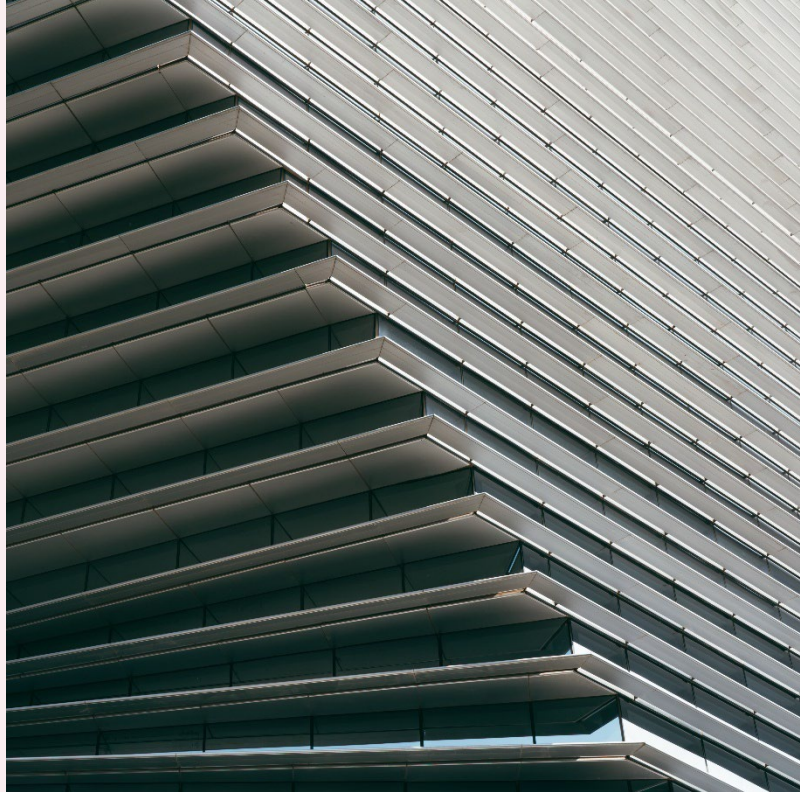


CFTC Enforcement Director Outlines Enforcement Priorities, Addresses Prediction Market Insider Trading, and Previews a Forthcoming Cooperation Advisory

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Key Takeaways

- **Enforcement posture:** David Miller, the Enforcement Director of the U.S. Commodity Futures Trading Commission (“**CFTC**”), stated that the “era of regulation by enforcement is over,” emphasizing a renewed focus on core enforcement areas—fraud, manipulation, and market abuse—rather than using enforcement actions to set policy.
- **Five priority enforcement areas:** Miller identified five areas the CFTC intends to prioritize: (1) insider trading (including in prediction markets), (2) market manipulation (particularly in energy markets), (3) disruptive trading/market abuse (including spoofing and wash trading), (4) retail fraud (including Ponzi schemes and technology-enabled scams), and (5) willful Anti-Money Laundering (“**AML**”)/Know Your Customer (“**KYC**”) violations. He also noted that the CFTC may make criminal referrals in appropriate cases, including in priority areas.
- **Prediction market insider trading:** Miller devoted significant attention to insider trading in prediction markets, stating that insider trading principles apply to prediction market event contracts and outlining how the CFTC expects to proceed under the Commodity Exchange Act’s (“**CEA**”) anti-fraud provisions—particularly CEA Section 6(c)(1) and CFTC Rule 180.1—through a misappropriation theory framework. Miller focused in particular on insider trading of sports-related event contracts and on trading based on government information.
- **Trading on government information:** Regarding government information, Miller highlighted duties created by the STOCK Act, the violation of which can form the basis of an insider trading charge. Miller also highlighted CEA Section 4c(a)(4) (sometimes referred to as the “Eddie Murphy Rule,” a reference to *Trading Places*) and other statutory provisions as potential tools the CFTC may use to address trading based on misused non-public government information.

- **Cooperation policy update:** Miller announced a forthcoming Staff Advisory on Cooperation that would replace the current policy and described a more streamlined approach that, in appropriate circumstances, could provide a clearer path to a declination for eligible entities that self-report, fully cooperate, and fully remediate—absent aggravating circumstances. Notably, the cooperation policy will render cooperation binary—targets must provide full cooperation to receive any cooperation credit—and targets will have to disgorge profits and provide restitution to victims to receive cooperation credit.

Introduction

On March 31, 2026, David Miller, the CFTC’s Director of Enforcement, delivered remarks addressing (i) the CFTC’s enforcement priorities, (ii) insider trading in prediction markets, and (iii) anticipated changes to the CFTC’s cooperation framework.¹ His remarks provide a useful window into how the Enforcement Division intends to deploy resources and evaluate cooperation in the near term.

Enforcement focus on core misconduct

Miller framed the Division’s approach as prioritizing serious misconduct of the sort that the CFTC has long prosecuted—fraud, price manipulation, and market abuse—rather than using enforcement actions to set policy. He also emphasized coordination with other regulators and noted that criminal referrals may be made in appropriate cases.

Consistent with that framing, Miller identified five enforcement priorities.

Priority 1: Insider trading (including prediction markets)

Miller stated that insider trading is prohibited under the CEA and CFTC regulations across CFTC-regulated markets. He emphasized that the Division’s focus is on the misappropriation of material non-public information (“**MNPI**”)—*i.e.*, trading or tipping in breach of a duty owed to the source of the information. Miller acknowledged, however, that CFTC-regulated markets are price discovery rather than disclosure markets. He stated that price discovery markets benefit from traders trading on non-public information that they rightfully possess and emphasized that the CFTC does not wish to discourage such trading.

Priority 2: Market manipulation (particularly in energy markets)

Miller stated that current energy market dynamics, including increased prices and increased volatility, might be attractive for would-be manipulators. He underscored that manipulation in energy markets can be uniquely harmful given inelastic demand in those markets and limited substitutability. He also emphasized the role of futures exchanges as a frontline defense against

¹ David I. Miller, Dir. of Enforcement, CFTC, *CFTC Enforcement Priorities, Insider Trading in the Prediction Markets, and Cooperation with the CFTC* (Mar. 31, 2026), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opamiller1>.

manipulation and referenced those markets' obligations to maintain appropriate surveillance and to list contracts not susceptible to manipulation.

Priority 3: Market abuse/disruptive trading

Miller identified market abuse conduct—such as spoofing, disruptive trading during closing periods, and wash trading—as an enforcement priority given the potential to distort price signals and undermine market integrity.

Priority 4: Retail fraud

Miller indicated continued focus on retail fraud and highlighted the evolution of common schemes, including Ponzi schemes, commodity pool fraud, pig-butcher/romance scams, and impersonation/phishing. He stated that these old schemes are often now accomplished with new tools and techniques, including AI-enabled impersonation and fake websites or applications designed to mimic legitimate platforms.

Priority 5: Willful AML/KYC violations

Miller emphasized “willful” failures to comply with AML/KYC requirements—distinguishing them from technical violations—and noted the connection between AML/KYC compliance and broader illicit finance risks. He stated that the CFTC would make criminal referrals for such violations where appropriate.

Discussion of Prediction Market Insider Trading Enforcement Framework

A central portion of Miller’s remarks focused on insider trading in prediction markets. He stated that insider trading principles apply to prediction market event contracts and outlined how the Enforcement Division expects to proceed in this area.

Statutory and regulatory basis: Miller pointed to CEA Section 6(c)(1) and CFTC Rule 180.1 as the key anti-fraud authorities, and described them as modeled on the anti-fraud framework developed under federal securities law.² He also discussed the CFTC’s view that certain event contracts fall within the CEA’s definition of “swap,” such that the CEA’s anti-fraud provisions apply to those contracts. He noted, however, that this issue is the subject of ongoing litigation.

Misappropriation theory: Miller explained that, for insider trading in CFTC-regulated markets, the operative theory is generally the misappropriation theory. Under that theory, liability may attach where an individual (i) possesses MNPI, (ii) misappropriates that information by trading or tipping in breach of a duty of trust or confidence owed to the information source, and (iii) acts with the requisite scienter.

Exchange obligations and integrity measures: Miller emphasized the role of exchanges as a first line of defense and highlighted their responsibilities to maintain surveillance and other controls designed to deter and detect fraud, manipulation, and insider trading, including with respect to contracts that may

² CEA § 6(c)(1), 7 U.S.C. § 9(1); 17 C.F.R. § 180.1.

present heightened integrity risks. Given the context in which the remarks were made, this may have been a veiled suggestion that prediction markets need to improve their surveillance and enforcement capabilities. He also referenced information-sharing initiatives, including a memorandum of understanding between the CFTC and Major League Baseball, as an example of integrity-focused coordination.³

Trading on government information: Miller separately addressed trading based on government information and referenced CEA Section 4c(a)(4)⁴ (sometimes referred to as the “Eddie Murphy Rule”) and other statutory provisions as potential bases for enforcement attention to trading on misused non-public government information.

Preview of Forthcoming Cooperation Advisory

Miller announced that the Division intends to issue a new Staff Advisory on Cooperation and described several intended features:

Declinations for eligible self-reporters. A party that self-reports, fully cooperates, and fully remediates could have a clearer path to a declination, absent aggravating circumstances. Aggravating circumstances include extensive wilful misconduct by senior management/ownership and recidivism. He also stated that the CFTC’s prior guidance on cooperation and self-reporting, issued in February 2025, is being rescinded.⁵

Clarification of self-reporting requirements. Miller stated that parties could now receive self-reporting credit for any prompt, timely, good faith self-reporting attempt, even if the CFTC had already learned of the issue confidentially, although parties would not be eligible for self-reporting credit where the disclosed issue is public or disclosure is imminent (*e.g.*, by a whistleblower, another agency’s or an SRO’s investigation, or via press reports). He emphasized that under the new guidance, disclosures of issues in CFTC-mandated CCO reports could constitute valid self-reports.

“Binary” cooperation. Miller suggested the Division’s cooperation assessment will be simplified: parties either provide full cooperation or do not. He previewed expectations that full cooperation could include (among other items) disclosure of relevant non-privileged information, preservation of records (including ephemeral messages), making personnel available for interviews, and good faith efforts to secure overseas documents.

Remediation expectations. Miller also tied cooperation credit to remediation and described remediation as requiring analysis of conduct and root causes, correcting deficiencies, making compliance program enhancements, and—where applicable—effecting discipline, restitution, and disgorgement.

³ Press Release, CFTC, *CFTC and MLB Sign Groundbreaking MOU* (Mar. 19, 2026), <https://www.cftc.gov/PressRoom/PressReleases/9199-26>.

⁴ CEA § 4c(a)(4), 7 U.S.C. § 6c(a)(4).

⁵ See Press Release, CFTC, *CFTC Releases Enforcement Advisory on Self-Reporting, Cooperation, and Remediation* (Feb. 25, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9054-25>.

The CFTC's forthcoming guidance is consistent with other enforcement authorities' recent efforts to clarify cooperation guidance. Notably, in March 2026, the Department of Justice ("DOJ") released its first ever Department-wide Corporate Enforcement and Voluntary Self-Disclosure Policy ("**CEP**"), applicable across all DOJ programs except for antitrust violations.⁶ The CEP is similarly centered around three core obligations: voluntary self-disclosure; full cooperation; and timely and appropriate remediation.

Practical Implications

Expect scrutiny of manipulation risk in energy markets. Miller emphasized that energy market manipulation is uniquely harmful and that the CFTC will continue scrutinizing these markets. Participants should ensure that surveillance and escalation controls are in place and documentation of trading rationales is robust, particularly during periods of volatility. Participants should expect exchanges to serve as a key enforcement line of defense against manipulation.

Reevaluate controls relevant to prediction markets. Exchanges and intermediaries involved in event contracts should reassess surveillance, controls around conflicted participants, and escalation procedures for suspicious trading. Businesses whose personnel have access to MNPI should evaluate whether their existing personal trading policies are broad enough to cover trading on prediction markets.

Review AML/KYC governance with an eye toward preventing violations. Miller's remarks suggest the Division will focus on intentional circumvention. Accordingly, documentation of an AML/KYC program's adequate design, resourcing, and remediation decisions may become relevant in future enforcement matters.

Update cooperation playbooks. The previewed declination pathway and "binary" cooperation expectations suggest entities should revisit investigation readiness, document preservation practices (including ephemeral messaging), and cross-border collection planning.

⁶ U.S. Dep't of Justice, Off. of the Deputy Att'y Gen., *Corporate Enforcement and Voluntary Self-Disclosure Policy* (Mar. 10, 2026), <https://www.justice.gov/dag/media/1430731/dl>.



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