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April 30, 2026

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

Submitted via the Federal eRulemaking Portal

Re: Prediction Markets (RIN 3038-AF65) — Comments on Advance Notice of Proposed Rulemaking on Event Contracts 91 Fed. Reg. 12,516 (Mar. 16, 2026)

Dear Secretary Kirkpatrick:

The National Congress of American Indians (NCAI) hereby submits these comments in response to the Commodity Futures Trading Commission's (CFTC) Advance Notice of Proposed Rulemaking (ANPRM) regarding event contract derivatives traded on prediction markets. In addition to these comments, NCAI urges the CFTC to conduct consultation with affected Tribal Nations, as this ANPRM poses negative impacts on Tribal gaming operations pursuant to the Indian Gaming Regulatory Act (IGRA).[1]

NCAI, founded in 1944 and based in Washington, D.C., is the oldest, largest, and most representative national organization comprised of American Indian and Alaska Native (AI/AN) Tribal governments and their citizens. NCAI advises and educates the public, state governments, and the federal government on a broad range of issues involving Tribal sovereignty, self-government, treaty rights, and policies affecting Tribal Nations.

NCAI's primary focus is protecting the inherent sovereign legal rights of Tribal Nations through positions directed by consensus-based resolutions. These resolutions are promulgated at NCAI national conventions by the organization's entire membership, which is annually renewed at approximately 300 Tribal Nations. During NCAI's 82nd Annual Convention and Marketplace conference, Tribal Nations enacted resolution #SEA-25-098 entitled, "Protecting Tribal Sovereignty and Regulated Gambling from Illegal Unregulated Event

Gambling". The resolution calls for the CFTC to affirm and exercise its existing authority under the Commodity Exchange Act §5c(c)(5)(C) (CEA) and Rule 40.11 to enforce the prohibition on sports and gaming event contracts within Tribal jurisdictions. These event contracts are a direct infringement on Tribal sovereignty and in direct conflict with IGRA and other State and Federal laws governing these activities.

A. Sports and Gaming Event Contracts Violate State and Federal Laws

Event contracts—particularly those that allow non-Tribal entities to manage, control, or receive a significant share of gaming revenues from specific events—raise serious concerns under IGRA.

In *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the United States Supreme Court held that Indian tribes possess the sovereign right to regulate gaming on their Indian lands. In 1988, Congress enacted IGRA "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments."[2] IGRA established the National Indian Gaming Commission (NIGC) as an independent federal regulatory authority "to protect such gaming as a means of generating tribal revenue."[3]

Under IGRA § 2710(d)(3)(A), Indian tribes negotiate with states to authorize and regulate "Class III" gaming, which includes various casino games, such as slot machines, banked card games, and importantly here—sports betting.[4] IGRA's compacting provisions strike a "delicate balance between the sovereignty of states and federally recognized Native American tribes."[5] Under IGRA, Indian tribes have negotiated with state governments and entered into Class III gaming compacts that include revenue sharing in exchange for Class III gaming exclusivity, including sports betting.

Indian gaming has been transformative for Indian tribes, uplifting tribal communities from poverty and providing a funding mechanism for critical governmental services, including education, healthcare, public safety, infrastructure, and cultural preservation. Indian gaming is the most successful tribal economic development initiative in U.S. history, accomplishing a "key goal of the Federal Government […] to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on federal funding."[6] Indian gaming is "not only 'a source of substantial revenue' for tribes, but the lifeblood on 'which many tribes have come to rely.'"[7]

Event contracts that circumvent IGRA's regulatory framework undermine Tribal sovereignty by allowing external entities to influence gaming activities without appropriate oversight or accountability.

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[2] 25 U.S.C. § 2702(1).
[3] 25 U.S.C. § 2702(3).
[4] *See* 25 C.F.R. § 502.4(c).
[5] *Chicken Ranch Rancheria of Me-Muk Indians v. California*, 42 F.4th 1024, 1031 (9th Cir. 2022).
[6] *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring).
[7] *Chicken Ranch*, 42 F.4th at 1032 (quoting *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1097, 1099–1100 (9th Cir. 2003)).

These agreements also conflict with Tribal-State compacts, which govern the scope and terms of Class III gaming. For these reasons, unapproved or improperly structured event contracts are inconsistent with IGRA's core purpose: to promote Tribal self-determination, ensure the integrity of Indian gaming, and safeguard Tribal revenues for governmental and community benefit.

Additionally, sports and gaming event contracts raise significant concerns under State law when they are structured to bypass established regulatory frameworks governing gambling activities. Most States tightly control gaming through comprehensive statutes that define who may operate, manage, or profit from wagering, and under what conditions. When event-based agreements effectively grant operational control, revenue participation, or promotional authority to unlicensed third parties, they constitute unauthorized gaming activity or illegal profit-sharing arrangements. Even when framed as marketing or event services, these contracts cross the line if they influence how bets are offered, managed, or monetized.

These contracts also conflict with State licensing requirements, consumer protection laws, and restrictions on inducements or revenue-sharing in gaming operations. States often require that all entities with a material role in gaming be vetted and approved by regulators to ensure integrity, transparency, and accountability. Agreements that attempt to recharacterize gaming functions as "events" or "swaps" risk being viewed as efforts to evade these requirements. As a result, improperly structured sports and gaming event contracts can expose parties to enforcement actions, including fines, license suspension, or invalidation of the underlying agreements.

B. Legislative History Proves that Congress Did Not Intend for the CFTC to Regulate Gaming

Legislative history is clear that Congress never intended to legalize gaming under the CEA or to transform the CFTC into a gaming regulator. Sen. Blanche Lincoln, former Chair of the Senate Committee on Agriculture, Nutrition, and Forestry and author of the Dodd-Frank amendments, clearly stated in a 2010 Colloquy with Sen. Diane Feinstein that the legislation was intended to empower the CFTC "to prevent the trading of futures and swaps markets that would allow citizens to profit from devastating events and also prevent gambling through futures markets."[8] Sen. Feinstein stated it was "very important to restore the CFTC's authority to prevent trading that is contrary to the public interest," because "derivatives traders have bet billions of dollars on derivatives contracts that served no commercial purpose at all and often threaten the public interest."[9] Sen. Feinstein asked Sen. Lincoln whether the intent of the legislation was to "define 'public interest' broadly so that the CFTC may consider the extent to which a proposed derivative contract would be used predominantly by speculators or participants not having a commercial or hedging interest."[10] Sen. Feinstein inquired further as to whether the CFTC would have "the power to determine that a contract is a gaming contract if the

[8] 156 Cong. Rec. S5906 (daily ed. Jul. 15, 2010).
[9] *Id.*
[10] *Id.*

predominant use of the contract is speculative as opposed to a hedging or economic use."[11] Sen. Lincoln confirmed:

> "That is our intent. The [CFTC] needs the power to, and should, prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed 'event contracts'. It would be quite easy to construct an 'event contract' around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament. These types of contracts would not serve any real commercial purpose. Rather, they would be used solely for gambling."[12]

The U.S. District Court for the District of Maryland recently observed that, "[i]t is highly unlikely that Congress would have overridden state gambling laws without at least some indication in the text and legislative history that it intended to do so," further finding that "the weight of the evidence strongly confirms that Congress did not intend for Dodd-Frank to constitute legislation not only legalizing sports betting nationwide, but displacing states' authority to regulate it."[13]

The CFTC acknowledged this sentiment in its 2024 Notice of Proposed Rulemaking that:

> "The [CFTC] is not a gaming regulator. The CEA and [CFTC] regulations are focused on regulating financial instruments and markets, and do not include provisions aimed at protecting against gambling-specific risks and concerns, including customer protection concerns inherent to gambling. Permitting event contracts involving gaming, as proposed to be defined, to trade on CFTC-regulated markets would in effect permit instruments commonly understood as bets or wagers on contests or games to avoid these legal regimes and protections. Gambling is a rapidly evolving field, and the [CFTC] does not believe that it has the statutory mandate or specialized experience appropriate to oversee it, or that Congress intended for the [CFTC] to exercise its jurisdiction or expend its resources in this manner."[14]

The CFTC's own regulations expressly prohibit the listing of event contracts involving gaming in 17 C.F.R. § 40.11(a)(1), providing: "[a] registered entity shall not list for trading" any "contract" or "swap" that "involves, relates to, or references… gaming or an activity that is unlawful under any State or Federal law." Two federal district courts have recently expressly confirmed that Regulation 40.11(a)

[11] *Id.*
[12] 156 Cong. Rec. S5906-07 (daily ed. Jul. 15, 2010).
[13] *KalshiEX LLC v. Martin*, 793 F. Supp.3d 667, 684 (D. Md., Aug. 1, 2025).
[14] *Event Contracts*, 89 Fed. Reg. 48968, 48982–83 (Jun. 10, 2024).

prohibits the listing of contracts involving gaming.[15] In *Hendrick*, the court noted that sports-related event contracts may be characterized in various ways, "but at bottom, they are sports wagers," and "everyone who sees them knows it."[16] In *Schuler*, the court held:

> "This Court does not endeavor to explain why the CFTC has not exercised its authority under the Special Rule or § 40.11(a) with respect to the sports-event contracts. But the agency's inaction is not proof that the sports-event contracts are regulated by or permissible under the CEA—and the Court has concluded they are not."[17]

Despite these legal precedents, prediction markets continue to operate online sports betting nationwide, including with Tribal jurisdictions. The prediction markets are proliferating and generating billions of dollars from their unlawful gambling schemes, targeting underage consumers without ensuring responsible gaming safeguards. The *Hendrick* court noted, "Whatever one's views are on gambling, there is no question that some segment of the population will suffer from problem gambling, but neither [designated contract markets (DCMs)] nor the CFTC is equipped to address those issues the same way state gaming regulators and licensed entities are."[18]

C. Tribal Gaming Operations Promote the Public Interest

Tribal gaming operations are not simply a matter of Tribal sovereignty and State and Federal law or supporting the services provided to their Tribal citizens. Tribal gaming operations importantly serve the public interest through robust regulatory oversight and maintain a strong commitment to enforcement, accountability, and responsible gaming practices. Tribal gaming enterprises operate under comprehensive regulatory frameworks established by Tribal gaming commissions, Tribal-State compacts, and Federal law, ensuring strict compliance with operational standards designed to protect patrons and maintain the integrity of gaming activities. This multilayered oversight promotes transparency, deters misconduct, and holds operators accountable through regular audits, inspections, and enforcement actions. Equally important, Tribal gaming operations prioritize public welfare by implementing rigorous safeguards to prevent underage gambling and address gambling addictions. These measures include age-verification protocols, employee training to identify and respond to problematic behavior, self-exclusion programs, and partnerships with organizations that provide addiction prevention, education, and treatment services. By coupling strong regulatory enforcement with proactive responsible gaming initiatives, Tribal gaming operations not only uphold public trust but also demonstrate their broader commitment to protecting communities while generating revenues that support essential governmental services and economic development.

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[15] *See Hendrick*, 2025 WL 3286282, at *9 ("the CFTC has prohibited DCMs from listing contracts that involve gaming"); *see also KalshiEX, LLC v. Schuler*, No. 2:25-cv-1165, 2026 WL 657004, at *9 ("the CFTC prohibits DCMs from listing any event contract 'that involves, relates to, or references…gaming").
[16] *Hendrick*, 2025 WL 3286282, at *8.
[17] *Schuler*, 2026 WL 657004, at *9.
[18] *Id.* at *13.

Under the CFTC's current regulatory framework—particularly given its limited staffing and enforcement capacity—the agency is not well positioned to ensure the same level of transparency, deter misconduct, hold operators accountable, or protect patrons as effectively as Tribal governments. Tribal gaming regulators operate with specialized expertise, on-the-ground oversight, and a direct governmental responsibility to their communities that cannot be replicated by a generalized federal market regulator. For these reasons, among others, NCAI cannot support extending CFTC jurisdiction over gaming and sports event contracts.

D. Considerations for the CFTC

NCAI works closely with and supports the considerations of its partner organizations – Indian Gaming Association (IGA), Washington Indian Gaming Association (WIGA), California Nations Indian Gaming Association (CNIGA), Oklahoma Indian Gaming Association (OIGA), the Minnesota Indian Gaming Association (MIGA), and other related organizations – which are working diligently to protect the gaming interest of Tribal Nations. We urge the CFTC to review their input closely and hold a Tribal consultation at its earliest convenience to ensure Tribal Nation feedback is adequately and meaningfully incorporated into any proposed rule or subsequent guidance. In addition to these comments, NCAI proposes the following considerations:

- The CFTC should not engage in rulemaking because Regulation 40.11(a)(1) already prohibits event contracts involving gaming
- Event contracts involving gaming are categorically prohibited as contrary to the public interest pursuant to Regulation 40.11, the "economic purpose test", and they violate State and Federal laws
- Prohibiting event contracts involving gaming is consistent with CFTC's Core Principle 2
- Event contracts involving gaming are not swaps because as several federal courts have recognized that the outcome of a sporting event (e.g., which team wins) is not "inherently associated" with a financial, commercial, or economic consequence within the meaning of the statute[19]
- Implementing geofencing to stop prediction markets from offering sports-related event contracts in jurisdictions where sports betting is illegal or subject to exclusive rights under a Class III gaming compact pursuant to IGRA does not violate CFTC's Core Principle 2
- Event contracts involving gaming violate CFTC's Core Principle 3 because they are "readily susceptible to manipulation"
- Gaming-related event contracts expose vulnerable retail participants to significant risks of addiction, financial harm, exploitation, and enable underage gambling
- Event contracts involving gaming do not serve the core statutory functions of risk management, hedging, or price discovery
- Event contracts involving gaming present severe and inherent risks of market manipulation that the CFTC is unequipped to detect or mitigate

[19] *Hendrick*, 2025 WL 3286282, at *4–9; *Schuler*, 2026 WL 657004, at *5–7.

E. Conclusion

NCAI does not support the CFTC's ANPRM. The CEA and CFTC regulations make clear that sports related event contracts are prohibited. The CFTC should reaffirm its existing rules, issue clear guidance, and enhance enforcement actions to ensure compliance with existing State and Federal laws.

Respectfully,



Larry Wright, Jr.
Executive Director
National Congress of American Indians