

The frontiers of finance: The compliance and litigation risks of prediction markets

Congressional inaction is a bad bet for prediction markets

New monthly column with former prosecutors addressing prediction markets and exploring the compliance and enforcement issues they present.

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As former prosecutors, federal and state, we worry that prediction markets have, by converting all human activity into a potential investment into one of two binary outcomes, vastly expanded opportunities for insider trading or market manipulation. Our laws and the institutions entrusted to enforce those laws are not ready for this development.

Recent events illustrate the legal and compliance risks posed by prediction markets. Gannon Ken Van Dyke, a US Army Special Forces soldier was indicted for allegedly leveraging his involvement and insider access in the planning and execution of the January 3, 2026, operation that ousted Venezuelan strongman Nicolás Maduro to make over $400,000 in successful wagers on the prediction market Polymarket. Multiple political candidates have placed bets based on their own election races. A Google employee allegedly took positions based on his inside access to company data. Pardoned ex-Congressman George Santos bet on his own attendance at the State of the Union address. And President Trump's long-time teleprompter operator was fined $172,000 for placing bets related to words or phrases to be used in Presidential speeches.

Unique risks

While these incidents sound like traditional insider trading cases, they present unique enforcement and compliance risks. In securities markets, insider trading law has a familiar architecture: duties of trust and confidence, the abuse of material nonpublic information, corporate insiders, and tippers and tippees, culminating in securities trades.

Prediction markets do not map neatly onto that framework. The "inside information" at issue might relate to military operations, a government policy announcement, a court decision, a sporting event, or even the outcome of a reality television show. The person with inside information may owe no legal duty to other market participants and may not be trading anything the law treats as a security. Yet the economic reality is the same: someone knows what the market does not and can monetize that knowledge.

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The problem becomes more acute when the trader is not merely informed about the outcome but can affect its outcome. A government employee or campaign staffer, athlete, or media insider may be positioned to influence the event on which the market is predicated.

In traditional securities markets, manipulation often means moving prices or creating a false appearance of supply, demand, or trading activity. In prediction markets, manipulation may mean changing the underlying reality itself: delaying a policy announcement or government action, influencing that government action, or affecting a contest, be it an athletic one or one on reality television. That distinction makes these cases difficult not only to detect, but also to charge.

For these reasons, prediction markets threaten to become an enforcement nightmare. They not only invite insider-trading-like conduct and market manipulation, they also bring those opportunities into every human activity. The more granular and exotic the contracts become, the more the market will attract the people best positioned either to know the answer in advance or to make a specific answer come true. Regulators and prosecutors will then be left trying to retrofit 20th-century statutes onto markets that have financialized events the law never anticipated as tradable instruments.

At every level, the government is ill-equipped to handle the myriad ways that bad actors may try to manipulate prediction markets. Under the current regime, contracts traded on prediction markets are swaps, not securities, so the CFTC, rather than the SEC, has primary jurisdiction. And there is good reason to fear the CFTC might not prioritize vigorous enforcement of malfeasance in prediction markets.

CFTC jurisdiction

First, the CFTC appears more interested in preserving its jurisdiction over other regulatory authorities than in high-profile enforcement actions. In 2026, the CFTC filed amicus briefs in cases against the prediction market Kalshi in the Ninth Circuit, the Massachusetts Supreme Judicial Court, and the Sixth Circuit, arguing for exclusive federal jurisdiction. On April 2, 2026, the CFTC sued Arizona, Connecticut, and Illinois to preempt those states' regulation of prediction markets, claiming that "the CFTC will continue to safeguard its exclusive regulatory authority over these markets and defend market participants against overzealous state regulators." The CFTC later sued New York, Wisconsin, Minnesota, Rhode Island, New Mexico, and Kentucky.

Meanwhile, other than its civil case against Van Dyke, the CFTC has only announced two other enforcement actions in 2026. If you are keeping score at home, in this calendar year alone, the CFTC has sued nine states to defend its enforcement territory, as compared with three individual enforcement cases. The SEC, in contrast, has never sued state securities regulators to protect its jurisdictional prerogative over securities markets.

Plus, given the CFTC's open reliance on prediction market executives, including as members of the CFTC's Innovation Advisory Committee, doubts about the purpose of the CFTC's attempt to prevent state regulation of prediction markets are well-founded.

Furthermore, the CFTC lacks the SEC's resources (especially in headcount) and experience in dealing with these kinds of cases, or litigated matters generally. None of this augurs a robust enforcement regime against the growing threat of malfeasance in prediction markets, which now constitute tens of billions of dollars annually in trading activity.

By allowing almost any life outcome to become the subject of a financial wager, prediction markets have not merely created a new asset class; they have exported the risks of insider trading and market manipulation from securities markets to virtually everything. The problem is not simply that bad actors may exploit these markets. It is that the current legal architecture gives regulators and prosecutors no consistent way to stop them.

Jurisdiction is fragmented, duties are uncertain, penalties are ad hoc, and enforcement often depends on happenstance rather than design. That is not a regulatory framework. It is an invitation to commit fraud.

Congress needs to close that gap. A federal statutory scheme is needed to define what prediction markets are, and specify what events may and may not be bet on. It must identify the regulators responsible for supervising these markets, impose disclosure, surveillance, and compliance obligations on market operators, and establish clear civil and criminal penalties for insider trading, event manipulation, and other abusive conduct.

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Without that architecture, the government will continue to chase the most obvious cases after the damage is done, while missing the broader misconduct these markets are practically built to invite. Prediction markets may be designed to price the future. But unless Congress acts, the future they are pricing is one in which every event is monetized before the law has decided who is responsible for keeping the market honest. ●

Opinion