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APRIL 7, 2026

Combatting Investigations & Enforcement Arising Out of Prediction Markets

Prediction markets are drawing increased scrutiny from regulators and prosecutors, with overlapping enforcement efforts and a still-developing legal framework. Proactive risk management and strategic responses to inquiries are critical as exchanges expand their own enforcement and the threat of investigation grows.

Prediction markets have become a lightning rod for U.S. regulators, with trading volumes exceeding US\$ 60 billion in 2025. In the turf battle for enforcement and oversight, state attorneys general are pursuing civil or criminal penalties on the exchanges, while federal regulators have signaled a willingness to police insider trading, manipulation, and fraud. The Commodity Futures Trading Commission's (CFTC) Enforcement Division has asserted primary authority through advisories and highlighted coordination with exchange platforms such as Kalshi and Polymarket, which, through self-regulatory organizations (SROs), are strengthening their internal surveillance and enforcement functions. These platforms have already conducted investigations resulting in fines and multi-year suspensions.

Meanwhile, significant criminal investigations are already underway. The U.S. Attorney for the Southern District of New York, whose office oversees the most active federal securities and commodities enforcement docket in the country, recently announced that he expects to bring fraud prosecutions involving the prediction markets.

Regardless of whether a company is aware of direct exposure to prediction markets, this evolving regulatory and enforcement landscape—combined with the risk of indirect or unidentified exposure, such as an employee trading on inside information or a competitor creating an antagonistic market (e.g., suggesting a company will not reach its earning goals)—makes it prudent to take proactive measures. Many companies are implementing internal policies governing employee participation in prediction markets and monitoring exchanges

for event contracts that could signal or prompt leaks of confidential information.

As to enforcement, however, the legal framework remains unsettled. This posture creates both risk and opportunity for market participants and targets of investigations.

Guarding Against Investigations & Standing Up to Regulators and Platforms

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Market participants should consider the following:

- **Testing the regulator's reach.** Jurisdiction is a live battleground. States have challenged the CFTC's authority to regulate prediction markets, and regulators are still negotiating their own jurisdictional lines. Indeed, whether a particular event contract even constitutes a "derivative" under the Commodities Exchange Act may not be straightforward. Participants—especially non-U.S. companies and traders—should not waive procedural requirements for obtaining cross-border evidence. Jurisdiction should not be conceded at the outset of an investigation; pressing the issue can help narrow the scope of an inquiry and increase negotiating leverage.
- **Contesting an insider trading theory.** Attempts to apply insider trading laws to prediction markets create potential defenses. In markets where a single large order can shift implied probabilities, regulators may characterize aggressive but legitimate trading as manipulative; however, moving the market alone does not establish illegal "manipulation" under the law. Moreover, if the relevant information was non-proprietary—even if difficult to find—it may not constitute "nonpublic" information for purposes of insider trading. Criminal wire fraud prosecutions may also be limited by recent case law finding that certain types of information do not constitute "property" under criminal fraud statutes.
- **Seizing control of the narrative.** Many investigations begin at the platform level before any government referral. Early engagement with the platforms themselves, such as by advancing an affirmative factual narrative and providing a legitimate trading rationale, can shape the nature and characterization of a platform's referral to a regulator, which, in turn, may affect a regulator's decision to pursue the matter further.
- **Challenging exchange proceedings.** Exchanges often set their own hearing rules, which may lack basic procedural protection. Market participants can challenge the adequacy of these processes and raise potential conflicts in how the investigations are handled. If exchange personnel were already aware of the activity—such as through prior interactions or compliance inquiries—that knowledge may affect how intent is assessed and could place the platform's own conduct at issue.
- **Going on the offensive.** Fully complying with an investigation does not necessarily signal credibility to regulators or exchanges. Market participants should be ready to challenge overreach, particularly in a market where the applicable law is largely untested. This can increase the investigative burden, create leverage, and allow participants to frame the narrative appropriately, rather than allowing the regulator to construct an incriminating version of the same facts.

As exchanges take a more aggressive enforcement stance and regulators move toward formal oversight, companies and traders face increasing risk. Defaulting to cooperation, especially where potential credit is uncertain, may not be the best approach in a market where legal standards remain unsettled. Early, strategic use of defensive and offensive tools may be more effective than reactive engagement.

About Kobre & Kim

Kobre & Kim is a conflict-free global law firm focusing on cross-border disputes and investigations, often involving fraud and misconduct.

Our team:

- Serves as lead counsel in prominent enforcement actions, including those involving market manipulation, insider trading, bribery and corruption, asset forfeiture, antitrust and competition, economic sanctions, money laundering, fraud and other misconduct.
- Assists clients in realizing value from their claims by developing investigative, enforcement, and defense strategies for criminal and civil litigation.
- Focuses exclusively on serving as special counsel in investigations matters and typically does not pursue institutional relationships.
- Delivers independent assessments in complex situations, affording a high level of comfort about our confidentiality due to a lack of ties with other industry participants.
- Brings together former U.S. Department of Justice prosecutors stationed across the globe (including in EMEA and Asia) with specialists in key jurisdictions, including the BVI and Cayman Islands, Asia, EMEA, Latin America, and the United States.