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ANY BETS ON WHO WILL REGULATE PREDICTION MARKETS?

This article analyzes the rapid emergence of prediction markets, including Kalshi and Polymarket, and the unresolved legal battle over whether they should be regulated as financial derivatives or as gambling platforms. Following the Supreme Court's decision in Murphy v. National Collegiate Athletic Association, legalized sports betting has expanded rapidly in the United States. The latest innovation in this space is the "prediction market," which transforms outcomes of political, economic, and sporting events into contracts that can be traded. Prediction market companies argue that such exchanges operate within the exclusive jurisdiction of the Commodity Futures Trading Commission, while state gambling regulators contend they are functionally unlicensed sportsbooks that should be subject to state regulation. The article further examines the difficulty of applying traditional insider trading doctrine to prediction markets, where participants may possess outcome-related information but lack fiduciary duties typical of securities markets. Absent clear regulatory guidance, enforcement may increasingly rely on federal fraud prosecutions based on terms of service.

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Just hours before U.S. military forces stormed the compound of Nicolas Maduro on January 3, 2026, capturing the Venezuelan president and his wife and transporting them to the United States to face charges for drug trafficking, a trader put down a \$32,000 bet on Maduro's downfall on the prediction market website Polymarket.¹ By the next morning, that trader netted more than \$400,000 when Maduro's removal was announced.² The winning user, who had anonymously

joined Polymarket in December 2025, made three other bets between December 27, 2025, and January 3, 2026, all related to Maduro and the United States' relations with Venezuela.³

Over the following weeks, as protestors in Iran flooded the streets amid rampant inflation, bettors across the world flocked to Kalshi, another leading prediction market, to make bets on whether or not the country's Supreme Leader, Ayatollah Ali Khamenei, would be "out as Supreme Leader" — by the end of the month, by the end of 2026, or by any other deadline a prediction

¹ Megan Cerullo, "Prediction market user made \$436,000 betting on Maduro capture," CBS News, Jan. 6, 2026, <https://www.cbsnews.com/news/polymarket-maduro-capture-bet-400000/>.

² *Id.*

³ *Id.*

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market trader could imagine.⁴ But six weeks later, when Khamenei was killed in a U.S. airstrike on February 28, 2026, Kalshi refused to pay out \$54 million owed to those who placed winning wagers on the date of his ouster.⁵ Kalshi's CEO, Tarek Mansour, faced fierce backlash from users as he explained that the terms of the market had clearly excluded death, which he emphasized "is not allowed for US-regulated entities."⁶ Polymarket, which currently offers political event markets only outside of U.S. regulation, honored its payouts.⁷

On prediction markets, users can make a bet out of *pretty much* anything, short of death itself — in the United States, anyway.

In fact, while the most headline-grabbing prediction market bets concern major world events, most trades made on these platforms are sports bets. After Kalshi began posting sports wagers in January 2025, around 75 percent of the bets made on the platform related to sport events,⁸ and of the company's \$263.5 million in revenue in 2025, around 89 percent resulted from sports trades.⁹

In 2025, at the peak of U.S. sports seasons, such as March Madness or the first month of the NFL season, sports accounted for about 90 percent of Kalshi's entire trading volume.¹⁰ Currently, on Polymarket's newly CFTC-approved U.S. website, only sports markets are offered; on the global Polymarket exchange — on which the Maduro bet was made — sports dwarfs other categories of bets, though categories such as "crypto," "politics," and "Trump" make up a significantly larger percentage of total bets on Polymarket than non-sports categories do on Kalshi.¹¹

The transformation of major world political news into fodder for profit-making wagers and the explosion of sports betting has shone the spotlight on prediction markets, sparking questions about who should regulate these markets and how. The answer to both questions depends on who you ask. The companies that run prediction markets, and many of those who use them, say that they provide "a public good that would enable the masses to get access to accurate information more quickly" and should be regulated by the Commodity Futures Trading Commission ("CFTC").¹² Critics see them as cleverly packaged, unregulated online casinos that encourage leaks of sensitive information for profit and should be regulated by state and tribal authorities, like traditional casinos.¹³

⁴ Danny Gallagher, "Markets forecast a Khamenei exit before 2027," *Kalshi News*, Jan. 13, 2026, <https://news.kalshi.com/p/iran-supreme-leader-khamenei-exit-odds>.

⁵ Julia Shapero, "Kalshi faces backlash over handling of \$54M market on Khamenei's ouster," *The Hill*, Mar. 5, 2026, <https://thehill.com/policy/technology/5769687-khamenei-ouster-market-controversy/>.

⁶ *Id.*

⁷ Prince J. Grimes, Kalshi backlash for Ali Khamenei death settlement, explained, *USAToday*, Mar. 3, 2026, <https://ftw.usatoday.com/story/sports/2026/03/03/kalshi-iran-ali-khamenei-death-prediction-market/88725356007/>.

⁸ Lev Akabas, "Kalshi's Volume Has Been 90% Sports During Football Season," *Sportico*, Oct. 3, 2025, <https://www.sportico.com/business/sports-betting/2025/kalshi-nfl-football-trade-bet-volume-1234872696/>.

⁹ Daniel O'Boyle, "Kalshi Fee Revenue In 2025 Was \$263.5 Million, With 89% Coming From Sports," *InGame on Yahoo! Finance*, Jan. 9, 2026, <https://finance.yahoo.com/news/kalshi-fee-revenue-2025-263-145801350.html>.

¹⁰ *Id.*

¹¹ Valerie Cross, "Kalshi, Polymarket Set New Records, Drive Notional Volume to \$5.23 Billion," *DeFi Rate*, Jan. 12, 2026, <https://defirate.com/news/volume-report-kalshi-polymarket-post-record-volume-driven-by-sports/>.

¹² Alicia Park, "Why Prediction Markets Need Insider Trading," *Forbes*, Jan. 9, 2026, <https://www.forbes.com/sites/aliciapark/2026/01/09/why-prediction-markets-need-insider-trading-according-to-their-godfather/>.

¹³ Patrice Kunesh, "The prediction market boom is posing an existential threat to American Indian gaming," *Brookings Research*, Jan. 20, 2026, <https://www.brookings.edu/articles/the-prediction-market-boom-is-posing-an-existential-threat-to-american-indian-gaming/>; Benjamin Schiffrin, "Predictably, 'Prediction Markets' Are Just Casinos," *Better Markets*,

The dispute over who should regulate is playing out in courts across the country. The legal issue focuses on the jurisdiction of the CFTC, the relatively small federal agency that has historically exercised authority under the Commodity Exchange Act to regulate derivatives and futures — financial contracts with values based on the price of an underlying asset, rate, or event, and that are typically used for hedging risk or speculating on future price movements. The prediction markets self-describe their offerings as the kinds of contracts governed by the CFTC rather than by state gambling regulators. Under the Trump administration, the CFTC has claimed exclusive jurisdiction over prediction markets. The dispute as to who regulates may well be decided by the Supreme Court.

The question of who should regulate is only the beginning. Equally important is the question of *how* this growing industry should be regulated. Much attention has been drawn to the issue of so-called “insider trading” on prediction by markets by people with “inside information” about events. While the CFTC has some experience regulating insider trading in the traditional commodities markets, the rationale for that regulation does not map cleanly onto the sports betting context and the CFTC has not yet provided clear indication of how it would regulate insider trading in prediction markets. Contributing to the uncertainty, state regulators do not have similar enforcement experience, and the major prediction markets have taken differing approaches to self-policing on their platforms. Ultimately, if clear rules are not established, high-profile instances of insider betting on sports prediction markets may lead to public demand for reform.

HOW DID WE GET HERE?

For many people who live in the United States, the behemoth of smartphone-based betting — whether through traditional sports gambling platforms like FanDuel or DraftKings, or in the prediction markets set up by Kalshi and Polymarket — seems to have emerged from nowhere: Americans turned their televisions to ESPN for the umpteenth time, or entered their usual subway station, and one day they were bombarded with advertisements for gambling.¹⁴ Not so long after,

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Jan. 26, 2026, <https://bettermarkets.org/analysis/predictably-prediction-markets-are-just-casinos/>.

¹⁴ Will Leitch, “The Sports-Betting Ads Are Awful, and They’re Not Going Away,” *New York Magazine*, Apr. 18, 2023, <https://nymag.com/intelligencer/2023/04/the-sports-betting-ads-are-awful-and-theyre-not-going-away.html>.

professional athletes were being indicted for sharing insider information about their own play with sports bettors so that the bettors could profit.¹⁵

The national legal sports betting industry is less than a decade old. It stems from a 2018 Supreme Court decision, *Murphy v. National Collegiate Athletic Association*, in which the Court struck down a 1992 federal law, the Professional and Amateur Sports Protection Act (“PASPA”), ruling that the statute — which banned states from legalizing sports betting — violated the Tenth Amendment.¹⁶ On behalf of a 7-2 majority, Justice Alito wrote that the provision of PASPA banning sports betting violated the anticommandeering doctrine and was impermissible under the Tenth Amendment, because it “unequivocally dictates what a state legislature may and may not do” and put state legislatures “under the direct control of Congress.”¹⁷

Murphy opened the floodgates for sports betting to appear all over the United States; that the Supreme Court’s decision came right as Americans began spending more of their lives on smartphones created the perfect storm for an explosion in the gambling industry. In 2017, sports wagers totaled \$4.9 billion, and in 2023 they totaled \$121.1 billion.¹⁸ In 2018, the Trump administration, the four major U.S. professional sports leagues, and the NCAA all opposed the Court’s overturning of PASPA.¹⁹ But in the years that have followed, only the NCAA has maintained its position against sports betting, even broadly banning its athletes

¹⁵ Stephanie Sy and Jackson Hudgins, “Indictment of MLB pitchers raises questions about impact of legal sports betting,” *PBS NewsHour*, Nov. 12, 2025, <https://www.pbs.org/newshour/show/indictment-of-mlb-pitchers-raises-questions-about-impact-of-legal-sports-betting>.

¹⁶ Mark Sherman, “How a 2018 Supreme Court decision paved the way for meteoric growth in legal sports betting,” *AP News*, Oct. 24, 2025, <https://apnews.com/article/supreme-court-sports-betting-arrests-8e7c3a0725f7ebd20ce9d739c1d3084a>.

¹⁷ *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 474 (2018).

¹⁸ Atharva Yeola, Matthew R. Allen, Nimit Desai, et al, *Growing Health Concern Regarding Gambling Addiction in the Age of Sportsbooks*, *JAMA INTERNAL MEDICINE* 2025;185;(4):382-389. doi:10.1001/jamainternmed.2024.8193.

¹⁹ Mark Sherman, How a 2018 Supreme Court decision paved the way for meteoric growth in legal sports betting, *AP News*, | Oct. 24, 2025, <https://apnews.com/article/supreme-court-sports-betting-arrests-8e7c3a0725f7ebd20ce9d739c1d3084a>.

and team employees from making bets on any sports in which NCAA sponsors a championship.²⁰

Professional teams, by contrast, have announced gaming and sports betting partners.²¹ In late 2025, the National Hockey League became the first major U.S. sports league to reach a deal with Kalshi and Polymarket to provide proprietary data from the league and the right to use NHL marks and logos across the platforms.²² Donald Trump, Jr. is on the board of both Polymarket and Kalshi.²³

As prediction markets sneak up on more traditional sports betting companies, eating into their profits, the sportsbooks, too, are trying to get into the prediction game. In late 2025, DraftKings incorporated a subsidiary that it registered with the CFTC to launch its own prediction markets app, DraftKings Predictions, as a standalone app that is set to exist alongside its traditional sports betting platform, DraftKings SportsBook.²⁴ Popular sports betting platforms Fanatics and FanDuel also announced partnerships with existing derivatives exchanges to release their own offerings in December 2025.^{25 26}

WHO SHOULD REGULATE PREDICTION MARKETS?

Over the past year, gambling regulators for state and tribal governments have asserted authority to regulate prediction markets, signaling that they see “event contracts” as rebranded unlicensed sports betting that are within the state’s police power to regulate and tax. The platforms respond that federal jurisdiction preempts state regulation, and the CFTC has now weighed in supporting that view.²⁷

Take for example Tennessee, which has no casinos, but does authorize 12 online sportsbooks, including DraftKings and FanDuel. In January 2026, Tennessee’s Sports Wagering Council sent cease-and-desist letters to Kalshi, Polymarket, and Crypto.com, ordering that each company stop running sports betting operations without a license issued by the state in violation of the Sports Gaming Act, or face steep monetary penalties and court action.²⁸ The same day, Kalshi sued the state in the Middle District of Tennessee and sought a preliminary injunction preventing the state and its Sports Wagering Council from enforcing any laws against Kalshi.²⁹ U.S. District Judge Aleta Trauger granted a preliminary injunction to Kalshi, crediting the argument that federal law preempts state gaming law.³⁰

How do the prediction markets justify self-certifying their offerings to the CFTC as commodities trades rather

²⁰ NCAA Media Center, Governance Decision, “DI schools rescind betting rules change; Ban on pro sports betting remains in place,” Nov. 21, 2025, <https://www.ncaa.org/news/2025/11/21/media-center-di-schools-rescind-betting-rules-change-ban-on-pro-sports-betting-remains-in-place.aspx#>.

²¹ Brant James, “Betting Partnership Tracker: Sportsbook, Casino & DFS Deals of NFL, NBA, MLB, NHL Teams,” *Gaming Today*, Feb. 4, 2022, <https://www.gamingtoday.com/news/sports-betting-casino-dfs-sponsorships-pro-teams/>.

²² Eben Novy-Williams, “NHL’s Kalshi, Polymarket Deals Could Clarify Role of Data Firms,” *Sportico*, Oct. 22, 2025, <https://www.sportico.com/business/sports-betting/2025/nhl-kalshi-polymarket-data-sportradar-genius-1234874471/>.

²³ Sharon LaFraniere, “Leading Prediction Firms Share a Commonality: Donald Trump Jr.,” *N.Y. Times*, Jan. 15, 2026, <https://www.nytimes.com/2026/01/15/us/politics/donald-trump-jr-prediction-markets.html>.

²⁴ Mary Cunningham, “DraftKings hopes to score big with new prediction markets app,” *CBS News*, Dec. 19, 2025, <https://www.cbsnews.com/news/draftkings-prediction-markets-app-sports-betting/>.

²⁵ “FanDuel, CME Group launch prediction markets in five US states,” *Reuters*, Dec. 22, 2025, <https://www.reuters.com/business/fanduel-cme-group-launch-prediction-markets-five-us-states-2025-12-22/>.

²⁶ Fanatics, “Fanatics Launches Fanatics Markets, the First Prediction Market at the Intersection of Sports, Finance and Culture,” Dec. 3, 2025, <https://www.fanaticsync.com/press-releases/fanatics-launches-fanatics-markets-the-first-prediction-market-at-the-intersection-of-sports-finance-and-culture>.

²⁷ Laya Neelakandam, “CFTC defends its right to prediction market enforcement as states challenge platforms,” *CNBC*, Feb. 17, 2026, <https://www.cNBC.com/2026/02/17/cftc-defends-prediction-market-enforcement-states-challenge.html>.

²⁸ Courtney Anderson, “State orders Kalshi, Polymarket, Crypto.com to stop offering sports betting in Tennessee,” *ABC 24*, Jan. 15, 2026, <https://www.localmemphis.com/article/news/state/tennessee/kalshi-polymarket-crypto-cease-and-desist-letters/522-7f35310a-a345-41cd-bbdb-e08a0d1efa17>.

²⁹ Nate Raymond, “US judge blocks Tennessee from barring Kalshi’s sports events contracts,” *Reuters*, Jan. 13, 2026, <https://www.reuters.com/legal/litigation/us-judge-blocks-tennessee-barring-kalshis-sports-events-contracts-2026-01-13/>.

³⁰ Katryna Perera, “Kalshi Gets A Win In Tennessee Over Sports Contracts,” *LAW360*, Feb. 20, 2026, <https://www.law360.com/compliance/articles/2444135/kalshi-gets-a-win-in-tennessee-over-sports-contracts>.

than as old-fashioned wagers? It comes down to the perceived lack of a “house” — how users are paid (or where their money goes when they lose). Kalshi makes its money by charging fees to its users for purchasing contracts, soliciting lower fees for longshot positions, and higher fees for events with closer odds. There are slight differences in how the other most popular prediction markets work — Polymarket, for instance, has announced that it will re-enter the U.S. market with a flat fee structure, charging only .01 cents per dollar traded.³¹ But what these platforms, and other prediction markets like PredictIt and Crypto.com, have in common is how they distinguish themselves from traditional gambling outfits: While a person who places a bet in a casino, at a racetrack, or on an app like FanDuel is making a straightforward bet against the “the house” — the entity accepting the bet itself — these prediction market companies position themselves as middlemen for traders who place bets on each side of a wager. They call every trade a “swap,” which is defined by the Commodities Exchange Act as a contract in which payment 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.”³²

This self-definition as a marketplace for “swaps” is key: Because users contract with each other on outcomes and the exchanges make revenue on fees rather than losses, Kalshi and the other marketplaces contend, Section 2(a)(1)(A) of the CEA grants the CFTC exclusive jurisdiction over these swaps just as it does over swaps or futures traded on any federally regulated exchange.³³ As a result, both field preemption and conflict preemption apply: Congress deliberately centralized regulation of derivatives markets to avoid a patchwork of state-by-state prohibitions that would undermine national markets *and* state gambling and gaming laws are preempted to the extent that they attempt to render illegal what is authorized by the CFTC.³⁴

But some courts have rejected Kalshi’s argument, emphasizing both the artfulness of its redefinition of bets as “swaps” and the low likelihood that Congress intended to use the Dodd-Frank Act as a backdoor to displace state police power to regulate gaming and federal legislation regarding Native American gaming. As a district court in Nevada noted, ruling on Crypto.com’s attempt to block regulation by the Nevada Gaming Control Board:

Crypto’s position, that its live presentation event contracts are swaps, would sweep nearly all sports wagering into the CFTC’s exclusive jurisdiction even though the states historically have regulated gambling through their police power. According to Crypto’s arguments and self-certification to the CFTC, nearly every sports bet would be a transaction in which payment is dependent on the outcome of a sporting event and is associated with a potential financial, economic, or commercial consequence.

N. Am. Derivatives Exch., Inc. v. Nevada Gaming Control Bd., No. 2:25-CV-00978-APG-BNW, 2025 WL 2916151, at *9 (D. Nev. Oct. 14, 2025).

Further, the distinction that prediction markets lack a “house” is not so clear-cut. Each of the prediction markets relies on “market makers,” a group that includes hedge funds, deep-pocketed users, and sister entities or owned subsidiaries of the prediction markets, to ensure that there will be takers on both sides of a wager.³⁵ Kalshi Trading, which is an affiliate of Kalshi, puts money on the opposite side of Kalshi contracts,³⁶ and Polymarket is building an “internal market-making team” that will place money on the other side of bets.³⁷

Critics argue that this structure, in which the prediction markets have related entities on the opposite sides of contracts, erases any distinction that might have existed between prediction markets and existing

³¹ Daniel O’Boyle, “Polymarket Reveals Fees For Upcoming US Exchange, Undercutting Rival Kalshi,” InGame/Yahoo! Finance, Nov. 3, 2025, <https://finance.yahoo.com/news/polymarket-reveals-fees-upcoming-us-212002637.html>.

³² Brief of Appellee KalshiEX, *KalshiEX LLC v. Flaherty*, No. 25-1922, ECF No. 55 at 47 (3d. Cir., opinion pending) (citing 7 U.S.C. § 1a(47)(A)(ii)).

³³ *Id.* at 18 (citing 7 U.S.C. § 2(a)(1)(A)).

³⁴ *Id.* at 53-60.

³⁵ Bobby Allyn, “They quit their day jobs to bet on current events. A look inside the prediction market mania,” NPR, Jan. 17, 2026, <https://www.npr.org/2026/01/17/nx-s1-5672615/kalshi-polymarket-prediction-market-boom-traders-slang-glossary>.

³⁶ *Id.*

³⁷ Oliver Knight, “Polymarket Hiring In-House Team to Trade Against Customers — Here’s Why It’s a Risk.” Coindesk, Dec. 5, 2025, <https://www.coindesk.com/business/2025/12/05/polymarket-hiring-in-house-team-to-trade-against-customers-here-s-why-it-s-a-risk>.

sportsbooks or gaming platforms. It also misleads customers who believe that their counterparty is another customer rather than the house.³⁸ Plaintiffs have filed class actions in New York and Illinois alleging that Kalshi systematically relies on market makers to take the other side of bets while illegally deceiving consumers by holding itself out as a “market” rather than a traditional sportsbook.³⁹

The prediction markets have contested this characterization, maintaining that market makers “compete with thousands of other market makers to take bids.”⁴⁰ But an analysis of 1.7 million trading addresses on Polymarket found that .04% of those addresses captured more than 70% of total profits on the platform, while more than 70% of Polymarket traders have lost money using it.⁴¹ Put that way, there does not seem to be much distinction, from the perspective of an everyday user, from losing money to the house.

With litigation ongoing across the country and conflicting lower court decisions, the question of who regulates prediction markets may well need to be resolved by the Supreme Court.

BETTING ON LIGHTER REGULATION

In fighting state regulation, prediction market companies appear to be calculating that the CFTC will be a friendlier regulator, at least in the near term.

This was not always the case. In 2022, the CFTC reached a settlement with Polymarket after it found that the company violated the Commodity Exchange Commission (“CEA”) and CFTC regulations by offering contracts on future events, like election results or COVID case counts, without registering as a designated

contract market or a swap execution facility.⁴² The CFTC identified these transactions as swaps under the jurisdiction of the CFTC, and assessed Polymarket with a \$1.4 million civil penalty and a three-year ban from U.S. markets for selling the contracts to consumers on its unregistered exchange.⁴³ In late 2024, as both the CFTC and the Justice Department investigated whether Polymarket had continued allowing U.S. users to place bets on event contracts, FBI agents raided the home of CEO Shayne Coplan and seized his cell phone.⁴⁴ The same year, the CFTC proposed a rule that would have restricted certain types of event contracts, including those related to political contests, award shows, and sports, from being listed or traded on entities registered with the CFTC.⁴⁵

In her final address as a commissioner of the CFTC, in fall 2025, outgoing commissioner Kristin Johnson spoke of “too few guardrails and too little visibility” into prediction markets. She expressed concern that “some market participants seem to be marching down a path to offer leveraged, margined prediction market contracts to retail investors” and that many businesses “approach the Commission seeking licenses to offer traditional products, only to quickly shift once a license is in hand and seek to self-certify prediction market contracts.”⁴⁶ She called for the Commission to set clear expectations about event contracts, and spoke of the need for notice-and-comment rulemaking to address issues like the growing popularity of contracts in which people bet on election outcomes.⁴⁷

But the CFTC’s new leadership is taking a different approach. In public remarks, new CFTC Chairman Michael Selig praised prediction markets for allowing

³⁸ *Id.*

³⁹ Matt Rybaltowski, “Class action suit vs Kalshi raises the temperature in heated prediction market rift,” *iGamingBusiness*, Dec. 2, 2025, <https://igamingbusiness.com/sports-betting/class-action-suit-against-kalshi-market-makers/>; *Pelayo et al. v. Kalshi Inc.*, S.D.N.Y., case no. 1:25-cv-09913-JLR, ECF No. 1; *Josephson et al. v. Kalshi, Inc.*, N.D. Illinois, case no. 1:26-cv-00220, ECF No. 1.

⁴⁰ Allyn, *supra* note 32.

⁴¹ Anas Hassan, Dec. 29, 2025, “70% of Polymarket Traders Lost Money as Top 0.04% Captured Most Profits: Data,” *Cryptonews*, <https://finance.yahoo.com/news/70-polymarket-traders-lost-money-192327162.html>.

⁴² CFTC, Press Release: CFTC Orders Event-Based Binary Options Markets Operator to Pay \$1.4 Million Penalty, Jan. 3, 2022, <https://www.cftc.gov/PressRoom/PressReleases/8478-22>.

⁴³ *Id.*

⁴⁴ David Yaffe-Bellany, William K. Rashbaum, Michael J. de la Merced, “F.B.I. Searches Home of Founder of Polymarket Betting Website,” *N.Y. Times*, Nov. 13, 2024, <https://www.nytimes.com/2024/11/13/technology/polymarket-shayne-coplan-fbi-search.html>.

⁴⁵ CFTC, Notice of Proposed Rulemaking, “Event Contracts,” 89 FR 48968, (Jun. 10, 2024), <https://www.federalregister.gov/documents/2024/06/10/2024-12125/event-contracts>.

⁴⁶ CFTC, Farewell Address of Commissioner Kristin N. Johnson, Sept. 3, 2025, <https://www.cftc.gov/PressRoom/Speeches/Testimony/opajohnson25>.

⁴⁷ *Id.*

traders to “hedge portfolio risks and test their abilities to forecast truth” and described his broader mission for the agency: “The CFTC’s approach should be to deliver the minimum effective dose of regulation — nothing more and nothing less.”⁴⁸

In early 2026, Selig announced that the CFTC would form an “Innovation Advisory Committee” to advise the Commission on “innovation in financial markets.”⁴⁹ Selig’s proposed committee would include the CEOs of Kalshi, Polymarket, and Crypto.com, in addition to executives from other regulated marketplaces.⁵⁰

On January 29, 2026, Selig announced that the CFTC would drop the proposed rule banning sports and politics prediction markets and that it would withdraw guidance issued in 2025 urging that prediction markets offer sports contracts with caution.⁵¹ He also indicated that the CFTC might step into litigation in district and circuit courts regarding states’ abilities to regulate sports betting,⁵² which the CFTC subsequently did in the Ninth Circuit appeal of the Crypto.com lawsuit against Nevada.⁵³ He emphasized the need of the CFTC to “modernize” and “future-proof” regulations, but stated that the CFTC would “not abandon our age-old principles, like investor protection, anti-fraud and anti-manipulation, and market integrity, which remain our North Star.”⁵⁴ On March 3, 2026, he announced that the CFTC would circulate a draft rule regarding prediction

markets “in the very near future.”⁵⁵ Such a rule, he stated, would set “very clear standards as to what can be self-certified in our markets and what cannot, and how to evaluate the different products that are offered in the space.”⁵⁶

REGULATING “INSIDER TRADING” IN PREDICTION MARKETS

Insider trading has long been illegal in securities markets, with many prominent criminal and civil enforcement actions brought against company insiders or tippees who trade in material non-public information about stocks. But enforcement of insider trading in the commodities futures markets is somewhat less common, in substantial part because of key differences in the rationale for regulating such activity in each context.

A 2009 joint report by the SEC and CFTC articulates the basic logic of the different approaches. In traditional securities, corporate insiders breach a fiduciary duty to the shareholders when they trade on material non-public information (“MNPI”). By contrast, the “historical function” of the futures markets was to “permit hedgers to use their non-public material information to protect themselves against risks to their commodity positions.”⁵⁷ Recognizing that counterparties in commodities and futures transactions might not have the same access to MNPI as corporate insiders, “corporate officials and personnel generally do not have a similar fiduciary duty with respect to those counterparties; indeed, their duties are to ensure that the company properly manages its risks by trading on the best available information.”⁵⁸

Prior to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), the Commodities Exchange Act expressly provided that the CFTC could make rules or initiate enforcement actions only regarding misuse of confidential information by only two groups of individuals:

⁴⁸ CFTC, Public Statements & Remarks, “Chairman Selig: America’s Financial Markets are ready for a Golden Age,” Jan. 20, 2026, <https://www.cftc.gov/PressRoom/Speeches/Testimony/seligstatement012026>.

⁴⁹ Aislinn Keely, CFTC Chair Taps Kalshi, Polymarket CEOs To Advisory Panel, *LAW360*, Jan. 12, 2026, <https://www.law360.com/fintech/articles/2429127/cftc-chair-taps-kalshi-polymarket-ceos-to-advisory-panel?copied=1>.

⁵⁰ *Id.*

⁵¹ Contessa Brewer, “Predictions market regulator scraps proposed ban on sports contracts, says new rules are coming,” *CNBC*, Jan. 29, 2026, <https://www.cnb.com/2026/01/29/cftc-scraps-proposed-ban-on-sports-contracts-says-new-rules-coming.html>.

⁵² *Id.*

⁵³ The brief can be downloaded from the CFTC’s website: CFTC Press Release, “CFTC Reaffirms Exclusive Jurisdiction over Prediction Markets in U.S. Circuit Court Filing,” Feb. 17, 2026, <https://www.cftc.gov/PressRoom/PressReleases/9183-26>.

⁵⁴ *Id.*

⁵⁵ Aislinn Keely, “CFTC Chair Previews Perpetual Futures, Event Contract Rules,” *LAW360*, Mar. 3, 2026, https://www.law360.com/securities/articles/2448346?cn_pk=d9977da3-ac12-4273-a33f-31be01dacbb7.

⁵⁶ *Id.*

⁵⁷ SEC and CFTC, “A Joint Report of the SEC and the CFTC on Harmonization of Regulation,” Oct. 16, 2019, <https://www.sec.gov/news/press/2009/cftcjointreport101609.pdf>.

⁵⁸ *Id.*

(1) CFTC employees and agents and (2) employees “of a board of trade, registered entity, or registered futures association.”⁵⁹

In 2011, pursuant to Section 753 of the Dodd-Frank Act, which prohibited fraud or manipulation “in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery,” the CFTC promulgated a broad regulation — Rule 180.1 — with language that mirrors Section 10(b) of the Securities Exchange Act and the SEC’s Rule 10b-5, the basis for most insider trading prosecutions in the securities context.⁶⁰ The CFTC has interpreted Rule 180.1 to bar “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.”⁶¹

Since 2015, when the CFTC brought its first insider trading enforcement action, the agency has pursued a small number of cases, all of which focused on misappropriation by corporate insiders of the company’s information.⁶² The first such action, which the CFTC announced on December 2, 2015, was against a gasoline trader, Arya Motazedi, who placed trades in oil and gas futures in his own accounts *before* he traded them for his employer — despite his company’s prohibition of such behavior.⁶³ Thus, while Motazedi’s trades on behalf of

his employer based on MNPI would not have been illegal, his misappropriation of that information for his own personal benefit was. The CFTC settled with Motazedi, who it found had engaged in “deceptive or manipulative conduct in connection with . . . [a] contract for future delivery . . . by trading on the basis of material nonpublic information in breach of a preexisting duty,” in violation of Rule 180.1 and the CEA.⁶⁴

More recently, in two cases brought in 2020, the CFTC signaled its use of the tipper-tippee theory of insider trading under the CEA and Rule 180.1, opening the doors to liability for those who misappropriate information and those to whom they pass that information. One order, issued September 30, 2020, centered on Marcus Schultz, the head of a trading desk at an energy company, who disclosed MNPI obtained from his employer to a broker under the pretense that he was seeking a counterparty for his company.⁶⁵ Then, Schultz — despite a duty he had under his employer’s policies to keep information confidential — executed block trades for his company “at non-bona fide prices that did not maximize the profit” for his company, allowing the broker and two of his customers to profit.⁶⁶ They then shared those profits with Schultz.⁶⁷

Then, in December 2020, the CFTC announced a settlement with a Dutch-Swiss company, Vitol Inc., in connection with bribes and kickbacks given by Vitol, Inc. employees to agents of state-owned enterprises (“SOEs”) in Brazil, Ecuador, and Mexico.⁶⁸ The CFTC found that agents of these SOEs provided the Vitol, Inc. employees with MNPI regarding oil products, and the employees, “while in possession of this improperly obtained information, traded and secured physical oil products and related derivative contracts in a broad range of oil markets in the United States and globally[.]”⁶⁹

Both cases indicated a willingness to bring actions to enforce Rule 180.1 not only against employees with a duty to keep information confidential, but also against

⁵⁹ Douglas K. Yatter, Sohom Datta, and Cameron J. Sinsheimer, “Insider Trading in Commodities Markets: An Evolving Enforcement Priority,” NYU Program on Corporate Compliance and Enforcement, Mar. 12, 2021, https://wp.nyu.edu/compliance_enforcement/2021/03/12/insider-trading-in-commodities-markets-an-evolving-enforcement-priority-part-i-of-iv/; CEA § 9(d), 7 U.S.C. § 13(d) (2008) (regarding “any Commissioner of the Commission or any employee or agent thereof”); CEA § 9(e), 7 U.S.C. § 13(e) (2008) (regarding “an employee . . . of a board of trade, registered entity, or registered futures association”).

⁶⁰ *Id.*

⁶¹ Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 Fed. Reg. 41,398, 41,403 (July 14, 2011).

⁶² Patrick G. Costello, *A Comparison of Insider Trading Law Under the Commodities Exchange Act and the Securities Act of 1934*, 7 Wayne St. U.J. Bus. L. 61, 73 (2024) (citing *CFTC v. United Inv’rs Grp., Inc.*, 440 F. Supp. 2d 1345, 1358 (S.D. Fla. 2006)).

⁶³ *Id.* at 74.

⁶⁴ *Id.* (citing *In re Motazedi*, CFTC No. 16-02, 2015 WL 7880066 (Dec. 2, 2015)).

⁶⁵ ¶ 34,825 *In the Matter of Schultz.*, Comm. Fut. L. Rep. P 34825.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *In the Matter of: Vitol Inc.*, Respondent., 2020 WL 7258887, at *2.

⁶⁹ *Id.*

third parties who knowingly traded on confidential information provided to them by an individual who did have such a duty.

But it is unclear how the CFTC's enforcement experience will be brought to bear in the prediction market context. One year into the new administration, the CFTC has not brought any actions related to insider trading on prediction markets, and high-profile events like the bets on Maduro's downfall have led to legislative proposals for further regulation.⁷⁰

But that may be changing. On February 25, 2026, after Kalshi announced the actions that it took against two insider traders on the platform, the CFTC published a press release asserting its own authority under the CEA: "[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 Debt Capital Market ("DCM"), including those described above related to prediction

markets."⁷¹ On the same day, CFTC Chairman Michael Selig tapped David Miller, a former securities fraud prosecutor with substantial experience in the insider trading context, as the CFTC's new director of enforcement.

WILL THE INDUSTRY POLICE ITSELF?

The concept of insider betting is not new. As long as there has been sports gambling, dishonest participants have tried to game the system. The most notorious instance of this phenomenon in U.S. sports was the Black Sox Scandal, in which allegations came to light that players from the Chicago White Sox had conspired with professional gamblers to throw the 1919 World Series.⁷² A court in Cook County, Illinois, tried eight players and 10 gamblers for five counts of conspiracy to obtain money by false pretenses and/or via a confidence game.⁷³ On August 2, 1921, all of the defendants were acquitted, after which the *Chicago Tribune* reported, "[j]urors shook hands and congratulated the men whom they had just acquitted."⁷⁴ But following the trial the first Commissioner of Baseball, Kenesaw Mountain Landis — who had previously served as a U.S. federal judge — banned all eight players from the sport for life.⁷⁵

After all, even aside from government regulation, there has been a powerful incentive for companies taking bets and dispensing winnings to police themselves. When bettors win or lose money against "the house," the house will go to great lengths to make sure it does not get cheated.

Prediction markets may not have the same incentives, because of their fee models. And prominent companies have thus far taken differing approaches to regulating insider betting, though the recent media spotlight on suspiciously well-timed bets around major world events has moved the major prediction markets towards articulating explicit bans on insider trading on their platforms.

⁷⁰ In early 2026, following the high-profile incidents regarding Venezuela, U.S. senators pressed the CFTC on its plans to combat insider trading in prediction markets. Ritchie Torres, a Democratic representative from New York, introduced a bill into the House entitled the "Public Integrity in Financial Prediction Markets Act of 2026," which would bar government employees, including elected officials, political appointees, and executive branch officers, from betting on a prediction market if they have "material nonpublic information relevant to such covered transaction" or "may reasonably obtain such material nonpublic information in the course of performing official duties." Bryan Metzger, "The DC lawmakers who think prediction markets are 'bad' and 'kind of sad,'" *Business Insider*, Feb. 7, 2026, <https://www.businessinsider.com/prediction-markets-capitol-hill-lawmakers-concerns-2026-2>. But, while many Capitol Hill lawmakers agree that prediction markets are "sad," there has been no real movement on any legislation regulating prediction markets — as to insider trading or otherwise. Shortly after the surge in bets related to U.S. military strikes in Iran and the death of Ayatollah Khamenei on February 28, 2026, Senators Jeff Merkley and Amy Klobuchar introduced a bill into the Senate that would specifically ban the president, vice president, members of Congress, and senior executive branch officials from trading event contracts on prediction markets. Justin Papp, "Sen. Merkley proposes prediction market ban for government officials after Maduro, Iran bets," *CNBC*, Mar. 5, 2026, <https://www.cnbc.com/2026/03/05/prediction-markets-merkley-ban-iran.html>. Other recent legislative efforts specifically targeting sports contracts are addressed in the next section of this article.

⁷¹ CFTC Press Release, "CFTC Enforcement Division Issues Prediction Markets Advisory," Feb. 25, 2026, <https://www.cftc.gov/PressRoom/PressReleases/9185-26>.

⁷² William F. Lamb, "The Black Sox Scandal," *Society for American Baseball Research*, <https://sabr.org/journal/article/the-black-sox-scandal/>.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

In January 2026, following increased scrutiny of the industry after the Maduro trades, Kalshi made clear that its terms of service already banned insider trading.⁷⁶ Its Rulebook has a provision defining an insider and barring insiders from taking part in trades on the site:

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.⁷⁷

The Rulebook also bans trades by anyone who “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) of any Contract[.]” Kalshi publicly announced its first two internal investigations into insider trading on the platform on February 25, 2026.⁷⁸ Kalshi issued a two-year ban and a \$20,000 fine to a video editor for a popular YouTuber, who had won about \$4,000 on the platform for bets he had made about the contents of the YouTuber’s future videos.⁷⁹ The second investigation was against a longshot gubernatorial candidate in California, who had made a public post on Twitter that he would make a Kalshi bet

on himself.⁸⁰ Kalshi fined that user \$2,200 and banned him for five years from the platform for the stunt, finding that he was a “a direct decision maker” under its Rulebook.⁸¹

DraftKings Predictions also bars from its platform users who have “accessed or had access, knowingly or otherwise, to any pre-release information, confidential information, or any other information that is not publicly available” if DraftKings determines “that such information provides or could provide [the user] an advantage in placing orders for Commodity Transactions or in otherwise using the Services[.]”⁸²

Before the public scrutiny of prediction markets increased in the early months of 2026, other exchanges — including, most prominently, Polymarket — positioned themselves as less hostile to the idea of insiders placing bets on their platforms. The CEO of Polymarket, Shayne Coplan, stated that “[w]hat’s cool about Polymarket is that it creates this financial incentive for people to go and divulge the information to the market[.]”⁸³ And while the platform’s terms of service generally banned conduct in violation of “any Applicable Laws,” including “any fraudulent act or scheme to defraud, deceive, trick or mislead” along with specific practices like fictitious transactions, manipulation, and spoofing,⁸⁴ they did not explicitly ban insider trading. This changed after public scrutiny regarding insider bets increased, and Congress began more serious discussions regarding regulation. On March 23, 2026, a bipartisan bill was introduced in the Senate, aimed at barring prediction markets from listing sports events contracts (though the bill does not mention political or current events bets).⁸⁵

⁷⁶ Nathan Bomey, “Kalshi prediction market CEO: We already ban insider trading,” *Axios News*, Jan. 7, 2026, <https://www.axios.com/2026/01/07/kalshi-inside-trading-tarek-mansour>.

⁷⁷ Kalshi Rulebook, current version December 11, 2025, available at https://kalshi.com/regulatory/rulebook?utm_campaign=how-kalshi-creates-a-safe-environment-for-traders&utm_medium=referral&utm_source=news.kalshi.com.

⁷⁸ Bobby Allyn, “Kalshi reveals insider trading case against editor for MrBeast,” *NPR*, Feb. 25, 2026, <https://www.npr.org/2026/02/25/nx-s1-5726050/kalshi-insider-trading-enforcement-actions>.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² DraftKings Predictions, Terms of Use, last accessed Jan. 23, 2026, <https://myaccount.draftkings.com/documents/predictions-terms-of-use?product=predict>.

⁸³ Bryan Metzger, “A well-timed Maduro bet on Polymarket paid out big. A new bill would keep government insiders out,” *Business Insider*, Jan. 9, 2026, <https://finance.yahoo.com/news/well-timed-maduro-bet-polymarket-003433439.html>.

⁸⁴ Internet Archive Wayback Machine, Polymarket Terms of Service as of Jan. 26, 2026, <https://web.archive.org/web/20260126175349/https://polymarket.com/tos>.

⁸⁵ Ken Sweet, “Kalshi and Polymarket place new bans on insider trading as senators move to curb prediction markets,” *Associated Press*, Mar. 23, 2026,

The same day, Polymarket announced that it updated its terms of service to prevent individuals from trading on “stolen confidential information,” the use of which would violate a preexisting duty or obligation held by that individual to another person or entity, or on “illegal tips” on any such confidential information.⁸⁶ The new terms of service, which apply to Polymarket’s new U.S. exchange as well as to its global platform, also bar from trading any person who could influence the outcome of the trade.⁸⁷ Simultaneously, Kalshi announced that it would strengthen its own insider trading ban by preemptively preventing professional or collegiate athletes from placing trades on their own leagues, and by barring politicians from making bets related to their campaigns.⁸⁸

These announcements indicate that the most powerful players in the industry are beating a hasty retreat from *laissez faire* attitudes about insider trading, though a minority of top prediction markets, including PredictIt, still have not introduced any bans on the practice. While its terms of conditions require traders to represent that they “will comply with all laws in the jurisdiction in which [they] are present,” the platform also explicitly informs users that it will not be policing itself for insider trading:

The Website is not a stock exchange, and there are no controls on market manipulation or trading on the basis of “inside information”. You confirm that you fully understand the risks that this entails, or, if you do not understand these risks, you agree to obtain appropriate independent advice before using the Website.⁸⁹

<https://www.theguardian.com/technology/2026/mar/24/kalshi-polymarket-insider-trading-regulation>.

⁸⁶ Polymarket, Press Release, “Polymarket Publishes Enhanced Market Integrity Rules Across Its DeFi Platform and CFTC-Regulated U.S. Exchange,” Mar. 23, 2026, <https://www.businesswire.com/news/home/20260320997513/en/Polymarket-Publishes-Enhanced-Market-Integrity-Rules-Across-Its-DeFi-Platform-and-CFTC-Regulated-U.S.-Exchange>.

⁸⁷ *Id.*

⁸⁸ Nathan Bomey, “Exclusive: Kalshi to preemptively block athletes and politicians from trading on their markets,” *Axios News*, Mar. 23, 2026, <https://www.axios.com/2026/03/23/kalshi-prediction-markets-insider-trading-ban>.

⁸⁹ PredictIt, Terms and Conditions, last accessed Mar. 24, 2026, <https://www.predictit.org/terms-and-conditions>.

Some prediction market traders have built monitoring and analytics tools that flag potential insider trading — not to tip off any authorities, but so other traders can follow the trades and make a profit. For these traders, the presence of insiders trading on material non-public information is a feature rather than a bug of prediction markets. Tre Upshaw, who created one such tool, called Polysights, told Bloomberg News that “[i]nsider trading just accelerates the truth faster at the end of the day.”⁹⁰

It thus remains to be seen the extent to which these fast-growing companies will seek to regulate insider trading on their platforms.

A POTENTIAL BACKDOOR TO ENFORCEMENT

To the extent the prediction markets attempt to police themselves by having users agree to terms of service that ban insider trading, those terms of services may open a backdoor to additional enforcement by federal prosecutors.

In October 2025, the U.S. Attorney’s Office for the Eastern District of New York (“EDNY”) charged current and former National Basketball Association (“NBA”) players and others with a wire fraud conspiracy and a money laundering conspiracy.⁹¹ The indictment alleges that NBA players and coaches provided inside information to bettors who then placed wagers through online sportsbooks. The key allegation — which the indictment uses to convert otherwise lawful sports betting into wire fraud — is that the rules issued by the online sportsbooks included not betting using non-public information, and that the bettors allegedly falsely represented that their wagers complied with that rule.

If the EDNY’s indictment holds up, the charges could serve as a template for enforcement in the prediction markets. To the extent bettors in the prediction markets represent they will abide by certain terms of service (including by not using inside information), the EDNY indictment shows how federal prosecutors could pursue those bettors for wire fraud. In this way, federal

⁹⁰ Emily Nicolle, “The Man Betting on Insider Trading as Prediction Markets Boom,” *Bloomberg*, Jan. 12, 2026, <https://www.bloomberg.com/news/articles/2026-01-12/the-man-betting-on-insider-trading-as-prediction-markets-boom?embedded-checkout=true>.

⁹¹ Dept. of Justice Press Release, “Current and Former National Basketball Association Players and Four Other Individuals Charged in Widespread Sports Betting and Money Laundering Conspiracy,” Oct. 23, 2025, <https://www.justice.gov/usao-edny/pr/current-and-former-national-basketball-association-players-and-four-other-individuals>.

prosecutors could become the primary enforcers in the prediction markets, regardless of what happens in the turf battle between the CFTC and state regulators.

THE IMPORTANCE OF PUBLIC SENTIMENT

Public sentiment could ultimately drive future developments in the regulation of prediction markets.

The notion that insider trading “accelerates the truth” has appeal in some contexts. It has some parallels to the justification for permitting trading by insiders in commodities futures markets, which are designed to offer participants a means to hedge against exposure to steep volatility in commodities prices. The fact that participants might have nonpublic information about crop yields, inventory levels, or production outages is a feature of markets that keep economy-moving industries afloat during hard times.

But that logic generally does not extend to sports betting. It is true that some businesses — such as sports bars near stadiums — depend to some extent on the

performance of the local teams. For example, a bar near Wrigley Field in Chicago may well be more profitable if the Cubs make the playoffs. In theory, the bar could wish to hedge against the (usually substantial) risk that the Cubs will not make the playoffs. But the need for hedging in such limited contexts provides a thin rationale for treating all sports betting as hedging and does not apply at all to many kinds of sports bets, such as in-game parlays.

Ultimately, the degree of public concern over the integrity of sports leagues could eventually lead to a push for stronger regulation. Whether that regulation comes from states or from the CFTC could depend on the results of ongoing litigation and whether courts — including the Supreme Court — view bets in prediction markets as more akin to futures contracts or gambling. While these issues play out, the most serious enforcement may be left to federal prosecutors, with their seeming power to attempt to convert misrepresentations about compliance with terms of service into charges of wire fraud. ■