

ALERT

White Collar Defense & Investigations

OCTOBER 14, 2026

Insider Trading in Prediction Markets: CFTC and DOJ Put Event Contracts Squarely in the Crosshairs

The Commodity Futures Trading Commission (“CFTC”) has made clear that [insider trading in prediction markets](#) is an enforcement priority. Speaking last week at the PREDICT conference in New York, CFTC Director of Enforcement David Miller described prediction markets as a key concern for the Division of Enforcement. He rejected the notion that insider trading is a “victimless crime,” saying instead that it undermines market integrity and that its victims are the people whose information is misappropriated. Nick Roos, Chief of the Securities and Commodities Fraud Task Force at the U.S. Attorney’s Office for the Southern District of New York (“SDNY”), who joined Miller on a panel about enforcement, signaled that federal prosecutors share this focus.

This alert explains what insider trading means under the CFTC’s anti-fraud authority, reviews the four prediction-market enforcement actions brought so far, outlines the defenses those cases raise, and offers practical takeaways for market participants and employers.

KEY TAKEAWAYS

- The CFTC treats insider trading in event contracts as fraud under Section 6(c)(1) of the Commodity Exchange Act (“CEA”) and CFTC Rule 180.1.
- In the commodities context, the relevant theory of insider trading is misappropriation, meaning trading on information in breach of a duty owed to the source of that information. The classical insider trading theory does not apply.
- The CFTC has brought four actions to date, some with [parallel criminal charges](#) by the Department of Justice (“DOJ”). They involve government information, corporate information, a speaker’s planned remarks, and a former public official’s own attendance at the 2026 State of the Union address.

- Defendants have raised threshold defenses, including extraterritoriality and whether certain event contracts qualify as “swaps” at all.
- Employers should review their trading and confidentiality policies, which may not clearly reach event contracts.

THE LEGAL FRAMEWORK: INSIDER TRADING UNDER THE CEA AND RULE 180.1

Before 2010, the CFTC’s anti-fraud tools were narrower than those available to the SEC under Section 10(b) of the Securities Exchange Act and Rule 10b-5. The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted in 2010, added Section 6(c)(1) to the CEA. The CFTC then adopted Rule 180.1, which tracks the language of Rule 10b-5. Together, they prohibit using or attempting to use any manipulative or deceptive device or contrivance in connection with any swap, any contract of sale of any commodity in interstate commerce, or any contract for future delivery. By borrowing the securities-law language, Congress and the CFTC brought a broad anti-fraud standard to commodities, derivatives, and swaps.

Two Theories of Insider Trading and Why Only One Applies

Classical theory. Under securities law, the classical theory covers corporate insiders, such as officers, directors, and employees, who trade in their own company’s stock on material nonpublic information. Liability rests on the duty those insiders owe to the company’s shareholders.

Misappropriation theory. The misappropriation theory covers anyone who trades on confidential information in breach of a duty of trust and confidence owed to the source of that information, such as an employer, client, or government agency.

Commodities and event contracts have no issuer and no shareholders to whom an insider owes a fiduciary duty, so the classical theory does not fit. The CFTC proceeds under the misappropriation theory. This is consistent with Miller’s description of the victims as “the people whose information is stolen.” The practical consequence is that there must be a breach of a duty to the information’s source. As the Santos matter discussed below shows, trading on one’s own information, without that breach, is not insider trading.

PREDICTION MARKETS FALL WITHIN THE CFTC’S REACH

Prediction markets list event contracts, which pay out based on whether a specified event occurs. The CFTC treats these contracts as swaps, which brings them within the CEA and Rule 180.1. As a result, the CFTC’s insider trading and manipulation authority applies to trading in these markets.

THE FOUR ENFORCEMENT ACTIONS

1. Van Dyke: Government Information and the “Eddie Murphy” Rule

Gannon Ken Van Dyke allegedly used information he obtained about Operation Resolve, the operation that removed Nicolás Maduro, to trade event contracts on whether the United States would invade Venezuela and whether Maduro would be removed from power. Van Dyke allegedly made about \$400,000. On August 23, 2026, the SDNY indicted him for allegedly violating the CEA’s anti-fraud provisions and committing wire fraud. The CFTC, on the same day, brought a parallel civil action seeking restitution, disgorgement, civil monetary penalties, trading and registration bans, and a permanent injunction. The case is also the first time the government has charged a violation of the so-called “Eddie Murphy rule,” the CEA provision added by Dodd-Frank that bars trading on nonpublic

government information misappropriated from a federal source. The rule is named for the 1983 film *Trading Places*, in which Eddie Murphy's character profits from a stolen government crop report.

2. The Google Engineer: Corporate Information

Each year, Google publishes a list of the individuals most searched on its platform during the prior year. A Google software engineer allegedly obtained advance access to that list and traded event contracts on its results, earning more than \$1 million. Parallel civil and criminal actions allege insider trading based on misappropriated corporate information, a direct analog to the misappropriation cases familiar from the securities context.

3. Trump's Teleprompter Operator: Mention Markets

One type of event contract is the "mention market," which pays out based on whether a speaker uses particular words. Gabriel Perez, who worked as President Trump's teleprompter operator, allegedly had advance notice of what the President would say and traded on it. The matter was resolved through a CFTC settlement and also involved the Eddie Murphy rule.

4. George Santos: Attendance Markets and Manipulation

Attendance markets offer event contracts on whether a person will attend a particular event. Former Congressman George Santos allegedly traded contracts on whether he himself would attend the State of the Union. The CFTC did not bring an insider trading charge, because the information was his own and there was no breach of a duty to a source. Instead, because Santos allegedly made misleading statements about whether he would attend, the CFTC charged him with manipulating

those event contracts. The case, which has since settled, shows that trading on one's own information may avoid insider trading liability but not liability for manipulation or false statements.

POTENTIAL DEFENSES

Extraterritoriality

In the Google engineer case, the defense has argued that the trading took place outside the United States. The government responded that Google is a U.S. company. In opposing the motion to dismiss, the government also asserted that the evidence will show counterparties in the United States, even though Polymarket was supposed to have blocked U.S. users. How courts resolve this question may shape the CFTC's reach over offshore platforms.

Whether the Contracts Are Swaps

CFTC jurisdiction depends on the contracts being swaps. For an event contract to qualify, the underlying event generally must have a potential financial, economic, or commercial consequence. Van Dyke presents the government's strongest position: whether the United States invades Venezuela, or who leads Venezuela, plainly carries economic consequences. The other cases are harder. It is not obvious what economic consequence follows from who was the most-searched person on Google. Similarly, it is hard to identify any economic consequence of whether Santos attended the State of the Union. Future defendants may test whether contracts like these fall within the CEA at all.

ENFORCEMENT CHALLENGES IDENTIFIED BY SDNY

At the PREDICT conference, Roos highlighted three challenges facing regulators, prosecutors, and compliance functions:

- Traditional compliance does not translate. A policy that bars employees from buying company stock may not clearly reach event contracts.
- Compliance has not kept pace. Opportunities to place bets have expanded, but compliance programs have not adjusted accordingly. Employers that could monitor brokerage accounts may have no visibility into these new trading venues.
- More sophisticated actors are coming. As prediction markets grow, Roos expects more sophisticated actors to engage in these markets, increasing the risk for insider trading.

PRACTICAL CONSIDERATIONS FOR COMPANIES

- Update insider trading, confidentiality, and personal trading policies to expressly cover event contracts and prediction markets, including contracts tied to company metrics, announcements, products, or personnel.
- Assess whether pre-clearance and monitoring programs can capture trading on prediction-market platforms and update such programs including employee training.
- Be especially mindful of the Eddie Murphy rule and parallel criminal exposure, particularly for government contractors and employees with access to nonpublic government information.

CONCLUSION

The CFTC's message is direct: prediction markets are not a regulatory blind spot, and insider trading in event contracts will be pursued, often alongside DOJ. Open questions about extraterritoriality and the scope of the "swap" definition will likely be litigated, but companies and individuals should not count on those defenses. Blank Rome's White Collar and Investigations team is available to help clients assess their exposure, update compliance programs, respond to CFTC and DOJ inquiries, and defend against civil and criminal charges.

This alert is for general informational purposes only and does not constitute legal advice.

For more information or assistance, please contact [Jennifer L. Achilles](#), or another member of the [White Collar Defense & Investigations](#) group.

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