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Don’t Bet Against the CFTC: Misuse of Confidential Information on Prediction Markets

By John O'Donnell, Scott Balber and Prishika Raj

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In a recent podcast interview, the CEO of Kalshi—a prediction market that allows users to legally trade on the outcome of real world events—stated that trading on confidential information on prediction markets is policed by “airtight” definitions and regulations. But nowhere during the course of that interview did he mention exactly who regulates that conduct, and how. In fact, recent publicity concerning suspicious trades on another platform, Polymarket, has market participants wondering if trading on prediction markets occurs in a regulatory void. Not so. This article explores recent trends in the use of confidential information on prediction markets, how the Commodity Futures Trading Commission (CFTC) regulates that conduct, and practical considerations for businesses.

L-R: John O'Donnell, Scott Balber and Prishika Raj of Herbert Smith Freehills Kramer.

What Are Prediction Markets?

Prediction markets are online platforms that let people buy and sell “event contracts,” which are yes or no wagers tied to realworld outcomes such as elections, geopolitical events, sports results, economic indicators, and even content or product releases. They function like small, informationdriven futures exchanges, where contract prices reflect the market’s aggregated probability of an event occurring.

In the last year, prediction markets have experienced explosive growth. Total trading volume exceeded $60 billion in 2025, representing a 400% increase from 2024. Platforms like Kalshi and Polymarket have rapidly expanded, and new entrants like Robinhood have joined the market. On March 1, 2026, Polymarket reported a single-day notional trading volume record of $478 million, with the politics category alone accounting for $220 million. This rise in prediction market activity has been fueled by surging interest in realtime forecasting, and broader participation enabled by cryptobased platforms.

Recent 'Insider Trading' Activity on Prediction Markets

Recent trading activity on prediction markets has led to increased speculation that government and corporate insiders are misusing confidential information to win outsize profits. For example, on Feb. 27, 2026—the eve of military air strikes on Iran—a cluster of more than 150 accounts placed hundreds of bets of at least $1,000 on contracts predicting a strike by the next day. At least 16 of those accounts profited over $100,000 each, and one account, which bought roughly $60,000 of "yes" contracts, made nearly half a million dollars when the attack occurred. Media reporting has speculated that these bets were fueled by insider information.

In addition, earlier this year, prediction markets drew congressional scrutiny when a newly created Polymarket account purchased a large "yes" contract that Venezuelan President Nicolás Maduro would be deposed just hours before his capture by U.S. special forces, leading to a payout of more than $400,000.

In response to these reports, on March 5, 2026, Sens. Amy Klobuchar and Jeff Merkley introduced the End Prediction Market Corruption Act, a bill which would ban the president, vice president, members of Congress, and other public officials from trading event contracts.

However, these suspicious wagers are not limited to geopolitical events. In October 2025, a new user on Polymarket bet $40,000 that OpenAI would launch an AI web browser by month's end, which netted the user a profit of nearly 20%. Media outlets reported that the trade was picked up by Inside Finder, a monitoring tool that is part of a suite of Polymarket analytics software called Polysights, and posted to Polysights' X platform. Rather than deterring account holders, the post was reportedly "used as a trading signal that helped the account's followers to follow the trade and make money off of it themselves."

Perhaps emboldened by the OpenAI trader, in December 2025, one new account bet on Google's 2025 Year in Search rankings and the exact launch date of a new Google product, resulting in payouts to the trader of nearly $1,000,000 and $150,000 respectively.

Although these traders might believe they are protected by a crypto-cloak of anonymity and lack of regulatory frameworks, this recent flurry of activity has caused regulators to take notice.

The Regulatory Framework Applicable to 'Insider Trading' on Prediction Markets

Trading on prediction markets and event contract platforms that are registered as designated contract markets (DCMs), like Kalshi and Polymarket, falls within the regulatory purview of the Commodity Futures Trading Commission (CFTC or the commission), and such activity and markets are subject to the Commodity Exchange Act of 1936 (CEA).

In an address in January 2026, CFTC Chair Michael Selig emphasized that prediction markets are not new, and "have operated within the CFTC's regulatory perimeter for more than two decades." (See Remarks of Chairman Selig at CFTC-SEC Event on Harmonization (Jan. 29, 2026)). Against the backdrop of increasingly suspicious trading activity, Selig outlined a four-part regulatory agenda for prediction markets, including: withdrawing a 2024 event contracts rules proposal that would prohibit political and sports-related event contracts; new rulemaking for event contracts; a reassessment and reassertion of the CFTC's exclusive jurisdiction over commodity derivatives; and (iv) drafting coordinated guidance with the Securities and Exchange Commission to draw clearer lines between commodity and security options and CFTC- and SEC-regulated swaps.

Selig has repeatedly emphasized that the CFTC will proceed by rulemaking instead of "regulation by enforcement." However, he has also made clear that the CFTC will use its enforcement authority to police prediction markets where it is appropriate to do so.

The CFTC's Enforcement Authority

The CFTC can bring fraud charges under Section 6(c)(1) of the CEA (7 U.S.C. § 9(a)(1)), which states that:

"it shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance …"

The provision applies broadly to an individual or entity, without limitation to platforms or traders, and the phrase "directly or indirectly" extends liability to any persons who cause or contribute to misconduct through intermediaries or structured activities.

CFTC Rule 180.1 (76 Fed. Reg. 41398-01) implements the provisions of CEA Section 6(c)(1) by expressly prohibiting fraud and fraud-based manipulative devices and contrivances employed intentionally or recklessly, in connection with any swap, contract of sale of any commodity in interstate commerce or contract for future delivery. The rule also prohibits the disclosure of material nonpublic information unless disclosure is necessary to make any statement to a person "in or in connection with the transaction" not materially misleading. Conduct covered by Rule 180.1 may be intentional or reckless.

The CFTC interprets "in connection with" broadly, to "reach all manipulative or deceptive conduct in connection with … any contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity." This means that section 6(c)(1) and Rule 180.1 are not limited to regulating transactions, i.e., purchase or sale, but include entry into events contracts on prediction markets.

On Feb. 25, 2026, the CFTC released an enforcement advisory to clarify its enforcement authority for prediction market participants. (CFTC Enforcement Division Release Number 9185-26 (Feb. 25, 2026)). In it, the CFTC asserted that it intends to investigate and bring actions involving certain categories of misconduct, including:

- Misuse of confidential information to place a bet in breach of a preexisting duty of trust and confidence to the source of the information (which is analogous to traditional "insider trading" in the securities context) pursuant to CEA Section 6(c)(1), and Rule 180.1(a)(1) and (3);
- Pre-arranged, noncompetitive trading and wash sales, under CEA Section 4c(a)(1) and (2)(A), and Rule 1.38(a);
- Other prohibited trading practices including disruptive trading pursuant to CEA Section 4c(a)(5); and,
- Other fraud and manipulation offences under the CEA.

The enforcement advisory highlighted two internal enforcement cases handled by Kalshi that the CFTC stated raised fact patterns that could result in an enforcement action under the CEA:

In May 2025, a political candidate traded contracts tied to his own candidacy, violating exchange rules against trading on events one can directly or indirectly influence. Kalshi imposed a $2,246.36 financial penalty (disgorgement of $246.36 related to the improper trading activity, plus a $2,000 penalty) and a five-year suspension from direct or indirect access to the exchange.

In August 2025, an individual traded a prediction market related to a YouTube channel while having an employment relationship or other formal affiliation with the subject of the contract, through which the trader likely had access to material nonpublic information related to his trades, in violation of exchange rules. Kalshi again imposed a $20,397.58 financial penalty (disgorgement of $5,397.58 in profits from the illicit trading, plus a $15,000.00 penalty) and a two-year suspension from direct or indirect access to the exchange.

Although Kalshi dealt with both of these cases through its internal enforcement program, the CFTC emphasized that it has "full authority to police illegal trading practices occurring on any DCM," including the Kalshi examples.

In addition to the enforcement advisory, the commission recently announced the appointment of former federal prosecutor David Miller as its new director of enforcement. In his first major speech, Miller reaffirmed the CFTC's commitment to "protecting the integrity of U.S. markets, including from fraud, abuse, and manipulation." More recently, in an address at New York University law school, Miller stated that insider trading will be one of the enforcement division's priority areas. Miller observed that there is a "myth in the mainstream media and social media that insider trading law doesn't apply in the prediction markets," and emphasized that to the contrary, insider trading on prediction markets is "precisely the kind of serious violation that [the CFTC will be] going after vigorously." (David Miller, Remarks at NYU Law School—CFTC Enforcement Priorities, Insider Trading in the Prediction Markets, and Cooperation with the CFTC (March 31, 2026)).

In discussing the regulations applicable to insider trading on prediction markets, Miller was careful to draw a distinction between misappropriated information, and MNPI that is "rightfully own[ed]" by a trader. He noted that market participants are not "breaching a duty to the source of information" if they use their own information to hedge risks. He also highlighted the role of prediction market platforms as a "first line of defense" in stopping insider trading and market manipulation.

Regulatory Requirements for Event Contract Market Offerings

The regulatory requirements applicable to DCMs are rapidly being clarified by the new administration. In an interview published on March 11, 2026, Chair Selig emphasized that DCMs have a duty to ensure that contracts that are susceptible to manipulation are evaluated and not listed, and that DCMs must, as self-regulating organizations, certify to the CFTC that the contracts they do list are free of the risk of manipulation.

The CFTC then issued a prediction markets advisory addressed to DCMs on March 12 that echoes Selig's comments. The advisory is "intended to provide market participants, legal counsel and interested members of the public [the Division of Market Oversight's (DMO)] current views on the listing and trading of event contracts." (See CFTC Staff Letter No. 26-08 (March 12, 2026)). Among other things, the advisory places the burden on DCMs to comply with regulatory requirements for event contracts markets, including the 23 statutory core principles set forth in the CEA (Section 5(d), 7 U.S.C. 7(d)).

Key obligations under the core principles include:

- Only listing for trading those derivative contracts that are not readily susceptible to manipulation (Core Principle 3, CEA Section 5(d)(3), 7 U.S.C. 7(d)(3));
- Establishing and enforcing rules to protect markets and market participants from abusive practices, and to promote fair and equitable trading on the DCM (Core Principle 12, CEA Section 5(d)(12), 7 U.S.C. 7(d)(12));

- Conducting real-time monitoring of all trading activity on DCM platforms and engaging in specific procedures under the CEA and regulations to investigate and discipline anomalies (17 CFR 38.157).

The advisory also highlights newly adopted guidance (17 CFR Part 38, Appendix C), which outlines relevant considerations for a DCM when designing a contract. For example, with respect to cash-settled contracts, DCMs should consider whether certain categories of event contracts, like sports-related contracts that resolve or settle based on injuries to individual sports participants, unsportsmanlike conduct, or physical altercations between sports participants, might create potential for manipulation.

Under the CEA, DCMS are also required to certify that an event contract complies with the CEA, or can voluntarily elect to seek prior commission approval of the contract. Self-certification requires an explanation and analysis of the contract's compliance with applicable provisions of the CEA, and DCMs are encouraged to proactively engage with DMO staff when designating contracts to avoid enforcement actions.

In what is presumably a reaction to recent illicit sports-betting activity (see Section IV below), the advisory also makes specific recommendations applicable to certifying sports-related event contracts. DCMs are encouraged to: engage in pre-self-certification communications with sports governing bodies when developing terms, conditions and market oversight programs; include analysis as to whether a contract is consistent with a sports league or governing body's integrity standards in self-certification submissions; share data and information with the relevant sports integrity monitoring organizations; and rely on official data provided by the relevant league or governing body, as applicable, as the settlement source.

The advisory also warns that the commission retains the authority to stay the listing of a self-certified contract pending commission proceedings for filing a false certification or pending a petition to alter or amend the contract terms and conditions pursuant to Section 8a(7) of the CEA. Accordingly, under preexisting CEA provisions, both traders and DCMs risk prosecution for violating conduct on prediction market platforms.

Other Applicable Regulatory Frameworks

The regulation of prediction markets is not limited to the CFTC, and federal fraud statutes may also apply. In a recent address, the U.S. Attorney for the Southern District of New York, Jay Clayton, stated that trading on prediction markets "doesn't insulate you from fraud." (Chris Dolmetsch and Nicola M White, Wall Street's Top Cop Expects Enforcement on Prediction Markets, Bloomberg (Feb. 5, 2026)). Under CEA Section 9(a) (7 U.S.C. § 13), the Department of Justice can bring felony charges for willful breaches of the CEA, including violations of Section 6(c)(1) and Rule 180.1. Another tool for prosecution is the wire fraud statute, 18 U.S.C. § 1343, which prohibits the use of electronic communications such as email, internet, phone or wire transfers in interstate commerce in furtherance of a scheme to defraud.

The wire fraud statute was recently used to indict several members of the National Basketball Association (NBA) for using confidential insider information to profit from illegal betting. In that case, several NBA players were charged with providing nonpublic information about upcoming NBA games or individual players' performances to co-conspirators in exchange for a fee or share in expected wagering profits.

The co-conspirators would then disseminate the information through a network who placed bets on their behalf. In many instances, the bets were successful and paid out thousands of dollars in profits. Prosecutors alleged that the players engaged in a conspiracy to commit wire fraud because they communicated nonpublic information via wire communications with the intent to defraud the betting companies. Similar charges might be laid in the context of prediction markets if the alleged conduct involves the transmission of nonpublic information through wire communications over interstate lines. (See *United States v. Earnest*, No. 1:25-cr-00323 (E.D.N.Y. Oct. 16, 2025) (Indictment), ¶¶ 30–64).

Practical Considerations for Business

The growth in the misuse of confidential information in prediction markets creates a new risk for business. Not only is the misuse of confidential information a breach of pre-existing duties of confidentiality to a company, but it can also create significant personal risks for employees who may be subject to a CFTC enforcement action, or even criminal charges.

Companies should continue to protect their material nonpublic and confidential information using nondisclosure and confidentiality provisions in employment contracts and policies, and evaluate and update their internal controls to prevent employees from trading in confidential information.

Some practical steps companies can take to protect their confidential information and their employees include:

- Add prediction market restrictions to insidertrading and securitiescompliance policies.
- Require attestations that employees are not using confidential corporate, client or government information in connection with activity on prediction markets.
- Require preclearance or outright prohibitions on trading event contracts relevant to employees' job functions.
- Train employees on how CFTC Rule 180.1 applies beyond traditional commodities markets.
- Consider disciplinary structures mirroring securities law policies.
- Contemporaneously memorialize and log any business decisions that could become the subject of a prediction market contract.

Scott Balber *is the managing partner of the New York office, and the U.S. head of litigation, at Herbert Smith Freehills Kramer.* **John O'Donnell** *is a partner in the firm's corporate crime and investigations group.* **Prishika Raj** *is a senior associate in the firm's dispute resolution practice with broad experience in complex commercial litigation.*