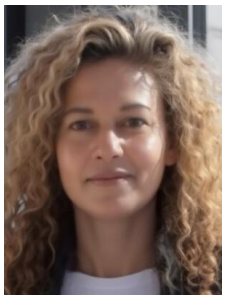
CFTC Trading Rule Can't Police Prediction Markets Yet

By **Tamara de Silva** (June 3, 2026)



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The Commodity Futures Trading Commission is now asserting insider trading enforcement authority over prediction markets. Its legal basis is Rule 180.1 of the Code of Federal Regulations, finalized in 2011 and modeled on Rule 10b-5 of the Securities Exchange Act.[1]

The enforcement theory is misappropriation: trading on material nonpublic information in breach of a preexisting duty of trust and confidence to the source of that information.[2]

The difficulty is that Rule 10b-5's insider trading framework was built, over 80 years of litigation, around a knowable universe of corporate insiders. Prediction markets present a fundamentally different informational environment. The asset is not a corporate issuer with identifiable relationships. It is a real-world event, a military operation, an election, a policy decision.

The people who possess material nonpublic information about these events do not occupy roles defined by corporate law. They are soldiers, campaign staffers, government employees, contractors and their families. The duty relationships that anchor misappropriation theory become progressively harder to identify as you move away from formal institutional employment, and in many cases they may not exist at all.

The framework does not fit. What follows explains why, and what fills the void.

The Securities Insider Trading Framework: 80 Years of Judicial Construction

Insider trading liability under Section 10(b) and Rule 10b-5 rests entirely on judicial construction. The SEC promulgated Rule 10b-5 in 1942, and the courts have built the insider trading doctrine through litigation in the decades since. Neither the statute nor the rule mentions insider trading. The doctrine was built case by case through four landmark U.S. Supreme Court decisions.

In Chiarella v. U.S. in 1980, the court rejected the proposition that anyone who possesses material nonpublic information and trades is liable under Rule 10b-5. The court held that liability requires a duty to disclose or abstain, arising from a relationship of trust and confidence.

Mere possession of information, without more, does not create that duty. This holding established that Rule 10b-5 does not impose a parity-of-information regime on the securities markets.[3]

Dirks v. U.S. Securities and Exchange Commission in 1983 extended the framework to tippers and tippees. The court held that a tippee's liability is derivative of the tipper's breach of fiduciary duty, and that the tipper must receive a "personal benefit" from the disclosure for liability to attach. The personal benefit test became a critical limiting principle, preventing the SEC from treating every leak of corporate information as a violation.[4]

In U.S. v. O'Hagan in 1997, the court recognized the misappropriation theory as a valid basis for Rule 10b-5 liability. Under this theory, a person commits fraud "in connection with"

a securities transaction when they misappropriate confidential information for trading purposes, in breach of a duty owed to the source of the information.

The court distinguished misappropriation from the classical theory: The duty runs not to the shareholders of the traded company but to the source of the information. James O'Hagan was a partner at Dorsey & Whitney LLP, a law firm representing Grand Metropolitan PLC in a tender offer for Pillsbury Co.'s common stock. His duty ran to his firm and its client, not to Pillsbury's shareholders.[5]

Salman v. U.S. in 2016 clarified the personal benefit test for gifts of information to family members, holding that a tipper who gives inside information to a trading relative receives a personal benefit sufficient for liability.[6]

The structural feature common to this entire body of law is that the universe of potential insiders is bounded. Material nonpublic information relates to a corporate issuer. The duty arises from identifiable sources: corporate fiduciary obligations, employment agreements and contractual confidentiality arrangements.

Information flows through traceable channels. When suspicious trading appears ahead of a corporate event, enforcement agencies have established tools to identify who had access: Section 16 filings, Form 4 reports, EDGAR timelines, and relationship mapping across identifiable networks of insiders and their associates.

Rule 180.1: Borrowing the Weapon, Disclaiming the Guardrails

Before the Dodd-Frank Act, insider trading prohibitions in commodity markets were narrow, applying principally to employees of the CFTC and registered entities. Derivatives markets operated on a different premise: Trading on superior information was not merely permitted, but was understood to be the engine of price discovery.

Section 753 of the Dodd-Frank Act amended Commodity Exchange Act Section 6(c)(1) to prohibit "any manipulative or deceptive device or contrivance" in connection with swaps, interstate commodity sales and futures.[7] The CFTC finalized Rule 180.1 in 2011, using language modeled on Rule 10b-5. The new rule eliminated the prior requirement to prove a market price effect or specific intent. Recklessness became a sufficient scienter standard. The "in connection with" element was interpreted broadly.

In the adopting release, the CFTC stated that it would be "guided, but not controlled, by the substantial body of judicial precedent applying the comparable language of SEC Rule 10b-5."[8] The agency explicitly adopted the misappropriation theory as a basis for Rule 180.1 liability. At the same time, consistent with Chiarella, the CFTC stated that Rule 180.1 does not create a parity-of-information regime. Derivatives markets would continue to permit trading on lawfully obtained information advantages.[9]

The CFTC's early Rule 180.1 enforcement actions involved conventional fact patterns. The agency's first insider trading case under the rule in 2015 was titled In the Matter of: Arya Motazedi. It involved an energy company employee who traded his employer's commodities in a personal account, breaching company personal trading policies.[10]

The duty was identifiable, the breach was clear, and the information channel was traceable. The framework worked because the facts resembled securities insider trading transposed to the commodities context.

Nearly 15 years after finalization, Rule 180.1 has produced a handful of enforcement actions and essentially no appellate case law defining its boundaries. There is no CFTC equivalent of Chiarella holding that mere possession of material nonpublic information without a duty is insufficient, no equivalent of Dirks articulating a personal benefit test, and no equivalent of O'Hagan defining the outer limits of misappropriation.

CFTC Enforcement Director David Miller's March remarks at NYU School of Law articulated the elements the agency intends to apply, but a speech is a statement of prosecutorial intent, not a body of tested doctrine.[11]

Why Misappropriation Theory Fails on Prediction Markets

In securities markets, the underlying asset is a corporate issuer. In prediction markets, the underlying asset is a real-world event. This distinction is not cosmetic. It breaks the misappropriation theory at the duty element.

When a trader buys a contract on whether the Federal Reserve will cut rates, whether a military operation will succeed or whether a candidate will win a primary, the information that resolves the contract is generated not by a corporate issuer with defined relationships, but by governments, campaigns, military commands, media companies and central banks. Each of these institutions has its own internal duty structure (classification rules, employment agreements, nondisclosure agreements), but none of it maps onto the corporate-issuer model that the insider trading doctrine was built around.

The CFTC's recent enforcement actions illustrate the spectrum of difficulty.

The Army Special Forces soldier, Gannon Ken Van Dyke, who was **indicted** in April for trading on classified intelligence about the Maduro extraction, owed a duty under military classification rules.[12] The YouTube editor, who Kalshi referred to as Artem Kaptur in regulatory filings and was disciplined by the company for trading on advance knowledge of video content, likely owed a duty to his employer.[13]

These are the tractable cases, where identifiable employment or contractual relationships establish the preexisting duty the misappropriation theory requires.

The intractable cases are the ones that matter. Take for example a campaign staffer who bets before internal polling goes public: Do they owe a preexisting duty of trust and confidence, and to whom? What if there is no NDA? What if they are a volunteer?

What about a congressional staffer who overhears a markup discussion, a Pentagon contractor's spouse who learns of a deployment over dinner, or a retired intelligence officer whose decades of experience allow them to read publicly available signals with greater accuracy than other participants? At each step further from formal employment, the duty element becomes harder to identify and harder to distinguish from a lawful analytical advantage.

The parity-of-information principle makes this harder, not easier.

Both the SEC and the CFTC have rejected the proposition that all trading on material nonpublic information is prohibited. Derivatives markets depend on participants with heterogeneous information advantages. The grain trader scouting crop conditions, the macro analyst reading satellite imagery, the geopolitical specialist monitoring shipping lanes: These are legitimate edges.

In securities, the boundary between lawful research and insider trading is drawn by the corporate disclosure framework. An analyst who builds a superior earnings model from public data is doing research. An analyst who obtains the earnings number from the chief financial officer's assistant is committing insider trading.

In prediction markets, there is no equivalent boundary. The CFTC has not drawn one. The courts have not been asked.

Win Rate as a Default Standard: The Doctrinal Vacuum in Practice

The absence of developed doctrine has practical consequences for how prediction market platforms conduct surveillance. Designated contract markets have an independent obligation under Commodity Exchange Act, Section 5(d), to maintain audit trails, conduct surveillance and enforce rules against prohibited practices.[14]

But the CFTC has not defined what "prohibited practices" look like in the prediction market context with any specificity beyond its February enforcement advisory, which described two Kalshi fact patterns and restated the agency's general authority.[15]

In this vacuum, the primary surveillance metric appears to be outcome-based: Flag the winners. In sports betting, sportsbooks routinely limit or ban sharp bettors who win too consistently. A sportsbook is a private business managing its risk. A CFTC-regulated designated contract market is not. Yet prediction market platforms appear to be importing the sportsbook model, using win rate or profitability concentration as a proxy for insider trading suspicion.

This methodology cannot distinguish between a genuine insider who traded on misappropriated information, a superior analyst whose lawful information advantage the CFTC has explicitly said Rule 180.1 does not prohibit, and a lucky participant whose streak in binary-outcome contracts looks statistically anomalous. If win rate is the primary trigger, all three categories collapse into one and the practical consequences follow.

No articulable standard exists to which a trader can conform her conduct before placing a trade.

In securities, a corporate insider knows the rules prospectively: They file Form 4, observe blackout periods and do not trade ahead of material disclosures. On a prediction market, the standard appears to be defined retroactively, after the platform reviews the trader's profit and loss. A trader who is flagged on the basis of statistical performance rather than relational evidence linking them to a source of material nonpublic information is left proving a negative: that they did not possess inside information and that their profitability reflects skill rather than misconduct.

The chilling effect matters most.

If sustained accuracy triggers investigation, sophisticated participants will limit their trading or exit the market. The participants who leave first are the informed analysts whose activity makes the market informationally efficient.

Prediction market platforms defend their regulatory status as CFTC-regulated derivatives, rather than illegal gambling, on the claim that they produce superior information aggregation. The economist Friedrich Hayek argued that markets aggregate dispersed

knowledge more efficiently than any central authority because individual participants, each acting on private information and local expertise, collectively produce prices that reflect more than any single person knows.

That mechanism depends on informed participants being rewarded for accuracy. A surveillance model that penalizes accuracy degrades the informational efficiency that distinguishes a derivatives market from a gambling platform, which is precisely the characterization state attorneys general are advancing in pending litigation against Kalshi and Polymarket.[16]

Dodd-Frank Did Not Define Insider Trading for These Markets

Section 753 of Dodd-Frank gave the CFTC a broad antifraud prohibition. Rule 180.1 implemented it. But neither the statute nor the rule defines insider trading, establishes its elements or creates a framework with identifiable boundaries.

The SEC faced the same statutory silence: Rule 10b-5 does not define insider trading either. But the SEC had 80 years of adversarial litigation, appellate review and Supreme Court correction to build the doctrine that today makes the prohibition knowable and enforceable.

Chiarella was decided in 1980, 46 years after the Exchange Act was enacted. The O'Hagan ruling came in 1997 and the Salman ruling in 2016. Each case refined the framework through contested proceedings in which defendants challenged the government's theory and courts imposed limiting principles.

The CFTC has had Rule 180.1 for nearly 15 years and has not produced equivalent doctrine. The enforcement chief's March remarks at NYU articulated the framework the agency intends to apply. But intent is not precedent.

Until the courts build the case law, or until Congress provides the statutory specificity that Dodd-Frank did not, prediction market insider trading enforcement will operate in a space defined by prosecutorial discretion rather than prospective rules. And the platforms, left to improvise surveillance standards without regulatory guidance, will continue to reach for the metric they can measure: who is winning.

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[1] 17 C.F.R. § 180.1. See Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 Fed. Reg. 41,398 (July 14, 2011) (adopting release).

[2] Remarks of CFTC Enforcement Director David Miller, NYU Law School, "CFTC Enforcement Priorities, Insider Trading in the Prediction Markets, and Cooperation with the CFTC" (March 31, 2026).

[3] Chiarella v. United States, 445 U.S. 222, 228-30 (1980).

[4] Dirks v. SEC, 463 U.S. 646, 662 (1983).

[5] United States v. O'Hagan, 521 U.S. 642, 652-53 (1997).

[6] Salman v. United States, 580 U.S. 39 (2016).

[7] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 753, 124 Stat. 1376 (2010) (amending CEA § 6(c)(1), 7 U.S.C. § 9(1)).

[8] 76 Fed. Reg. at 41,399.

[9] Id. at 41,403.

[10] In the Matter of Arya Motazedi, CFTC Docket No. 16-02 (Dec. 2, 2015).

[11] Miller, supra note 2.

[12] United States v. Van Dyke (S.D.N.Y. 2026) (indictment).

[13] KalshiEX LLC, Disciplinary Actions (Feb.-Apr. 2026); CFTC Division of Enforcement, Prediction Markets Advisory, Press Release 9185-26 (Feb. 25, 2026).

[14] 7 U.S.C. § 7(d) (Core Principles for Contract Markets).

[15] CFTC Division of Enforcement, Prediction Markets Advisory, Press Release 9185-26 (Feb. 25, 2026).

[16] See, e.g., Wisconsin v. KalshiEX LLC (W.D. Wis. filed Apr. 2026); New York v. KalshiEX LLC (S.D.N.Y. filed 2026).