

GIBSON DUNN



Derivatives | Securities Regulation & Corporate  
Governance Update

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## The CFTC Advises Prediction Market Users: Insider Information Is Not Fair Game

*The CFTC re-affirms its intent to police insider trading on registered prediction markets.*

With prediction markets rapidly growing, the Commodity Futures Trading Commission's (CFTC) Enforcement Division issued a pointed reminder: trading in event contracts on prediction markets can violate exchange rules and/or constitute fraud or insider trading-type misconduct under federal law if the trader has direct or indirect influence over the outcome of the event or has confidential information and acts in breach of a pre-existing duty of trust and confidence, such as a duty owed to the trader's employer.

### What Happened?

The February 25, 2026 [CFTC enforcement advisory](#) relates to enforcement action taken by a CFTC-registered exchange but makes clear that engaging in unlawful trading practices in event contracts will not escape scrutiny from the CFTC itself, whose mandate includes enforcement against fraud, manipulation, and abusive practices in the U.S. derivatives markets, including registered prediction markets.

CFTC-registered exchanges, which include registered prediction markets known as "Designated Contract Markets," are self-regulatory organizations and have oversight responsibilities over the activities that occur on their platforms. In addition to supervising this exchange-level oversight, the CFTC retains enforcement authority over trading activities on the exchanges it regulates. The

advisory cited one exchange's internal enforcement program's handling of two matters. In one matter, a political candidate traded an event contract tied to his own candidacy in violation of exchange rules because the exchange alleged that the trader had direct or indirect influence over the outcome of the event. In another, the exchange penalized a video editor who allegedly traded an event contract on upcoming content that had not yet been released, enabling highly successful trades on the alleged basis of material, nonpublic information that was misappropriated from the trader's employer in violation of a pre-existing duty of trust and confidence.

In addition to noting these exchange-level sanctions, the enforcement advisory underscored that the CFTC has *full authority* to police illegal trading practices (including those on exchanges) and that such conduct may violate among other things Section 6(c)(1) of the Commodity Exchange Act and CFTC Rule 180.1, which prohibit manipulative schemes and trading based on misappropriated confidential information. The enforcement advisory highlighted that the CFTC's Enforcement Division "will investigate and prosecute violations" and is coordinating with exchanges regarding "referrals of appropriate potential violations" to the Enforcement Division.

### **Why This Matters**

- **Using confidential company information in prediction markets can violate a pre-existing duty of confidentiality to the company.**

Using internal, confidential, or time-sensitive company information to profit on prediction markets can create significant personal and legal risk for individuals. In the course of their employment, employees often encounter nonpublic information subject to a duty of confidentiality and/or subject to requirements to not utilize such information for personal benefit, either pursuant to various company policies or under common law or both. For example, company codes of conduct or common law duties may prohibit employees and other covered persons from:

- using employer confidential information for personal gain,
- misusing employer resources,
- engaging in conflicts of interest, or
- acting in ways that harm the company's reputation.

If an employee's trading on prediction markets violates company policies or common law duties, such trading could not only breach duties to the trader's employer, for which the employer could take punitive actions, but also result in violation of exchange rules and federal laws. The same types of restrictions, and thus same consequences, may apply to independent contractors, service providers, and others with access to confidential or proprietary information arising through a relationship that supports a duty of trust and confidence.

- **Trading on such confidential information could also potentially expose individuals to regulatory scrutiny.**

The Enforcement Division, in its advisory, also made clear that (1) exchanges have been, and are expected to, enforce their rules and the CFTC's rules with respect to trading in event contracts, and (2) the CFTC is looking at trading in event contracts as an area for potential investigation. This could create real legal risks for individuals involved in inappropriate activities.

The advisory, for example, cited CFTC Rule 180.1, which is broad and modeled on SEC Rule 10b-5,<sup>[1]</sup> and referenced as an illegal practice “misappropriation of confidential information in breach of a pre-existing duty of trust and confidence to the source of the information (commonly known as ‘insider trading’) ...” The Enforcement Division also cited other illegal disruptive trading practices including pre-arranged, noncompetitive trading and wash sales, disruptive trading, and general fraud and market manipulation.

- **Influence over an outcome is a red flag.**

If an individual's role allows that person to influence the outcome of an event (e.g., campaign work, corporate announcements, event planning, content production), trading on related event contracts poses significant risks that such trading could be found to violate not only workplace policies but also exchange rules and federal law, as outlined above. As referenced in the [CFTC's advisory](#), one trader in a recent exchange action was penalized *specifically because* he had direct or indirect influence over the outcome.

### **Bottom Line: Improper Event Contract Activity Will Attract Scrutiny**

Like trading on any financial market, both the CFTC and CFTC-regulated exchanges prohibit the misuse of information. The CFTC has now re-affirmed that it has full authority to police illegal trading practices on exchanges and that prediction market users involved in inappropriate trading can face regulatory consequences.

In addition, many companies maintain codes of conduct or other policies that prohibit employees and others from engaging in conduct such as that discussed above. Companies may well find it helpful to specifically address the applicability of their policies to prediction market trading, both to assist their employees in avoiding prohibited or unlawful conduct and to protect the companies' reputation. And the CFTC has been explicit that exchanges (e.g., designated contract markets) have a duty to maintain audit trails, conduct surveillance, and enforce their rules against illegal practices.

If you are interested in discussing these developments, Gibson Dunn's lawyers are available to assist with any questions you may have.

<sup>[1]</sup> SEC Rule 10b-5, promulgated under Section 10(b) of the Securities Exchange Act of 1934, prohibits the use of any manipulative or deceptive device in connection with the purchase or sale of any security. The Rule makes it unlawful (a) to employ any device, scheme, or artifice to defraud; (b) to make any untrue statement of a material fact or to omit a material fact necessary to make statements made not misleading; or (c) to engage in any act, practice, or course of business that operates as a fraud or deceit upon any person, in each case in connection with the

purchase or sale of any security. 17 C.F.R. § 240.10b-5 (2025); see also Securities Exchange Act of 1934 § 10(b), 15 U.S.C. § 78j(b) (2024).

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