

# Betting on Company Information: Prediction Market Considerations for Public Companies

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Prediction markets allow participants to trade contracts on whether or not real-world events will occur. These platforms have grown rapidly, and contracts tied to specific company activity are now actively trading, including contracts on IPOs, mergers and acquisitions, earnings call mentions, and sales and subscriber metrics. While most public companies have adopted insider trading and related policies to regulate trading in the company's securities, companies' policies are generally written for securities transactions, where prediction market event contracts are generally not offered or traded as securities in the traditional sense. That gap matters, as companies still need to guard against misuse of company information in the context of other transactions, such as events contracts. Trading on the basis of nonpublic information on prediction markets may attract enforcement at multiple levels, including platform based sanctions, regulatory actions, and criminal charges against individuals that may have implications for public companies. This alert explains the risks, outlines what companies can do to address these risks and identifies what to watch for as the regulatory framework takes shape.

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## Prediction Markets and Company-Related Event Contracts

“Prediction Markets” are markets on which “event contracts” are traded. Although “event contract” is not a defined term in the Commodity Exchange Act or the Commodity Futures Trading Commission’s (CFTC) regulations, event contracts are a type of derivative contract, often a swap with a binary payoff structure, whose settlement is based on the outcome of an underlying occurrence or event, with pricing reflecting the market’s collective view of the likelihood of specific outcomes.

Participants buy a “yes” or a “no” position, with pricing reflecting demand and, in some cases, aided by liquidity provided by market makers. Prediction markets operating in the United States typically register with the CFTC as designated contract markets (DCMs) or operate pursuant to an exemption from registration. To date, event contracts have generally been offered on DCMs as swap contracts, not securities.<sup>1</sup>

The following are illustrative examples of company-related event contracts that are already actively trading on prediction market platforms:

- *Will a company complete a proposed acquisition, or when will a pre-IPO technology company go public?* — with pricing reflecting market views on timing and likelihood across multiple potential windows.
- *Will a specific word or phrase appear in a public company CEO's earnings call transcript?* — contract resolves based on whether the specified language is used during the call.
- *Will a company's reported production volume or subscriber count exceed a specified threshold?* — contract resolves based on whether the relevant metric, as disclosed in the company's financial

statements or earnings release, meets or surpasses the stated figure.

The implications for public companies warrant attention. An investor relations employee with advance knowledge of the earnings script, a legal assistant aware that a deal is closing, a finance analyst working on the company’s draft financial statements or 10-K – each could trade on a prediction market and profit from the use of confidential company information. No securities change hands. But even where no company securities are traded, employee wagers on company-related event contracts can constitute illegal trading, signal nonpublic information leakage to the market, harm the company’s reputation and expose the company to regulatory scrutiny. This makes prediction markets a corporate governance concern, not just an individual enforcement risk.

### The Enforcement Reality: Wagers in Prediction Markets can Constitute Illegal Trading

While company codes of conduct generally cover the maintenance of confidentiality of company information, most existing insider trading policies are drafted with reference to trading in securities and may not expressly cover wagers on company-related event contracts, which as noted above are generally offered as swaps, potentially outside the reach of SEC Rule 10b-5. But the absence of an express securities law nexus does not eliminate enforcement risk. Employee misuse of nonpublic information on prediction markets may attract enforcement at multiple levels:

#### Platform Risk

At least one leading U.S. prediction market platform maintains an explicit insider trading prohibition in its CFTC-approved rulebook and has taken steps to enforce it against individual traders. Other platforms prohibit only general “fraudulent trading.” Platform consequences may include profit disgorgement and trading bans. Some prediction market platform

<sup>1</sup> To the extent a company-related event contract were structured or characterized as a “security-based swap” or an option on securities it could be subject to the SEC’s

security-based swap anti-fraud regime, including Rule 9j-1 of the Securities Exchange Act of 1934.

operators have suggested that informed trading may improve market accuracy, raising questions about the consistency of platform-level enforcement across the industry and potentially implying conflicts with trading regulations and company policies.

### **CFTC Risk**

In an [advisory published on February 25, 2026](#), the CFTC affirmed that it “has full authority to police illegal trading practices” on any prediction market, including misappropriation of confidential information in breach of a pre-existing duty of trust and confidence to the source of that information, commonly known as insider trading, pursuant to Section 6(c)(1) of the Commodity Exchange Act and CFTC Regulation 180.1.

The CFTC’s Regulation 180.1, while modeled on Rule 10b-5, remains less developed than its securities law counterpart. It generally prohibits trading in CFTC-regulated markets based on knowledge of fraud or misrepresentations, or in violation of a duty not to disclose or use nonpublic information, including pertaining to fiscal, economic or political developments.

The CFTC’s advisory highlights two recent enforcement actions taken in relation to prediction market platforms. In the first, a political candidate traded on his own candidacy on a regulated prediction market platform in May 2025 in breach of exchange rules prohibiting trading in contracts over which the trader has direct or indirect influence over the outcome, resulting in a \$2,246 penalty and a five-year suspension from direct or indirect access to the prediction market platform. In a second case, a content creator’s employee traded prediction market contracts related to that creator’s prominent YouTube channel while in possession of nonpublic information, resulting in a \$20,397 penalty and a two-year suspension from direct or indirect access to the prediction market platform. In both cases, the CFTC identified potential manipulative and fraudulent conduct and, in the second case, potential insider trading through misappropriation of nonpublic information in breach of a pre-existing duty. While these matters were

handled through the prediction market platform’s internal enforcement program, the CFTC noted that the conduct also fell within its own enforcement authority under the Commodity Exchange Act.

### **DOJ Risk**

The Department of Justice could conceivably bring wire fraud charges where platform terms of service are violated. Where a prediction market platform’s rules prohibit insider trading or informed trading, an employee who trades on inside information in violation of those rules and profits from doing so may face criminal exposure under a theory that the terms-of-service violation serves as the predicate act for a federal wire fraud charge. DOJ has used the federal wire fraud statute to prosecute insider-trading-like schemes in other digital-asset contexts involving alleged misappropriation of confidential information (e.g., NFT marketplace and crypto-exchange listing cases). Unlike the CFTC, the DOJ can seek prison time. Note that the DOJ can also bring criminal charges on behalf of the CFTC for criminal violations of the Commodity Exchange Act.

### **What Companies Can Do Now**

A company’s code of conduct should already prohibit employees from using company confidential information for personal gain. Companies should consider, however, whether their existing policies adequately explain how those restrictions apply to participation in prediction markets and whether to introduce language addressing the CFTC-related enforcement concerns discussed above. Several approaches are worth considering, depending on a company’s particular circumstances and disclosure appetite:

#### **An Internal Communication or Standalone Policy**

For many companies, the most practical starting point may be a short internal communication (a memo, employee FAQ, or standalone internal policy) rather than a formal amendment to the insider trading policy or code of conduct. The message can be straightforward: participation in prediction markets is a direct application of the existing prohibition on using

confidential information for personal gain and enforcement is already happening. Guidelines of this type would typically not require an amendment to any publicly filed or published insider trading policy or code of conduct and can be issued promptly and revised as the regulatory landscape evolves. This approach may be particularly well suited to the current environment, where rulemaking is developing and policy language has not yet settled. It mirrors the approach many companies have taken to AI usage: a clear, practical reminder targeted at a new technology.

### Update the Insider Trading Policy or Code of Conduct

Given that prediction market contracts are not securities in the traditional sense, some companies may elect to house the prohibition within their code of conduct rather than (or in addition to) their insider trading policy. A code of conduct framework offers broader disciplinary flexibility and would be based on the characterization of the issue as the misuse of confidential information rather than SEC Rule 10b-5 insider trading in the technical sense. To the extent companies choose to expand their policies, coverage should extend to all prediction market platforms, whether public, private, foreign, domestic, regulated, or unregulated, where participation involves nonpublic information relating to the company, its customers, partners, or vendors. Violations of any expanded policy would typically be treated consistently with other policy violations, including forfeiture of incentive compensation, termination for cause and disgorgement of profits.

Companies can also consider adding violations of CFTC rules into their insider trading policies. One practical consideration in doing so is whether the existing insider trading policy infrastructure lends itself well to developments in prediction markets. For example:

- *Since prediction markets are not limited to company securities, but contracts can be structured to cover many company related events, is there a practical way to appropriately define*

*coverage outside of prohibiting misuse of company information?*

- *Do blackout periods appropriately limit risk; should any contract be permitted in an open window?*
- *Are preclearance procedures appropriate in the context of prediction markets?*

Companies should weigh whether the current regulatory uncertainty, including pending CFTC rulemaking, makes incorporating specific policy language into existing publicly available policies premature.

### Special Situations and Policy Limitations

Companies operating in highly regulated industries, or those with significant nonpublic information exposure, may wish to go beyond updating their policies and consider implementing more proactive compliance measures, such as requiring employees to disclose prediction market accounts, mandating periodic certifications of compliance, or, in limited circumstances, imposing outright restrictions on maintaining accounts on platforms offering company-related event contracts. Any such measures should be carefully tailored to avoid impermissibly restricting lawful off-duty activities, a consideration governed primarily by state law that varies by jurisdiction.

### Regulatory Backdrop

The regulatory environment is developing, which itself may argue for maintaining flexibility. On March 12, 2026, the CFTC Division of Market Oversight [published an advisory](#) reminding DCMs of their obligations with respect to events contracts, including to list only contracts not readily susceptible to manipulation, prevent price distortion and disruptions to cash settlement, and protect markets and participants from abusive practices through real-time monitoring, further confirming that Regulation 180.1 is an emerging enforcement priority. Also on March 12, 2026, the CFTC issued an [Advanced Notice of Proposed Rulemaking](#) (ANPRM) seeking comment on prediction markets regulation. The day before, the [CFTC and SEC signed a Memorandum of](#)

**Understanding** to address jurisdictional and definitional issues, with a focus on distinguishing between commodity options, security options, swaps and security-based swaps, and addressing open jurisdictional questions over event contracts based on securities or issuers of securities, and coordinating on enforcement.

The ANPRM comment period is open now. The CFTC has specifically requested comment on whether there is public interest utility in allowing persons with an information advantage on a particular event contract to trade on prediction markets, noting that while such trading may improve price reliability, it may also lead to manipulation, unfairness and misuse of inside information.

## Market Manipulation Theories

Theories of use of event-based contracts to manipulate markets are separately developing and may lead to additional regulatory scrutiny and policy changes. There are two distinct potential manipulation scenarios: manipulation of the prediction market itself (for example, where someone who controls the outcome of an event trades on it) and manipulation by the prediction market of a correlated market (for example, moving a prediction market to influence a securities or other market, or vice versa). The CFTC's pending rulemaking specifically raises the issue of cross-market manipulation and has requested comment on the risks posed by events controlled by a single individual or small group. Where prediction markets are used in a manner that could influence or manipulate securities markets, the SEC may assert jurisdiction notwithstanding the CFTC's primary oversight role over prediction market platforms.

## Practical Takeaways

The regulatory landscape is evolving rapidly, but companies need not wait for further rulemaking or clarifications to take meaningful steps to mitigate potential risks. The following considerations may help guide an initial response:

- **Consider acting now, even without a final rule.** Enforcement is already occurring at the prediction

market platform and CFTC levels and DOJ action may not be far behind. An internal communication reminding employees that existing prohibitions on misuse of confidential information apply to prediction markets may be a prudent first step.

- **Choose the policy vehicle and application of restrictions deliberately.** Companies updating existing codes of conduct and/or insider trading policies should consider the appropriate scope and level of restriction: from a brief note that trades in prediction markets are within the scope of the code/policy to approaches that include blackout windows or preclearance type processes. For example, companies could consider whether to impose a wholesale prohibition on employee participation in company-related event contracts, or to adopt a more permissive framework that restricts such participation only during certain blackout periods and, outside those periods, subjects it to preclearance procedures similar to the company's existing insider trading policy infrastructure. Companies should remember that insider trading policies and codes of conduct may be required to be filed or publicly posted.
- **Think broadly about scope.** Companies exploring policy changes should avoid limiting restrictions to particular prediction market platforms. Coverage should extend to all platforms, whether public, private, foreign, domestic, regulated, or unregulated, where participation involves nonpublic information relating to the company, its customers, partners, or vendors.
- **Watch the regulatory landscape.** The ANPRM comment period is open, the CFTC and SEC are actively coordinating cross-market oversight and pending rulemaking could reshape the framework. Companies that adopt flexible, lower-commitment vehicles now may be better positioned to update their approach as the rules develop.

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