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, 91 Fed. Reg. 12516 (Mar. 16, 2026)

Dear Secretary Kirkpatrick:

The Washington Indian Gaming Association ("WIGA"), on behalf of its twenty-three federally recognized member tribes, respectfully submits these comments in response to the Commodity Futures Trading Commission's ("CFTC" or "Commission") Advance Notice of Proposed Rulemaking ("ANPRM") concerning event contract derivatives traded on prediction markets.

Introduction

WIGA's member tribes are sovereign governments. They conduct and regulate gaming pursuant to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-2721, tribal gaming ordinances, and tribal-state compacts negotiated on a government-to-government basis and approved under federal law. Gaming revenue is governmental revenue. It supports health care, education, public safety, housing, infrastructure, elder services, cultural preservation, and other essential public services.

These comments answer the questions presented in the ANPRM. They also address a threshold issue that governs each question: whether contracts that function as wagering on the outcome of non-economic events fall within the class of instruments the Commodity Exchange Act ("CEA" or "Act") permits to be listed at all. Properly interpreted, the Act does not permit such contracts.

Section 5c(c)(5)(C) of the CEA, 7 U.S.C. § 7a-2(c)(5)(C), identifies "gaming" as a category of contracts subject to prohibition where contrary to the public interest. Section 40.11 of the Commission's implementing regulations, 17 C.F.R. § 40.11, implements that limitation and provides that a registered entity shall not list for trading or accept for clearing a contract that involves, relates to, or references gaming or activity unlawful under state or federal law. This is not a policy preference. It is the operational, statutory and regulatory boundary.

WIGA applies a single controlling rule throughout this submission: a contract falls outside the permissible scope of Commission-regulated markets where its value is determined by the outcome of a non-economic event, participants lack bona fide underlying commercial exposure to hedge or manage, the contract's primary function is to enable participants to risk value on that outcome, and the contract operates in economic substance as wagering. This standard provides a judicially administrable test. A reviewing court can apply it by asking whether the contract's payoff is determined by a non-economic event outcome and whether participants use the contract to manage preexisting commercial exposure. Where the answer to the first question is yes and the second is no, the contract falls within gaming and is outside the permissible scope of the Act.

Where these conditions are present, the contract involves "gaming" within the meaning of section 5c(c)(5)(C) and may not be listed pursuant to the prohibition in 17 C.F.R. § 40.11(a)(1).

Sports-related event contracts are the clearest current example. They derive value from, for example, whether a team wins, whether a player achieves a statistic, or whether a contest resolves in a particular way. Participants do not hedge commodity price risks, manage financial exposure, or engage in price discovery tied to commercial markets. They risk money on a sporting event outcome. That is sports wagering in economic substance.

This conclusion does not turn on labels. A contract does not cease to be gaming because it is called a swap, event contract, binary option, prediction market, or exchange-traded instrument. Nor does central clearing, an order book, exchange registration, or self-certification transform wagering into a permissible derivative. The Act requires substance over form.

The legal consequence is equally clear. If a contract falls outside the permissible scope of the Act because it involves gaming, it does not trigger CFTC exclusive jurisdiction or preempt state and tribal law. Federal jurisdiction follows statutory permissibility; it cannot be used to create it.

This submission is structured to create a complete administrative record. It provides the governing legal framework, applies that framework to each category of issue raised in the ANPRM, answers each ANPRM question directly, and identifies the consequences under the Administrative Procedure Act if the Commission departs from the statutory boundary without reasoned explanation. The current statutory and regulatory framework is clear: sports event contracts are prohibited under the CEA. As such, the Commission's proposed rulemaking is both unnecessary and unwarranted.

This submission does not oppose innovation in derivatives markets; it seeks to preserve the statutory boundary that distinguishes derivatives from wagering.

ANPRM Crosswalk

The following crosswalk identifies where each group of ANPRM questions is answered. The direct answers in Appendix A are intentionally tailored to the question asked, while the body of the letter provides the legal and factual basis for those answers.

ANPRM Question(s)	**Primary Sections**	**Issue**	**Record Conclusion**
Q1-Q3	Sections I, II, IV; Appendix A	Definitions and scope of event contracts	Distinguish economic-risk contracts from non-economic wagering contracts.
Q4-Q5	Sections I, VI; Appendix A	Public interest	Public interest is constrained by section 5c(c)(5)(C) and Regulation 40.11.
Q6-Q8	Section III; Appendix A	Hedging and economic purpose	No bona fide hedging exists for non-economic event outcomes.
Q9-Q10	Sections III, VIII; Appendix A	Price discovery and information	Predictions about event outcomes are not CEA price discovery.
Q11-Q14	Sections VIII, IX; Appendix A	Manipulation, integrity, inside information	Structural risks confirm exclusion and cannot create authority.
Q15-Q16	Sections V, VII, IX; Appendix A	Self-certification and listing	Existing authority is sufficient to stay and prohibit gaming contracts.

Q17-Q18	Sections VI, XII; Appendix A	Costs, benefits, innovation, liquidity	Economic analysis cannot expand statutory authority.
Q19-Q22	Sections VII, X; Appendix A	Jurisdiction, preemption, state and tribal authority	No preemption where the contract is outside the Act; IGRA is preserved.
Q23-Q28	Sections II, IV, V, VI; Appendix A	Section 5c(c)(5)(C) procedure and category determinations	Category-level determinations are appropriate for sports-related gaming contracts.
QF29-Q32	Sections VIII, IX; Appendix A	Inside information and small group control	Asymmetric information is not public-interest utility for gaming contracts.
Q33-Q40	Sections I, IV, VII, XI, XII; F	Classification, excluded commodity, antitrust, small entities, other matters	Formal classification, demand, and competition concerns do not override the gaming limitation.

I. The Commodity Exchange Act Imposes a Binding Limitation on Contracts Involving Gaming

The CEA regulates derivatives markets to facilitate price discovery, risk transfer, and the management of commercial exposure. The Act is not a general-purpose regulator for markets in all uncertain events. Its structure reflects a central principle: Commission-regulated markets are limited to instruments that serve economic functions tied to underlying commercial activity.

Congress imposed a boundary on that authority in section 5c(c)(5)(C). That provision identifies categories of event contracts that may be determined contrary to the public interest, including gaming, terrorism, assassination, war, unlawful activity, and other similar activity determined by rule or regulation. Congress did not insert "gaming" as a decorative term. It performs work. It prevents derivatives markets from becoming vehicles for gambling.

The Commission implemented that boundary through 17 C.F.R. § 40.11. Regulation 40.11(a)(1) states in mandatory terms that a registered entity shall not list for trading or accept for clearing

any contract that involves, relates to, or references gaming or activity unlawful under state or federal law. The statute identifies the category. The regulation supplies the consequence. Together, they create an operative limitation on listing.

This framework answers the ANPRM's threshold questions regarding the definition and scope of event contracts. An event contract is not automatically permissible because it references an event. The relevant question is what kind of event and what economic function the contract serves. A contract tied to economic variables, commercial prices, or measurable risk exposures may fall within the Act. A contract whose value is determined by a non-economic event outcome and whose purpose is wagering does not.

The Commission should adopt and apply the following limiting principle: contracts that derive value from changes in economic variables and are used to manage or transfer commercial risk fall within the Act; contracts that derive value from non-economic outcomes and function as wagering fall outside it. This distinction preserves the boundary Congress established and provides an administrable rule for the Commission and reviewing courts.

While section 5c(c)(5)(C) uses discretionary language ("may determine"), that discretion operates within the statutory categories Congress identified. Where a contract falls squarely within gaming and lacks any connection to economic risk transfer, permitting such contracts would contradict the structure, purpose, and prior application of the Act and would require a reasoned explanation overcoming those constraints.

A case-by-case approach to contracts tied to non-economic outcomes would eliminate any administrable limiting principle and effectively delegate to the Commission the authority to determine the boundary between derivatives and wagering without a stable rule of decision. The statute does not permit such open-ended discretion.

That limiting principle also answers the ANPRM's public-interest questions. The Commission is not free to permit gaming contracts based on perceived benefits, market demand, or innovation. Section 5c(c)(5)(C) identifies gaming as a statutory category, and Regulation 40.11(a)(1) states that contracts involving gaming shall not be listed. Public-interest analysis operates within that framework. It does not erase it.

Nor may definitional overlap expand the Commission's authority. Even if a contract could be described as a swap, option, binary contract, or event derivative, section 5c(c)(5)(C) imposes an independent limitation. Classification does not determine permissibility. A contract that involves gaming cannot be rendered lawful by form.

Any contrary interpretation would lack a limiting principle. If contracts on sports outcomes are permissible because they can be written in derivative form or because their outcomes have indirect economic consequences, then contracts on almost any public event could be characterized the same way. Elections, awards shows, criminal verdicts, celebrity events,

televised contests, and numerous other non-economic occurrences may have downstream economic effects. That cannot be the statutory line. The line Congress drew is gaming.

II. The Statutory Meaning of Gaming Encompasses Wagering on Non-Economic Events

The term "gaming" is not defined in the CEA. It therefore carries its ordinary meaning, informed by legal usage and statutory context. In ordinary usage, gaming includes risking value on the outcome of a contest or uncertain event with the possibility of receiving value based on that outcome. That meaning covers wagering on sporting contests and similar non-economic events.

This meaning aligns with the Act's structure. The CEA regulates markets tied to commodities, financial variables, and economic indicators. Those markets allow participants to hedge exposure, manage risk, and discover prices relevant to commercial activity. Gaming is different. It involves the creation of risk for gain based on an event outcome, not the reduction of preexisting commercial exposure.

Giving "gaming" its ordinary meaning is necessary to avoid surplusage. If contracts functionally equivalent to wagers on sporting contests are not gaming, it is difficult to identify what the statutory term does. The Commission should not interpret section 5c(c)(5)(C) in a way that deprives Congress's chosen term of effect in the very context where it most naturally applies.

The proper inquiry is functional, not formal. A contract involves gaming when participants risk value on the outcome of an event outside their control and receive gains or losses based on that outcome, without using the contract to manage commercial exposure. The use of exchange infrastructure, an order book, clearing, or standardized terms does not alter the character of the activity.

This interpretation is reinforced by federal gaming law. IGRA establishes a comprehensive framework for gaming involving tribes, including Class III gaming conducted under tribal-state compacts. IGRA reflects Congress's understanding that wagering activity is regulated through specialized frameworks, not through general financial-market authority. The CEA should be harmonized with that framework by reading "gaming" to include contracts that function as wagering.

A narrower definition would be unworkable. Limiting gaming to casino-style house-banked games (which would, arguably, fall within the broader definition of "swap" relied upon by DCMs to offer their sports-related event contracts, regardless), or excluding exchange-traded contracts by definition, would allow the statutory boundary to be avoided by drafting and platform design. The Act does not permit evasion by nomenclature. Economic substance governs.

Accordingly, sports-related event contracts and similar non-economic event contracts fall within "gaming" when they allow participants to risk money on event outcomes without bona fide hedging exposure, and are therefore expressly prohibited by the Commission's regulations. This answer directly resolves the ANPRM's questions concerning definitional scope and the sources

that should inform the meaning of gaming, and further establishes that the ANPRM is unnecessary and unwarranted to begin with.

III. Contracts Tied to Non-Economic Event Outcomes Lack Bona Fide Hedging and Do Not Serve a Permissible Economic Purpose

A defining feature of lawful derivatives markets under the CEA is their connection to underlying economic activity. The Act contemplates markets in which participants manage, transfer, or price risk arising from commercial exposure. Contracts that function as wagering on non-economic outcomes do not serve that function.

Bona fide hedging requires a preexisting commercial exposure, a direct relationship between that exposure and the contract, and use of the contract to reduce or manage that exposure. The presence of speculative participation does not eliminate the legitimacy of a market where hedgers exist. But speculation cannot substitute for hedging where no hedging function is present at all.

Event contracts tied to sports outcomes lack any identifiable class of bona fide hedgers. Participants do not hedge commodity price exposure, manage financial risk arising from commercial activity, or offset positions in an underlying market. They enter positions based on expectations about who will win, what score will occur, or what statistic will be achieved. Further, the average purchaser of sports-related event contracts purchases such contracts for their entertainment value, like gambling, not as financial instruments.

The absence of hedging is not incidental. It is dispositive evidence that the contract functions as wagering. Where no participant class is using the contract to manage underlying exposure, the contract does not facilitate risk transfer. It creates risk and allocates gains or losses based on event prediction.

The absence of bona fide hedging in these markets is structural, not merely evidentiary. Because the underlying event is non-economic, there is no general class of participants with a commercial exposure capable of being offset in the manner contemplated by the Act. Hedging is not merely absent in practice; for these contracts it is absent as a matter of market function.

Claims of indirect economic interest do not satisfy the hedging requirement. Broadcasters, sponsors, advertisers, venues, local businesses, and fans may have economic interests affected by sporting events. But the existence of downstream economic consequences does not create a bona fide hedging market. Many events have economic consequences for someone. If that were enough, the statutory boundary would collapse.

The Act requires a direct connection between the contract payoff and a defined commercial exposure. Generalized interest, reputational exposure, entertainment value, or speculative positioning does not satisfy that standard. A contract that protects a farmer against crop price movement is not comparable to a contract that pays because a team wins a game.

The absence of hedging also defeats claims of statutory price discovery. Price discovery under the Act concerns economic variables, commercial prices, and information relevant to markets. A market price for the probability of a team winning does not price a commodity, financial asset, input cost, interest rate, or other economic variable. It prices the wager.

The Commission's prior practice confirms the centrality of economic purpose. In the Nadex political event order, the Commission considered the absence of hedging and price-basing utility in determining that contracts tied to election outcomes involved gaming and were contrary to the public interest. That reasoning applies with equal force to sports contracts, which present an even more familiar form of wagering.

The ANPRM's questions regarding hedging, price risk, price discovery, and economic purpose should therefore be answered through a missing-hedger test. A DCM seeking to list an event contract tied to a non-economic event should be required to identify a credible class of bona fide commercial hedgers and explain how the contract reduces or manages their exposure. Sports-related event contracts cannot meet that test.

IV. The Act Governs Economic Substance, Not Nomenclature, Structure, or Platform Design

The CEA is concerned with economic function. It does not allow the scope of permissible trading to turn on labels, user interfaces, matching engines, clearing arrangements, or registration status. Where a contract functions as wagering, it involves gaming regardless of how it is described.

Courts have long rejected attempts to recharacterize wagering as legitimate trading based on form rather than substance. *See CFTC v. Co Petro Marketing Group, Inc.*, 680 F.2d 573 (9th Cir. 1982).

Structural features do not alter economic substance. Exchange trading can reduce counterparty risk. Clearing can improve settlement reliability. Standardized terms can facilitate execution. None of these features creates hedging demand or converts a non-economic event outcome into an economic variable. Infrastructure changes mechanics; it does not change substance.

The same is true of financial classification. Proponents may describe sports event contracts as swaps, binary options, event derivatives, or prediction markets. These descriptions are not controlling. Section 5c(c)(5)(C) operates as an independent limitation even when a contract can be framed in derivative terminology.

Even when such contracts were characterized as swaps, they do not fall within the class of instruments the Act was designed to regulate. A swap in the relevant statutory context involves payment obligations tied to economic variables, financial interests, or commercial consequences. Contracts tied solely to the outcome of a non-economic event do not reflect changes in price, rate, value, or economic condition. They allocate gains and losses based on the resolution of an event.

This distinction between economic variables and event outcomes is dispositive. A contract on whether a team wins a game or a player reaches a performance milestone does not transfer or manage economic risk. It pays based on the event result. In substance, it functions as wagering. Section 5c(c)(5)(C) therefore bars listing regardless of asserted definitional overlap.

The statutory concept of a swap contemplates payments tied to economic variables or financial interests; extending that concept to contracts whose payoff depends solely on non-economic contest outcomes would detach the definition from its economic foundation and collapse the distinction Congress preserved.

Innovation does not alter this analysis. The Commission may regulate new financial products that fall within the Act. It may not redefine the Act to accommodate products that fall outside it. Describing wagering as innovation does not supply statutory authority.

If form controlled over substance, the distinction between derivatives and wagering would depend entirely on drafting. Any wager could be repackaged as a financial contract, routed through an exchange, and claimed to fall within exclusive federal jurisdiction. Congress prevented that result by including gaming as a limiting category.

This substance-over-form principle also determines jurisdiction. If a contract is wagering in substance, it falls outside the permissible scope of the Act. It does not become a federally protected instrument because a registered entity lists it or self-certifies it.

V. Prior Commission Practice Requires Reasoned Consistency

The Commission has previously considered event contracts tied to non-economic outcomes and applied a framework grounded in economic purpose, hedging utility, and public interest. That framework precludes contracts that function as gambling.

The Commission's 2012 Nadex order is the most relevant administrative precedent. There, the Commission prohibited political event contracts tied to election outcomes. It considered the absence of hedging utility, the lack of price-basing function, and the relationship between the contracts and gaming. CFTC, Order Prohibiting the Listing or Trading of Political Event Contracts (Apr. 2, 2012).

The same analytical factors are present here. Sports event contracts derive value from non-economic outcomes, lack a class of bona fide hedgers, and allow participants to risk value on contests of others. The fact that the underlying event is a sporting contest rather than an election strengthens, rather than weakens, the gaming conclusion.

Under the Administrative Procedure Act, an agency must provide a reasoned explanation when it departs from prior policy or interpretation. *See* 5 U.S.C. § 706; *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009). If the Commission now permits contracts functionally indistinguishable from those it previously prohibited, it must acknowledge the prior reasoning and explain why the statute supports a different result.

Agency action would be vulnerable if it permits contracts lacking a hedging function after previously treating that absence as relevant, relies on form after previously applying a substance-based analysis, or fails to explain why sports contests should be treated differently from other non-economic contests.

An agency determination permitting such contracts without directly addressing the absence of hedging, the non-economic nature of the underlying event, and the Commission's prior determinations would fail to engage with important aspects of the problem and would therefore be arbitrary and capricious.

Regulation 40.11 reinforces this consistency obligation. The Commission has already implemented section 5c(c)(5)(C) in mandatory terms. A departure from that framework cannot occur silently through non-enforcement, self-certification, or case-by-case drift.

Self-certification is a procedural mechanism, not a determination of legality, and cannot expand the statutory scope of permissible contracts.

VI. The Public Interest Inquiry Does Not Authorize Policy Balancing Around the Gaming Limitation

The public interest inquiry in section 5c(c)(5)(C) is constrained by statutory structure. It is not an open-ended invitation to balance popularity, liquidity, innovation, or information aggregation against the statutory boundary Congress imposed.

The statute identifies gaming as a category of concern. Regulation 40.11 implements that determination by expressly prohibiting contracts involving gaming. Where a contract is properly classified as gaming, the public interest inquiry has already been made by the Commission and is therefore resolved by the statutory and regulatory framework.

The ANPRM asks whether potential benefits should inform public interest analysis. Those questions are appropriate only within statutory bounds. The Commission may compare regulatory alternatives for permissible products. It may not authorize impermissible products because it believes they may produce benefits. And moreover, the Commission has already made the public interest determination to prohibit event contracts that involve or relate to gaming. The questions asked by the ANPRM are therefore unnecessary.

Liquidity is not a freestanding statutory good. A liquid wagering market remains a wagering market. Consumer demand is not a jurisdictional basis. Innovation is not authority. Information aggregation is not CEA price discovery where the underlying reference is a non-economic event outcome.

Permitting policy balancing at the threshold would eliminate any limiting principle. In a different statutory universe, the Commission could authorize contracts on nearly any public event by citing interest, liquidity, or informational value. Section 5c(c)(5)(C) prevents that result.

The public interest inquiry must also account for the regulatory mismatch. The CFTC is a derivatives regulator, not a gaming regulator. State and tribal gaming systems include licensing, age restrictions, self-exclusion, responsible gaming, advertising limits, geolocation, enforcement, and integrity systems tailored to wagering activity. The CEA does not recreate those systems.

Consequently, the public interest analysis does not support conditional approval. Safeguards may reduce some risks, but they do not transform a prohibited gaming contract into a permissible derivative. The threshold question is statutory authority, not regulatory design.

VII. Federal Jurisdiction and Preemption Do Not Attach to Contracts Outside the Act

The CEA's jurisdictional provisions apply only to instruments within the permissible scope of the Act. Preemption follows statutory coverage. It does not create it.

The proper sequence is straightforward. First, determine whether the contract is a permissible instrument under the Act. Second, if the contract falls outside the Act because it involves gaming, federal jurisdiction does not attach. Third, where federal jurisdiction does not attach, state and tribal authority remain intact.

This sequence defeats the argument that exchange listing or swap characterization automatically preempts state and tribal law. A contract cannot bootstrap itself into federal exclusivity by assuming the very status that section 5c(c)(5)(C) denies.

There is no express preemption of state or tribal gaming regulation. The CEA contains no language displacing state gambling laws, tribal gaming ordinances, or tribal-state compact frameworks. Nor is there field preemption. Gambling has long been regulated under state police powers and, in Indian Country, under IGRA. The CEA does not occupy the field of gaming regulation.

There is no conflict preemption where the contract is prohibited by and therefore falls outside the bounds of the Act. State and tribal laws regulating wagering do not conflict with the CEA when the CEA itself does not authorize the wagering product. Any asserted conflict arises only from an overbroad interpretation of federal authority.

Recent litigation underscores why the Commission's record matters. Some courts have rejected Kalshi's preemption theory at the preliminary stage, including KalshiEX LLC v. Martin, No. 1:25-cv-01283, 2025 WL 4003045 (D. Md. Aug. 1, 2025), and KalshiEX LLC v. Schuler, No. 2:25-cv-1165, 2026 WL 657004 (S.D. Ohio Mar. 9, 2026). Other courts, including the Third Circuit in KalshiEX LLC v. Flaherty, No. 25-1922 (3d Cir. Apr. 6, 2026), have credited Kalshi's likelihood of success on swap and preemption arguments at the preliminary-injunction stage. The split confirms the need for the Commission to state the established statutory and regulatory boundaries are clear.

The Commission should not leave this issue to self-certification and piecemeal litigation. A clear recognition that sports-related event contracts involve gaming would align agency action with

section 5c(c)(5)(C), preserve state and tribal regulatory authority, and provide a record for reviewing courts.

Section 5c(c)(5)(C) operates as a threshold limitation, not a free-floating balancing test. The Commission does not weigh the benefits of gaming contracts against their risks once a contract falls within a prohibited category. Rather, Congress identified categories—such as gaming—that are inappropriate for derivatives markets. The Commission's role is to apply that boundary, not to revisit it through case-by-case policy analysis.

VIII. Manipulation, Integrity, and Information Asymmetry Confirm the Regulatory Mismatch

Event contracts tied to non-economic outcomes present structural risks that differ from those addressed by the CEA. In traditional derivatives markets, manipulation concerns typically involve prices, supply, settlement references, or trading conduct. In sports event contracts, risk can arise from the underlying event itself and from nonpublic information about the event due to lack of consumer protection safeguards and regulatory oversight.

Participants with influence over an event may have incentives to affect that outcome. Insiders may possess information about injuries, player availability, officiating, team strategy, disciplinary decisions, or other facts that affect the contract. The binary nature of many sports contracts can amplify the value of such information, especially where, as here, the very entities offering and profiting from the contracts are self-regulating and the Commission lacks the regulatory expertise to properly oversee gaming activity.

Proponents may argue that informed trading improves prediction. That claim does not establish statutory authority. Asymmetric information about non-economic events is not the price discovery protected by the Act. A market that reflects private information about a player's injury or a team's strategy may be informative, but it is not a commodity price, financial rate, or commercial risk signal. It is simply insider trading.

The Commission's anti-manipulation authority, even if used, is not a substitute for sports integrity regulation. CFTC surveillance may detect unusual trading patterns. It does not regulate locker rooms, officiating assignments, medical disclosures, athlete conduct, league discipline, or coaching decisions. Gaming regulators and sports integrity systems have the expertise and professional ability to address those risks through specialized mechanisms. The CFTC simply does not, and real-world harm occurs because of that.

These concerns reinforce the public-interest conclusion. They do not mean the Commission should build a federal responsible-gaming and sports-integrity regime under the CEA. They mean the products are not within the Act's framework.

If the Commission relies on information aggregation or mitigation measures to justify listing, it must explain how those considerations relate to the Act's purposes and why Regulation 40.11(a)(1) does not control. Failure to address that mismatch would be arbitrary and capricious.

IX. Sports-Related Event Contracts Satisfy Each Element of Gaming

Sports-related event contracts provide the clearest application of the controlling rule. They derive value from non-economic outcomes, lack bona fide hedging, and are the functional equivalent of gambling.

Their value is determined by the outcome of a sporting contest or related performance metric: which team wins, which player reaches a statistical threshold, or how a contest resolves. These outcomes are not economic variables. They are contest results.

Participants lack underlying commercial exposure in the sense contemplated by the Act. They do not hedge commodity prices, interest rates, currency exposure, weather-related business risk, or other commercial inputs. They take directional positions on sporting outcomes.

The practical operation confirms the conclusion. A participant who purchases a contract tied to whether a team wins a game commits capital with the expectation of gain if the predicted outcome occurs and loss if it does not. The participant does not offset an existing commercial position or manage price risk. The participant takes a position on the outcome of an event. That is functionally indistinguishable from placing a wager.

The economic reality does not change based on the platform on which the transaction occurs. A wager does not cease to be a wager because the counterparty is another participant rather than a sportsbook, because the contract is cleared, or because the interface uses financial terminology.

Arguments that sports event contracts may be useful to broadcasters, sponsors, advertisers, or local businesses prove too much. Many non-economic events can affect someone economically. The statute requires more than downstream consequences. It requires a contract serving the Act's economic functions. Sports event contracts do not.

Regulation 40.11 therefore applies directly. Because sports-related event contracts involve gaming, a registered entity shall not list them. They may not be authorized through self-certification, may not be normalized through retail distribution, and may not be used to displace state or tribal law.

This conclusion resolves the ANPRM's sports-specific issues and provides a category-level rule. The Commission need not analyze every game, league, event, or player prop separately. The category's defining features are sufficient: wagering on a sporting contest without bona fide commercial exposure.

X. Tribal Sovereignty and IGRA Independently Constrain Any Broader Interpretation

Even if ambiguity existed under the CEA, IGRA and tribal sovereignty independently require a narrow interpretation that preserves established gaming frameworks.

IGRA establishes a comprehensive federal framework for gaming on Indian lands. Class III gaming, including sports wagering as authorized in Washington State, occurs only pursuant to tribal law, state authorization, and a tribal-state compact approved under federal law. RCW 9.46.0364; 25 U.S.C. § 2710(d).

This compact framework is not incidental. It reflects Congress's deliberate allocation of authority among tribal, state, and federal governments. It protects tribal sovereignty while allowing states a defined role in the co-regulation of Class III gaming. It also supports tribal self-determination and governmental revenue.

Sports-related event contracts that function as wagering bypass that framework. They allow wagering activity to occur on Indian lands and elsewhere without tribal authorization, without compact compliance, without state-tribal regulatory coordination, and without the responsible-gaming and enforcement systems embedded in regulated, compacted gaming.

The CEA contains no clear statement authorizing the Commission to create a parallel federal wagering regime that displaces or circumvents IGRA. To the contrary, the CEA identifies gaming as a category subject to limitation. The statutes can be harmonized by interpreting the CEA not to permit contracts that function as gaming.

The Indian canons of construction reinforces this conclusion. Ambiguities in federal statutes affecting tribal interests must be resolved in favor of tribes unless Congress clearly provides otherwise. *See Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985). No such clear statement appears in the CEA.

The Commission must consider these tribal interests as sovereign interests, not merely market impacts or stakeholder interests. Tribal gaming revenues support governmental services, regulatory systems, jobs, and community programs. Compact rights reflect negotiated sovereign arrangements. Any rulemaking that treats those impacts as ordinary competitive effects would fail to consider an important aspect of the problem.

Permitting sports event contracts would also weaken the balance Congress established in IGRA by allowing non-compact, federally facilitated wagering to compete with compacted gaming. That result cannot be inferred from general derivatives provisions.

XI. The Major Questions Doctrine Forecloses a Nationwide Wagering Regime Without Clear Congressional Authorization

Interpreting the CEA to authorize nationwide markets for wagering on sporting events and other non-economic outcomes would raise a major question. Agencies may not exercise powers of vast economic and political significance without clear congressional authorization. *West Virginia v. EPA*, 597 U.S. 697 (2022).

Such an interpretation would transform the CFTC from a derivatives regulator into a federal overseer of nationwide gambling markets. It would alter the balance between federal, state, and tribal authority. It would allow exchange-traded products to bypass gaming laws and compact frameworks. That is not a marginal market-structure adjustment.

The CEA contains no clear authorization for that transformation. It does not mention sports wagering as a permissible CFTC market. It does not displace IGRA. It does not create a federal responsible-gaming framework. Instead, it identifies gaming as a category subject to prohibition.

Historical context confirms the absence of authorization. Congress enacted Dodd-Frank while sports wagering was heavily restricted under federal and state law. The legislative history cited in the public record reflects concern about event contracts being used for gambling, including examples involving the Super Bowl, the Kentucky Derby, and the Masters Tournament. Congress did not silently authorize a national sports-betting regime through derivatives law.

The absence of a limiting principle further confirms the major question. If sports event contracts are permissible because they can be structured as swaps or because outcomes may have downstream economic consequences, the Commission's authority could extend to almost any event, including other types of casino gambling. That is the kind of boundless interpretation courts reject absent clear congressional direction.

Even if the statute were ambiguous, the major questions doctrine would prevent the Commission from using ambiguity to authorize such markets. Clear authorization is required. It is absent.

XII. Cost-Benefit Analysis and Economic Justifications Cannot Expand Statutory Authority

The ANPRM asks about costs, benefits, innovation, liquidity, competition, and participant effects. Those questions are important only after statutory authority is established. Cost-benefit analysis cannot create authority where the Act withholds it.

Economic analysis is a tool for evaluating regulatory choices among lawful options. It does not permit the Commission to authorize contracts that fall outside the Act because they involve gaming.

Claims of liquidity do not change the analysis. Liquidity in an impermissible product is not a statutory benefit. Claims of innovation likewise do not expand the Commission's jurisdiction. Innovation must occur within legal boundaries.

Informational value also does not control. The Act does not authorize otherwise prohibited markets merely because they may generate forecasts in downstream economic consequences. It authorizes derivatives markets tied to economic risk, price discovery, and commercial risk management.

Consumer demand is not a basis for listing. Demand exists for many forms of wagering. Congress chose to regulate gaming through separate frameworks, including state law and IGRA, and to identify gaming as a limited category under the CEA. The Commission acted consistently with this Congressional choice by expressly prohibiting event contracts that involve or relate to gaming.

Small-entity and antitrust considerations do not change the statutory result. Businesses do not have a right to build models on prohibited contracts. Competition policy does not require competition in impermissible products.

If the Commission relies on cost-benefit analysis to act contrary to the rule of law and permit contracts involving gaming, it would consider factors beyond statutory authority and fail to apply the threshold limitation. That would be arbitrary, capricious, and in excess of statutory authority.

XIII. Integrated Responses to ANPRM Questions

WIGA provides the following direct responses to the ANPRM questions. These answers should be read with the crosswalk and the analysis above. Each response applies the same controlling framework to the specific question presented.

Question 1

The Commission should provide guidance only to clarify the statutory boundary already imposed by section 5c(c)(5)(C) of the CEA and section40.11(a)(1) of the Commission's regulations. Guidance should state that contracts functioning as wagering on non-economic outcomes, including sporting contests, involve gaming and may not be listed. Operational guidance for DCM core principles cannot substitute for the threshold determination that the product is outside the Act.

Question 2(a)

Impartial access does not require access to impermissible contracts. Access principles apply to lawful markets; they do not require a DCM to offer gaming contracts in every jurisdiction or to every retail participant. Where state or tribal law regulates wagering, geofencing or exclusion is consistent with the statutory boundary.

Question 2(b)

Resolution criteria for sports event contracts do not cure the threshold problem. These contracts depend on league rules, officiating decisions, injuries, postponements, forfeits, and other contest-specific determinations. That complexity confirms that the underlying reference is a contest outcome, not an economic variable.

Question 2(c)

Sports event contracts are readily susceptible to manipulation because incentives may attach to the underlying contest or to nonpublic information about it and are not regulated by professional gaming regulators. Athletes, coaches, officials, team personnel, medical staff, and others may possess information or influence that traditional derivatives surveillance is not designed to police. The Commission is not a gaming regulator and does not have the expertise to properly regulate gaming activity. Moreover, in the face of illegal sports event contracts, the Commission has chosen not to use its enforcement authority, proving it is incapable of overseeing sports integrity or protecting consumers from insider trading.

Question 2(d)

DCM surveillance may detect trading anomalies, but it cannot regulate the underlying sporting environment. Market surveillance cannot substitute for sports integrity oversight, responsible-gaming controls, licensing, and enforcement systems used by state and tribal gaming regulators.

Question 2(e)

Position limits and accountability cannot transform wagering into hedging. They may reduce exposure in lawful markets, but they do not create economic purpose or remove a contract from the prohibited category of gaming.

Question 2(f)

Margin should not be permitted for sports event contracts. Leveraged exposure would intensify retail-wagering risks and deepen the mismatch between derivatives regulation and gaming regulation. But even fully collateralized contracts remain impermissible if they involve or relate to gaming.

Question 2(g)

Operational risk includes rapid retail access, mobile interfaces, high-volume trading around events, and disputes over contest outcomes. These features reinforce that the products are wagering products and are not suitable for treatment as ordinary derivatives.

Question 2(h)

Blockchain or decentralized architecture does not change the statutory analysis. Technology may increase enforcement difficulty, but it cannot convert gaming into a permissible derivative.

Question 3

DCO core principles cannot supply economic purpose where none exists. Clearing discipline may reduce counterparty risk but does not change the underlying character of a contract that pays based on a sporting outcome.

Question 4

Institutional participation does not cure the gaming problem. A contract tied to a non-economic sporting outcome does not become permissible because an eligible contract participant trades it. Liquidity from institutions is not a substitute for bona fide hedging.

Question 5

The Commission should require DCMs to demonstrate bona fide commercial hedging utility and price-basing relevance before listing event contracts. For non-economic contests, including sports, the absence of such a showing should result in prohibition under Regulation 40.11.

Question 6

The costs and benefits of guidance must include state and tribal regulatory displacement and sovereignty infringement, compact interference, consumer-protection gaps, enforcement costs, litigation uncertainty, and loss of statutory integrity. The least disruptive approach is categorical recognition that sports-related wagering contracts involve gaming.

Question 7

Public interest under section 5c(c)(5)(C) is constrained by the CEA's purposes and the categories Congress identified. Contracts involving gaming should not be permitted through open-ended balancing.

Question 8

CEA section 3 supports exclusion because sports event contracts do not manage price risks, discover commercial prices, or disseminate pricing information for economic markets. They disseminate probabilities about event outcomes, which is not the same statutory function.

Question 9

The former economic purpose test remains highly relevant. The Commission should ask whether the contract has utility for hedging or price basing. Sports event contracts fail that test because they lack bona fide hedgers and commercial price-basing function. Moreover, sports event contracts are expressly prohibited, in any event.

Question 10

Event contracts tied to non-economic outcomes do not play a meaningful role in managing price risks. They may reveal expectations about outcomes, but those expectations are not prices for commodities, financial instruments, or commercial inputs.

Question 11

The Commission should prioritize statutory compliance, prevention of manipulation, and protection from abusive practices. Innovation and fair competition cannot justify contracts that involve gaming and fall outside the Act.

Question 12

Sports event contracts are not insurance. Insurance requires insurable interest, risk pooling, underwriting, indemnification, and regulation. A retail contract on the outcome of a game lacks those features and functions as wagering.

Question 13

Regulatory changes are unnecessary if they would weaken the existing prohibition. If the Commission acts, it should clarify that sports-related event contracts and similar wagering products involve gaming and are contrary to the public interest under the current statutory and regulatory framework.

Question 14

Cost-benefit analysis must remain within statutory bounds. The costs of allowing sports event contracts include regulatory displacement, consumer harm, litigation, and erosion of tribal compact value. The benefits asserted by proponents do not create authority.

Question 15

The scope of listed activities should be determined by ordinary meaning, statutory context, prior Commission practice, and economic substance. Gaming includes risking value on contest outcomes without underlying commercial exposure.

Question 16

If an event contract involves activity unlawful under state or federal law, that fact weighs against listing. The Commission should not treat CFTC listing as a mechanism to override state gambling law, IGRA, or other federal wagering statutes absent clear congressional direction.

Question 17

Terrorism and assassination illustrate that Congress identified categories where market formation itself can create harmful incentives. Gaming presents a similar structural concern when markets create financial incentives tied to contests of others.

Question 18

War-related contracts confirm that Congress did not intend every event with public interest or economic consequences to be traded as a derivative. Some events are inappropriate subjects for Commission-regulated markets.

Question 19

Gaming should be interpreted functionally. A sports competition should be treated as gaming where the contract allows participants to risk value on the outcome of a sporting event.

Entertainment awards, contests, and similar non-economic events should be analyzed under the same functional test.

Question 20

Similar activity should include non-economic contests or events that replicate wagering, lack bona fide commercial hedging utility, or create integrity risks comparable to gaming. The Commission may address such categories by rule or guidance.

Question 21

Regulatory amendments are unnecessary unless they strengthen, not weaken, the application of section 5c(c)(5)(C). They should not create a pathway for sports contracts through conditions, disclosures, or responsible-gaming substitutes.

Question 22

The costs of prohibition are limited to foregone trading in products Congress identified as subject to prohibition. The benefits include statutory fidelity, lower litigation risk, protection of consumers, and preservation of state and tribal authority.

Question 23

The phrase "in connection with the listing" should be read broadly enough to allow the Commission to act before widespread trading begins. The public-interest review should not be reduced to after-the-fact cleanup once retail markets have scaled.

Question 24

Category-based determinations are appropriate where defining features show that contracts involve a listed activity. Sports event contracts are such a category because they involve wagering on sporting contests without commercial exposure.

Question 25

A contract "involves" gaming when gaming is an essential feature, reference, or consequence of the contract. A contract whose payoff depends on a sports outcome satisfies that standard.

Question 26

The 90-day review period should not force incomplete public-interest determinations. DCMs should provide sufficient information regarding hedging, participants, state-law conflicts, tribal impacts, and integrity risks before listing.

Question 27

Procedural rules should strengthen front-end review, including stays and prior approval for categories likely to involve gaming. Self-certification should not be used to create fait accompli markets in prohibited products.

Question 28

Procedural costs are justified because early review prevents unlawful or contrary-to-public-interest products from reaching retail markets. Clear categorical guidance would reduce uncertainty and conserve resources.

Question 29

There is no public-interest utility in allowing persons with asymmetric nonpublic information about sports or other non-economic events to trade gaming contracts. That activity creates unfairness and integrity risk rather than economic price discovery.

Question 30

Events influenced by small groups present special risks. Sports contests involve athletes, coaches, officials, trainers, league personnel, and others whose conduct or information may affect outcomes. This supports prohibition rather than conditional approval.

Question 31

Anti-manipulation authority is not sufficient to justify listing. Enforcement tools do not answer whether the product belongs in Commission-regulated markets. The Commission should consider whether manipulation of the underlying event can realistically be detected and deterred.

Question 32

Government, league, team, medical, officiating, and production information all raise nonpublic-information concerns depending on the event. The Commission should not create markets that depend on policing widespread nonpublic event information beyond its institutional competence.

Question 33

Formal swap classification is not dispositive. Sports event contracts are wagers on outcomes, not swaps tied to economic variables. Even if definitional overlap were asserted, section 5c(c)(5)(C) independently bars gaming contracts.

Question 34

If characterized as futures, the same limitation applies. Futures form cannot convert wagering into commercial risk management.

Question 35

Excluded commodity status does not make a contract permissible. The excluded commodity definition may identify certain contingencies, but section 5c(c)(5)(C) supplies a separate limitation where the contract involves gaming.

Question 36

Similar non-DCM transactions include sportsbook wagers, offshore prediction markets, fantasy-style event wagers, and other contingent betting arrangements. Their similarity confirms that sports event contracts are wagering in economic substance.

Question 37

Consumer-purpose exclusions and related statutory boundaries show that not every contingent payment belongs in the swaps regime. Retail sports event contracts sold for personal speculation should not be forced into derivatives regulation.

Question 38

Section 15(a) analysis must consider public protection, market integrity, price discovery, risk management, state and tribal displacement, compact interference, and litigation costs. Sports event contracts fail the price discovery and risk-management factors and impose significant public-interest costs.

Question 39

Antitrust considerations do not require authorizing impermissible products. The objective is not competition in prohibited gaming contracts. The least anticompetitive means consistent with the Act is that the category is prohibited while lawful event contracts tied to bona fide economic risk are allowed.

Question 40

Small-entity impacts do not override the statute. Prediction-market businesses do not have a right to build business models on sports wagering contracts. Any flexibility must remain consistent with section 5c(c)(5)(C), Regulation 40.11, IGRA, and state police powers.

XIV. Responses to Arguments Advanced in the Record

The public record and current litigation reflect several arguments advanced by prediction-market proponents. WIGA addresses those arguments directly because the APA requires the Commission to respond to significant comments and because courts reviewing any final agency action will look to whether the agency confronted the strongest contrary positions.

A. Information aggregation is not statutory price discovery

Proponents argue that event contracts are lawful swaps because they involve bilateral contingent payment obligations, are traded on regulated exchanges, and aggregate dispersed information

into price signals that can inform economic decision-making. WIGA does not dispute that markets can aggregate beliefs. The legal question is whether that function is the kind of price discovery protected by the CEA. For sports-related contracts and similar non-economic outcomes, it is not. The claim that event contracts provide price discovery conflates economic price formation with the aggregation of beliefs about discrete outcomes. Prices under the Act reflect economic variables. Certain event contract prices, like those for sports event contracts, reflect probabilities assigned to event outcomes. That function, even if valuable, is not the type of price discovery the Act was designed to support. A probability that one team will defeat another is not a price for a commodity, input, financial instrument, rate, index, or commercial exposure. It is a betting line expressed through exchange architecture.

If information aggregation alone were sufficient, the CEA would become a general federal charter for markets in every uncertain social, political, cultural, or entertainment event. Congress did not enact that statute. It enacted a commodity and derivatives statute and then added a specific limitation for gaming.

B. Liquidity cannot legitimize an impermissible market

Proponents also argue that sports contracts supply liquidity for prediction-market platforms. That argument confirms the statutory problem rather than solving it. Liquidity in a product that functions as wagering does not convert it into a lawful derivative. A highly liquid gaming market remains a gaming market. Section 5c(c)(5)(C) exists precisely to prevent market activity from becoming the justification for listing products Congress identified as subject to prohibition.

C. Offshore competition cannot expand agency authority

Some commenters contend that prohibiting domestic sports event contracts will push activity offshore. Offshore activity may be a policy concern, but it does not expand the Commission's statutory authority. Agencies administer the statutes Congress enacted. If Congress wishes to establish a federal wagering regime to compete with offshore operators, it can do so expressly. The CEA is not that regime.

D. Federal regulation is not automatically superior to state and tribal gaming regulation

Proponents sometimes frame CFTC oversight as safer or more transparent than state and tribal gaming regulation. That argument overlooks the difference between derivatives oversight and gaming oversight. State and tribal systems regulate licensing, suitability, responsible gaming, advertising, age limits, geolocation, suspicious wagering, self-exclusion, and integrity monitoring. The CFTC's framework is not designed to perform those functions at scale for retail wagering products.

E. The swap argument fails at both the definition and permission stages

The strongest proponent argument is that sports event contracts are swaps and therefore fall within exclusive CFTC jurisdiction. That argument fails for two independent reasons. First,

contracts on sporting outcomes are not tied to economic variables in the statutory sense. They are based on contest outcomes. Second, even if a party asserts definitional overlap, section 5c(c)(5)(C) independently limits listing where a contract involves gaming and section 40.11(a)(1) of the CFTC's regulations expressly prohibit such contracts. Classification is not authorization.

F. Self-certification is a process, not a legal safe harbor

Self-certification cannot transform an impermissible contract into a permissible one. The Part 40 process exists to facilitate listing of products that comply with the Act. It does not delegate to DCMs the power to decide the outer boundary of federal wagering markets. Where a self-certified contract involves gaming, the Commission has expressly prohibited the listing.

G. Conditional approval would not cure the statutory defect

Age limits, disclosure, warnings, trading limits, insider-trading rules, or responsible-gaming conditions would not cure the threshold legal defect. Such measures may reduce some risks, but they do not create hedging utility, economic price discovery, or statutory authority. A prohibited gaming contract with safeguards remains a prohibited gaming contract. Moreover, the Commission is not and has never been a gaming regulator; it does not have the industry expertise or regulatory framework necessary to maintain adequate oversight and ensure such safeguards remain in place.

H. Sports contracts cannot be isolated from other non-economic event markets

Sports are the clearest present example, but the limiting principle must be broader than sports. Entertainment awards, reality-show outcomes, political contests, other non-economic events, and even other kinds of casino gaming can be structured as event contracts. The CEA and the Commission's rules are already clear that such event contracts are impermissible. Should the Commission adopt a rule, it must be one that clarifies that event contracts turn on economic substance: whether the contract hedges commercial exposure or functions as wagering on a non-economic outcome.

I. Dodd-Frank history supports the boundary

The Dodd-Frank context supports a narrow interpretation. Congress addressed event contracts with concern about gambling through futures markets. It also prohibited certain motion-picture box-office futures in 7 U.S.C. § 13-1. That history shows Congress did not assume every event with commercial consequences belongs on a board of trade. It drew lines around entertainment and gaming-related event markets.

J. Bucket-shop history supports substance over form

Commodity law has long distinguished bona fide markets from wagers dressed in financial form. Bucket-shop history demonstrates the danger of allowing contract form to obscure wagering

substance. The same principle applies here. Exchange architecture cannot be used to resurrect wagering activity under derivatives terminology.

K. Tribal interests are sovereign interests, not incumbent economic preferences

Proponents may characterize tribal and state objections as protectionism or incumbent resistance. That framing is wrong. Tribes are sovereign governments, and IGRA is a federal statutory framework enacted to promote tribal self-government, economic development, and regulatory integrity. The issue is not ordinary competition. It is whether a federal financial regulator may authorize a parallel wagering market that bypasses a congressionally structured sovereign framework.

L. Litigation uncertainty strengthens the need for agency clarity

The current litigation landscape is unsettled. Some courts have rejected broad preemption theories; others have credited them at preliminary stages. That uncertainty is precisely why the Commission should use this rulemaking to clarify the statutory boundary. A reasoned agency record clarifying that section 5c(c)(5)(C), Regulation 40.11, IGRA, federalism principles, and the APA already prohibit sports event contracts would assist courts and reduce regulatory fragmentation.

XV. Final Integration

The questions presented in the ANPRM address definitions, public interest, core principles, manipulation, inside information, cost-benefit analysis, jurisdiction, preemption, tribal authority, and related matters. Each question has been answered in context. Each answer returns to the same statutory threshold.

Contracts tied to non-economic event outcomes that lack bona fide hedging function and operate as wagering fall within gaming. Contracts within gaming are subject to section 5c(c)(5)(C) and Regulation 40.11. Such contracts are expressly prohibited and therefore may not be listed.

This conclusion does not depend on hostility to innovation. It depends on statutory scope. The Commission may encourage responsible innovation within the derivatives markets Congress authorized. It may not create a parallel federal wagering regime under the CEA.

The conclusion also does not depend on denying that prediction markets may generate information. Some markets may produce signals. But the CEA does not authorize the Commission to regulate all information-generating markets. It regulates derivatives markets serving economic risk-management and price-discovery functions. It does not regulate sports wagering or other gaming activity.

Finally, the conclusion does not depend on ignoring litigation uncertainty. The litigation landscape is mixed, and one appellate court has credited Kalshi's preemption theory at the preliminary stage. That uncertainty makes this rulemaking more important, not less. The

Commission should state the statutory boundary clearly and build a reasoned record that gives effect to section 5c(c)(5)(C), Regulation 40.11, IGRA, and the APA.

Conclusion

For the reasons set forth above, WIGA respectfully urges the Commission to interpret and apply section 5c(c)(5)(C) and Regulation 40.11 consistent with their text, structure, and prior application.

Contracts that function as wagering on the outcome of non-economic events, including sports-related event contracts, fall outside the permissible scope of the Commodity Exchange Act and may not be listed on Commission-regulated markets.

Sports-related event contracts satisfy each element of that rule. They derive value from contest outcomes, lack any bona fide hedging function, do not discover prices in the statutory sense, and operate as mechanisms for risking value on non-economic outcomes for entertainment purposes. In economic substance, they are gaming.

The question presented is not whether such contracts may have appeal, liquidity, or informational value. It is whether Congress authorized them. It did not. Contracts that function as wagering on non-economic event outcomes fall within gaming under section 5c(c)(5)(C) and section 40.11(a)(1) of the Commission's regulations and therefore may not be listed. Any contrary interpretation would exceed statutory authority, conflict with Regulation 40.11, invite unauthorized preemption of state and tribal gaming authority, undermine IGRA, and fail under the Administrative Procedure Act.

On behalf of WIGA Member Tribes:

Chairman Dustin Klatush Chehalis Tribe	*Chairman Jarred-Michael Erickson* Colville Tribes	*Chairman Bill Iyall* Cowlitz Indian Tribe
Chairwoman Darlene Hollum Hoh Tribe	*Chairman W. Ron Allen* Jamestown S'Klallam Tribe	*Chairman Glen Nenema* Kalispel Tribe
Chairwoman Frances Charles Lower Elwha Klallam Tribe	*Chairman Anthony Hillaire* Lummi Nation	*Chairman T.J. Greene* Makah Tribe
Chairman Ken Choke Nisqually Tribe	*Chairwoman RoseMary LaClair* Nooksack Tribe	*Chairwoman Amber Caldera* Port Gamble S'Klallam Tribe
Chairman Rio Jaime Quileute Tribe	*Chairman Guy Capoeman* Quinault Indian Nation	*Chairwoman Norma Joseph* Sauk-Suiattle Tribe
Chairman Quintin Swanson Shoalwater Bay Tribe	*Chairman Guy Miller* Skokomish Indian Tribe	*Chairman Kris Peters* Squaxin Island Tribe

Chairman Eric White
Stillaguamish Tribe

Chairman Leonard Forsman
Suquamish Tribe

Chairman Steve Edwards
Swinomish Tribal Community

Chairman Hazen Shopbell
Tulalip Tribes

Chairman Gerald Lewis
Yakama Nation

Respectfully submitted,

Rebecca George

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Appendix A -

This appendix identifies the principal issues preserved for administrative and judicial review. It is included to make clear that WIGA is not merely expressing policy opposition, but is raising statutory, regulatory, federalism, tribal sovereignty, and administrative-law objections that the Commission must address in any final rule, guidance, order, or enforcement posture.

1. Threshold statutory authority

WIGA preserves the argument that the CEA does not authorize the listing of contracts that function as wagering on non-economic outcomes. The threshold inquiry is statutory permissibility, not whether the instrument can be described using derivatives terminology. A final agency action that assumes permissibility without addressing section 5c(c)(5)(C) would fail to address the central question presented by the ANPRM.

2. Regulation 40.11

WIGA preserves the argument that Regulation 40.11 is operative and mandatory. The Commission must explain how any decision permitting sports-related event contracts can be reconciled with the regulatory text stating that a registered entity shall not list contracts involving gaming. Non-enforcement, delay, or tolerance of self-certification is not a reasoned interpretation of the regulation.

3. Economic purpose and missing hedges

WIGA preserves the argument that the absence of bona fide hedgers is affirmative evidence that sports event contracts function as wagering. A final action that relies on hypothetical, indirect, or attenuated economic interests without identifying a credible class of commercial hedgers would be arbitrary and capricious.

4. Prior Commission practice

WIGA preserves the argument that the Commission must account for prior event-contract precedent, including the Nadex Order. If the Commission departs from prior reasoning concerning economic purpose, gaming, and public interest, it must acknowledge the departure and supply a reasoned explanation.

5. Federalism and preemption

WIGA preserves the argument that the CEA does not expressly, field, or conflict preempt state gambling law where the contract falls outside the Act. Any contrary view must first establish that the contract is a permissible CEA instrument. Exclusive jurisdiction cannot be used to bootstrap an impermissible gaming contract into legality.

6. IGRA and tribal sovereignty

WIGA preserves the argument that any interpretation of the CEA must be harmonized with IGRA and construed in favor of tribal sovereignty absent a clear statement from Congress. The Commission must treat tribal impacts as sovereign and statutory impacts, not merely competitive or economic effects.

7. Major questions and clear authorization

WIGA preserves the argument that authorizing nationwide markets for sports-related wagering through the CEA would raise a major question requiring clear congressional authorization. The Commission cannot rely on general definitions or ambiguity to create a federal wagering regime.

8. Cost-benefit limits

WIGA preserves the argument that cost-benefit analysis cannot expand statutory authority. Benefits such as liquidity, innovation, consumer demand, or information aggregation are legally insufficient if the product falls within the gaming limitation.

9. Record response requirement

WIGA preserves the argument that the Commission must respond to each significant issue raised in these comments, including statutory text, Regulation 40.11, economic purpose, substance over form, litigation posture, preemption, IGRA, tribal reliance interests, major questions, inside information, manipulation, youth exposure, and responsible-gaming mismatch. Failure to respond to these issues would be arbitrary and capricious.