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Recent Developments in the Regulation of Prediction Markets:

Federal Preemption, State Gaming Laws, and the CFTC's Regulatory Approach

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I. Introduction

Prediction markets (commonly referred to as "***event contracts***") have experienced remarkable growth in recent years, emerging as platforms where participants can trade on the outcomes of real-world events ranging from elections to economic indicators to sporting events. These platforms operate as federally registered exchanges offering event contracts to retail and institutional participants alike. However, this expansion has attracted extensive scrutiny from state regulators, many of whom have asserted that these contracts constitute unlawful gambling under state law. As of the date of this publication, numerous states have issued cease-and-desist letters and initiated litigation and even criminal charges against prediction market operators, raising fundamental questions about the scope of federal preemption under the Commodity Exchange Act (the "***CEA***").

This paper examines these developments in three parts: first, the Commodity Futures Trading Commission's (the "***CFTC***" or the "***Commission***") evolving regulatory approach under Chairman Michael S. Selig, including the CFTC's March 12, 2026 Division of Market Oversight ("***DMO***") prediction markets advisory (the "***Advisory***") and Advance Notice of Proposed Rulemaking ("***Notice***"); second, the ongoing event contracts litigation across federal judicial districts; and third, a recent CFTC Division of Enforcement advisory concerning trading misconduct on prediction market platforms.

II. The CFTC's Regulatory Framework Under Chairman Selig

Since taking office in December 2025[1] as Chairman of the CFTC, Chairman Selig has advocated a principles-based approach to regulation that prioritizes regulatory clarity and calibrates regulatory intervention to the minimum level necessary. In his landmark address at the FIA Global Cleared Markets

[1] Press Release, Willkie Alum Michael Selig Confirmed as 16th CFTC Chairman (Dec. 19, 2025), available at https://www.willkie.com/news/2025/12/willkie-alum-michael-selig-confirmed-as-16th-cftc-chairman.

Conference titled “The Next Era of American Markets Leadership,” Chairman Selig emphasized that the Commission will refrain from setting policy through enforcement actions and is committed to providing the “minimum effective dose” of regulation.[2]

At the same time, Chairman Selig has vigorously defended the CFTC’s role as the principal regulator of prediction markets and its exclusive jurisdiction over prediction markets against state-level challenges. In an op-ed published in *The Wall Street Journal*, Chairman Selig addressed ongoing litigation concerning state authorities’ attempts to apply state gaming and similar laws to CFTC-registered exchanges listing event contracts.[3] Chairman Selig asserted that such state actions are inconsistent with existing case law and precedent on federal preemption and that the event contracts at issue are commodity derivatives that fall entirely within the CFTC’s oversight.[4] He has reiterated that federal courts have historically upheld the Commission’s sole authority over derivatives and have acknowledged a broad definition of “commodity.”[5] The op-ed accompanied the CFTC’s filing of an *amicus curiae* brief in the U.S. Court of Appeals for the Ninth Circuit in support of Nadex’s (d/b/a Crypto.com/Derivatives North America) (“***Crypto.com***”) appeal against the State of Nevada, in which the CFTC reaffirmed that event contracts listed on CFTC-registered exchanges are subject to the Commission’s exclusive jurisdiction.[6] Former CFTC Chairman J. Christopher Giancarlo and other CFTC experts expressed this view in a separate *amicus* brief in the same appeal.[7]

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2 Michael S. Selig, Chairman, Commodity Futures Trading Comm’n, *The Next Era of American Markets Leadership* (Mar. 9, 2026), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig2 (hereinafter, “***FIA Speech***”).

3 Michael S. Selig, *States Encroach on Prediction Markets*, Wall St. J. (Feb. 16, 2026), available at https://www.wsj.com/opinion/states-encroach-on-prediction-markets-6eb43af9?gaa_at=eafs&gaa_n=AWEtsqcZ7b3MJClwhzJOofwwq94DnE2gbDX7UoL1cbzHylzMYGEdUAugWu-Z&gaa_ts=69a08fea&gaa_sig=T_tZzoKlrGjLbyEaXiY3R2do9tsM8A3-glUxhgXx9viY1MxJCAJRJyCtMfiC-gy_1bojAJlDStpb7UZopLAN3g%3D%3D.

4 *Id.*

5 *See* FIA Speech, *supra* note 2.

6 Brief for CFTC as Amicus Curiae Supporting Appellant, *N. Am. Derivatives Exch., Inc. v. State of Nevada*, No. 25-7187 (9th Cir. Feb. 17, 2026) (hereinafter, “***CFTC Amicus Brief***”).

7 Brief for Former Federal Government Officials and Experts on the Scope of CFTC Jurisdiction as Amici Curiae Supporting Appellant, *N. Am. Derivatives Exch., Inc. v. State of Nevada*, No. 25-7187 (9th Cir. Feb. 3, 2026) (hereinafter, “***Willkie Amicus Brief***”).

Beyond defending the CFTC's jurisdictional prerogatives, Chairman Selig has also launched several initiatives to provide clearer rules governing prediction markets. At a Joint Event on Harmonization held by the CFTC and the SEC on January 29, 2026, Chairman Selig announced that the CFTC would withdraw a 2024 proposed rule that would have prohibited certain event contracts tied to sports and politics and would propose new rules designed to provide clear regulations to govern prediction markets while supporting the "responsible development of event contracts markets."[8] In his landmark address at the FIA Global Cleared Markets Conference, Chairman Selig unveiled his comprehensive agenda for the Commission and previewed the below CFTC actions.[9]

A. CFTC Issues Advisory and Advanced Notice of Proposed Rulemaking

On March 12, 2026, the CFTC issued two coordinated actions that represent the most significant regulatory developments for prediction markets to date: (i) a DMO staff advisory to designated contract markets ("***DCM***") that sets near-term supervisory expectations for listing and overseeing event contracts and (ii) an advance notice of proposed rulemaking inviting public comment on how the CEA and existing CFTC regulations should apply to event contracts traded on prediction markets, and whether any CFTC regulations should be amended to address unique aspects of event contracts trading.[10]

The Advisory addresses contract design and manipulation analysis, including the importance of pre-submission engagement with sports leagues for sports-related contracts; product submission requirements; and self-regulatory obligations under DCM statutory Core Principles 3, 4, and 12.[11]

The Notice signals a principles-based trajectory for prediction markets, previewing possible guidance or rule amendments on exchange and clearinghouse core principles, manipulation and surveillance standards, position-limit frameworks, classification and reporting, and public interest determinations under

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8 Chairman Michael S. Selig, *The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance* (Jan. 29, 2026), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig1 (hereinafter, "***Project Crypto Speech***").

9 FIA Speech, *supra* note 2.

10 Div. of Mkt. Oversight, Commodity Futures Trading Comm'n, Prediction Markets Advisory, CFTC Staff Letter No. 26-08 (Mar. 12, 2026) (hereinafter, "***CFTC Advisory***"); Advance Notice of Proposed Rulemaking; Prediction Markets, Commodity Futures Trading Comm'n (Mar. 12, 2026) (hereinafter, "***CFTC Notice***").

11 CFTC Notice, *supra* note 10; 7 U.S.C. § 7(d)(3), (4), (12).

Section 5c(c)(5)(C).[12] The CFTC seeks comment on how DCM, derivatives clearing organization ("***DCO***"), and swap execution facility ("***SEF***") core principles should apply to event contracts, including contract design and susceptibility to manipulation, market surveillance, position limits, financial integrity and customer protection, and risk management.[13]

The Notice also addresses Section 5c(c)(5)(C) public interest determinations. Under Section 5c(c)(5)(C)(i) of the CEA, the Commission may determine that certain event contracts listed by DCMs or SEFs are contrary to public interest if the contract involves: "(I) activity that is unlawful under any Federal or State law; (II) terrorism; (III) assassination; (IV) war; (V) gaming; or (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest."[14] The Notice asks what factors should inform these public interest determinations, how to distinguish gaming from other activities, whether event contracts are classified as swaps or futures under the CEA, and whether the underlying events fall within the "excluded commodity" definition.[15]

Finally, the Notice highlights the unique information aggregation function prediction markets serve, asking whether allowing trading by persons with asymmetric information advances the public interest, and how to balance this against risks of manipulation and misuse of inside information.[16] This inquiry signals the Commission's continued attention to applying its unique "insider trading" doctrine (discussed in Section IV below) to event contracts.

The two releases work in tandem to shape the immediate and long-term trajectory of prediction markets regulation. Market participants should consider submitting comments to assist the Commission in identifying the contours of permissible conduct and compliance obligations for event contracts, as meaningful input will help shape the prediction markets industry for years to come. Comments in response to the Notice are due April 30, 2026.

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12 CFTC Notice, *supra* note 10.
13 *Id.*
14 7 U.S.C. § 7a-2(c)(5)(C)(i) (emphasis added).
15 CFTC Notice, *supra* note 10.
16 *Id.*

III. Federal Preemption and State Gambling Laws: The Emerging Judicial Landscape

A multitude of courts across the country are considering whether an event contract on a sporting match is a novel derivative subject to federal commodity derivatives law or is instead a bet governed by state gambling law. Litigation pending in Arizona, Connecticut, Iowa, Maryland, Massachusetts, Nevada, New Jersey, New York, Ohio, Tennessee, and Utah asks whether the CEA preempts state gambling laws as applied to sports and event contracts offered by companies like KalshiEx LLC ("***Kalshi***"), Crypto.com, Robinhood Markets, Inc. ("***Robinhood***") and Coinbase Financial Markets, Inc. ("***Coinbase***"). Several other states have issued cease-and-desist letters to these companies.[17] At issue is whether such contracts, when listed on federally regulated exchanges, fall under the CFTC's exclusive jurisdiction and benefit from federal preemption, or remain subject to state gaming laws.

The wave of litigation concerning event contracts focuses on platforms such as Kalshi and Crypto.com, which are registered with the CFTC as DCMs. Kalshi's platform enables users to take positions (either "yes" or "no" positions) on a variety of events, including elections, sporting events, and other matters relevant to financial markets, the economy, and commerce, amongst other topics. As noted, state authorities have taken the position that the offering of these contracts constitutes unlicensed betting in violation of state gambling laws. Each of Kalshi, Crypto.com, Robinhood, and Coinbase have sought to enjoin these states from enforcing their gaming laws, arguing that the states' gaming laws are preempted by the CEA.

A motion for a preliminary injunction requires the plaintiff to establish four factors.[18] The courts' analyses and decisions in the Kalshi and Crypto.com cases hinged on the first factor: whether the plaintiff is likely to succeed on the merits. Kalshi and Crypto.com each had to establish that it had a likelihood of success on the merits of its claim that the states' laws regulating sports betting have been preempted by the

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[17] As of the date of this publication, eleven states (Arizona, Connecticut, Illinois, Maryland, Michigan, Montana, Nevada, New Jersey, New York, Ohio, and Tennessee) have sent cease-and-desist letters to Kalshi.

[18] A plaintiff seeking a preliminary injunction must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the plaintiff's favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008).

CEA. Preemption can occur as (i) express preemption; (ii) field preemption; and (iii) conflict preemption. Express preemption occurs when a federal law explicitly states that it overrides or replaces state laws on a particular subject. Field preemption occurs when federal regulation is so comprehensive that it can be inferred that Congress intended to "occupy the field" and leave no room for state regulation. Conflict preemption exists when there is conflict between state laws and federal laws, such that compliance with both federal and state law is impossible.

Courts have analyzed preemption in the cases in various ways. Some courts' analyses focused on whether the event contracts at issue were "swaps." In a case brought by Kalshi against the State of Nevada, Judge Andrew P. Gordon denied Kalshi's motion for preliminary injunction and concluded that the event contracts issued by Kalshi were not swaps because the event contracts were dependent on an outcome of an event rather than the event itself, and Kalshi at times advertised itself as a platform for sports betting.[19] Judge Gordon, in a case brought by Crypto.com to enjoin Nevada from enforcing its gaming laws against Crypto.com, also denied Crypto.com's motion for preliminary injunction. Crypto.com filed a Notice of Appeal in the U.S. Court of Appeals for the Ninth Circuit.[20] The briefing for the appeal is still ongoing, with the CFTC scheduled to participate in oral argument as *amicus curiae* following on its brief discussed above.

However, other courts' analyses focused on whether Section 2(a)(1)(A) of the CEA grants the CFTC exclusive jurisdiction over event contracts. In relevant part, Section 2(a)(1)(A) of the CEA states:

> The Commission shall have exclusive jurisdiction . . . with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty"), and transactions involving swaps or contracts of sale of a commodity for future delivery . . . traded or executed on a contract market . . . or a swap

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19 *KalshiEX LLC v. Hendrick*, No. 2:25-cv-01287 (D. Nev. Sept. 18, 2025).

20 *North American Derivatives Exchange v. Nevada Gaming Control Board*, No. 2:25-cv-00978 (D. Nev. Oct. 14, 2025).

> execution facility . . . or any other board of trade, exchange, or market and transaction subject to regulation by the Commission. . . . Except as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State.[21]

The courts have been split on their decisions on CEA preemption. The divergent rulings have created substantial uncertainty for market operators and market participants that may persist unless and until addressed by the Supreme Court, Congressional action, or further CFTC action. As of the date of this publication, Kalshi has filed appeals in the U.S. Courts of Appeal for the Fourth,[22] Sixth,[23] and Ninth[24] Circuits, after district courts in those circuits denied Kalshi's motions for a preliminary injunction. New Jersey and Tennessee gaming authorities have filed appeals in the U.S. Courts of Appeal for the Third Circuit[25] and the Sixth Circuit,[26] respectively, after district courts granted Kalshi's motions for preliminary injunction against those state regulators. Briefings in the Kalshi appellate-level cases are still ongoing.

A. Amicus Briefs in Support of Crypto.com

As noted, on February 3, 2026, former CFTC Chairman J. Christopher Giancarlo and other experts on the scope of CFTC jurisdiction filed an *amicus* brief in support of Crypto.com in the U.S. Court of Appeals for the Ninth Circuit.[27] On February 17, 2026, the CFTC also filed an *amicus* brief in support of Crypto.com in the same appeal.[28] Both briefs emphasize the CFTC's exclusive jurisdiction over event contracts on CFTC-registered DCMs and argue that the event contracts at issue constitute "swaps" under the CEA. In addition, both briefs detail the extensive CFTC regulatory framework governing event

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21 7 U.S.C. § 2(a)(1)(A).
22 *KalshiEX LLC v. Bradshaw*, No. 25-2087 (4th Cir. filed Sept. 30, 2025).
23 *KalshiEX LLC v. Schuler*, No. 2:25-cv-01165 (S.D. Ohio filed Mar. 20, 2026).
24 *KalshiEX LLC v. Hendrick*, No. 25-7245 (9th Cir. filed Oct. 2, 2025).
25 *N.J. Div. of Gaming Enf't v. KalshiEX LLC*, No. 25-3184 (3d Cir. filed Nov. 5, 2025).
26 *KalshiEX LLC v. Orgel*, No. 3:26-cv-00034 (M.D. Tenn. filed Mar. 20, 2026).
27 Willkie Amicus Brief, *supra* note 7.
28 CFTC Amicus Brief, *supra* note 6.

contracts, including the CFTC's robust regime for registration and ongoing supervision of DCMs and oversight processes for contracts traded on DCMs.

B. Tribal Gaming Interests and Related Litigation

Several Federally recognized Native American tribes have also filed suit against Kalshi and Robinhood, alleging that the companies are engaging in illegal sports gambling on tribal lands in violation of the Indian Gaming Regulatory Act ("***IGRA***") and the Tribes' Tribal-State Gaming Compacts with each of California and Wisconsin.[29] The tribes seek to enjoin Kalshi and Robinhood from continuing operations on their reservations. On November 12, 2025, a California district court denied a motion for a preliminary injunction filed by three California tribes.[30] The court held that the Unlawful Internet Gambling Enforcement Act ("***UIGEA***"), rather than IGRA, governs intrastate event contracts.[31] The UIGEA contains an express carveout for any transaction "conducted on or subject to the rules of a registered entity" under the CEA.[32] The tribes appealed the court's decision in the U.S. Court of Appeals for the Ninth Circuit. The briefing is still ongoing.

IV. CFTC's Enforcement Advisory on Trading Misconduct in Prediction Markets

On February 26, 2026, the CFTC's Division of Enforcement (the "***Division***") issued an enforcement advisory concerning prediction markets, highlighting two disciplinary cases involving misuse of nonpublic information and fraud in connection with trading on Kalshi. The Division's release emphasized the CFTC's authority to investigate and bring enforcement actions against "insider trading" and other fraud, as well as manipulation and other prohibited practices, occurring on event contract platforms. The cases were addressed through Kalshi's internal disciplinary committee.

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29 *Ho-Chunk Nation v. Kalshi*, No. 3:25-cv-00698 (D. Wis. Aug. 20, 2025); *Blue Lake Rancheria v. Kalshi*, et al., No. 3:25-cv-06162 (N.D. Cal. Jul. 22, 2025).

30 *Blue Lake Rancheria v. Kalshi*, et al., No. 3:25-cv-06162 (N.D. Cal. Nov. 12, 2025) (order denying preliminary injunction).

31 *Id.*

32 31 U.S.C. §§ 5361-5367.

A. Case 1: Political Candidate Self-Trading

In May 2025, social media videos emerged depicting a political candidate apparently trading on his own candidacy on Kalshi. Kalshi's compliance team contacted the candidate that same day. The candidate acknowledged that he knew these trades were improper and violated Kalshi's rules prohibiting trading in a contract where the trader has direct or indirect influence over the outcome. Kalshi imposed a $2,246.36 penalty (consisting of $246.36 in disgorgement and a $2,000 penalty), along with a five-year suspension from direct or indirect exchange access. The CFTC identified this conduct as potentially violating prohibitions on manipulation and fraud under Section 6(c)(1) of the CEA and Commission Rule 180.1(a)(1) and (3).

B. Case 2: Employer's Material Nonpublic Information

In August and September 2025, an individual traded a prediction market contract related to a YouTube channel while maintaining an employment relationship with the channel. Kalshi discovered that the trader was an editor for the YouTube channel and concluded that the trader likely had access to material nonpublic information related to such trades, in violation of Kalshi's rules. Kalshi imposed a $20,397.58 penalty (consisting of $5,397.58 in disgorgement and a $15,000 penalty), along with a two-year suspension from direct or indirect exchange access. The CFTC identified this conduct as potentially violating prohibitions on misappropriation of confidential information in breach of a pre-existing duty of trust and confidence under Section 6(c)(1) of the CEA and Commission Rule 180.1(a)(1) and (3).

Kalshi case (2) has parallels with prior Commission actions pursuing trading on the basis of material nonpublic information belonging to the defendant or respondent's employer, brokerage customer, or other principal, in breach of a duty of trust and confidence to that principal. For example, the advisory cited *CFTC v. Clark*,[33] a recently settled case in which a futures trader employed by an energy company misappropriated his employer's material nonpublic information (e.g., order and trade information) for

[33] Complaint, *Commodity Futures Trading Comm'n v. Clark*, No. 4:22-cv-00365 (S.D. Tex. Feb. 3, 2022); Consent Order, *id.* (Jan. 29, 2026).

personal benefit. Clark disclosed this information in a "tipping" chain to allow the ultimate tippee to profit from trading against Clark's employer on the basis of the information (and pass a share of the proceeds back to Clark).

Notably, in *In re Trafigura Trading LLC* ("***Trafigura***"), the Commission charged Trafigura with, among other things, misappropriating material nonpublic information obtained from another market participant in violation of Section 6(c)(1) of the CEA and Commission Rule 180.1.[34] Specifically, Trafigura improperly obtained information from an employee of a Mexican trading entity and traded while in knowing possession of this information.[35] Trafigura was ordered to pay a civil monetary penalty of $55 million, though there were also other charges in the matter.[36] The Trafigura case underscores that the prohibitions illustrated by Kalshi case (2) above—involving an employee trading on his employer's information—would equally apply to a third party who receives and trades on that misappropriated information. For example, if the YouTube channel editor in Kalshi case (2) had instead shared material nonpublic information with an outside acquaintance who then traded on that information (e.g., similar to the tipping chain in Clark), that acquaintance could also face liability under Commission Rule 180.1, depending on the facts and circumstances.

The requirement of misappropriation of material nonpublic information belonging to another in breach of a duty to that other has repeatedly been recognized as foundational to the CFTC's "insider trading"-type cases under Section 6(c)(1) of the CEA and Commission Rule 180.1. In promulgating Rule 180.1, the CFTC "recognize[d] that unlike securities markets, derivatives markets have long operated in a way that allows for market participants to trade on the basis of lawfully obtained material nonpublic information."[37] This would generally include, among other things, a market participant's own material nonpublic information (for example, an agricultural company's internal nonpublic forecasts of its own crop yields, or an oil company's similar projections of its own oil production).

34 *In re Trafigura Trading LLC*, Comm. Fut. L. Rep (CCH) ¶35,391 (CFTC Jun. 17, 2024).
35 *Id.*
36 *Id.*
37 76 Fed. Reg. 41398, 41403 (July 14, 2011).

In a recent interview concerning prediction markets, Chairman Selig addressed differences between the securities and commodity derivatives laws' respective "insider trading" doctrines, explaining that the informational asymmetries in commodity derivatives markets generally differ from those in the securities markets—where a company and its insiders often have market-moving information about the company itself and have a duty to shareholders to refrain from trading on that information—but that informational asymmetries may exist in commodity derivatives markets, as is sometimes the case with respect to event contracts.[38] He noted that the CFTC is evaluating the nuances of these differences in doctrines for policing prediction markets, including in the case of persons that can influence a contract's outcome, such as members of a sports league—or a candidate for office, as in Kalshi case (1) above. In light of the Commission's active consideration of the application of its "insider trading" doctrine in such cases, it is sensible that the advisory is centered on manipulation rather than "insider trading" in addressing that case.[39]

By contrast, an employee trading on *his or her employer's* proprietary information, as in Kalshi case (2) above, presents a much more familiar fact pattern from prior misappropriation "insider trading" cases, as the advisory observed and as discussed above.[40]

It is also worth noting that DCMs, in their capacity as self-regulatory organizations, have the authority to and are expected to design and tailor their rules to promote market integrity and protect market participants in light of the particular products and participants on their respective platforms. Such rules may be more specific than CEA or CFTC rules that may also apply to the conduct, which are often drafted at a high level but fleshed out in the CFTC rulemaking record and case law. For example, Kalshi case (1) charged a violation of a specific Kalshi rule prohibiting trading in a contract where the trader has direct or

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38 Odd Lots, *New CFTC Chairman Michael Selig on How to Regulate Prediction Markets* (Feb. 12, 2026), available at https://www.bloomberg.com/news/videos/2026-02-12/new-cftc-chairman-on-how-to-regulate-prediction-markets-video.

39 *See, e.g.*, Matt Levine, *Kalshi Found Some Insider Traders*, Bloomberg op. (Feb. 25, 2026), available at https://www.bloomberg.com/opinion/newsletters/2026-02-25/kalshi-found-some-insider-traders (noting that the candidate subject to this enforcement action "presumably had no duty of trust and confidence to anyone else about his candidacy").

40 In addition to *Clark*, *see also*, *e.g.*, *In re Motazedi,* [2015-2016 Transfer Binder] Comm. Fut. L. Rep (CCH) ¶33,599 (CFTC Dec. 2, 2015) (consent order) (settlement of claims under, *inter alia*, Section 6(c)(1) and Rule 180.1 against a gasoline trader for misappropriating his employer's information to trade against and trade ahead of his employer).

indirect influence over the outcome, although there is no CEA provision or CFTC rule containing such a specific prohibition (but as noted, the CFTC cautioned that the conduct could potentially violate broader prohibitions on manipulation and fraud under Section 6(c)(1) of the CEA and Commission Rule 180.1(a)(1) and (3)). Once an exchange adopts such a specific prohibition in its rulebook, the statutory core principles applicable to DCMs and CFTC rules thereunder require the DCM to enforce the rule unless and until it is changed.[41]

C. The Enforcement Advisory: Implications for Market Participants

The advisory made clear that the CFTC has fulsome authority to police misconduct related to event contracts on DCMs and will exercise that authority in appropriate cases. Among the illegal trading practices identified as potentially relevant are:

(1) Misappropriation of confidential information in breach of a duty of trust and confidence to the information's source (commonly referred to as "insider trading") (pursuant to Section 6(c)(1) of the CEA and CFTC Rule 180.1(a)(1) and (3));

(2) Pre-arranged non-competitive trading, wash sales, and other prohibited trading practices, including disruptive trading (pursuant to Section 4c(a) of the CEA and CFTC Regulation 1.38(a)); and

(3) Fraud and manipulation (pursuant to various provisions of the CEA).

The advisory further highlighted the DCMs' independent duty to maintain audit trails, conduct market surveillance, and enforce rules against prohibited practices. The Division stated that it will continue coordinating with DCMs regarding their enforcement dockets and referrals for Division investigation of potential violations where appropriate.

As the foregoing discussion illustrates, the pace of regulatory and market developments in prediction markets is extraordinary; industry participants should closely monitor further actions by the

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41 *See, e.g.*, 7 U.S.C. § 7(d)(2) (Compliance with rules); 17 C.F.R. Part 38, Subpart C (requiring a DCM to "establish, monitor, and enforce compliance with" its rules, including rules prohibiting, among other things, "fraudulent trading" and "any other trading practices that a designated contract market deems to be abusive").

Commission, new judicial decisions, and potential Congressional action as this dynamic area of derivatives law continues to evolve.