the insurance mechanism at delivering the potential of financial gain. The typical transaction fee charged by a prediction market is less than 2% of contract value. The house keeps about 5% of every dollar bet on a roulette table. In contrast, traditional property and casualty insurance products return only around 70¢ out of every premium dollar to policyholders in the form of insurance claim payments. While there is little aggregate data for parametric insurance, it appears the return to policyholders in the form of claims payments is closer to 50¢ out of every premium dollar with intermediation costs and other expenses consuming as much as an additional 40¢ of every premium dollar.

The value of traditional insurance – a value that cannot be replicated in prediction markets or gambling houses – is the absence of basis risk. Traditional insurance is a promise to pay for actual loss. That certainty in matching contract payout to actual loss is very valuable to families and small businesses. The insurer may be making payments for years or even decades after the event while the actual loss becomes defined by the pace and messiness of real life. The transactions costs for such a product are necessarily significant.

The value of gambling houses and prediction markets is the promise of a potential financial gain. Those transactions fully and finally resolve in as little as a few seconds to a few days after the subject event. The payout is completely untethered from the circumstances of the participating individual or small business. Accordingly, the transactions costs are comparatively low.

Parametric insurance offers consumers the worst of both words. When purchasing the contract, the consumer is saddled with the high transaction costs of the insurance model. When the triggering event occurs, the consumer is left to deal with the basis risk through a payout untethered from their actual losses (if any) caused by the subject event.

F. Conclusion

The existence of a multi-billion-dollar parametric insurance market demonstrates there is demand for event contracts for use in risk transfer related to meteorological and other catastrophe events. Such event contracts may very well be an effective supplement to or even substitute for traditional insurance products.

Under CFTC's current rules, parametric contracts do not fall within the insurance safe harbor. It is in the best interest of all stakeholders – especially consumers – that CFTC enforces its own rules. This responsibility does not change simply because certain event contracts are mislabeled as "insurance" or state legislatures or regulators purport to regulate certain event contracts as "insurance". It benefits no one for the CFTC to drag its feet on the enforcement of existing rules.

17. The second and third listed activities are terrorism and assassination. Are the meanings of these terms self-evident, or are there any ambiguities that the Commission should consider? Are specific definitions in other contexts, such as insurance, helpful? Would event contracts involving cyberterrorism be covered by the terrorism provision, and if so, what factors distinguish cyberterrorism from other cyber attacks? What public interest factors should the Commission consider for event contracts involving terrorism or assassination?

The U.S. insurance industry overwhelmingly relies on the definition of "act of terrorism" contained in the Terrorism Risk Insurance Act. Section 102(1) defines "act of terrorism" as follows:

> (A) CERTIFICATION.—The term "act of terrorism" means any act that is certified by the Secretary, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—
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> (i) to be an act of terrorism;

(ii) to be a violent act or an act that is dangerous to—

(I) human life;

(II) property; or

(III) infrastructure;

(iii) to have resulted in damage within the United States, or outside of the United States in the case of—

(I) an air carrier or vessel described in paragraph (5)(B); or

(II) the premises of a United States mission; and

(iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(B) LIMITATION.—No act shall be certified by the Secretary as an act of terrorism if—

(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or

(ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

(C) DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

(D) TIMING OF CERTIFICATION.—Not later than 9 months after the report required under section 107 of the Terrorism Risk Insurance Program Reauthorization Act of 2015 is submitted to the appropriate committees of Congress, the Secretary shall issue final rules governing the certification process, including establishing a timeline for which an act is eligible for certification by the Secretary on whether an act is an act of terrorism under this paragraph.

(E) NONDELEGATION.—The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

Treasury describes the certification process in 31 CFR § 50.60, *et seq*. Following a potential act of terrorism, Treasury may commence a review of the event to determine whether it should be certified as an act of terrorism. Within 30 days of commencing that review,

Treasury will publish a notice in the Federal Register. Treasury may but is not required to publish notification that a particular event is not under review. Treasury will continue to provide periodic notices while an event remains under review (initially 30 days and then 60 days). There is no outer time limit for conclusion of the certification.

No event has been certified as an act of terrorism under the Terrorism Risk Insurance Act since its enactment on November 26, 2002. The Act is currently set to expire on December 31, 2027. The Act has been extended in 2005, 2007, 2015, and 2019. Each extension of the program does bring with it the possibility of a change in the definition of act of terrorism. Most notably, the 2007 extension expanded the program to include domestic terrorism.

The Terrorism Risk Insurance Act's definition of terrorism is of little use outside of the geographic bounds of the United States. Specifically, the definition may be applied extra-territorially only with respect to damage occurring to a United States embassy or consulate or to a U.S. flagged air carrier or vessel.

This definition is understood to encompass a cyber-attack to the extent the attack meets the other criteria of the definition.

The Terrorism Risk Insurance Act's definition of terrorism is likely not a useful definition for CFTC's purposes because:

- The Terrorism Risk Insurance Act is temporary and, when it is renewed, the definition of act of terrorism is subject to change.
- The certification process is likely to take months or even years to conclude.
- The $5 million damage threshold is tied to "property and casualty insurance losses." Because federal government facilities are not insured, terrorism directed exclusively at federal property would be unlikely to satisfy the definition.
- The definition has little reach outside of the United States.

Another possible definition can be found in The Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act) administered by the Department of Homeland Security. This is a permanent program which defines "act of terrorism" as follows:

> (2) ACT OF TERRORISM.—(A) The term "act of terrorism'' means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary.
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> (B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—
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> (i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

Notably, this definition also has limited reach outside of the United States. Further, the definition is limited to methods of "mass destruction, injury or other loss." There is indication that cyber-attacks are considered within the scope of this definition.

Prior to the enactment of the Terrorism Risk Insurance Act and in anticipation of the potential expiration of the Terrorism Risk Insurance Act, the U.S. insurance industry has generally turned to the following definition of "terrorism":

"Terrorism" means activities against persons, organizations or property of any nature:

a. That involve the following or preparation for the following:

(1) Use or threat of force or violence; or

(2) Commission or threat of a dangerous act; or

(3) Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

b. When one or both of the following applies:

(1) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or

(2) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

This definition is typically subject to a threshold such as total insured industry losses of more than $25 million or the death of or serious injury of 50 or more persons.

18. The fourth activity is war. Does this activity encompass all military actions, or are there military actions that do not constitute war? What factors distinguish war from, for example, civil unrest? What factors distinguish war from political actions, or other actions as part of international relations? Are specific definitions in other contexts, such as insurance, helpful? What public interest factors should the Commission consider for event contracts involving war?

The most common "war exclusion" in the United States insurance industry provides that the insurance does not cover:

> (1) War, including undeclared or civil war; or
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> (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
>
> (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.