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Profiting From Prediction

Law Working Paper N° 975/2026
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Abstract

Prediction markets transform uncertain events into profit-making opportunities. By allowing platform users to buy and sell event contracts tied to future outcomes, prediction market platforms convert real-world contingencies into tradable financial products. In the last year, users have traded on uncertainties like elections, corporate events, sports outcomes, weather, public health developments, geopolitical crises, and even war or death. Prediction markets are defended on the basis of providing benefits like information aggregation or better-informed risk allocation. In addition to the users attempting to profit from event contracts, prediction market platforms generate revenue by collecting a fee on each transaction. But prediction markets also have potential downsides, including the commodification of events that may involve harm to traders, third parties, and society more broadly. This Article asks when prediction market platforms and their users should be permitted to commodify uncertain, future events and gain financially from users' predictions. Much of the current debate centers on how to classify prediction markets within existing legal regimes, such as gambling or derivatives law. This Article takes a purposefully broader perspective to develop a more fulsome understanding of the transactions occurring on prediction market platforms. It argues that prediction markets - like many areas of technological and financial innovation - require an assessment of their potential benefits and harms through a lens of bounded commodification. Bounded commodification stands for the principle that there are limits - legal, ethical, and societal - that do and should constrain the private transactions profit-seeking individuals and firms may pursue. Drawing on contract law doctrine and theory, this Article offers a foundational framework for assessing when event contracts should be prohibited, when they should be regulated by state and federal authorities, and when the platforms themselves should be required to adopt ex ante, firm-level internal controls and compliance systems. Prediction markets are here to stay, requiring a principled account of when law should permit or constrain users and platforms to profit from prediction.

Keywords: Prediction markets, event contracts, contracts, bounded commodification, insider trading, market manipulation, gambling, derivatives, corporate compliance

JEL Classification: K10, K23, K22, K12, K43, K13, K14, K20, G14, G18, G13, D62, D82, L3

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PROFITING FROM PREDICTION

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ABSTRACT

Prediction markets transform uncertain events into profit-making opportunities. By allowing platform users to buy and sell event contracts tied to future outcomes, prediction market platforms convert real-world contingencies into tradable financial products. In the last year, users have traded on uncertainties like elections, corporate events, sports outcomes, weather, public health developments, geopolitical crises, and even war or death. Prediction markets are defended on the basis of providing benefits like information aggregation or better-informed risk allocation. In addition to the users attempting to profit from event contracts, prediction market platforms generate revenue by collecting a fee on each transaction. But prediction markets also have potential downsides, including the commodification of events that may involve harm to traders, third parties, and society more broadly.

This Article asks when prediction market platforms and their users should be permitted to commodify uncertain, future events and gain financially from users' predictions. Much of the current debate centers on how to classify prediction markets within existing legal regimes, such as gambling or derivatives law. This Article takes a purposefully broader perspective to develop a more fulsome understanding of the transactions occurring on prediction market platforms. It argues that prediction markets—like many areas of technological and financial innovation—require an assessment of their potential benefits and harms through a lens of bounded commodification. Bounded commodification stands for the principle that there are limits—legal, ethical, and societal—that do and should constrain the private transactions profit-seeking individuals and firms may pursue. Drawing on contract law doctrine and theory, this Article offers a foundational framework for assessing when event contracts should be prohibited, when they should be regulated by state and federal authorities, and when the platforms themselves should be required to adopt ex ante, firm-level internal controls and compliance systems. Prediction markets are here to stay, requiring a principled account of when law should permit or constrain users and platforms to profit from prediction.

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INTRODUCTION

Between December 2025 and January 2026, an anonymous trader purchased tens of thousands of dollars' worth of event contracts on a prediction market platform wagering that Venezuelan President Nicolás Maduro would be removed from power by January 31, 2026.[1] When the U.S. military captured Maduro on January 3, 2026, the anonymous trader earned nearly half a million dollars in profit.[2] Prediction market platforms are exchanges that allow participants to trade on uncertain future events through event contracts. Users place a binary (yes-no) "bet" on the outcome of a particular event by buying and selling contracts that pay out if the specified event occurs. The price of the contract reflects prediction market platform users' assessment of the likelihood that the event will happen. The unusually well-timed trades—placed shortly before a U.S.–linked operation targeting

[1] The Department of Justice has since identified and charged the user with trading on the basis of classified information. Dan Mangan, *U.S. Soldier Arrested for Polymarket Bets on Maduro Capture That Won $400K, Justice Department Says*, CNBC (Apr. 24, 2026, at 08:37 ET), https://www.cnbc.com/2026/04/23/doj-soldier-polymarket-bets-venezuela-maduro.html; Press Release, U.S. Dep't of Just., U.S. Soldier Charged with Using Classified Information to Profit from Prediction Market Bets (Apr. 23, 2026), https://www.justice.gov/opa/pr/us-soldier-charged-using-classified-information-profit-prediction-market-bets.

[2] Danielle Kaye & Natalie Sherman, *Anonymous Crypto Gambler Made $436,000 on Maduro Capture,* BBC NEWS (Jan. 5, 2026), https://www.bbc.com/news/articles/cx2gn93292do.

Maduro—prompted concerns that the trader, later identified as a U.S. Army Special Forces soldier, may have acted on material nonpublic information.[3] Less than two months after the Maduro trades, another prediction market user made over half a million dollars from well-timed event contracts on the removal of Iran's Supreme Leader from office.[4] These transactions raise obvious concerns about insider trading,[5] broadly understood as trading on material non-public information.[6] But more problematically, they also allowed prediction market platforms and traders to financially benefit from the removal or death of a world leader via an event contract easily traded through an everyday device like a smartphone or computer.[7]

These episodes are not outliers. To date, traders on prediction market platforms have bought and sold event contracts worth over $2 billion related to the Iran war,[8] including half a billion dollars on whether and when U.S.-Israel strikes on Iran would occur.[9] They have traded millions of dollars' worth of event contracts on active war casualties, such as whether a downed U.S.

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[3] Bobby Allyn, *A $400,000 Profit on Maduro's Capture Raises Insider Trading Questions on Polymarket*, NPR (Jan. 5, 2026, at 17:47 ET), https://www.npr.org/2026/01/05/nx-s1-5667232/polymarket-maduro-bet-insider-trading. Those concerns appeared to have been well-placed. Press Release, U.S. Dep't of Just., *supra* note 1.

[4] Bobby Allyn, *Prediction Market Trader 'Magamyman' Made $553,000 on Death of Iran's Supreme Leader*, NPR (Mar. 1, 2026, at 21:57 ET), https://www.npr.org/2026/03/01/nx-s1-5731568/polymarket-trade-iran-supreme-leader-killing; Ephrat Livni, *Betting on Ayatollah's Ouster Ignites Ire Over Prediction Markets*, N.Y. TIMES (Mar. 18, 2026), http://nytimes.com/2026/03/18/world/middleeast/ayatollah-ouster-bets-death.html.

[5] Andy Hirschfeld, *Gamblers Make Big Profits on Iran Strikes, Raising Insider Trading Concerns*, AL JAZEERA (Mar. 4, 2026), https://www.aljazeera.com/economy/2026/3/4/traders-mint-money-on-betting-platforms-on-us-israel-strike-on-iran.

[6] See DONNA M. NAGY, LISA M. FAIRFAX & VERONICA ROOT MARTINEZ, SECURITIES LITIGATION, ENFORCEMENT, AND COMPLIANCE: CASES AND MATERIALS 331, 388, 418–19, 451–54 (5th ed. 2023) (discussing insider trading involving corporate insiders, government officials, and trading on material nonpublic information).

[7] *See* Justin Wolfers & Eric Zitzewitz, *Prediction Markets*, 18 J. ECON. PERSPS. 107, 108–09 (2004) (describing prediction markets as markets in which participants trade contracts whose payoffs depend on future events and explaining that enthusiasm for such markets derives from their potential to aggregate information); Kenneth J. Arrow et al., *The Promise of Prediction Markets*, 320 SCI. 877, 877 (2008) (arguing that prediction markets can produce forecasts with lower prediction error than conventional forecasting methods); Allyn, *Prediction Market Trader*, *supra* note 4.

[8] Suzy Khimm & Joe Murphy, *Prediction Market Bets on the Iran War Top $2 Billion, NBC News Analysis Shows*, NBC NEWS (Apr. 28, 2026, at 14:12 ET), https://www.nbcnews.com/news/us-news/polymarket-prediction-market-bets-iran-war-top-2-billion-rcna341009.

[9] Hirschfeld, *supra* note 5; Allyn, *Prediction Market Trader*, *supra* note 4 ("On Polymarket alone, half-a-billion dollars was traded over when exactly U.S. forces would drop bombs on Iran.").

pilot would be found dead or alive.[10] Traders have taken significant positions on local and national elections in ways that may sway outcomes.[11] Prediction market platforms and their users have gained financially from event contracts on corporate mergers,[12] confidential government data,[13] and matters involving proprietary company information.[14] Perhaps surprisingly, these transactions have generated serious third-party harms, with platform users, for example, threatening journalists' lives and pressuring them to change their reporting so that users could avoid steep financial losses.[15]

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[10] This trading caused backlash and was later removed from Polymarket's site. Sasha Rogelberg, *Polymarket Apologizes After Letting Users Bets on Downed U.S. Pilots in Iran: "It Should Not Have Been Posted"*, FORTUNE (Apr. 6, 2026, at 12:38 ET), https://fortune.com/2026/04/06/polymarket-apology-market-downed-f-15-us-pilot-insider-trading-iran-war/.

[11] Bruce Crumley, *Here's Why Election Betting Activity Is Raising Eyebrows Ahead of the November 5 Vote*, INC. (Oct. 21, 2024), https://www.inc.com/bruce-crumley/heres-why-election-betting-activity-is-raising-eyebrows-ahead-of-nov-5-vote/90991901 (explaining attempts to "shape actual voting outcomes by rigging the betting predictions to favor one candidate over the other").

[12] Helena K. Grannis et al., *Betting on Company Information: Prediction Market Considerations for Public Companies*, CLEARY GOTTLIEB STEEN & HAMILTON LLP (Mar. 23, 2026), https://www.clearygottlieb.com/news-and-insights/publication-listing/betting-on-company-information-prediction-market-considerations-for-public-companies.

[13] *Court in Buenos Aires Orders Blocking of Polymarket in Argentina*, BUENOS AIRES TIMES (Mar. 16, 2026), https://www.batimes.com.ar/news/economy/court-in-buenos-aires-orders-blocking-of-polymarket-in-argentina.phtml ("On the Polymarket contract linked to Argentina's February inflation reading, trading volume surged to nearly US$91,000 before the data was published, fuelling [sic] speculation among some market observers that the official index may have been leaked ahead of its release.").

[14] Boaz Sobrado, *Alleged Insider Nets $1 Million on Polymarket in 24 Hours*, FORBES (Dec. 4, 2025, at 10:51 ET), https://www.forbes.com/sites/boazsobrado/2025/12/04/alleged-insider-nets-1-million-on-polymarket-in-24-hours/ (detailing how an anonymous trader made "over $1 million in 24 hours by placing suspiciously accurate bets on Google's 2025 Year in Search rankings. The trader's near-perfect record of 22 correct predictions out of 23 attempts has sparked accusations about insider trading . . . .").

[15] Henry Larson, Gabriel J. Sánchez & William Troop, *People Who Had Placed Online Bets on the War Tried to Get a Reporter to Rewrite His Story*, NPR (Mar. 20, 2026, at 16:12 ET), https://www.npr.org/2026/03/20/nx-s1-5750394/people-who-had-placed-online-bets-on-the-war-tried-to-get-a-reporter-to-rewrite-his-story; Francisco Rodrigues, *Suspected Insiders Make Over $1.2 Million on Polymarket by Betting on U.S.'s Iran Strike*, COINDESK (Feb. 28, 2026, at 10:02 ET), https://www.coindesk.com/markets/2026/02/28/suspected-insiders-make-over-usd1-2-million-on-polymarket-ahead-of-u-s-strike-on-iran; *see also* Wolfers & Zitzewitz, *supra* note 7, at 107–08 (discussing the DARPA Policy Analysis Market controversy, including proposed contracts tied to geopolitical risk and the political backlash against so-called "terrorism futures"); Robin Hanson & Ryan Oprea, *A Manipulator Can Aid Prediction Market Accuracy*, 76 ECONOMICA 304, 304–05 (2009) (describing concerns that prediction markets could allow participants to profit from terrorist acts or manipulate markets to mislead decisionmakers).

Event contracts in the sporting context, which reportedly account for at least eighty percent of recent platform revenue,[16] have also generated a range of downstream harms. The easy availability of these event contracts—which the platforms have argued avoids traditional state gambling law—appear to have exacerbated a growing public health crisis in gambling addiction.[17] Moreover, they may be contributing to undermining integrity in sport by increasing risks of outcome manipulation.[18] Journalists have also reported how the increase in sport event contracts has led to harassment and abuse of athletes whose performance determines platform users' outcomes.[19]

As the above examples demonstrate, event contract trading on prediction market platforms encompasses a wide range of topics and activity. Many see this breadth as an asset. Founders,[20] executives,[21] investors,[22] and

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[16] Kaitlyn Radde, *Trading Volume on Prediction Markets Has Soared in Recent Months*, Pew Rsch. Ctr. (May 27, 2026), https://www.pewresearch.org/short-reads/2026/05/27/trading-volume-on-prediction-markets-has-soared-in-recent-months/; Nick Devor, *Kalshi Still Needs Sports, Even as Courts Close In*, BARRON'S (Mar. 11, 2026, at 16:02 ET), https://www.barrons.com/articles/kalshi-sports-prediction-markets-a5bc21ef.

[17] *See infra* Part II.B.

[18] *See infra* Part I.C.2.

[19] Charlie Baker, *NCAA Urges Federal Agency to Suspend College Sport Prediction Markets*, NCAA (Jan. 14, 2026), https://www.ncaa.org/news/2026/1/14/media-center-ncaa-urges-federal-agency-to-suspend-college-sport-prediction-markets.aspx; Justin Klawans, *Sports Betting Is Causing Athletes to Be Abused and Harassed Online*, THE WEEK (June 4, 2025), https://theweek.com/sports/sports-betting-athletes-online-harassment (finding that 48% of college basketball players said they have received online, verbal, or physical abuse, and 33% reported receiving direct blame for platform users' losses). Empirical evidence suggests a significant portion of abusive online conduct targeting student-athletes is directly linked to betting-related activity. Saquandra Heath, *NCAA Calls on Fans, Social Media Platforms to Curb Abuse as It Releases First Online Harassment Study*, NCAA (Oct. 10, 2024), https://www.ncaa.org/news/2024/10/10/media-center-ncaa-calls-on-fans-social-media-platforms-to-curb-abuse-as-it-releases-first-online-harassment-study.aspx.

[20] *See* Anderson Cooper et al., *Polymarket CEO Says His Prediction Market is "the Most Accurate Thing We Have as Mankind Right Now,"* 60 MINUTES OVERTIME, CBS NEWS (Nov. 30, 2025, at 19:30 ET) https://www.cbsnews.com/news/polymarket-predictions-accuracy-shayne-coplan-60-minutes/ (quoting Polymarket CEO and founder Shayne Coplan's statement that Polymarket is "the most accurate thing we have as mankind right now").

[21] *See* Max Raskin, *A Conversation With a Prediction-Market Prophet*, WASH. POST (June 28, 2026), https://www.washingtonpost.com/opinions/2026/06/28/qa-with-kalshis-tarek-mansour-prediction-market-prophet/ (quoting Kalshi CEO and co-founder Tarek Mansour's description of prediction markets as "a very positive externality" that "push[] people toward financial literacy and literacy about the world").

[22] *See* James Hunt, *Polymarket Raises $45 Million From Peter Thiel's Founders Fund, Vitalik Buterin and Others*, BLOCK (May 14, 2024, at 11:34 ET), https://www.theblock.co/post/294367/polymarket-raises-45-million-from-peter-thiels-founders-fund-vitalik-buterin-and-others (quoting Founders Fund Partner Joey Krug's statement that "[t]he tangible benefits of using Polymarket as a complement to consuming news on social and mainstream media was obvious").

even some scholars[23] often frame prediction markets as socially beneficial "truth signals" that provide information faster than institutions can, and which democratize financial innovation by lowering barriers to investment.[24] For example, Kalshi, one of the leading prediction market platforms, sees itself, at least in part, as an educational tool that "enhances public discourse," provides "collective wisdom," and generates "more efficient markets and better-informed trading decisions." [25]

Currently, prediction markets are enjoying rapid, widespread adoption. Venture capital ("VC") investors have channeled billions of dollars into the startups building and scaling prediction markets,[26] fueling the markets' swift expansion and transforming them from niche betting platforms into one of the fastest growing sectors in Silicon Valley. Indeed, prediction markets are becoming an increasingly prominent segment of the financial industry,[27] with

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[23] *See* Arrow et al., *supra* note 7, at 877 (arguing that prediction markets may improve forecasts and decisionmaking by aggregating dispersed information); Wolfers & Zitzewitz, *supra* note 7, at 108–09 (explaining that prediction markets are promoted as mechanisms for information aggregation and revelation); Matthew Turk, John T. Holden & Todd Haugh, *Optimal Insider Trading in Prediction Markets* (Aug. 10, 2026) (unpublished manuscript), https://ssrn.com/abstract=7259584 (arguing that prediction markets provide valuable informational benefits and should be preserved while subjecting insider trading and market manipulation to targeted legal restrictions). *But see* Nizan Geslevich Packin & Sharon Rabinovitz, *Prediction Markets as a Public Health Threat*, 392 SCI. 257, 260 (2026) (criticizing commercial prediction markets for appropriating the scientific credibility of earlier research-oriented prediction markets).

[24] Jason Wingard, *The Polymarket Effect: How Prediction Markets Are Beating the Experts*, FORBES (Nov. 20, 2025, at 13:23 ET), https://www.forbes.com/sites/jasonwingard/2025/11/19/the-polymarket-effect-how-prediction-markets-are-beating-the-experts ("[T]his isn't about gambling. It's about information. Betting markets turn belief into financial risk, creating a 'truth signal' that moves faster than polls, pundits, or official reports. When thousands of people are willing to lose money on what they think will happen, the result is a dynamic forecast[.]"); Eze Vidra, *Why Prediction Markets Are the Next Multi-Billion Dollar Asset Class*, VC CAFE (Oct. 23, 2025), https://www.vccafe.com/2025/10/23/why-prediction-markets-are-the-next-multi-billion-dollar-asset-class (describing how "prediction markets are the ultimate crowdsourced probability engines" and an "unfiltered source of truth" because "the money reflects what people genuinely believe, not just what they say, due to having 'skin in the game'"); *What Is Kalshi's Mission?*, KALSHI (Mar. 17, 2026), https://help.kalshi.com/en/articles/13823764-what-is-kalshi-s-mission ("One of the primary reasons for Kalshi's existence is to democratize access to prediction markets.").

[25] *What Is Kalshi's Mission?*, *supra* note 24; *Kalshi's Tarek Mansour on Prediction Markets, Regulation, and the Future of Truth in Finance*, YAHOO SPORTS (Feb. 23, 2026), https://sports.yahoo.com/articles/kalshi-tarek-mansour-prediction-markets-135928927.html ("On Kalshi, the goal is liquidity and accuracy, not maximizing losses.").

[26] Alicia Park, *VCs Are Throwing Money at Recent College Grads to Build Prediction Markets*, FORBES (Feb. 10, 2026, at 11:28 ET), https://www.forbes.com/sites/aliciapark/2026/02/10/vcs-are-throwing-money-at-recent-college-grads-to-build-prediction-markets.

[27] *See e.g.*, News Desk, *Charles Schwab and Cboe Plan S&P 500 Yes-Or-No Options as Prediction Markets Go Mainstream*, NEWSBTC (June 22, 2026, at 11:27 GMT-4),

major financial institutions incorporating the platforms into their trading infrastructure and viewing them as a distinct asset class with applications in forecasting, hedging, and risk management.[28] Yet the influx of VC investment also creates powerful structural incentives to prioritize rapid growth and lucrative exits. In turn, this incentive structure can encourage startup firms to (i) engage in excessive risk-taking, (ii) aggressively pursue as a business model dominance within the relevant industry or sector, and (iii) fail to properly account for social considerations when they interfere with maximizing investors' financial returns.[29]

Growing recognition of the risks prediction markets pose has invited bipartisan scrutiny of these platforms. Lawmakers have questioned whether event contracts that facilitate trading on nonpublic information; allow participants to financially benefit from war, political violence, and other high-stakes geopolitical events; and foster abuse and harassment of third parties are consistent with principles of contract law or market integrity.[30] Since January 2026, members of Congress have introduced over thirty bills aiming to regulate prediction markets, including proposals to limit government insider trading, or to ban event contracts in sports, war, elections, death, terrorism, and government actions, among others.[31] The proposed legislation reflects a

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https://www.tradingview.com/news/newsbtc:baa963727094b:0-charles-schwab-and-cboe-plan-s-p-500-yes-or-no-options-as-prediction-markets-go-mainstream; Will Knight, *Wall Street Is Already Betting on Prediction Markets*, WIRED (Mar. 16, 2026), https://www.wired.com/story/prediction-markets-find-a-welcome-on-wall-street ("Some of the biggest names in finance have already jumped into the world of prediction markets."); *see also* Packin & Rabinovitz, *supra* note 23, at 257 (describing the shift from academic and institutional prediction markets to gamified, large-scale digital trading platforms integrated into mainstream information channels); Arrow et al., *supra* note 7, at 877 (describing prediction markets' potential use by firms and public institutions).

[28] Kate Knibbs, *Wall Street Is Already Betting on Prediction Markets*, WIRED (Mar. 16, 2026, at 05:30 ET), https://www.wired.com/story/prediction-markets-find-a-welcome-on-wall-street; Samuel O'Brient, *A Top Options Firm Is Hiring Traders to Bet on the Weather and Other "Event-Driven Outcomes"*, BUS. INSIDER (Feb. 19, 2026), https://www.businessinsider.com/prediction-markets-susquehanna-traders-options-betting-kalshi-wall-street-2026-2; *Interactive Brokers Expands Prediction Markets, Unifying Access to Kalshi, CME Group, and ForecastEx*, MORNINGSTAR (May 14, 2026, at 14:08 ET), https://www.morningstar.com/news/business-wire/20260514242527/interactive-brokers-expands-prediction-markets-unifying-access-to-kalshi-cme-group-and-forecastex.

[29] Emilie Aguirre, *The Hidden Cost of Venture Capital*, 111 IOWA L. REV. 63, 87 (2025).

[30] Megan Mineiro, *Lawmakers Press to Limit Prediction Bets by Policymakers*, N.Y. TIMES (Mar. 26, 2026), https://www.nytimes.com/2026/03/26/us/politics/congress-betting-ban.html; *see also* Packin & Rabinovitz, supra note 23, at 257–58 (identifying electoral manipulation and insider trading on government action); Wolfers & Zitzewitz, *supra* note 7, at 119–20 (discussing concerns that terrorism-related or assassination-related contracts may allow traders to profit from harmful events).

[31] Ronak D. Desai, Renato Mariotti & Marguerite Harris, *Congress Predictably Turns Its Attention to Prediction Markets*, PAUL HASTINGS LLP (Apr. 1, 2026), https://www.paulhastings.com/insights/client-alerts/congress-predictably-turns-its-

growing set of concerns that prediction markets enable platforms and users to financially benefit in ways that are particularly difficult to regulate under existing law. As one legislator noted, prediction markets allow "insiders to get rich by commodifying every part of our lives," which risks transforming everyday interactions—whether mundane or extraordinary—into a system influenced by financial incentives rather than public interest.[32]

One of the complicating features of regulating prediction markets is that these platforms involve transactions that extend beyond any single doctrinal category as currently classified under existing law. Prediction markets have been simultaneously characterized as gambling,[33] as platforms that facilitate private contracting,[34] and as event-based financial derivatives that fall

attention-to-prediction-markets; ALEXANDER H. PEPPER & KARL E. SCHNIEDER, PREDICTION MARKETS LEGISLATION IN THE 199TH CONGRESS, R49266, CONGRESS.GOV (Aug. 17, 2026), https://www.congress.gov/crs-product/R49266. For example, a January House bill sponsored by Rep. Ritchie Torres and the bipartisan March 25 PREDICT Act would limit insider trading by government officials, while the Banning Event Trading on Sensitive Operations and Federal Functions ("BETS OFF") Act, would prohibit wagering on government actions, war, terrorism, and other events where participants may possess or control nonpublic information. *Id.*; Press Release, Congressmen Gabe Amo et al., Amo, Murphy, Casar, Ansari Introduce Bicameral Bill to Ban Prediction Markets from Enabling Officials to Bet on and Profit Off War (Mar. 18, 2026) [hereinafter Press Release, Congressmen Amo, Murphy, Casar, Ansari], https://amo.house.gov/press-release/amo-murphy-casar-ansari-introduce-bicameral-bill-to-ban-prediction-markets-from-enabling-officials-to-bet-on-and-profit-off-war.

[32] Press Release, Congressmen Amo, Murphy, Casar, Ansari, *supra* note 31. Note, this conception of insiders is being contested as to what should or should not count as insider trading.

[33] Some have argued that prediction markets are "gambling—pure and simple" and should be treated accordingly. Hirschfeld, *supra* note 5; *see also* Ilya Beylin, *Event Contracts Are a Step Too Far for Derivatives Regulation,* 4 U. CHI. BUS. L. REV. 77, 132–40 (2025) (arguing that many event contracts should be delisted from CFTC-regulated exchanges and left to state-law regulation*)*; Melinda Roth, *Prediction Markets: Creating a New Asset Class from Ballots to Box Scores*, CONN. L. REV. 1, 99–100 (forthcoming 2026) (recommending that event contracts be regulated as derivatives by the CFTC, despite their resemblance to betting); Packin & Rabinovitz, *supra* note 23, at 258–59 (arguing that commercial prediction markets exhibit structural and functional similarities to online gambling, including gamified features, continuous engagement, and addiction-related risks); Arrow et al., *supra* note 7, at 877–78 (noting that federal and state laws limiting gambling have historically created barriers to prediction-market development).

[34] Under this view, entering into event contracts on prediction market platforms are acceptable instances of individuals engaging in voluntary transactions and the law should only intervene in limited, well-defined circumstances. Alan Schwartz & Robert E. Scott, *Contract Theory and the Limits of Contract Law*, 113 YALE L.J. 541, 548, 555 (2003) (private bargains between parties should be respected in most instances in place of paternalistic intervention); *see* Wolfers & Zitzewitz, *supra* note 7, at 108–10 (describing prediction markets as markets in which participants trade contracts whose payoffs depend on future events and identifying common contract forms, including winner-take-all, index, and spread contracts). These contracts are key components of hedging and risk management for many market players. Beylin, *Event Contracts, supra* note 33, at 79–80. In a narrow set of circumstances, some contracts may be prohibited or voided. 42 U.S.C. § 274e (1984) (prohibiting the sale of human organs); Eric A.

within the purview of the Commodity Futures Trading Commission ("CFTC").[35] Each classification carries different regulatory consequences, with none fully capturing the unique challenges the event contracts traded on prediction market platforms present.[36] Attempts to put the new challenges, risks, and opportunities prediction market platforms create into preexisting legal categories exposes the limits of current regulatory approaches.[37] And lawmakers at both the state and federal level appear to recognize that ex post enforcement efforts alone may be insufficient to oversee the transactions taking place on the prediction markets, and they are starting to take action toward ex ante constraints. Thus, developing a framework for understanding prediction markets—including the platforms that operate them, the event contracts they offer, and the users who trade on them—appears increasingly imperative.

Building this framework necessitates taking a purposefully broad perspective in assessing prediction market platforms and event contracts. Understanding the legal problems that prediction markets create requires understanding how event contracts are structured, how platforms and traders generate revenue from them, and why their design can convert seemingly

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Feldman, *Baby M Turns 30: The Law and Policy of Surrogate Motherhood*, 44 AM. J.L. & MED. 7, 8–9 (2018) (surrogacy contracts in some states are prohibited); Anthony T. Kronman, *Paternalism and the Law of Contracts*, 92 YALE L. J. 763, 763 (1983) ("Two neighbors cannot make an enforceable contract to rob a third, nor can a group of businessmen negotiate a price-fixing agreement that will be binding as a matter of law."); RESTATEMENT (SECOND) OF CONTRACTS §§ 12, 14, 15, 16, 164, 175, 178, 208 (A.L.I. 1981).

[35] The CFTC emphasizes that prediction markets are subject to the Commodity Exchange Act and its prohibitions on fraud, manipulation, and insider trading. CFTC, Div. of Mkt. Oversight, CFTC Letter No. 26-08 (Mar. 12, 2026) [hereinafter *Prediction Markets Advisory*], https://www.cftc.gov/csl/26-08/download; Roth, *supra* note 33, at 1, 99–100 (recommending that event contracts be regulated as derivatives by the CFTC, despite their resemblance to betting); Hunter Ng et al., *Price Discovery and Trading in Modern Prediction Markets* 1, 4–7 (Apr. 28, 2026) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5331995 (finding that liquid prediction markets contributed to price discovery and outperformed polls in forecasting the 2024 presidential election).

[36] This shift reflects the reality that ex post enforcement, while necessary, cannot by itself safeguard market integrity in rapidly evolving markets. *Prediction Markets Advisory*, *supra* note 35; Arrow et al., *supra* note 7, at 878 (urging ex ante safe-harbor rules and regulatory design for specified prediction markets rather than relying solely on uncertain legal treatment); *cf.* Gina-Gail S. Fletcher, *Benchmark Regulation,* 102 IOWA L. REV. 1929, 1963–69 (2017) (arguing that ex post enforcement alone is insufficient to protect benchmark integrity and proposing an ex ante regulatory framework); Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35806 (June 12, 2026) (to be codified at 17 C.F.R. pt. 40).

[37] *See* Hanson & Oprea, *supra* note 15, at 304–05 (describing concerns that manipulators may attempt to mislead decisionmakers by manipulating prediction-market prices); Gina-Gail S. Fletcher, *Legitimate Yet Manipulative: The Conundrum of Open-Market Manipulation*, 68 DUKE L.J. 479, 480–81 (2018) (explaining that open-market manipulation can occur through facially legitimate market transactions).

ordinary event contracts into incentives for socially harmful conduct. Taking this broader view illuminates how prediction markets comprise a diverse range of topic-specific markets, each consisting of event contracts tied to a particular subject matter, such as financial markets, weather markets, currency markets, entertainment markets, political markets, sports markets, and beyond. [38] Some event contracts have largely innocuous impacts, while others may carry significant societal consequences or be vulnerable to user manipulation in ways that undermine the fairness of the contract resolution and threaten the safety of third parties. Against this backdrop, this Article asks, when should firms and individuals be allowed to commodify uncertainty and financially benefit from prediction?

Answering that question requires more than deciding whether the transactions on prediction markets are gambling, derivatives, or some other type of private contract. Instead, it requires a framework for determining how and when the law should delineate the acceptable boundaries of commodification when the commodified object is not a traditional asset, but uncertainty itself—including uncertainty around socially sensitive events whose costs may fall not only on traders, but also on third parties and society more broadly. The law therefore must determine when financially benefitting from prediction is acceptable and when it becomes unacceptable because it produces impermissible social harms. To do so, it must draw from theoretical analogies that provide insights into the proper bounds of commodification.

Leveraging contract theory and adjacent literatures,[39] this Article develops a framework that looks to the relationship between the contract, the underlying event, and the benefits and social harms that prediction market trading produces. It argues that prediction markets—like many areas of technological and financial innovation—require assessment through a lens of bounded commodification that considers both the potential benefits and social harms of the listed event contracts. Bounded commodification stands for the principle that there are limits—legal, ethical, and societal—that do and should

[38] A market may be defined broadly—for example, as the market for financial products—or narrowly—for example, as a market for a particular financial product or event contract. Neil Fligstein & Luke Dauter, *The Sociology of Markets*, 33 ANN. REV. SOC. 105, 106, 116–17 (2007) (describing markets as social structures involving exchange among buyers and sellers and noting that, in economic theory, markets involve the exchange of goods or services for money).

[39] While other approaches to prediction markets draw from theoretical understandings in law and economics to address particular angles of prediction markets, such as insider trading, we leverage contract theory and adjacent literatures in an attempt to distinguish between acceptable and unacceptable forms of commodification in this context. Jonathan R. Macey & Luca Enriques, *Different Markets, Different Regulatory Priorities: Insider Trading, Manipulation, and Corruption-Prone Event Contracts in Prediction Markets*, Eur. Corp. Governance Inst. Law Working Paper No. 955/2026 (Aug. 20, 2026), https://ssrn.com/abstract=7323118.

constrain the actions profit-seeking[40] individuals and firms may pursue via private transactions.

Under our proposed framework, some event contracts should be presumptively prohibited because they monetize grave social harm or may undermine public decisionmaking. Other event contracts should be regulated at the federal level as derivatives or securities-adjacent instruments because they replicate familiar risks like insider trading, manipulation, and market integrity failures and provide comparable hedging and risk mitigation benefits to market actors. Still others—particularly sports, entertainment, and gambling-adjacent contracts—should be regulated at the state level,[41] because they raise participant protection and consumer harm concerns that have traditionally been overseen by state governments and that federal derivatives regulation is not well-suited to address. A fourth category of event contracts creates strong incentives to cause or manipulate harmful outcomes and should be regulated through ex ante market design and institutional practices implemented in the prediction market platforms themselves. Across these categories, platform firms that operate prediction markets, VC firms that finance prediction markets, and public and private firms that are exposed to prediction market trading should all adopt affirmative compliance protocols that provide guidance and internal controls on issues like product design, trading surveillance, and permissible employee conduct.

In taking this purposefully broad view of the problems raised by prediction markets, we propose a foundational framework for scholars and policymakers to use going forward to evaluate the different types of event contracts that are currently being traded—and will be traded in the future—on prediction market platforms. This broad view, however, necessarily means that this Article does not purport to provide an exhaustive analysis and assessment of every aspect of the problems raised by prediction market platforms and event contract transactions. We fully anticipate that scholars and policymakers will develop specific understandings and guidelines on items like insider trading and sports betting—this Article does not attempt to tackle

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[40] This Article's title and text focus quite a bit on the idea of profit, but we note that while prediction market platforms generate revenue on each transaction that occurs on the platform, the firms themselves are not necessarily profitable (e.g. generating positive cash flow). These firms' ability to achieve profitability depends on a range of factors beyond the actual revenue generated on each transaction. Yet even without positive cash flow, firm owners and investors gain financially as their prediction platforms expand. It is to that financial gain that we refer broadly as "profiting."

[41] Throughout the Article, we refer to state and federal level regulation. However, we also recognize that Native American tribal governments also have a stake in these questions as they have the authority to regulate gaming within their territories under the Indian Gaming Regulatory Act (IGRA). *See* Indian Gaming Regulatory Act § 11, 25 U.S.C. § 2710. Given that under the IGRA, tribes regulate sports betting and casino-style games under a state-tribal agreement, references to state gaming regulation incorporate tribal regulation of gaming on tribal lands. *See* Indian Gaming Regulatory Act § 11, 25 U.S.C. § 2710(d)(1)(C).

those specific policy proposals.[42] Additionally, this Article purposefully does not address the ways in which prediction market transactions may interact with certain other areas of law—like potential tort law claims third parties may have against prediction market users or platforms. Given the rapid surge of popularity of prediction market platforms and transactions, as well as the increased attention from state and federal regulators, we believe providing a foundational framework for assessing the permissibility of these transactions more systematically is important as a starting point.

Part I begins with an examination of prediction markets and event contracts. It describes the rise and structure of prediction market platforms, including the role of venture capital in financing their growth and intensifying their potential to cause harm. It then examines the benefits of prediction markets. Finally, Part I describes the current legal and regulatory landscape, including the active fight between states and the federal government over the appropriate legal classification of trading on prediction markets and who should regulate them.[43]

Part II examines the costs prediction markets generate to financial markets,[44] participants, and third parties. These costs include manipulation, integrity and verification problems, gambling and exploitation harms, information inequality, and harm to public figures, institutions, firms, and vulnerable communities.

Part III puts forth this Article's core argument that prediction markets should be understood as a problem of bounded commodification, recognizing that limits do and should properly constrain the private transactions through

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[42] *See infra* note 191 (explaining how prediction markets replicate and may exacerbate some long-standing problems posed by traditional sportsbooks).

[43] In discussing the legal regime that may apply to event contracts, we discuss both securities and derivatives laws, recognizing that both are salient to the issue. While the CFTC has jurisdiction over derivatives, its jurisdiction is shared with the SEC, which specifically has jurisdiction over security-based swaps. As such, we consider both the securities and commodities regulatory framework in our discussion of event contracts.

Separately, it is beyond the scope of this Article to opine on the ongoing debate on whether securities and commodities law should remain separate. We note that the challenge in determining how to regulate prediction markets highlights the tension inherent in the bifurcated nature of U.S. financial regulation (that is, the division between securities regulation and commodities/derivatives regulation), which is unique in global financial regulation. While some may view prediction markets as evidence of the convergence between securities and derivatives, this debate is beyond the scope of this Article.

[44] The term "markets" is here necessarily imprecise, because event contracts can involve transactions that overlap with more than one market. For example, prediction markets could undermine various aspects of the financial markets. *See infra* Part II. But event contracts may also involve more niche markets like weather markets or currency markets. SEE E.G., KALSHI, *Weather Markets*, (July 22, 2026), https://help.kalshi.com/en/articles/13823837-weather-markets; POLYMARKET, *Currency Predictions & Odds*, https://polymarket.com/predictions/currency (last visited Sep. 13, 2026).

which individuals and firms may seek profit. It develops a framework to distinguish acceptable from unacceptable monetization of events, which draws heavily from traditional common law understandings of contract law, as well as contract law theory and adjacent legal areas. Part III identifies three factors that should guide regulation of prediction market transactions and applies that framework through four differentiated regulatory responses. The factors focus on whether the contract (i) falls outside the bounds of permissible private exchange, (ii) imposes costs on participants or third parties, and (iii) incentivizes opportunistic conduct.

Part IV addresses implications and additional concerns this argument raises. The Article then concludes.

I. THE EMERGENCE OF PREDICTION MARKETS

Prediction markets have expanded rapidly from niche forecasting tools housed in research universities and by the government[45] into a significant and widespread phenomenon that allows everyday people to participate in a range of event contracts. This Part begins by describing the rise, structure, and venture financing of prediction markets, which is directly related to how and why prediction markets have experienced explosive growth over the past few years. It then identifies the benefits prediction markets are believed to provide. Finally, it discusses the current and emerging regulatory landscape.

A. The Rise, Structure, & Financing of Prediction Markets

Prediction market platforms list event contracts that platform users enter into.[46] Event contracts allow participants to transact based on their beliefs as to the future occurrence (or non-occurrence) of an event.[47] These outcomes may be tied to a wide range of possible events, including financial and economic occurrences, sports or political results, or even weather events.[48] Typically, event contracts are structured as swaps[49] with a binary payoff

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[45] *See* Wolfers & Zitzewitz, *supra* note 7, at 107, 110 (discussing the DARPA Policy Analysis Market proposal and the University of Iowa's Iowa Electronic Markets).

[46] *Prediction Markets Advisory*, *supra* note 35.

[47] Beylin, *Event Contracts*, *supra* note 33, at 80.

[48] *Id.* at 127–28; Dan Santaromita & Hannah Vanbiber, *Are Prediction Markets Just Sports Betting by Another Name? How Legal Battles Are Taking Shape*, THE ATHLETIC (Mar. 9, 2026), https://www.nytimes.com/athletic/7075799/2026/03/09/prediction-markets-sports-betting-legal-battles/ ("On Kalshi, sports make up around 90 percent of the volume."); Crumley, *supra* note 11 (prediction markets in election outcomes); Grannis et al., *supra* note 12 (prediction markets in corporate outcomes); Gregory Svirnovskiy, *From Iran to Paris Weather: Alleged Prediction Market Violations Start Stacking Up*, POLITICO (Apr. 24, 2026), https://www.politico.com/news/2026/04/24/prediction-market-insider-trading-violations-00890570 (prediction markets in weather).

[49] Swaps are financial derivatives that derive their value from the underlying commodity. 7 U.S.C. § 1a(47).

structure tied to the referenced event.[50] The binary structure means that these contracts are formulated as a "yes or no" position on the outcome or occurrence of the event.[51] For example, a trader may take a position on questions that range from: will it rain tomorrow?;[52] to will Duke win the women's NCAA basketball championship?;[53] to will members of Congress be banned from trading stocks?[54] The price of an event contract reflects prediction markets' users assessment of the implied probability of the referenced future event occurring.[55] The contract trades as a fraction of a $1.00 and ranges from $0.01 to $0.99. As such, an event contract that is priced at $0.30 means that the applicable market estimates a 30% chance of the event occurring.[56] This price signal is central to the claim that prediction markets generate useful information: because traders can profit from correcting mispriced probabilities, market prices can aggregate dispersed information about future events.[57] Prediction markets, however, differ from traditional sports betting in that prediction market platforms do not take the opposite side of the event contract.[58] Instead, they match counterparties on each side of the transaction and generate revenue through trading fees.[59] In addition, unlike

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[50] Beylin, *Event Contracts*, *supra* note 33, at 80 (noting that "event contracts are generally understood to be contracts referencing the occurrence of an event where the pay-off structure is binary").

[51] *Understanding Prediction Markets and Event Contracts*, U.S. COMMODITY FUTURES TRADING COMM'N, https://www.cftc.gov/LearnandProtect/PredictionMarkets (last visited Apr. 27, 2026).

[52] KALSHI, *Weather Forecast Markets*, https://kalshi.com/hub/weather (last visited Apr. 27, 2026).

[53] KALSHI, *Women's College Basketball Champion?*, https://kalshi.com/markets/kxwmarmad/march-tournament-w/kxwmarmad-25 (last visited Apr. 27, 2026).

[54] KALSHI, *Will Congress Be Banned from Trading Stocks?*, https://kalshi.com/markets/kxtrdban/congress-banned-from-trading-stocks/kxtrdban-25dec31 (last visited Apr. 27, 2026).

[55] *Understanding Prediction Markets*, U.S. COMMODITY FUTURES TRADING COMM'N, *supra* note 51 (explaining that the price of the contract "reflects the market's expectation of the outcome" and the "profit is the difference between their initial investment and the payout").

[56] Fidelity Learn, *What Are Prediction Markets?*, FIDELITY (June 24, 2026), https://www.fidelity.com/learning-center/trading-investing/prediction-markets.

[57] Ilya Beylin, *Regulation of Prediction Markets in the U.S.* 1 (2026) (unpublished manuscript) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6503161 ("In this Hayekian manner, pricing for event contracts comes to aggregate market information.").

[58] Santaromita & Vanbiber, *supra* note 48 (explaining that traders in prediction markets "put[]up money against another market participant on the other side, rather than betting against 'the house' as in traditional sports betting").

[59] David Yaffe-Bellany, *All Bets Are On: The Rise of Prediction Markets*, N.Y. TIMES (Jan. 19, 2026), https://www.nytimes.com/2026/01/19/technology/polymarket-kalshi-prediction-markets.html; Santaromita & Vanbiber, *supra* note 48 ("The companies make money via commissions and transaction fees, which means they are motivated to see a bigger volume of trades, but do not have a vested interest in the outcome of an event.").

traditional sports betting, prediction market participants can trade their contracts to other users at any point prior to resolution.

The two largest prediction market platforms in the U.S. are Kalshi and Polymarket.[60] Kalshi received CFTC approval as a designated contract market—a financial exchange for trading event contracts—in November 2020.[61] Polymarket received CFTC approval in December 2025.[62]

The size of and activity on prediction markets have grown dramatically in recent years. Between 2006 and 2020, approximately five event contracts were offered on average each year across all prediction platforms.[63] That number jumped to approximately 130 in 2021 and over 1,600 in 2025.[64] Transaction volume has also grown significantly. Kalshi's revenue grew from $1.8 million in 2023 to about $24 million in 2024 to $260 million in 2025,[65] representing over 1,000% growth year over year. Event contract trading volume across Kalshi rose from an average of $1.2 billion per month in 2025 to over $20 billion per month by early 2026.[66] Driving the majority of this growth, sports-related event contracts account for at least eighty percent of prediction market revenue since 2025.[67] The NFL generated much of this growth,[68] with trading

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[60] *Best Predication Market Apps (2026): Top Platforms Compared*, FOX SPORTS (July 2, 2026), https://www.foxsports.com/stories/betting/best-prediction-markets.

[61] KALSHI, *About Kalshi*, https://kalshi.com/about (last visited Apr. 27, 2026); KALSHI NEWS, *Kalshi Wins CFTC Approval for Exchange to Trade Event Contracts* (Nov. 5, 2020), https://news.kalshi.com/p/kalshi-designation.

[62] Katrin Bennhold, *Betting on Everything*, N.Y. TIMES (Mar. 26, 2026), https://www.nytimes.com/2026/03/26/world/polymarket-betting-iran-trump-olympic-transgender.html; Kyle Montevirgen, *Polymarket*, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/money/Polymarket (last visited Apr. 27, 2026); Ng et al, *supra* note 35, at 9–10.

[63] Prediction Markets, 91 Fed. Reg. 12516 (Mar. 16, 2026) https://www.cftc.gov/sites/default/files/2026/03/2026-05105a.pdf.

[64] *Id.*

[65] Nick Lichtenberg, *America's New Love Affair with Gambling Drives Kalshi to $871 Million Haul on Super Bowl Sunday*, FORTUNE (Feb. 10, 2026), https://fortune.com/2026/02/10/kalshi-super-bowl-sunday-871-million-sports-gambling-michael-lewis-warning/.

[66] *How Prediction Markets Scaled to USD 21B in Monthly Volume in 2026*, TRM LABS (Mar. 27, 2026), https://www.trmlabs.com/resources/blog/how-prediction-markets-scaled-to-usd-21b-in-monthly-volume-in-2026. Prediction markets' exponential growth stemmed in no small part from Kalshi's legal victory over the CFTC in 2024 regarding election contracts. Jennifer Hughes, *U.S. Election Bets Surge After Court Lifts Ban*, FIN. TIMES (Oct. 15, 2024), https://www.ft.com/content/0bfa5288-ecd2-41d1-9c1f-ac84e0c43c65; KalshiEx LLC v. Commodity Futures Trading Comm'n, 119 F.4th 58, 65–67 (D.C. Cir. 2024) (reasoning that elections events contracts do not constitute gambling).

[67] Santaromita & Vanbiber, *supra* note 48; Lichtenberg, *supra* note 65; Radde, *supra* note 16; Devor, *supra* note 16.

[68] Daniel O'Boyle, *Kalshi Fee Revenue in 2025 Was $263.5 Million, with 89% Coming from Sports*, YAHOO FIN. (Jan. 9, 2026), https://finance.yahoo.com/news/kalshi-fee-revenue-2025-263-145801350.html.

volume on Super Bowl Sunday 2026 exceeding $1 billion[69] and users wagering over $100 million alone on the opening song for the halftime show.[70]

Prediction markets not only attract retail participants but also mainstream financial institutions. Brokerages, exchanges, hedge funds, asset managers, and other financial services firms increasingly view prediction markets as a distinct asset class to invest in, financial product to offer, data tool to leverage, or hedging instrument to employ.[71] Nasdaq, for example, has applied to the SEC for permission to list binary options on its indices.[72] Three issuers filed SEC applications in April 2026 to offer political-outcome event contracts as exchange-traded funds ("ETFs").[73] Brokerage firms like Interactive Brokers have integrated prediction markets into their trading platforms, offering clients direct access to Kalshi and similar firms alongside stocks, options, futures, and other traditional financial products.[74] Quantitative trading firms like Susquehanna Group have established dedicated prediction market desks and facilitate trading by regularly entering into event contract transactions on prediction market platforms.[75]

Prediction markets' rapid expansion and mainstream integration have not happened organically. They have been fueled by significant venture capital

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[69] Layla Neelakandan, *Kalshi Says Super Bowl Trading Volume Surpassed $1 Billion*, CNBC (Feb. 10, 2026), https://www.cnbc.com/2026/02/10/kalshi-super-bowl.html.

[70] *Id.*

[71] Knibbs, *Wall Street*, *supra* note 28; O'Brient, *supra* note 28; *Interactive Brokers Expands Prediction Markets, supra* note 28.

[72] Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing of a Proposed Rule Change to Adopt New Options Rule 3B To List and Trade Outcome-Related Options, 91 Fed. Reg. 12652 (Mar. 16, 2026), https://www.federalregister.gov/documents/2026/03/16/2026-05019/self-regulatory-organizations-nasdaq-mrx-llc-notice-of-filing-of-a-proposed-rule-change-to-adopt-new.

[73] The ETFs would be available within individual retirement accounts and offer an opportunity to invest in who wins the US presidential election in November 2028. Contessa Brewer, *Prediction Markets Could Soon Be Available in Your Retirement Account*, CNBC (Apr. 24, 2026), https://www.cnbc.com/2026/04/24/prediction-markets-could-soon-be-available-in-your-retirement-account.html; Roundhill ETF Trust, Registration Statement (Form 4N1-A) (Feb. 13, 2026), https://www.sec.gov/Archives/edgar/data/1976517/000139834426003166/fp0097618-1_485apos.htm; Bitwise Funds Trust, Registration Statement (Form 485APOS) (Feb. 17, 2026), https://www.sec.gov/Archives/edgar/data/1928561/000121390026017412/ea0277256-01_485apos.htm; GraniteShares ETF Trust, Registration Statement (Form 485APOS) (Feb. 17, 2026), https://www.sec.gov/Archives/edgar/data/1689873/000149315226007125/form485apos.htm.

[74] Interactive Brokers Grp., Inc., *Interactive Brokers Expands Prediction Markets, Unifying Access to Kalshi, CME Group, and ForecastEx*, BUS. WIRE (May 14, 2026, at 10:08 ET), https://www.businesswire.com/news/home/20260514242527/en/Interactive-Brokers-Expands-Prediction-Markets-Unifying-Access-to-Kalshi-CME-Group-and-ForecastEx.

[75] SUSQUEHANNA, *Susquehanna Predictions*, https://sig.com/predictions/ (last visited Aug. 1, 2026).

investment. VC investors have poured billions of dollars into prediction market startups, which represent one of the fastest-growing sectors in Silicon Valley.[76] Kalshi and Polymarket have each raised billions of dollars in multiple rounds of VC funding, doubling their valuations to around $20 billion in the span of just a few months.[77] A host of other, smaller prediction market platforms have raised tens of millions of dollars from prestigious VC firms and accelerators like Andreessen Horowitz and Y Combinator, for some firms, before even launching their companies.[78] VCs have also invested heavily in the broader prediction market sector, funding the infrastructure and services necessary to scale and embed prediction markets into mainstream finance.[79]

Yet the influx of VC investment also creates powerful structural incentives for prediction market platforms to ensure their long-term success, which requires pursuing an aggressive growth strategy. In particular, the VC investment model requires startups to generate a lucrative exit via acquisition or IPO as quickly as possible.[80] This system therefore drives portfolio startups to maximize their valuations so they can maximize exit opportunities. For platform businesses, maximizing valuation is perceived as necessary for achieving dominance in the relevant industry or sector. The value of these firms increases as additional users participate, enabling network effects that crowd out other firms and eventually enable supracompetitive pricing.[81] As a

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[76] Ben Weiss, *Exclusive: The CEOs of Kalshi and Polymarket are Arch Rivals—But Are Investing in the Same $35 Million Prediction Market VC Fund,* FORTUNE (Mar. 23, 2026), https://fortune.com/2026/03/23/kalshi-polymarket-5cc-capital-prediction-market-fund-raise/ (stating that "prediction markets have become one of the buzziest sectors in Silicon Valley"); Park, *supra* note 26; Andrew Jennings & Kimberly Krawiec, *Vice Capital*, 15 U.C. IRVINE L. REV. 427, 442 (2025) (discussing gambling and adjacent startups no longer being a disreputable industry for VC investment).

[77] *Kalshi Private Company Profile*, PITCHBOOK (2026) (on file with author); Yuliya Chernova, *Kalshi Cinches $22 Billion Valuation in Ongoing Round*, WALL ST. J. (Mar. 19, 2026), https://www.wsj.com/articles/kalshi-cinches-22-billion-valuation-in-ongoing-round-194007ac; Kate Clark & Kevin T. Dugan, *Kalshi and Polymarket Are Each Eyeing Roughly $20 Billion Valuations*, WALL ST. J. (Mar. 7, 2026), https://www.wsj.com/finance/kalshi-and-polymarket-are-each-eyeing-roughly-20-billion-valuations-d7b9c5d8.

[78] Park, *supra* note 26.

[79] For example, one VC is creating its own prediction markets terminal to increase accessibility of platform markets to professional traders and creating prediction market indices that would package multiple platforms together into one tradable bundle. Kalshi, Polymarket, and prestigious VCs are coinvesting in a venture fund for startups providing prediction market infrastructure and services. Ben Weiss, *Exclusive: Paradigm, a Major Investor in Kalshi, Is Building Its Own Prediction Markets Trading Terminal, Sources Say*, FORTUNE (Apr. 1, 2026), https://fortune.com/2026/04/01/paradigm-prediction-markets-trading-terminal; Weiss, *Exclusive: The CEOs of Kalshi and Polymarket, supra* note 76.

[80] VCs are compensated with twenty percent of any returns generated plus a two percent fixed management fee. Emilie Aguirre & Michael J. Burstein, *Disrupting Venture Innovation,* 52 J. CORP. L. 1, 11 (forthcoming 2026).

[81] Lina M. Khan, *The Separation of Platforms and Commerce*, 119 COLUM. L. REV. 973, 983–1015 (2019) (commenting on the consolidation of platform markets); Michael L. Katz & Carl

result, dominant firms generate higher valuations and more lucrative exits, driving platforms within the prediction market sector to prioritize capturing market share as a path to acquisition or IPO for founders and investors.[82]

The VC model also prioritizes aggressive growth and, like many areas of innovation, a high tolerance for risk-taking. VCs typically rely on a very small percentage of their investments to generate most returns and expect most of their portfolio startups to underperform or fail.[83] Under this system, entrepreneurs recognize that only big payoffs count and failure is commonplace, incentivizing firms to pursue aggressive growth strategies—even if they are not legal.[84] For example, prior to receiving CFTC approval, Polymarket allowed U.S. traders to use its platform to trade event contracts despite not having state nor federal regulatory approval to operate and being banned by the CFTC. Notwithstanding this non-compliance with U.S. laws, Polymarket raised hundreds of millions of dollars in VC funding.[85] Prediction market platform startups have also repeatedly sought to expand into novel types of event contracts that push the boundaries of existing contract, gambling, commodities, and securities laws. In the race to attract users and boost trading volume, firms identify new, sensational categories of uncertainty to transform into tradable assets, producing increasingly controversial or manipulable event contracts that may generate unintended and inadequately

Shapiro, *Network Externalities, Competition, and Compatibility*, 75 AM. ECON. REV. 424, 424 (1985) (noting that network effects refer to "the utility that a user derives from consumption of a good increases with the number of other agents consuming the good").

[82] Katz & Shapiro, *supra* note 81 (finding that the value of a network increases with the number of users); Jean-Charles Rochet & Jean Tirole, *Two-Sided Markets: A Progress Report*, 37 RAND J. ECON. 645 (2006) (finding that platform businesses benefit from network effects and therefore have strong incentives to scale); Mark A. Lemley & David McGowan, *Legal Implications of Network Economic Effects*, 86 CALIF. L. REV. 479 (1998) (finding that markets that benefit from network effects tend toward concentration because users prefer the largest network).

[83] *See* Aguirre, *supra* note 29, at 74, 88 (2025) (noting that VC "success depends on hitting a small number of 'home runs' from a large number of small investments"); Elizabeth Pollman, *Startup Governance,* 168 U. PENN. L. REV. 155, 169–170 (2019); Mark A. Lemley & Andrew McCreary, *Exit Strategy*, 101 B.U. L. REV. 1, 6 (2021).

[84] "Regulatory entrepreneurship" refers to startups that operate in legal gray zones, aggressively pursue growth before regulators can intervene, and mobilize their users to resist regulatory oversight. Elizabeth Pollman & Jordan Barry, *Regulatory Entrepreneurship*, S. CAL. L. Rev., 390 (2017) ("They break the law and take advantage of legal gray areas, real or imagined, asking forgiveness instead of permission. They seek to grow 'too big to ban' before regulators can act, sometimes referred to as 'guerilla growth.' Perhaps most dramatic, they mobilize their users and stakeholders as a political force.").

[85] Users simply needed to log in with a VPN to participate on the overseas platform. Polymarket also maintained its headquarters in New York City. *Polymarket Raises $2B at $9B Valuation*, INSIGHTS4VC (Oct. 9, 2025), https://insights4vc.substack.com/p/polymarket-raises-2b-at-9b-valuation.

addressed social harms.[86] Prediction market platforms have listed, for example, death-adjacent contracts, contracts that result in third-party abuse or harassment, contracts based on material nonpublic information, and contracts in violation of state gambling laws. VC thus does not merely finance prediction market platforms; it provides these firms with the incentives and resources to externalize the costs of expanding aggressively, dominating the market, and taking significant risks, while privatizing the gains.[87]

The rapid growth of prediction markets reflects more than technological innovation or investor enthusiasm. It also reflects a widespread belief that event contracts traded on prediction market platforms can predict the future better than experts. The next subpart explains the benefits these platforms may generate.

B. The Benefits of Prediction Markets

Underlying the popularity and growth of prediction markets are their real and perceived benefits. One of the primary benefits of event contracts traded on prediction market platforms is their ability to aggregate dispersed information, providing useful signals and forecasts that respond to changed conditions and events.[88] Prediction markets offer a rich source of information aggregation because they continuously update as users alter their beliefs with the availability of new information, leveraging the wisdom of crowds.[89] As information aggregators, prediction markets support the theory underlying the efficient market hypothesis: in a well-functioning market, the price will reflect the best available estimate of the probability of an event occurring, because any trader who believes the price is wrong has a financial incentive to act on

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[86] *See infra* Part II; Bobby Allyn, *2 Young Billionaires Are Behind the Prediction Market Boom. They Hate Each Other*, NPR (Mar. 6, 2026), https://www.npr.org/2026/03/06/nx-s1-5735893/iran-war-kalshi-polymarket-feud (“‘[Kalshi’s CEO] is being so aggressive [competing with Polymarket] because the size of the bag is generational if they get it right,’ the person said. ‘For them, it’s existential.’”); Clark & Dugan, *supra* note 77 (discussing the billions of dollars of VC funding funneled into prediction market platforms).

[87] Aguirre, *supra* note 29, at 68 (“VC . . . is structured to crowd out social performance by creating a time-pressured focus on growth and exit.”); Christopher Buccafusco & Samuel N. Weinstein, *Antisocial Innovation*, 58 GA. L. REV. 573, 581 (finding that “a substantial portion of innovative activity [i]s actually bad for society as a whole”); Aguirre & Burstein, *supra* note 80, at 3, 31–32, 37 (explaining that VC influence “has pernicious effects. It results in wasteful over-investment in particular technologies, and it pulls innovators away from high social value projects”).

[88] *See* Wolfers & Zitzewitz, *supra* note 7, at 112–115; *see also* Packin & Rabinovitz, *supra* note 30, at 257 (“Academic and institutional PM platforms’ aggregated judgments often outperform expert predictions and polls in controlled settings.”); Turk et al., supra note 23, at 48 (“The function of prediction markets is to aggregate information in a way that provides socially useful forecasts.”).

[89] Anthony M. Diercks, Jared Dean Katz & Jonathan H. Wright, *Kalshi and the Rise of Macro Markets* 2–3, 6, (Fin. & Econ. Discussion Series 2026-010, Working Paper No. 2026-010, 2026), https://doi.org/10.17016/FEDS.2026.010.

that belief and profit from it.[90] Prediction markets facilitate information aggregation because of three structural features: they create incentives for users to disclose what they believe will happen;[91] reward research and information gathering efforts; and provide a novel mechanism for combining diverse opinions into a single price.[92]

Recent research on prediction markets has demonstrated that information gleaned from how users trade frequently outperform traditional methods of information aggregation and forecasting across a wide range of domains.[93] For example, the Iowa Electronic Markets—the longest-running academic prediction market—posted an average error across four presidential cycles that was more than twenty-five percent smaller than the Gallup poll average error.[94] A 2026 study using billions of dollars in Polymarket and Kalshi transaction data found that prediction market prices lead, rather than follow, polls.[95] Interestingly, prediction markets have become a unique source of information of notable value to the financial markets because they can provide better forecasting than some traditional tools that central banks and financial market participants have relied on historically.[96]

Related to their information aggregation role, prediction markets offer an additional avenue for offsetting and insuring against risk. The specific nature of event contracts means that they are useful tools for firms and individuals to hedge their exposure to specific, idiosyncratic risks that traditional financial instruments may cover imprecisely or not at all.[97] In some ways, event contracts refine and amplify the hedging benefits of traditional derivatives, such as futures and options, because they allow traders to isolate, price, and insure against specific future risks. Consider the concerns of a wheat farmer versus those of a strawberry farmer as an illustrative example. Wheat is

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[90] Wolfers & Zitzewitz, *supra* note 7, at 108.

[91] This analysis assumes users will be truthful, an assumption that may not always hold because many prediction-market participants trade for arbitrage purposes.

[92] Wolfers & Zitzewitz, *supra* note 7, at 121.

[93] *See, e.g.*, *id.* at 119; Arrow et al., *supra* note 7, at 877; Erik Snowberg, Justin Wolfers & Eric Zitzewitz*, Prediction Markets for Economic Forecasting*, 2, 21, 34 (Nat'l Bureau of Econ. Rsch., Working Paper No. 18222, 2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2112946.

[94] Arrow et al., *supra* note 7, at 878.

[95] Ng et al., *supra* note 35, at 3–4, 14 (finding that while "prediction market returns significantly predict future poll numbers and changes in poll results . . . the poll numbers and changes do not significantly predict returns on Polymarket").

[96] Diercks, Katz & Wright, *supra* note 89, at 8–9.

[97] ROBINHOOD MARKETS, INC., PREDICTION MARKETS 1–2 (Mar. 2025); *see also* The Editorial Board, *The Uses and Abuses of Prediction Markets*, FIN. TIMES (Jan. 25, 2026), https://www.ft.com/content/0e1ac46d-8a51-4d3a-b840-ac6620f2f7cc?syn-25a6b1a6=1; Prediction Markets; Public Interest Determinations, *supra* note 36 (stating that prediction markets "allow market participants to hedge exposure to a wide array of events for which no traditional financial instrument otherwise exists").

a popular futures contract and available on all commodities exchanges. The standardization inherent in a futures contract enables a wheat farmer to hedge against price uncertainty for her crop through a futures transaction that is pre-defined in terms of asset quality, quantity, and settlement timeframe.[98] However, strawberry futures are not traded on major derivatives exchanges,[99] making it difficult for a strawberry farmer to offset the risks of climate or macroeconomic factors that may impact the profitability or size of her crop yield.[100] An event contract tied to the future probability of rain, however, may allow the strawberry farmer to home in on the potential impact of weather on her crops and, importantly, to do so with lower transaction costs.

Notably, the ever-updating variety and ease of access to event contracts on prediction market platforms make these hedging and insurance benefits available to a large swath of participants—from sophisticated institutional actors to individual traders and everyone in between. Economic event contracts may offer bespoke hedges and more precise price signals for outcomes—such as information releases, interest rate decisions or specific policy changes—that may be difficult to replicate through existing derivatives products.[101] Hedge funds, asset managers, and corporate treasury desks now use event contracts "as signals or hedges" in connection with macroeconomic and policy-driven risks.[102] In this vein, tariff-related uncertainty—a category of risk that is difficult to hedge through equity or fixed-income instruments—has emerged as a specific use case, with event contract payoffs offsetting supply chain and pricing exposure for affected firms.[103]

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98 CME GRP., *Definition of a Futures Contract*, https://www.cmegroup.com/education/courses/introduction-to-futures/definition-of-a-futures-contract (last visited Sep. 10, 2026).

99 See e.g., CME GRP., *Agricultural Futures and Options*, https://www.cmegroup.com/markets/agriculture#explore-our-agricultural-products (last visited Sep. 10, 2026) (listing the agricultural products traded on the Chicago Mercantile Group; strawberry is not listed).

100 To be certain, the strawberry farmer in this example could make use of forward contracts in the over-the-counter market but such contracts would likely have higher transaction costs than standardized futures or weather-related event contracts.

101 The Editorial Board, *supra* note 97.

102 Peter Chan & Matthew S. Smith, *United States: Event Contracts and Prediction Markets,* BAKER MCKENZIE 1 (Apr. 2026), https://www.bakermckenzie.com/en/insight/publications/2026/04/united-states-event-contracts-and-prediction-markets.

103 John Crawford, *Place Your Bets—on Everything: Babson Professors Unpack the Prediction Markets*, BABSON COLL.: BABSON THOUGHT & ACTION (Mar. 11, 2026), https://entrepreneurship.babson.edu/prediction-markets/; *see also* Evan Gorelick, *Net Gain*, N.Y. TIMES (June 14, 2026), https://www.nytimes.com/2026/06/14/briefing/net-gain.html?eafs_enabled=false (reporting a New York bar owner used prediction markets to hedge NBA finals outcomes to offset the cost of a promotional offer for customers).

Further, the binary nature of event contracts makes them a particularly useful and valuable tool for insuring against idiosyncratic risks that have no comparable hedge available in the financial markets. For example, Western Grazers, a California-based goat herding company, has purchased event contracts tied to the question: "Will California fail to pass an alternative wage or provide relief from goat herder overtime mandates before October 1, 2026?"[104] If California does fail to pass this legislation, Western Grazers will receive a payout of $500,000 on its event contracts, which will offset the company's expected higher labor costs.[105] Event contracts, therefore, broaden the potential options for businesses, individuals, and investors to mitigate risks in novel, targeted ways, without increasing transaction costs or basis risk.[106]

Prediction markets supporters also highlight the platforms' social benefits. They argue prediction markets make public discourse more nuanced and disciplined by attaching financial consequences to predictions, rewarding accuracy and penalizing error in ways that polls and punditry structurally cannot.[107] Under this reasoning, a pundit or commentator who purchases an event contract is forced to financially support their stated view, and their profit motive counteracts any biases—whether from personal enthusiasm, audience expectations, or prior public commitments—that might otherwise distort their predictions.[108] Because participants express their beliefs under conditions where accuracy has economic consequences, not merely expressive value, participants are more likely to express their truly held beliefs, regardless of its social acceptability, if they believe that they are likely to profit from being

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[104] Vanessa Phillimore, *Small Businesses Turning to Prediction Markets to Hedge Against Operational & Financial Risks*, BONUS.COM (Sep. 1, 2026), https://www.bonus.com/news/small-businesses-turn-to-prediction-markets-to-hedge-operational-financial-risks/.

[105] *Id.*

[106] Basis risk (or mismatch risk) is the risk that a hedge may not fully or adequately offset risks, thereby exposing the trader to additional, unexpected risks. *See Gina-Gail S. Fletcher, Hazardous Hedging: The (Unacknowledged) Risks of Hedging with Credit Derivatives,* 33 REV. BANKING & FIN. L. 813, 871 (2014).

[107] *See* Robin Hanson, *Insider Trading and Prediction Markets*, GEORGE MASON UNIV., DEP'T ECON. 7 (Nov. 2007), https://mason.gmu.edu/~rhanson/insiderbet.pdf (stating that prediction markets "work well not only because they reward accuracy and punish error, but also because they encourage self-selection of participants"); *see also* Wingard*, supra* note 24. ("Polls measure what people say. Bets measure what people believe. In surveys, people posture. In public, they perform. On social platforms, they signal identity. But in a prediction market, incentives reverse: accuracy is rewarded, noise is punished, and wishful thinking becomes expensive."); Snowberg, Wolfers & Zitzewitz, *supra* note 93, at 6 (noting that "as superior information will produce monetary rewards, there is a financial incentive for truthful revelation . . . professional forecasters may have other motivations than simply forecast accuracy").

[108] Rebecca Haw Allensworth, *Prediction Markets and Law: A Skeptical Account*, 122 HARV. L. REV. 1217, 1219 (2009).

accurate.[109] According to advocates, prediction markets also broaden access to financial markets by lowering barriers to entry and flattening traditional credentialing hierarchies.[110]

Lastly, prediction markets platforms are a source of entertainment for many users. Through event contracts traded on these platforms, users can interactively participate in a range of social, cultural, and sporting events[111] in ways that were previously unavailable. To be sure, sports gambling has long existed as a comparable avenue for interested fans to participate in the outcome of games—a pastime that prediction market platforms also facilitate.[112] But prediction market platforms go beyond sports betting—offering event contracts on topics ranging from reality television outcomes, to music chart rankings, to the number of celebrity views on social media. In providing the opportunity for users to express their views on these topics, prediction market platforms foster a sense of community among users, as they share wins, discuss their trades, and debate live odds. And while these sorts of event contracts may seem silly to some, contract law has never required voluntary transactions to be rational; people are free to engage in the transactions they want as long as they do not bump up against a legal prohibition. The upshot is that prediction market platforms allow users to speculate on issues that are both varied and niche and, in this way, serve as a valuable source of entertainment for many users.

Given these significant benefits to researchers; the financial markets, particularly aspects of the markets that have traditionally been underrepresented; and prediction market platform participants, it is unsurprising that prediction markets have grown exponentially over the past few years. Notwithstanding the benefits, prediction markets have presented

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[109] For example, in 2024 Polymarket accurately predicted a decisive Trump victory while opinion polls portrayed a much tighter race. Niall Ferguson & Manny Rincon-Cruz, *How the Trump Whale and Prediction Markets Beat the Pollsters in 2024*, WALL ST. J. (Nov. 15, 2024, at 11:27 ET), https://www.wsj.com/politics/elections/how-the-trump-whale-and-prediction-markets-beat-the-pollsters-in-2024-dd11ec4e. Many attributed this to poll respondents not wanting to publicly admit to supporting Trump, despite intending to vote for him. *Id.* (citing that "Trump supporters were both less likely to talk to pollsters and less likely to tell pollsters that they would vote for the former president").

[110] Blockchain-settled platforms have "substantially lowered barriers to participation. Packin & Rabinovitz, *supra* note 23, at 257 (noting that prediction markets "democratize participation through low entry barriers and, more recently, cryptocurrency access . . . reaching millions of users and operating as mainstream infrastructure rather than niche tools"); Ng et al, *supra* note 35, at 1–2. Richard Warr, *Prediction Markets and the Economics of Belief*, POOLE THOUGHT LEADERSHIP (Feb. 6, 2026), https://poole.ncsu.edu/thought-leadership/article/prediction-markets-and-the-economics-of-belief/ ("[A]nyone can participate and profit from being correct. Credentials, status, or pedigree do not matter. Only accuracy does.").

[111] SEE E.G., KALSHI, *Culture Prediction Markets & Entertainment Odds*, https://kalshi.com/category/culture (last visited Sep. 10, 2026).

[112] *See supra* note 16 and accompanying text.

challenges for oversight and regulation. The next subpart turns to the current regulatory framework governing event contracts traded on prediction market platforms.

C. The Fight to Regulate Prediction Markets

Periods of rapid financial innovation are often followed by formal legal and regulatory responses. When new technological or financial products emerge, they often outpace existing legal categories, which requires regulators and policymakers to determine how those products fit within existing frameworks or whether new ones are required.[113] This historical pattern has occurred with algorithmic trading patterns[114] and innovations in decentralized finance,[115] and is also evident here. Prediction markets have transformed uncertainty into tradable contracts at a pace that has left legislators, regulators, and courts scrambling to determine who and how to regulate transactions on prediction market platforms. The result is an active and ongoing contest between the states and federal government over regulatory jurisdiction and policy preferences as it relates to prediction market platforms.

At the federal level, the CFTC has long asserted its authority over event contracts, taking the position that these transactions fall within the Commodity Exchange Act's broad definition of swaps.[116] The agency's use of this authority, however, has vastly changed between the Biden administration and the second Trump administration. In 2023, under the Biden administration, Kalshi extended its offerings and self-certified election-related event contracts for trading on its platform.[117] In response, the CFTC issued an order disapproving Kalshi's election event contract, stating that the contract involved gambling, was prohibited under state law, and was against the public interest.[118] The CFTC also issued proposed rules to regulate event contracts on prediction markets in June 2024, which would have banned political, sports,

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[113] Pollman & Barry, *supra* note 84, at 398; Veronica Root Martinez, *Purpose-Driven Compliance*, 13 TEXAS A&M L. REV. 1349, 1410 (2026).

[114] Gina-Gail S. Fletcher, *Deterring Algorithmic Manipulation*, 75 VAND. L. REV. 259, 274–75, 281–82 (2021).

[115] Gina-Gail S. Fletcher, Veronica Root Martinez & Steven L. Schwarcz, *Regulating DeFi Platforms*, __ MINN. L. REV. __ (forthcoming 2026).

[116] *See e.g.*, COMMODITY FUTURES TRADING COMM'N, *Understanding Prediction Markets and Event Contracts*, https://www.cftc.gov/LearnandProtect/PredictionMarkets (last visited Sep. 14, 2026).

[117] *In re Certification by KalshiEX LLC of Derivatives Contracts with Respect to Political Control of the United States Senate and United States House of Representatives*, COMMODITY FUTURES TRADING COMM'N (Sep. 22, 2023), https://www.cftc.gov/sites/default/files/filings/documents/2023/orgkexkalshiordersig230922.pdf.

[118] *Id.*

and entertainment event contracts for being contrary to public interest.[119] The agency reversed its stance on event contracts with the election of Trump and the change of Presidential administration in 2024. Under its new Chair Michael Selig, the CFTC has unequivocally stated that it had the exclusive authority to regulate event contracts, regardless of the event underlying the contract.[120]

Most state governments disagree with the CFTC's jurisdictional claims over all event contracts, instead asserting that some event contracts, specifically sports-related ones, fall within the ambit of state gaming laws.[121] In keeping with this view, some states have sought to regulate or outright prohibit certain prediction market offerings, particularly those event contracts tied to sports or other events historically governed by state gaming law.[122] These opposing positions have put the CFTC and the states on a collision path over the regulation of prediction market platforms and the event contracts traded thereon. As of September 2026, the CFTC has filed suit against nine states in an attempt to obtain "exclusive jurisdiction" over event contracts and to prevent what the CFTC characterized as a fragmented and inconsistent regulatory regime via the states.[123]

Yet, despite the CFTC's desire for uniformity in regulation of prediction market platforms, recent court holdings have diverged in their categorization of event contracts as swaps or gambling. Both the Third Circuit and the Ninth Circuit have been asked to decide whether sports event contracts should be treated as swaps under the CEA or gaming under state

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[119] Notice of Proposed Rulemaking, Event Contracts, 89 Fed. Reg. 48,968 (June 10, 2024), https://www.cftc.gov/sites/default/files/2024/06/2024-12125a.pdf.

[120] Michael S. Selig, *WSJ Op-Ed: States Encroach on Prediction Markets*, COMMODITY FUTURES TRADING COMM'N (Feb. 17, 2026), https://www.cftc.gov/PressRoom/SpeechesTestimony/seligstatement021726.

[121] Letter from Andy Wilson, Ohio Att'y Gen. to Christopher Kirkpatrick, Sec., CFTC, *Comments Related to the Notice Regarding Prediction Markets from Forty-Four States* (July 27, 2026), https://www.regulations.gov/comment/CFTC-2026-1189-0174.

[122] Brief of Amici Curiae of Nevada, Ohio, and 32 Other States, KalshiEx LLC v. Flaherty, No. 25-1922 (3d Cir. June 17, 2025), https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/2025-6-17-NJ-Amicus.aspx.

[123] Press Release, U.S. Commodity Futures Trading Commission, CFTC Sues Trio of States to Reaffirm its Exclusive Jurisdiction Over Prediction Markets (Apr. 2, 2026), https://www.cftc.gov/PressRoom/PressReleases/9206-26#:~:text=%E2%80%9CThis%20is%20not%20the%20first,risk%20of%20fraud%20and%20manipulation.%E2%80%9D; *see also* Matt Ford, *The Legal War Over Prediction Markets Is Getting Crazier*, NEW REPUBLIC (Aug. 19, 2026), https://newrepublic.com/article/214489/legal-war-prediction-markets-crazier. It is debatable whether the CFTC will prevail in this litigation effort. *See e.g.*, Gillian R. Brassil, *Wisconsin Prediction Market Crackdown Endures CFTC Challenge (1)*, BLOOMBERG L. (July 29, 2026, at 18:06 ET) (reporting that a federal judge permitted Wisconsin to continue regulating sports prediction markets as gambling despite the CFTC's challenge), https://news.bloomberglaw.com/securities-law/cftc-loses-bid-to-halt-wisconsin-prediction-market-crackdown.

law; each reached a different conclusion. In answering this question, the Third Circuit held that sports event contracts traded on CFTC-licensed exchanges are swaps and, as such, subject to the exclusive jurisdiction of the CFTC. The Ninth Circuit, for its part, found that sports-based event contracts bear the hallmark of gambling and the CEA did not preempt state regulation of sports event contracts.[124] At the writing of this Article, there is active litigation occurring between prediction market platforms and the CFTC, on the one hand, and various state and tribal gaming authorities, on the other hand, seeking a determination on which event contracts should be treated as gambling and which should be categorized as swaps and subject to federal oversight.[125]

In addition to the current conflicts between the states and federal government over what entity should properly regulate prediction market transactions, members of Congress have introduced a range of bills targeting prediction markets. The bills range from relatively narrow interventions that focus on insider trading by government officials to much broader proposals that would prohibit entire categories of event contracts due to their commodification of societal harms like war or terrorism.[126] For example, the proposed Banning Event Trading on Sensitive Operations and Federal Functions ("BETS OFF") Act, would prohibit event contracts where participants may possess or control material information about the event outcome, reflecting concerns about possible corruption, as well as the potential to commodify sensitive public functions and activities.[127] The volume and scope of the proposed congressional legislation suggests that prediction markets have moved from a niche financial product to a matter of national policy concern.

All this underscores just how important it is for lawmakers and regulators to structure properly the ex ante framework for prediction markets. Regulatory systems that develop in a piecemeal fashion can suffer from significant gaps or poorly aligned incentives that undermine the potential

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[124] KalshiEX, LLC v. Assad, 2026 WL 2543846, *3 (9th Cir., 2026). Notably, the Ninth Circuit has remanded the question of whether election-related event contracts were swaps or gaming.
[125] Hannah Schoenbaum, *Federal Judge Lets Utah Enforce Its Anti-Gambling Laws on the Prediction Market Kalshi*, ASSOCIATED PRESS (Aug. 5, 2026), https://apnews.com/article/utah-kalshi-prediction-market-regulation-467a74d689dd687c88cdad5e4da9fb3b; Brian Kerhin, *Ruling Lets Wisconsin Pursue Action Against Kalshi, CDNA and Similar Event-Contract Sites*, FOX 11 NEWS (July 31, 2026), https://fox11online.com/news/local/ruling-lets-wisconsin-pursue-action-against-kalshi-cdna-and-similar-event-contract-sites-commodity-futures-trading-commission-green-bay-law-judge-william-griesbach. *See generally*, Mick Bransfield, *Prediction Market Litigation Tracker*, MickBransfield.com (Sep. 11, 2026), https://mickbransfield.com/2025/08/11/summary-of-legal-actions-involving-kalshis-sports-event-contracts/ (tracking litigation prediction markets-related litigation).
[126] Desai, Mariotti & Harris, *supra* note 31.
[127] Press Release, Congressmen Amo, Murphy, Casar, Ansari, *supra* note 31.

effectiveness of governmental interventions over the long term.[128] Effective ex ante regulation does more than set the standards that could result in ex post punishment for misconduct; it establishes the baseline expectations that shape firm behavior. These platforms need clear rules regarding concerns like (i) what event contracts are permissible, (ii) what restrictions on trading should apply, and (iii) what obligations prediction market platforms and firms more generally have on monitoring participation in event contracts. Without a clear set of ex ante rules, prediction market platforms (and firms whose employees may trade on these platforms) lack the guidance necessary to structure their internal controls appropriately. The challenge, therefore, is not simply to regulate prediction markets, but to create the legal foundation necessary for enforcement authorities to generate sufficient external incentives for firms to invest in internal compliance and monitoring systems that will ensure proper conduct going forward.

For now, however, prediction markets remain in a moment of flux. Various authorities are currently offering and testing multiple regulatory levers simultaneously—federal securities and derivatives law, state and tribal gambling regimes, and newly proposed federal legislation—without a clear resolution as to how they will interact or which will dominate.[129] The regulatory framework emerging from this period will shape how prediction markets operate, as well as the incentives of those who build, finance, and participate in these platforms.

II. THE COSTS OF PREDICTION MARKET TRANSACTIONS

The popularity and benefits of prediction markets belie the numerous and varied costs that also accompany these event contract transactions. Part II details the significant costs that prediction markets impose on financial markets, platform participants, and third parties. It first explains how prediction markets undermine market integrity by facilitating insider trading and manipulation. It next considers the costs prediction markets impose on platform participants, including gambling-related harms, exploitation, and informational inequity. It then examines costs to third parties—individuals, firms, and institutions—who did not consent to participate in the market.

A. Costs to Financial Markets

Prediction markets push the boundaries of financial regulation in ways that appear to impose significant costs on financial markets. They create new

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[128] Veronica Root, *Coordinating Compliance Incentives*, 102 CORNELL L. REV. 1003, 1003, 1030–32 (2017).

[129] It is very likely that multiple levels will be needed to properly regulate prediction markets. These levels will require coordination by U.S. state and federal authorities as well as enforcement authorities globally.

opportunities for actors to gain financially from trading on nonpublic information and incentives for participants to manipulate market outcomes.[130] Together, these forms of misconduct undermine market integrity, not only within prediction markets themselves, but also across the broader financial markets. Before examining these harms, it is important to clarify both what constitutes the financial market at issue here and what we mean by market integrity.

Prediction markets do not operate in a vacuum. Modern financial markets are deeply interconnected, blurring traditional boundaries among securities, commodities, and derivatives.[131] Prediction market platform trading further entangles traditional financial market transactions. For example, many event contracts reference commodities (e.g., will oil exceed a certain price on a future date), securities (e.g., will GameStop acquire eBay), and macroeconomic events (e.g., will the Fed cut rates in July).[132] Activity on prediction markets can also affect other financial markets by influencing stock price, commodities prices, or broader investor expectations.[133] Concerns with market integrity therefore cannot be limited to prediction markets alone but must also encompass the broader financial markets with which they interact.

Market integrity refers to market fairness and the absence of market abuse within the financial markets.[134] Participants are likely to transact in a financial market that they perceive as fair. Conversely, perceived unfairness discourages financial market participation or causes traders to discount the

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[130] *See infra* Part II.A.1.

[131] *See* Matthias Raddant & Dror Y. Kenett, *Interconnectedness in the Global Financial Market* 1–2 (Office Fin. Rsch., Working Paper No. 16-09, Sep. 27, 2016), https://www.financialresearch.gov/working-papers/files/OFRwp-2016-09_Interconnectedness-in-the-Global-Financial-Market.pdf (explaining that modern global financial markets have become increasingly interconnected); Paul S. Atkins, Chairman, U.S. Sec. & Exch. Comm'n, Remarks at FIA Global Cleared Markets Conference, *Fostering Regulatory Harmony Between the SEC and CFTC*(Mar. 10, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-fostering-regulatory-harmony-between-sec-cftc-031026 (stating that innovation has blurred the once-distinct boundaries between securities, futures, and derivative markets).

[132] Of course, event contracts on prediction markets are not limited to events concerning financial markets. As discussed *supra* Part I.A, they encompass a vast range of events, including sports, culture, elections, and government affairs, among other things. Concerns about the impact of prediction markets on these non-financial markets are discussed *infra* Parts II.B and II.C.

[133] *See* Crawford, *supra* note 103 (noting that prediction markets tracking Jerome Powell's potential departure from the Federal Reserve moved with stock and bond markets and that prediction markets "contain economically meaningful information that is rapidly incorporated into broader financial markets"); Wolfers & Zitzewitz, *supra* note 7, at 112–13, 122 (showing that the "Saddam Security" contract price moved in lockstep with oil prices and concluding that this reflected a causal relationship, with war risk adding roughly $10 per barrel to oil prices).

[134] Fletcher, *Legitimate Yet Manipulative*, *supra* note 37, at 492.

value of financial market transactions.[135] In markets, such as prediction markets, where transactions are zero-sum—one person's loss is another's gain—the concept of fairness may seem unimportant given the inevitability of losses. However, even in zero-sum transactions, market integrity has salience for participants, who must believe that traders all enter transactions with an equal chance of success to maintain the integrity of the market.[136]

That expectation of equal opportunity is precisely what insider trading and manipulation threaten: they convert a market structured around competing predictions into one in which some participants can profit from privileged information or distorted market conditions. Prediction markets impose costs on financial markets by facilitating insider trading and incentivizing manipulation, thereby undermining market integrity, eroding public trust and confidence in the financial markets, and, notably, doing so in ways that exploit gaps in existing prohibitions.

1. Insider Trading

Prediction markets undermine financial market integrity by creating new pathways for the use of material nonpublic information. Event contracts allow individuals to profit from the outcome of corporate, political, or economic events.[137] Employees with access to confidential information about internal business developments or inquiries from governmental authorities may be able to monetize that information through event contracts, demonstrating one way these contracts create an alternative channel for potential insider trading that may fall outside existing legal prohibitions and internal compliance system rules.[138] Although prediction markets differ from financial markets, the concerns underlying insider trading prohibitions appear quite similar.

Insider trading undermines market integrity by allowing those with privileged access to material nonpublic information to extract profits unavailable to ordinary participants.[139] The informational asymmetry between

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[135] Gina-Gail Fletcher, *Engineered Credit Default Swaps: Innovative or Manipulative?*, 94 N.Y.U. L. REV. 1073, 1114 (2019).

[136] Fletcher, *Legitimate Yet Manipulative*, *supra* note 37, at 533 (explaining that a transaction harms market integrity if it upsets "the reasonable expectations of the parties that their transactions have the same likelihood of success or failure").

[137] Both Kalshi and Polymarket have claimed that they have developed robust surveillance systems to protect against insider trading. Stanford Law School, *Unpacking Prediction Markets*, YOUTUBE (Apr. 23, 2026), https://www.youtube.com/watch?v=JfT7P7rU2-g.

[138] Roxanne Petraeus, *Employee "Betting" in Prediction Markets: New Risks for Insider Trading and Proprietary Information Disclosure*, COMPLIANCE & ETHICS BLOG (Jan. 21, 2026), https://complianceandethics.org/employee-betting-in-prediction-markets-new-risks-for-insider-trading-and-proprietary-information-disclosure/; Grannis et al., *supra* note 12.

[139] *See* Fletcher, *Legitimate Yet Manipulative*, *supra* note 37, at 530–31 (explaining that market manipulation, including insider trading, undermines market integrity by allowing traders to

insiders and outsiders to the firm does more than produce potentially unfair financial gains; it distorts price formation, erodes investor confidence, and incentivizes the misuse of confidential information.[140] When a market is perceived as favoring insiders, potential market participants may withdraw from the market altogether or discount the reliability of market prices.[141] For these reasons, insider trading has long been understood as conduct that threatens both the fairness and efficient functioning of financial markets.[142] Notwithstanding the long-established prohibition against insider trading in the securities markets, some question whether insider trading laws apply to prediction markets with equal force.[143] From this perspective, the use of material nonpublic information in prediction markets exposes gaps between existing securities law, commodities law, and compliance frameworks.[144] And, importantly, not all trading on insider information that occurs on prediction markets would meet the legal definition of legally impermissible insider trading, especially in the securities markets.[145]

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profit unfairly through facially legitimate trades, thereby eroding public trust in the fairness of the markets).

[140] *See* Michael J. Fishman & Kathleen M. Hagerty, *Insider Trading and the Efficiency of Stock Prices*, 23 RAND J. ECON. 106, 106 (1992) (noting insider trading leads to "a loss of liquidity in the market," "perverse managerial incentives," and "a perception of unfairness and loss of investor confidence").

[141] *Id.* at 107.

[142] United States v. O'Hagan, 521 U.S. 642, 658–59 (1997); 45 Fed. Reg. 60412 (Sep. 12, 1980) (trading on misappropriated information "undermines the integrity of, and investor confidence in, the securities markets"). That said, not all individuals believe insider trading should be prohibited.

[143] *See, e.g.*, Nick Whitaker & J. Zachary Mazlish, *Why Prediction Markets Aren't Popular*, WORKS IN PROGRESS (May 17, 2024), https://worksinprogress.co/issue/why-prediction-markets-arent-popular. In the commodities context, liability for insider trading generally rests on the misappropriation theory, which extends liability beyond traditional insiders to reach those who trade on material nonpublic information in breach of a duty owed to the source of that information. It also rests on the Commodity Exchange Act's prohibition on trading nonpublic government information ("Eddie Murphy Rule"). Jay B. Sykes, *Prediction Markets and Insider Trading Law*, CONG. RSCH. SERV., 1–2 (Apr. 3, 2026), https://www.congress.gov/crs_external_products/LSB/PDF/LSB11406/LSB11406.4.pdf. Prediction market platforms have begun to attempt to stop insider trading. *See e.g.*, Larry Neumeister, Associated Press, *Kalshi Permanently Bans Ex-Congressman George Santos for Life After Concluding He Likely Was Insider Trading*, PBS NEWSHOUR (Aug. 31, 2026, at 12:22 PM ET), https://www.pbs.org/newshour/politics/kalshi-permanently-bans-ex-congressman-george-santos-for-life-after-concluding-he-likely-was-insider-trading.

[144] Amy Jane Longo et al., *Insider Trading in Prediction Markets Poses Compliance Risks*, BLOOMBERG L. (Apr. 9, 2026, at 04:30 ET), https://news.bloomberglaw.com/legal-exchange-insights-and-commentary/insider-trading-in-prediction-markets-poses-compliance-risks; PROSKAUER ROSE LLP, *Do Your Insider Trading Policies Cover the Prediction Markets? Should They?* (Mar. 12, 2026), https://www.proskauer.com/blog/do-your-insider-trading-policies-cover-the-prediction-markets-should-they.

[145] Insider trading law does not prohibit all trading on superior information. In securities markets, a finding of liability generally depends on (i) the use of material nonpublic

The increase in well-timed, highly lucrative wagers has fueled concerns that insider trading is occurring on prediction market platforms.[146] In response, the CFTC has emphasized that prediction markets are not a legal loophole for insider trading, stating that insider trading is illegal "in all our markets—including the prediction markets." The agency has identified trading on misappropriated information as a core enforcement priority[147] and has signaled that it will investigate and prosecute such conduct under its existing anti-fraud authority.[148]

2. Manipulation

Prediction markets also undermine market integrity by creating new incentives for manipulation. Similar to insider trading, manipulation allows bad actors to profit from abusive market tactics like misinformation, price distortion, or deceptive conduct.[149] Although manipulation has long been a central concern of financial regulation,[150] prediction markets create new opportunities to influence the outcome of tradable events. Prediction market transactions are particularly vulnerable to outcome manipulation—efforts to

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information in connection with a securities transaction and (ii) on a breach of a duty owed to the corporation's shareholders or to the source of the information. In commodities markets, liability generally turns on misappropriation, fraud, manipulation, or the use of nonpublic government information. Prediction markets, however, allow participants to trade on event-specific information that may be private or confidential information an individual received in advance of the public, but trading on prediction market platforms may not technically meet the elements required to deem an event contract transaction as legal insider trading. Yet, trading when one has advance or private information may distort prices and result in the extraction of financial gain from less informed counterparties.

[146] *See, e.g.*, Stuart A. Thompson & David Yaffe-Bellany, *Dozens of Polymarket Bets Show Signs of Insider Trading, The Times Finds*, N.Y. TIMES (May 18, 2026), https://www.nytimes.com/2026/05/13/technology/polymarket-insider-trading.html; Jon Wertheim, Jessica Kegu & Andy Bast, *Online Prediction Market Traders Make Millions Betting on U.S. military operations*, CBS NEWS (June 28, 2026, at 19:00 ET), https://www.cbsnews.com/news/prediction-market-traders-make-millions-betting-on-us-military-operations-60-minutes-transcript-2026-06-28/; Jon Wertheim et al., *Suspected Insider Accounts Net $2.4 million on Polymarket Iran War Bets With 98% Win Rate, Firm Finds*, CBS NEWS (May 17, 2026), https://www.cbsnews.com/news/betting-on-iran-war-insider-trading-concerns-prediction-markets-60-minutes/.

[147] David I. Miller, Dir. of Enforcement, U.S. Commodity Futures Trading Comm'n, Remarks at NYU Law School, Enforcement Priorities, Insider Trading in the Prediction Markets, and Cooperation with the CFTC (Mar. 31, 2026), https://www.cftc.gov/PressRoom/SpeechesTestimony/opamiller1.

[148] Sykes, *supra* note 143; Nicholas A. Caselli et al., *Regulating Insider Trading on Prediction Markets*, Freshfields (Apr. 9, 2026), https://www.freshfields.com/en/our-thinking/blogs/a-fresh-take/regulating-insider-trading-on-prediction-markets-102mp8l.

[149] Fletcher, *Legitimate Yet Manipulative*, *supra* note 37, at 493.

[150] Fletcher, *Benchmark Regulation*, *supra* note 36, at 1936. As Jerry Markham has famously opined: "The methods and techniques of manipulation are limited only by the ingenuity of man . . . ." JERRY MARKHAM, LAW ENFORCEMENT AND THE HISTORY OF FINANCIAL MARKET MANIPULATION 147 (2014).

influence the underlying event in order to guarantee the profitability of one's positions. Although outcome manipulation exists beyond prediction markets, such as points shaving in sports and benchmark manipulation in finance, prediction markets likely make it easier to accomplish, more lucrative, and more difficult to detect.

Consider a comparison to benchmark manipulation. In the 2010s financial regulators brought enforcement actions against several global banks after traders colluded to submit false interest rate data to influence benchmarks that determined the value of related contracts.[151] The scheme succeeded for years because it is difficult to uncover manipulation and, more notably, because the banks could exploit their conflicted position as both the setter and user of the interest rate.[152] Prediction markets create similar concerns. Traders may bet on outcomes over which they possess influence or control. The ability to exploit their conflicted position is particularly present in prediction markets because traders do not know their counterparties and there is currently no way to prevent conflicted parties from entering into self-serving transactions. Even absent a pre-existing conflict, prediction markets encourage outcome manipulation because traders need only influence a discrete event—not the whole market. It is easier to influence the most-streamed song on Spotify on a given day than it is to influence the most streamed song all year, just as manipulating a benchmark is easier than moving the price of a highly liquid security.[153] Additionally, because event contract outcome manipulation may require relatively little capital, such distortions may be more lucrative for (and more attractive to) would-be bad actors.

Prediction markets also complicate enforcement. Anti-manipulation claims are already difficult to prove under securities and commodities laws, particularly with respect to manipulative intent and artificial pricing.[154] These laws and regulations are notoriously complicated and contradictory, making it particularly challenging to successfully hold bad actors liable for market distortions.[155] Event contracts introduce additional uncertainty because many

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[151] Fletcher, *Benchmark Regulation*, *supra* note 36, at 1932, 1949–51.

[152] *Id.* at 1950–52.

[153] *See, e.g.*, Kate Knibbs, *Spotify Confirms Streaming Fraud After Kalshi Trader Cries Foul*, WIRED (July 2, 2026, at 14:30 ET), https://www.wired.com/story/spotify-streaming-manipulation-prediction-markets-polymarket-kalshi.

[154] Fletcher, *Deterring Algorithmic Manipulation, supra* note 114, at 274–275.

[155] *Id.* at 273–75. Proving manipulation under the securities and commodities laws requires a multi-prong showing of various elements. For example, under Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, the plaintiff must prove: (i) the defendant made a material misstatement or omission or used a fraudulent device; (ii) that she did so with scienter (i.e., intent); (iii) the defendant's conduct was related to the purchase or sale of a security; (iv) the plaintiff detrimentally relied; and (v) the plaintiff was harmed. To prove price manipulation under Section 6(c)(1) and Rule 180.1 of the Commodities Exchange Act of 1936, the plaintiff

underlying events occur outside traditional financial markets. A recent allegation of outcome manipulation involving Spotify illustrates the problem. A Kalshi user alleged that another trader employed bots to inflate the streaming count of a song tied to an event contract.[156] Even if regulators could identify the users behind the bots, it is uncertain whether their actions constitute illegal manipulation. Arguably, even if a bot generated the streams, if they are genuine, they accurately reflect Spotify's published metrics. Further, whether the person(s) behind the bots held event contracts or not, proving manipulative intent could be difficult: the absence of such positions undermines the motive to manipulate the outcome, while their mere existence may not, by itself, establish manipulative intent. Prediction markets therefore strain existing manipulation laws, likely making it more difficult for regulators to hold manipulators liable for their misdeeds.

Prediction markets, in sum, make manipulation easier to accomplish by lowering many of the traditional barriers to successfully distorting the market. While it is true that every market presents an opportunity for opportunistic conduct, the highly specific nature of event contracts makes outcome manipulation possible, profitable, and attractive. The ease with which actors can enter into event contracts and take actions to affect the outcome of the contract heighten the susceptibility of several event contracts to manipulation. And, importantly, manipulation laws will often struggle to adequately capture and punish actors across the various event contract markets,[157] many of which occur outside traditional financial markets.

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This subpart demonstrates the ways in which prediction markets are vulnerable to behavior that mirrors insider trading and manipulation concerns. Yet even when trading is not infected by insider trading or manipulation, prediction markets have the potential to expose participants to distinct risks arising from the platforms' design. The next subpart turns to those additional participant-facing costs.

B. Costs to Participants

Prediction markets also appear to generate significant costs to participants, by potentially exacerbating problem gambling, engaging in behavioral and financial exploitation, and generating unequal access to information.

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must demonstrate: (i) a manipulative act or omission; (ii) intent; (iii) causation; and (iv) artificial price.

[156] Knibbs, *Spotify Confirms, supra* note 153.

[157] *See supra* notes 38–44 and accompanying text.

Prediction markets may be contributing to a growing public health crisis in problem gambling.[158] A mounting body of evidence shows a correlation between the expansion of legalized sports betting and increases in gambling-related harms, including higher rates of addiction and financial distress.[159] Because at least eighty percent of recent prediction market revenue comes from sports betting, this issue is of central importance to prediction markets, blurring the line between financial instrument and gambling.[160] The risk is especially acute for younger and more vulnerable users, who may perceive participation as investing rather than high-risk speculation—a concern exacerbated by prediction market apps being listed as "Financial Services" on the app store, the ability to trade contracts before they resolve, and platforms' prominent offering of interest rates for cash deposited in digital wallets.[161]

Although prediction markets lack a traditional "house," they share many of the structural features of online sports gambling. Like online sportsbooks, prediction markets offer real-time trading, rapid feedback loops, continuous market availability, gamified interfaces, and the ability to wager on highly granular event outcomes.[162] Yet they also take traditional gambling a step further, introducing an unprecedented breadth and granularity of available

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158 Carlos Garcia, *Prediction Markets Have Made Betting Easier Than Ever—and Young Men Are Paying the Price*, FORTUNE (Apr. 10, 2026, 13:13 PM ET), https://fortune.com/2026/04/10/prediction-markets-gambling-addiction/ ("As platforms like Kalshi become more mainstream, a growing number of young people, especially men, are losing money on these apps. Mental health clinicians warn that prediction markets could exacerbate a growing public health crisis of problem gambling in the U.S.").

159 *See, e.g.*, Suzy Khimm, *Gambling Disorder Diagnoses Spike in States That Legalized Sports Betting, Study Shows*, NBC NEWS (June 26, 2026, at 18:24 ET), https://www.nbcnews.com/sports/sports-gambling/gambling-disorder-increased-legalized-sports-betting-rcna351785 (reporting a new study finding that diagnoses of gambling disorder rose more than 60% since 2018 in states that legalized sports betting, with the largest increase among young men, and noting other recent studies have linked online sports gambling legalization to increases in bankruptcies, debt, and credit card delinquencies); Jacob Goss & Daniel Mangrum, *Sports Betting Across Borders: Spatial Spillovers, Credit Distress, and Fiscal Externalities* (Fed. Rsrv. Bank of N.Y. Staff Rep. No. 1184, Mar. 2026), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr1184.pdf (finding a correlation between online sports gambling legalization and decreases in credit scores and increases in overall credit delinquency).

160 *See* Ian Frisch, *Prediction Markets and Casinos Go to War Over Sports Betting*, N.Y. TIMES (Feb. 7, 2026), https://www.nytimes.com/2026/02/07/business/dealbook/prediction-markets-sports-betting.html ("About 90 percent of the transaction fees [Kalshi] collects comes from sports events."); Radde, *supra* note 16 ("Sports has made up 80% of total trading volume on Kalshi and 39% on Polymarket since July 2024."); Devor, *supra* note 16.

161 *See* Packin & Rabinovitz, *supra* note 23, at 257 (stating that prediction markets' "[a]ddictive design, vulnerable users, and permissive regulatory environments are a well-established formula [ ] for population-level harm")

162 *See* Packin & Rabinovitz, *supra* note 23, at 257 (stating that prediction market platforms are "gamified, large-scale digital trading platforms enabling continuous, real-time global participation across jurisdictions, some operating on crypto-based infrastructure and optimized for engagement").

bets.[163] For example, a user watching a baseball game can bet on whether the next pitch will be a ball or a strike and learn the outcome within seconds. The platform then immediately invites the user to place another bet—on the next pitch, next at-bat, or another in-game event. The platform interface is designed to make trading feel both interactive and entertaining. Platforms increasingly integrate with the television viewing experience, displaying live prediction market odds embedded within sporting events and allowing users to move seamlessly between watching the game and placing bets.[164] These design features reduce the natural stopping points associated with traditional forms of gambling,[165] creating a virtually limitless sequence of betting opportunities. Prediction markets may therefore exacerbate some of the problems that traditional sportsbooks present, enabling high-frequency betting that is presented as financial trading, thus blurring the lines between entertainment and investment.

Prediction markets themselves appear to recognize their products' gambling-like features. Kalshi, for example, maintains a "Voluntary Self-Exclusion" webpage that allows users to restrict access to the platform "in order to limit their potential losses on the exchange."[166] That page also directs users to behavioral health organizations that provide treatment and support for gambling addiction.[167] These practices mirror responsible gambling practices commonly required of online sportsbooks.[168] Although prediction market firms frequently distinguish their products from gambling, the

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163 *See infra* note 191 (on ways in which prediction markets may exacerbate long-standing problems in sports gambling).

164 *See, e.g.*, Shwetha Surendran, *UFC Inks Deal with Prediction Betting Platform Polymarket*, ESPN (Nov. 13, 2025, at 10:21 ET), https://www.espn.com/mma/story/_/id/46953436/ufc-announces-deal-prediction-market-polymarket (discussing UFC's partnership with Polymarket, whereby prediction market odds and market activity are shown in live broadcasts, and whereby viewers can buy, sell, and trade throughout a live fight).

165 *See* John Fernandez, *Gambling Addiction: Growing Mental Health Concern Fueled by Online Betting, Prediction Markets*, BAPTIST HEALTH BRAIN & SPINE CARE (May 13, 2026), https://baptisthealth.net/baptist-health-news/gambling-addiction-growing-mental-health-concern-fueled-by-online-betting-and-prediction-markets ("Accessibility is one of the biggest changes we've seen. When gambling moves from a destination to something in your pocket, the barrier to entry disappears, and so does the natural stopping point.").

166 KALSHI, *Voluntary Self-Exclusion* (Mar. 16, 2026), https://help.kalshi.com/en/articles/13823789-voluntary-self-exclusion.

167 *Taking Back Control Starts Here*, SELFEXCLUDE, https://selfexclude.io/?referrer=kalshi-1 (last visited July 28, 2026); *Online Therapy for Gambling Addiction Recovery*, BIRCHES HEALTH, https://bircheshealth.com/(last visited July 28, 2026); *Online Counseling Designed for Your* Life, KINDBRIDGE, https://kindbridge.com/(last visited July 28, 2026).

168 *See* AM. GAMING ASS'N, *Responsible Gaming Regulations and Statutes Guide* (July 8, 2025), https://www.americangaming.org/resources/responsible-gaming-regulations-and-statutes-guide (noting that all 38 U.S. jurisdictions with legalized sports betting or online gaming require self-exclusion programs, 32 jurisdictions have codified commitments to fund treatment, education, or research related to problem gambling, and 29 jurisdictions require operators to let patrons self-limit deposits, losses, wagering amounts, or time spent gambling).

adoption of self-exclusion programs and referrals to gambling addiction resources reflect an acknowledgment that participation on these platforms can create risks akin to those of online sports gambling.

Prediction platforms also employ marketing practices that exploit less experienced and more financially vulnerable users.[169] Consistent with the venture-backed incentives described above,[170] prediction platforms aggressively seek to expand their user base, particularly among younger users who may be more susceptible to speculative betting. These firms frequently advertise on social media the success young traders have achieved, inaccurately portraying prediction markets as a pathway to easy wealth even though the vast majority of users lose money on the platforms.[171] Both Kalshi and Polymarket attempted to hire a fifteen-year-old gamer to promote their platforms, terminating the relationship a week later due to legal concerns.[172] Prediction market firms have paid college fraternities tens of thousands of dollars to recruit new users from their membership.[173] They have hired student influencers to produce sponsored content, in some instances hiding the sponsorship in violation of the law.[174] One student recruiter hired by Kalshi reported that her supervisor instructed her to target other students "because they 'spend money recklessly.'"[175] These practices raise significant concerns that prediction platforms deliberately deploy marketing strategies to exploit inexperienced, financially vulnerable users.

Exploitative prediction market practices extend beyond marketing to the design of the platforms themselves. Although prediction market firms are not banks—and are not regulated as such—they encourage users to deposit substantial sums into platform "wallets" by offering cash incentives for minimum deposits and the ability to earn an attractive interest rate on money stored within the wallet.[176] Once deposited into the prediction market platform

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169 Katherine Long, *'Is This Insider Information?' The Prediction Market Bets Driving a Campus Frenzy*, WALL ST. J. (Mar. 5, 2026, at 21:00 ET), https://www.wsj.com/business/media/prediction-markets-campus-e57cd19f (Kalshi posted that "[c]ollege campuses are the best place to spark new financial movements and will play a key role in bringing the next 100M users to prediction markets").

170 *Supra* Part I.C.

171 Long, *supra* note 169; Andrey Sergeenkov, *How Many Traders Are Profitable on Polymarket*, SERGEENKOV.COM (Apr. 6, 2026), https://sergeenkov.com/polymarket-profitability (finding 84% of Polymarket users are unprofitable).

172 Long, *supra* note 169 ("Kalshi briefly signed up a 15-year-old videogame streamer . . . to promote its brand on X as an affiliate. A week later, Kalshi ended the partnership. 'Yo brother, legal team confirmed that we can't work with minors rn,' a Kalshi employee wrote to the user . . . 'Kinda sad tbh.'").

173 *Id.* ("Polymarket mailed SigEp a wooden plaque recognizing them as 'the first Polymarket Pledge Class.'").

174 *Id.*

175 *Id.*

176 Garcia, *supra* note 153. ("Prediction markets also offer incentives for users to park sizable amounts of money on the platform."). Prediction platforms offer a meaningful interest rate in

wallet, those funds are immediately available for traders to enter into event contracts, which reduces barriers to trading and encourages significant participation by the user on the platform..[177] Thus, these platforms actively develop marketing and product strategies to encourage users, some of whom are financially vulnerable, to deposit more money and enter into event contracts on a frequent basis.

A final cost to participants arises from information inequality. Prediction markets are often defended on the theory that they are providing important and valuable information based on how participants engage the platform. For example, the prediction markets might tell us the front-running candidate better than typical polling strategies or whether farmers are likely to have successful crops of corn, which would impact the price of the commodity in the future. In practice, however, research suggests that prediction markets trading patterns appear to produce substantial disparities between a small class of sophisticated or informationally advantaged traders and the much larger population of ordinary users. One recent empirical study of Polymarket found that profits are "highly concentrated": the top 0.1% of users captured 51.2% of all gains, the top 1% captured 76.5%, and roughly 69% of users ended the sample period with a loss.[178] The same study found that successful participants on the platforms were more likely to implement sophisticated trading strategies, suggesting that participant outcomes turn not only on prediction accuracy, but also on differences in their ability to deploy advanced trading methods.[179]

Importantly, prediction market users do not always know whether they are trading against casual users or against professionalized traders who may be deploying proprietary software or algorithmic trading strategies. The New York Times has reported that prediction market "sharps" have earned six- and seven-figure annual returns by identifying what other traders have not yet priced into prediction market transactions, while less experienced users often

large lettering right next to the button users must press to place a trade. *See, e.g.*, KALSHI, https://kalshi.com/?op_market_ticker=KXCONGRESSPAYINCREASE-30-30JAN01&op_order_side=yes&op_side=BUY&op_order_type=dollars (last visited July 28, 2026).

[177] Garcia, *supra* note 153. Behavioral research shows that lowering payment frictions, especially through electronic payments, increases consumer spending. Richard H. Thaler, *Mental Accounting and Consumer Choice*, 4 MARKETING SCI. 199 (1985) (explaining how payment mechanisms influence consumer spending decisions); Marie-Claire Broekhoff & Carin van der Cruijsen, *Paying in a Blink of an Eye: It Hurts Less, but You Spend More*, 221 J. ECON. BEHAV. & ORG. 110, 112 (2024) (electronic payments increase overspending).

[178] Pat Akey et al., *Who Wins and Who Loses in Prediction Markets? Evidence from Polymarket*, 1, 3 (June 12, 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6443103.

[179] *Id.* at 3, 25.

serve as the "dumb money" on the other side of those trades.[180] Another report describes traders using what is known as arbitrage software to exploit price discrepancies across prediction platforms, with one trader reporting more than 1,000 arbitrage bets per week and more than $1 million in profit.[181] These strategies may improve price accuracy—one of the purported benefits of prediction markets—over time, but they also raise concerns about protecting ordinary participants of these platforms. When ordinary users are encouraged to treat prediction markets as accessible tools for trading on their beliefs while sophisticated counterparties deploy significantly superior trading strategies, the market's informational benefits may be at the cost of transferring wealth from less informed participants to more informed and better-equipped traders.

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The participant-facing costs described above are serious, but they arise within the trading relationship between or amongst users who chose to enter the market. As the next subpart shows, however, prediction markets also impose costs on people and institutions who never consented to participate at all in these transactions.

C. Costs to Third Parties

Prediction markets also generate costs to third parties who did not choose to participate in the market. There are a number of examples that suggest that prediction market trading can create costs that fall directly on third parties outside the event contract transaction. Moreover, once an event contract forms around the conduct of third parties, those third parties may face harassment, pressure, reputational injury, safety risks, or distorted incentives created by unknown individuals who now have a financial stake in what happens to the third party or the actions they take.

1. Individuals

Some event contracts are premised on direct harms to third parties, many of whom are already vulnerable populations. For example, a prediction market on immigration raids or deportation targets allows traders to profit from harms to immigrants and people of color. They may also incentivize traders to sow fear or spread harmful rumors. Prediction markets on recessions, unemployment, foreclosures, or other adverse financial outcomes

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[180] Adam Iscoe, *The Average Guys Outsmarting Wall Street on Prediction Markets*, N.Y. TIMES MAG. (May 26, 2026), https://www.nytimes.com/2026/05/26/magazine/polymarket-prediction-wall-street.html.

[181] Evan Gorelick & Katherine Chui, *You Can Make Free Money on Polymarket. If You Know Math.*, N.Y. TIMES (June 12, 2026), https://www.nytimes.com/interactive/2026/06/12/upshot/kalshi-polymarket-prediction-markets-arbitrage.html.

allow platform users to take a financial stake in the suffering of economically disadvantaged communities.[182] Contracts on disease outbreaks, weather catastrophes, overdose deaths, or other negative public health outcomes commodify communities facing devastating health events, making them the subject of speculation.[183] For example, bets on the Los Angeles wildfires in January 2025 incited concerns about encouraging arson for profit.[184] Kalshi's market on whether the hantavirus outbreak would escalate into a public health emergency generated more money than any other market opened in the same time frame, profiting from the suffering and death of the virus's victims.[185] Prediction market transactions on coups, wars, terrorist attacks, or regime changes monetize death and suffering of populations living through extreme volatility and may incentivize violence.[186] For example, users have bet over $2 billion on the Iran war and more than $50 million on whether Iran's Supreme Leader would be removed.[187] In these cases, prediction markets enable traders to profit from harmful events whose costs are borne disproportionately by vulnerable third parties.

In addition, because the value of an event contract depends on the occurrence or perceived occurrence of a real-world event, market participants may often have financial incentives to pressure, intimidate, or harass third parties who control or influence the event itself, or the information used to resolve the event. These incentives extend well beyond parties to the contract and may result in costs levied on athletes, journalists, or other individuals whose decisions or actions may affect the event's outcome. The surge in harassment of professional and college athletes provides a stark example.[188]

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[182] Don Heider, *Prediction Markets and the Common Good*, SANTA CLARA MARKKULA CTR. FOR APPLIED ETHICS (May 6, 2026), https://www.scu.edu/ethics-spotlight/the-ethics-of-prediction-markets/prediction-markets-and-the-common-good ("Other people's fear and suffering has become, in a very real sense, a way to make money.").

[183] Jamie L Pietruska, *Catastrophe Markets*, AEON (Mar. 27, 2026), https://aeon.co/essays/what-is-the-real-cost-of-betting-on-weather-catastrophes (betting on weather catastrophes); Heider, *supra* note 182.

[184] Alexander Osipovich, *Want to Bet on the L.A. Wildfires? Prediction Markets Are Getting Edgy*, WALL ST. J. (Feb. 1, 2025, at 05:30 ET), https://www.wsj.com/finance/regulation/prediction-market-bets-test-limits-c52f556d.

[185] Ananya Chetia, *There's Little Chance of a Hantavirus Global Outbreak. What the Latest Odds Say*, CNBC (May 11, 2026, at 14:14 ET), https://www.cnbc.com/2026/05/09/hantavirus-outbreak-little-chance-says-kalshi.htm.

[186] Allyn, *Prediction Market Trader*, *supra* note 4 (prediction contracts made betting on Iran's Supreme Leader's death); Khimm & Murphy, *supra* note 8 (prediction contracts made betting on war casualties); *Payoffs for Prediction: Could Markets Help Identify Terrorism Risk?*, NPR (Nov. 28, 2015, 08:00 ET), https://www.npr.org/2015/11/28/457672529/reviving-payoff-for-prediction-of-terrorism-risk (moral repugnance of markets on terrorism); Crumley, *supra* note 11 (on use of prediction markets in an attempt to rig elections).

[187] Kalshi ultimately cancelled the $54 million in payouts to the winning users, stating that it would not allow death contracts. Livni, *supra* note 4; Khimm & Murphy, *supra* note 8.

[188] Klawans, *supra* note 19 (finding that 48% of college basketball players report receiving online, verbal, or physical abuse, and 33% reported receiving direct blame for users' losses);

Platform users have threatened and abused athletes online, verbally, and even physically in an effort to influence athletic performance or in retaliation for losing wagers.[189] One student-athlete reported receiving nearly 1500 abusive messages in under two weeks, while others have reported receiving death threats after performances that caused platform users to lose money.[190] Empirical evidence suggests that much of the abusive conduct targeting student-athletes is directly linked to sports betting activity.[191] Concerned by the alarming rise in abuse, the NCAA has urged the CFTC to suspend prediction markets on collegiate sports until appropriate safeguards can be established to protect student-athletes and preserve the integrity of athletic competition from the particular problems that prediction markets—as distinct from traditional sportsbooks—pose.[192]

Similar incentives arise where a small number of individuals control information that determines the resolution of an event contract. Prediction market participants have targeted journalists, for example, whose reporting determines how a market settles. In one notable example, users threatened a journalist whose reporting determined the outcome of a contract on whether Iran would strike Israel on a particular day.[193] Platform users pressured the journalist to change his reporting in line with their bet, with one user writing, "believe that we have the capabilities, and after you make us lose $900,000, we will invest no less than that to finish you, or you end this now with money in your pocket and also earn back the life that you had until now."[194] By attaching financial rewards to the occurrence or reporting of real-world events,

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Heath, *supra* note 19; The Athletic NFL Staff, *How Widespread Sports Betting Affects NFL Players: 'People Have Said They'll Kill Me,'* THE ATHLETIC (Jan. 29, 2026), https://www.nytimes.com/athletic/7003985/2026/01/29/nfl-player-poll-sports-betting-fantasy-football/(quoting professional (NFL) football players who stated they have received death threats and abusive messages via social media from platform users).

189 Klawans, *supra* note 19; Heath, *supra* note 19.

190 Heath, *supra* note 19.

191 Heath, *supra* note 19. It is important to note that the surge in abuse of student athletes and the harassment of athletes more broadly cannot be solely traced to prediction markets. Indeed, this behavior has a long history tied to sports betting in general, which prediction markets replicate. Yet prediction markets may exacerbate this long-standing problem by significantly broadening the commodification of sports-related events, including those that historically may have fallen outside traditional sports books—such as whether a player will be injured or the outcome of a certain play. As a result, prediction markets not only contribute to athlete abuse and harassment, they may further increase incentives to engage in such behavior or to manipulate outcomes.

192 Baker, *supra* note 19.

193 The bet turned on whether a missile or missile fragments landed in Israel. Under the terms of the event contract, if an Iranian missile hit Israel, it would count as a strike. But if the missile was intercepted and only missile fragments fell into the country, it would not count. The losing platform users threatened the journalist whose reporting resolved the contract to update his article in their favor. Larson, Sánchez, & Troop, *supra* note 15.

194 *Id.*

prediction markets can incentivize intimidation, coercion, and abuse directed at third parties who never chose to participate in the market.

The reality is that whenever the outcome or resolution of an event contract depends on the discretionary decisions of a small number of individuals, those individuals become potential targets of those who are hoping to profit on the outcome of the event contract. Legislators negotiating the passage of a bill, Federal Reserve officials setting monetary policy, and even corporate executives making merger or disclosure decisions, may become vulnerable to pressure, coercion, or harassment to alter their behavior at the behest (or demand) of a prediction market participant. The costs of prediction markets thus extend to nonparticipants who never consented to bear the risks created by the event contract transactions occurring on prediction market platforms.

2. Firms

For a variety of firms—whether they are public companies, law firms, or accounting firms—prediction market transactions have required an examination of the firm's internal policies and procedures. One primary concern is that an employee may use confidential company information, or information they have obtained during the course of their employment, to their benefit in a prediction market transaction.[195] Importantly, existing insider-trading or related policies may not clearly cover prediction market participation, which has caused a flurry of concerns for leaders within firms. Companies must determine whether to (i) limit or prohibit all participation by employees in prediction markets, (ii) clarify existing codes of conduct cover prediction market trading,[196] and (iii) allow prediction market trading by employees,[197] and if allowed, must determine whether the employees have an internal disclosure obligation.[198] Regardless of the choices made, as the use of prediction markets continues to evolve, and as regulators continue to formalize new expectations, firms of all types will need to update and revise their compliance policies as they relate to these sorts of transactions.

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[195] *Lisa H. Bebchick et al., Prediction Markets and Your Compliance Program—Conflicts of Interest and Reputational Risks*, ROPES & GRAY LLP (Apr. 2, 2026), https://www.ropesgray.com/en/insights/alerts/2026/04/prediction-markets-and-your-compliance-program-conflicts-of-interest-and-reputational-risks

[196] *See e.g.*, MICROSOFT CORP., *General Insider Trading Policy*, Ex. 19.1 (July 29, 2026) (incorporating prediction market activity within a general insider trading policy), https://www.sec.gov/Archives/edgar/data/789019/000119312526323660/msft-ex19_1.htm.

[197] *See e.g.*, KBRA, *KBRA Announces Companywide Prohibition on Employee Participation in Prediction Markets*, BUSINESS WIRE (Apr. 29, 2026), https://www.businesswire.com/news/home/20260429614636/en/KBRA-Announces-Companywide-Prohibition-on-Employee-Participation-in-Prediction-Markets

[198] *Id.*

3. Institutions

Prediction markets also generate serious costs for the integrity and legitimacy of social institutions[199] by fundamentally altering the character of the events they monetize. This phenomenon is perhaps most visible in sports.[200] Rather than focusing solely on athletic competition, athletes may face incentives or pressure to alter their performance, manipulate discrete in-game events, conceal injuries, or otherwise underperform.[201] Indeed, sports betting has been linked to athletes intentionally changing their performance, including the recent indictment of Major League Baseball pitchers for throwing rigged pitches for financial gain.[202] As financial incentives become intertwined with athletic performance, sport shifts from athletic competition to an opportunity for speculation, eroding its social meaning and integrity while presenting the practice as financial investment.[203]

A similar dynamic can be identified in areas other than sports. For example, journalistic reporting becomes a mechanism for settling event contracts. Government decisions become opportunities for speculation by

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[199] *See* Seumas Miller, *Social Institutions*, STAN. ENCYCLOPEDIA OF PHIL. (Edward N. Zalta & Uri Nodelman eds., Oct. 22, 2025), https://plato.stanford.edu/entries/social-institutions/ (describing social institutions as complex social forms that reproduce themselves and consist of structures of roles, rules, functions, culture, power, and sanctions).

[200] O'Boyle, *supra* note 68; *see e.g.*, Rebecca Ungarino & Nick Devor, *JPMorgan Urges Caution on Prediction Markets While Allowing Employees to Trade Them*, BARRON'S (May 8, 2026), https://www.barrons.com/articles/jpmorgan-prediction-markets-kalshi-polymarket-0ed2457c.

[201] Shane Sanders, *Point Shaving in NCAA Men's Basketball: Behavioral Finance, Scale, and Deterrence*, 34 J. BEHAV. & EXPERIMENTAL FIN. 100670, 100670–73 (2022).

[202] Again, this problem plagues sports gambling in general, rather than prediction markets specifically. *Supra* note 191. Indeed, the above example of the indicted Major League Baseball players was linked to sports gambling generally rather than prediction markets per se. But this example illustrates how prediction markets create incentives and opportunities for performance manipulation analogous to those observed in sports gambling, foreshadowing the importance of regulating these event contracts as we regulate sports gambling. *Infra* Part III.C.3. Zack Meisel, *Guardians' Emmanuel Clase, Luis Ortiz Indicted on Charges Linked to Illegal Sports Betting*, THE ATHLETIC (Nov. 9, 2025), https://www.nytimes.com/athletic/6792150/2025/11/09/guardians-pitchers-sports-betting-scandal-mlb-clase-ortiz.

[203] These concerns underpinned why professional sports leagues long advocated for restricting sports gambling. *See, e.g.*, John T. Holden, Marc Edelman & Keith Miller, *Legalized Sports Wagering in America*, 44 CARDOZO L. REV. 1383, 1392–93 ("As states . . . discussed legalizing sports wagering in the early 1990s, major professional sports leagues and the National Collegiate Athletic Association (NCAA) began to organize a coalition to renew their attack on sports betting as an activity that they purported would corrupt the integrity of sports.").

prediction platform users.[204] Corporate decisionmaking,[205] elections,[206] and even war[207] have become the subject of event contracts. By attaching financial rewards to these sorts of everyday activities, prediction markets place actors who contribute to social institutions into another, competing role that may threaten their independent judgment and the legitimacy of the institutions they serve.

The legitimacy of social institutions[208] depends on decisionmakers exercising independent judgment according to their professional, legal, and fiduciary obligations. When athletes alter their performance or journalists modify their reporting, it diminishes the legitimacy of the institutions they represent—institutions that are key social, political, economic, and democratic pillars of society. By attaching financial rewards to decisions that should instead be governed by professional, legal, fiduciary, or public obligations, prediction markets do more than commodify uncertainty—they commodify the institutions themselves, threatening the independence, legitimacy, and public trust upon which those institutions depend.

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This Part has shown that there are both benefits and costs associated with prediction markets. Importantly, the platforms themselves financially benefit from every transaction, which means the platforms' upside is quite strong. The potential harms created by transactions on prediction market platforms, however, can impact the platforms, participants, third parties, public institutions, or society more broadly. That reality reveals a primary problem raised by the rise of prediction market: when should firms and users be permitted to financially benefit from commodifying uncertainty?

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[204] For example, prediction markets allow users to bet on government official behavior, from mundane events like whether the Chair of the Federal Reserve will say "good afternoon" in a press conference, to macroeconomic events like whether the Federal Reserve will raise interest rates or when a congressional vote will occur. Osipovich, *supra* note 184; KALSHI, *Government Shutdown on Jan 31, 2026?* (https://kalshi.com/markets/kxgovshut/government-shutdown/kxgovshut-26jan31 (last visited July 28, 2026); POLYMARKET, *US Government Shutdown Saturday?*, https://polymarket.com/event/will-there-be-another-us-government-shutdown-by-january-31 (last visited July 28, 2026).

[205] For example, a corporate executive may control disclosure timing, a merger closing date, or board announcements that are the subject of a prediction market event contract. Grannis et al., *supra* note 12.

[206] *See, e.g.* KALSHI *Elections*, https://kalshi.com/category/elections (last visited July 28, 2026); *US Election*, POLYMARKET, https://polymarket.com/politics/us-presidential-election (last visited July 28, 2026).

[207] *See, e.g.*, *War Predictions & Odds*, POLYMARKET, https://polymarket.com/predictions/war (last visited July 28, 2026).

[208] João de Pina-Cabral, *Afterword: What Is an Institution?*, 19 SOC. ANTHROPOLOGY 477, 485–86 (2011) (discussing institutions as systems of patterned expectations concerning the proper behavior of persons occupying designated roles, enforced by sanctions and treated as legitimate).

The answer cannot turn only on how an event contract is labeled (e.g., as a derivative or wager). Those traditional legal categories do not resolve whether a particular form of revenue or profit should be permissible. And these categories do not neatly encapsulate the sophisticated and emerging financial innovations the prediction markets rely upon, making them an inadequate mechanism by which to address the problems prediction markets raise. The relevant inquiry is whether the particular event contracts and the costs and benefits they produce justify allowing firms and platform users to earn revenue from those transactions.

Scholars have long debated the boundaries of acceptable and impermissible sources of revenue. For example, Jennifer Hinton's research, rooted in environmental literature, argues that evaluating legitimate sources of financial gain requires an inquiry into how money was earned, from whom value was extracted, and whether any relevant stakeholders knowingly and voluntarily contributed to the revenue-generating transactions.[209] Importantly, corporate law and compliance principles have long-recognized that profit seeking is not boundless. [210] They acknowledge that firms pursue revenue streams within a range of constraints, including constraints based on legal requirements, ethical expectations, and the societal risks created by their business models.[211] The upshot is that firms and individuals are not entitled, and have never been entitled, to pursue revenue streams unbridled, without some form of countervailing restrictions.

The task for lawmakers, therefore, is to determine which forms of profiting from prediction law should permit, which it should constrain, and which it should prohibit outright. Part III develops a framework for distinguishing among these categories.

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[209] Jennifer B. Hinton, *Limits to Profit? A Conceptual Framework for Understanding Profit and Sustainability* 1, 14–15 (Post-Growth Econ. Network Working Paper Series, No. 02/2022, 2022), https://www.econstor.eu/handle/10419/264903. Note, the environmental literature discusses the concept of bounded commodification, understanding that excessive concerns focused on profitability or revenue generation can cause people and companies to discount potential harms to the environment. *Id. See also* Margaret Jane Radin, CONTESTED COMMODITIES: THE TROUBLE WITH TRADE IN SEX, CHILDREN, BODY PARTS AND OTHER THINGS (1996) (arguing "for a conception of incomplete commodification, in which some contested things can be bought and sold, but only under carefully regulated circumstances.")

[210] *See* PRINCIPLES OF CORP. GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 2.01(a), (b)(1)–(3) (A.L.I.1994) (stating that a corporation may pursue profit only within legal boundaries and that corporate decisionmakers may take ethical considerations into account and devote reasonable resources to public welfare and similar purposes); PRINCIPLES OF THE L., COMPLIANCE AND ENFORCEMENT FOR ORGANIZATIONS §§ 1.01(g), (h), (m), (n), (v), 2.02(a)–(b) (A.L.I. 2021) (organizations should foster compliant, ethical, and risk-aware conduct, adhere to ethical standards and binding internal rules, and account for legal, financial, operational, and reputational risks created by noncompliance).

[211] *Id.*

III. ACCEPTABLE PROFITS FROM PREDICTION: A FRAMEWORK

The preceding Parts demonstrated that prediction markets create both substantial benefits and significant costs. This Part develops a framework for determining when to allow profit from prediction. It should be noted that in developing this framework, we believe that simply treating every event contract as a swap subject to CFTC regulations, without regard for the event on which the contract is based is insufficient. The current fight between the CFTC and the states paints event contracts with a broad brush, without an assessment of the costs, benefits, and social considerations that may accompany different types of event contracts. Further, much of the debate on how to regulate prediction markets focuses on specific, narrow categories of event contracts with little to no theoretical framing to guide future decisions on later-added event contracts. Our framework aims to fill that gap by drawing on common law contract doctrine, contract law theory, and adjacent literatures to identify the principles that should govern the legal treatment of event contracts traded on prediction markets. Building on those principles, this Part proposes a functional framework for evaluating event contracts and applies that framework to distinguish among contracts that should be prohibited, federally regulated, or governed primarily by state gambling law.

A. Establishing the Framework: Theoretical Analogies

At a baseline, prediction market transactions can be understood as another way for parties to enter into voluntary contracting relationships. Prediction market platforms provide the mechanism through which individuals freely transact to allocate risk and express beliefs about future events. Some event contracts may serve valuable informational purposes. Others may serve primarily entertainment purposes, with largely innocuous outcomes. As Parts I and II demonstrate, however, some event contracts may have serious negative consequences for participants, third parties, financial markets, and even public institutions. The law has always identified limits to legally enforceable contracts. Contract law has developed a range of doctrines reflecting the premise that the parties' desire to enter into a voluntary exchange does not by itself evidence the legal permissibility of certain transactions. The central task for scholars and lawmakers, therefore, is to attempt to identify under which circumstances otherwise permissible private exchange warrants legal intervention that would limit or prohibit such transactions.

To do so, this Part turns to contract law doctrine, theory, and adjacent legal areas to identify contexts in which the law limits voluntary transactions once their broader social costs exceed acceptable limits. Each of the following analogies addresses a distinct mechanism by which facially voluntary contracting can produce unacceptable costs and how law responds to them. First, historical limits on speculation illuminate when law has traditionally understood transactions that resemble risk allocation or information

aggregation instead to be impermissible transactions that generate manipulation, excessive risk-taking, or other social costs. Second, the implied covenant of good faith and fair dealing illustrates when contract law constrains conduct that, although consistent with an agreement's express terms, impermissibly interferes with a counterparty's reasonable expectations of the bargain. Third, the immoral markets literature and emerging scholarship on the social costs of innovation ask, respectively, when commodification and the introduction of new products or services create harms sufficient to overcome the ordinary presumption favoring voluntary exchange. Together, these analogies help produce a functional framework for distinguishing event contracts that facilitate private risk allocation and information aggregation from those that generate unacceptable social costs that justify tailored regulatory intervention.

1. Historical Limits on Speculation

Speculation—the ability of market actors to assume risks with the expectation of short-term profits—is an intrinsic aspect of the financial markets.[212] Speculators are not faced with a pre-existing risk that they seek to offset; rather, they enter the markets to gamble on potential outcomes they expect to be profitable. Their willingness to accept risks based on their expectations contributes to price discovery, information availability, and liquidity within the markets—all of which are necessary for an efficient market.[213] But speculation is not without limits. Excessive and unregulated speculation can be harmful not only to those who engage in it but also to third parties.[214] This risk is particularly of concern when traders speculate through financial or insurance contracts. When contract-based speculation creates unacceptable incentives for harmful conduct, courts, lawmakers, and regulators have traditionally stepped in to impose constraints on otherwise permissible market activity.[215] Recognizing the double-sided nature of speculation, the law has long relied on contract law doctrines to draw boundaries around acceptable forms of speculation, in an effort to delineate

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[212] Lynn A. Stout, *Why the Law Hates Speculators: Regulation and Private Ordering in the Market for OTC Derivatives*, 48 DUKE L.J. 701, 735 (1999).

[213] Fletcher, *Legitimate Yet Manipulative*, *supra* note 37, at 518.

[214] E. Glen Weyl & Eric A. Posner, *An FDA for Financial Innovation: Applying the Insurable Interest Doctrine to Twenty-First-Century Financial Markets*, 107 NW. U.L. REV. 1307, 1309. ("However, [gambling] is overwhelmingly a negative-sum activity, which, in the aggregate, harms the people who engage in it, and which can also produce negative third-party effects by increasing systemic risk in the economy.").

[215] In today's financial markets, examples abound of ways in which regulators try to limit speculation, such as leverage limitations, position limits in commodities trading, and rules limiting short selling activity. *See generally* Stout, *supra* note 212, at 713–33 (discussing many of the anti-speculation laws present in financial regulation).

between acceptable risk allocation and harmful risk generation. These concerns—and these doctrines—remain highly relevant to prediction markets.

Two common law doctrines are especially salient to identifying the boundaries of contract-based speculation: the rule against difference contracts and the insurable interest requirement. Both doctrines have limited the ways in which parties could speculate through contracts. Historically the courts established a rule against difference contracts, which denied enforceability to purely speculative contracts.[216] A difference contract is an agreement in which the parties agree to pay each other the difference between the contract price and the market price on a given date.[217] While this sounds very similar to a future or forward contract, the main distinction to courts was that neither party owned the commodity underlying the contract; both simply wagered on price movements. Thus, if the value of the contract was based on the increase (decrease) of the price of corn in three months, but neither party owned corn nor was otherwise exposed to the risk of corn prices fluctuating, the court would classify the agreement as an unenforceable difference contract rather than a legitimate hedging transaction. By refusing to enforce such contracts, courts signaled that speculation activity that lacked any underlying economic interest was less deserving of legal protection than contracts used to allocate existing risk.[218]

The second principle that common law courts developed to limit speculative contracts is the insurable interest requirement, which remains applicable in insurance law.[219] This doctrine requires that an insurance policy is only granted to someone that would suffer actual damages if the insured item (or person) were harmed or destroyed.[220] The insurable interest requirement prevents persons from using insurance contracts to gamble, but allows those with legitimate interests to be able to hedge future risk of loss.[221] Additionally, by linking insurability to one's potential for losses, the insurable interest requirement reduces incentives to cause the harm and profit from the insurance policy.[222] For example, if a person could insure a neighbor's home, they may have incentive to burn it down because they would not suffer the harm but would benefit from the recovery. Further, even if a policyholder has an insurable interest, insurance law generally denies recovery if the

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[216] *See* Stout, *supra* note 212, at 706, 714 ("In a difference contract . . . the contracting parties would agree to perform not by actually delivering the good that was the subject of the contract, but by paying the difference between the contract price and the market price at the time of performance.").
[217] *Id.* at 713–14.
[218] *Id.* at 713–18.
[219] John M. Stockton, *An Analysis of Insurable Interest Under Article Two of the Uniform Commercial Code*, 17 VAND. L. REV. 815, 815 (1964).
[220] *Id.*
[221] *Id.*
[222] *Id.*

policyholder intentionally causes harm to the insured person or property. Thus, insurance law and, historically, the common law, limit purely speculative contracting around risks parties do not bear and seek to ensure parties cannot profit from harms they had incentives to create.

While modern financial markets have largely abandoned both doctrines, the legacy of these foundational doctrines persists.[223] For example, most commodities trading today would qualify as a difference contract under the common law rule because parties to futures and options contracts on traded commodities are speculators who lack any ownership interest in the underlying commodity. Today, such transactions are a routine and lawful feature of modern financial markets. Similarly, credit default swaps, made (in)famous during the 2008 financial crisis, demonstrate that contemporary finance no longer requires either physical ownership or an insurable interest before parties may assume financial exposure.[224] However, financial markets regulations remain vested in curtailing excessive speculation and many of the existing limits on speculation are rooted in these common law doctrines.[225] Thus, although these doctrines have been mostly abandoned in the financial markets, they remain salient for their theoretical approach to circumscribing excessive speculation in the markets.

These doctrines reflect three enduring principles that remain highly relevant to prediction markets. First, speculation should serve a legitimate economic function. If a private contract is purely speculative, generates negative externalities, or creates harm to third parties, those types of contracts are typically restricted. Modern financial markets recognize that speculators can provide a variety of benefits, because they help contribute to price discovery, greater liquidity, and better informational efficiency. But those benefits justify speculation only when meaningful economic value accompanies it. Such contracts are similar to existing derivative contracts on commodities and securities and, as such, should be subject to similar limitations on speculation.

Second, these doctrines underscore how law should remove financial incentives to cause or manipulate an underlying event. Interfering with the outcome of a contract should negate a person's payout on the contract, and parties should not financially benefit from manipulating or causing the very events on which they wager. Similar to insurance law and historical common law principles, denying a payout to a party who attempts, successfully or not,

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[223] Though, again, the insurable interest requirement remains applicable under insurance law. Gary Meggitt, *Insurable Interest—The Doctrine That Would Not Die*, 35 LEGAL STUD. 280, 280 (2015).

[224] Fletcher, *Engineered Credit Default Swaps*, *supra* note 135, at 1081.

[225] Modern financial markets largely address these concerns through ex ante regulation, disclosure requirements, surveillance, position limits, and anti-manipulation rules rather than categorical prohibitions on speculative contracting.

to affect the outcome of the contract would serve to discipline parties and disincentivize such misconduct.

Third, contracts that raise public policy concerns—for example, by generating substantial harm to third parties or incentivizing misconduct—warrant legal constraints. Contract law has long imposed such limits through the doctrine of public policy, under which courts may invalidate voluntary agreements that are "based on principles that are directly contrary to the objectives of our laws."[226] Judicial disfavor of difference contracts was rooted in public policy concerns regarding the harms of speculation to the economy, participants, and third parties. Similarly, one of the goals of the insurable interest requirement is to disincentivize misconduct towards third parties. Prediction market contracts should likewise be considered in terms of public policy concerns. Event contracts based on individual actors, highly specific events, or easily manipulable outcomes should be more heavily scrutinized given the public policy concerns they raise and the extent to which these contracts may incentivize misconduct. Thus, although the modern financial markets have eschewed some of these common law principles, they and remaining contract law doctrine nonetheless provide useful guidelines to understand how to discourage problematic speculation in private contracting and how to limit the harms that may arise from such contracts.

2. The Implied Covenant of Good Faith and Fair Dealing

Even where a contract is otherwise lawful, contract law has also long recognized that parties may not act in bad faith or interfere with their counterparties' ability to receive the benefit of the bargain.[227] The implied covenant of good faith and fair dealing embodies that principle. It attaches to all contracts and cannot be eliminated.[228] By ensuring that the reasonable expectations of the parties are fulfilled, the implied covenant "assumes that neither party will act in such a way that will destroy or injure the right of the counterparty to receive the benefits of the contract."[229] Even in contracts in which one counterparty has discretionary authority in the contract's performance, the implied covenant requires that each party with authority act reasonably and in good faith.[230] Thus, a party who deliberately tries to interfere with the contract's outcome or otherwise deprive a counterparty from

[226] *In re* Baby M, 537 A.2d 1227, 1250 (N.J. 1988).

[227] Kathleen M. Miller, *When Can the Covenant of Good Faith and Fair Dealing Be Invoked?*, BUS. L. TODAY (Feb. 22, 2024), https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-february/when-can-covenant-good-faith-fair-dealing-be-invoked.

[228] *See* Fletcher, *Engineered Credit Default Swaps*, *supra* note 135, at 1128–30 (discussing how credit default swaps contracts modify, but do not eliminate, the implied covenant of good faith and fair dealing).

[229] Fletcher, *Engineered Credit Default Swaps*, *supra* note 135, at 1128.

[230] Miller, *Good Faith and Fair Dealing*, *supra* note 227.

receiving the benefit of the contract violates the implied covenant of good faith and fair dealing and renders the contract voidable. This doctrine is contract law's principal mechanism for policing impermissible opportunistic conduct after a contract has been formed.

The doctrine of good faith and fair dealing provides useful insight for event contracts because it recognizes that parties should not profit by interfering with the contractual expectations of their counterparties. It underscores the impermissibility of opportunistic or manipulative behaviors that ultimately deprive counterparties of their contractual benefits.

Yet, in a traditional bilateral contract, the principle of good faith and fair dealing can be enforced efficiently ex post by voiding the agreement or awarding other judicial relief in the presence of bad faith behavior. Prediction markets transactions, however, present an additional problem. Although event contracts are formally between two parties with opposing views on the outcome of the contract, thousands of unrelated traders replicate virtually identical contracts simultaneously. As such, by the time a court could determine that one party interfered with an event contract in violation of the implied covenant of good faith and fair dealing, countless innocent counterparties will have already traded, settled, and relied on the market. Ex post remedies are therefore too little, too late.[231]

The previous Spotify prediction market example illustrates the problem. In June 2026 there were $3 million worth of event contracts tied to which song would be the month's most streamed track.[232] After the event contracts settled in favor of a lesser-known song, Spotify discovered artificial streaming activity that had pushed the winning song to number one on the charts. However, by the time the fraud was discovered, the event contracts were settled and winners paid their earnings. Importantly, among those winners was likely the (still unidentified) perpetrator of the streaming fraud and also market participants who were unconnected to and unaware of the fraud. The problem is not simply that one trader may have violated the implied covenant. It is that the purported manipulation affected thousands of identical contracts, which involved numerous innocent counterparties who neither participated nor knew of the misconduct.

Once event contracts of this nature have settled (e.g. taken wealth from the losers and given it to the believed winners), unwinding those transactions is often not practical, and potentially not sufficient, to put the parties back in the position they would have been before the contract was entered into. The implied covenant of good faith and fair dealing thus not only identifies an

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[231] *See* Part C.4 *infra* (on the importance of ex ante market design in addressing opportunism).
[232] Denitsa Tsekova, S*potify Challenges Prediction Markets After Song Chart Rigging*, BLOOMBERG (July 2, 2026), https://www.bloomberg.com/news/articles/2026-07-02/spotify-challenges-prediction-markets-after-song-chart-rigging.

important principle for understanding when prediction markets users should not be permitted to profit, helping to inform the appropriate boundary conditions for these markets. It also underscores the importance of ex ante design and enforcement in order to ensure compliance with the doctrine remains possible.

3. Immoral Markets & the Limits of Innovation

Contract law theory has long recognized—through, among other doctrines, the doctrine of public policy—that the presence of voluntary exchange does not, on its own, justify every form of commodification or every new product or market practice. Two literatures help illuminate these limitations in the context of prediction markets. First, the literature on morally contested markets asks when commodifying particular goods, services, relationships, or events creates harms sufficient to overcome the ordinary presumption that private actors are permitted to agree to engage in voluntary exchanges. This literature has considered markets in, for example, organs, surrogacy, blood, sperm and eggs, sex work, adoption, and other goods or services that many regard as inappropriate subjects of market exchange. This scholarship, which spans multiple disciplines, has long discussed whether some goods and services should be excluded from market valuation altogether. Second, emerging scholarship on the social costs of innovation examines when novel products and services, though privately beneficial to some participants, impose broader social harms or distributional consequences that warrant legal intervention. These literatures on commodification and innovation are particularly relevant to prediction markets, which commodify in novel ways future events via prediction market transactions.

Together, these literatures offer insight for evaluating when the ability of parties to contract should be constrained or prohibited. The literature on morally contested markets identifies several reasons why voluntary exchange may be an inadequate basis for permitting a given transaction. Scholars note that even when there are immediate benefits to the parties of the transaction, commodification may alter social norms, change incentives, or shift costs onto third parties and vulnerable populations in unacceptable ways.[233] First, commodification may corrupt or alter the meaning of the underlying good, service, relationship, or event. Critics of the commercial exchange of organs, surrogacy, or sex work, for example, worry that permitting such exchanges may degrade the human body (e.g., sex work), alter the meaning of parenthood or intimacy (e.g. surrogacy contracts), or crowd out altruistic behavior (e.g.

[233] *See* Kimberly D. Krawiec, *Markets, Repugnance, and Externalities*, 19 J. INSTITUTIONAL ECON. 944, 946–48 (2023) (noting the difficulty of drawing sharp lines between bodily labor that may be compensated and bodily labor that may not).

organ donation).[234] Second, commodification of certain products or services may at times reinforce existing societal inequality, particularly when those with fewer resources are induced to sell access to their bodies, labor, or private lives to wealthier market participants.[235] Third, a transaction may impose harms on nonparties by altering the incentives that influence how individuals behave, shifting social norms, or externalizing costs onto vulnerable individuals and public institutions.[236] The central question, as Kimberly D. Krawiec has explained, is thus not merely whether willing buyers and sellers would transact, but whether the subject of exchange is one that should be bought and sold at all.[237]

Each of these concerns may arise in the prediction market context. Event contracts that commodify for example, the death of a named individual,[238] catastrophic events,[239] or an individual's engagement in sexual activity[240] raise concerns about corrupting the meaning of the underlying event. Permitting event contracts on this sort of activity threatens to erode societal norms of dignity and privacy that are ordinarily treated as outside the boundaries of permissible commercial exchange. Additionally, event contracts may exploit societal inequality when they turn the circumstances of economically or socially vulnerable individuals into the subject of event contracts. For example, a contract on whether ICE will deport more than 750,000 people in a given year[241] permits traders to profit from adverse outcomes experienced by people with limited political or economic power. In addition to potentially exacerbating societal inequality, event contracts tied to mass deportations may also create perverse financial incentives for traders to

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234 *See id.* at 947–48; Herjeet Marway, Sarah-Louise Johnson & Heather Widdows, *Commodification of Human Tissue*, *in* HANDBOOK OF GLOBAL BIOETHICS 581, 592–95 (Henk A.M.J. ten Have & Bert Gordijn eds., 2014).

235 Anne Phillips, *It's My Body and I'll Do What I Like with It: Bodies as Objects and Property*, 39 POL. THEORY 724, 724–28, 739–43 (2011).

236 *See* Krawiec, *supra* note 233, at 946–48 (noting the difficulty of drawing sharp lines between bodily labor that may be compensated and bodily labor that may not).

237 Krawiec, *supra* note 233, at 945–46; *see also* Marway, Johnson, & Widdows, *supra* note 234, at 592–95 (defining commodification as a process through which persons are treated as things and relationships are transformed into contracts).

238 Tom Westbrook, *Prediction Markets Scrutinized as Millions Made by People Betting on Death of Ayatollah Ali Khamenei*, THE INDEP. (Mar. 2, 2026), https://www.the-independent.com/news/business/polymarket-iran-bets-khamenei-death-b2929971.html.

239 Legislation introduced in New Jersey would prohibit prediction markets that allow trading on death markets and catastrophic events. NAT'L CONF. OF STATE LEGISLATURES, *Prediction Markets 2026 State Legislation* (Sep. 9, 2026), https://www.ncsl.org/financial-services/prediction-markets-2026-state-legislation.

240 POLYMARKET, *How Many Men Will Lily Phillips Have Sex with in One Day?* (last visited Sep. 12, 2026), https://polymarket.com/event/how-many-men-will-lily-phillips-have-sex-with-in-one-day.

241 POLYMARKET, *Will Trump Deport 750,000 or More People in 2025?* (last visited Sep. 12, 2026), https://polymarket.com/event/will-trump-deport-750000-or-more-people-in-2025.

engage in activity that purposefully seeks to increase removal rates for the sole purpose of obtaining personal financial gain.

Emerging scholarship on antisocial innovation reaches a related conclusion from a different direction. Innovation is often treated as presumptively beneficial, particularly when a new product or market practice is financially lucrative or expands consumer choice.[242] But much innovation may also impose significant individual, environmental, competitive, labor, privacy, and societal harms that are not reflected in the private gains to innovators or participants.[243] Some innovations may be harmful on balance while others may benefit some participants but produce objectionable distributional consequences.[244] The venture capital firms that finance and scale innovation may privilege private returns while crowding out social objectives,[245] narrowing the range and quality of innovation and displacing socially valuable alternatives.[246] This scholarship therefore cautions against assuming that, for example, novelty, financial lucrativeness, or voluntary consumer uptake necessarily demonstrates an innovation's social value.[247] Rather, law should assess the incentives embedded in a new product or market practice, the harms the product or practice foreseeably creates, and whether those harms can be adequately addressed after the product or practice becomes widespread.[248]

This scholarship is directly relevant to prediction markets, which are often lauded as innovative mechanisms for aggregating information and expanding consumer choice. But those claimed benefits do not necessarily establish that every category of event contract should be legally permissible. Instead, the research on antisocial innovation reinforces the importance of scholars and policymakers carefully scrutinizing whether particular types of event contracts create harms that warrant ex ante legal intervention.

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[242] Buccafusco & Weinstein, *supra* note 87, at 609 ("[M]ost popular and scholarly discussion of innovation treats it as an unalloyed good. But many innovations don't improve the world; they make it worse.").

[243] *Id.* at 585, 639 (cataloguing six categories of "antisocial innovation harms" and stating that "we live in a world in which much innovation is socially harmful").

[244] *Id.* at 637 (on the potential distributional harms of innovation).

[245] Aguirre, *supra* note 29, at 68 ("VC—the most prestigious and coveted form of startup funding—is structured to crowd out social performance").

[246] Aguirre & Burstein, *supra* note 80, at 4 (this dynamic "narrows the scope of technological development, discourages experimentation, and pulls innovators away from high social value projects").

[247] Buccafusco & Weinstein, *supra* note 87, at 639 (writing to "caution against the all-too-easy ascription of positive value to innovation")

[248] *Id.* at 648, 654 (advocating greater ex ante scrutiny of innovation for antisocial effects); Stuart Minor Benjamin & Arti K. Rai, *Fixing Innovation Policy: A Structural Perspective*, 77 GEO. WASH. L. REV. 1, 6 (2008) (advocating a federal Office for Innovation Policy that would oversee various aspects of innovation governance ex ante).

It is important to note that neither the literature on immoral markets nor the emerging scholarship on antisocial innovation embraces a categorical anti-"market" position. Scholars of morally contested markets have explained that it is important not to confuse objections to what is being sold with objections to how it is being sold.[249] In their view, many concerns raised about corruption, coercion, exploitation, or externalities may be addressed through appropriate market design.[250] Similarly, scholarship on antisocial innovation does not presume that a product or service is harmful merely because it is new, controversial or disruptive, but rather, calls for an assessment of the innovation's concrete social costs, distributional effects, and potential benefits.[251] These sorts of critiques require opponents of commodification and antisocial innovation alike to identify a specific mechanism through which an exchange or innovation causes harm, rather than relying on personal intuition or societal unease as a sufficient basis for regulatory intervention. Immoral markets scholars have demonstrated that institutions frequently manage, reframe, or make moral repugnance more acceptable through institutional practices (e.g., recasting organ donation or surrogacy in gift language) and other sorts of interventions in an effort to preserve the market's permissibility.[252] Antisocial innovation scholars have likewise explained how legal and institutional arrangements can preserve the private benefits that incentivize innovation while better accounting for its pervasive social costs.[253]

Taken together, these literatures provide a useful framework for evaluating event contracts that looks beyond the presence of voluntary exchange, the efficiency or informativeness of the event contract, or whether the product fits neatly within existing categories such as gambling or derivatives. Instead, this literature focuses on whether commodification unacceptably alters the social meaning of the underlying event being traded upon, exploits societal inequality, or imposes material harms on third parties. This framework does not imply that every unfamiliar, controversial, or unsettling event contract should be prohibited. Rather, it supports ex ante limits when a category of contracts presents identifiable and substantial harms, underscoring that while some event contracts should remain beyond the bounds of voluntary exchange, others may be permissible assuming appropriate operating constraints are implemented.

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[249] Jason Brennan & Peter Jaworski, *In Defense of Commodification*, 2 MORAL PHIL. & POL. 357, 359–68 (2015); Jason Brennan & Peter M. Jaworski, *Markets Without Symbolic Limits*, 125 ETHICS 1053, 1053–62 (2015).

[250] Brennan & Jaworski, *In Defense of Commodification*, *supra* note 249, at 365.

[251] Buccafusco & Weinstein, *supra* note 87, at 656–57 (rejecting a precautionary principle approach to new innovations and endorsing an assessment that considers both forgone innovation benefits and costs to society).

[252] Kieran Healy & Kimberly D. Krawiec, *Repugnance Management and Transactions in the Body*, 107 AM. ECON. REV. 86, 86–89 (2017).

[253] Buccafusco & Weinstein, *supra* note 87, at 656.

These concerns are precisely the type traditionally reflected in the contract law doctrine of public policy. Although parties ordinarily may structure lawful bargains as they choose, courts will not typically enforce agreements that involve a subject matter or means of performance that contravenes clearly established public policy.[254] The challenge for prediction market transactions, however, is that some transactions seem to fall under clearly existing public policy understandings while other transactions fall in zones where public policy is still evolving. That said, the doctrine of public policy can help supply a doctrinal basis for distinguishing between legally permissible event contracts with informational benefits from those that look analogous to the types of voluntary exchanges that warrant constraint or prohibition.

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Taken together, contract law doctrine and theory demonstrate that lawmakers, policymakers, and legal scholars have long debated the proper boundaries for allowing private actors to enter into voluntary agreements. A desire to promote voluntary exchanges between private parties via contract is insufficient on its own to determine whether a market activity should be legally protected. Drawing from this doctrinal and theoretical foundation, the task, therefore, is to develop a principled framework for distinguishing among event contracts that should be permitted, that should be regulated, and that should be disallowed.

B. A Framework for Evaluating Event Contracts

This subpart—building on the understanding of the costs and benefits of prediction market transactions—translates the preceding doctrinal and theoretical insights from the field of contracts and adjacent literatures into a framework for evaluating the permissibility of event contracts. It identifies three factors that scholars and lawmakers should consider when determining when firms and individuals should be permitted to gain financially from transactions on prediction markets. The factors focus upon whether the contract (i) falls outside the bounds of permissible private exchange (ii) imposes material costs on third parties, and (iii) incentivizes opportunistic conduct. Prediction markets should not receive presumptive legal protection just because traders voluntarily transact or a contract may produce informational benefits. Under this framework, profit from prediction is permissible only when the event itself is an appropriate object of market exchange; the event contract does not impose impermissible costs on third

254 *See* TRACEY E. GEORGE & RUSSELL KOROBKIN, K: A COMMON LAW APPROACH TO CONTRACTS 1, 221 (3d ed. 2021) (discussing the public-policy doctrine).

parties; and a trader is not exploiting a positional advantage or manipulating an event contract's result.

In applying these factors, this subpart incorporates the applicable cost framework outlined in Part II—which focuses on costs to markets, participants, and third parties. This subpart, therefore, attempts to create a framework for understanding the boundaries that should be in place for allowing financial gain from prediction market transactions. It operationalizes the concept of bounded commodification, which stands for the proposition that there are proper limits—legal, ethical, and societal—that do and should constrain the private transactions profit-seeking individuals and firms may pursue.

1. Out of Bounds: Is the Event an Appropriate Object of Market Exchange?

Policymakers and regulators should consider whether allowing certain types of event contracts contradicts or is incompatible with existing legal regimes or societal norms. The doctrine of public policy and the literatures on immoral markets and antisocial innovation are instructive here. Some event contracts observed on prediction markets over the last few years are not merely risky or manipulable; they involve human suffering, public violence, national security, democratic governance, or other human and institutional interests that existing law has, in adjacent contexts, already treated as beyond the bounds of private exchange and commodification. Applying the principles reflected in these existing legal limits to the prediction market context suggests that law may properly refuse to convert these subjects into opportunities for private financial gain. In other words, there are some categories of event contracts that may need to be banned completely.

This is, admittedly, a fraught endeavor: the fact that person A finds an event contract offensive does not mean that person B should as well. And the law must be careful in elevating the preferences of person A over those of person B, even if person B's primary reason for attempting to enter into a contractual relationship is for entertainment value. That said, lawmakers make these sorts of policy determinations on a routine basis, even as a subset of groups within society contest those decisions. Any preemptive bans need to assess the nature of the contract itself—and guided by the scholarship on immoral markets and antisocial innovation—determine if a market for such activities is unacceptable.[255]

[255] It is worth noting that the ways in which event contracts are created on these platforms means that there could be conduct that is deemed impermissible after the event contract has occurred. In those instances, questions may arise about how to untangle the payouts that occurred as a result of this contract. One way to deter impermissible contracting may be to take the entire pot of money that was wagered on the impermissible contract and put it

2. Material Harms: Does the Event Contract Impose Impermissible Costs on Third Parties?

Scholars and policymakers should also evaluate where the costs of an event contract are likely to flow. As recognized above, contract law generally permits parties to make voluntary bargains regardless of the positive or negative consequences of those decisions to the parties themselves. [256] Individuals can enter into contracts that are significant or meaningful—personally or professionally—and they can enter into contracts that are silly or esoteric.[257] But that presumption weakens when individuals' decisions to contract will result in material harms to third parties. The law may look more closely at the permissibility of those contracts.[258]

- **Individuals.** As Part II explains, event contracts can impose a range of costs on third-party individuals whose conduct helps determine the resolution of an event contract, but who are not parties to the contract (and may not be aware of its existence). Athletes, journalists, and other individuals may face harassment, threats, or pressure from traders seeking to affect the outcome of an event contract. These individuals might be completely unaware that their conduct would implicate the resolution of an event contract prior to being threatened.
- **Firms.** Firms will often bear ordinary compliance costs as prediction markets expand, and those costs alone do not justify restricting event contracts.[259] A different concern arises when an event contract creates foreseeable reputational or operational

somewhere other than back in the hands of the platform users. The idea would be to create a strong disincentive for users to attempt to bet on items that they know are likely to be banned after the fact, because they will eventually lose the consideration they put forward regardless of if they win or lose the event contract itself. The analogy would be to something like disgorgement of ill-gained profits, only in this instance all monetary bets associated with the banned transaction would be forfeited, confiscated, and reallocated to parties other than the users who entered into the transaction or the platform (e.g. to a charitable organization). We are grateful to Evan Absher for this insight.

[256] *See* GEORGE & KOROBKIN, *supra* note 254, at 117–18 (explaining that courts ordinarily support the parties' voluntary choices)

[257] *See id.* at 19–22 (discussing *Hamer v. Sidway*, in which an uncle promised his nephew $5,000 if the nephew refrained from drinking, using tobacco, swearing, and gambling until age twenty-one).

[258] *See* GEORGE & KOROBKIN, *supra* note 254, at 221 (explaining that the public-policy doctrine protects third parties and society when voluntary contracts threaten unjustified external harms and that courts may refuse to enforce contracts that contravene public policy).

[259] The new compliance costs that firms need to absorb as a result of prediction market trading are likely not the types of costs that should require policymakers to restrict users' ability to engage in prediction market transactions. They are additional costs, but firms are required to respond to a variety of external factors in developing their compliance programs. *See* Martinez, *Purpose-Driven Compliance*, *supra* note 113.

harms to firms. A contract involving fictitious product failures or executive misconduct, for example, may function as a misleading "truth signal," which may then impose real reputational costs on the firm in question or may confer a competitive advantage to other firms even if the listed event contract has no credible basis in fact.

- **Societal Institutions**. Event contracts can also impose costs on societal institutions, including governmental actors and authorities and journalists reporting on regular events. When a contract turns the activities of actors within societal institutions into a source of potential financial gain for platform users, it may create a set of problematic—or even unacceptable—incentives to act in ways contrary to the institution's underlying public purpose. Not every contract concerning a public institution will create such costs, but contracts that foreseeably do warrant heightened scrutiny.

Concerns of this nature harken back to the reasoning behind anti-speculation laws, some of which remain in insurance law today. They also implicate the immoral markets literature and scholarship on anti-social innovation, which underscore the importance of restricting contracts when they impose impermissible costs on third parties or society. The question lawmakers and scholars should focus upon is whether an event contract foreseeably shifts material costs onto third parties. If they do, the event contract necessitates heightened scrutiny rather than the ordinary deference accorded to parties' decisions to enter into voluntary private exchanges.

3. Opportunistic Conduct: Is the Trader Exploiting Positional Advantage or Manipulating an Event Contract's Result?

Scholars and regulators should assess whether allowing an event contract creates avenues for opportunistic conduct. Opportunistic conduct—like engaging in insider trading, market manipulation, or interference with the event resolution—could take a variety of forms that could be inconsistent with traditional contract law doctrine and theory. For example, a congressional staffer with nonpublic polling information might place prediction market bets related to that information and receive a windfall after the poll is released.[260]

[260] NPR reported that congressional staffers used unreleased polling information to place bets before the information became public, with one staffer stating he and his colleagues made "thousands" when the market moved after the poll's release. Luke Garrett, *Campaign Staffers Tell NPR They Make 'Thousands' Betting on Their Own Candidates*, NPR (May 7, 2026), https://www.npr.org/2026/05/07/nx-s1-5795891/prediction-markets-kalshi-polymarket-campaign; Lauren McGaughy, Campbell Robertson & Corina Knoll, *Kalshi Fines and Suspends 3 Political Candidates for Betting on Their Races*, N.Y. TIMES (Apr. 22, 2026), https://www.nytimes.com/2026/04/22/us/kalshi-suspends-politicians-trading-elections.html.

Similarly, an experienced trader might deploy sophisticated trading tools or other strategies to manipulate trades on the prediction market to the trader's advantage.[261] Additionally, there have been instances where individuals have attempted to manipulate the resolution of event contracts to manufacture a "win." This sort of opportunistic conduct recalls the concerns about costs to the market, prediction market platform participants, and third parties.

- **Market.** Opportunistic conduct by a user is problematic for the market itself, because it diminishes the integrity of the market. When one analogizes the laws of insider trading and market manipulation, it seems unlikely that an adjudicator would find these sorts of transactions permissible when one considers the contract doctrine of good faith and fair dealing.
- **Participants.** Opportunistic conduct as it relates to unwitting platform users and transaction partners is a concern, because it implicates the duty of good faith and fair dealing, which, as discussed above, the law requires of all legally enforceable contracts. If one party to the event contract transaction is engaged in what amounts to insider trading or is utilizing methods to manipulate the outcome of the transaction, traditional contract law principles would not permit that sort of behavior, which looks analogous to conduct the law traditionally prohibits.
- **Third Parties.** Opportunistic conduct can also create problems for third parties. For example, if a user threatens a third party to ensure a particular event contract resolution, that sort of incentive to act would be against existing public policy.[262] Additionally, if a firm's employees take inside information to benefit personally via a prediction market transaction, it could create problems for the firm, including causing consumers or clients to lose trust in the firm itself. This too would look like a problem under the doctrine of public policy, as this sort of misappropriation of firm information is not permitted in analogous legal contexts (e.g., under the securities laws).

The upshot is that event contracts structured to reward conduct the law ordinarily seeks to restrain—like insider trading, market manipulation, or impermissible threats—raise a distinct concern about whether they should be allowed as enforceable contractual relationships and how to design the market to deter such outcomes.[263] Permitting these sorts of contracts would allow users to profit on activities that traditional contract law principles and adjacent legal regimes typically would not deem permissible. . Regulators should

[261] *See* Weiss, *Exclusive: Paradigm*, *supra* note 79.

[262] Threats to third parties violate existing law in either the tort or criminal law context.

[263] Brennan & Jaworski, *In Defense of Commodification*, *supra* note 249, at 365.

therefore assess ex ante whether a category of event contracts predictably enables such opportunism and design the market in such a way as to monitor and deter such behavior while preserving any countervailing benefits these markets may provide.

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Together, these factors provide scholars and policymakers a framework for evaluating event contracts. This framework is not meant to be dispositive. It is an attempt to take existing legal understandings regarding the boundaries between permissible and impermissible contracting and apply it to the recent problems and controversies involving prediction market transactions. Regulators may need to look at the factors holistically to properly evaluate a particular set of event contracts. For example, a contract that generates substantial information or hedging value may still warrant regulation if it creates serious opportunities for manipulation or imposes significant negative externalities to third parties. Conversely, a contract that presents little risk of manipulation may be deemed impermissible if it commodifies human suffering or undermines important public institutions. Importantly, the above three-factor framework relies on broad standards as opposed to bright-line rules.[264] This approach gives lawmakers and regulators starting place for deciding when prediction-based revenue or profit should be permitted, when it should be constrained, and when law should refuse to recognize it at all. Part III.C applies this framework to identify the types of event contracts that should be prohibited, federally regulated, or left primarily to state law.

C. Applying the Framework: Differentiated Regulatory Responses

Applying the framework developed in Part III.B yields three distinct legal categories of event contracts. The first category is event contracts that should be presumptively prohibited, because the risks they create appear to outweigh their potential benefits. The second category is items that should be permitted, but should be subject to robust federal oversight, under existing securities and derivatives legal regimes. The third and final category argues that many of the event contracts on prediction markets are properly understood and categorized as gambling contracts, and they should remain subject to the historical domain of state gambling law. An attempt to create an omnibus legal intervention that will govern all prediction markets would likely be ineffective and incomplete, which necessitates this differentiated approach. That said, we acknowledge that reasonable people can disagree about the right lines to draw

[264] This approach appears consistent with Paul Oudin's recent taxonomy of prediction market users, which distinguishes among exogenous informed traders, endogenous traders who can influence the underlying event, and retail traders. Paul Oudin, *A Functional Analysis of Prediction Market Regulation* 7 (July 4, 2026) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7053718&trk=public_post_comment-text.

with regards to the permissibility of prediction market transactions. We expect an evolution in thinking and understanding surrounding these transactions will continue to evolve over time, but as a starting point, we believe there is enough information today to identify the below three methods for governing prediction market transactions at this time.

1. Presumptive Prohibition

There are some categories of event contracts being traded on prediction market platforms that should be presumptively prohibited. Because event contract transactions occurring on these platforms are dynamic, the categories of presumptively prohibited event contracts outlined below could shift and change over time, but the factors outlined in Part III.B. provide the analytical foundation for identifying future categories of event contracts that should be presumptively prohibited.

The first category of event contracts that should be presumptively prohibited are those that commodify severe human suffering. As the immoral markets literature and scholarship on anti-social innovation illustrate, these sorts of private transactions exceed the bounds of permissible market activities for a host of reasons. Contracts tied to events like war, terrorism, violence, assassination, death, or serious injury of identified persons, mass shootings, or any illegal event would fall within this category.[265] As the immoral markets literature notes, not everything should be the subject of private contracting or market exchanges. Again, the commodification itself can change incentives of third parties and may exploit a range of vulnerable populations. Similarly, sports event contracts that turn on harassment, injury, coercion, or abuse of players would fall under the category of an event contract that commodifies human suffering and should be prohibited. Because the costs of commodification for these types of contracts substantially outweigh any informational value the market may generate, these contracts should be prohibited.

The second category of event contracts that should be presumptively prohibited are those that implicate sensitive government, military, or national security interests. This category would prohibit contracts where publicly aggregating sensitive information would seriously endanger national security, military operations, public safety, other vital governmental interests, or otherwise undermine the public interest the law seeks to protect. Additionally, this category would prohibit contracts involving classified government activity, removal of or harms to sovereign leaders, intelligence operations, or the timing or success of military operations.

To effectuate the prohibitions described above, state and federal regulators should pass formal legislation or regulations that clearly prohibit these types

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[265] *See* 7 U.S.C. § 7a-2(c)(5)(C); Packin & Rabinovitz, *supra* note 23, at 257–60; Arrow et al., *supra* note 7, at 877–78.

of event contracts. Ex ante prohibitions are almost always subject to becoming outdated due to financial innovation—which is why the topic of prediction markets presents such a thorny set of issues—but some ex ante regulation is needed in this space. In addition to formal legal intervention, prediction market platforms themselves should enact a range of firm-level governance and compliance initiatives to address these impermissible categories of contracts. The platforms have, in some instances, begun to prohibit the classes of contracts discussed in this Part, though it has often looked like a reactionary response to public outcry or criticism at the existence of event contracts that commodify things that should not be commodified.

2. Federal Securities & Derivatives Regulation

Another set of event contracts should be deemed permissible and subject to traditional federal securities and derivatives regulation. Event contracts in this category may include contracts tied to (i) corporate events, including earnings, mergers, layoffs, executive departures, litigation, or product approvals; (ii) government and regulatory events, including interest rate decisions, agency actions, regulatory approvals, and other official actions with significant economic consequences; (iii) macroeconomic data releases, including inflation, unemployment, GDP, and similar economic indicators; and possibly (iv) elections, if not otherwise prohibited by statute or regulation.[266]

If appropriately regulated, these event contracts can provide opportunities for more precise forecasting and targeted risk management than existing financial products may offer, particularly with respect to corporate, regulatory, or macroeconomic events. These event contracts also concern subjects that are generally appropriate for market exchange, distinguishing them from some of the contracts discussed above. At the same time, they create familiar risks of insider trading, manipulation, conflicts of interest, and market abuse.[267] But these risks are the types of problems long addressed through ex ante regulations and rules, market surveillance by regulators, and firm-level compliance systems. Some event contracts in this category, however, may raise substantial concerns regarding potentially opportunistic behavior and potential harms to third parties. These concerns mean that event contracts in this category may require additional anti-fraud, anti-manipulation, and market surveillance tools to limit the occurrence, impact, and susceptibility of these contracts to opportunistic behavior and third party harm.[268]

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[266] This is meant to be a representative, and not an exhaustive, list. Elections continue to occupy a controversial space, with many advocating for their inclusion in the presumptively prohibited category. Crumley, *supra* note 11.

[267] *See* Beylin, *Event Contracts*, *supra* note 33, at 79–83, 127–40; Fletcher, *Legitimate Yet Manipulative*, *supra* note 37, at 480–93; Fletcher, *Benchmark Regulation*, *supra* note 36, at 1963–69.

[268] *See also* Part III.C.4 *infra.*

3. State Regulation

A third category of event contracts—and the largest to date[269]—essentially function primarily as gambling. While the CFTC has attempted to argue that these are event contracts subject to its jurisdiction, a critical look at the subject matter of these contracts appears inconsistent with these claims. Sports event contracts differ from traditional sportsbook wagers, for example, because platforms match counterparties rather than taking the other side of the bet and the contracts are tradeable before settlement. But those distinctions should not obscure the practical reality that most sports event contracts allow users to wager on the same underlying outcomes regulated by state gambling law.[270] Different states have made their own policy judgments about what sort of gambling is permitted, whether restrictions on gambling should be imposed, and whether gambling should be prohibited altogether—and those state policy judgments should be respected. [271]

The theoretical underpinnings discussed in Part III.A are also instructive in determining that this category of contracts should be left to the states. Importantly, the historical limits on speculation offer little reason to treat sports or entertainment event contracts as socially valuable financial products that should be regulated at federal level. The common law has historically distinguished between socially beneficial speculation and mere entertainment wagering like sports betting. That distinction supports treating these contracts as gambling rather than federally regulated financial products.

The framework proposed here, therefore, requires returning gambling-adjacent contracts to the state regulatory systems which are already designed to govern gambling. We agree with scholars who have argued that prediction markets should not be permitted to recharacterize ordinary sports wagering occurring on their platforms as federally regulated derivatives. [272] Attempts to characterize gambling contracts in this way appear to be tied to attempts by the platforms to avoid state licensing, taxation, and consumer protection

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[269] RENA S. MILLER & KARL E. SCHNEIDER, CONG. RSCH. SERV., IF13187, PREDICTION MARKETS: POLICY ISSUES FOR CONGRESS 1 (2026), https://www.congress.gov/crs_external_products/IF/PDF/IF13187/IF13187.3.pdf ("Sports are the most popular event contract type by volume . . . As of February 2026, roughly 87% of Kalshi's $39.7 billion traded in the past year was on sports. Such percentages are lower . . . on Polymarket (38%), but sports event contracts are still the largest singular category.").

[270] *See* Beylin, *Event Contracts*, *supra* note 33, at 80–83, 128–40.

[271] *See* John T. Holden, Matthew C. Turk & Marc Edelman, *Regulating Sports Prediction Markets*, U. ILL. L. REV. (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6350738 (manuscript at 1–5, 43–47); Beylin, *Event Contracts*, *supra* note 33, at 128–40; Packin & Rabinovitz, *supra* note 23, at 258–60.

[272] *See* Holden, Turk & Edelman, *supra* note 271, at 4–5.

regimes.[273] The attempt by platforms to avoid state-by-state regulation makes sense, because it is costly to comply with such a diverse set of legal regimes with different expectations. That said, the fact that a set of rules will create a challenge for the prediction markets' internal controls efforts is not a strong justification for ignoring the reality that gambling is occurring on prediction market platforms and the states are best equipped to regulate gambling.

Accordingly, low-stakes entertainment markets and sports-related event contracts should generally be treated as gambling adjacent, and in most cases as gambling rebranded. States are best suited to regulate these transactions. States already have regimes in place that include things like age restrictions, responsible gambling tools, advertising limits, loss limits, and self-exclusion mechanisms.[274] Safeguards for athletes and other third parties should be reexamined to ensure the prediction markets are not heightening those risks in any ways, and if they are, that appropriate deterrents are adopted.[275]

As mentioned above, the CFTC is attempting to assert exclusive jurisdiction over the prediction markets. That approach is not a sensible allocation of regulatory authority for contracts whose principal use is entertainment betting rather than hedging or price discovery. The CFTC is ill-equipped and ill-suited to regulate gambling. The CFTC is not principally a consumer nor investor protection agency. The agency's regulations do not impose retail consumer protections nor are investors entitled to the level of disclosures available in the securities markets.[276] Rather, the CFTC relies primarily on customer fund segregation, margin requirements, and market participants' sophistication to regulate the market.[277] Further underscoring the mismatch between the CFTC and gambling regulation is the agency's regulatory remit, which is focused on facilitating appropriate pricing and

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[273] *Id.*

[274] *See* Packin & Rabinovitz, *supra* note 23, at 258–60; Holden, Turk & Edelman, *supra* note 271, at 43–47.

[275] As discussed in Part III.C.1—and bolstered by the immoral markets literature—contracts tied to individual athlete performance, student-athlete performance, injuries, officiating decisions, disciplinary events, or other highly personal sports-related contingencies should likely be prohibited or subject to heightened restrictions because this commodification threatens the integrity of the underlying event and also creates acute risks of harassment, coercion, manipulation, and third-party harm. *See infra* Part III.C.1; Part III.A.3; *see* Packin & Rabinovitz, *supra* note 23, at 258–60; Holden, Turk & Edelman, *supra* note 271, at 45–47.

[276] *See generally* Jerry Markham, *Merging the SEC and CFTC – A Class of Cultures*, 78 U. CIN. L. REV. 537 (2009) (discussing the differences between the SEC and CFTC in terms of the regulatory mandate and culture).

[277] *See generally* Jerry W. Markham, *Commodity Exchanges and Regulation, in* COMMODITIES: MARKETS, PERFORMANCE, AND STRATEGIES 37 (H. Kent Baker, Greg Filbeck & Jeffrey H. Harris, eds., 2018) (discussing the CFTC's tools for regulating commodity exchanges pursuant to the Commodity Exchange Act of 1936).

trading in the commodities markets. [278] To be sure, this remit includes derivatives on weather, interest rates, and other underlying events that affect commodities prices both directly and indirectly. But it is a bridge too far to include most of the low-level entertainment event contracts that dominate prediction markets. Event contracts on the winner of the 2026 FIFA World Cup, the top Netflix movie of the week, and the next winner of Big Brother are wholly unrelated to the commodities markets and outside the scope of the CFTC's regulatory ambit to render the agency the appropriate regulator. State gambling regulations are, therefore, much better suited to the task.

Where an event contract is functionally a wager, states have made their own determinations about the limits of permissible commodification, and state gambling laws already supply a comprehensive regulatory framework. The CFTC should not displace state authority by treating these sorts of event contracts as if they are another type of federally regulated derivatives contracts.

4. Opportunism and Manipulation

Finally, a fourth category of event contracts create significant manipulation or opportunism risks that warrant ex ante legal intervention. These contracts frequently hinge on the discretionary decisions of a small number of individuals who control the outcome of the underlying event. They create incentives to pressure decisionmakers and enable endogenous traders who have control or influence over outcomes to alter their own conduct for financial gain,[279] often interfering with counterparties receiving the benefits of their bargains. These event contracts thus enable precisely the type of bad faith behavior that contract law seeks to prohibit via the mandatory duty of good faith and fair dealing that attaches to every contract. In addition, many of these contracts may generate little independent informational value while remaining highly susceptible to manipulation and opportunism. These contracts resemble the speculative arrangements historically viewed with suspicion under the common law because they facilitate wagering without meaningful social utility while simultaneously creating incentives for opportunistic interference with the underlying event. As a result, these contracts generate acute risks of potential manipulation, insider trading, harassment, and coercion.

Yet this category of event contracts does not fall neatly within existing legal regimes, warranting its own legal intervention. Scholarship on immoral markets and anti-social innovation is instructive here. These literatures make clear the importance of implementing appropriate ex ante market design and institutional practices to address concerns that markets may raise around

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[278] *About*, U.S. COMMODITY FUTURES TRADING COMM'N, https://www.cftc.gov/About/Agriculture (last visited July 26, 2026).

[279] Oudin, *supra* note 264, at 20–24.

corruption, coercion, exploitation, or negative externalities.[280] We therefore advocate a set of legal interventions that would require prediction market platforms to engage in thoughtful market design and implement tailored institutional practices to address manipulation and opportunism risks ex ante. This approach will require firms to implement anti-manipulation practices and market surveillance tools—like position limits, eligibility restrictions, and screening practices—designed to prevent participants from financially benefiting from improper influence over the events on which they trade.[281]

* * *

This Part argues that regulating prediction markets requires a layered regulatory and enforcement approach. The most extreme event contracts—those that cause or conceal harm, monetize severe human suffering, or threaten public decisionmaking—should be presumptively prohibited. Where a contract has meaningful informational or hedging value, but also presents the risk of behavior that is akin to insider trading or manipulation, it should be treated as a federally regulated financial product subject to regulatory requirements and firm-level compliance obligations.[282] Where a contract is functionally gambling via entertainment betting or sports wagering, it should be returned to state gambling regulation rather than allowed to displace state consumer protection regimes.[283]

IV. IMPLICATIONS AND ADDITIONAL CONSIDERATIONS

This Part addresses potential implications and additional considerations raised by this Article's argument and proposed framework for regulating prediction markets.

A. Implications

The framework developed above has implications beyond the appropriate legal classification of event contracts. This section considers the broader implications of this framework.

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[280] Indeed, the immoral markets literature urges the importance of not confusing objections to what is being sold with objections to how it is being sold. *Supra* notes 249–55 and accompanying text.

[281] *See* Part III.C.2 *supra.*

[282] *See* Beylin, *Event Contracts*, *supra* note 33, at 79–83, 127–40; Fletcher, *Legitimate Yet Manipulative*, *supra* note 37, at 538–543; Fletcher, *Benchmark Regulation*, *supra* note 36, at 1963–69.

[283] *See* Holden, Turk & Edelman, *supra* note 271, at 43–47; Beylin, *Event Contracts*, *supra* note 33, at 128–40; Packin & Rabinovitz, *supra* note 23, at 258–60.

1. Incentivizing Internal Controls

The framework developed above has implications for how prediction market firms should design products, allocate governance responsibilities, and structure internal compliance systems. In particular, adoption of this framework should incentivize prediction market platforms to take a proactive approach to ensure their internal controls are properly implemented to prevent foreseeable harms through ex ante internal governance regimes.

A central insight from compliance scholarship is that external legal and regulatory interventions cannot identify and address every risk created by complex business activity, particularly during periods of intense innovation. Firms, however, possess information about their products, users, incentives, market design, and operational vulnerabilities that regulators will often lack. As such, firms are required to adopt appropriate internal compliance systems in an effort to both (i) satisfy regulators after misconduct occurs and (ii) to engage in the traditional self-policing expected of firms generally.[284] By requiring prediction market firms to adopt appropriate compliance protocols, it will enable prediction market platforms to better identify, assess, and respond to the risks inherent in their own business model before harm materializes. As one of us has explained, effective compliance should not be driven solely by enforcement priorities, although that serves as an important floor upon which compliance programs are built. [285] Instead, effective compliance systems should be shaped by the firm's purpose, the risks created by pursuing that purpose, and the ethical standards necessary to guide employee judgment when law is incomplete, ambiguous, or slow to respond.[286] That latter insight is especially important in emerging industries, where legal requirements may be fragmented and regulatory expectations may not yet provide a significant floor upon which compliance can be built.[287]

Even without those regulatory requirements, prediction market platforms can engage in risk assessments to determine where their products might run afoul of analogous regulatory regimes or cause harm to third parties and society more generally. For example, before listing a contract, firms could conduct a documented product-risk assessment that examines whether the contract is likely to create harm to certain markets or third parties. Many potential categories of concern have been discussed above, but the actor most adept to identify how an event contract might create harm is the prediction market platform firm itself. The introduction of strong internal controls is also important because it can impact behavior within the firm more generally.

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[284] Jennifer Arlen & Reinier Kraakman, *Controlling Corporate Misconduct: An Analysis of Corporate Liability Regimes*, 72 N.Y.U. L. REV. 687, 690–91 (1997).

[285] *See* Martinez, *Purpose-Driven Compliance, supra* note 113, at 1356–57, 1388–96, 1409–10.

[286] *See* Martinez, *Purpose-Driven Compliance, supra* note 113, at 1356–57, 1388–96, 1409–10.

[287] *See id.* at 1410–11; Root, *supra* note 128, at 1014–17.

Behavioral ethics research shows that misconduct is sometimes normalized within organizations when employees view the choices they make as merely technical, legal, or business decisions without an ethical dimension.[288] A prediction market firm that treats contract listing as a purely commercial question may not be prompting employees—and in turn the firm—to consider whether that commercial transaction should be deemed permissible or prohibited. Firms should adopt internal controls to help counteract that tendency.

As of right now, it appears that two sets of firms would need to adopt affirmative firm-level compliance initiatives. Additionally, governmental employees or those with strong government ties will likely need affirmative rules regarding their participation in prediction markets.

First, prediction market platforms will need to put internal controls in place to properly respond to securities and derivatives regulation. Once a contract is listed, firms should consider maintaining surveillance systems capable of identifying problematic trades that reflect harms like opportunism, manipulation, or human suffering. Importantly, these systems should include mechanisms for pausing trading, delisting contracts, reporting suspicious conduct to regulators, disciplining users, and documenting remediation. In these sorts of instances, prediction market firms should have escalation protocols in place. For example, potential problems may need to be reviewed by a cross-functional committee that includes internal stakeholders with expertise in legal, compliance, risk, market surveillance, product, and public policy. Moreover, there should be policies in place that identify when a problem identified should be considered a red flag that requires escalation to senior management or the board. These sorts of compliance systems necessarily slow things down, and in this industry, slowing down may mean curbing financial gain. Compliance personnel must have sufficient independence, resources, authority, and access to information to resist pressure from stakeholders who have countervailing incentives to prioritize transaction volume and increasing market valuation.[289]

Relatedly, prediction market platforms should put specific internal procedures in place to govern the resolution of event contracts. Platforms should identify objective resolution criteria and dispute procedures before

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[288] *See* Vikas Anand, Blake E. Ashforth & Mahendra Joshi, *Business as Usual: The Acceptance and Perpetuation of Corruption in Organizations*, 18 ACAD. MGMT. EXEC. 39, 39–42 (2004); Linda K. Treviño, Gary R. Weaver & Scott J. Reynolds, *Behavioral Ethics in Organizations: A Review*, 32 J. MGMT. 951, 952–55 (2006); Ann E. Tenbrunsel & Kristin Smith-Crowe, *Ethical Decision Making: Where We've Been and Where We're Going*, 2 ACAD. MGMT. ANNALS 545, 548–50 (2008).

[289] *See* Deborah A. DeMott, *The Crucial but (Potentially) Precarious Position of the Chief Compliance Officer*, 8 BROOK. J. CORP. FIN. & COM. L. 56, 57–58, 79 (2013); Geoffrey P. Miller, *An Economic Analysis of Effective Compliance Programs*, *in* RESEARCH HANDBOOK ON CORPORATE CRIME AND FINANCIAL MISDEALING 247, 247–62 (Jennifer Arlen ed., 2018).

trading begins. Further, platforms should incorporate built-in time delays between the occurrence of the underlying event and final settlement of the contract to permit challenges to the accuracy or integrity of the information on which the contract is resolved before payouts are made.

Finally, prediction market platforms should consider how to adopt internal controls that address opportunistic and manipulative behavior generally—even if it does not fall within the elements of securities law violations like insider trading. As we note above, there is a class of behavior on prediction market platforms that should not necessarily be presumptively prohibited, but does not fall under current legal or regulatory categories. In other words, there is a class of conduct in a legal gray zone that probably necessitates careful monitoring—from either a regulator or the prediction market platforms themselves. For example, if prediction market platforms are aware that insider-trading adjacent behavior is occurring on their platforms, they should consider how to adopt internal controls that might prevent such behavior. Importantly, if the prediction market platforms adopt some of these ex ante internal controls on their own, it may mitigate the need for certain ex ante regulatory efforts.[290]

Second, public companies and other firms whose activities may become the subject of event contracts should update their internal compliance programs. For example, event contracts focused on events related to particular corporate firms may require additional internal controls because they create heightened risks of insider trading and misuse of material nonpublic information. Public companies should update insider trading policies[291] to expressly cover prediction market activity that allows employees to profit from company-related information. Those policies should also strongly consider

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[290] In 1979, the U.S. nuclear power industry created the "Institute of Nuclear Power Operations ("INPO"), which used a arrange of self-regulatory efforts to motivate firms within the industry to improve plant safety through improved personnel training. Institutional plan -- Institute of Nuclear Power Operations, 1993, report, 1993; United States. (https://digital.library.unt.edu/ark:/67531/metadc1272344/m1/2/: accessed October 25, 2026), University of North Texas Libraries, UNT Digital Library, https://digital.library.unt.edu; crediting UNT Libraries Government Documents Department; *Training and Qualification of Nuclear Power Plant Personnel*, 57 Fed. Reg. 537, 538–39 (Jan. 7, 1992) (proposed rule), https://www.nrc.gov/docs/ML2315/ML23157A256.pdf. After the industry engaged in these efforts, the Nuclear Regulatory Commission deferred planned rulemaking related to personnel training and did not issue binding rules on the industry with regards to training and other matters until after a court case that prevented the commission from engaging in enforcement activities without formal regulatory requirements. *See Pub. Citizen v. Nuclear Regul. Comm'n*, 901 F.2d 147, 149–50, 157–58 (D.C. Cir. 1990).

[291] This is actively happening at many companies. Georgia Fearn, *Prediction Markets Are Exploding—but the Corporate Crackdown Has Already Begun*, INC. (July 10, 2026), https://www.inc.com/georgia-fearn/prediction-markets-exploding-corporate-crackdown-has-already-begun/91372445 (explaining that financial firms like Goldman Sachs have begun to crack down on personal-trading policies due to insider trading concerns).

prohibiting employees from trading (or tipping) event contracts that involve information employees obtained from the firm related to topics like pending mergers, future earnings, or other material company events.

With regard to (i) employees of government agencies and federal contractors and (ii) public officials, both the government and prediction market platforms should put in place specific prohibitions. Specifically, they should enact trading bans or ethics rules that prohibit trading on matters connected to official duties, classified information, sensitive operations, or nonpublic government action. These rules should cover direct trading, as well as "tipping," trading through family members or intermediaries, and other efforts to evade insider trading prohibitions.

2. Reducing Regulatory Arbitrage

Prediction markets, while not truly new,[292] are newly widespread via a range of technological innovations.[293] Periods of rapid innovation—whether that be the steam engine or a complicated financial product—always pre-date legal and regulatory requirements. This Article responds to the current regulatory gap and proposes a functional framework. Importantly, this framework should assist in reducing the incentives for regulatory arbitrage by focusing less on existing legal classifications and more on the economic function, risks, and consequences of an event contract. Unsurprisingly, those taking innovative products to market often do not want to be subject to legal and regulatory requirements, because it may (i) slow their growth, (ii) limit their growth opportunities, or (iii) require costly investments in compliance activities.

When legal obligations depend primarily on formal labels, firms have incentives to structure economically similar products in the way that will be

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[292] *See* Kelli María Korducki, *How Prediction Markets Got Their Start in 19th-Century America*, HISTORY.COM (Apr. 28, 2026), https://www.history.com/articles/prediction-markets-origins-america-betting; Bruce Blythe, *Prediction Markets: The Intersection of Forecasting and Investing*, BRITANNICA MONEY (July 20, 2026), https://www.britannica.com/money/prediction-markets ("Prediction markets aren't new; they evolved from academic curiosity to legitimate financial instruments over several decades.").

[293] *See How Prediction Markets Scaled to USD 21B in Monthly Volume in 2026*, TRM LABS (Mar. 27, 2026), https://www.trmlabs.com/resources/blog/how-prediction-markets-scaled-to-usd-21b-in-monthly-volume-in-2026 (explaining that the surge in prediction market activity has been driven in part by a "rapidly expanding user base"); *see also* Anchit Jain, *The Rise of Blockchain-Based Prediction Markets*, CAL. MGMT. REV. (Sep. 17, 2024), https://cmr.berkeley.edu/2024/09/the-rise-of-blockchain-based-prediction-markets/ (explaining that the advantages of decentralized prediction markets have led to increased activity for platforms like Polymarket); *How Polymarket Turned the Smartphone into a Prediction Trading Hub*, PHANDROID.COM (May 26, 2026), https://phandroid.com/2026/05/26/how-polymarket-turned-the-smartphone-into-a-prediction-trading-hub/ ("Polymarket's rise is closely tied to the way people now use smartphones as real-time information centers.").

more likely to obtain favorable regulatory treatment. Prediction market firms have the capability to potentially engage in this type of regulatory arbitrage because relatively small changes in contract design, settlement resolution practices, or platform structure can alter how a product is characterized from a legal perspective. And those running the prediction markets have attempted in various ways to argue that their product is distinct from and not appropriately regulated by existing legal and regulatory systems. Our proposed framework, however, focuses more on function rather than form, and it does so in a way that prevents firms from sidestepping regulatory obligations merely by redesigning products or rebranding them as financial innovation.

A value of this approach is that it can also accommodate emerging prediction market products that do not fit neatly into the categories of gambling, derivatives, securities, games, social media, or consumer technology. For example, Meta's prediction market app reportedly would allow users to predict outcomes in categories such as politics, sports, entertainment, and world affairs, but would rely on a video game-like points system rather than cash betting, at least initially.[294] This example is why lawmakers need a functional framework rather than a regime tied only to existing legal regimes. If prediction market transactions encourage users to (i) pressure, threaten, or harass third parties, or (ii) manipulate, or otherwise interfere with the resolution of the event contract, the relevant harm is not eliminated by calling the payoff points rather than money. The relevant question is whether the event contract creates incentives to engage in behavior that policymakers and society have deemed unacceptable. Legal oversight should not be avoidable because a platform has replaced dollars with points.

Further, in limiting regulatory arbitrage, our proposed framework enhances market integrity, mitigates systemic risk, and promotes true financial innovation. First, our framework enhances market integrity because it focuses on treating similar products similarly—applying insider trading and manipulation prohibitions, derivatives and securities regulation, and gambling rules uniformly, regardless of the product form chosen. Consistent application of regulations improves enforcement and, by extension, public trust in the markets, as there is less confusion about whether and how regulations should apply to a product.

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[294] Mike Isaac & David Yaffe-Bellany, *Mark Zuckerberg Directed Meta to Create a Prediction Markets App*, N.Y. TIMES (June 23, 2026), https://www.nytimes.com/2026/06/23/technology/meta-prediction-markets-app.html; Helene Braun, *Meta Is Developing a Prediction Market App Called 'Arena' as Sector Booms: NYT*, COINDESK (June 23, 2026), https://www.coindesk.com/markets/2026/06/23/meta-is-developing-a-prediction-market-app-called-arena-as-sector-booms-nyt; Bobby Allyn, *Meta Plans to Release AI-Powered Prediction Market App, Documents Show*, NPR (June 24, 2026), https://www.npr.org/2026/06/24/nx-s1-5869486/meta-prediction-market-app-ai.

Relatedly, uniform application of regulations also mitigates systemic risk. By limiting the transfer of risky activities to unregulated or less regulated market sectors, our framework reduces the potential build-up of systemic risk in the markets. Again, if like products are treated alike, then it will be more difficult for high-risk activity to migrate beyond the attention of regulators, where such risks may have a significant impact on the broader financial markets.

Lastly, in reducing regulatory arbitrage our proposed framework promotes true financial innovation. Regulatory arbitrage allows those outside the regulatory framework to thrive because of decreased costs and the advantages of operating unbounded. When firms and products are subject to the same regulation, it levels the playing field, facilitating better competition among market actors. Without the advantages of non-regulation, firms are required to compete on the quality of their products and services, rather than gaining a competitive edge because of their reduced regulatory burden. In such an environment, true financial innovation is possible as firms must provide improved products or services to gain market share, rather than simply profiting from undercutting regulated firms. In short, if prediction markets are unable to survive in the same regulatory environment as similar products, then it is questionable whether the transactions occurring on these platforms are truly innovative or simply thriving because they evade regulatory obligations. Thus, in limiting regulatory arbitrage, our proposed framework mitigates some of the risks that accompany the current regulatory status of prediction markets (i.e., market integrity and systemic risk concerns), while allowing benefits (i.e., financial innovation) to flourish.

B. Additional Considerations

This Part addresses considerations raised by this Article's argument and proposals.

1. Autonomy vs. Paternalism

The law of contracts can be characterized as the law governing a set of voluntary exchanges by private parties. In general, people are free to contract for the things they want, even if their friends, neighbors, or local government officials believe the contract to be unwise. As indicated above, freedom to contract is not absolute—there are clear limits. But in general, people are free to contract for the things they want, and the law promotes their autonomy to do so. Indeed, the primary value of contract law is that it identifies when the state will intervene if a dispute arises between two parties who chose to enter into a voluntary exchange. When the law intervenes, it is sometimes described as taking a paternalistic view on particular sets of contracts, which necessarily erodes the autonomy of the individuals who sought to contract. When to allow

individuals to assert their autonomy and when the law should adopt more paternalistic controls is a conundrum seen throughout the law. [295]

These concerns also matter for prediction markets. As applied here, one might be concerned that this Article's proposals interfere too readily with autonomy in private contracting. This critique rooted in paternalism concerns should be taken seriously.[296] A regulatory framework that reflexively prohibits event contracts merely because regulators distrust participants' choices would be in conflict with the autonomy principles of contract.[297] That is not the framework this Article proposes. Instead, this Article puts forth a framework that facilitates autonomy while also guarding against the costs and harms these contracts can (and have) produced.[298]

For prediction markets, the question is when governmental authorities and policymakers should intervene. This Article's framework does not ask lawmakers to choose between respecting individual autonomy and enacting paternalistic regulation. Instead, it suggests that lawmakers should identify when individuals' decisions to enter into an event contract should be respected, when it should be structured through state and federal regulator oversight, and when it should be presumptively prohibited because the market itself creates unacceptable harms or costs.

2. Considering "Who" the Trader Is.

This Article has primarily focused on prediction market platforms and the ways in which their facilitation of event contracts creates potential harms to different groups of people and society. The Article is largely silent, however, on the different groups of individuals who may trade on the platforms and the reality that the "who" may change whether the activity seems permissible.

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[295] That tension is most familiar in unconscionability doctrine, where courts confront the possibility that a formally voluntary agreement may nevertheless be deemed unenforceable due to defects in the bargaining process like grossly one-sided terms or general concerns about unfairness. *See* U.C.C. § 2-302 (A.L.I. & UNIF. L. COMM'N 2022); RESTATEMENT (SECOND) OF CONTRACTS § 208 (A.L.I. 1981); Larry A. DiMatteo & Bruce L. Rich, *A Consent Theory of Unconscionability: An Empirical Study of Law in Action*, 33 FLA. ST. U.L. REV. 1067, 1070–75 (2006).

[296] Unconscionability is often criticized as paternalistic because it permits courts to unravel voluntary agreements between consenting parties on the ground that the bargain is too harsh. Seana Valentine Shiffrin, *Paternalism, Unconscionability Doctrine, and Accommodation*, 29 PHIL. & PUB. AFFS. 205, 205–11 (2000).

[297] Jessica Flanigan, *Rethinking Freedom of Contract*, 174 PHIL. STUD. 443, 443–53 (2017) (arguing that restrictions on voluntary contracts may misfire or leave vulnerable parties worse off if the law removes their best available contracting option without improving the background conditions that made that option attractive).

[298] Hanoch Dagan & Mark P. Gergen, *Autonomy and Form*, 53 HOFSTRA L. REV. 1, 1–3, 15–17 (2024).

For example, if an individual is a fiduciary in some way for a professional baseball team, one might think it inappropriate for them to trade on whether the team will win a set of games, even if that person is not privy to material, non-public information. The exact same trade by a fan of the baseball team who is not a fiduciary of the team may look perfectly acceptable. Additionally, one may worry about judges participating on prediction market platforms, because it may be difficult to identify what they are betting on, which would then make it difficult to understand when the judge may have a conflict in a case before them that requires recusal.[299] As both of these examples suggest, the "who" may matter just as much as the underlying event contract.

The "who" question is likely best tackled by the prediction market platforms themselves through familiar know-your-customer protocols[300] or other internal control mechanisms. If prediction market platforms adopt know-your-customer practices, they will be better equipped to know when a particular trader should not be trading on a particular type of event contract. Importantly, this sort of know-your-customer protocol may also help contribute to the integrity of event contract resolutions. We believe more work on how to assess who is trading on prediction market platforms will be needed from both scholars and policymakers.

3. Should Prediction Markets be Left to Self-Correct?

One may believe that general market principles will naturally discipline prediction market platforms without need for meaningful legal intervention. On this view, unreliable platforms with poorly designed contracts that are vulnerable to manipulation should eventually lose users, liquidity, and legitimacy on their own. For example, if users are manipulating the resolution of events, consumers will eventually wonder whether their trades will be properly administered and paid out. And as information about the sophisticated nature of a small number of traders on prediction markets becomes more widespread, everyday users may determine that the system is "rigged" and avoid the platforms altogether. The intuition resembles the familiar lemons market account: when buyers cannot distinguish high-quality from low-quality goods, they may discount their willingness to pay, which then may cause higher-quality sellers to exit, leaving the market to be dominated by

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[299] See 28 U.S.C. § 455(a), (b)(4) (requiring disqualification of federal judges when their impartiality might reasonably be questioned or the judge has a financial interest in the subject matter or a party to the litigation).

[300] See James Chen, *Know Your Client (KYC): Key Requirements and Compliance for Financial Services*, Investopedia (Sept. 16, 2026), https://www.investopedia.com/terms/k/knowyourclient.asp (describing KYC procedures for verifying customer identities and assessing financial profiles)

lower-quality products.[301] Applied to prediction markets, the argument is that users will eventually identify low-integrity transactions and migrate to better platforms, causing unreliable prediction market platform firms to correct or collapse on their own.

It is possible that poorly run prediction market platforms will lose users and ultimately exit the space. But that sort of "the market will fix it" response fails to properly consider the harms that could occur in the interim. A collapsed or discredited market does not reverse harms like athlete harassment, threats to journalists, spillover effects to financial markets, or leaked government or corporate information. It also does not stop the potential harm from the normalization of financially benefiting from violence or death. And, perhaps most importantly, prediction market harms can impact non-users as well. Third parties may bear the costs of prediction market contracts without ever trading, consenting, or receiving any offsetting benefit. The upshot is that prediction markets are not purely a financial market with the potential of producing only financial benefits and costs. The range of external harms that can be produced from these event contracts requires formal legal intervention.

4. VC Firm Constraints?

Part I.A. of this Article outlines the ways in which venture capital has facilitated the expansion of prediction markets from small, narrowly accessible products to a mainstream financial phenomenon readily available to ordinary retail users. Additionally, it outlines how the realities of VC financing can create incentives for prediction market firms to expand quickly, aggressively, and in a manner that embraces a high tolerance for risk-taking. One of us has detailed the ways in which VC's time-constrained focus on rapid growth and exit can crowd out firm social performance,[302] and prediction market platforms are, in many ways, a new iteration of an old problem. This Article's proposals are primarily targeted at constraining the actions of prediction market platforms and platform users, but it does not engage in a robust effort to constrain VC firms themselves, despite identifying them as part of the source of the problems this Article has outlined.

This Article does not suggest that sort of proposal because one of us has already written about how to better align the VC investment model with firm social performance.[303] Specifically, addressing these concerns will require VC firms to incorporate social performance into VC compensation metrics

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[301] *See* Anke S. Kessler, *Revisiting the Lemons Market*, 42 INT'L ECON. REV. 25, 25–27 (2001) (citing George A. Akerlof, T*he Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q.J. ECON. 488, 489–92 (1970)).

[302] Aguirre, *supra* note 29, at 68–69.

[303] *Id.* at 103–13 (suggesting new investment and corporate governance models for social performance).

and the corporate governance arrangements of their startup portfolio firms.[304] That said, it is important to remember that VC firms, like firms in all areas of innovation, will often outpace ex ante regulation. Firms should not use their headstart as an excuse to behave as if there are no limits to acceptable conduct or to exploit regulatory gaps at the expense of consumers or society. Responsible business practices should include an affirmative attempt from firm leaders to create decisionmaking frameworks that enable their employees to act consistently with the firm's standards and expectations, even absent formal legal or regulatory guidance.[305]

CONCLUSION

Modern prediction markets have exploded in growth over the past several years, and that increased growth has demonstrated that seemingly simple event contracts can present a range of costs and harms that are borne by markets, participants, third parties, and society more generally. These developments are forcing scholars and policymakers to determine when financially benefiting from prediction market platform transactions should be permitted and when it should be prohibited.

This Article makes three contributions to legal scholarship. First, it articulates a comprehensive descriptive account of prediction markets and the range of costs they create—costs to markets, participants, and third parties. It also develops a normative account of bounded commodification, which stands for the principle that there are limits—legal, ethical, and societal—that do and should constrain the actions profit-seeking individuals and firms may pursue via private transactions. This insight helps to explain why some forms of financial gain from prediction are legitimate while others should be constrained or prohibited. Second, it offers a functional framework for scholars,

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[304] *Id.* at 104–10 (suggesting adjusting the traditional "2 and 20" VC fee structure, whereby VCs typically receive a two percent annual management fee and twenty percent of any investment profits, to better align with portfolio firm social performance).

[305] *See* PRINCIPLES OF THE LAW, COMPLIANCE AND ENFORCEMENT FOR ORGANIZATIONS §§ 3.07(a)–(b), 5.06(c), (f)–(h) & cmts. c, f, h (A.L.I. 2025) (recommending that boards and executive management promote organizational values and ethical standards, and that compliance programs be based partly on underlying principles and provide employees with guidance, communication, and training concerning appropriate conduct); Shannon A. Bowen, *Organizational Factors Encouraging Ethical Decision Making: An Exploration into the Case of an Exemplar*, 52 J. BUS. ETHICS 311, 318–21 (2004) (finding that senior-level support, ethics training, open communication, and an organizational culture emphasizing ethics encouraged employees to engage in autonomous and more thoroughly considered ethical decisionmaking); Martinez, *Purpose-Driven Compliance*, *supra* note 113, at 1380–83, 1387–88 (arguing that firms should establish their own ethical and aspirational standards, rather than merely follow the floor established by external legal and regulatory interventions); PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 2.01(b)(2) & cmt. h (A.L.I. 1994) (recognizing that corporations may take ethical considerations into account even when no legal obligation requires them to do so).

lawmakers, and regulators, and firms to consider going forward. Specifically, it urges the consideration of whether the event contract (i) falls outside the bounds of permissible private exchange, (ii) imposes costs on participants or third parties, and (iii) incentivizes opportunistic conduct. Third, after applying those factors, it demonstrates that some event contracts should be presumptively prohibited; others should be subject to federal financial regulation; still others, particularly sports and gambling-adjacent contracts, should be returned to state regulatory regimes; and a fourth category of event contracts will require careful ex ante market design to minimize the risk of manipulation and opportunism.

Prediction markets are likely to continue evolving faster than existing legal categories. That does not mean scholars and policymakers should wait to determine appropriate legal and regulatory interventions. Instead, it means those actors needs a principled way to ascertain the boundary between permissible and impermissible prediction market-based financial gain.

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