

Different Markets, Different Regulatory Priorities: Insider Trading, Manipulation, and Corruption-Prone Event Contracts in Prediction Markets

Law Working Paper N° 955/2026

August 2026

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Abstract

Securities markets and prediction markets are fundamentally different. Securities markets allocate capital, finance productive enterprise, and provide the infrastructure through which households save for retirement. Prediction markets do none of those things. Their principal social product is the information contained in their prices: a continuously updated estimate of the probability that a specified event will occur. While prediction markets could, in theory, be used to manage risk by allowing traders to hedge, thus far liquidity constraints have meant that traditional derivatives contracts (options and futures) rather than prediction market contracts are used. Those differences have important regulatory implications, suggesting little or no regulation of informed trading as such on prediction markets and significant regulation of manipulation on these markets. The institutional features of securities markets indicate the opposite: strict regulatory attention to insider trading, which can undermine valuable property rights in information, but comparatively little concern for manipulation, which is rare and largely self-correcting. In securities markets, unauthorized insider trading may appropriate valuable corporate information, generate agency costs, widen spreads, and impair markets that allocate society's capital. In prediction markets, trading based on superior information usually improves the only product the market creates. Empirical surveillance can identify anomalous trading and even informational advantage, but trading data alone cannot establish whether the advantage was obtained or used in breach of a duty. A general prohibition on trading while possessing nonpublic information would likely suppress, rather than protect, the market's informational function. Manipulation presents a different problem. Some event contracts motivate participants to influence the occurrence, description, or settlement of the event on which payment depends. This Article dubs these instruments corruption-prone event contracts: contracts whose payoff depends on events that one or more market participants can materially influence through their own conduct or through the conduct of persons subject to their influence. The appropriate model is the insurable-interest doctrine. Life insurance is socially useful when the beneficiary would suffer a genuine loss from the insured's death. A wager policy on the life of a stranger creates a different incentive, and the law responds *ex ante* by refusing to recognize the contract rather than relying exclusively on prosecution after the harm occurs. Prediction-market regulation should use the same institutional logic. Existing misappropriation, agency, ethics, and classified-information rules should govern genuine breaches of confidence. Lawfully informed traders should remain free to trade. Exchanges and the Commodity Futures Trading Commission should, however, exclude corruption-prone event contracts at the listing stage, particularly contracts on granular outcomes that market participants can influence or control, and events whose listing creates severe incentives to engage in socially harmful conduct or to disclose confidential information.

Keywords: CFTC, Securities Markets, Insider Trading, Market Manipulation, Misappropriation Theory, Prediction Markets

JEL Classifications: D82, G14, G18, K22

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Securities markets and prediction markets are fundamentally different. Securities markets allocate capital, finance productive enterprise, and provide the infrastructure through which households save for retirement. Prediction markets do none of those things. Their principal social product is the information contained in their prices: a continuously updated estimate of the probability that a specified event will occur. While prediction markets could, in theory, be used to manage risk by allowing traders to hedge, thus far liquidity constraints have meant that traditional derivatives contracts (options and futures) rather than prediction market contracts are used.

Those differences have important regulatory implications, suggesting little or no regulation of informed trading as such on prediction markets and significant regulation of manipulation on these markets. The institutional features of securities markets indicate the opposite: strict regulatory attention to insider trading, which can undermine valuable property rights in information, but comparatively little concern for manipulation, which is rare and largely self-correcting. In securities markets, unauthorized insider trading may appropriate valuable corporate information, generate agency costs, widen spreads, and impair markets that allocate society's capital. In prediction markets, trading based on superior information usually improves the only product the market creates. Empirical surveillance can identify anomalous trading and even informational advantage, but trading data alone cannot establish whether the advantage was obtained or used in breach of a duty. A general prohibition on trading while possessing nonpublic information would likely suppress, rather than protect, the market's informational function.

Manipulation presents a different problem. Some event contracts motivate participants to influence the occurrence, description, or settlement of the event on which payment depends. This Article dubs these instruments **corruption-prone event contracts**: contracts whose payoff depends on events that one or more market participants can materially influence through their own conduct or through the conduct of persons subject to their influence.

The appropriate model is the insurable-interest doctrine. Life insurance is socially useful when the beneficiary would suffer a genuine loss from the insured's death. A wager policy on the life of a stranger creates a different incentive, and the law responds *ex ante* by refusing to recognize the contract rather than relying exclusively on prosecution after the harm occurs. Prediction-market regulation should use the same institutional logic.

Existing misappropriation, agency, ethics, and classified-information rules should govern genuine breaches of confidence. Lawfully informed traders should remain free to trade. Exchanges and the Commodity Futures Trading Commission should, however, exclude corruption-prone event contracts at the listing stage, particularly contracts on granular outcomes that market participants can influence or control, and events whose listing creates severe incentives to engage in socially harmful conduct or to disclose confidential information.

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INTRODUCTION

The history of insider trading regulation in the securities markets is the story of a transition from an approach grounded in vague notions of “fairness” and “equality of bargaining position” to a Coasean framework grounded in principles of property rights and contract enforcement. The justifications based on fairness and equal information proved unworkable because virtually every securities trade involves some informational asymmetry between the parties, making every trade subject to the accusation that it was not fair to one of the parties.¹ Over time, the Supreme Court explicitly rejected fairness rhetoric in favor of an analysis focused on specific relationships and fiduciary duties.

Liability under Rule 10b-5 now requires a breach of a pre-existing duty of trust and confidence owed to the source (rightful owner) of the information, whether the issuer’s shareholders (the “classical” theory) or the principal from whom the information was misappropriated (the “misappropriation” theory).² This doctrine recognizes that valuable nonpublic information is a species of property, and the real questions in insider trading law are questions about how property rights in information should be allocated and enforced.³

Manipulation law is less well developed but it has followed a similar evolutionary path. Manipulation is prohibited by section 9(a) of the Securities Exchange Act, by Rule 10b-5, by

¹ Jonathan R. Macey, *From Fairness to Contract: The New Direction of the Rules Against Insider Trading*, 13 HOFSTRA L. REV. 9, 15–17 (1984); *Speed v. Transamerica Corp.*, 99 F. Supp. 808, 829 (D. Del. 1951). The point was efficaciously noted well before insider trading doctrine developed in the U.S. by OSCAR WILDE, AN IDEAL HUSBAND act 2 (1899) (“Of course I had private information about a certain transaction contemplated by the Government of the day, and I acted on it. Private information is practically the source of every large modern fortune.”).

² *Chiarella v. United States*, 445 U.S. 222 (1980); *Dirks v. SEC*, 463 U.S. 646 (1983); *United States v. O’Hagan*, 521 U.S. 642 (1997).

³ Macey, *supra* note 1, at 11, 26–31; *see also* Frank H. Easterbrook, *Insider Trading, Secret Agents, Evidentiary Privileges, and the Production of Information*, 1981 SUP. CT. REV. 309; Dennis W. Carlton & Daniel R. Fischel, *The Regulation of Insider Trading*, 35 STAN. L. REV. 857 (1983).

section 6(c) of the Commodity Exchange Act, and by the antifraud rules the Commodity Futures Trading Commission (CFTC) adopted under Dodd-Frank.⁴

Just as there is no statutory definition of the term insider trading, no statute defines the term manipulation, and courts and scholars have struggled for decades to develop a line of demarcation to separate manipulative trading from aggressive but legitimate trading.⁵ Generally speaking, manipulation is problematic to the extent that it simultaneously makes prices less accurate as signals for allocating resources and makes markets less liquid.⁶ Inaccurate prices misdirect capital and reduce market depth (liquidity) that facilitates capital formation.

Neither insider trading law nor antimanipulation rules are designed to achieve “fairness” among traders. Insider trading law protects the returns to costly information production and constrains the agency costs of managerial trading. Manipulation law protects the informational integrity of prices that direct real investment. Each rule protects capital markets whose social function is to allocate capital and channel savings.

Prediction markets do not allocate capital or channel savings or serve any other important economic function. A prediction market is a market in contingent claims—contracts that pay a fixed amount if a specified event occurs and nothing if it does not. Will the Federal Reserve cut rates in September? Will Donald J. Trump win a Nobel Prize? Will a hurricane make landfall in Florida before October? The price of these contracts, in a liquid market, “represents the market’s expectation of the probability that a particular event will occur.”⁷ These markets have grown from academic curiosities into a real industry. Trading volume on CFTC-registered prediction markets exceeded twenty-five billion dollars in 2025, and the number of listed contracts grew from roughly two hundred and twenty in all of 2021 to more than eight thousand in the single month of May 2026.⁸

Forecasts are routinely cited by journalists, researchers, and policymakers as superior to the predictions generated by polls and pundits, and there is evidence that the predictions

⁴ 15 U.S.C. § 78i(a)(2); 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; 7 U.S.C. § 9(1); 17 C.F.R. § 180.1.

⁵ See Daniel R. Fischel & David J. Ross, *Should the Law Prohibit “Manipulation” in Financial Markets?*, 105 HARV. L. REV. 503 (1991); Steve Thel, *\$850,000 in Six Minutes—The Mechanics of Securities Manipulation*, 79 CORNELL L. REV. 219 (1994).

⁶ Albert S. Kyle & S. Viswanathan, *How to Define Illegal Price Manipulation*, 98 AM. ECON. REV. 274, 274 (2008).

⁷ See generally Justin Wolfers & Eric Zitzewitz, *Prediction Markets*, 18 J. ECON. PERSP. 107, 109 (2004); Kenneth J. Arrow et al., *The Promise of Prediction Markets*, 320 SCIENCE 877 (2008).

⁸ *Prediction Markets; Public Interest Determinations*, 91 Fed. Reg. 35,806, 35,807–08 (proposed June 12, 2026) (to be codified at 17 C.F.R. pt. 40).

generated on these markets are generally informative⁹ and well calibrated.¹⁰ Of course, they are far from perfect.

The available empirical evidence is well summarized in a paper by Constantin Bürgi, Wanying Deng, and Karl Whelan and another paper by Justin Wolfers and Eric Zitzewitz. Bürgi, Deng, and Whelan examined more than 300,000 contracts on Kalshi and found that its prices are informative but imperfect.¹¹ Wolfers and Zitzewitz report that market-generated forecasts are “typically fairly accurate” and “outperform most moderately sophisticated benchmarks.”¹²

The most common bias that produces error on prediction markets is favorite–longshot bias, which manifests as low-probability outcomes tending to be overpriced and high-probability outcomes tending to be underpriced. This means that taking the longshot side generates systematically lower returns than taking the favorite side. Bürgi, Deng, and Whelan’s analysis of Kalshi data confirms this pattern across more than 300,000 contracts, finding that low-priced contracts win substantially less often than their prices imply, even though prices overall become more accurate as resolution approaches.¹³ More generally, prediction-market prices sometimes do not reflect objective probabilities—or even the mean beliefs of traders—because equilibrium prices can be distorted by heterogeneous beliefs and risk preferences; Wolfers and Zitzewitz accordingly conclude that market prices are generally useful but “sometimes biased” estimates of event probabilities,¹⁴ while Manski shows formally that identifying a contract price directly with the probability of the event requires assumptions that need not hold.¹⁵ These biases counsel

⁹ Roberto Gómez-Cram, Yunhan Guo, Theis Ingerslev Jensen & Howard Kung, *Prediction Market Accuracy: Crowd Wisdom or Informed Minority?* 2–6 (June 25, 2026) (unpublished manuscript), <https://ssrn.com/abstract=6617059> (stating that “prediction markets produce remarkably accurate forecasts”); Anthony M. Diercks, Jared Dean Katz & Jonathan H. Wright, *Kalshi and the Rise of Macro Markets* 24–27 (FEDS Working Paper No. 2026-010, 2026), <https://doi.org/10.17016/FEDS.2026.010>; Constantin Bürgi, Wanying Deng & Karl Whelan, *Makers and Takers: The Economics of the Kalshi Prediction Market* (CESifo Working Paper No. 12122, 2026), <https://ssrn.com/abstract=5502658>.

¹⁰ A prediction market is “calibrated” when the probabilities implied by market prices correspond to observed frequencies. For example, if a large group of contracts trades around \$0.70, a perfectly calibrated market would see roughly 70% of those events occur. “Reasonably well calibrated” is descriptive rather than a fixed statistical threshold; it means that observed resolution frequencies are fairly close to the probabilities implied by prices. See Timo Dimitriadis, Tilmann Gneiting & Alexander I. Jordan, *Stable Reliability Diagrams for Probabilistic Classifiers*, 118 PROC. NAT’L ACAD. SCIS. e2016191118 (2021), <https://doi.org/10.1073/pnas.2016191118>.

¹¹ Bürgi et al., *supra* note 9.

¹² Justin Wolfers & Eric Zitzewitz, *Interpreting Prediction Market Prices as Probabilities* 1–4, 15–19 (Nat’l Bureau of Econ. Rsch., Working Paper No. 12,200, 2006), <https://doi.org/10.3386/w12200>; Wolfers & Zitzewitz, *Prediction Markets*, *supra* note 7, at 108, 112–14.

¹³ Bürgi et al., 9

¹⁴ Wolfers & Zitzewitz, *Interpreting Prediction Market Prices as Probabilities* 1–4, 15–19.

¹⁵ Charles F. Manski, *Interpreting the Predictions of Prediction Markets*, 91 ECON. LETTERS 425, 425–29 (2006).

against treating a market price mechanically as a literal probability, but they do not undermine the broader evidence that prediction-market prices contain substantial information about subsequent outcomes.

Growth on this scale has generated calls to import securities-style prohibitions for trading on prediction markets. If it is illegal for a corporate officer to trade her company's stock on advance knowledge of a merger, the intuition runs, surely it should be illegal for a campaign staffer to buy election contracts on advance knowledge of internal polling. Following this intuition, in April 2026, federal prosecutors in the Southern District of New York filed the first criminal case in American history charging insider trading in a prediction market, alleging that an Army master sergeant had used classified information about a covert operation to purchase event contracts.¹⁶ The following month, the same office and the CFTC filed parallel criminal and civil actions against a Google engineer who allegedly traded contracts on Google's then-unreleased "Year in Search" rankings, generating roughly \$1.2 million in profits.¹⁷

The House Committee on Oversight and Government Reform has opened an investigation into insider trading on the two largest platforms, Kalshi and Polymarket.¹⁸ These exchanges have formulated rules to bar politicians from trading their own races, athletes from trading their own sports, and employees from trading contracts tied to their employers.¹⁹ In February 2026, the CFTC issued an advisory declaring that two traders disciplined by an exchange had "potentially" violated its Rule 180.1.²⁰ Modeled after the Securities and Exchange Commission's (SEC) Rule 10b-5 to target deceptive and fraudulent conduct in swaps, futures, and event contracts on prediction markets, Rule 180.1 makes it illegal for any person to use a "device, scheme, or artifice to defraud" in connection with contracts on a designated contract market. The rule also prohibits trading or tipping based on material nonpublic information when

¹⁶ Press Release, H. Comm. on Oversight & Gov't Reform, Comer Launches Investigation into Insider Trading on Prediction Market Platforms (May 22, 2026), <https://oversight.house.gov/release/comer-launches-investigation-into-insider-trading-on-prediction-market-platforms/> (describing the federal indictment unsealed April 24, 2026, alleging that a U.S. Army master sergeant used classified information regarding a covert operation to place wagers generating more than \$409,000 in profits).

¹⁷ Complaint, CFTC v. Spagnuolo, No. 1:26-cv-04419 (S.D.N.Y. filed May 27, 2026); Criminal Complaint, United States v. Spagnuolo, No. 26 MAG 2020 (S.D.N.Y. filed May 27, 2026).

¹⁸ H. Comm. on Oversight & Gov't Reform, *supra* note 16.

¹⁹ The two largest platforms revised their rulebooks in the first quarter of 2026 to bar candidates from trading contracts on their own races, athletes from trading contracts on their own leagues, and employees from trading contracts tied to their employers.

²⁰ 17 C.F.R. § 180.1 (2025).

it involves breaching a pre-existing duty of trust and confidence (the misappropriation theory of insider trading). The CFTC’s June 2026 proposed listing rule identifies “misuse of material nonpublic information” as one of the factors bearing on whether an event contract may be prohibited.²¹ And members of the 119th Congress have introduced at least eight bills on the subject, two of which would ban Federal officials and staff from using material nonpublic information to trade on prediction markets.²²

This Article argues that the debate has been framed around the wrong distinction. In prediction markets, the tension that exists is seldom between informed and uninformed traders in particular contracts. Much more relevant is a market-level distinction between contracts that are corruption-prone and those that are not. Corruption-prone event contracts are prediction-market contracts whose payoff depends on events that a market participant can materially influence through their own conduct or through the conduct of persons subject to their influence. The defining characteristic is not merely that misconduct is possible. It is that the contract itself is characterized by a fundamental moral hazard because its payoff structure creates a financial incentive to manipulate the event that triggers payoffs.

The common law’s treatment of wager policies, which would forbid placing a bet on whether a stranger’s house will burn down, or whether a stranger will die on or before a date certain, supplies the appropriate regulatory model. The insurable-interest doctrine distinguishes contracts that transfer genuine risk from contracts that give a stranger a financial interest in another person’s death or other misfortune. The doctrine addresses the dangerous incentive by regulating the contract *ex ante*. Prediction markets should adopt the same approach for the narrow class of contracts that reward participants for changing, rather than forecasting, the underlying event.

Part I compares the economic importance and functions of securities and prediction markets. Part II explains the property, agency, and market-structure foundations of insider trading and manipulation law.

²¹ 91 Fed. Reg. at 35,831–32.

²² See Jay B. Sykes, Cong. Rsch. Serv., LSB11406, *Prediction Markets and Insider Trading Law* (Apr. 3, 2026) (surveying the February 2026 advisory, the exchange rulebooks, and the pending legislation). The two bills are both named the Public Integrity in Financial Prediction Markets Act of 2026, H.R. 7004, 119th Cong. (2026) and S. 4188, 119th Cong. (2026). For another comprehensive legal treatment of the subject, surveying the public and private law tools available to police insider trading and manipulation on prediction markets and concluding that ample legal mechanisms already exist, see Matthew Turk, John T. Holden & Todd Haugh, *Optimal Insider Trading in Prediction Markets* (Aug. 10, 2026) (unpublished manuscript), <https://ssrn.com/abstract=7259584>.

Part III evaluates the empirical evidence concerning informed trading, particularly the important work of Roberto Gómez-Cram, Yunhan Guo, Theis Ingerslev Jensen, and Howard Kung, showing that skilled outsiders—not crowd wisdom or insider traders—are responsible for much of the accuracy of prediction-market forecasts,²³ and a related article by Joshua Mitts and Moran Ofir, which, largely consistent with the findings by Gómez-Cram, Guo, Jensen, and Kung, discusses several informed-trading episodes and develops a screen to identify anomalous trades.²⁴ Part IV develops the category of corruption-prone event contracts and the insurable-interest analogy. Parts V and VI address hard cases and the existing statutory architecture. A conclusion follows.²⁵

I. TWO MARKETS OF VERY DIFFERENT IMPORTANCE

This part compares the economic functions and social importance of securities markets and prediction markets. It shows that securities markets play a central role in capital formation and household savings, whereas prediction markets principally produce information through their prices, and it draws from those differences the basic implications for the appropriate scope and intensity of regulation.

A. What Is at Stake in Securities Markets

U.S. public equity markets alone represent roughly \$60 trillion in capitalization, and the debt markets are larger still.²⁶ Capital markets play a critical role in fueling the U.S. economy, providing 75.3% of financing for non-financial corporations through the issuance of various types of securities.²⁷ These markets channel household and corporate savings into productive investment. They fund retirements through pensions and defined-contribution plans. They supply the benchmarks against which capital is priced and the collateral on which the banking and derivatives systems run. Their prices guide decisions about which factories are built, which drugs are developed, and which firms flourish and which ones do not. When securities prices are

²³ Gómez-Cram et al., *supra* note 9, at 2–6.

²⁴ Joshua Mitts & Moran Ofir, *From Iran to Taylor Swift: Informed Trading in Prediction Markets* (Aug. 8, 2026) (unpublished manuscript), <https://ssrn.com/abstract=6426778>.

²⁵ See *infra* Parts IV–V.

²⁶ See generally SIFMA, CAPITAL MARKETS FACT BOOK (2025) (reporting the capitalization of U.S. equity markets and outstanding fixed-income securities).

²⁷ *Id.*

wrong, capital is misallocated across the entire economy; when securities markets falter, the effects are macroeconomic and immediate.

Participation is also very widespread, with 58% of U.S. households owning equity securities.²⁸ Households hold securities directly and through intermediaries because modern economic life—retirement above all—practically requires it. And securities markets connect investors’ savings, albeit indirectly through secondary-market liquidity and valuation, to enterprises that deploy capital to produce goods, services, and future cash flows, contributing to the economy’s growth.

These features justify the massive regulatory apparatus that is an integral part of the securities industry. The costs of insider trading and manipulation in securities markets are not confined to the trading floor. They raise the cost of capital, degrade the price signals that allocate resources, and tax the savings of people who cannot realistically opt out. A large, expensive body of rules, backed by public and private civil and criminal monitoring and enforcement, is worth its considerable price when the thing being protected is the machinery of capital formation itself.

B. What Is at Stake in Prediction Markets

Prediction markets are different in kind, and, almost as relevant for regulatory purposes, in scale. They allocate no capital. They finance no enterprise. No one’s retirement depends on them, and most people do not participate in them. Their aggregate value is a rounding error next to the securities markets. Although the enterprise valuation of Kalshi and Polymarket is substantial,²⁹ the total value of all outstanding contracts on Polymarket and Kalshi’s U.S. trading platforms is less than \$500 million.³⁰ If the entire industry vanished tomorrow, the GDP would not be affected, particularly in light of their limited use for hedging purposes.³¹

²⁸ *Id.* See also Kenneth E. Bentsen, Jr., *Top 10 Takeaways from SIFMA’s 2025 Capital Markets Fact Book*, SIFMA (Aug. 26, 2025), <https://www.sifma.org/news/blog/top-10-takeaways-from-sifmas-2025-capital-markets-fact-book>.

²⁹ Jared Polites, *Kalshi Eyes \$40B Valuation, While Polymarket Targets \$20B: Is Either One Actually Exploring an IPO?*, BENZINGA (Aug. 10, 2026), <https://www.benzinga.com/Opinion/26/08/61097119/kalshi-eyes-40b-valuation-while-polymarket-targets-20b-is-either-one-actually-exploring-an-ipo>.

³⁰ Allium, *Polymarket vs. Kalshi: How to Compare Open Interest Using Onchain Data* (July 1, 2026), <https://www.allium.so/blog/polymarket-vs-kalshi-how-to-compare-open-interest-using-onchain-data/>.

³¹ Michael J. de la Merced, *Prediction Markets’ Next Major Bet: Wall St. Traders*, N.Y. TIMES, June 17, 2026, <https://www.nytimes.com/2026/06/17/business/dealbook/hedging-prediction-markets-kalshi.html> (reporting that “many market participants say that while institutions have shown increasing interest in using prediction markets, the number demanding to get in remains low for now”).

And while securities markets are an essential part of a complex ecosystem that enables firms to obtain cheaper financing for the production of new goods and services and, in short, value creation and economic growth, prediction markets are zero-sum. Every contract is a side bet; every dollar won is a dollar lost by a counterparty. The market as a whole creates no wealth for its participants.³² What it creates—the only thing it creates—is information. The price of an event contract is a continuously updated, incentive-backed probability estimate, and that estimate is consumed, free of charge, by people who never trade: journalists, campaigns, businesses making contingent plans, researchers, and public officials. The forecast is a genuine public good, and on discrete questions—who will win, whether rates will move, whether a bill will pass—it is often better than any poll or panel of experts.³³ But it is a modest public good, produced by a modest industry, and honesty about that modesty is the beginning of sound policy.

C. What the Comparison Implies for Regulation

Two implications follow from this comparison.

First, an elaborately expensive securities-market-style enforcement infrastructure cannot be justified here. The costs of that apparatus—mandatory disclosure, market-wide surveillance, an enforcement division, criminal referrals, treble penalties—would dwarf the economic significance of prediction markets and would be disproportionate to the gravity of the harms it would seek to deter. Insider trading in securities markets taxes capital formation across a \$60 trillion market. Insider trading in prediction markets redistributes money among voluntary participants in a small, zero-sum game whose value is largely hedonic. It may be fun to guess what the value of Bitcoin will be, or whether the Knicks will win another national championship or which celebrity will marry next, but there is no social value to these bets.³⁴

³² Derivatives markets, including options and futures markets, at least serve a valuable hedging function, which prediction markets are trying hard, but so far unsuccessfully, to serve. *Id.* See also *infra* note 34 (explaining why derivatives are preferred over prediction markets for hedging risk).

³³ See Wolfers & Zitzewitz, *supra* note 7, at 108–13; Arrow et al., *supra* note 7, at 877.

³⁴ Thus far, adoption by hedge funds and corporations of prediction markets for hedging purposes remains very limited. de la Merced, *supra* note 31 (noting that the number of firms using prediction markets for hedging “remains low for now”). Instead, prediction markets are used primarily by individual traders and small accounts that use event contracts to target specific binary risks. Prediction markets are not used for hedging because the markets lack the market depth and size required for effective hedging by business. In addition, event contracts or prediction markets settle on specific external indices rather than a business’s precise financial loss, creating imperfect alignment with firms’ risk management needs. Established alternatives to prediction markets for hedging and managing risk—traditional derivatives, options, and futures markets—remain far more efficient and deeply entrenched for hedging. *Id.*

Similarly, the low stakes to protecting these markets also means that prohibiting a category of contracts is itself cheap. Little is lost when a contract that makes predictions with little or no social value is never listed. And if a particular platform such as Polymarket or Kalshi thinks that the risk is small and the rewards are large, it should assume that risk.

Part IV identifies a class of contracts—those written on granular events that identifiable individuals control, and for which the social value is small and the capacity for corruption is large. For this class, the cost-benefit analysis seems clear. The sensible response is not to build an enforcement regime elaborate enough to catch the referee, the settlement-source employee, and the mention-market gamesman, but to decline to write contracts on their conduct in the first place. The disparity in stakes, in short, supports regulatory minimalism on both margins: no securities-style conduct regime for informed trading, and simple categorical exclusion for the contracts that invite manipulation.

II. THE FOUNDATIONS OF THE SECURITIES MARKETS REGIME

This part sets out the doctrinal and economic foundations of the securities-market rules governing insider trading and manipulation. It traces insider trading law’s shift from fairness and equal-access rationales to a property-rights and contract-based framework, identifies the principal economic harms that support the prohibition, and distinguishes among information-based, trade-based, and action-based manipulation. Building on Part I’s findings, this part also compares and, where necessary, contrasts securities markets with prediction markets, highlighting the similarities and differences between the two that may or may not justify similar regimes and enforcement intensity.

A. Insider Trading: From Fairness to Property

Since the promulgation of Rule 10b-5, it has been unlawful for a corporate insider to trade in securities on the basis of material, nonpublic information.³⁵ The earliest judicial justifications sounded in equity. In *Speed v. Transamerica Corp.*, Judge Leahy defended the rule as an attempt to prevent insiders from taking “unfair advantage of the uninformed minority stockholders” and to provide “some degree of equalization of bargaining position” between

³⁵ 17 C.F.R. § 240.10b-5; 15 U.S.C. § 78j(b).

trading parties.³⁶ The Second Circuit’s landmark opinion in *SEC v. Texas Gulf Sulphur Co.* embraced the same conception, announcing that Rule 10b-5 rests on “the justifiable expectation of the securities marketplace that all investors trading on impersonal exchanges have relatively equal access to material information.”³⁷

The fairness rationale was a bad argument, even in securities markets, and the argument is even worse when applied to trading on prediction markets. Requiring equality of information among trading parties threatens to criminalize most if not virtually all securities trading, since one party nearly always enjoys superior knowledge, sophistication, or analytical skill.³⁸ A rule of “equal access” does not distinguish between a trader who acquires an advantage through years of painstaking research and a trader who acquired it by breaking into the filing cabinet in his law partner’s office, though the first kind of informational advantage should be encouraged and rewarded, while the second should be deterred and punished.

Another flaw in the fairness or equal treatment justification for insider trading rules is that it does not provide an account for who is harmed by those who trade by buying (selling) when an insider is selling (buying). Most counterparties trade at the market price in response to needs to rebalance their portfolios or to changes in their personal or familial patterns of consumption and investment. These counterparties buy at lower prices when insiders are selling, and sell at higher prices when insiders are buying. As such, insider trading actually makes these traders better off than they would have been without insider trading.³⁹

Yet another problem with the fairness or equal-access theory of insider trading regulation is that it ignores the costs of producing information. Prohibiting a party with superior access to information from profiting from that access removes the incentive to ferret out that information in the first place.⁴⁰

³⁶ *Speed v. Transamerica Corp.*, 99 F. Supp. 808, 829 (D. Del. 1951) (emphasis omitted).

³⁷ *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 848 (2d Cir. 1968) (en banc), *cert. denied*, 394 U.S. 976 (1969).

³⁸ Macey, *supra* note 1, at 16–17; Kenneth E. Scott, *Insider Trading: Rule 10b-5, Disclosure and Corporate Privacy*, 9 J. LEGAL STUD. 801, 805 (1980).

³⁹ HENRY G. MANNE, *INSIDER TRADING AND THE STOCK MARKET* 93–110 (1966); Macey, *supra* note 1, at 21–22 & n.52.

⁴⁰ Macey, *supra* note 1, at 18–19; George J. Stigler, *The Economics of Information*, 69 J. POL. ECON. 213 (1961); *see also* Stephen M. Bainbridge, *Equal Access to Information: The Fraud at the Heart of Texas Gulf Sulphur*, 71 SMU L. REV. 643 (2018); Stephen M. Bainbridge, *The Insider Trading Prohibition: A Legal and Economic Enigma*, 38 FLA. L. REV. 35, 37–45 (1986).

The Supreme Court’s decisions in *Chiarella v. United States* and *Dirks v. SEC* expressly rejected the parity-of-information theory and reoriented the doctrine around specific relationships and duties.⁴¹ *Chiarella* held that a financial printer who deduced the identities of takeover targets from documents entrusted to his employer violated no duty to the shareholders from whom he bought stock, because he was “a complete stranger who dealt with the sellers only through impersonal market transactions.”⁴² *Dirks* held that a tippee inherits liability only where the tipper breached a fiduciary duty created by a pre-existing relationship of trust and confidence by tipping material inside information in exchange for some sort of pecuniary or non-pecuniary payoff about which the tippee knew or should have been aware.⁴³ *United States v. O’Hagan* largely completed the development of the legal architecture governing insider trading with its holding that a person who misappropriates confidential information in breach of a duty owed to the *source* of the information commits fraud “in connection with” a securities transaction even absent any duty to his trading counterparties.⁴⁴

This line of cases establishes a comprehensive theoretical foundation for U.S. insider trading regulation based on Coasean ideas of property rights and contract. The corporation that expends resources to generate valuable information—a mineral discovery, a planned tender offer, undisclosed earnings—has a strong commercial interest in maintaining the confidentiality of this information consistent with the fact that the information is a form of intellectual property.⁴⁵ The insider who trades on such information without permission converts this corporate asset to his own use, making his breach “equivalent to theft.”⁴⁶ Thus, insider trading law ensures that property rights in valuable information are allocated and safeguarded against theft in order to maximize the production of socially useful information.⁴⁷

The regulation of derivatives markets, on which prediction-market contracts trade, clearly reflects the property rights/contractarian approach to regulating insider trading. When the CFTC adopted Rule 180.1, it stated explicitly that the rule would not be construed to require parity of information, and that trading on the basis of lawfully obtained nonpublic information does not

⁴¹ *Chiarella v. United States*, 445 U.S. 222 (1980); *Dirks v. SEC*, 463 U.S. 646 (1983).

⁴² *Chiarella*, 445 U.S. at 232–33.

⁴³ *Dirks*, 463 U.S. at 660.

⁴⁴ *O’Hagan*, 521 U.S. at 652–53.

⁴⁵ Macey, *supra* note 1, at 26–28.

⁴⁶ *Id.* at 28–29 (citing 445 U.S. at 245 (Burger, C.J., dissenting)); *United States v. Newman*, 664 F.2d 12, 17 (2d Cir. 1981).

⁴⁷ Macey, *supra* note 1, at 30–33.

violate the rule absent breach of a preexisting duty.⁴⁸ The CFTC’s insider trading enforcement program in the commodity markets has accordingly been grounded entirely on the property-rights-based misappropriation theory.⁴⁹ There has never been an “equal access” rule in the derivatives markets. Nor should one be invented. Prohibiting insider trading in prediction markets based on a parity-of-information rationale would have to explain not only why securities law’s abandoned theory should be revived, but also why it should be revived in the one corner of the regulatory landscape that never adopted it in the first place and in markets where it is the least suitable.

B. The Economic Case for the Securities Prohibition

The property/contractarian/Coasean framework identifies four distinct consequential harms caused by insider trading. First, unauthorized insider trading appropriates valuable intellectual property that belongs to the firm. Inside information has a short shelf life. Its value is depleted once an insider’s purchases (sales) have driven a stock’s price up (down) to reflect the insider’s information; at that point, the opportunity to profit from the information is gone.⁵⁰ After that happens, a firm that cannot capture the returns from information it has generated—often at great expense, as in a prospective acquirer’s research into undervalued targets—has less incentive to generate such information. The prospect of insider trading therefore means that firms will invest less and produce less valuable information.⁵¹ This problem does not affect prediction markets other than for a small subset of event contracts, namely those on particular corporate events (e.g., will SpaceX and Tesla merge by the end of 2026). Where these contracts are traded misappropriating material nonpublic information, Rule 180.1 would apply much in the same way as the securities markets insider trading prohibition would apply if the trade was on the relevant companies’ shares.

⁴⁸ Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices, 76 Fed. Reg. 41,398, 41,403–05 (July 14, 2011) (codified at 17 C.F.R. pt. 180) (declining to impose a parity-of-information requirement and confining liability to trading in breach of a preexisting duty).

⁴⁹ *In re Motazed*, CFTC No. 16-02 (Dec. 2, 2015); *In re Ruggles*, CFTC No. 16-34 (Sept. 29, 2016); CFTC v. EOX Holdings LLC, 405 F. Supp. 3d 697 (S.D. Tex. 2019). For a detailed account of the CFTC’s misappropriation-based enforcement program and its extension to prediction markets, see Turk et al., *supra* note 22, at 30–33.

⁵⁰ Macey, *supra* note 1, at 31.

⁵¹ *Id.* at 18–19 & n.48; Frank H. Easterbrook & Daniel R. Fischel, *The Proper Role of a Target’s Management in Responding to a Tender Offer*, 94 HARV. L. REV. 1161, 1178 (1981).

Second, insider trading can inflict operational harm quite apart from the appropriation of trading profits. Trading by insiders can reveal information to the market. In *Texas Gulf Sulphur* itself, purchases by insiders who knew of the company's massive ore discovery risked alerting landowners and competitors before the company had completed its land-acquisition program, forcing it to pay more for mineral rights its own exploration had made valuable.⁵² In the tender-offer setting, an employee's trading in target stock can raise the price the bidder must pay and may cause the offer to fail.⁵³

These are real resource costs, borne by the parties who created the information—the class of cases in which the effect “is akin to that of theft.”⁵⁴ This problem could potentially affect prediction markets because if it is possible to make inferences about the real-world events providing the underlying motivations for stock market purchases, it might also be possible to make inferences about the real-world events motivating purchases and sales on prediction markets. The signaling harm identified in *Texas Gulf Sulphur*—trading that tips off the market and raises the firm's acquisition costs—likewise has no meaningful analogue on prediction markets. There is no land to be quietly assembled, no target to be cheaply acquired behind trades on prediction markets (again, unless the contracts are exactly on such corporate events). Indeed, the “signaling” that informed purchases produce in a prediction market is not a harm at all but the product itself: an anonymous, unbiased, credible, incentive-compatible transmission of private information into a public price. The contract on the identity of the 2025 Nobel Peace Prize that moved from two percent to seventy percent in the hours before the announcement was not a scandal in its informational aspect; it was an example of the system working as it is supposed to work.⁵⁵ Whatever is troubling about the episode concerns the Norwegian institution's control of its own confidential information, not the market's price.

There is, of course, one category of events for which the *Texas Gulf Sulphur* signaling harm may materialize: those on specific corporate events (for instance: will SpaceX and Tesla merge by the end of 2026?). Trading on the related contracts based on nonpublic information in a

⁵² Macey, *supra* note 1, at 44–47; SEC v. Texas Gulf Sulphur Co., 401 F.2d 833, 843–44 (2d Cir. 1968).

⁵³ Macey, *supra* note 1, at 46–47, 54; Easterbrook, *supra* note 3, at 331.

⁵⁴ David D. Haddock & Jonathan R. Macey, *Regulation on Demand: A Private Interest Model, with an Application to Insider Trading Regulation*, 30 J.L. & ECON. 311, 311–12 n.1 (1987) (“When trades on the basis of confidential information increase the cost of business for a firm, the effect is akin to that of theft.”).

⁵⁵ Contract prices on the 2025 Nobel Peace Prize moved from below two percent to well above seventy percent in the hours preceding the announcement, prompting an inquiry by the Norwegian Nobel Institute into whether confidential information had been leaked.

situation involving misappropriation is a substitute for illicit trading on the relevant shares. Accordingly, these specific contracts may deserve the same scrutiny as securities trading in terms of regulatory and enforcement attention, but they are currently a tiny fraction of the events covered by prediction markets.

To be sure, one could imagine prediction markets to evolve and become much more complete, to the point of covering many corporate events for a multitude of issuers. Kalshi was founded exactly with that vision in mind,⁵⁶ that is, that prediction markets would allow securities traders (and financial market participants more generally) to bet on specific events (e.g., that ore discoveries are made in a certain area by a certain company) rather than proxies thereof (that the mining company's price will go up). This scenario, however remote, will, in any event, be covered by CFTC's Rule 180.1.

Third, insider trading generates agency costs. Permitting managers to profit from advance knowledge of firm-specific news allows them to profit from bad news as well as good, potentially skewing project selection toward volatility, encouraging delay in disclosure while insiders accumulate positions, and driving a wedge between managerial and shareholder interests.⁵⁷ Even commentators sympathetic to Henry Manne's defense of insider trading as entrepreneurial compensation concede that the practice presents serious monitoring problems, which is why the sensible baseline is one in which the firm—the owner of the information—may allocate or withhold trading rights by contract.⁵⁸ Bainbridge has pressed this critique furthest, arguing that an insider's returns bear no reliable relation to his contribution, that trading profits cannot be confined to those who generated the value, and that the practice gives managers reasons to delay disclosure and to prefer volatility.⁵⁹

The issue is more subtle and complex than Bainbridge and others have acknowledged. From the perspective of fully diversified shareholders, insiders, whose human capital investment in the firm is not diversified at all, may be overly risk-averse. The opportunity to hedge their bets

⁵⁶ See Avantika Chilkoti, *Rules-Based Disorder: Why Prediction Markets Struggle If Reality Is Contested*, THE ECONOMIST, July 23, 2026, <https://www.economist.com/interactive/1843/2026/07/23/rules-based-disorder-why-prediction-markets-struggle-if-reality-is-contested>.

⁵⁷ Richard Leftwich & Robert Verrecchia, *Insider Trading and Managers' Choice Among Risky Projects* (Univ. of Chi. Graduate Sch. of Bus., Working Paper No. 63, 1981); Robert J. Haft, *The Effect of Insider Trading Rules on the Internal Efficiency of the Large Corporation*, 80 MICH. L. REV. 1051 (1982).

⁵⁸ Manne, *supra* note 39, at 131–45; Carlton & Fischel, *supra* note 3, at 863; Macey, *supra* note 1, at 38 n.185.

⁵⁹ Stephen M. Bainbridge, SECURITIES LAW: INSIDER TRADING 145–63 (1999); *see also* Bainbridge, *Equal Access to Information*, *supra* note 40, at 660–63.

by selling short or by entering into equivalent contracts on prediction markets can align insiders' risk preferences more closely with those of shareholders. But, here again, this rationale extends to what is currently the small subset of corporate event-related prediction market contracts.

Fourth, insider trading imposes costs on securities markets as institutions. Market makers systematically lose to better-informed counterparties, and because they cannot identify and screen which of their counterparties is a better informed insider, in anticipation of the presence of a certain percentage of better-informed insiders among the trading population, they widen the bid-ask spreads at which they make markets across the board, thereby increasing their profits from trading against relatively poorly informed outsiders to offset their expected losses to insiders. All traders, including the liquidity traders and long-horizon savers for whom securities markets principally exist, shoulder part of this cost, thereby raising trading costs and firms' cost of capital.⁶⁰

This rationale also cuts differently when it comes to prediction markets. Insider trading widens spreads in prediction markets just as elsewhere; uninformed participants pay more to trade, and some marginal recreational traders may be driven away. But recall why widened spreads matter in securities markets: they raise transaction costs for savers and raise the cost of capital for productive firms. Prediction markets do not provide a venue for investors, and they do not provide finance to firms or allocate capital in the economy. The recreational bettor deterred by sharp counterparties suffers a loss of entertainment, not of access to capital markets. That is a consumer-protection question about disclosure and market design, answered by telling participants what kind of venue they have entered—not by degrading the forecast.

A public enforcement apparatus to punish insider trading and, *ex ante*, reduce its incidence on public securities markets is a subsidy which may well be justified given those markets' role in mobilizing capital to productive uses. Because prediction markets are far smaller and do not perform the capital-allocation function of securities markets, the corresponding negative market consequences of insider trading are also much smaller, making the net benefits of deploying a similar apparatus to tackle the same behavior highly dubious. Of course, it is certainly possible that insider trading on prediction markets will reduce trading volume by driving away non-insiders, who do not want to make wagers against people who already know

⁶⁰ Haddock & Macey, *supra* note 54, at 331; Walter Bagehot, *The Only Game in Town*, 27 FIN. ANALYSTS J. 12 (1971); H. Nejat Seyhun, *Insiders' Profits, Costs of Trading, and Market Efficiency*, 16 J. FIN. ECON. 189 (1986).

the outcome of the event they are wagering on. But, given the limited social value of prediction markets, this is a problem that could well be left to the venues themselves: after all, their revenues come from transaction fees,⁶¹ which gives them strong incentives to address the problem.

To conclude, none of the arguments used to selectively ban insider trading establishes that every instance thereof is inefficient, and the enforcement apparatus built around Rule 10b-5 has well-documented pathologies.⁶² But together they make the case for a selective ban on insider trading in public securities markets more than plausible.⁶³ Transposed to prediction markets, however, each of these arguments loses much, if not all, of its strength.

C. Manipulation and Its Rationale

Manipulation law is older than insider trading law and less coherent. Congress prohibited manipulative practices in section 9(a) of the Securities Exchange Act, in section 10(b), and in section 6(c) of the Commodity Exchange Act, but nowhere defined the term.⁶⁴ Courts' attempts at definition are either circular—condemning trading intended to produce an “artificial” price while defining a price as artificial when it results from manipulation—or so broad as to condemn ordinary market practices.⁶⁵ In a pathbreaking contribution, Daniel Fischel and David Ross argued that manipulation law should be jettisoned altogether for “trade-based” cases—attempts to move prices unaccompanied by any fraudulent conduct—because no reliable line separates a manipulative purchase from a benign investment strategy, and because manipulation unaccompanied by fraud or monopoly power will usually be an unprofitable strategy in modern markets.⁶⁶

Three distinct categories of conduct are potentially manipulative: *information-based* manipulation, *trade-based* manipulation, and *action-based* manipulation.⁶⁷

⁶¹ See Chilkoti, *supra* note 56.

⁶² Macey, *supra* note 1, at 58–63 (questioning the necessity and efficiency of public enforcement); Michael P. Dooley, *Enforcement of Insider Trading Restrictions*, 66 VA. L. REV. 1 (1980).

⁶³ As one of us has argued, a case can be made for a regime that enables companies to opt out of the insider trading regime. See Macey, *supra* note 1, *passim*.

⁶⁴ 15 U.S.C. § 78i(a)(2); 15 U.S.C. § 78j(b); 7 U.S.C. § 9(1).

⁶⁵ See Fischel & Ross, *supra* note 5, at 506–10 (cataloguing the circularity of the “artificial price” standard).

⁶⁶ *Id.* at 503–05, 511–19; *but see* Thel, *supra* note 5, at 222–26; Franklin Allen & Douglas Gale, *Stock-Price Manipulation*, 5 REV. FIN. STUD. 503 (1992).

⁶⁷ See 15 U.S.C. § 78i(a)(1) (wash sales and matched orders in securities); 7 U.S.C. § 6c(a)(1)–(2) (wash sales, accommodation trades, and fictitious sales in the commodity markets).

Information-based manipulation

Information-based manipulation consists of making false or misleading statements designed to move prices—“lie, buy, and sell high”; the “pump and dump.” This is simple, old-fashioned fraud and should be prosecuted as such. No special rationale for prohibiting such behavior on securities markets is required.

Trade-based manipulation

Trade-based manipulation uses trades themselves to mislead. Its common forms are wash sales (buying and selling the same asset simultaneously to create fake volume without taking risk); matched orders (two or more people passing a security back and forth to the same end); marking the close (trading in the final minutes of the day to set an artificial closing price); and spoofing (placing large orders one intends to cancel, to create a false impression of supply or demand). A subspecies is the corner or squeeze: buying up virtually the entire supply of an asset and then dictating its price, a tactic particularly effective against traders with short positions who must buy to cover.

Most of these techniques simply do not work on prediction markets. Because new contracts can be created instantly at no cost, the supply of contracts is perfectly elastic; there is no fixed float to corner and no short squeeze to exploit. Nor are there closing prices to mark: event contracts trade continuously from listing until the underlying event occurs or the contract expires. Wash sales and matched orders do occur on prediction markets, but they operate on a different margin. Fake volume cannot exploit scarcity where there is no scarcity; even if a manipulator convinces the market that interest in a contract is high, the result is more contracts outstanding, not a sustained rise in their price.

Wash trading nonetheless flourishes on prediction markets, for reasons peculiar to them. Crucially, unlike wash trading on securities markets, which is done to affect securities prices, wash trading on prediction markets is done for reasons unrelated to contract prices. One reason for wash trading on prediction markets is that many crypto-based platforms reward active users with tokens or governance rights on the basis of their trading volume, so fake volume generates real rewards despite their lack of effect on prices.⁶⁸

⁶⁸ Ryan S. Gladwin, *Will Polymarket Launch a Token? Why Some Traders Are Betting on an Airdrop*, DECRYPT (2024), <https://decrypt.co/248178/will-polymarketlaunch-token-ethereum-airdrop>; Helene Braun & Nikhilesh De,

Another reason for wash trades on prediction markets is that the trading platforms themselves benefit from creating the appearance that a lot of trading is taking place on the platform. High reported trading volume drives media attention, aggregator rankings, and valuation. High rates of wash trading have in fact been documented on the largest platform.⁶⁹ These are real integrity problems, but they are problems about *metrics*—airdrops, rankings, advertised liquidity—rather than about prices, and they are reachable by the existing statutory prohibitions on wash sales and fictitious trades.

Action-based manipulation

The third and analytically distinct category of manipulation is action-based manipulation, which, as the name implies, involves actually doing something that changes the real value of an asset or the real outcome of an event, rather than merely the price at which it trades. A trader with a short position who commits arson and destroys the issuer’s inventory is engaged in action-based manipulation. In securities markets the category is virtually unheard of, for a simple reason: individual traders almost never can create enough disruption to change the fundamentals of a large public corporation. As Part IV shows, prediction markets enjoy no such structural protection, and, as such, action-based manipulation is, at least in theory, a serious problem there.

III. PREDICTION MARKETS AND INFORMED TRADING

This Part asks who produces the accuracy for which prediction markets are prized, and how often that accuracy is purchased through a breach of duty. Section A shows that accuracy is attributable neither to crowd wisdom nor to insiders, but to a small minority of persistently skilled traders—about three percent of accounts, active across dozens of unrelated markets—who earn their edge from faster and better analysis of public information, cross-contract arbitrage, and the crowd’s behavioral biases; the crowd supplies most of the volume, almost none of the information, and the subsidy that funds the production of accurate prices. Section B argues that insider trading, though it plainly occurs and should be policed where it breaches a duty of

Polymarket Will Launch Token and Airdrop After U.S. Relaunch, CMO Says, COINDESK (Oct. 24, 2025), <https://www.coindesk.com/markets/2025/10/24/polymarket-will-launch-token-and-airdrop-after-u-s-relaunch-cmo-says>.

⁶⁹ Allen Sirolly, Hongyao Ma, Yash Kanoria & Rajiv Sethi, *Network-Based Detection of Wash Trading* (Nov. 6, 2025) (Colum. Bus. Sch. Rsch. Paper No. 5714122), <https://ssrn.com/abstract=5714122> (estimating that roughly one quarter of the leading platform’s historical volume reflects wash trading).

confidence, remains localized and sporadic rather than pervasive, for reasons that are structural: many event contracts admit of no definitive foreknowledge, insider opportunities are often one-shot rather than a recurring pipeline, thin order books compress informational rents, anomalous positions are conspicuous and permanently recorded, and the non-market penalties are severe. Section C explains that an event contract channels no capital, so its price is not a byproduct of the market's function but its entire social product. Together these findings support a narrow but consequential conclusion (Section D): the empirical record establishes informational advantage, not breach of duty, and therefore supplies no warrant for a rule broader than the duty-based one already in force.

A. Who Makes Prediction Markets Accurate

A prediction market lists binary (or occasionally scaled) contingent claims: a contract might pay \$1 if the incumbent wins reelection and \$0 otherwise. A contract trading at sixty-two cents conveys the market's aggregate judgment that the incumbent has a sixty-two percent chance of winning. It is tempting to attribute the accuracy of these prices either to the "wisdom of crowds" or alternatively, to insiders.⁷⁰ Interestingly, it turns out that neither of these explanations is accurate.

Instead, the best available evidence is that the impressive accuracy of prediction markets is attributable to bets placed by a small minority of *persistently skilled traders*—about three percent of accounts—who trade on *public* information.⁷¹ Using the universe of transactions on Polymarket, the largest prediction market platform, Gómez-Cram, Guo, Jensen, and Kung find that these skilled traders obtain an edge over their counterparties by employing a variety of strategies and techniques, including processing public data faster or more accurately, reacting more quickly to news, enforcing the law of one price across related contracts,⁷² and betting against the crowd's irrational behavioral biases.⁷³

Unlike corporate insiders, whose knowledge is narrow and firm-specific, the skilled minority is active across a wide range of unrelated markets—on average, seventy-eight markets

⁷⁰ F.A. Hayek, *The Use of Knowledge in Society*, 35 AM. ECON. REV. 519 (1945).

⁷¹ Gómez-Cram et al., *supra* note 9, at 2–6.

⁷² The law of one price is that investments with identical payoffs should command identical prices.

⁷³ See generally Gómez-Cram et al., *supra* note 9.

per account.⁷⁴ It is this group's order flow, not the crowd's and not insiders', that predicts outcomes and consistently moves prices toward correct values.⁷⁵ Their activity improves accuracy across markets as different as sports, cryptocurrency, and elections. That breadth should not be taken to mean that private information is impossible in those categories: lineup or injury information, unreleased internal polling, proprietary forecasts, and listing or protocol decisions can all shift the probability of an outcome even in the absence of definitive information of the ultimate outcome of an event like an athletic contest or an election. But the converse is equally relevant: an informational advantage can come from astute analysis of public data, greater computational speed or analytical skill, or by lawfully creating or acquiring non-public information, rather than by misappropriation.⁷⁶ The crowd, for its part, supplies roughly seventy percent of the volume and almost none of the information to prediction markets; its losses fund the skilled minority's profits—the Grossman-Stiglitz equilibrium in its purest observed form, in which uninformed flow is the subsidy that pays for the production of accuracy.⁷⁷

B. How Common Is Insider Trading on Prediction Markets?

Genuine episodes of informed trading on prediction markets certainly occur; a handful have already been charged or publicly exposed. But the best available evidence indicates that such trading is rare, and the reason the known episodes came to light is instructive: the conspicuous insider announces himself, while subtler informed trading may leave no comparable trace. On securities markets, insider trading is commonplace.⁷⁸ Such trading is estimated to occur

⁷⁴ Gómez-Cram et al., *supra* note 9, at 14 & tbl.2.

⁷⁵ *Id.* at 21–23, 25–29.

⁷⁶ Gómez-Cram et al., *supra* note 9, at 5, 22; *see also* Mitts & Ofir, *supra* note 24, at 72 (identifying probability-relevant private-information channels in sports, weather, cryptocurrency, and elections without equating such information with a known final outcome).

⁷⁷ Sanford J. Grossman & Joseph E. Stiglitz, *On the Impossibility of Informationally Efficient Markets*, 70 AM. ECON. REV. 393 (1980); Gómez-Cram et al., *supra* note 9, at 15–16 (finding that the gains of market makers, the skilled, and the lucky are fully offset by the losses of the rest of the crowd).

⁷⁸ Marc J.M. Bohmann & Vinay Patel, *Informed Options Trading Prior to FDA Announcements*, 49 J. BUS. FIN. & ACCT. 1211, 1211–36 (2022), <https://doi.org/10.1111/jbfa.12600>; Vinay Patel & Tālis J. Putniņš, *How Much Insider Trading Happens in Stock Markets?* (Jan. 11, 2020) (unpublished manuscript), <https://ssrn.com/abstract=3764192>. Keown & Pinkerton conclude that leakage of inside information is a pervasive, systematic problem and that trading on merger information “abounds.” Arthur J. Keown & John M. Pinkerton, *Merger Announcements and Insider Trading Activity: An Empirical Investigation*, 36 J. FIN. 855, 866 (1981); Meulbroek found that roughly half of the stock-price increase before mergers are announced occurs on days when insiders actually trade. Lisa K. Meulbroek, *An Empirical Analysis of Illegal Insider Trading*, 47 J. FIN. 1661 (1992). *See also* Gretchen Morgenson, *Is Insider Trading Part of the Fabric on Wall Street?*, N.Y. TIMES (May 19, 2012), <https://www.nytimes.com/2012/05/20/business/is-insider-trading-part-of-the-fabric-on-wall-street.html>.

in one in five mergers and acquisitions and one in twenty earnings announcements, at least four times the prosecution rate. Insider trading on securities markets is more likely when the information is more valuable, when more people possess it, and in more liquid stocks.⁷⁹

Gómez-Cram and his coauthors identify likely insider trading on prediction markets by looking for implausibly strong track records concentrated in markets with characteristics that make them particularly prone to insider trading, suspicious timing, and extreme confidence reflected in price-insensitive trades. These measures identify 967 accounts out of roughly 1.72 million as involving likely insider trading, representing about 0.2% of trading volume and 1.3% of profits; insider activity appears in only 6% of markets. Under these criteria, such trading is best characterized as localized and sporadic rather than pervasive. That result is meaningful evidence that insider trading on prediction markets is not pervasive.

Insiders often cannot trade with a very high degree of certainty on many of the contracts on prediction markets because of the nature of the contracts, at least not in the same, definitive way that it occurs on securities markets. Insider information is often not available for contracts on the weather, the price of widely held, liquid cryptocurrencies, or national elections. Of course, it is certainly possible for a tennis player to make money on a singles tennis match by throwing the game. This sort of corrupt behavior is more difficult in team sports. In team sports, however, it is possible for a single player to tilt the odds, and for people who gamble a lot, tilting the probabilities of winning is all that is needed to virtually ensure a payoff over numerous bets. Thus, while some contracts on prediction markets, such as contracts on what the value of Bitcoin will be or who the winner of a U.S. Presidential election will be, are categorically unsusceptible to insider trading, other contracts are susceptible or at least somewhat susceptible to insider trading.

Mitts and Ofir identify plausible private-information channels that might give traders in such categories an edge: proprietary forecasts in weather; listing, treasury, and protocol decisions in cryptocurrency; and internal polling or an impending candidate withdrawal in politics.⁸⁰ Of course, a trader can have information that materially changes the probability of an event occurring without knowing the actual outcome. But from a legal perspective, the point is that

⁷⁹ Patel & Putniņš, *supra* note 78.

⁸⁰ Mitts & Ofir, *supra* note 24, at 72 (identifying private-information channels including injury and lineup information, proprietary weather forecasts, cryptocurrency listing and protocol decisions, internal polling, and advance knowledge of candidate withdrawal).

having information that gives one an edge in trading does not, in and of itself, establish wrongdoing. Under the applicable CFTC rules, a probability-relevant informational advantage becomes insider trading only when using it to trade violates a preexisting duty of trust and confidence or confidentiality imposed by contract or by the existence of a fiduciary relationship.

The nature of insider trading on prediction markets and on securities markets is somewhat different. The informational flows on prediction markets are episodic rather than recurring. Corporate insiders are in a position to observe a recurring pipeline of earnings, deals, and other firm-specific information. In contrast, most prediction-market insiders may be privy to only one tradable piece of information on a one-time basis.⁸¹ Such one-shot opportunities reduce repeatable rents and make prediction-market insider trading structurally different from corporate insider trading.⁸² The producer knows this season's finale; the staffer knows a particular polling result; an aide knows that a candidate is about to withdraw from a race. The account data bear exactly that signature: the suspected insider accounts were opened in the days before the events they traded and fell dormant immediately after resolution.⁸³ Securities insider trading is tempting because the opportunity presents itself to the same people over and over. With few exceptions, event-contract foreknowledge is a one-shot endowment scattered across an ever-changing population of people, most of whom do not trade prediction markets at all.

The illiquidity on prediction markets likewise severely limits the scale of informed trading, but it does not make informed trading entirely self-defeating. Mitts and Ofir acknowledge that thin order books constrain deployable size and accelerate price discovery, but identify documented cases in which meaningful profits remained available before prices fully adjusted. The Maduro event contract, for example, which involved a bet on whether Nicolás Maduro would be out of power by January 31, 2026, generated a profit of approximately \$485,346 on \$38,533 of capital at risk at an average entry price of about 7.4 cents. Apparently, in

⁸¹ Notable exceptions may be those, for instance, of the personal assistant of a celebrity or U.S. President's staffers. Their number is, and is intuitively destined to remain, much lower than that of people privy to material nonpublic information at the thousands of U.S. publicly traded corporations.

⁸² Mitts & Ofir, *supra* note 24, at 88 (observing that a track-record-based identification strategy may have limited recall for a one-shot participant who knows one thing, once, and cautioning against treating a high-specificity estimate as a ceiling).

⁸³ Gómez-Cram et al., *supra* note 9, at 27–28 & app. C (documenting that the flagged accounts were created in the days before the events they traded and ceased trading after resolution).

this case, insider bets did not have a significant effect on the prices of these particular contracts.⁸⁴ Thinness compresses informational rents, but it does not eliminate them.⁸⁵

Detecting who is trading is also easier on prediction markets than on securities markets. On thinly traded prediction markets, a freshly opened account taking a six-figure position in a ten-cent contract days before an unannounced event *is* the disclosure—permanently recorded, linkable through funding trails, and flagged by proxies simple enough that academics have little trouble identifying them in their scholarly work,⁸⁶ because it is easy to identify insider trading on these markets.⁸⁷

On cryptocurrency markets, blockchain transparency lowers the cost of detecting anomalous wallets, not the cost of proving legal insider trading. A conspicuous new wallet can be flagged quickly and its transactions permanently traced on-chain, but the ledger does not reveal the beneficial owner, the source of the information, or whether a duty was breached. Surveillance tools can therefore improve investigative triage without converting an anomaly into proof.⁸⁸

Perhaps most importantly, the non-market penalties facing many people with valuable event information are severe. Government officials, military personnel, employees, athletes, campaign staff, and platform personnel may face termination, loss of clearance, contractual liability, discipline, or criminal sanctions. In sum, insider trading clearly occurs on prediction markets⁸⁹ and rules banning trading that breaches fiduciary duties and commitments to maintain confidentiality should be enforced. But the expected frequency and scale of trading on prediction markets differ from what securities markets experience.

⁸⁴ Mitts & Ofir, *supra* note 24, at 88 (insider trading does not appear to have had a noticeable impact on price).

⁸⁵ *Id.* at 88 (agreeing that thinness constrains deployable size and accelerates price discovery but noting that the Maduro trades returned approximately \$485,346 on \$38,533 of capital at risk at an average price of \$0.074).

⁸⁶ Gómez-Cram et al., *supra* note 9, at 27–28 (describing the record, timing, and conviction proxies); see H. Comm. on Oversight & Gov’t Reform, *supra* note 16 (indictment unsealed within four months of the trades).

⁸⁷ See Mitts & Ofir, *supra* note 24, at 14, 40, 43–47 (describing the identification of the Iran strike wallets by the blockchain analytics firm Bubblemaps, of the Google Year in Search trades by a software engineer posting on X, and of the OpenAI browser trades by the Polysights “Insider Finder” tool, developed by a single entrepreneur and funded in part by a \$25,000 grant from Polymarket itself). *Cf. id.* at 33 (noting that the anomalous trading was itself the signal that the Nobel Committee’s deliberations had been compromised, and that the breach might otherwise have gone undetected).

⁸⁸ *Id.* at 88 (distinguishing public visibility of a wallet’s trading from identifying its beneficial owner, establishing the source of its information, or proving a breach of duty); see also *id.* at 14, 40, 43–47 (describing third-party identification of several suspicious wallets and trades).

⁸⁹ See *infra* Part V; see also Mitts & Ofir, *supra* note 24, at 13–62 (case studies documenting sanctions, investigations, and alleged misuse of classified, corporate, institutional, and personal information).

Mitts and Ofir screen Polymarket transactions from February 2024 through February 2026 and retain 210,718 wallet-market pairs as a deliberately inclusive candidate pool. Of 197,705 resolved pairs, 69.9% earned positive realized dollar profit and 75.0% held a net position in the token that ultimately won. Under the authors' principal accounting convention, the flagged population earned \$143.0 million in aggregate realized profit; the authors also report approximately \$119.0 million more than the pairs' own execution prices implied.⁹⁰

Across all resolved flagged pairs, the price-implied winning-side rate is 74.35% and the observed rate is 75.03%, an overall excess of only 0.69 percentage points. The more important result lies in the upper tail. Pairs scoring 200–500 and 500+ outperform their price-implied benchmarks and together generate \$171.8 million of price-adjusted excess profit, while the two lower tiers generate a negative \$52.8 million.⁹¹

This is evidence of informational advantage, not of insider trading in the legal sense, and Mitts and Ofir acknowledge that their screen is not a measure of insider-trading prevalence.⁹²

Participants on prediction markets can beat market-implied odds through faster analysis of public information, superior models, lawfully acquired private information, conviction, wealth, or luck. Conversely, traders can possess valuable nonpublic information that can be used to tilt the odds of winning in their favor, without actually knowing the ultimate outcome. An aide who knows an internal poll or an impending withdrawal of a candidate in an election likely has valuable information even though uncertainty about who ultimately will win the election remains.⁹³

Mitts and Ofir show that the upper tail of anomalous traders earns returns that exceed transaction-price-implied expectations, and their case studies supply independent evidence of

⁹⁰ Mitts & Ofir, *supra* note 24, at 69, 73–75, 83–84 (describing the deliberately inclusive candidate pool, distinguishing positive realized profit from winning-side frequency, and reporting aggregate and price-implied-benchmark results).

⁹¹ *Id.* at 74–75 (reporting a 74.35% price-implied winning-side rate and a 75.03% observed rate, and reporting \$171.8 million of price-adjusted excess profit in the two highest score tiers versus negative \$52.8 million in the two lower tiers).

⁹² *Id.* at 69, 84, 87, 103 (describing the flagged set as a candidate pool rather than a count of insiders, distinguishing informational advantage from breach of duty, stating that trading data alone cannot establish the latter, and disclaiming the aggregate profit figures as a measure or demonstrated lower bound of insider-trading profit).

⁹³ *Id.* at 72, 84–86 (explaining that probability-relevant private information need not reveal the ultimate outcome and emphasizing that high composite scores may reflect skill, conviction, public analysis, or other lawful informational advantages rather than insider trading). *Accord* Turk et al., *supra* note 22, at 50–52 (arguing that lawful high-information trading should be permitted, and even encouraged, lest insider trading regulation become a general prohibition on informational advantage).

misuse in several specific episodes. They do not purport to show that the broader anomalous population consists of traders who obtained or used information in breach of a duty. Winning big on prediction market bets may reflect astute analysis of polling data, private but legitimately obtained analysis, or simple intuition.

C. The Price Is the Product

On prediction markets some traders outperform the odds embedded in the contract prices, indicating that some order flow embodies information or analysis not yet reflected in price. Such informed trading can predict outcomes, move prices, and improve the accuracy of the predictions embedded in prices. The effect of informed trading on accuracy is particularly relevant. Unlike in stock markets, in prediction markets the price of the contracts traded itself is the market's entire social product. Securities markets produce accurate prices too, but as a byproduct of, and an input into, their primary function of allocating capital and providing liquidity to savers. A share of stock is a claim on a firm's cash flows; the market for it serves important purposes even when prices are noisy. A prediction market contract is a side bet. It channels no capital to any productive enterprise. If the price of an election contract conveys no information, the market is worthless, even less than worthless to the extent that it consumes real resources, producing nothing but redistributions among gamblers. The informational function is the virtue of such markets, and will remain so until the markets can be adopted for hedging purposes.⁹⁴ The CFTC itself acknowledges this, listing among the expected public benefits of prediction markets facilitating "price discovery, information aggregation [and] hedging."⁹⁵

D. Policy Implications

The analysis so far leads us to one conclusion: the reasons for distinguishing sharply between misappropriation of information and informational advantage are even stronger in prediction markets than in securities markets.

First, as the evidence discussed above shows, superior trading performance may reflect faster processing of public information, better models, cross-market arbitrage, superior judgment,

⁹⁴ See *supra* note 34 (describing why prediction markets are not used for hedging purposes, and that such hedging occurs on traditional derivatives markets instead).

⁹⁵ 91 Fed. Reg. at 35,845.

or legitimately acquired private information. Even unusually profitable or conspicuously well-timed trading therefore does not establish that the trader obtained or used information in breach of a duty. Market data can identify informational advantage and can flag trades for investigation. Standing alone, however, it cannot identify the source of that advantage or establish misappropriation.

Second, it is true that adverse selection does not disappear merely because the market is a prediction market: better-informed traders can impose losses on market makers, widen spreads, and discourage some uninformed participants from trading. But wider spreads in securities markets matter greatly because they increase the costs borne by investors and the cost of capital for productive firms. Prediction markets do not finance firms or serve as a principal repository of household savings. And platforms themselves have strong incentives to respond when adverse selection becomes sufficiently severe to reduce liquidity or undermine customer confidence. Exchanges may accordingly adopt contract-specific restrictions designed to preserve participation.

Third, prediction markets differ from securities markets in one important respect. In securities markets, illicit insider trading may impose costs that extend beyond the counterparties to particular transactions. Unauthorized use of firm information may appropriate an asset produced at the firm's expense, interfere with corporate plans, create managerial agency costs, and increase adverse-selection costs in markets through which firms raise capital and households invest their savings. Prediction markets presently perform no comparable capital-allocation function. Their principal output is the information embedded in contract prices. The social gains from effectively banning misappropriation-based insider trading are therefore smaller than in securities markets. This doesn't mean that conduct should be condoned. Rule 180.1 properly reaches such conduct because liability depends on deception or breach of an independent duty to the source of the information. But lower social gains from an effective ban do imply that policing it is not as much of a priority as in securities markets.

IV. CORRUPTION-PRONE EVENT CONTRACTS AND CONTRACT-BASED REGULATION

The preceding Parts distinguish informed trading from manipulation. That distinction is necessary but incomplete. Prediction markets present a form of manipulation that securities

markets usually do not: the underlying event itself may be subject to the trader's influence. When that is true, the trader's advantage lies not in what she knows but in what she can do.

A. Trade-Based Manipulation Is Usually Self-Defeating

A familiar concern is that a trader will buy contracts not because she believes the event is likely to occur but because she wants others to infer that it is likely. The trader may hope to create momentum, attract followers, and sell at an inflated price. In a binary prediction market, however, the strategy is ordinarily expensive and self-defeating. The manipulator must buy contracts at prices she believes are wrong, and the position ultimately settles at zero or one according to a publicly verifiable event. Unless the trader can deceive others long enough to exit, she finances the correction of her own distortion.

Historical and experimental evidence largely confirms the intuition.⁹⁶ Attempts to manipulate political betting markets have generally produced temporary price movements followed by rapid correction, and controlled experiments find that informed traders often earn greater returns when a manipulator enters because the manipulator subsidizes those who trade toward the correct probability.⁹⁷

Formal models point in the same direction. Manipulative order flow can increase the reward to gathering information and thereby attract traders who correct the price. The conclusion is not that trade-based manipulation is impossible. It is that ordinary buying and selling, without fraud, monopoly power, or control of settlement, is a weak candidate for categorical prohibition in a market with fixed terminal payoffs.⁹⁸

B. Information-Based Manipulation Remains Ordinary Fraud

False statements designed to move a contract price present a different case. A trader who lies about the occurrence of the event, fabricates evidence, or conceals a financial conflict while

⁹⁶ Paul W. Rhode & Koleman S. Strumpf, *Manipulating Political Stock Markets: A Field Experiment and a Century of Observational Data* 2–5, 25–31 (June 2008) (unpublished manuscript), [https://users.wfu.edu/strumpks/papers/ManipIHT_June2008\(KS\).pdf](https://users.wfu.edu/strumpks/papers/ManipIHT_June2008(KS).pdf).

⁹⁷ Robin Hanson, Ryan Oprea & David Porter, *Information Aggregation and Manipulation in an Experimental Market*, 60 J. ECON. BEHAV. & ORG. 449 (2006).

⁹⁸ A Kyle-style (or Kyle-type) model is a foundational market-microstructure framework for strategic informed trading and price formation under asymmetric information. See Albert S. Kyle, *Continuous Auctions and Insider Trading*, 53 ECONOMETRICA 1315, 1315–36 (1985); Robin Hanson & Ryan Oprea, *A Manipulator Can Aid Prediction Market Accuracy*, 76 ECONOMETRICA 304, 304–05, 312–13 (2009).

inducing reliance engages in ordinary fraud. The prediction-market setting does not require a new or special theory to condemn this behavior, which clearly is and should be actionable.

The prosecution of Andrew Left illustrates the distinction.⁹⁹ The government alleged that Left used his research platform, media appearances, and market reputation to publish recommendations while trading inconsistently with the positions he represented to the public, generating substantial profits.¹⁰⁰

The alleged wrong was not superior analysis. An analyst may publish an honest bearish view while holding a disclosed short position. The alleged wrong was deception concerning the analyst's own holdings, intentions, and trading. That is information-based manipulation in the conventional sense.¹⁰¹

The case also illustrates a control problem at the margin: the trader knew and controlled the timing of his own market-moving publication. But control over an announcement does not justify a general prohibition on informed trading. It justifies enforcing duties of honesty and, where a contract is written directly on a participant's own conduct, asking whether the contract should exist.¹⁰²

C. Action-Based Manipulation and Corruption-Prone Event Contracts

A prediction market may be written on any verifiable proposition. Many propositions describe aggregate states of the world no single person controls: the unemployment rate, the winner of a national election, or the path of a hurricane. Others are granular and discretionary. A referee can determine whether a particular foul is called. A chief executive can decide whether to utter a specified word during an earnings call.¹⁰³ A candidate can decide when to withdraw. A settlement employee may be able to determine which source resolves a disputed contract.

⁹⁹ Press Release, U.S. Att'y's Off., C.D. Cal., Founder of Citron Research Found Guilty of Scheming to Manipulate Stock Market via Media Campaigns (June 1, 2026), <https://www.justice.gov/usao-cdca/pr/founder-citron-research-found-guilty-scheming-manipulate-stock-market-media-campaigns>; Indictment, United States v. Left, No. 2:24-cr-00456 (C.D. Cal. filed July 25, 2024); Complaint, SEC v. Left, No. 2:24-cv-06311 (C.D. Cal. filed July 26, 2024).

¹⁰⁰ U.S. Att'y's Off., C.D. Cal., *supra* note 99 (reporting alleged profits and the counts of conviction).

¹⁰¹ Complaint ¶¶ 1–5, SEC v. Left, *supra* note 99 (alleging that Left represented his public recommendations as consistent with his own and his fund's positions).

¹⁰² U.S. Att'y's Off., C.D. Cal., *supra* note 99.

¹⁰³ The chief executive of a large cryptocurrency exchange read aloud, during an earnings call, the entire list of words that observers had wagered he would use—an illustration of how completely a contract's settlement may lie within a single participant's control. For a conduct-based approach that treats such outcome manipulation as a per se violation to be addressed through aggressive ex post enforcement, rather than through the listing-stage exclusion defended here, see Turk et al., *supra* note 22, at 48–50.

This Article calls contracts in the latter category **corruption-prone event contracts**. They are contracts whose payoff depends on events that one or more market participants can materially influence through their own conduct or through the conduct of persons subject to their influence. The definition is structural. It does not require proof that any particular trader intended to manipulate the outcome when she entered the position.

The danger increases as the contract becomes narrower. A contract on the season-long record of a professional team is difficult for any one participant to control. A contract on the first penalty, the next player substitution, a particular utterance, or a single discretionary decision may be easy to influence. The contract converts authority over an event into a privately tradable financial interest.

Related settlement problems arise when a derivative is tied to a price or factual determination that a trader can affect during the settlement window.¹⁰⁴ Futures law has long recognized the danger of cash-settlement squeezes, and the same logic applies when a prediction contract relies on a thin, contestable, or internally controlled data source.¹⁰⁵

D. Wager Policies and the Insurable-Interest Doctrine

The closest legal analogue is the insurable-interest doctrine. Life insurance performs a valuable risk-mitigation function for policyholders who would suffer a genuine loss from the insured's death. A policy purchased by a stranger performs a different function. It becomes a wager and gives the policyholder a financial interest in the insured's death.

Anglo-American law responded by regulating the contract ex ante. The Life Assurance Act of 1774 (also called the Gambling Act of 1774) declared policies made for gaming or wagering, or for the benefit of persons lacking an interest in the life insured, null and void. American courts likewise described stranger-originated wager policies as objectionable because they created an interest in the early death of the insured. At the same time, the law preserved genuine insurance and permitted the assignment of a valid policy after an insurable interest existed at inception. But the law does not allow contracts that impose excessive moral hazard,

¹⁰⁴ Praveen Kumar & Duane J. Seppi, *Futures Manipulation with "Cash Settlement"*, 47 J. FIN. 1485 (1992).

¹⁰⁵ See *id.* at 1486–90 (modeling the incentive to trade the underlying in order to determine a cash settlement price). Contemporaneous empirical work on short-dated event contracts settling on cryptocurrency prices documents precisely this pattern, finding spikes in settlement-window order flow in the spot market followed by large post-settlement reversals.

like insurance contracts that provided fire insurance payoffs at 200% of the value of the insured house.¹⁰⁶ The doctrine therefore separates beneficial risk transfer from contracts whose incentive structure is socially dangerous.¹⁰⁷

Whatever the relative historical importance of antigambling policy and concern about incentives to hasten death, the doctrine operates *ex ante*: it regulates the contract rather than waiting to punish misconduct arising from it.

E. When Contract Regulation Dominates Conduct Regulation

Legal systems possess two regulatory technologies. Conduct regulation permits a category of transactions and punishes fraud, coercion, manipulation, or breach after it occurs. Contract regulation refuses to recognize or list agreements whose predictable incentive effects make them socially undesirable.

Securities markets generally require conduct regulation because the markets and instruments serve indispensable functions. Eliminating public equity markets to avoid insider trading would destroy capital formation. Prediction markets present a narrower choice. Declining to list a contract on a referee's next call, a candidate's own withdrawal, or an employee-controlled settlement source sacrifices little forecasting value.

The critical issue is whether the payoff of a contract turns on conduct that is within the discretion of a single person or small group, so that the contract itself creates a financial incentive to manipulate the event rather than forecast it. In such cases we propose regulating the contract *ex ante*. Classes of contracts that pose particular concerns are single-actor sports micro-events, like contracts on the first pitch being a ball, a specific free throw, a point-after-touchdown kicker's first attempt in a particular game, or the number of yellow cards a referee shows in a game. The pitch-rigging prosecutions in American baseball illustrate the concept: a

¹⁰⁶ Cal. Ins. Code § 280 (West 2026) (“If the insured has no insurable interest, the contract is void.”); N.Y. Ins. Law § 3401 (McKinney 2026) (property insurance enforceable only for the benefit of a person with an insurable interest, defined as a “lawful and substantial economic interest in the safety or preservation of property from loss”); W. Va. Code § 33-6-3(c) (2026) (measure of insurable interest in property is “the extent to which the insured might be damaged (damaged) by loss, injury, or impairment”).

¹⁰⁷ Life Assurance Act 1774, 14 Geo. 3 c. 48, §§ 1, 3 (Gr. Brit.), <https://www.legislation.gov.uk/apgb/Geo3/14/48/contents> (declaring wager policies without an interest null and limiting recovery to the value of the interest); Conn. Mut. Life Ins. Co. v. Schaefer, 94 U.S. 457, 460–63 (1876) (distinguishing valid life insurance from a wager policy); Warnock v. Davis, 104 U.S. 775, 779 (1881) (describing the insurable-interest requirement and the concern that a wager policy creates an interest in the insured's early death); Grigsby v. Russell, 222 U.S. 149, 154–57 (1911) (distinguishing a policy procured as a wager from the good-faith assignment of a valid policy); *see also* 7 U.S.C. § 7a-2(c)(5)(C); 91 Fed. Reg. 35,834–35.

single player controls the settlement event completely.¹⁰⁸ Detection is difficult because throwing a ball rather than a strike in a baseball game happens all the time, appears normal, and cannot be identified as statistically anomalous. Contracts in which parties merely predict the winner of a particular game, by contrast, aggregate dozens of actors and are far less corruption-prone because there is no way for a cheater to predict whether there will be offsetting cheaters who pick the other team.

Markets on what particular words a CEO utters on an earnings call, or on phrases a well-known YouTuber says in a video are similarly manipulable, as are personal-conduct contracts on named individuals: contracts on whether a named congressman attends the State of the Union (as happened with George Santos),¹⁰⁹ whether an official resigns by a date, whether a coach or manager is fired by season's end, whether a celebrity wears a particular color outfit at an event. These are all close cousins to the death-bet: a bet on a stranger's discretionary behavior, held by someone with no insurable interest in it, and often tradeable by the subject himself or by other individuals like aides. Sabotage-payoff contracts, such as contracts on whether a particular website suffers an outage on a certain date, whether a particular flight is delayed or cancelled, whether a power grid experiences a blackout, are problematic because particular people, crew, engineers, employees, and sometimes complete outsiders can cause the event to occur.

There are other events where the number of people with the power to rig the event is very small, but where rigging the outcome is easy to detect. Such contracts pose far less of a problem. Contracts predicting reality-show winners, pageant results, editor-selected designations like a magazine's person of the year can be monitored, so the probability of detection is higher.

In addition, contracts that serve a discernible, valid, public purpose, such as hedging, should be permitted. For example, bets should be permitted on the interest rate decisions made by the Federal Reserve Board (a twelve-member body, institutionally insulated) because these

¹⁰⁸ Indictment, United States v. Clase de la Cruz, No. 1:25-cr-00346 (E.D.N.Y. filed Nov. 5, 2025) (charging two Major League Baseball pitchers with rigging individual pitches so that co-conspirator bettors could win proposition wagers on pitch outcome and velocity) (unsealed Nov. 9, 2025); Press Release, U.S. Att'y's Off., E.D.N.Y., Two Current Major League Baseball Players Charged in Sports Betting and Money Laundering Conspiracy (Nov. 9, 2025), <https://www.justice.gov/usao-edny/pr/two-current-major-league-baseball-players-charged-sports-betting-and-money-laundering>. Superseding indictment filed Feb. 12, 2026.

¹⁰⁹ *In re Santos*, CFTC No. 26-05 (July 31, 2026) (consent order) (finding that Santos traded a Kalshi event contract on whether he would attend the 2026 State of the Union address between February 12 and 25, 2026, while making materially misleading social media posts about his attendance plans to move the contract price in favor of his positions, and imposing \$17,569.98 in disgorgement, a \$17,500 civil monetary penalty, and a three-year trading ban). Press Release, CFTC, Release No. 9276-26 (July 31, 2026), <https://www.cftc.gov/PressRoom/PressReleases/9276-26>.

contracts serve important and legitimate needs for hedging interest rate risk. These competing concerns augur for a case-by-case determination of whether the contracts should be disallowed.

The points made here are illustrated by the controversial Defense Advanced Research Projects Agency (DARPA) funded Policy Analysis Market.¹¹⁰ This was an attempt to use prediction markets to forecast geopolitical events in the Middle East, including regime stability, coups, assassinations, and, in one example presented to Congress, the likelihood of a biological weapons attack on Israel.¹¹¹ The entire project was cancelled within days of being exposed in the press in July 2003. As Joseph Stiglitz pointed out at the time, some, but not all of the events on which contracts were created would have created perverse incentives to cause the very events being traded: a terrorist or sympathizer could buy “yes” on an attack contract and then commit or facilitate the attack—getting paid for the atrocity—or could trade strategically to feed disinformation into a price signal U.S. authorities would be relying on. Stiglitz observed that participants “would have been betting, in effect—and perhaps profiting—on such potential events as an attack by North Korea or an assassination of Yasser Arafat,” potentially creating a “moral hazard” problem.¹¹²

Senator Tom Daschle claimed that the program “could provide an incentive to actually commit acts of terrorism.”¹¹³ This was true for some but not all of the DARPA/Policy Analysis Market contracts. Clearly, a bet on whether there would be a biological weapons attack on Israel should not be allowed. But a contract predicting regime change in Iran seems unproblematic.¹¹⁴

Further complicating the analysis is that a distinction probably should be made between contracts that create incentives for contracting parties to engage in behavior that directly harms others or causes real social harm (committing murder or burning down a house) from unethical behavior that does not cause discernible harm to anyone or anything. George Santos’ bet about whether he would attend the State of the Union address in 2026 seems to fit this category, as would a contract on whether a celebrity will utter particular words at a press conference. The harm in these latter cases is to the hedonic traders who were on the other side of the trade and

¹¹⁰ Joseph E. Stiglitz, *Terrorism: There’s No Futures in It*, L.A. TIMES, July 31, 2003, at B13.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Terror Betting Torpedoed*, CBS News (July 31, 2003), <https://www.cbsnews.com/news/terror-betting-torpedoed-31-07-2003/> (quoting Senate Minority Leader Tom Daschle).

¹¹⁴ Although, ironically, the settlement of Kalshi’s contract “Ali Khamenei out as Supreme Leader?” proved extremely problematic. *See* Chilkoti, *supra* note 56.

who were trading for their own amusement, as well as to the viability and integrity of the prediction markets that sponsor such contracts.

To conclude, the general principle should be: when a contract creates financial incentives for parties to bring about or materially influence the contingency on which payment depends, and prohibiting that category imposes comparatively modest social costs (unlike cases in which a contract can be used for hedging purposes),¹¹⁵ contract-based regulation ordinarily dominates conduct-based regulation. This policy tool also avoids the evidentiary problem. If the contract is not offered, no participant acquires a financial interest in producing the relevant outcome. The rule prevents the incentive rather than attempting to reconstruct subjective motivation after the event.

F. The Proposal Is Narrow and Is Not Paternalistic

The proposal is not an objection to speculation or gambling as such. Most prediction contracts do not give traders meaningful control over the event and should not be prohibited merely because some participants possess better information. Gambling is not the issue. The issue is a contract that rewards corruption.

Nor is the test whether manipulation is conceivable. Every market is vulnerable to misconduct. The relevant question is whether the contract systematically places persons capable of affecting the outcome in a position to profit from doing so.

A presumption against listing should apply to contracts on self-performed acts, discretionary officiating, individually controlled statements or decisions, compromised settlement sources, and events whose occurrence would impose grave social harm while offering little forecasting value. The presumption may be rebutted where objective settlement criteria, participant exclusions, independent verification, position limits, or other safeguards eliminate the material influence. Similarly, the presumption may be rebutted where the stakes are so low that no valid public policy is served by banning the contract or where the benefits of the contracts for hedging purposes outweigh the risks of manipulation or fraud.

¹¹⁵ This is the example of the Fed's interest rates setting. A further exception may be carved out for contracts whose event manipulation can cause no public harm whatsoever, in which case the listing decision could be better left to prediction exchanges themselves.

This approach is more permissive than a general insider-trading prohibition and more restrictive toward the contracts that create genuine corruption risk. It leaves the informed trader alone and regulates the dangerous instrument.

V. THE HARD CASES: CONFIDENTIAL INFORMATION, CLASSIFIED INFORMATION, AND OFFICIAL SECRETS

The argument against a generalized insider-trading prohibition encounters its greatest difficulty when traders exploit information obtained through employment, fiduciary relationships, public office, or access to classified material. These cases involve genuine wrongdoing. Yet, they do not establish that prediction markets require a parity-of-information regime. They require the law to distinguish the misuse of a trusted confidence from control of the underlying event, a distinction that is easy to make—and that the applicable rules are already consistent with.

A. Confidential Corporate Information

Consider first *CFTC v. Spagnuolo*. The defendant, a Google software engineer, allegedly accessed confidential “Year in Search” rankings through internal systems and used them to trade twenty-three related contracts with nearly perfect accuracy, earning approximately \$1.2 million.¹¹⁶ The alleged wrong fits the traditional misappropriation framework: an employee converted information entrusted for corporate purposes into personal trading profits.¹¹⁷

Nothing about that theory requires a new insider-trading regime. Rule 180.1 has incorporated a duty-based misappropriation theory since 2011, and the CFTC has used it in commodity cases involving employees who traded on confidential information belonging to their firms. The prediction contract changes the instrument through which the breach was monetized; it does not change the character of the breach.¹¹⁸

The identity of the injured party matters. Google produced the rankings, maintained systems to preserve their confidentiality, and limited employee access. The counterparties on the

¹¹⁶ Complaint, *CFTC v. Spagnuolo*, *supra* note 17, ¶¶ 1–4.

¹¹⁷ *Id.*; see also 17 C.F.R. § 180.1.

¹¹⁸ 76 Fed. Reg. 41,398 (July 14, 2011); *In re Motazed*, *supra* note 49; *In re Ruggles*, *supra* note 49.

prediction market did not own the information. The proper rule protects the source’s entitlement without transforming every lawful informational advantage into fraud.

B. Classified Information and Public Trust

The classified-information cases are more serious. In *United States v. Van Dyke*, an Army master sergeant with a top-secret clearance allegedly used information concerning a covert military operation to purchase event contracts, generating profits exceeding \$400,000. Nothing in this Article defends that conduct.¹¹⁹

The primary wrong, however, is a breach of public trust and a threat to national security, not informational inequality among traders. A soldier who sells operational plans to a foreign intelligence service, publishes them online, reveals them to a relative, or uses them to trade commits the same underlying wrong. The prediction market is a mechanism for monetizing the breach.

Existing law already addresses these wrongs. Section 4c(a)(3) of the Commodity Exchange Act restricts covered federal officials and employees from using position-derived nonpublic information in covered commodity transactions, while section 4c(a)(4) addresses tipping and knowing use.¹²⁰ Mail fraud, wire fraud, commodities fraud, ethics rules, military law, clearance rules, and statutes governing classified information provide additional sanctions.¹²¹ Israeli authorities confronted materially similar allegations through security, bribery, and obstruction charges rather than through a newly invented market offense.¹²²

C. The Limits of the Property Theory Are Not a Regulatory Gap

¹¹⁹ See H. Comm. on Oversight & Gov’t Reform, *supra* note 16.

¹²⁰ 7 U.S.C. § 6c(a)(3)–(4) (CEA § 4c(a)(3)–(4)), as amended by the Stop Trading on Congressional Knowledge Act of 2012, Pub. L. No. 112-105, 126 Stat. 291.

¹²¹ 18 U.S.C. §§ 1341, 1343, 1348. See also Turk et al., *supra* note 22, at 43–44 (describing the military nondisclosure agreements and court-martial sanctions applicable to the defendant in *Van Dyke*).

¹²² See Mitts & Ofir, *supra* note 24, at 26–28 (describing the February 12, 2026 indictment by the Tel Aviv District Attorney of an IDF reservist and a civilian for using classified operational plans to place Polymarket wagers, on charges of severe security offenses, bribery, and obstruction of justice, following a joint investigation by the defense establishment’s security directorate, the domestic security service, and the national police cybercrime unit). The authors observe that the Israeli response proceeded through national security statutes “rather than financial regulation.” *Id.* at 28.

Recent cases impose genuine limits on the fraud route. In *United States v. Blaszcak*,¹²³ the Second Circuit held that confidential government information concerning the substance and timing of agency decisions is not “property” for purposes of the wire fraud and securities fraud statutes, so government employees and their tippees do not violate those statutes by trading on it.¹²⁴ In *United States v. Chastain* the Second Circuit vacated the wire fraud conviction of an executive who traded digital assets on advance knowledge of which items his employer would feature on its website, holding that confidential business information is “property” under the federal fraud statutes only where it carries commercial value to the company from which it was obtained.¹²⁵ The principle is exactly the one a property theory requires: rights in information deserve protection only to the extent the information is valuable to its owner.¹²⁶ Those decisions may narrow prosecutions in precisely the categories occupied by some prediction-market cases.¹²⁷

It does not follow that the resulting space must be filled with a market-wide possession rule. The limitations reflect the boundaries of property-based fraud. Creating liability whenever existing property law does not reach the conduct would evade those boundaries rather than respect them.

D. Confidentiality Rules and Contract Rules Perform Different Functions

A trader may possess confidential information without being able to affect the outcome. An employee who learns a completed corporate ranking may know how a contract will resolve but may have no power to change it. The misconduct lies in unauthorized use of the employer’s information, and a source-based rule is appropriate in this context.

Conversely, a person may control an outcome without misappropriating information. A candidate knows her own plans; a referee knows how he will exercise discretion; an executive may determine the words she will speak. The property theory may fail because nothing was

¹²³ *United States v. Blaszcak*, 56 F.4th 230, 243–45 (2d Cir. 2022). On the inapplicability of the classical theory of insider trading to prediction markets, *see also* Turk et al., *supra* note 22, at 24–30.

¹²⁴ *Blaszcak*, 56 F.4th at 243–45.

¹²⁵ *United States v. Chastain*, 145 F.4th 282, 295 (2d Cir. 2025); *cf.* *Carpenter v. United States*, 484 U.S. 19 (1987) (treating a newspaper’s prepublication schedule as its property).

¹²⁶ *Chastain*, 145 F.4th at 295; *see also* *Ciminelli v. United States*, 598 U.S. 306 (2023) (rejecting the right-to-control theory of federal fraud).

¹²⁷ *See* Sykes, *supra* note 22 (noting that these decisions “may stand as an obstacle to Title 18 prosecutions targeting insider trading in certain types of event contracts”).

stolen. Yet the contract may be more troubling because the financial position can affect conduct. That is the corruption-prone-contract problem.

The categories sometimes overlap. A public official may possess confidential information and influence the decision. A corporate executive may know and help determine an announcement. In those cases, source-based sanctions and contract-level restrictions may both be appropriate. But, again, overlap does not justify collapsing the categories into a universal prohibition on informed trading.

E. Protect the Confidence, Not the Counterparty

Employers and governments legitimately demand that agents safeguard the information that is entrusted to them on a confidential basis. Those interests are best protected by the institutions that own the confidence, understand the consequences of disclosure, and bear the resulting costs. The government may discipline or prosecute its officer; an employer may fire or sue its employee; a platform may suspend the trader and refer suspected crimes.¹²⁸

None of this requires treating prediction-market counterparties as victims of informational inequality. Protect confidences where enforceable duties exist, protect national security through national-security law, and exclude contracts that create incentives to influence the underlying event. The law does not need a new offense of knowing more than another trader.

VI. THE EXISTING REGULATORY FRAMEWORK ALREADY SUPPLIES THE RIGHT TOOLS

The preceding Parts identify two problems and two responses. Where a trader exploits confidential information in breach of a duty to its source, the appropriate response is source-based conduct regulation. Where a contract creates a financial incentive to influence the underlying event, the appropriate response is regulation at the listing stage. The Commodity Exchange Act already contains both tools.

A. The Act Is Organized Around the Listing Decision

¹²⁸ Both major platforms have suspended accounts and made criminal referrals in suspected cases, and one publicly described its market-integrity infrastructure as the source of the referrals that produced the 2026 charges.

Registered prediction markets operate within the Commodity Exchange Act’s designated-contract-market framework.¹²⁹ The Act gives the CFTC exclusive jurisdiction over covered futures, options, and swaps traded on registered exchanges, while the statutory definition of “swap” includes contracts whose payment depends on the occurrence or extent of an event with potential financial, economic, or commercial consequences.¹³⁰ The classification of some sports and event contracts remains contested, but the framework’s design is clear.¹³¹

A designated contract market must enforce its rules, maintain audit trails, conduct surveillance, and list only contracts that are not readily susceptible to manipulation.¹³² For event contracts, section 5c(c)(5)(C) authorizes the CFTC to exclude contracts involving unlawful activity, terrorism, assassination, war, gaming, or other designated activity when listing would be contrary to the public interest.¹³³

The CFTC’s current proposal¹³⁴ reinforces the listing-stage approach by focusing on characteristics of the underlying event and by distinguishing granular, individually influenced outcomes from aggregate outcomes governed by objective settlement criteria. The statute therefore already locates the regulatory instrument where this Article locates the problem.¹³⁵

B. Rule 180.1 Should Remain a Misappropriation Rule

Section 6(c)(1) and Rule 180.1 prohibit fraudulent and deceptive conduct in commodity transactions. The CFTC modeled Rule 180.1 on Rule 10b-5 but expressly declined to impose a general duty to disclose or a parity-of-information rule.¹³⁶ Lawfully obtained nonpublic information may ordinarily be used absent deception, fraud, or breach of an independent duty. Rule 180.1 appropriately reaches an employee who converts an employer’s confidential information, a broker who exploits entrusted customer information, or a trader who acquires

¹²⁹ 7 U.S.C. § 2(a)(1)(A); *see* Sykes, *supra* note 22 (describing the registration of the leading platforms as designated contract markets).

¹³⁰ 7 U.S.C. § 1a(47)(A)(iii).

¹³¹ *See* Sykes, *supra* note 22 (noting that two district courts have concluded that sports event contracts qualify as “swaps” and two have reached the opposite conclusion, with appeals pending).

¹³² 7 U.S.C. § 7(d)(2)–(4), (10), (18) (designated contract market core principles requiring, among other things, enforcement of exchange rules, the listing only of contracts not readily susceptible to manipulation, trade monitoring, and audit-trail recordkeeping).

¹³³ 7 U.S.C. § 7a-2(c)(5)(C); 91 Fed. Reg. 35,834–35; *see supra* note 107.

¹³⁴ 91 Fed. Reg. 35,806.

¹³⁵ 91 Fed. Reg. at 35,821, 35,835–38.

¹³⁶ 7 U.S.C. § 9(1); 17 C.F.R. § 180.1, *supra* note 48. *See also* Turk et al., *supra* note 22, at 30–33.

information through deception. It should not reach the meteorologist with a better model, the political observer with superior judgment, or the researcher who lawfully discovers facts before others.

Alongside Rule 180.1 are prohibitions on wash sales and fictitious trades, STOCK Act restrictions governing official information, and the federal fraud statutes as limited by *Blaszczak* and *Chastain*.¹³⁷ These regulations capture a wide range of conduct.¹³⁸ They allocate trading rights on the basis of a fully developed theory of property rights.¹³⁹

C. A Recommended Regulatory Regime for Prediction Markets

Exclude corruption-prone contracts. The CFTC and exchanges should adopt categorical presumptions against contracts on granular outcomes within an identifiable person's material influence, compromised settlement sources, self-performed acts, and events whose listing creates severe incentives to cause socially harmful conduct. The existing special-rule authority and manipulation-susceptibility core principle are sufficient.

Remove information inequality as an independent listing factor. Concern about information leakage or misuse of material nonpublic information is overbroad in a market whose product is the aggregation of information. The factor should matter only when the nature of the event creates extraordinary disclosure harms or when access is coupled with control or compromised settlement.¹⁴⁰

Leave contract-specific conduct rules primarily to exchanges. Exchanges internalize the tradeoff between forecast accuracy and customer confidence. Exchanges may issue blanket trading prohibitions for candidates on their own races, athletes on their own leagues, employees on contracts tied to their employers, or settlement personnel on affected contracts.¹⁴¹ The CFTC should ensure that exchanges enforce the rules they adopt.

Address breaches of confidence at the source. Corporate secrets, official information, and classified material should be governed by employment, agency, ethics, military, and criminal

¹³⁷ 7 U.S.C. § 6c(a)(1)–(2), *supra* note 67.

¹³⁸ 7 U.S.C. § 6c(a)(3)–(4); *see supra* note 120 and accompanying text.

¹³⁹ *See supra* Part II.A–B.

¹⁴⁰ 91 Fed. Reg. at 35,831–32.

¹⁴¹ *See supra* note 19. For a survey of platform terms-of-service, surveillance protocols, and the emerging wave of government and private-employer restrictions on prediction-market trading, *see Turk et al., supra* note 22, at 40–45.

law. Narrow jurisdictional seams—such as uncertainty about instrument classification or knowing private tippees—can be closed by targeted drafting.

Adopt no parity rule. Neither statute, regulation, nor enforcement improvisation should make possession of material nonpublic information, standing alone, the offense.

This program requires no comprehensive new statute. It uses existing fraud rules for genuine deception, existing exchange oversight for market conduct, and existing listing authority for contracts that create dangerous incentives. The pending proposals should be assessed against that architecture.¹⁴²

CONCLUSION

The regulation of insider trading in securities markets serves important public policies even if it may make such markets somewhat less informationally efficient. The justification is not that trading with superior knowledge is unfair; it is that unauthorized trading can violate contractual and fiduciary obligations of trust and confidence and can involve theft. Unauthorized trading of information belonging to someone else appropriates information that was costly to create. Such trading inflicts real economic damage on the owner of the information and undermines the operation of the markets that allocate capital and are the most important repository for savings and investment. In securities markets, manipulation rules protect the accuracy of the prices that guide the allocation of capital in the economy.

Prediction markets are different. Buying contracts on prediction markets does not allocate capital or finance productive enterprises. The principal social product of prediction markets is the information contained in their prices, which provides estimates of the probability that a particular future event will occur during a specified time frame. That product is created when people with superior information, models, or judgment trade with less astute counterparties. A general prohibition on informed trading, particularly one that attempted to level the playing field by eliminating information disparities among traders, would degrade the very forecast that prediction markets exist to produce.

This does not mean that prediction markets should not be regulated. Real harm can occur when a person unscrupulously trades on the basis of information in violation of pre-existing

¹⁴² See generally Sykes, *supra* note 22, on which this Part's account of the advisory, the exchange rulebooks, and the pending bills chiefly relies.

commitments of confidentiality. Of course, such commitments should be respected and violations rigorously enforced.

Unlike insider trading on securities markets, the harm from abusive trading on prediction markets is principally experienced by the entity to which the trader owed a duty of confidentiality, not by the trading venue or by a counterparty. Breaches of confidence should therefore be addressed where the injury occurs. Employers, principals, governments, and institutions should enforce agency law, contracts, ethics rules, classified-information statutes, and existing misappropriation doctrine against persons who misuse entrusted information. Platform surveillance can help identify trades that warrant investigation, but liability should still depend on the source of the information and the duty breached.

Turning from insider trading to manipulation, prediction markets face a particular hazard that securities markets do not: a person can buy a contract on an event and then take actions that cause the event to occur. This creates severe moral hazard problems, as it can incentivize people to do socially injurious and even criminal acts. Such contracts change the incentives of people like referees, executives, government officials, candidates for political office, athletes, or anyone else who can determine the outcome of an event on which a prediction-market contract is written.

The insurable-interest doctrine provides the right regulatory paradigm. For centuries, the insurable-interest doctrine has barred wager policies procured by persons lacking an insurable interest when the policy would give the holder a financial interest in the insured's death.

Prediction markets should take a similar approach. Contracts on aggregate, objective, multi-causal events whose outcomes cannot be materially influenced by those trading on those very contracts should remain available, even when some traders possess nonpublic information that they have obtained legitimately. Contracts on granular events within an identifiable participant's material influence, compromised settlement sources, or contingencies whose listing creates strong incentives to engage in socially harmful conduct should be presumptively excluded.

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