Elk Valley
RANCHERIA
Crescent City, CA

2332 Howland Hill Road
Crescent City, CA 95531

Phone: 707.464.4680
Fax: 707.465.2638

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VIA CFTC COMMENT PORTAL
https://comments.cftc.gov

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Prediction Markets, RIN 3038-AF65 — Comments of Elk Valley Rancheria, California

Dear Secretary Kirkpatrick:

On behalf of Elk Valley Rancheria, California, a federally recognized Indian tribe ("Elk Valley") located in Del Norte County, California, we submit these comments in response to the Commodity Futures Trading Commission's Advance Notice of Proposed Rulemaking regarding prediction markets and event contracts.

Elk Valley has a direct sovereign, governmental, regulatory, and economic interest in the lawful treatment of gaming activity. For Elk Valley, the principal issue raised by the ANPR is straightforward: sports-event contracts offered on CFTC-regulated prediction markets are "gaming" and should not be listed, traded, or cleared on or through registered entities. Those products threaten tribal sovereignty, undermine the federal and state framework governing Indian gaming, and exceed the role Congress intended the Commission to play under the Commodity Exchange Act.

Elk Valley's position is equally clear on process. The Commission should not adopt a one-size-fits-all approach to event contracts. Different categories of event contracts raise materially different statutory, public-interest, and administrability concerns. But sports-event contracts are the easiest category, not the hardest. Contracts on the outcome, score, margin, statistics, performance, ranking, or other result of a game or athletic competition are the paradigmatic example of "gaming." They should be prohibited.

Elk Valley therefore urges the Commission to take a two-tiered approach:

1. **Primary position:** reaffirm and enforce the existing prohibition in CEA section 5c(c)(5)(C) and 17 C.F.R. § 40.11 against contracts involving gaming, including sports-event contracts.

2. **Alternative position:** if the Commission concludes that additional specificity is useful, adopt interpretive guidance or targeted rule text expressly defining gaming to include sports-event contracts and sports-related propositions.

Executive Summary

Elk Valley respectfully submits five core points.

1. Sports-event contracts are gaming. Contracts on the Super Bowl, March Madness, regular-season games, player statistics, proposition markets, tournament outcomes, and similar sports contingencies function as wagers on games and athletic competitions.

2. Existing law already permits, if not actually requires, the Commission to prohibit them. CEA section 5c(c)(5)(C) and 17 C.F.R. § 40.11 provide the Commission with ample authority to bar contracts that involve gaming and are contrary to the public interest.

3. The Commission is not a gaming regulator. Congress did not intend CFTC-regulated exchanges to become nationwide sports-wagering venues operating alongside—or in displacement of—tribal and state gaming regimes.

4. Sports-event contracts raise acute public-interest concerns. They resemble retail gambling products, are especially susceptible to manipulation and insider misuse, and create consumer-protection and event-integrity risks that the CFTC is not institutionally designed to supervise as a gaming regulator.

5. Any final Commission action must account for Tribal Nations. Federal action in this area can directly affect tribal sovereignty, tribal governmental revenues, and compact-based expectations under the Indian Gaming Regulatory Act and related tribal-state frameworks.

Elk Valley's Interest

Elk Valley submits this comment because the expansion of prediction markets into sports-event products directly implicates the line between lawful derivatives activity and gaming. Federal law recognizes tribal self-government and tribal economic development as central interests served by Indian gaming. The federal Indian gaming framework, including IGRA and tribal-state compacting, reflects negotiated allocations of authority and economic expectations that should not be undermined indirectly through a federal derivatives regime.

Sports-event contracts offered through federally regulated exchanges also create practical problems that are not merely semantic. Calling a wager on a sporting event an event contract does not change the underlying product. These products still depend on games, races, contests, and athlete performance; still invite speculation for entertainment rather than commercial hedging; and still present the same concerns about integrity, inside information, and consumer harm associated with sports wagering.

Legislative and Regulatory History

At the time Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the Commission subsequently adopted its definitional rulemakings, wagering on sports and other events was already lawful in Nevada and certain other U.S. jurisdictions and operated within established, state-regulated frameworks distinct from the derivatives markets governed by the Commodity Exchange Act. These activities neither contributed to the 2008 financial crisis nor presented the types of systemic risks that Congress sought to address through the swap regulatory regime.

Nothing in the statutory text, structure, or legislative history suggests that Congress intended the definition of "swap" to encompass traditional wagering contracts of this nature. Interpreting the term "swap" to reach such arrangements would produce untenable results. For decades, these transactions have been entered into (i) outside of designated contract markets and (ii) by participants who do not qualify as eligible contract participants ("ECPs"). Yet, under the Act, off-exchange swaps involving non-ECPs are unlawful. If such wagering contracts were properly characterized as swaps, a substantial body of long-standing, state-authorized conduct would be rendered per se illegal under federal law—an outcome the Commission has never endorsed or enforced in practice.

The Commission's own rulemakings and interpretive guidance confirm this understanding. In its joint rulemaking further defining the term "swap," the Commission emphasized that the definition must be interpreted in light of the statutory context and should not be read to reach traditional commercial or consumer arrangements that do not function as derivatives. *See* Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement," 77 Fed. Reg. 48,208, 48,246–48,247 (Aug. 13, 2012) (excluding, inter alia, certain consumer and commercial transactions lacking the hallmarks of swaps). Similarly, in its interpretation of the forward contract exclusion, the Commission has reiterated that the Commodity Exchange Act is not intended to regulate transactions that are properly characterized as non-derivative commercial arrangements. *See*, e.g., CFTC, Further Definition of "Swap"—Forward Contract Exclusion, 77 Fed. Reg. 48,227, 48,247–48,249 (Aug. 13, 2012).

Moreover, the Commission's longstanding interpretation of its anti-gaming authority under CEA § 5c(c)(5)(C) confirms that Congress drew a distinction between derivatives markets and traditional gaming. *See* Prohibition on Event Contracts, 76 Fed. Reg. 25,774, 25,776–25,778 (May 5, 2011) (proposing to prohibit certain event contracts while recognizing the existence of separate, state-regulated gaming regimes and focusing on contracts listed on registered entities).

Notably, these authorities address event-based contracts only when offered on Commission-regulated platforms, not traditional, state-regulated wagering.

The absence of any Commission enforcement action treating state-authorized sports wagering or analogous gaming activity as unlawful off-exchange swaps—despite the clear statutory prohibition on such transactions involving non-ECPs—further underscores the better reading of the statute: Congress did not intend to displace state-regulated gaming regimes or to sweep traditional wagering contracts within the scope of the federal swap framework.

The Commission Should Use a Category-Specific Framework

The Commission should not treat all event contracts alike. Some event contracts may present different questions depending on the nature of the underlying contingency and whether the product has a genuine connection to hedging, commercial consequence, or price discovery. But the existence of hard cases is not a reason to hesitate on easy ones.

Sports-event contracts should be treated as a distinct prohibited category as "gaming". A category-specific framework is superior to ad hoc contract-by-contract disputes because it promotes administrability, provides notice to exchanges and market participants, and allows the Commission to draw a clear boundary where the statutory and public-interest concerns are strongest.

At minimum, the Commission's framework should evaluate event contracts based on:

- the nature of the underlying contingency;
- whether the product closely resembles wagering rather than risk-transfer or price-discovery activity;
- whether there is any bona fide hedging or commercial rationale;
- susceptibility to manipulation, insider participation, or participant influence;
- customer-protection and surveillance concerns; and
- whether the category can be administered consistently under the CEA framework.

Under that framework, sports-event contracts fail.

Sports-Event Contracts Are Gaming Under the CEA and Regulation 40.11

CEA section 5c(c)(5)(C) specifically identifies gaming as a category of contracts the Commission may determine to be contrary to the public interest. The Commission's regulation,

17 C.F.R. § 40.11, in turn prohibits a registered entity from listing for trading or accepting for clearing a contract that involves, relates to, or references gaming or unlawful activity.

Sports-event contracts fall comfortably within that prohibition. Contracts tied to the winner of a game, the score of a match, a player's statistics, tournament advancement, championship outcomes, or similar sports contingencies are wagers on athletic contests. Their economic function does not change because they are listed on a registered exchange, described as informational tools, or structured in derivative form.

The Commission should therefore state expressly that sports-event contracts are prohibited because they:

- reference games, sporting events, athletic contests, races, matches, tournaments, seasons, or comparable competitive exhibitions;
- replicate products commonly understood as sports wagers;
- lack the characteristics that ordinarily justify derivatives regulation as a tool for hedging or price discovery; and
- present the precise public-interest concerns Congress intended the Commission to prevent in the event-contract context.

Existing Law Is Sufficient; Enforcement Should Be the Commission's First Response

Elk Valley's primary position is that new rulemaking is not necessary to prohibit sports-event contracts. Existing law already supplies the Commission's authority and the operative prohibition. If the Commission believes uncertainty persists in the marketplace, the appropriate response is not to relax the standard or imply that sports-event contracts are potentially lawful. The appropriate response is to reaffirm the existing rule and enforce it.

Accordingly, the Commission should:

- reaffirm that contracts involving gaming remain prohibited under section 5c(c)(5)(C) and 17 C.F.R. § 40.11;
- make clear that sports-event contracts fall within that prohibition; and
- use interpretive guidance, review authority, and enforcement tools to prevent listing and clearing of such products.

Sports-Event Contracts Are Contrary to the Public Interest Under the CEA and Existing Regulations

Even apart from the textual fit within gaming, sports-event contracts are contrary to the public interest for the following reasons.

- They resemble retail gambling, not commercial hedging. These products are ordinarily marketed and understood as opportunities to speculate on the outcome of games and athletic performances. They do not become commercial risk-management tools simply because they are offered on a federally regulated platform.

- They are especially susceptible to manipulation and insider misuse. Sports-event contracts can be influenced by a relatively small number of actors: athletes, coaches, referees, trainers, team personnel, league insiders, media affiliates, and others with access to nonpublic information or practical ability to affect events. Proposition-style and micro-outcome contracts intensify those risks.

- They create consumer-protection concerns outside the Commission's institutional role. Permitting sporting-event wagers to trade as financial instruments risks blurring the distinction between investing and gambling, particularly for retail participants. It also risks creating the false impression that products offered on federal derivatives venues carry the same substantive protections associated with state and tribal gaming systems.

- They threaten tribal and state gaming frameworks. If sports wagering can be relabeled and moved onto CFTC-regulated venues, the result would undermine existing tribal-state compact structures, interfere with settled expectations surrounding Class III gaming, and erode a framework Congress designed to respect tribal sovereignty and state police powers in the gaming field.

The Commission Is Not a Gaming Regulator

This ANPR should not be used to transform the Commission into a national gaming regulator. The Commission's expertise lies in financial instruments and markets. Gaming regulation requires a different set of tools, enforcement mechanisms, consumer protections, and integrity frameworks. The question is not whether the Commission can supervise exchange operations in general. The question is whether Congress intended the CFTC to oversee a national market in products that function as sports wagers. It did not.

That conclusion is reinforced by the statutory design, the legislative history surrounding the Dodd-Frank amendments, the Commission's own prior statements, and the recent judicial decisions recognizing that sports-event contracts are not made lawful merely because they are styled as swaps or listed by registered entities.

Sports-Event Contracts Are Not Properly Salvaged by Labeling Them as Swaps

Elk Valley further submits that sports-event contracts should not be rescued by overbroad reliance on the term "swap." The outcome of a sporting event is not the type of financial, economic, or commercial contingency that justifies turning a wager into a regulated derivatives product. Interpreting the statute otherwise would risk sweeping ordinary sports betting into the CFTC's exclusive jurisdiction and would create the sort of major regulatory displacement Congress would have addressed clearly if it intended that result.

Prohibiting Sprots-Event Contracts as Gaming is Consistent with Statutory Text and Existing Regulations

The statute provides that the Commission may determine that agreements, contracts, or transactions involving specified activities—including gaming and other similar activities—are contrary to the public interest. Nothing in that text requires the Commission to proceed only through individualized adjudication. To the contrary, the Commission may exercise its delegated authority through notice-and-comment rulemaking when recurring product characteristics present the same legal and policy concerns across a defined category. Rule 40.11 itself reflects that Congress and the Commission contemplated both product review and broader determinations under existing regulatory authority.

When a class of contracts shares the relevant feature—such as functioning as gaming contracts based on sports events, contests, or the performance of competitors—the Commission may reasonably conclude by rule that the category falls within the statute and is contrary to the public interest.

Rule 40.11 demonstrates that the Commission already made a determination that contracts that involve "gaming" are contrary to the public interest when the Commission conducted that inquiry at the level of the category addressed by the rule, i.e., to prohibit contracts involving "gaming." The Commission is not limited to considering whether a contract has some asserted commercial utility. Congress did not say that any contract with a colorable hedging rationale must be permitted. Instead, Congress singled out gaming and similar activities for heightened scrutiny and authorized the Commission to exclude them from regulated markets when contrary to the public interest.

The relevant issue is whether contracts on those outcomes function as wagering instruments based on contests, games, competitive performances, or closely related occurrences. The Commission may interpret and apply the statutory term "gaming" in a functional way that addresses the structure and practical operation of the contract, rather than relying on dictionary labels alone. The Commission in Rule 40.11 determined that contracts functioning as gaming instruments implicate public-interest concerns distinct from ordinary commercial derivatives. Those concerns include the use of regulated exchanges for wagering activity, the reputational and integrity risks associated with listing such products on Commission-regulated venues, and the tension between those products and the traditional role of derivatives markets in facilitating

commercial risk transfer and price discovery tied to economic commodities and financial benchmarks.

A product is not transformed into a proper exchange-traded derivative merely because someone can posit an indirect exposure to the underlying event. That logic would sweep broadly and could be invoked for an extensive range of gaming-like contracts. Congress did not require the Commission to permit every product for which some participant can articulate a risk-management theory. Rather, Congress authorized the Commission to exclude categories of contracts involving gaming and similar activities when the public interest so warrants.

This is particularly true for sports-event related contracts. Contracts based on the outcome of a sporting event, the performance of an athlete, or a game-related occurrence are paradigmatic examples of gaming as that term is reasonably used in Section 5c(c)(5)(C) and Rule 40.11. Whatever novelty may attach to the platform, interface, or technology used to offer such contracts, the underlying economic substance remains the same: staking value on the results of sports contests or closely related in-game events. The Commission has reasonably concluded in Rule 40.11 that the public interest is not served by bringing that form of gaming activity within the core infrastructure of federally regulated derivatives markets.

Prohibiting Sports-Event Related Contracts as Gaming Does Not Limit Responsible Innovation

The characterization of the offer of sports-event related contracts as innovation overstates both the nature of the products at issue and the effect of the proposal. Prohibiting sports-event related contracts as gaming under the existing statute and regulations does not limit responsible innovation. It channels innovation toward products consistent with the purposes of the CEA and away from products that merely repackage sports wagering in a regulated derivatives format.

Responsible innovation in derivatives markets means developing products, market structures, and compliance systems that improve hedging, price discovery, resilience, transparency, and lawful market access. It does not require the Commission to approve every novel contract simply because it is technologically sophisticated or commercially popular. A sports-event contract offered through a designated contract market may be innovative in presentation, but if its economic substance is gaming, the Commission acts consistently with the statute by excluding it.

Indeed, drawing that line supports responsible innovation rather than suppressing it. Clear boundaries preserve the distinction between derivatives markets and gaming markets; provide market participants with notice about which products belong on Commission-regulated venues; and encourage firms to innovate in areas that further the Commission's core regulatory objectives. Innovations in clearing, market surveillance, collateral management, event-risk hedging tied to commercial activity, and lawful forecasting or information tools remain fully available even if sports-event contracts are excluded as gaming.

Nor is the possibility of offshore activity a sufficient reason to permit gaming contracts on regulated domestic markets. The Commission's obligation is to administer the statute Congress enacted, not to approve disfavored products because similar activity may occur elsewhere. If a product falls within gaming as reasonably interpreted under Section 5c(c)(5)(C) and existing regulations, the fact that another jurisdiction may tolerate it does not make the Commission's prohibition anti-innovation. It reflects adherence to statutory limits and preservation of the integrity of U.S. derivatives markets.

If Any Event Contracts Are Permitted, the Commission Should Require Strong Front-End Showings

Elk Valley's principal position remains that sports-event contracts should be prohibited. But if the Commission permits other categories of event contracts, it should require robust front-end evidentiary showings and not rely on conclusory self-certification.

At minimum, a registered entity seeking to list an event contract should be required to provide a written record addressing:

- why the contract does not involve gaming or unlawful activity;
- the commercial or hedging rationale for the product;
- how the contract is not readily susceptible to manipulation;
- whether insiders, participants, affiliated persons, or others with asymmetric information can trade or influence the relevant event;
- the surveillance, escalation, and emergency-review controls that will apply;
- customer-protection and disclosure issues; and
- why listing the contract is consistent with the public interest.

For any permitted event-contract category, the Commission should also require:

- trading restrictions for insiders and restricted persons;
- affiliate and control-person monitoring;
- cross-market surveillance where linked activity may occur;
- escalation and suspension protocols when event-linked irregularities appear; and
- practical review procedures that can be implemented consistently by DCMs, SEFs, DCOs, intermediaries, and Commission staff.

If the Commission Seeks Additional Clarity, It Should Adopt Narrow, Targeted Text

If the Commission concludes that additional regulatory clarity is warranted, Elk Valley urges the Commission to adopt **targeted text focused on sports-event contracts**, rather than a broad framework that could invite unnecessary uncertainty elsewhere.

Suggested Text

For purposes of 17 C.F.R. § 40.11, the Commission should define gaming in a future rulemaking or interpretive amendment to 17 C.F.R. § 40.11 as follows:

> (a) Gaming. For purposes of this section, "Gaming" means any agreement, contract, transaction, swap, event contract, or other instrument in which the amount payable, settlement value, price, return, transfer of value, or other economic entitlement is determined in whole or in material part by, or is contingent upon, a Covered Gaming Outcome.
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> (b) Covered Gaming Outcome. A "Covered Gaming Outcome" means:
>
> > (1) the outcome, occurrence, non-occurrence, score, margin, statistic, performance, ranking, standing, award, disciplinary action, injury, or other result of any game, sporting event, athletic contest, tournament, exhibition, match, race, season, playoff, championship, bracket, bowl, cup, title, electronic contest, virtual contest, simulated contest, or substantially similar competition; or
> >
> > (2) the outcome or result of any game of chance or mixed chance and skill, including any casino-style game or activity, card game, table game, slot-style or randomized game, house-banked game, random-number-generated game, electronic game, digital game, internet-based game, simulated game, or iGaming activity.
>
> (c) Derived or related measures. Gaming includes any proposition, contingency, index, metric, formula, derivative, or other measure that is derived from, calculated by reference to, or materially related to a Covered Gaming Outcome.
>
> (d) Characterization immaterial. An agreement, contract, transaction, swap, event contract, or other instrument that satisfies subsection (a) constitutes Gaming without regard to:
>
> > (1) whether it is characterized as predictive, informational, commercial, hedging, risk-management, or otherwise;
> > (2) whether it is listed, traded, executed, or cleared by or through a registered entity or other trading facility; or

(3) the form, label, terminology, or technology used to offer, trade, settle, or clear the instrument.

(e) Illustrative prohibited sports-event contracts. Prohibited sports-event contracts include, without limitation:

(1) single-game winner or loser contracts;
(2) championship, tournament, playoff, bracket, bowl, cup, title, race, or similar outcome contracts;
(3) daily, weekly, recurring, or season-long sports-event contracts;
(4) player, team, and in-game proposition contracts;
(5) contracts tied to points, touchdowns, goals, runs, strikeouts, rebounds, penalties, innings, quarters, periods, possession outcomes, injuries, disciplinary actions, or comparable event-specific occurrences or statistics;
(6) contracts tied to standings, win totals, rankings, awards, qualification, elimination, or performance-based outcomes; and
(7) any substantially similar sports-related proposition, contingency, index, metric, or derived measure.

That text is preferable because it is direct, administrable, and tailored to the category now creating the greatest conflict with existing gaming law.

Tribal Sovereignty and Consultation

Any final Commission action in this area should expressly recognize that the treatment of sports-event contracts can have substantial direct effects on Tribal Nations. Elk Valley is a sovereign tribal government. Federal action that alters or weakens the value of tribal gaming arrangements, tribal regulatory authority, or compact-based expectations implicates the federal government's longstanding trust relationship with federally recognized tribes.

That concern is especially important in California, where tribal gaming exists within a carefully structured federal and state framework centered on IGRA, tribal-state compacts, and federal approval processes. Those arrangements reflect negotiated reliance interests and sovereign-to-sovereign understandings. A federal approach that enables gaming-like products to bypass that framework would create avoidable conflict with settled federal Indian law and policy.

Accordingly, before adopting any final action that would affect tribal gaming interests, the Commission should:

- engage in meaningful government-to-government consultation with affected Tribal Nations;

- assess the effect of its approach on tribal governmental revenues, regulatory interests, and compact-based expectations; and

- avoid regulatory choices that unsettle or devalue federally approved tribal gaming arrangements.

If the Commission nonetheless permits contracts that function as gaming or closely resemble sports wagering, it should at minimum require robust geo-fencing and territorial safeguards sufficient to prevent such products from being offered on Indian lands absent tribal authorization under applicable federal law.

Requested Action

Elk Valley respectfully urges the Commission to:

1. Confirm that event contracts should be evaluated by category, not through a one-size-fits-all framework.

2. Reaffirm that contracts involving gaming are prohibited under CEA section 5c(c)(5)(C) and 17 C.F.R. § 40.11.

3. State expressly that sports-event contracts involve gaming and may not be listed, traded, or cleared on or through a registered entity.

4. Decline to adopt any rule or guidance that would imply sports-event contracts are potentially lawful simply because they are exchange-listed or described as predictive or informational products.

5. If the Commission decides further specificity is warranted, adopt targeted interpretive guidance or regulatory text defining gaming to include sports-event contracts and sports-related propositions.

6. Require robust evidentiary submissions and front-end review for any event-contract category that is not prohibited outright.

7. Require enhanced anti-manipulation, anti-insider, and event-integrity protections for any event contracts the Commission permits.

8. Provide administrable examples and procedures that allow market participants and regulated entities to identify prohibited sports-event contracts before listing.

9. Engage in meaningful government-to-government consultation with affected Tribal Nations before taking final action that would affect tribal gaming interests, tribal sovereignty, or compact-based expectations.

Conclusion

Elk Valley appreciates the opportunity to comment. Prohibiting sports-event related contracts as gaming under the existing statute and regulations does not foreclose legitimate market development. It preserves the proper role of Commission-regulated derivatives markets and ensures that innovation proceeds in ways that advance lawful risk management, price discovery, and market integrity rather than importing sports wagering into federally regulated exchanges.

The Commission should draw a clear line between legitimate derivatives activity and gaming. Sports-event contracts belong on the gaming side of that line. The Commission should therefore reaffirm and enforce existing law to prevent the listing and clearing of sports-event contracts. If the Commission believes additional clarity is necessary, it should adopt narrow, targeted text expressly confirming that sports-event contracts and sports-related propositions are gaming and are prohibited under the Commission's event-contract framework.

Respectfully submitted,



Dale A. Miller
Chairman