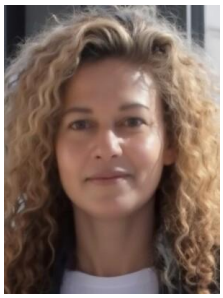
Futures Market Anonymity Now Presents A Structural Problem

By **Tamara de Silva** (April 10, 2026)

Editor's note: Law360 welcomes opinionated commentary and debate in our Expert Analysis section. To submit op-eds or rebuttals, or to speak to an editor about submissions, please email expertanalysis@law360.com.



Tamara de Silva

Futures markets have always protected the anonymity of their participants. That was a defensible feature when the markets served commercial hedgers and professional speculators operating in a specialized regulatory space. It is a much harder position to defend when the same anonymity extends to trades placed minutes before a presidential social media post moves global energy prices by hundreds of millions of dollars.

The structural problem has not changed. What changed is who is watching and what is at stake.

On March 23, roughly 6,200 oil futures contracts changed hands in a 60-second window, carrying a notional value of approximately $580 million.[1] The volume was nearly nine times the historical average for that window.[2] S&P 500 futures spiked in the same time frame.

Fifteen minutes later, President Donald Trump posted on Truth Social that the U.S. had been holding productive conversations with Iran. Crude prices fell sharply, and the Dow surged more than 1,000 points.[3]

The identities of the traders behind those positions remain unknown and, under current CME Group Inc. disclosure rules, they are not required to be disclosed in real time to anyone outside the exchange.

Former U.S. Securities and Exchange Commission Chairman Jay Clayton, now the U.S. Attorney for the Southern District of New York, acknowledged on CNBC that regulators would examine the activity, noting that surveillance in the futures and commodities markets is more complex and less comprehensive than in cash equities. He called on Congress to act.

He is right that the law is not clear enough. But the problem is not primarily a statutory gap. It is a structural one, built into the self-regulatory model that governs futures exchanges and now, by extension, prediction markets.

A Conflict the Self-Regulatory Organization Model Cannot Resolve

CME Group is a publicly traded corporation. Its revenue depends on trading volume. Its market-maker incentive programs, some of which date to 2005 and remained in place for years without modification, provide fee rebates and economic benefits to the participants who generate that volume.[4]

Certain original market-making firms received trading perks 10 times greater than those available to later entrants.[5] CME has sought confidential treatment for the specific terms

of some of those rebates, filing Freedom of Information Act confidential treatment requests to shield the details from public disclosure.[6]

The U.S. Commodity Futures Trading Commission examined these programs in 2014 after Virtu Financial disclosed that regulators had requested information about its participation in exchange incentive programs. The commission sought to understand who receives discounts, how large the savings are and whether early-adopter programs ever actually terminate.

The exchange defended the programs as tools for building market liquidity. That defense has merit as far as it goes. The problem is not that market-maker programs exist. The problem is that the same entity that profits from volume, rewards the participants who generate it and maintains confidential financial relationships with its most active traders is also the entity responsible for surveilling those traders for misconduct.

That is the SRO model. No amount of internal procedural separation resolves the underlying conflict of interest.

I spent years representing clients attempting to prove manipulative trading by high-frequency firms in futures markets. The anonymity problem was not a litigation obstacle that could be worked around with a better discovery strategy — it was the architecture.

Trade data sufficient to reconstruct a 60-second anomaly exists at the exchange level. Accessing it requires either regulatory compulsion or litigation-compelled discovery, by which time the practical ability to reconstruct the relevant activity is often compromised.

The SEC built the Market Information Data Analytics System in 2013 precisely to give regulators granular, near-real-time visibility into equity markets, in part because prior market structure scandals made the cost of opacity undeniable. The CFTC has no equivalent.

Prediction Markets Inherited the Same Gap

The March episode did not occur in isolation. The Financial Times noted that similar anomalous positioning preceded prior U.S. military actions against Iran and Venezuela on prediction markets.

One trader made nearly $1 million on Polymarket by correctly predicting unannounced U.S. and Israeli military operations, winning 93% of five-figure wagers.[7] Israeli authorities indicted two individuals, including a military reservist, for allegedly using classified information to trade on Polymarket during the conflict.[8]

The sector handled more than $40 billion in trading volume in 2025 alone.[9]

The CFTC's response to these concerns has been significant but incomplete. On March 12, the CFTC's Division of Market Oversight issued Staff Advisory Letter No. 26-08 to all designated contract markets, or DCMs, reiterating existing compliance obligations under Core Principles 3, 4 and 12, which cover manipulation resistance, surveillance and enforcement, and customer protection.[10]

On the same date, the CFTC published an advance notice of proposed rulemaking in the Federal Register, formally opening a public comment period on how to regulate prediction markets, with comments due April 30.[11] That ANPRM followed a February advisory from

the CFTC's Enforcement Division addressing two prior enforcement matters involving the misuse of nonpublic information on prediction markets.[12]

The advisory and the ANPRM together signal that the CFTC intends to exercise exclusive jurisdiction over prediction markets and is moving toward a formal regulatory framework. What they do not do is mandate real-time position reporting, establish surveillance functions independent of the platforms themselves or create automatic referral obligations when trading anomalies exceed defined thresholds.

The CFTC is asking the right questions. The architecture that produced the March episode will remain intact until the answers become binding rules.

Polymarket and Kalshi both announced new insider trading policies in the days following the March trading episode, under pressure from Congress and the CFTC guidance. The policies prohibit trades based on stolen confidential information, illegal tips and positions of authority or influence over an event outcome.

Those are the right categories. The enforcement mechanism is not adequate.

Polymarket relies in part on community-assisted compliance, meaning users can report suspicious activity through a public interface. For a pseudonymous blockchain-based platform handling nearly $8 billion in monthly volume, that is not a surveillance regime.[13] It is more akin to a suggestion box.

Kalshi operates as a CFTC-regulated DCM with more formal obligations and reported approximately $10.4 billion in monthly volume as of February, but even its enforcement had been largely reactive until the current controversy forced a change in posture.[14]

The deeper problem is that prediction markets inherited the structural opacity of futures markets without the decades of institutional development that preceded them. When Kalshi and Polymarket update their own rulebooks in response to scandal, they are replicating the SRO model in compressed form.

Platform self-governance is not a substitute for independent surveillance, and calling it regulation does not make it so.

What the CFTC Can Do Now and What Requires Congress

The CFTC has existing authority under the Commodity Exchange Act to require enhanced large trader reporting. Section 4(i) of the CEA authorizes the commission to require reports of trades, positions and accounts in such form and at such times as the commission may require.

The number of event contracts certified for listing on DCMs reached approximately 1,600 in 2025, up from an average of roughly five per year between 2006 and 2020.[15]

Calibrating large trader reporting thresholds to reflect the speed and scale of modern algorithmic trading, particularly in contracts with demonstrated sensitivity to government announcements, does not require new legislation. It requires rulemaking.

Mandatory referral protocols, requiring exchanges to escalate to the CFTC when trading anomalies exceed defined statistical parameters in a specified window before a government announcement, could similarly be implemented through exchange rule changes certified by

the CFTC under Section 5(c) of the CEA.

The SRO model does not have to be dismantled to be made more accountable. Automatic escalation requirements reduce the discretion that exchanges currently exercise in deciding what to investigate and what to report.

What requires Congress is public disclosure of SRO disciplinary actions in futures markets, modeled on the Financial Industry Regulatory Authority BrokerCheck framework. FINRA's disclosure obligations for broker-dealers were built through statutory authority in the Securities Exchange Act.

There is no equivalent in the CEA. A futures market participant who has been disciplined by CME for trading misconduct faces no public disclosure obligation comparable to what a registered representative faces under FINRA rules. That asymmetry has no principled regulatory basis.

For prediction markets, the CFTC needs dedicated surveillance capacity with independent access to trade data, operating alongside, rather than through, the platforms themselves.

Approving a DCM and delegating enforcement to the platform is not substantive oversight. It is the SRO model applied to markets that list contracts on the outcomes of elections, military operations and government decisions.

The stakes of getting that wrong are not limited to market integrity. They extend to the integrity of the government information that prediction market participants are, in some cases, apparently trading on.

The March episode will be investigated. The participants may eventually be identified. But the regulatory architecture that made them anonymous in the first place, and that is now being replicated in a new class of markets, will remain intact unless the reforms are structural rather than reactive.

Congress and the CFTC have the tools. The question is whether the current episode produces a response proportionate to the problem.

R. Tamara de Silva is the founder and managing attorney at De Silva Law Offices LLC.

[1] Financial Times, "Traders Made Bets Worth Half a Billion Dollars in Oil Market Before Trump Iran Post," March 24, 2026 (citing Bloomberg data). The FT calculated the notional value at approximately $580 million based on roughly 6,200 Brent and WTI futures contracts traded between 6:49 a.m. and 6:50 a.m. New York time on March 23, 2026.

[2] Id. The average trading volume for the same sixty-second window over the prior five trading days was approximately 700 contracts, making the March 23 volume nearly nine times the recent baseline.

[3] Id. President Trump's Truth Social post appeared at approximately 7:04 a.m. New York time. The Dow Jones Industrial Average surged more than 1,000 points following the post.

[4] "Perks Live Forever at CME Amid Review of Market Maker Advantages," Traders Magazine, June 19, 2014. Incentives granted by CME Group for help drumming up volume in Eurodollar futures as far back as 2005 remained in place at the time of reporting, according to regulatory filings.

[5] Id. The Eurodollar trading perks available to original market-making firms were reported to be ten times greater than those available to new entrants.

[6] "Can Market-Makers' Rebates Explain CME's Credit Futures High Turnover Ratio?," The DESK, March 2026. CME declined to specify the terms of its market maker incentives and filed a FOIA Confidential Treatment Request to protect them from public disclosure.

[7] CNN, "Trader Made Nearly $1 Million on Polymarket with Remarkably Accurate Iran Bets," March 24, 2026 (citing analysis by Bubblemaps). The trader won approximately 93 percent of five-figure wagers on unannounced U.S. and Israeli military operations against Iran.

[8] Id. Israeli authorities indicted two individuals, including a military reservist, for allegedly using classified military information to profit on Polymarket during the Iran conflict.

[9] Marketplace, "U.S. Regulators Eye Rules for Prediction Markets," March 24, 2026. Prediction markets including Kalshi and Polymarket handled more than $40 billion in trading volume in 2025.

[10] CFTC Letter No. 26-08, Prediction Markets Advisory (Mar. 12, 2026), available at https://www.cftc.gov/csl/26-08/download. The advisory reiterates DCM obligations under Core Principles 3 (manipulation resistance), 4 (surveillance and enforcement), and 12 (customer protection), and states that CFTC Rule 180.1 prohibits manipulative or deceptive conduct including misappropriation-based insider trading pursuant to CEA Section 6(c)(1).

[11] Prediction Markets, Advance Notice of Proposed Rulemaking; Request for Comment, 91 Fed. Reg. 12,516 (Mar. 16, 2026). Comments are due April 30, 2026. RIN 3038-AF65.

[12] CFTC Enforcement Division Advisory on Insider Trading in Prediction Markets, February 25, 2026, as referenced in CFTC Letter No. 26-08 and reported in Alvarez & Marsal, "Prediction Markets: CFTC Issues Guidance and Potential Rulemaking Notice," March 2026.

[13] The Block Data Dashboard, as reported by The Block, March 25, 2026. Polymarket recorded approximately $7.94 billion in monthly trading volume as of the most recent available data.

[14] Id. Kalshi recorded approximately $10.44 billion in monthly trading volume as of February 2026.

[15] 91 Fed. Reg. 12,516, supra note 11, at n.9. From 2006 to 2020, DCMs listed an average of approximately five event contracts per year. In 2025, DCMs certified approximately 1,600 event contracts for listing.