

# Securities Enforcement Update

Gain-Based Enforcement & Prediction Markets

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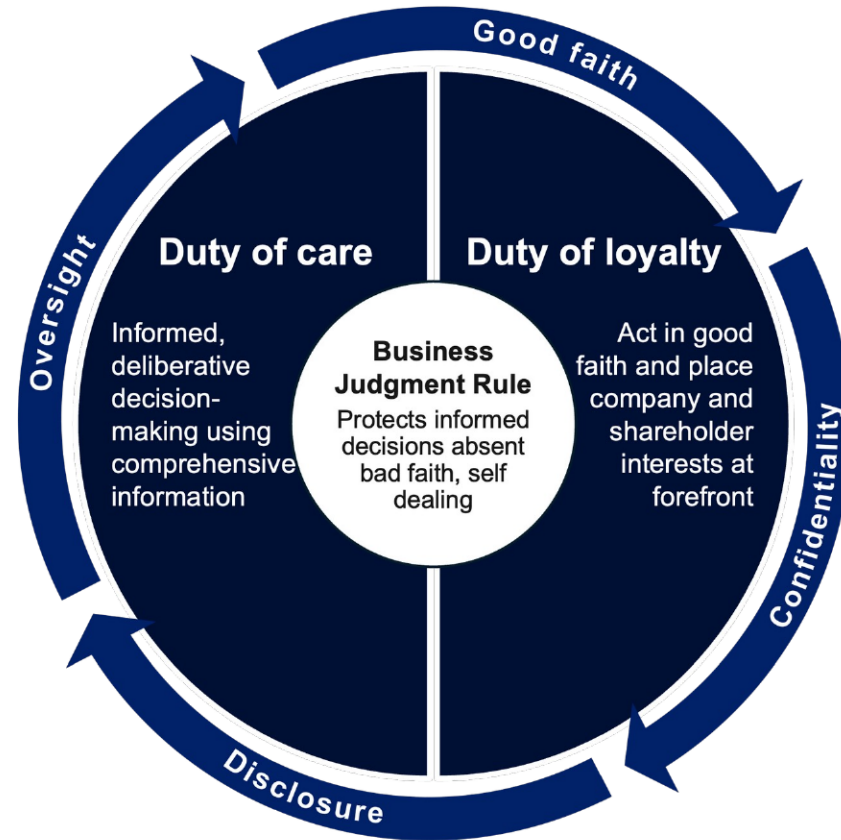
# Fiduciary Duty Landscape for Directors Post-Boeing

## Oversight

- Part of duty of care; *Boeing* highlighted importance of “mission critical” risk management and held board liable for lack of monitoring and quality risk oversight
- AI increasingly qualifies as a ‘mission-critical’ risk when embedded in core operations, compliance, or safety functions.



## Fiduciary Duties



## Good faith

Component of duty of care and loyalty providing protection for directors who make decisions and take actions in best interests of the corporation

## Confidentiality

Directors must keep corporate information confidential, including Board communications and deliberations. Shareholders not entitled to all information

## Disclosure

Directors must communicate honestly with shareholders, including full and fair disclosures. Does not obligate Board to provide all information to shareholders (materiality standard)



# Executive Summary

Recent developments are reshaping enforcement exposure for companies and their people

## Harm → Gain

*Sripetch v. SEC*: the SEC may disgorge profits without proving investor loss

## \$1.2M

Google engineer's Polymarket profit on "Year in Search" bets (May 2026)

## \$409,881

U.S. soldier's Polymarket profit, Maduro operation (Apr. 2026)

## 13+

Congressional bills on prediction markets (2026)

### 01 SCOTUS — *Sripetch v. SEC*

The Supreme Court held the SEC need not prove investor loss to obtain disgorgement, overturning *SEC v. GoviI*. Exposure now turns on financial benefit, not quantifiable harm.

### 02 Prediction Markets

The CFTC and DOJ are policing insider trading on event contracts (Kalshi, Polymarket). Two 2026 cases reach a corporate employee and a government insider.

### 03 Enforcement Theories

Gain-based and misappropriation theories: disgorgement, the Commodity Exchange Act, CFTC Rule 180.1, wire fraud, and theft of government information.

### 04 Board Implications

The direct company exposure is gain-based disgorgement for disclosure and controls matters. Prediction-market trading is largely an individual-conduct and reputational risk, addressed by policy.

# The Shift: From Harm to Gain

*One question now drives enforcement exposure across securities and derivatives*

Enforcement increasingly asks whether conduct created a **financial benefit**—not whether harm can be quantified.

## The direct company exposure

After Sripetch, the SEC can disgorge profits without proving investor loss—reaching even technical disclosure and controls matters. This is the development that touches the company directly.

## Misappropriation is the trigger

In prediction markets the violation is the individual's: using nonpublic information obtained in breach of a duty, and valuable to the bet, under the CEA and CFTC Rule 180.1. A bet on public or trivial information is not actionable.

## Gain is the measure

Where there is a violation, the recovery and the charge track the benefit obtained—the company's stake in the prediction-market cases is principally reputational, not direct liability.

# SCOTUS — *Sripetch v. SEC*

*The SEC may obtain disgorgement without proving investor loss*

## The holding

On June 4, 2026, the U.S. Supreme Court held in *Sripetch v. SEC* that the SEC need not prove that investors suffered a financial loss to obtain disgorgement—the return of profits obtained through alleged misconduct—for securities-law violations. The decision overturns the more restrictive Second Circuit approach in *SEC v. Govil* and confirms that disgorgement remains broadly available as an enforcement tool.

## Illustrative example

If the SEC alleges a disclosure or internal-controls issue, even absent identifiable investor losses, it could assert the company obtained a benefit—preserving valuation, achieving more favorable transaction terms, or avoiding losses—and seek disgorgement of that benefit. Exposure is tied not to investor harm, but to whether any financial advantage can be linked to the conduct.

## Where exposure arises

Disgorgement is a core component of SEC enforcement and is often the largest financial-exposure item. It commonly arises in disclosure or reporting issues, accounting or controls deficiencies, insider trading or misuse of MNPI, and improper sales or securities offerings. The argument—once available where no clear investor harm existed—is no longer available.

## Why it matters

It increases potential exposure across a broader range of scenarios, including matters once viewed as technical; strengthens the SEC’s leverage in investigations and settlement discussions; and reinforces the continued shift toward gain-based enforcement—focused on financial benefit rather than measurable harm.

*Sripetch v. SEC* (U.S. June 4, 2026); cf. *SEC v. Govil* (2d Cir.).

# Prediction Markets: The Application Arena

*Event contracts with binary payoffs tied to real-world outcomes*

## How They Work

**Binary contracts:** Buy Yes/No contracts that pay \$1 if an event occurs and \$0 otherwise; price reflects the market-implied probability.

**Event types:** Elections, geopolitical events, sports, economic indicators, and corporate events such as earnings and leadership changes.

**Key platforms:** Kalshi (CFTC-registered DCM) and Polymarket (operated by Blockratize Inc.), both growing rapidly since 2021.

**Regulation:** The Commodity Exchange Act governs event contracts as swaps/options; the CFTC has jurisdiction over registered exchanges.

## What Actually Creates Risk

**The trigger:** Using nonpublic information obtained in breach of a duty of trust or confidence—the misappropriation theory behind these cases.

**Materiality:** Turns on how valuable the information was to the specific bet—not the existence of a market. Public or trivial bets (e.g., a meeting's location) are not actionable.

**Narrow company nexus:** The violation is the individual's and is generally not imputed to the company. Its stake is protecting its own MNPI and reputational association.

**Residual caveats:** Greater concern where executives are involved, controls are absent, or the information is also Reg FD / disclosure-sensitive.

# Recent DOJ & CFTC Enforcement Actions

*Parallel criminal and civil actions now reach trading on misappropriated information*

S.D.N.Y. • Complaint unsealed May 2026

## ***U.S. v. Spagnuolo***

Google software engineer (alias “AlphaRaccoon”) charged with commodities fraud, wire fraud, and money laundering.

Allegedly used nonpublic internal Google data on trending searches to trade Polymarket contracts predicting Google’s year-end “Year in Search” rankings—via a tool marked “Google Confidential.”

Risked ~\$2.75M and profited ~\$1.2M as the rankings were announced. SDNY: “corporate insiders cannot use confidential business information to turn a profit.”

S.D.N.Y. • Indictment unsealed Apr. 2026

## ***U.S. v. Van Dyke***

U.S. Army soldier charged with unlawful use of confidential government information, theft of nonpublic government information, Commodity Exchange Act violations, wire fraud, and an unlawful monetary transaction.

Allegedly used classified information about the operation to capture Nicolás Maduro to bet ~\$33K on Polymarket Venezuela/Maduro contracts; profited ~\$409,881.

Paired with a CFTC civil action—the CFTC’s first insider-trading action involving event contracts.

**What these cases share:** Both are individual prosecutions. Liability turns on misappropriating nonpublic information held under a duty of trust or confidence and using it to profit—not on the existence of a prediction market, and not on benign or public information. For an employer, the conduct is generally not imputed to the company; its exposure is principally reputational and a question of whether policy and MNPI controls address event contracts.

# Legal & Regulatory Framework

*How enforcement theories apply across securities and prediction markets*

## Securities Law

**Disgorgement (post-Sripetch):** The SEC may recover profits tied to misconduct without proving investor loss; exposure turns on financial benefit.

**SEC Rule 10b-5:** Prohibits fraud in securities transactions; insider trading is trading on MNPI in breach of a duty.

**Classical & misappropriation:** Insiders breach duties to shareholders; outsiders breach duties to the source of the information.

**STOCK Act / 10b5-1:** Government officials are not exempt; pre-arranged plans provide an affirmative defense with cooling-off rules.

## Prediction Markets

**CFTC Rule 180.1:** Modeled on Rule 10b-5; prohibits fraud and manipulation in derivatives, including on registered exchanges like Kalshi.

**Commodity Exchange Act:** Regulates event contracts as swaps; the CFTC asserts exclusive jurisdiction (affirmed by the Third Circuit).

**Wire fraud / theft of gov't info:** Used in U.S. v. Van Dyke for trading on classified government information.

**Misappropriation reaches insiders:** U.S. v. Spagnuolo applied it to a Google engineer trading event contracts on nonpublic employer data.

# CFTC Guidance & Congressional Action

*Regulators and lawmakers are moving to address prediction-market integrity*

## CFTC & Federal Actions

- Division of Enforcement advisory (Feb. 2026): insider trading and manipulation in prediction markets will face CFTC scrutiny.
- Confirmed CFTC Rule 180.1 applies to event contracts on registered exchanges (DCMs).
- Advance Notice of Proposed Rulemaking (Mar. 2026) on event-contract regulation.
- CFTC/DOJ sued multiple states (Apr. 2026); the Third Circuit affirmed federal preemption.

## Congressional Legislation (2026)

**BETS OFF Act:** ban contracts on government action, terrorism, war, assassination, and outcomes a person can control.

**PREDICT Act:** bar Members of Congress, the President, and executive officials from trading political-event contracts.

**STOP Corrupt Bets Act:** bar listing event contracts on actions by the executive, legislative, or judicial branches.

**13+ bills** introduced overall; platforms are self-regulating in part to preempt legislation.

# Risk Assessment

*Calibrated to the company—separating direct exposure from individual-conduct and reputational risk*

| Risk Category   | Severity  | Likelihood | Trend  | Relevance |
|---|-----------|------------|--------|-----------|
| Gain-based disgorgement for disclosure & controls matters (post-Sripetch)     | High      | High       | Rising | Direct    |
| Disgorgement as the largest exposure item in SEC resolutions                  | High      | Medium     | Rising | Direct    |
| MNPI controls & insider trading in traditional securities (10b5-1)            | High      | Low        | Stable | Direct    |
| New obligations from CFTC rulemaking / pending legislation                    | Medium    | Medium     | Rising | Indirect  |
| Employee misuse of company MNPI on a prediction market (individual liability) | Low / Med | Low        | Rising | Indirect  |
| Reputational association if an employee is charged                            | Medium    | Low        | Rising | Indirect  |

*Note: The genuinely company-facing exposure is gain-based disgorgement (top rows). Employee prediction-market trading is an individual-conduct matter—relevant to the company chiefly as a policy and reputational question, not direct corporate liability. Illustrative, as of June 2026.*

# Board & Company Implications

*Where the gain-based shift and prediction markets intersect with governance*

## The direct exposure: disclosure & controls

After Sripetch, even technical disclosure or controls issues can carry gain-based disgorgement, because the SEC need not prove investor loss. This is the company-facing risk; rigor around disclosure controls is the first line of defense.

## Prediction markets: individual conduct

The violation is the employee's, premised on misappropriating the company's MNPI in breach of a duty. It is generally not imputed to the company; the company's stake is protecting its MNPI and reputational association.

## What this is not

Not corporate liability for an employee's personal bet, and no disgorgement against the company. A benign or public-information wager (e.g., a meeting's location) is not insider trading, and markets listing company-related contracts do not create company liability.

## A measured response

Extend MNPI rules and the Code to event contracts and fold it into existing training—proportionate, not alarmist. Keep focus on disclosure-controls rigor, and watch the residual cases: executive involvement, a controls gap, or Reg FD-sensitive information.