

## CLIENT ALERT

# CFTC Issues Prediction Markets Enforcement Advisory: Agency Highlights Disciplinary Cases Brought by KalshiEx

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Last week, the Commodity Futures Trading Commission’s Division of Enforcement issued an advisory concerning prediction markets (commonly referred to as “event contracts”). The advisory follows two exchange disciplinary cases involving misuse of nonpublic information and fraud in connection with trading on KalshiEX (“Kalshi”), a CFTC-registered designated contract market (“DCM”).<sup>1</sup> The Division’s message emphasized the CFTC’s authority to investigate and prosecute “insider trading” and other fraud, as well as manipulation and other prohibited practices, on event contract platforms. The advisory is consistent with CFTC Chairman Michael Selig’s recent statements publicly championing the responsible development of prediction markets and the CFTC’s exclusive jurisdiction over event contracts that are listed on DCMs.

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<sup>1</sup> Press Release No. 9185-26, *CFTC Enforcement Division Issues Prediction Markets Advisory* (Feb. 25, 2026), available [here](#). For more information on Kalshi’s event contracts litigation, see Larsen et al., *Betting on Uncertainty in the Regulation of Event Contracts* (Nov. 2025), available [here](#).

This client alert summarizes the key aspects of the advisory, the underlying Kalshi disciplinary matters, and Chairman Selig's broader position and agenda with respect to event contracts.

### **The Enforcement Advisory: Key Message**

The advisory summarized the Kalshi cases (detailed below) and noted that Kalshi's internal enforcement program addressed the matters, but made clear that the CFTC has fulsome authority to police misconduct related to event contracts on DCMs and will exercise that authority in appropriate cases. Illegal trading practices identified as potentially relevant include, but are not limited to:

- (1) Misappropriation of confidential information in breach of a duty of trust and confidence to the information's source (commonly referred to as "insider trading") (pursuant to Section 6(c)(1) of the Commodity Exchange Act (the "CEA") and CFTC Rule 180.1(a)(1) and (3));
- (2) Pre-arranged non-competitive trading, wash sales, and other prohibited trading practices, including disruptive trading (pursuant to Section 4c(a) of the CEA and CFTC Regulation 1.38(a)); and
- (3) Fraud and manipulation (pursuant to various provisions of the CEA).

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

### **The Kalshi Disciplinary Cases**

The advisory followed public disclosure of two disciplinary actions involving improper trading on Kalshi during 2025, both of which were addressed through Kalshi's internal disciplinary committee. Citing to Kalshi, the advisory described the cases as follows:

- (1) *Political Candidate Self-Trading.* In May 2025, videos surfaced on social media showing a political candidate apparently trading on his own candidacy on Kalshi. That day, Kalshi's compliance team contacted the candidate, who acknowledged that he knew these trades were improper and violated Kalshi's rules prohibiting trading in a contract where the trader has direct or indirect influence over the outcome. Kalshi imposed a \$2,246.36 penalty (consisting of \$246.36 in disgorgement and a \$2,000 penalty) and a five-year suspension from direct or indirect exchange access. The CFTC identified this conduct as potentially violating prohibitions on manipulation and fraud under Section 6(c)(1) of the CEA and Commission Rule 180.1(a)(1) and (3).
- (2) *Employer's Material Nonpublic Information.* In August and September 2025, an individual traded a prediction market contract related to a YouTube channel while maintaining an employment relationship with the channel. Kalshi discovered that the trader was an editor for the YouTube

channel and concluded that the trader likely had access to material nonpublic information related to his trades, in violation of Kalshi's rules. Kalshi imposed a \$20,397.58 penalty (consisting of \$5,397.58 in disgorgement and a \$15,000 penalty) and a two-year suspension from direct or indirect exchange access. The CFTC identified this conduct as potentially violating prohibitions on misappropriation of confidential information in breach of a pre-existing duty of trust and confidence under Section 6(c)(1) of the CEA and Commission Rule 180.1(a)(1) and (3).

This case has parallels with prior Commission actions pursuing trading on the basis of material, nonpublic information belonging to the defendant or respondent's employer, brokerage customer, or other principal, in breach of a duty of trust and confidence to that principal. For example, the advisory cited *CFTC v. Clark*,<sup>2</sup> a recently settled case in which a futures trader employed by an energy company misappropriated his employer's material nonpublic information (e.g., order and trade information) for his own benefit, disclosing it in a "tipping" chain to allow the ultimate tippee to profit from trading against Clark's employer on the basis of the information (and pass a portion of the profits back to Clark).

The requirement of *misappropriation* of material nonpublic information belonging to another in breach of a duty to that other has repeatedly been recognized as foundational to the CFTC's "insider trading"-type cases under Section 6(c)(1) of the CEA and Commission Rule 180.1. In promulgating Rule 180.1, the CFTC "recognize[d] that unlike securities markets, derivatives markets have long operated in a way that allows for market participants to trade on the basis of lawfully obtained material nonpublic information."<sup>3</sup> This would generally include, among other things, a market participant's *own* material nonpublic information (for example, an agricultural company's internal nonpublic projections of its own crop yields, or an oil company's similar projections of its own oil production).

Chairman Selig referenced differences between the securities and commodity derivatives laws' respective "insider trading" doctrines in a recent interview on prediction markets, explaining that the informational asymmetries in commodity derivatives markets generally differ from those in the securities markets—where a company and its insiders often have market-moving information about the company itself and have a duty to shareholders to refrain from trading on that information—but that informational asymmetries may exist in commodity derivatives markets, as is sometimes the case with respect to event contracts.<sup>4</sup> He noted that the CFTC is carefully considering the nuances of these differences in doctrines for policing prediction markets, including in the case of persons that can influence a contract's outcome, such as members of a sports league—or a candidate for office, as in Kalshi case (1) above. Given the Commission's active consideration of the application of its "insider trading" doctrine in such

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<sup>2</sup> Complaint, *Commodity Futures Trading Comm'n v. Clark*, No. 4:22-cv-00365 (S.D. Tex. Feb. 3, 2022); Consent Order, *id.* (Jan. 29, 2026).

<sup>3</sup> 76 Fed. Reg. 41398, 41403 (July 14, 2011).

<sup>4</sup> Odd Lots, *New CFTC Chairman Michael Selig on How to Regulate Prediction Markets* (Feb. 12, 2026), available [here](#).

cases, it is sensible that the focus of the advisory is on manipulation rather than “insider trading” in addressing that case.<sup>5</sup>

By contrast, an employee trading on *his or her employer’s* proprietary information, as in Kalshi case (2) above, is a much more familiar fact pattern from prior misappropriation “insider trading” cases, as the advisory noted and as discussed above.<sup>6</sup>

Of note, in their capacity as self-regulatory organizations, DCMs have the authority to and are expected to design and tailor their rules to promote market integrity and protect market participants in light of the particular products and participants on their respective platforms. Such rules may be more specific than CEA provisions or CFTC rules that may also apply to the conduct, which are often drafted at a high level but fleshed out in the CFTC rulemaking record and case law. For example, Kalshi case (1) charged a violation of a specific Kalshi rule prohibiting trading in a contract where the trader has direct or indirect influence over the outcome, although there is no CEA provision or CFTC rule containing such a specific prohibition (but as noted, the CFTC cautioned that the conduct could potentially violate broader prohibitions on manipulation and fraud under Section 6(c)(1) of the CEA and Commission Rule 180.1(a)(1) and (3)). Once an exchange establishes such a specific prohibition in its rulebook, the statutory core principles for DCMs and CFTC rules thereunder require the DCM to enforce the rule unless and until it is changed.<sup>7</sup>

## Key Takeaways

The enforcement advisory arrives against the backdrop of Chairman Selig’s broader regulatory agenda for prediction markets. At a Joint Event on Harmonization held by the CFTC and the SEC on January 29, 2026, Chairman Selig announced that the CFTC would withdraw a 2024 proposed rule that would have prohibited certain event contracts tied to sports and politics and would propose new rules designed to provide clear regulations to govern prediction markets while supporting “responsible development of event contract markets.”<sup>8</sup>

Chairman Selig has also defended the CFTC’s exclusive jurisdiction over prediction markets against state-level challenges. In a recent op-ed published in *The Wall Street Journal*, Chairman Selig addressed ongoing litigation concerning state authorities’ attempts to apply state gaming and similar laws to CFTC-registered exchanges listing

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<sup>5</sup> See, e.g., Matt Levine, *Kalshi Found Some Insider Traders*, Bloomberg op. (Feb. 25, 2026), available [here](#) (noting that the candidate subject to this disciplinary action “presumably had no duty of trust and confidence to anyone else about his candidacy”).

<sup>6</sup> In addition to *Clark*, see also, e.g., *In re Motazed*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep (CCH) ¶33,599 (CFTC Dec. 2, 2015) (consent order) (settlement of claims under, *inter alia*, Section 6(c)(1) and Rule 180.1 against a gasoline trader for misappropriating his employer’s information to trade against and trade ahead of his employer).

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

<sup>8</sup> For a more detailed discussion of Chairman Selig’s remarks at the CFTC-SEC Joint Event on Harmonization, see Comstock et al., *SEC and CFTC Chairmen Pledge to Harmonize U.S. Crypto Regulation* (Feb. 2026), available [here](#).

event contracts.<sup>9</sup> Chairman Selig asserted that such state actions are inconsistent with existing law and precedent on federal preemption, observing that the event contracts at issue are commodity derivatives that fall squarely within the CFTC's oversight.<sup>10</sup> The op-ed accompanied the CFTC's filing of an amicus brief in the U.S. Court of Appeals for the Ninth Circuit in support of Crypto.com's appeal against the State of Nevada, in which the CFTC reaffirmed that event contracts on CFTC-registered exchanges are subject to the agency's exclusive jurisdiction.<sup>11</sup> Willkie partners J. Christopher Giancarlo, Kari Larsen, and A. Kristina Littman filed a separate amicus brief in the same appeal also expressing this view.<sup>12</sup>

Market participants should expect further developments from the CFTC on these evolving markets, including rule proposals, that will identify contours of permissible conduct and the scope of compliance obligations for event contracts, including with respect to the issues discussed herein.

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If you have any questions regarding this alert, please contact one of the authors, any member of our event contracts team listed below, or the Willkie attorney with whom you regularly work.

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<sup>9</sup> Chairman Michael S. Selig, *States Encroach on Prediction Markets*, Wall St. J. (Feb. 16, 2026), available [here](#).

<sup>10</sup> *Id.*

<sup>11</sup> Brief for CFTC as Amicus Curiae Supporting Appellant, *N. Am. Derivatives Exch., Inc. v. State of Nevada*, No. 25-7187 (9th Cir. Feb. 17, 2026).

<sup>12</sup> Brief for Former Federal Government Officials and Experts on the Scope of CFTC Jurisdiction as Amici Curiae Supporting Appellant, *N. Am. Derivatives Exch., Inc. v. State of Nevada*, No. 25-7187 (9th Cir. Feb. 3, 2026).

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