Governance & Securities Alert

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Prediction Markets and Insider Trading: Emerging Risks for Public Companies

Practical Guidance for Strengthening Corporate Governance and Compliance Policies

The rapid growth of prediction markets has created new and increasingly significant compliance challenges for public companies. Once viewed primarily as niche platforms for political forecasting and event-based speculation, prediction markets have evolved into sophisticated marketplaces where participants may trade contracts tied to the outcomes of elections, economic developments, regulatory actions, mergers and acquisitions, earnings announcements, litigation outcomes, executive departures, product launches, and other real-world events.

For public companies, these developments present risks that many existing compliance programs were not designed to address. Employees, officers, directors, consultants, and other insiders with access to confidential company information may now have opportunities to monetize that information through event contracts without ever purchasing or selling traditional securities. As a result, conduct that historically would have manifested through insider trading in company stock may increasingly occur through prediction market transactions.

Recent enforcement actions by the U.S. Department of Justice ("DOJ") and the Commodity Futures Trading Commission ("CFTC"), together with public statements by federal regulators, prediction market operators, and recent joint SEC/CFTC requests for comment on event-contract classification and swap and security-based swap reporting frameworks, demonstrate that the use of confidential information in prediction markets has become an active enforcement and regulatory priority. While significant legal questions remain unresolved, including whether certain event contracts constitute securities, security-based swaps, swaps, mixed swaps, or instruments outside those categories, companies should not assume that regulatory uncertainty reduces compliance risk. Rather, companies should look to get ahead of the matter by ensuring that existing insider trading policies, confidentiality provisions, information security controls, ethics programs, and employee training materials, as applicable, expressly address prediction markets.

This alert examines the legal and compliance risks prediction markets create for public companies, outlines practical steps companies should consider now to update corporate policies to mitigate any compliance risks, and provides example approaches that some companies have already taken to amend their policies to address prediction market participation.

Current Landscape Regarding Employee Participation on Prediction Markets

Prediction markets present challenges that differ in important respects from traditional insider trading concerns. Historically, public company compliance programs have focused on preventing employees from purchasing or selling securities while in possession of material nonpublic information. Insider trading policies, blackout periods, preclearance procedures, training programs, and surveillance systems were developed around that framework.

The issue remains unresolved as to whether trading event contracts while in possession of material nonpublic information constitutes insider trading under Section 10(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Rule 10b-5.

Traditional insider trading doctrine developed in the context of securities markets, and liability generally, requires a purchase or sale of a "security" and a breach of a duty arising under either the classical theory or the misappropriation theory of insider trading.

Prediction markets challenge several of those assumptions. Specifically, many event contracts are not obviously securities. In some cases, they may resemble swaps, security-based swaps, mixed swaps, forwards, or other derivatives. In others, they may resemble wagering contracts tied to future events. The SEC and CFTC have now expressly sought public comment on how to draw clearer regulatory lines for innovative products, including event contracts, that may implicate both agencies' jurisdiction.

Similarly, it remains unclear whether trading an event contract based on confidential information concerning a public company satisfies the "in connection with" requirement under Rule 10b-5. Whether courts will extend that framework to prediction market activity remains an open question, but the potential characterization of some event contracts as derivatives may increase the practical relevance of SEC oversight even *before* courts resolve the Rule 10b-5 question.

Updating Organizational Documents to Address Prediction Markets

Prediction markets expose potential gaps in many existing compliance programs. Despite unresolved regulatory issues, companies should consider amending their governance policies now to cover participation in prediction markets, rather than wait for regulatory clarity. That is, from a governance perspective, the critical issue is not whether event contracts ultimately qualify as securities, but instead that employees should not be permitted to use confidential company information for personal financial gain.

Accordingly, companies should update their policies to focus on conduct rather than legal classifications. For example, instead of attempting to determine whether event contracts are securities, policies should prohibit employees from using material nonpublic information or confidential company information to trade, invest, speculate, wager, or otherwise participate in any transaction whose value depends upon the occurrence or non-occurrence of company-related events. For most organizations, the appropriate response will not be the creation of a standalone prediction market policy. Instead, companies should evaluate how prediction markets intersect with existing governance frameworks and determine whether existing policies should be updated accordingly.

A. Insider Trading Policies

The most obvious starting point is the insider trading policy.

Many insider trading policies prohibit trading in securities while in possession of material nonpublic information. However, such language may not clearly apply to prediction-market activity, event contracts, wagering platforms, or similar outcome-based instruments. Companies should avoid taking definitive positions regarding whether event contracts are securities. Instead, policies should focus on conduct and prohibit the use of material nonpublic information or confidential company information for personal financial gain regardless of the instrument involved.

Companies should consider expanding policies to prohibit:

- Trading, wagering, or taking positions in prediction market or event contracts while aware of material nonpublic information;
- Using confidential company information in connection with event contracts, outcome-based contracts, swaps, wagers, or similar speculative instruments;
- Participating in contracts tied to company-specific or counterparty-specific events, including earnings, mergers and acquisitions, litigation, regulatory approvals, product launches, contract awards, executive transitions, or cybersecurity incidents;

- Tipping, recommending, encouraging, or assisting another person in prediction-market trading or related speculative activity; and
- Using confidential information to facilitate prediction-market participation.

Companies should also consider whether insider trading policies should expressly address preclearance, blackout periods, and account disclosure requirements for directors, executive officers, designated insiders, and employees in functions that regularly access sensitive information. Even where a company does not impose a blanket prohibition, preclearance procedures can help ensure that Legal or Compliance reviews the proposed activity before employees participate in markets that may be tied to company-specific or counterparty-specific events.

Policies should further clarify that restrictions apply to indirect activity, including transactions by family members, household members, controlled entities, or other intermediaries when the covered person provides information, direction, funding, encouragement, or assistance. This type of language can reduce ambiguity and make clear that employees may not evade policy restrictions by acting through others.

Several companies have already amended their insider trading policies to address participation in prediction markets and to prohibit the use of confidential company information for personal gain. Recent amendments reflect a range of approaches, from targeted prohibitions on prediction-market trading while aware of material nonpublic information to broader bans on company-related event contracts or platform participation by designated covered persons. *See Appendix A for recent examples from public company insider trading policies.*

B. Codes of Conduct

Similarly, some first moving companies have also chosen to update their Codes of Conduct to clarify that employees may not use confidential company information for personal benefit, including participation in prediction markets, event contracts, wagering platforms, speculative transactions, or other arrangements whose value depends on the occurrence or non-occurrence of real-world events. This language has been incorporated into existing confidentiality, conflicts-of-interest, and ethical-conduct provisions, rather than being treated only as an insider trading issue.

Code provisions can be especially useful because they reach misuse of confidential information, conflicts of interest, personal benefit, and reputational harm even when a transaction does not involve company securities.

In building out code-of-conduct language, companies should consider addressing certain key points. First, confidential information may be used only for legitimate company business purposes and not for personal financial benefit. Second, employees may not use or share company information to participate in prediction markets or help others do so. Third, employees should escalate questions or potential conflicts to Legal, Compliance, or the ethics hotline before engaging in activity that may involve company-related information.

Companies should also decide whether the code should include a general prohibition applicable to all employees, a targeted prohibition for employees with access to sensitive information, or an escalation requirement for uncertain situations. The appropriate approach may vary depending on the company's business, information profile, employee population, and tolerance for enforcement complexity. *See Appendix B for recent examples from public company Codes of Conduct.*

Conclusion

The emergence of prediction markets introduces compliance risks that many public companies have not yet addressed. While significant unresolved legal and regulatory questions remain regarding the classification of event contracts and the application of existing securities laws, companies should not wait for regulatory clarity before acting. By proactively updating insider trading policies, codes of conduct, and related governance frameworks, companies can help ensure that employees understand the boundaries around the use of confidential information, regardless of the instrument or platform involved.

If you have questions concerning the contents of this Alert, or would like more information, please speak to your regular contact at Weil or to any of the following authors:

Authors

Adé Heyliger	View Bio	ade.heyliger@weil.com	+1 202 682 7095
Rachel Alpert	View Bio	rachel.alpert@weil.com	+1 212 310 8061

APPENDIX A

The examples below illustrate that recent insider trading policy amendments vary in scope. Some policies prohibit the use of confidential information in prediction-market activity, while others impose broader restrictions on company-related contracts, platform accounts, or participation by designated covered persons.

Company	Date Amended	Amended Language in Insider Trading Policy
Snowflake Inc.	March 20, 2026	Finally, if you participate in prediction markets - platforms that allow people to bet on real-world events like elections, sports, award shows, economic trends, and corporate announcements and developments - you may not bet on anything related to Snowflake, regardless of whether you are in possession of material nonpublic information, or use confidential information you have learned through your role at Snowflake to make non-Snowflake bets. Please see our Global Code of Conduct and Ethics for more information about prediction market betting.
GoDaddy Inc.	April 26, 2026	We have an Insider Trading Policy that prohibits all directors, officers, employees and agents (e.g., consultants and independent contractors) from: using confidential information, including material, non-public information, obtained through their relationship with the Company to engage in transactions or take positions on event-based or prediction market platforms, whether relating to GoDaddy or other companies or entities with which we work, such as customers, vendors or business partners.
Federated Hermes, Inc.	May 1, 2026	Prediction Markets are derivative contracts in which two parties agree to pay one another upon the occurrence or non-occurrence of certain events. These contracts are commodities traded on Commodities Futures Trading Commission (CFTC)-regulated exchanges known as Designated Contract Markets (DCMS) and are offered to retail or institutional investors on various platforms such as Kalshi, Polymarket, and Robinhood. While the contracts are based on a wide range of events, they can be based on the performance of a single stock or issuer, the performance of a securities-based index, or events related to the financial markets. Certain Prediction Markets transactions could be viewed as a conflict of interest with transactions undertaken on behalf of Federated Hermes funds, ETFs, or clients. Federated Hermes employees could be viewed as trading while in possession of material non-public information in relation to certain securities or events. Finally, engaging in certain transactions could have reputation risk to Federated Hermes. Because the platforms do not produce account statements, transactions cannot be pre-cleared and monitored like securities transactions in a brokerage account. Therefore, it is Federated Hermes policy that no Federated Hermes officers or employees may participate in Prediction Markets or hold accounts on Prediction Markets platforms like those identified above.

Company	Date Amended	Amended Language in Insider Trading Policy
8X8, Inc.	May 22, 2026	Prediction Markets and Event Contracts. Directors, officers and other employees are prohibited from purchasing, selling, or otherwise transacting in event contracts, prediction market contracts, binary options, or any similar instruments on any platform when such transaction is based on, or informed by, material nonpublic information obtained through employment with, or the performance of services on behalf of, the Company. This prohibition applies whether the event contract relates to the Company, any Third Party (as defined herein), or any other subject matter about which the individual possesses material nonpublic information by reason of their relationship with the Company. For the avoidance of doubt, this prohibition extends to prediction market contracts that do not involve the Company's securities directly but that relate to events, transactions, product launches, regulatory actions, or other corporate activities about which the individual possesses material nonpublic information. Employees remain free to participate in prediction markets on topics unrelated to the Company's business or about which they have no confidential information obtained through their employment.
AeroVironment, Inc.	June 26, 2026	Prediction markets and similar platforms (including but not limited to markets operated by Kalshi, Polymarket and other event contract platforms) allow participants to trade contracts based on the outcome of future events, including events related to corporate performance, business developments, regulatory actions, and other matters that may relate to the Company or companies with which the Company conducts business. Covered Persons are prohibited from using Company confidential information for personal financial gain in any form, including through wagering, betting, or trading on prediction markets or similar platforms. This prohibition applies regardless of whether the prediction market contract qualifies as a "security" under securities laws. Covered Persons may not use, disclose, or rely upon any material non-public, proprietary, confidential, or controlled information obtained through their relationship with the Company when participating in any prediction market. This includes, but is not limited to, prediction markets or contracts concerning corporate earnings or earnings call language, mergers and acquisitions, regulatory approvals or outcomes, contract awards, product launches, management decisions, or any other business developments or events about which a Covered Person possesses material non-public information obtained through employment with or performance of services on behalf of the Company. Trading on inside information in prediction markets can trigger federal regulatory scrutiny under commodities fraud and wire fraud statutes, breach corporate policies, and damage the Company's reputation and credibility. Covered Persons are reminded that the Company's Amended and Restated Code of Business Conduct and Ethics separately addresses the proper handling and protection of confidential information and applies to all contexts in which Company information may be used or disclosed.

APPENDIX B

The examples below illustrate how companies are beginning to address prediction markets through codes of conduct and ethics policies. These updates generally frame the issue as one involving confidential information, conflicts of interest, personal benefit, and reputational risk, rather than only securities trading.

Company	Date Amended	Amended Language in Codes of Conduct
Nuveen Churchill Private Capital Income Fund	March 6, 2026	Do not enter into any Event Contract involving any company, financial market, or economic indicator or forecast (such as recession likelihood or GDP growth) using an online prediction market platform (e.g. Kalshi, Polymarket, Augur) or any other means. This restriction does not apply to Event Contracts related to sports, politics, culture, or other events not previously defined as prohibited.
Enhanced Group Inc.	May 7, 2026	Covered Persons may not, directly or indirectly, place, purchase, sell, enter into, maintain or otherwise participate in any prediction market, event contract, swap, wager or similar arrangement relating to the Company or the Enhanced Games, the Company's securities, or any event, milestone, transaction, product launch, financing, regulatory matter, strategic initiative or other development involving the Company or the Enhanced Games.
Cirrus Logic, Inc.	May 21, 2026	Confidential information should not be used for personal gain in any form, including through personal investments or through trading, wagering, betting, or entering into any transaction or arrangement.
Amplify ETF Trust	July 8, 2026	An Event Contract is a derivative contract based on a specified event. It is also known as a prediction or information contract. Event Contracts involving individual securities/issuers, securities indices, financial markets, currency spreads, or similar financial indices are prohibited.
Visa Inc.	July 14, 2026	Also, you must never use non-public Visa information, including information about business decisions, financial results, partnerships, or Visa events, to inform or influence trades or bets on any online wagering or prediction market platforms. "Prediction market platforms" are online platforms where participants place event-based trades on real-world outcomes. This restriction extends beyond your own activity: you must not disclose or tip non-public Visa information to anyone, including family members or spouses, if you know or should know that such information is being used in online wagering or prediction market platforms.