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***Payments Pros – The Payments Law Podcast — Trading, Gambling, or Something Else? Prediction Markets and the Payments Puzzle***

**Speakers: Stephen Piepgrass and Keith Barnett**

**Aired: February 25, 2026**

**Stephen Piepgrass (00:00):**

Welcome to a special crossover edition of *Regulatory Oversight* and *Payments Pros*. I'm Stephen Piepgrass, one of the hosts of our *Regulatory Oversight Podcast* and the leader of our firm's Regulatory Investigation Strategy and Enforcement or RISE Practice Group. Today I'm joined by Keith Barnett, who you may recognize as one of the hosts of our *Payments Pros* podcast. Together we're going to dig into how predictive markets, gaming, and payments collide and what all of this means for companies trying to operate in a fast-changing and legally complex space. Before we begin, I encourage all our listeners to visit and subscribe to our blog at [regulatoryoversight.com](https://regulatoryoversight.com) to stay current on the latest in regulatory news and developments.

**Stephen Piepgrass (00:45):**

As I mentioned, Keith and I are going to explore how predictive markets interact with CFTC rules, insider trading issues, state gambling laws, and what all of this means for third-party providers and payment processors, especially, who engage with participants in this space. Keith is also a partner in our RISE Practice Group and advises payment processors, money transmitters, payment apps, and related companies on compliance with federal and state money services business laws. Keith has more than 20 years of experience in litigation, compliance, regulatory matters, internal and government investigations, and represents clients before government regulators including the CFPB, FTC, SEC, and important for this conversation, the CFTC, as well as industry regulators like FINRA and private litigants in federal and state courts, arbitration tribunals, and administrative proceedings.

**Stephen Piepgrass (01:38):**

Keith, thank you for joining me today.

**Keith Barnett (01:40):**

Great to be here, Stephen.

**Stephen Piepgrass (01:41):**

Excellent. And I know our listeners are excited to have two podcast hosts joining them on this podcast today, combining our expertise in a way. As we jump into this topic, there may be some of our listeners who are wondering, what are predictive markets? These are still pretty new. So can you give our listeners, Keith, just a quick sense for what are these? And then we can dive into the complex issues around them.

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**Keith Barnett (02:07):**

Sure thing. Predictive markets, it's a relatively new phenomenon, but it applies, or at least they've applied it to the Commodity Exchange Act, which has been around for a much longer time. But, put simply, predictive market contracts are exchange-traded platforms where people buy and sell contracts on the outcomes of future events. It functions like a stock market for forecasts, but with prices reflecting the collective belief in a certain result. For example, I went to UCLA as an undergrad and Duke for law school, but I'm a Bruin through and through. If will someone have a predictive market? Will there be a predictive market? Will the UCLA Bruins win the national championship in women's basketball? It's reflective of a yes-no question there. That's a very simple example of what it is. And the prediction market contracts, they're classified as swaps under the Commodity Futures Trading Commission authority and not securities under SEC authority. Stephen, you mentioned at the outset that we're going to talk about insider trading. That's the significant distinction there, that they are viewed or classified as swaps and not securities.

**Stephen Piepgrass (03:29):**

A point we've made, and our listeners who've been listening to our podcast for a while now, this is a point we've made before, a lot of the regulators who have been looking at these predictive markets, and actually a lot of the opponents of them, many of them are state attorneys general, have really made the argument that predictive markets allow for essentially sports betting in the same way that licensed sports betting takes place in some states. And I think you've hit the nail on the head, Keith, on one very, very important distinction, which is when it comes to insider trading, when predictive markets actually allow for an imbalance of information among the market participants in a way that traditional stock markets don't allow because they have insider trading rules as well that are applied there and that sports wagering doesn't allow for.

**Keith Barnett (04:20):**

That's right. Just to back up for a second on that, in a prior life, and some may even say in a current life, I was an SEC enforcement defense lawyer on that end. I've had 10b-5 cases on behalf of clients. Just a quick primer on insider trading under the SEC versus the CFTC, because I've also, as you mentioned earlier, litigated against the CFTC. As some of our listeners may know, SEC Rule 10b-5, that prohibits insider trading, but it explicitly applies only to securities. And as I mentioned earlier, these contracts, these predictive market contracts, do not qualify as securities. You could call them a betting contract where one party's gain equals another party's loss. So there is a CFTC rule that prohibits trading on material non-public information, but that rule requires proof that information was obtained in breach of an existing duty from law, agreement, relationship, or whatever. It's much broader under the SEC. And another thing to note is that the CFTC has not brought any enforcement actions for predictive market insider trading, actually precisely because of the uncertainty with the rule. This is not as clear-cut as it is under 10B5. And if you don't mind for a second, I'd like to mention that the CFTC Chairman Michael Seelig has actually made an announcement in late January that conceivably could address that dilemma that I just brought up, if that's okay.

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**Stephen Piepgrass (06:01):**

Why don't you tell our listeners about that really, really interesting op-ed written by the new chairman?

**Keith Barnett (06:07):**

Yeah. To back up for a second, in his op-ed, he mentioned about how old the Commodity Exchange Act is, right? And the fact that the CFTC was initially formed to promote orderly operations in the markets for future delivery of agriculture products. For those of us who were born in the 1970s and grew up watching movies in the 1980s, I remember the movie Trading Places, right? Where they were betting on pork belly futures. I was a little kid watching that movie and I just thought Eddie Murphy was funny and Dan Aykroyd and everyone else, and then rewatch it as an adult. And they're talking about pork belly futures and all these other things that could happen. But that's what the CFTC regulates, right? So the new SEC chairman, Michael Seelig recently said that things have changed, right? On the commodities market. You have crypto, you have things of that nature. And he was actually pretty critical of the CFTC under Biden. He said instead of developing the guardrails that fostered ingenuity, the Biden administration focused on regulation by enforcement. Right? We're going to try to fit this square peg in a round hole.

**Keith Barnett (07:24):**

So even though our existing laws do not pertain to the way things have changed over the past 40, 50, 60 years, we're just going to try to shoehorn that in and initiate enforcement actions and hope that the other side just lies down or a court agrees with us or whatever.

**Stephen Piepgrass (07:44):**

If I can jump in there, we see that all the time with regulators, and especially many of the regulators I deal with are state attorneys general. They are constantly trying to apply rules that applied to old practices long ago to current ones and push the law forward through what we like to call the law of settlements. Get companies to agree to something in a settlement agreement that then applies going forward and puts the industry on notice that now this is how this is being interpreted, even though no one ever thought that this old rule would apply to a new scenario. So that's what he's talking about there when it comes to regulation by enforcement.

**Keith Barnett (08:21):**

Right. And we see that also in the payments world. So this is our crossover podcast. So let me bring in. Like in the payments world, we've seen that with the CFPB, the Federal Trade Commission, and most recently the state regulators who are trying to have their own interpretations of their state money transmitter laws that we say, look, this doesn't apply to our clients, but you're going to try to fit this in anyway because you'll have these state and federal regulators that just expect businesses to just lay down and just pay a settlement so they can keep their business going instead of fighting back. But now we're starting to see a lot more fight in businesses who do not want to deal with that. But in getting back to what Chairman Seelig

said, he's like, let's stop all that, right? CFTC and other financial regulators must develop clear and fit for purpose regulations that allow entrepreneurs to build new things while continuing to protect the public from fraud, scams, and market manipulations. And that was pretty significant that he said that. And that's almost a direct quote that I just read off to you.

**Stephen Piepgrass (09:33):**

There's probably a practical reason for this too, in that we know that the CFTC has something like 1/8 the staff of the SEC. They just don't have the enforcement bodies to go after companies in this space. So you've got very unclear law as to whether it even applies, and then a lack of just enforcers. What do you do in that situation? Well, then you turn to exactly what you're talking about, which is let's look at the regs, let's look at the law that applies today, let's bring it up to date, create a very clear roadmap for the companies that are operating in this space, and then once that roadmap's there, then we can start to enforce. I think that's a very business-friendly sort of approach. And it's as some of our listeners who've been listening to our podcast for a while know, we've been theorizing that there's probably been a conversation going on in the background among the market participants and the regulator around the need for exactly this. So I think the next question is going to be who's at the table as these rules and regulations are going to be developed, right?

**Keith Barnett (10:35):**

And it's interesting that you say that because based upon what he said, the public is going to be at the table. Right? And so he said in the op-ed, and this is also almost a direct quote, arbitrary, cumbersome, and opaque rules will not stand the test of time. The agency's policymaking divisions will develop clear rules of the road for market participants that will be codified. This is important through a notice and comment rulemaking to ensure that the regulatory requirements do not change wildly from administration to administration. So what does that mean? It means that they are actually going to draft the rules, present them to the public and allow the public to comment on the rules, and then hopefully they'll be better about the CFPB about taking input from the business leaders and actually doing something to listen to what the business leaders are saying as to what will work. What will work to actually help foster ingenuity, to promote innovation, but also protect the general public. Fostering innovation and protecting the general public are not two mutually exclusive things. But when you look at some of the rulemaking through enforcement that we've discussed earlier, it's almost as if in the past the regulators have felt like those are two mutually exclusive things.

**Stephen Piepgrass (11:56):**

It'd be very interesting to see how this develops. The other thing it will be interesting to see is the impact of this announcement in an op-ed on ongoing litigation. So one of the things that we've been watching very closely is a lot of the states have brought legal actions against Kalshi in particular, and Kalshi's brought some of its own affirmative actions as well. And as we've discussed previously, a circuit split seems like it may be shaping up around the question that we alluded to earlier about whether who really gets to be the regulator in this space, especially when it comes to sports contracts. Is it the traditional regulators of gaming, the states that can ban these outright or can put in place a licensing regime around it, or is it the CFTC? Who's going to win in that case? And I can imagine that the law firms who are litigating those questions

right now are rapidly working on motions and notices of supplemental authority, perhaps even citing this op-ed to get the courts to put a pause until the CFTC has a chance to consider these new rules and regulations that it's working on and that Chairman Seelig has told us they are working on.

**Keith Barnett (13:10):**

I think that's right. And just piggybacking off what you just said, the NCAA in January of 2026 has publicly stated, urging the CFTC to actually pause predictive markets with respect to college sports because they said they're concerned about integrity. But the NCAA has made it clear, it's ironically, the NCAA wants regulations here, but they want regulations from the CFTC citing the risk to student athletes and the potential for illegal gambling. And they've even proposed a temporary ban on college sports markets until safeguards like age limits and better monitoring are in place. But I also believe that the NCAA's request is a difficult request simply because, at least the way the law looks at it from the CFTC's perspective and from Kalshi's perspective, that this is trading, not betting. And so if the NCAA is referring this to as to gambling, then they're kind of losing the battle from the beginning if they're asking the CFTC to jump in. They need to say regulate this trading market because that's ultimately what it is.

**Stephen Piepgrass (14:27):**

Keith, you're exactly right. The issue here is that we've got a confluence of events that's led to sort of a flashpoint today. Right before that announcement or right around the time of the announcement by the NCAA, you have yet another announcement from FBI and DOJ of a massive gambling ring of sorts, probably flowing out of investigations that have been going on for quite some time of other gambling rings that were announced in months past. And this one seems to implicate dozens, if not scores, of college basketball players, including games in the United States and in China. And I think what the NCAA is reacting to is this explosion or seeming explosion, it's probably been going on for quite some time under the radar, of sports wagering and manipulation of bets in this space. And the concern is that you bring the predictive markets into the mix and suddenly it's like pouring gasoline on that fire with the additional problem of lack of ability to regulate around insider trading. And I'm sure our listeners who are familiar with these sorts of things can start playing out the scenarios in their own heads about the implications of that.

**Keith Barnett (15:46):**

Yeah, and you mentioned earlier, the sort of battle between the CFTC and the different states that are battling with the different providers of these platforms. And it's still definitely an unsettled issue, which as you mentioned at the top of this discussion, represent payment processors, money transmitters, banks, pretty much everyone in the payments industry. And one of the many things that is required of banks, financial institutions is onboarding due diligence, knowing your customer, right? Knowing the merchant. And if you have a bank or a payment processor that is providing bank related services to a company that provides these trading platforms, the bank and payment processor, they also need to know where does the law stand on this, right? And they need to know that because a part of the know your customer also includes a rep and warrant from what we call the merchant, that they are submitting entries, which are requests for money to be sent back and forth, that these entries must relate to lawful

transactions under state and federal law, right? And so that's where the dilemma comes in with respect to prediction markets. When you have state regulators on the one hand saying that this is either unlawful gambling or gambling that needs to be regulated by us, but then when you have the businesses that are providing this, on the other hand saying, no, you have no jurisdiction here, it's the CFTC that has jurisdiction.

**Keith Barnett (17:33):**

These are swaps and this is perfectly legal. And of course, you'll have the money transmitter, the payment processor, the bank, they want to take in this business, right? These are lots of money going back and forth here. And that's helpful to in business. But you have to get some clarity on where the law stands here on whether or not this is gambling that might be unlawful. So therefore you may not be able to process this payment or may not be able to take this money in. Or on the other hand, is it something within the jurisdiction of the CFTC where this is a swap and there's no problem with us either clearing these transactions or processing the payments for this transaction. So it's going to be very interesting to see what happens over the next few months or a few years.

**Stephen Piepgrass (18:22):**

And I think we both have clients who are struggling with those questions right now. And the best answers we can provide are keep a very close watch on this.

**Keith Barnett (18:31):**

That's right.

**Stephen Piepgrass (18:32):**

How these legal cases are coming down. The good news is, as of the time of recording of this podcast, although this is still very much a legally gray area and things are in limbo, they are in limbo because the court cases are all stayed at the moment. The position of the CFTC has just been made even more clear with this op-ed that just came out a couple of days before we recorded this podcast. During this period, I think there are a lot of service providers who are operating in good faith, recognizing that, yes, the law is in flux, but as of today, operating in this space it's kosher. Whether that will continue or not, we all are going to have to wait and see and watch very closely. And I think that's going to keep you busy and me busy for quite some time to come because I think a lot of these issues are going to remain unresolved until further regulatory action and further action may be eventually by the U.S. Supreme Court on these very questions.

**Keith Barnett (19:29):**

That's right. I agree.

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**Stephen Piepgrass (19:31):**

Keith, this has been a really interesting conversation. I hope our listeners enjoyed it as well. I am sure there are a host of issues that we haven't even gotten a chance to cover and we will probably be back talking about this again. But for now, we will sign off. So thanks again for joining me.

**Keith Barnett (19:48):**

Thanks for having me. And it's also great to do this combined podcast. It's like the pieces of Voltron coming together to

**Stephen Piepgrass (19:57):**

How many of our listeners will get that reference?

**Keith Barnett (20:00):**

You have to be over 45 probably to get that reference.

**Stephen Piepgrass (20:03):**

You have clearly given away both our ages.

**Keith Barnett (20:06):**

That's right.

**Stephen Piepgrass (20:06):**

Thanks, Keith. For our listeners, please do remember to subscribe to the podcast using Apple Podcast, Google Play, Stitcher, or whatever platform you choose, and we look forward to having you join us again next time.

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