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Do Your Insider Trading Policies Cover The Prediction Markets? Should They?

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Prediction markets now offer contracts tied directly to public company events—including stock price movements, earnings call language, regulatory outcomes, corporate announcements, and management decisions. These contracts are typically structured as event-based instruments rather than traditional securities. But for public companies, the practical question is straightforward: ***If employees are prohibited from trading securities on inside information, can they still bet on it?***

The short answer is no—at least where the bet involves material nonpublic information (MNPI) about the employee's company—but many corporate policies may not yet say so explicitly.

Prediction Market Bets Are Not Outside Federal Law

Traditional insider trading liability under the federal securities laws requires the purchase or sale of a security. Prediction market contracts are structured as event-based wagers rather than securities transactions. But that distinction does not necessarily make bets using insider information permissible or risk-free, for either the company insider or their employer.

First, some U.S.-based prediction market platforms are registered with the Commodity Futures Trading Commission (CFTC). Under existing U.S. law, the CFTC has asserted oversight authority over event contracts structured as forward or derivative-style instruments, stating that they are subject to commodities-fraud and market-manipulation rules that prohibit trading on MNPI. In those circumstances, insider-trading-type liability may arise under commodities law. The CFTC has begun to invoke its regulatory authority, with Chairman Michael Selig recently emphasizing that the agency "for decades has overseen regulation of prediction markets—or event contracts," and highlighting the potential liability market participants may face to the extent they inappropriately exploit MNPI.

Second, depending on their structure, prediction market contracts tied directly to the price or performance of a public company's stock may still qualify as "security-based swaps," which are treated as "securities" under the federal securities laws. Because these contracts may derive their value from a single reference security, they could fall within the SEC's jurisdiction and be subject to the federal securities anti-fraud rules. While the SEC has never pursued a traditional insider trading claim for prediction market trades, it might decide to do so in the future.

Third, even where a prediction market contract is not a security or regulated derivative, the federal wire fraud statute may apply. Misappropriating confidential information for personal gain through interstate communications can form the basis for criminal liability. The U.S. Attorney for the Southern District of New York has warned of potential criminal prosecutions related to abuse of prediction markets, and the theories advanced in recent sports-gambling prosecutions involving bets based on inside information may provide the template. In those cases, wire-fraud liability was premised on the use of MNPI in breach of a duty owed – the same theory underlying traditional insider trading claims.

Platform Rules Often Prohibit Insider Trading

Many prediction market platforms, such as Kalshi, include terms of use and other insider trading policies that expressly prohibit trading based on inside or nonpublic information. Those that are CFTC-registered exchanges, like Kalshi, operate as regulated markets with affirmative obligations to monitor trading and enforce their rules.

Violations can result in account termination or forfeiture of funds, regardless of whether a regulator brings a formal enforcement action. This means an employee who trades using confidential corporate information may face exchange-level enforcement even if the legal status of the transaction is uncertain.

Kalshi recently began producing public reports on its own audit and enforcement activities. On February 25, 2026, the platform fined and suspended a MrBeast employee after finding that he had used nonpublic information about upcoming videos to profit from trading in related prediction market contracts. The platform also suspended the account of a former candidate for California governor who purchased contracts tied to his own candidacy, finding that he violated the terms of use by acting as a direct decision-maker with the ability to influence the outcome of the underlying event. That type of "insider" prohibition mirrors traditional antifraud principles in regulated exchanges.

Kalshi has begun reporting such incidents to its regulator, and the CFTC's Division of Enforcement has responded by issuing an advisory notice reiterating the Commission's "full authority to police illegal trading practices" on designated contract markets, including prediction markets. On March 12, 2026, the CFTC followed up by issuing a prediction markets advisory and a separate notice seeking public comment on potential future rulemaking in this area.

Many Corporate Policies Do Not Address Prediction Markets

Few corporate codes of conduct, insider trading policies, or training materials clearly address prediction market trading. These omissions can create risk. An employee who uses confidential company information to place a wager is still potentially misusing MNPI and breaching duties of loyalty and confidentiality. Whether the instrument is labeled a "security," a "swap," or an "event contract" should not change the analysis.

Moreover, the absence of an express policy prohibiting insider trading on the prediction markets may provide the would-be employee trader with a false sense of protection. Employees are still subject to firm-wide confidentiality obligations, and certain employees may also be bound by transaction-specific nondisclosure agreements. Beyond contractual constraints, employees owe common law duties of trust and confidence when entrusted with confidential information, which prohibit them from using such information for personal benefit without disclosure to their employer. The SEC recently recognized both contractual and common law duties as sources of the breached duty in its "shadow trading" enforcement action.

Why Companies Should Consider Addressing This More Clearly

The ability to monetize corporate information through prediction markets creates new compliance blind spots and reputational risks. As platforms begin enforcing insider trading policies and the CFTC and prosecutors turn greater attention to prediction market activity, scrutiny is poised to increase. Although the precise contours of liability are still evolving, the practical risks are immediate: the appearance of employees wagering on inside information can erode trust with investors, regulators, and the public. For these reasons, companies should consider whether their codes of conduct, insider trading policies and training materials should:

- Explicitly prohibit betting or otherwise trading on company-related information or events, whether or not arguably “material” for securities law purposes – if the information impacts the outcome of a bet or other trade, it will look material in hindsight;
- Reiterate that confidential company information may not be used for any personal financial gain, including wagering;
- Make clear that the prohibition applies regardless of whether the instrument qualifies as a security; and
- Incorporate prediction markets as a new risk area into existing training.

The nature and extent of required changes to company policies and procedures depends on the current language, and in some cases only modest revisions may be warranted. In addition, the new or clarifying language should be sufficiently broad that it encompasses other, similar types of products that may come along in the future. Because insider trading policies are now filed as exhibits to annual reports on Form 10-K and Form 20-F, companies updating their policies should consider the timing of any updates in connection with their annual report filings.

Regardless of company policy, however, employees remain independently responsible for complying with applicable law.

Bottom Line

Prediction market contracts may not always qualify as regulated derivatives or securities. But the duty not to misuse confidential corporate information does not depend on the label attached to the contract or instrument. Trading on inside information in the prediction markets can still trigger federal regulatory scrutiny, violate platform rules, breach corporate policies, and damage corporate credibility.

Companies should ensure their compliance frameworks reflect the rapid expansion of trading opportunities available to employees.

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