Insider Trading Enforcement: Is the CFTC Willing and Able to Regulate in Today's Environment?

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Regulation by Enforcement is Over - Now What?

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Introduction

As this article is being written, there are a myriad of media reports regarding what the Wall Street Journal described as "a mysterious flurry of trading activity in oil and S&P500 futures about 15 minutes before [President] Trum de-escalated tensions with Iran with a Monday [March 23, 2026] post of Truth Social, which sent oil prices tumbling and stocks rallying." Alexander Osipovich & Jack Pitcher, *The Well-Time Trades Made Moments Before Trump's Policy Suprises*, WALL STREET JOURNAL (Mar. 25, 2026).[1] The Journal further reported that "[d]uring the two-minute period from 6:49 a.m. to 6:51 a.m. ET, more than $760 million worth of Brent and West Texas Intermediate oil futures changed hands, according to Dow Jones Market Data. A similar burst of activity took place at the same time in S&P 500 futures." *Id*. Although by far the largest in magnitude, the trading activity described here is by no means the only example of suspiciously-timed trades in advance of government actions. The Journal describes four other incidents in the stock markets, futures markets, and prediction markets. *Id*. Despite numerous calls for investigations, there has been no public announcement of any investigations by the Commodity Futures Trading Commission (CFTC). The purpose of this article is to describe the basis for and scope of the CFTC's enforcement jurisdiction with respect to insider trading, including limitations on its authority to take action on insider trading.

The Origins of the CFTC's Enforcement Authority in Connection With Insider Trading

It used to be common to hear that there is no such thing as insider trading in the commodity futures markets. After all, insider trading is an inherent feature in such markets. Farmers, for example, place hedge trades in the futures market based on "inside" knowledge about their crops, inventory, and upcoming sales or purchases. Indeed, it is precisely this type of "insider trading"

[1] https://www.wsj.com/finance/investing/the-well-timed-trades-made-moments-before-trumps-policy-surprises-36e6963a?mod=hp_lead_pos11.

that allows the futures markets to serve as a price discovery and risk management tool. Prior to 2010, the Commodity Exchange Act's ("CEA") only insider trading prohibition related to misuse of information by the CFTC's own personnel and personnel of the exchanges and self-regulatory organizations overseen by the CFTC. CEA §§ 9(d) and 9(e), 7 U.S.C. §§ 13(d) and (13(e).

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. In 2011, 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.

When adopting Rule 180.1, the CFTC made clear that "a person who engages in deceptive or manipulative conduct in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, *for example by trading on the basis of material nonpublic information in breach of a pre-existing duty (established by another law or rule, or agreement, understanding, or some other source), or by trading on the basis of material nonpublic information that was obtained through fraud or deception, may be in violation of final Rule 180.1*." CFTC, *Final Rule: Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation*, 76 FR 41398, 41403 (July 14, 2011) (emphasis added). At the same time, however, the CFTC stressed that "it is not a violation of final Rule 180.1 to withhold information that a market participant lawfully possesses about market conditions. The failure to disclose such market information prior to entering into a transaction, either in an anonymous market setting or in bilateral negotiations, will not, by itself, constitute a violation of final Rule 180.1." *Id*. at 41402.

Consistent with its guidance when adopting Rule 180.1, the CFTC has relied upon Rule 180.1 to bring insider trading actions under a misappropriation theory. Most of these actions have involved employees of trading firms accused of using material nonpublic information learned in the course of their employment to trade for their personal accounts. For example, the very first enforcement action brough by the CFTC accused Arya Motazedi, a proprietary gasoline and energy trader at public company in Chicago, of trading on confidential, proprietary information concerning his employer's proprietary trading in energy commodities (*e.g*., timing, amounts and prices) – including by frontrunning his employer's orders.[2] To date, the CFTC's enforcement actions have all involved some form of misappropriation – steering clear of the "classical theory" of insider trading, *i.e*., trading by a company insider in breach of a duty owed to trading counterparties. *See* Jay Sykes, *Prediction Markets and Insider Trading Law*, Congressional Research Service: Legal Sidebar (Mar. 18, 2026).[3]

The CFTC's Enforcement Authority Regarding Misuse of Information Obtained From the Federal Government

The expansion of the CFTC's anti-fraud authority was not the only provision in Dodd-Frank that involves insider trading. Dodd-Frank also expanded the existing prohibition on misuse of nonpublic information by personnel of the CFTC, self-regulatory organizations, and exchanges to apply to misuse of nonpublic information from any federal government source. This provision targets government personnel who impart confidential government information "in [their] personal capacity and for personal gain with intent to assist another person, directly or indirectly, to use the

[2] *In the Matter of Arya Motazedi*, CFTC Docket No. 16-02 (Dec. 2, 2015).

[3] https://www.congress.gov/crs-product/LSB11406.

information to enter into" trades CEA § 4c(a)(4)(A), 7 U.S.C. § 6c(a)(4)(A). It also targets persons who receive such confidential information imparted by government employee and trade on that information. CEA § 4c(a)(4)(B), 7 U.S.C. § 6c(a)(4)(B). Finally, Dodd-Frank also made it unlawful to "steal, convert, or misappropriate" confidential federal government information in order to use such information (or assist others) to enter into trades. CEA § 4c(a)(4)(C), 7 U.S.C. § 6c(a)(4)(C).

The CFTC has yet to bring any enforcement actions pursuant to Section 4c(a)(4) of the CEA. Notably, however, the CFTC did bring an enforcement action against an exchange and two of its employees asserting that the employees had disclosed material, nonpublic information for personal gain in violation of Section 9(e)(1) of the CEA and Rule 1.59(d). Section 9(e) makes it a felony for an person:

(1) who is an employee, member of the governing board, or member of any committee of a board of trade, registered entity, swap data repository, or registered futures association, in violation of a regulation issued by the Commission, willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon, or swaps, on the basis of, or willfully and knowingly to disclose for any purpose inconsistent with the performance of such person's official duties as an employee or member, any material nonpublic information obtained through special access related to the performance of such duties; or

(2) willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of any material nonpublic information that such person knows was obtained in

> violation of paragraph (1) from an employee, member of the governing board, or member of any committee of a board of trade, registered entity, or registered futures association.

Rule 1.59 similarly prohibits personnel of self-regulatory organizations from "(i) Trad[ing] for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information obtained through special access related to the performance of such person's official duties as an employee, governing board member, committee member, or consultant; or (ii) Disclos[ing] for any purpose inconsistent with the performance of such person's official duties as an employee, governing board member, committee member, or consultant any material, non-public information obtained through special access related to the performance of such duties. 17 C.F.R. § 1.59(d)(1). It further provides that no person shall trade on the basis of such material non-public information that such person knows was obtained from SRO personnel in violation of the rule. 17 C.F.R. § 1.59(d)(2).

In its action against NYMEX and its two employees, the CFTC alleged that the two employees worked on NYMEX's ClearPort Facilitation Desk where they were responsible for facilitating customer transactions reported for clearing through the ClearPort System. *U.S. Commodity Futures Trading Commission v. Byrnes*, 58 F. Supp. 3d 319, 321 (S.D.N.Y. 2014) (describing allegations in CFTC's complaint and denying NYMEX's motion to dismiss). This work gave them access to nonpublic information about crude oil options and natural gas futures trades which, according to the CFTC, the employees shared with a commodities broker. *Id*. This information includes the identities of buyers and sellers, the number of contracts traded, the prices and structure of transactions, and trading strategies of certain market participants. *Id*. In return, the broker provided the employees with meals, drinks, and entertainment on multiple occasions. *Id*.

In August 2020, the enforcement action was resolved with the entry of a consent order finding the two employees directly liable for their improper disclosures and NYMEX vicariously liable for the misconduct of its former employees. CFTC, *NYMEX and Two Former Employees to Pay $4 Million for Disclosing Material Non-Public Information*, Release No. 8216-20 (Aug. 4, 2020).[4] The two employees agreed to a permanent ban from trading commodity interests and registering with the CFTC. *Id*. The order also imposed a $4 million civil monetary penalty jointly and severally on NYMEX and the two employees (with the liability of the employees capped at $300,000 and $200,000). *Id*.

Notwithstanding the fact that the CFTC has not brought any enforcement against involving misuse of confidential information by *federal government personnel*, there is no question that it has the authority to do so. For example, if – notwithstanding the vigorous denials by the administration – the trading activity in oil and S&P 500 futures shortly before President Trump announced that he had deescalated tensions with Iran on March 23, 2026 was in fact by someone with advance knowledge of the Truth Social post, the disclosure of the information and the trading of the information is very likely a violation of Section 4c(a)(4) of the CEA. There is one caveat, however. A violation of Section 4c(a)(4)(A) hinges on the imparter of information doing so "in his personal capacity and *for personal gain with the intent to assist another person*" to use the information to trade. In other words, simply being a blabber mouth does not appear to violate the rule.

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[4] https://www.cftc.gov/PressRoom/PressReleases/8216-20

What Has the CFTC Done and What Can it Do to Combat Insider Trading in the Prediction Markets?

It is impossible to ignore the stunning growth of prediction markets over the last two years. Indeed, as the New York Times recently reported, prediction markets were "[o]nce a niche phenomenon … embraced by political junkies who wanted to bet on the presidential election," but are now "everywhere, an unavoidable presence in American politics and culture." David Yaffe-Bellany, *All Bets Are On: The Rise of Prediction Markets*, NEW YORK TIMES (Jan. 19, 2026).[5] Nearly $12 billion traded on Kalshi and Polymarket in December 2025. *Id*. And Americans are projected to trade a billion dollars just on this year's March Madness. Dennis Romboy, *March Madness and the Rise of Prediction Markets*, DESERET NEWS (Mar. 22, 2026).[6]

The rise of prediction markets has been accompanied by increasing reports of efforts to influence the outcome of events, including death threats to made to journalist trying to get him to change his reporting on missile damage in Israel. *Id*. According to the journalist, after reporting that a Iranian missile struck a wooded area outside the city of Beit Shems, he was "flooded with emails from people who wanted him to change the story to change missile to debris or interceptor fragments because they had bet 'no' on a missile strike." *Id*. Threats against athletes have skyrocketed with one in three high-profile college athletes reporting receiving abusive messages from someone with a betting interest. NCAA, *Sport betting culture negatively impacts mental health; NCAA works to support student-athletes* (May 17, 2024).[7] In fact, in January 2026, the NCAA sent a letter to the chairman of the CFTC "implore[ing] you to suspend collegiate sport

[5] https://www.nytimes.com/2026/01/19/technology/polymarket-kalshi-prediction-markets.html

[6] https://www.ksl.com/article/51471352/march-madness-and-the-rise-of-prediction-markets

[7] https://www.ncaa.org/news/2024/5/17/media-center-sports-betting-culture-negatively-impacts-mental-health-ncaa-works-to-support-student-athletes.aspx.

prediction markets until a more robust system with appropriate safeguards is in place." David Purdum, *NCAA asks regulators to suspend collegiate prediction markets*, ESPN (Jan. 14, 2026).[8]

While some market participants appear to be trying to influence the outcome of events, others may be trading based on material non-public information – the highest profile instance being an anonymous user receiving a payout of more than $400,000 after betting the Venezuelan President Nicolás Maduro would be out of office. Wyatt Grantham-Philips, *A $400,000 payout after Maduro's capture is putting prediction markets in the spotlight*, ASSOCIATED PRESS (Jan. 11, 2026).[9] The bulk of the trader's bids were just hours before President Trump announced the nighttime raid that led Maduro's capture, causing many to speculate that the trader had inside information. *Id*.

It remains to be seen what information this trader possessed when making these very timely and profitable trades and how the trader learned of the information. It is possible, however, that *even if the trader had advance knowledge of the Venezuelan raid*, that the CFTC's prohibitions on insider trading were not violated. If for example, the information was shared with the trader from a government source – but not for the government source's "personal gain" – trading on that information may not constitute a violation of Section 4c(a)(4)(B). And, if the government source shared the information, but not for "personal gain," the disclosure of the information likely did not violate Section CEA § 4c(a)(4)(A).[10] Similarly, if the information was freely shared with no

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[8] https://www.espn.com/college-sports/story/_/id/47614688/ncaa-asks-regulators-suspend-collegiate-prediction-markets.

[9] https://apnews.com/article/prediction-markets-maduro-trades-1f47e737f915fff00c57f03e7390b41f.

[10] It is important to note, however, that personal gain does not require a kickback or other monetary compensation. As discussed above, the CFTC took the position in its action against the NYMEX employees, the being supplied meals, drinks, and entertainment constituted "personal gain."

restrictions, the CFTC (or Department of Justice) may have a difficult time establishing that the information was misappropriated in violation of Rule 180.1.

It is likely, assuming the trader had advance knowledge of the raid, that trading based on such information violated Polymarket's terms of service – but only as those terms are written today. Polymarket's November 2025 Rulebook,[11] in effect at the time of the raid, incorporated and largely mimicked the fraud and manipulation provisions of the CEA (Rules 6.1(a), (d), and (g)), but did not contain additional provisions on insider trading other than prohibitions against trading on confidential information by Polymarket personnel (Rule 2.7) and a prohibition against trading based on knowledge of an impending transaction by another person (Rule 6.1(t)).[12]

On March 23, 2026, facing intense scrutiny and a rash of proposed legislation looking to curb prediction markets,[13] Polymarket announced that it had updated its "market integrity rules" which it described on its website as follows:

> **Insider Trading, and Trading By Those Who Can Influence the Outcome, Are Strictly Prohibited on Polymarket**

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[11] Polymarket US Rulebook (Nov. 25, 2025), available at https://www.cftc.gov/sites/default/files/filings/orgrules/25/11/rules11252533511.pdf.

[12] Kalshi, on the other hand, did have a separate, additional insider trading prohibition. Rule 5.17(y) of Kalshi's 2025 rulebook stated that:

> If a Trader is an Insider that has access to material non-public information that is the subject of an Underlying of any Contract or that has the ability to exert any influence on the subject of an Underlying of any Contract, that Trader is prohibited from attempting to enter into any trade or entering into any trade, either directly or indirectly, on the market in such Contracts. An "Insider" means any person who has access to or is in a position to have access to material nonpublic information before such information is made publicly available. A Trader who is an employee or affiliate of a Source Agency for any Contract is prohibited from attempting to enter into any trade or entering into any trade, either directly or indirectly, on the market in such Contracts.

KalshiEX LLC Rulebook (2025), available at https://www.cftc.gov/sites/default/files/filings/orgrules/25/07/rules07012525155.pdf.

[13] For example, on March 10, Senator Adam Shiff and Representative Mike Levin announced a bicameral bill, titled "Discouraging Exploitative Assassination, Tragedy, and Harm Betting in Event Trading Systems Act," or the "Death Bets Act," which seeks to ban prediction market contracts tied to death, war, and assassination. On March 23, 2026, Senators Schiff and John Curtis introduced the "Prediction Markets Are Gambling Act," seeking to bar prediction contracts tied to sports or casino-style games from being listed or traded on a registered platform.

It is a violation of Polymarket's terms to:

1. **Trade on stolen confidential information**. You may not trade on any contract if you possess confidential information about the outcome or likely outcome of the underlying event, if using that information would violate a preexisting duty or obligation of trust or confidence you owe to another person or entity.

2. **Trade on illegal tips**. You may not trade on confidential information that was passed to you by someone who owed a preexisting duty of trust or confidence to someone else — if you know or have reason to know that the person who shared the information would be prohibited from trading on it themselves.

3. **Trade if you can influence the outcome**. You may not trade on any contract if you hold a position of authority or influence sufficient to affect the outcome of the underlying event. You also may not trade at the direction of someone who holds such a position.[14]

Assuming that the anonymous trader who bid just prior to the raid in Venezuela learned of the raid from a government employee, the trading likely would likely constitute a "trade on illegal tip" and violate Polymarket's new terms and conditions, as the trader should have been aware that government employee would be prohibited from trading in such information.

Notwithstanding the efforts of the prediction markets to assuage criticism that they are not doing enough to prevent insider trading and undue influence, to date there are only two publicly announced enforcement actions – both by Kalshi. According to Kalshi, one matter involved a gubernatorial candidate who traded about $200 on his own candidacy.[15] He was fined $2,000 and suspended for five years. The other matter involved an employee of a popular YouTube channel who traded based on inside knowledge of the contents of YouTube channel.[16]

[14] Polymarket, *Market Integrity: Our Rules, Our Standards, Our Commitment*, available at https://polymarket.com/market-integrity.

[15] Bobby DeNault, *Two Insider Cases We've Recently Closed*, KALSHINEWS (Feb. 25. 2026), available at https://news.kalshi.com/p/kalshi-trading-violation-enforcement-cases.

[16] *Id*.

Kalshi's two announced cases are two more than the CFTC has brought. On the same day that Kalshi announced its closing of the two enforcement cases, the CFTC issued an advisory that simply described the two Kalshi enforcement actions and pointed out that "[w]hile Kalshi's internal enforcement program handled these matters, under the Act, the Commission has full authority to police illegal trading practices occurring on any DCM, including those described above related to event contracts." *CFTC Enforcement Division Issues Prediction Markets Advisory*, Release No. 9185-26 (Feb. 25, 2026).[17] A couple of weeks later, on March 12, 2026, the CFTC released another staff advisory on prediction markets. This advisory, while largely focused on product listings and specifications, stressed the obligations of designated contract markets to monitor trading activity and protect market participants from abusive practices. *CFTC Staff Issues Prediction Markets Advisory*, Release No. 9193-26 (Mar. 12, 2026).[18]

On the same day it issued the staff advisory, the CFTC published an Advance Notice of Proposed Rulemaking (ANPRM) requesting comment on a broad range of issues relating to regulation of prediction markets, including inside information. The questions posed by the ANPRM included:

> 29. The price on a prediction market could be viewed as an indication of how likely the underlying event is to occur. The price may be a more reliable indicator of probability if the people trading on the prediction market have some insight into how likely the underlying event is to occur. On the other hand, trading by these informed participants may lead to manipulation, unfairness, and the misuse of inside information. Is there some public interest utility if people with an asymmetric information advantage on a particular event contract are able to trade on prediction markets? Does the public interest utility depend on the type of event in question? What factors should the Commission consider in evaluating and balancing the public interest in this scenario?
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> 30. Some events underlying event contracts are under the control of a single individual or small group of individuals. What role should this aspect of event

[17] https://www.cftc.gov/PressRoom/PressReleases/9185-26.

[18] https://www.cftc.gov/PressRoom/PressReleases/9193-26.

> contracts play in the Commission's consideration of how prediction markets should be regulated? Do the considerations change depending on the type of event in question? Are there particular challenges related to cross-market manipulation—for example, where an individual or small group of individuals seeks to move the prediction market to influence another market, or vice versa? Are prediction markets more likely than other DCMs or SEFs to be susceptible to manipulation? Why or why not?
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> 31. CEA section 6(c)(1) provides that ''[i]t 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, in contravention of such rules and regulations as the Commission shall promulgate by [July 21, 2011], provided no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.'' What aspects of prediction markets are relevant to the application of this statute? Are prediction markets more or less likely than other derivative markets to be susceptible to ''any manipulative or deceptive device or contrivance''? How should the potential for application of this statute inform the Commission's regulation of prediction markets?
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> 32. CEA section 4c(a)(3) provides that ''[i]t shall be unlawful for any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress . . . or any judicial officer or judicial employee . . . who, by virtue of the employment or position of the Member, officer, employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated [or disclosed] . . . in a manner which makes it generally available to the trading public, . . . to use the information in his personal capacity and for personal gain to enter into, or offer to enter into [a futures contract, option on a futures contract, commodity option, or swap].'' Similarly, CEA section 4c(a)(4) provides that it is unlawful for any such Federal Government employee or official to impart such information in his personal capacity and for personal gain with intent to assist another person in entering into a futures contract, option on a futures contract, commodity option, or swap, and it is unlawful for the other person who receives such information from any such Federal Government employee or official to knowingly use the information in such transactions. How are prediction markets likely to be affected by nonpublic information that is available to Federal Government employees or officials? How should the potential for application of this statute inform the Commission's regulation of prediction markets?

The questions posed in the ADRM are very broad and it remains to be seen whether the CFTC will in fact implement additional rules to address problematic trading on material nonpublic information or simply rely on the existing regulatory framework. It is important to note, however, that there is at least the possibility – given that, in some aspects, prediction markets are more like stock markets than traditional futures markets – that the CFTC will implement rules that more closely resemble the classical theory of insider trading (which does not require a misappropriation of inside information).[19] If so, the next question will inevitably be whether and when the CFTC starts taking a similar in more traditional futures matters.

Conclusion

As of the date of this article, there is widespread media attention regarding potential insider trading based on advance knowledge of government actions and, more generally, the potential for rampant insider trading on prediction markets. Notwithstanding the concerns that have been raised, there has been remarkably little enforcement action. Some of that inaction may be attributed to limitations on the scope of the CFTC's enforcement authority – but there may be many other factors in play, including the CFTC's lack of experience with insider trading cases and the general lack of a regulatory framework surrounding prediction markets where much of the suspicious trading is occurring. Given the CFTC's recent Advance Notice of Proposed Rulemaking in this area, there will undoubtedly be an attempt to address the latter issue. What remains to be seen is whether the CFTC has the requisite resources, experience, and appetite to implement and operate an effective enforcement program in this area.

[19] For example, the classical theory of insider trading may be an appropriate tool to prosecute a company insider who trades an event contract centered on whether that company will take a certain action.