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Legal Sidebar

Prediction Markets and Insider Trading Law

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The past two years have witnessed the dramatic growth of prediction markets—i.e., online platforms that allow users to buy or sell contracts with payoffs tied to the occurrence or nonoccurrence of specific events, such as sporting event outcomes, political election results, and macroeconomic or geopolitical developments. Highly publicized instances of large, well-timed bets on prediction markets have generated interest in whether and how insider trading law applies to such markets. This Legal Sidebar provides an overview of these issues. It is divided into three parts. First, the Sidebar offers background on prediction markets and insider trading law. Next, it discusses a February 2026 advisory from the Commodity Futures Trading Commission (CFTC) addressing insider trading on prediction markets. The Sidebar concludes by discussing considerations for Congress.

Background

Prediction Markets

Prediction markets are online platforms that specialize in offering "event contracts"—i.e., contracts that allow traders to bet on the occurrence or nonoccurrence of a specific event. Typically, event contracts have a binary payoff structure and are presented as "Yes/No" questions. For example, a trader who buys a "Yes" contract may receive a payout of $1 if the underlying event occurs before the contract's expiration date, but nothing if the event does not occur before that date. Conversely, a trader who purchases a "No" contract may receive a payout of $1 if the underlying event does not occur before the contract's expiration date, but nothing if the event does occur before that date. In liquid markets, the price of an event contract is generally regarded as reflecting the market's assessment of an event's probability at a given point in time. For example, a "Yes" contract that pays $1 if an event occurs and trades at $0.60 is commonly viewed as suggesting that the market believes there is a 60% chance that the event will occur.

Several prediction markets have registered with the CFTC as "designated contract markets" (DCMs)—a type of derivatives exchange. The Commodity Exchange Act (CEA) gives the CFTC "exclusive jurisdiction" over futures, options, and swaps traded on registered exchanges. (The implications of this language for state regulation of event contracts are being litigated.) The CEA defines the term "swap" to include contracts that provide for payment 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." The CFTC has taken the position that certain event contracts—including event

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contracts based on the outcomes of sporting events ("sports event contracts")—fall within this component of the CEA's "swap" definition. The CFTC has also argued that event contracts qualify as "options," which likewise fall within the CEA's definition of "swap."

While CFTC-registered exchanges have listed event contracts since 1992, the number and variety of event contracts listed by registered exchanges increased sharply beginning in 2021. The CFTC has explained that, since 2021, DCMs have listed "a substantial number of event contracts not associated with traditional commodities, financial indices, or economic indicators." These novel event contracts include contracts based on the release dates for video games and musical albums, Oscar award winners, sporting events, and the outcomes of political elections. Sports event contracts have proved particularly popular, accounting for more than 85% of trading volume on Kalshi—a leading prediction market registered with the CFTC.

Several large, well-timed trades involving event contracts have recently generated concerns about the extent to which prediction-market users are profiting based on material nonpublic information (MNPI). For example, in late December 2025 and early January 2026, a user of an offshore exchange operated by Polymarket purchased a high volume of contracts predicting the ouster of Venezuelan President Nicolás Maduro. After the U.S. military captured Maduro on January 3, 2026, the user reportedly secured a payout of more than $400,000. Polymarket's offshore exchange also experienced a sharp uptick in large purchases of contracts predicting U.S. military strikes on Iran shortly before such strikes occurred in February 2026. Some Members of Congress have voiced concerns that these trades may have been based on MNPI.

Insider Trading Law

SEC Rule 10b-5

The law of insider trading has developed primarily in the context of securities markets. Courts have held that trading securities based on MNPI in breach of a duty constitutes a violation of Securities and Exchange Commission (SEC) Rule 10b-5, which prohibits certain types of fraudulent and deceptive conduct in connection with the purchase or sale of any security.

Persons can be liable for insider trading under Rule 10b-5 based on either of two theories. If a company's insiders (e.g., officers, directors, or "temporary insiders" such as outside counsel) trade the company's securities based on MNPI, they violate Rule 10b-5 by breaching duties owed to their *trading counterparties*—i.e., the company's shareholders or would-be shareholders. The Supreme Court has reasoned that there is a "relationship of trust and confidence" between a corporation's insiders and its shareholders, which gives rise to a duty on the part of insiders to disclose MNPI before trading the corporation's securities. Violations of this duty give rise to liability under the "classical" theory of insider trading.

Because the classical theory is based on the breach of duties owed to trading counterparties, it does not apply to corporate outsiders who lack a fiduciary relationship with the issuing corporation and its shareholders. Corporate outsiders can still be liable for insider trading, however, if they trade securities based on MNPI in breach of a duty to *the source of the information*. For example, an attorney representing the bidder in a takeover would violate Rule 10b-5 by purchasing shares of the target corporation if such trading violated a duty of confidentiality owed to the bidder. This type of liability is called the "misappropriation" theory of insider trading because it is predicated on a trader's misappropriation of property rights in confidential information. Trading based on misappropriated information, the Supreme Court has said, "involves feigning fidelity to the source of the information," making it "deceptive" within the meaning of Rule 10b-5.

With the classical and misappropriation theories as foundations, federal courts have adopted additional tests for assessing "tipper" and "tippee" liability for insider trading—i.e., whether individuals violate Rule 10b-5 by disclosing MNPI to other traders or by trading securities based on MNPI obtained from others.

Under Rule 10b-5, breach of a duty is a necessary element for insider trading liability under both the classical and misappropriation theories. The Supreme Court has rejected the argument that Rule 10b-5 creates a parity-of-information regime barring all trading based on MNPI.

Violations of Rule 10b-5 may trigger civil and/or criminal liability.

The CEA and CFTC Rule 180.1

Historically, insider trading prohibitions in derivatives law were far narrower than SEC Rule 10b-5, applying only to employees of the CFTC and CFTC-registered entities. In 2010, however, Section 753 of the Dodd-Frank Act amended the CEA to prohibit fraud and manipulation "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" in contravention of rules adopted by the CFTC. The following year, the CFTC finalized Rule 180.1, which prohibits fraud or deception in connection with swaps, interstate commodity sales, and futures traded on or subject to the rules of registered entities. In doing so, the CFTC explained that Rule 180.1 was "modeled on" SEC Rule 10b-5 and that the agency would be "guided, but not controlled, by the substantial body of judicial precedent applying the comparable language of" Rule 10b-5.

The CFTC has relied upon Rule 180.1 to bring enforcement actions under the misappropriation theory, several of which have involved employees of trading firms accused of using MNPI derived from their employers to trade for their personal accounts. The classical theory of insider trading is unlikely to apply in derivatives markets because, unlike corporate insiders who trade their company's shares, derivatives traders typically lack fiduciary relationships with their counterparties.

Consistent with judicial interpretations of SEC Rule 10b-5, the CFTC has clarified that Rule 180.1 does not create a parity-of-information regime forbidding all trading based on MNPI. Specifically, the CFTC has said that "derivatives markets have long operated in a way that allows for market participants to trade on the basis of lawfully obtained [MNPI]," and that the failure to disclose such information prior to trading will not, by itself, constitute a violation of Rule 180.1.

Violations of Rule 180.1 may trigger civil and/or criminal liability.

The CEA also contains separate insider-trading provisions directed at federal government officials and employees. Section 4c(a)(3) of the CEA, as amended by the Stop Trading on Congressional Knowledge (STOCK) Act, prohibits federal agency employees, Members of Congress, congressional employees, and judicial officers and employees from using nonpublic information derived from their positions to trade commodity futures, options, or swaps. Section 4c(a)(4) of the statute prohibits (1) individuals in the specified categories from imparting such information to others with the intent to assist such trades, and (2) any person from knowingly using such imparted information to enter such trades.

Title 18 of the *U.S. Code*

Insider trading may violate several criminal prohibitions in Title 18 of the U.S. Code. The federal mail fraud statute (18 U.S.C. § 1341) prohibits use of the mails to further a fraudulent scheme. The wire fraud statute (18 U.S.C. § 1343) contains a similar prohibition that applies to the use of wire communications, including the internet. The Sarbanes-Oxley Act of 2002 also created the separate criminal offenses of securities and commodities fraud, which are codified in 18 U.S.C. § 1348. The Department of Justice has

used all three statutes to prosecute individuals alleged to have traded securities or derivatives based on MNPI in breach of a duty.

In many respects, judicial interpretations of these statutes have tended to track the interpretation of SEC Rule 10b-5. Some decisions, however, have recognized possible differences between the elements of Rule 10b-5 insider trading and Title 18 insider trading. In *United States v. Blaszczak*, for example, the U.S. Court of Appeals for the Second Circuit (Second Circuit) concluded that information regarding the substance and timing of federal agency decisions does not qualify as federal "property" for purposes of the wire fraud statute and 18 U.S.C. § 1348. As a result, the court held, government employees and their tippees do not violate those statutes by trading securities based on such information. It is unclear whether this principle applies to misappropriation claims brought under SEC Rule 10b-5 or the CEA.

Similarly, in *United States v. Chastain*, the Second Circuit held that, in wire fraud prosecutions predicated on the misappropriation of confidential information from a private company, the government must prove that the relevant information had commercial value to the company. In *Chastain*, the defendant was a former employee of OpenSea, an online marketplace for non-fungible tokens (NFTs). The government alleged that the defendant used confidential information to purchase NFTs before they were featured on OpenSea's website. The Second Circuit vacated the defendant's wire fraud conviction, concluding that the information qualified as "property" under the wire fraud statute only if it had commercial value to OpenSea and that the district court's jury instructions erroneously omitted that requirement. The Second Circuit reasoned that this error was not harmless based on evidence that OpenSea did not have important commercial interests in keeping the identify of featured NFTs confidential. As with *Blaszczak*'s holding regarding federal agency decisions, it is unclear whether this principle would apply to misappropriation claims brought under SEC Rule 10b-5 or CFTC Rule 180.1.

The CFTC's February 2026 Advisory

On February 25, 2026, the CFTC issued an advisory addressing insider trading on prediction markets. The advisory discusses two recent enforcement actions by Kalshi. One enforcement action involved a political candidate who traded event contracts regarding his own candidacy. Another involved an employee of a company affiliated with a YouTube channel who traded event contracts related to the channel's videos. In both cases, Kalshi imposed financial penalties on the traders and suspended them from using its platform. While the CFTC has not, to date, pursued enforcement actions against either of the traders, the agency's advisory said that both individuals "potentially" violated Rule 180.1. The CFTC also indicated that it has "full authority to police illegal trading practices" on registered exchanges and that exchanges have "an independent duty pursuant to the core principles of the [CEA] to maintain audit trails, conduct surveillance, and enforce rules against prohibited practices."

Issues for Congress

The application of insider trading law to prediction markets raises several issues, including threshold questions regarding the status of event contracts under the CEA and CFTC rules. As discussed, CFTC Rule 180.1 applies to "swaps," among other instruments, and the CFTC has taken the position that many event contracts qualify as "swaps" under the CEA. There is ongoing litigation over whether sports event contracts qualify as "swaps" under the CEA, along with the jurisdictional implications of that status. In adjudicating motions for preliminary injunctions, two federal district courts have concluded that sports event contracts qualify as "swaps," while two other federal district courts have reached the opposite conclusion. Those decisions have been appealed. While the status of sports event contracts remains uncertain, it appears likely that some other categories of event contracts fall within the CEA's definition of "swap," which includes contracts that provide for payment 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."

Another issue of interest involves the relationship between CFTC Rule 180.1 and rules adopted by prediction markets. The comparative scope of Rule 180.1 and certain exchange rules concerning "insider trading" remains unsettled. Kalshi, for example, has adopted rules governing insider trading that prohibit a broader range of conduct than the misappropriation theory. Under Kalshi's rules, an individual cannot trade an event contract if he or she

- is an "Insider that has access to [MNPI] that is the subject of an Underlying of [the] Contract" (the rules define "Insider" to mean "any person who has access to or is in a position to access [MNPI] before such information is made publicly available");
- has "the ability to exert any influence on the subject of an Underlying of [the] Contract"; or
- is a "decision maker, either directly or indirectly, or has any influence, either directly or indirectly, no matter the scale and importance of the influence, on the outcome of the Underlying (event)."

Because breach of a duty is not an element of these prohibitions, Kalshi's rules appear to extend beyond the misappropriation theory. Whether the additional categories of trading that Kalshi prohibits could trigger liability under Rule 180.1 is unclear. As discussed, the CFTC has said that Rule 180.1 does not create a parity-of-information regime, explaining that "derivatives markets have long operated in a way that allows for market participants to trade on the basis of lawfully obtained [MNPI]." The CFTC's February 2026 advisory, however, appears to suggest that trading event contracts based on MNPI may violate Rule 180.1 even without misappropriation in certain circumstances. In the advisory, the CFTC said that a political candidate "potentially" violated Rule 180.1 by trading event contracts regarding his candidacy. Instead of invoking the misappropriation theory in connection with that case (as it did elsewhere in the advisory), the CFTC indicated that the candidate's conduct may have involved a "manipulative scheme or artifice to defraud" or "an act, practice or course of business that operates as a fraud." The agency did not, however, elaborate on the details of this theory. At least one commentator has questioned whether it would be viable as a matter of existing law. A federal prohibition of the full range of conduct barred by Kalshi's rules may thus require legislative changes.

Federal prosecutors may also scrutinize prediction-market activity for unlawful insider trading. The U.S. Attorney for the Southern District of New York has said that prosecutors in his office are reviewing the laws that might be used to pursue criminal charges involving insider trading on prediction markets. Those laws may include CFTC Rule 180.1 and the CEA provisions governing insider trading by federal government officials and employees. If certain types of event contracts are ultimately deemed to fall outside the scope of CFTC Rule 180.1, Title 18 may provide an alternative basis for prosecuting insider trading involving such contracts. The Second Circuit's decisions in *Blaszczak* and *Chastain*, however, may stand as an obstacle to Title 18 prosecutions targeting insider trading in certain types of event contracts—specifically, contracts involving federal agency decisions and information that lacks commercial value to private companies.

Several pieces of legislation regarding insider trading on prediction markets have been introduced in the 119th Congress.

H.R. 7004, the Public Integrity in Financial Prediction Markets Act of 2026, would make it unlawful for elected federal officials, House and Senate employees, political appointees, and employees of executive agencies to trade certain categories of prediction-market contracts (1) while in possession of MNPI relevant to those contracts, or (2) if they "may reasonably obtain" such MNPI in the course of their

official duties. The bill would apply to prediction-market contracts related to government policy, government action, or political outcomes.

H.R. 8076, the Preventing Real-time Exploitation and Deceptive Insider Congressional Trading (PREDICT) Act, would prohibit the President, Vice President, Members of Congress, dependent children and spouses of Members of Congress, congressional employees, political appointees, employees and officers of executive or independent agencies who occupy positions above GS-15 of the General Schedule, certain high-ranking members of the military, and judicial officers and employees from trading event contracts tied to "specific political events."

S. 4017, the End Prediction Market Corruption Act, would categorically prohibit the President, Vice President, and Members of Congress from trading event contracts. The legislation would bar senior executive branch officials from trading event contracts involving matters in which they "participate[] personally and substantially." The bill also would direct the CFTC to issue a rule to "restrict the inappropriate use of [MNPI], in breach of an express or implied duty not to use or disclose such [MNPI], as a means of making a profit through" the trading of event contracts.

S. 4060, the Prediction Markets Security and Integrity Act of 2026, would prohibit the use of MNPI to trade on prediction markets. The bill also would make it unlawful to (1) participate in prediction-market contracts that "present a conflict of interest," or (2) "engage in manipulation and deceptive practices that predetermine the outcome or otherwise materially interfere with the integrity and execution" of prediction-market contracts. In addition to these prohibitions, the legislation would impose various rules on prediction markets concerning permissible contracts, contract resolution, and the enforcement of market rules.

S. 4188, the Public Integrity in Financial Prediction Markets Act, would prohibit the President, Vice President, Members of Congress, employees of the House of Representatives or Senate, political appointees, and employees of executive or independent agencies from using MNPI derived from their positions to profit from the purchase or sale of prediction market contracts.

Other bills, while not addressing insider trading directly, would prohibit certain categories of event contracts. Sponsors of these bills have cited concerns regarding insider trading as one basis for prohibiting the relevant types of contracts.

H.R. 7840, the Event Contract Enforcement Act, would prohibit CFTC-registered exchanges from listing certain categories of event contracts, including contracts involving "conduct by or in any level or branch of the Federal Government or of any State or local government, including by or in any instrumentality or by any personnel of any level or branch of any such government."

The Banning Event Trading on Sensitive Operations and Federal Functions (BETS OFF) Act (S. 4115 and H.R. 7955) would prohibit CFTC-registered entities from listing certain categories of event contracts, including contracts based on events whose "primary underlying characteristic" is not "financial, commercial, or economic," if such events involve (1) "an action taken by any government, unit of government, intergovernmental organization, or government official," (2) an outcome that is under the "complete control" of any person, or (3) an outcome that is known by any person in advance.

The Stop Trading on Predictions and Corrupt Bets (STOP Corrupt Bets) Act of 2026 (S. 4226 and H.R. 8123) would prohibit CFTC-registered entities from listing event contracts involving

- political elections or contests;
- actions taken by the executive, legislative, or judicial branch of the U.S. government (subject to an exception for contracts that the CFTC determines are used for hedging or mitigating commercial risk);
- sporting events or contests; or

- any military action taken by the United States or a foreign country.

Author Information

Jay B. Sykes
Legislative Attorney

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