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BILL ANOATUBBY
GOVERNOR

April 29, 2026

SUBMITTED VIA CFTC COMMENT PORTAL

Mr. Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

Dear Secretary Kirkpatrick:

We thank the Commodity Futures Trading Commission ("Commission") for the opportunity to comment on its Advance Notice of Proposed Rulemaking concerning prediction markets. *See* 91 Fed. Reg. 12516 (Mar. 16, 2026). The Commission has not yet engaged in government-to-government consultation with Tribal nations. Accordingly, our enclosed comments not only offer our proposal for administrative action but also introduce you to the Chickasaw Nation and our critical interests in the subject matter.

The Chickasaw Nation's views the Commission's failure to enforce the prohibition against "excluded commodity[y]" trading products involving "gaming" activities that are "unlawful under any Federal or State law," *see*, *e.g.*, 17 C.F.R. § 40.11, is contrary to the public interest and an illegal threat to Tribal government gaming we conduct under our laws and the protective auspices of the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq*, as well as state-regulated gaming we conduct under Oklahoma license. As remedy, we propose: (i) a common-sense regulatory definition of "gaming" and (ii) procedural reforms, both of which we believe are necessary to protect a revenue source that is critical to our provision of programs and services to our citizens and consistent with the Commission's fulfillment of its mission and obligations under law.

We look forward to your evaluation of our proposal and would welcome your further engagement with us on this important matter.

Sincerely,

Bill Anoatubby

Bill Anoatubby, Governor
The Chickasaw Nation

Enclosure

Comments of the Chickasaw Nation submitted to the Commodity Futures Trading Commission in Relation to the Advanced Notice of Proposed Rulemaking Concerning Prediction Markets (April 30, 2026)

Prepared on behalf of the Chickasaw Nation by:
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EXECUTIVE SUMMARY

- The Chickasaw Nation, a federally recognized Tribal nation, engages in the regulation and operation of Tribal government gaming under the auspices of its sovereignty and the federal Indian Gaming Regulatory Act.
- The Commission's failure to implement the existing prohibition of "gaming"-related event contracts, combined with its current litigation position by which it claims the authority to disregard local gaming regulatory jurisdictions, is allowing for the unlawful conduct of unregulated online sports betting in violation of the Nation's laws and rights.
- The Chickasaw Nation is concerned by this ongoing injury *and* the precedent it suggests, which could lead to the development of an unlawful nationwide and unregulated online casino industry unless the Commission acts to properly implement the Commodities Exchange Act ("CEA").
- To avoid these ongoing and potential future harms we call on the Commission to promulgate:
    - a workable definition of "gaming" for purposes of its Part 40 regulations; and
    - procedural reforms to require Commission pre-approval of "gaming"-related commodity products while giving affected Tribal and State regulators a meaningful opportunity to participate in the administrative product review process.
- We therefore propose regulatory language, which we believe is consistent with the Commission's prior consideration of the matter and the fulfillment of the Commission's statutory mission to enforce the CEA while providing for reasonable market innovation.

I. INTRODUCTION

1. The Interests of the Chickasaw Nation

The Commodity Futures Trading Commission ("Commission") has not consulted with the Chickasaw Nation concerning the impact of its failure to implement the federal law prohibition on prediction market products, *see generally* Congressional Research Service, *Federal-Tribal Consultation: Background Issues for Congress*, R48093 (Jun. 12, 2024), https://www.congress.gov/crs-product/R48093, but we appreciate the opportunity to submit our comments in these proceedings. In view of our substantial interests in this matter, we offer specific proposals for

regulatory reform to ensure the Commission's full, proper, and fair enforcement of the Commodities Exchange Act ("CEA") in keeping with its statutory mission.

The Chickasaw Nation is a federally recognized Tribal nation that exercises inherent rights of sovereign self-government and has done so since time immemorial, as affirmed in our treaties with the United States as well as numerous federal statutes and court decisions. Today, we operate health, housing, education, jobs training, and other government services, and these programs materially improve our citizens' quality of life as well as the sustainability and health of our communities. *See generally* Chickasaw Nation, *Programs and Services Directories*, https://www.chickasaw.net/services/programs-and-services-Directories.aspx; Chickasaw Nation, *Progress reports*, https://governor.chickasaw.net/Reports/Progress-Reports.aspx. Our impact is broad and deep. *See, e.g.*, Chickasaw.TV, *Economic Impact*, https://www.chickasaw.tv/lists/economic-impact; Kyle D. Dean, *Oklahoma Native Impact* (Mar. 23, 2022), https://www.Oknative impact.com/wp-content/uploads/2022/03/All-Tribe-Impact-Report-2022-Final.pdf.

As a Tribal nation, federal law and local economics have generally made taxation an unlikely source of government revenues. We have instead engaged with our trustee through self-governance compacts to assume administration and expand those federal programs that directly impact our communities. *See generally Indian Self-Determination and Education Act*, Pub. L. 93-638, 88 Stat. 2203 (Jan. 4, 1975); *see also* Chickasaw Nation Governor Bill Anoatubby, Testimony for the Record Submitted to the H. Nat. Res. Comm. for the Hearing Examining 50 Years of the Indian Self-Determination and Educ. Assist. Act in Indian Country (Apr. 4, 2025), https://www.congress.gov/119/meeting/house/118050/witnesses/HHRG-119-II00-Wstate-AnoatubbyB-20250404.pdf. And we have aggressively pursued government economic development initiatives, significantly including Tribal government gaming operations pursuant to our sovereign authority and under the *Indian Gaming Regulatory Act* ("IGRA"), 26 U.S.C. § 2701, *et seq*., which enterprises have produced substantial resources for our government programs and services.

IGRA affirms and protects our "exclusive right to regulate gaming activity" on our reservation, *id.*, § 2701(5), though it also required us to form an intergovernmental compact with Oklahoma before offering certain forms of gaming. We did so in 2005. *See* 70 Fed. Reg. 5725 (Feb. 8, 2005). Oklahoma's joining us in this compact was an historic act. Oklahoma law prohibits virtually all forms of gaming, other than a state-operated lottery and limited state-regulated horse racing. In a departure from its otherwise broad prohibitions, the compact secures "substantial exclusivity" to compacted Tribal nations with respect to gaming activities within the State, and in exchange, we remit a revenue-share to Oklahoma based on the performance of certain games. *See* Tribal Gaming Compact Between the Chickasaw Nation and the State of Oklahoma (filed with Oklahoma Sec'y of State, Nov. 29, 2005), https://www.sos.ok.gov/documents/filelog/63568.pdf. Gaming Tribal nations in Oklahoma generated $3.64 billion from gaming in 2025 alone. *See* Heide Brandes, Journal Record, *Oklahoma Tribes face digital crossroads in tribal gaming* (Apr. 15, 2026), https://journalrecord.com/2026/04/15/oklahoma-tribes-digital-crossroads-tribal-gaming-revenue/. And per state statute, the State channels the vast bulk of our revenue-share remittances, which annually amount to hundreds of millions of dollars, into public education while also providing funding to the Oklahoma Department of Mental Health and Substance Abuse. *See* 3A O.S. § 280.

Tribal government gaming is the single most regulated form of gaming conducted in the United States. Not only does each Tribe regulate its own operations, but the National Indian Gaming Commission ("NIGC") also reviews and approves each Tribe's regulatory, internal control, and licensure systems. Within this comprehensive framework, we implement responsible gaming standards, rigorously screen and license all persons engaged in the offering of our gaming to the public, provide prize and tort claim dispute resolution processes to protect patron interests, maintain insurance policies to cover patron injuries, operate age-verification systems to protect underage persons, and maintain facility bar and self-exclusion systems to protect those with compulsive or addictive disorders. Any gaming occurring within our reservation outside our regulation and oversight and this comprehensive system evades these systems, undermines our sovereignty and laws, and violates Oklahoma and federal law.

Claiming broad and preemptive jurisdiction, the Commission is allowing this injury to occur. Sports betting, for example, remains prohibited under Oklahoma law and is outside the scope of our IGRA compact. *Cf*. Dacoda Wahpekeche, KOCO News 5, *Oklahoma Senate votes down sports betting bill after heated debate* (Apr. 22, 2026), https://www.koco.com/article/oklahoma-senate-votes-down-sports-betting-bill-after-heated-debate/71099782; Fox Sports, *Sports betting states where it's legal in the US 2026* (Apr. 22, 2026), https://www.foxsports.com/stories/betting/where-is-sports-betting-legal. Commission-sanctioned sports betting nonetheless flourishes in Oklahoma without regard for established regulatory systems. *E.g.*, James Leland, *Next IO, Is Kalshi Legal: In which states is the Kalshi app legal* (Apr. 21, 2026), https://next.io/prediction-markets/kalshi/legal/. This situation enables evasion, undermines our legal systems, and destabilizes our enterprises.

Meanwhile, within the controlling regulatory system, we operate state-of-the art gaming venues that are fundamental to the Chickasaw Nation's economic health. Our work is good *not only* for Chickasaw citizens *but also* for the State of Oklahoma and the United States. Today, we operate twenty-five Tribal-licensed IGRA gaming venues throughout our reservation, including the WinStar World Casino (the largest casino in the world), as well as one Oklahoma-licensed racino. According to an analysis of 2022, we have a nationwide workforce of 13,403 people (including gaming, healthcare, and Tribal government) with an annual payroll of more than $1 billion and a national economic impact of more than $8.2 billion, of which 41.4% is within our reservation. As one of the largest employers in Oklahoma, we engage with community partners throughout the State to ensure the stability, health, and growth of our communities, and we invest directly in the success of the entire region's economy. Continuing disregard for and disruption of our regulatory system and our gaming operations would be *not only* unlawful and an affront to our sovereignty *but also* poorly advised, redounding to the injury of the Nation and other Tribes, thousands of individuals, and countless communities throughout our region.

We have seen, first hand, how federal policy can devastate Tribal communities, and today the Commodity Futures Trading Commission's ("Commission") ongoing failure to enforce the Commodity Exchange Act ("CEA") and its own regulations concerning "excluded commodities," 7 U.S.C. § 1a(19); *see also* § 7 U.S.C. § 7a-2(c)(5)(C); 17 C.F.R. § 40.11, poses a fundamental risk of unmitigated harm to the Chickasaw Nation and other Tribal nations that rely on Tribal

government gaming to support their citizens and communities. *See, e.g.*, Patrice H. Kunesh, *The prediction market boom is posing an existential threat to American Indian Gaming*, Brookings Institute (Jan. 20, 2026), https://www.brookings.edu/articles/the-prediction-market-boom-is-posing-an-existential-threat-to-american-indian-gaming/. We are gravely concerned by this ongoing harm to our economic foundations and, accordingly, propose a means for regulating conduct that is unlawful under our laws, Oklahoma law, IGRA, and the CEA in a manner that fulfills the Commission's purpose and mission.

2. Scope of the Chickasaw Nation's Comments

The Commission's Advanced Notice of Proposed Rulemaking itemized forty question groups, which collectively cover a broad sweep of prediction market policy matters. *See* Commission, *Advance Notice of Proposed Rulemaking* ("Advance Notice"), 91 Fed. Reg. 12516 (Mar. 16, 2026). Given the nature of our interest in the subject, we focus primarily on ***question 16*** ("activity that is unlawful under any Federal or State law") and ***question 19*** (gaming) and propose substantive and procedural regulatory reforms to improve the Commission's implementation of the CEA as enacted. Our comments are also, if more generally, responsive to ***questions 7 & 9*** (public interest). Our proposals build on the Commission's prior consideration of these matters as well as the comments and public positions offered by other interested actors. We believe the unregulated explosion in Commission-sanctioned event contracts pertaining to gaming—namely, sports betting—underscore the need for action *now*—before unaltered Commission practice allows the further erosion of our rights as it enables the nationwide launch of unregulated online casinos.

In preparing our comments, we have carefully considered the Advance Notice as well as the Commission's 2011 and 2024 promulgations, each of which provide insights from the regulated community as well as the Commission's own prior considerations of the matter. *See* Commission, *Provisions Common to Registered Entities*, 76 Fed. Reg. 4476 (Jul. 27, 2011) (amending 17 C.F.R. part 40); Commission, *Event Contracts Proposed Rule*, 89 Fed. Reg. 48968 (Jun. 20, 2024) (proposing new revisions to 17 C.F.R. part 40), *withdrawn by Event Contracts Withdrawal of Proposed Regulatory Action*, 91 Fed. Reg. 5386 (Feb. 6, 2026) (withdrawing 2024 rules proposal).

II. DISCUSSION

1. Overview of the Chickasaw Nation's Comments

The Commission has filed *amicus* briefs and initiated lawsuits premised on a claim of exclusive jurisdiction to regulate designated commodity markets ("DCMs"). We do not contest the Commission's claim to statutory jurisdiction *over DCMs*. We do, however, *vehemently* contest your claimed right to disregard, by claimed preemption and accompanying regulatory non-feasance, Tribal and local regulatory systems that have been developed and implemented consistent with federal law and the public's interest relating to a matter that has *always* been recognized a subject committed to local control, i.e., *gaming*. Today, the Commission's ongoing failure to implement the statutory prohibition of "gaming" event contracts as well as those based upon "activit[ies] that are unlawful under Federal or State law" allows the conduct of sports betting—a Class III gaming activity under IGRA—within our reservation in violation of our sovereignty and laws, Oklahoma law, and federal law. We are further concerned that the

Commission's current litigation position would empower the expansion of DCM product offerings into the full spectrum of traditional gaming activities, essentially opening the door for nationwide, unregulated online casino gaming on the flawed premise that it is merely commodity market trading. This would be an absurd and unlawful result, and we call on the Commission to function as Congress directed and put an end to this ongoing harm to local interests and existing law.

We appreciate the Commission's acknowledgement of the importance of these unsettled issues by initiating this pre-rulemaking process under the Administrative Procedures Act, 5 U.S.C. § 553, even as it litigates its broad legal position in court. Accordingly, we propose administrative reforms that would enable the Commission to proceed with reasonable regulation of emerging prediction markets in a manner that preserves your administrative jurisdiction while *not* treading upon our rights and interests.

We believe the Commission's position in court faces substantial risk, regardless of whether it wins or loses any of the current lawsuits. First, it is presently ceding to the courts the administrative role Congress gave the Commission in prohibiting "gaming"-related financial instruments. At least one other commentator has offered a similar observation. *See, e.g.*, Noel Le, *Defining Gaming Under the Commodity Exchange Act* (comment submission to the Commission, Apr. 18, 2026, https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=114921). Second, we believe the Commission's litigation position is in tension with its prior consideration of these matters, which is exacerbated by the Commission's failure to offer a clear regulatory definition of "gaming." That tension turns to grave risk, for the Nation and others, when the Commission takes the position that administrative non-feasance somehow preempts comprehensive regulatory systems that govern the very types of activities Congress intended to exclude from commodity markets—specifically, activities that are "unlawful under Federal or State law" and "gaming." That risk even extends beyond those Tribal governments that rely on well-regulated IGRA gaming enterprises for their revenues to the Commission's own regulated community, which is now facing legal actions under 7 U.S.C. § 25(b) in the wake of administrative inaction. To be clear, we do not dispute that such instruments may fairly be denominated "swaps," but we believe the Commission's position misses the point; *irrespective of whether an event contract may reasonably be denominated a "swap," if it is based upon a "excluded commodity," then it is prohibited by the CEA and existing Commission rules*. We believe the law, the public's interest, and the Commission's own mission is therefore undermined by its failure to regulate.

We understand the Commission's Advance Notice as a good faith request for public input to help guide its reasonable administrative action on this important matter. We therefore propose:

(i) a substantive definition of "gaming" that comports with common understandings, prior Commission statements, and the recent litigation position of at least one major actor in this area; and

(ii) procedural reforms to require Commission pre-review of "gaming"-related products as well as meaningful State and Tribal regulator recourse for purposes of challenging an alleged unlawful product.

Defining "gaming" to avoid conflict with locally regulated traditional gaming activities, as Congress intended, should not be complex. Nor should it be controversial. And we call on the Commission to take reasonable steps, consistent with our proposals, to do the right thing. Implementing our recommendations would *not only* protect the material and legal interests of the Chickasaw Nation, other Tribal nations, and the regulated community *but also* protect the Commission's mission to regulate critical commodities markets while providing for reasonable innovation. We further believe our recommendations would help to restore public faith in the Commission's role as it executes on its mission. Conversely, we believe the Commission's failure to act risks devastation to Tribal and local economies, perpetuation of litigated conflict and market uncertainty, and exposure of the Commission's regulated community to ongoing financial risk.

2. "Gaming" that is "unlawful under Federal or State law" is inarguably an "excluded commodity," which should be made plain in § 40.11 by a clear definition of the term "gaming."

For fifteen years, the Commission and its regulated community have recognized the need for Part 40 to define "gaming." This recognition long pre-dates the explosion in sports betting event contracts that have flooded DCMs since 2025. As discussed in this section, we propose a workable definition premised on occurrences that relate to games or contests held for entertainment, specifically including those activities regulated or prohibited under IGRA or state law and have the basic attributes of what is easily recognized as gaming. Our proposed definition is consistent with the Commission's prior considerations of the matter as well as the recent litigation position of a major DCM that is active in this area.

a. The Commission has long-recognized the importance of a clear regulatory definition of "gaming."

Our proposal has a longstanding and well-reasoned administrative foundation. For example, reciting a comment from a DCM during its 2011 rulemaking, the Commission stated "the term 'gaming' should be further defined to ensure that registered entities do not confront difficult legal questions with respect to the applicability of the 'gaming' prohibition in § 40.11(a)(1)." 76 Fed. Reg. at 44785. We agree, and the Commission likewise "agree[d] that the term 'gaming' requires further clarification," *id*., though it nonetheless declined, at that time, to promulgate such a definition, concluding it would instead "consider product submissions on a case-by-case basis under § 40.2 or § 40.3." *Id*.

The rule promulgated in 2011, though, was nonetheless plain in its statement of the prohibition of "gaming"-related products:

> (a) Prohibition. A registered entity shall not list for trading or except for clearing on or through the registered entity any of the following:
> (1) An agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section 1a(19)(iv) of the Act, that involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law; or
> (2) An agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which involves,

> relates to, or references an activity that is similar to an activity enumerated in § 40.11(a)(1) of this part, and that the Commission determines, by rule or regulation, to be contrary to the public interest.

And notwithstanding its declining to define the term "gaming" for purposes of this statement of the prohibition, the Commission emphasized:

> Finally, the Commission would like to note that its prohibition of certain "gaming" contracts is consistent with Congress's intent to "prevent gambling through the futures markets" and to "protect the public interest from gaming and other events contracts." The Commission may, at some future time, adopt regulations that prohibit products that are based upon activities "similar to" those enumerated in Section 745 of the Dodd-Frank Act[, Pub. L. 111-203, 124 Stat. 1376, 1735-1737 (Jul. 21, 2010)]. It has determined not to propose such regulations at this time.

Id. at 44786 (citations omitted). In other words, the Commission recognized the significance of this issue fifteen years ago but declined to act even as it expressly stated the federal law prohibition on "gaming" products. All five of the Commission's commissioners voted in favor of this promulgation, *see id*. at 44800, which remains in force—though essentially unenforced fifteen years later.

The Commission revisited the question in 2024 and published a proposed new regulation, which included a definition of "gaming." *See* 89 Fed. Reg. 48968. It proposed acting at that time because it "observed a significant increase in the number of event contracts listed for trading by CFTC-regulated exchanges, as well as in the diversity of occurrences and events underlying such contracts," including at least one identified sports-related event. *Id*. at 48969; *see also id.* at n.9 (noting event contract relating to the National Football League). The Commission stated that the number of these products had jumped from five event contracts per year between 2006 and 2020 to 131 in 2021 and stayed at that level over the following years. *Id*. at n.9. It also commented on "the increased interest that the Commission has observed, among applicants for exchange registration, in operating exchanges that would primarily or exclusively offer event contracts for trading." *See Id*. at 48969. In other words, it observed a radical shift in market activity that underscored the importance of the issue it identified (but deferred action on) thirteen years prior.

As to implementation of its "case-by-case" approach, the 2024 publication shows it has been ineffective. Of the hundreds of event contracts self-certified by DCMs, the Commission noted that, "[t]o date, *the Commission has issued two final determinations*" involving "excluded commodities" under Rule 40.11. *See id*. at 48971 (emphasis added). It also noted it had received two other requests for review, one of which involved sports betting, but the product offerors withdrew the submittal in both instances, *see id*. at 48972, thus evading any opportunity for Commission pre-review under current rules.

In this administrative context, the Commission proposed in 2024 to define "gaming" for purposes of § 40.11, *see id*. at 48974, which proposal it subsequently withdrew, *see* 91 Fed. Reg.

5386. The proposal was approved by three commissioners, *see* 89 Fed. Reg. at 48992, but two dissented, albeit on grounds that tend to support our proposal.

First, Commissioner Summer K. Mersinger agreed that "13 years later, it is long past time" for the Commission to promulgate a clear "gaming" definition. 89 Fed. Reg. at 48993. All the same, she characterized the proposed definition as "much too broad," taking exception to its inclusion of "*any* other occurrence or non-occurrence *in connection with*" gaming. *Id*. (emphasis added). The dissenting commissioner's comments suggest that a definition limited to "the outcome of a game and the performance of one or more competitors in a game" may be appropriate, *id*. (commenting "[s]o far, so good" as to those elements of the proposed definition), but she criticized the Commission for going too far past that mark. We have heeded her comments in crafting our own proposed definition.

Second, Commissioner Caroline D. Pham dissented on the grounds that the definition would enmesh the Commission too far into gaming regulation. *See id*. at 48999 ("I certainly don't want the Commission to be registering Las Vegas sportsbooks and other betting venues"). We agree and would add that the Commission lacks any expertise or facility, whatsoever, in the regulation of gaming. Such regulation includes, among other things, oversight of responsible gaming standards, protection from infiltration by organized crime, age-verification, mitigation of compulsive and addictive abuses, etc. Those matters are already regulated under local systems, but the path the Commission has been taking would seem to require it to duplicate those systems while, based on its current litigation position, displacing those systems it would have to replicate. Following this path would come at enormous cost in terms of an unjustified and unlawful expansion of the federal bureaucracy and cause local injury as existing systems were evaded. In this regard, we not only agree with but would emphasize Commissioner Pham's highlighting of constitutional prohibitions against a federal agency's intruding on "a power clearly reserved to the States," i.e., gaming regulation. *Id*. We were therefore alarmed that the Advance Notice suggests the Commission may nevertheless be contemplating exactly this possibility, i.e., of *becoming* a new federal gaming regulator. *See* 91 Fed. Reg. at 12521 (questions 19.d. & e., querying with respect to young participants and application of "responsible gaming standards").

Coming up to the present day, the Commission's Advance Notice shows that in the short interval of time since it withdrew the 2024 proposal, the administrative justification for a regulatory definition of "gaming" is sharper than ever. In its Advanced Notice, the Commission reiterated the dynamics that precipitated the 2024 promulgation, i.e., its having "observed a significant increase in the number of event contracts listed for trading on prediction markets, as well as the diversity of occurrences and events underlying such contracts." 91 Fed. Reg. at 12517. But it also noted that the number of applications for DCMs had not only "*more than doubled* over the past year" but that those applications were, again, "largely from entities that are *interested primarily, or exclusively, in operating prediction markets*." *Id*. at 12518 (emphasis added). Finally, it noted a *stunning increase* in event contracts self-certified since 2024:

> From 2006-2020, DCMs listed for trading an average of approximately five event contracts per year. In 2021, this number increased to 131, and the number of newly-

> listed event contracts per year remained at a similar level until 2025, *when DCMs certified approximately 1,600 event contracts for listing for trading*.

Id. (emphasis added). A review of the Commission's public database shows that most of these event contracts appear to relate to sporting events. *See* https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizationProducts?Organization=&Type=&Status=&Date_From=2025-01-01&Date_To=2025-12-31&Category=&Subcategory=&Show_All=0. Extensive public reporting confirms this impression. *See, e.g.*, Dan Santaromita & Hannah Vanbiber, The Athletic, *Are prediction markets just sports betting by another name? How legal battles are taking shape* (Mar. 9, 2026), https://www.nytimes.com/athletic/7075799/2026/03/09/prediction-markets-sports-betting-legal-battles/; Ben Blatt & Amy Fan, New York Times, *Is sports betting illegal in your state? Not if you call it a "prediction market"* (Oct. 5, 2025), https://www.nytimes.com/2025/10/05/upshot/sports-betting-prediction-markets.html. As does the fact that high-profile DCMs registered with the Commission are now publicly boasting that they are the only providers of "sports betting legal in all 50 states." *E.g., KalshiEX LLC v. Flaherty, et al.*, -- F.4th --, 2026 WL 924004, *9 (3rd Cir. 2026) (Roth, J., dissenting) ("It is difficult, however, to take Kalshi's argument at face value when its marketing materials, such as the Instagram posts below, routinely refer to its products as "sports betting" (including image of Kalshi ad stating "Sports betting legal in all 50 states on Kalshi").).

Accordingly, the Commission's own publications illustrate the meteoric rise not merely of event market wagering but of the explosion of DCMs using the Commission's procedures to do precisely what they cannot do under local laws. Sports betting is either illegal or regulated as "gaming" in all fifty states. Nonetheless, event contracts based upon "excluded commodities" are now commonplace, in direct violation of the prohibition recognized in the Commission's 2011 promulgation. This situation illustrates the Commission's own recognition that it is now implementing the CEA contrary to Congress intent that it "'prevent gambling through the futures markets' and . . . 'protect the public interest from gaming and other events contracts.'" *See* 76 Fed. Reg. at 44786 (citations omitted). Based on this record, this matter demands responsible and reasonable administrative action.

b. Even Kalshi (circa 2024) would agree.

In 2023, the Commission sought to bar Kalshi, presently one of the largest actors in event contract sports betting, from offering such products based on political election outcomes. The Commission's position was that the proposed product amounted to "gaming" in that the relevant occurrence was a "contest," which it held amounted to a form of "gaming." Kalshi challenged that reasoning, and in successfully arguing for summary judgment, it argued (echoing Commissioner Mersinger's 2024 regulatory dissent) that the Commission's "logic hinges on an overbroad interpretation of 'gaming' that cannot be squared with ordinary usage and is flatly foreclosed by statutory context." Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment, *KashiEx LLC v. Commodity Futures Trading Commission*, No. 23-cv-03257 (D.D.C.) (document no. 17-1, filed January 25, 2024).

Kalshi then surveyed dictionaries to explicate an "Ordinary Meaning" of the term "gaming" and offered that "the common denominator, as the term's root itself suggests, is the

existence of a *game*." *Id*. at 24 (emphasis in original). It then exhaustively surveyed federal and state statutory provisions relating to "gaming," including IGRA, and concluded that "[c]onsistent with ordinary usage, federal law, and state law, 'gaming' must therefore involve a *game*. Mere betting—in the absence of an underlying 'game'—does not constitute 'gaming." *Id*. at 25-26 (emphasis in original). Turning to statutory context, Kalshi argued the Commission's broad definition of "gaming" to include election contests would be unworkable but that "[g]iving the term its ordinary meaning—betting on *games*—avoids all these pitfalls." *Id*. at 27-28 (emphasis in original).

Driving its point home, Kalshi argued that its election-related event contracts cannot reasonably be construed as "gaming."

> Elections are not games. They are not remotely analogous to *casino games, lotteries, bingo, or even sporting events*. Elections, unlike "games," are not *staged for entertainment or to facilitate speculation for sport*. Rather, elections—again, unlike games—have extrinsic effects outside the contest itself, and indeed carry significant economic consequences for the real world. Buying or selling election event contracts therefore does not amount to "gaming."

Id. at 27 (internal citations omitted and emphasis added). *See also id*. at 28 (recognizing that the "word on its face—and based on its legislative history—appears to be concerned with *casinos and sports*" (internal citation omitted and emphasis added)); *id*. at 30 (recognizing "*horseraces or boxing matches*" as "staged *purely for entertainment and to facilitate betting*") (emphasis added). While Kalshi is now one of the leading DCMs for sports betting event contracts, its position in court little over a year ago was that such event contracts would qualify as "gaming" under common usage and a logical construction of the word and, thus, involve "excluded commodities."

The court agreed, and so do we: "Gaming" involves the placing of wagers or bets on games of skill or chance in which the bettor has no economic stake in the event other than the bet he or she places. Such occurrences are held for entertainment purposes or to facilitate betting and have no independent economic consequence against which an actor may wish to hedge his or her risks. We further agree with Kalshi that this is precisely the sort of "gaming" with which Congress was concerned when it designated "gaming" as an "excluded commodity" and called on the Commission to act reasonably in prohibiting market products based upon them.

c. The Chickasaw Nation proposes a regulatory definition of "gaming" for purposes of Part 40 regulations based on common usage and the Commission's prior evaluations of the matter.

In consideration of the foregoing and the Advance Notice's questions 16 and 19, we call on the Commission to revise 17 C.F.R. § 40.11 to implement the following definition of "gaming" at subsection (b), which is currently reserved:

> (b) For purposes of 7 U.S.C. § 7a-2(c)(5)(C) and this chapter, "gaming" means any activity prohibited or regulated under the Indian Gaming Regulatory Act or state law and which involves the staking or risking by any person of something

> of value upon: (i) the occurrence, non-occurrence, or outcome of a contest, game, match, or competition involving skill or chance conducted primarily for entertainment, amusement, or sport; (ii) the occurrence or non-occurrence of a specified act or event during a contest, game, match, or competition; or (iii) the performance or performances of one or more competitors in one or more such contests, games, matches, or competitions.

This language builds on the definition the Commission proposed in 2024, *see* 89 Fed. Reg. at 48974, while narrowing it in accord with Commissioner Mersinger's reasoning in her 2024 regulatory dissent and the court's ruling in *KalshiEx LLC v. Commodity Futures Trading Commission*, 2024 WL 4164694 (D.D.C.) (holding election contest is not "gaming" within meaning of § 40.11). We also believe this definition squares entirely with Kalshi's construction of the term in its litigation against the Commission.

In addition to being well supported by the Commission's own prior consideration of the matter and the litigation position of a leading DCM, we believe this definition would help to end administrative inaction that presently allows for wholly unregulated sports betting to occur contrary to Congress's direction and in violation of numerous Tribal and State laws. We believe this definition would further be instrumental in avoiding the potential expansion of this claimed regulatory loophole to engulf other gaming offerings conducted by Tribes under IGRA or offered by state-operated or state-regulated entities under applicable state laws. And we believe it would do so without burdening other event contracts or prediction markets that would fall outside the ambit of traditional gaming activities, thus allowing the Commission to continue to fulfill its mission to provide for reasonable innovation, per its statutory mission.

3. **Self-certification of "gaming" event contracts should be disallowed and means provided to provide for the Commission's pre-approval and other remedial actions to ensure unlawful "gaming" products are not offered for public trade.**

We believe the Commission needs to take a more active *procedural* role in implementing the prohibition against "gaming" products. We also believe it is critical that the Commission, rather than convert itself to a federal gaming regulator, integrate means for local regulators to be heard in the review of such products.

As the 2024 proposed rulemaking illustrates, the Commission's "case-by-case" approach—which relies wholly on the voluntary DCM submittal of proposed products—is unsuited to meaningful oversight. We therefore call on the Commission to require mandatory pre-approval of any "gaming" event contract and to provide for regulator petition for Commission review of "gaming" products that have evaded mandatory review. In addition to providing for a more effective implementation of § 40.11, a mandatory review and petition process would allow for flexibility to ensure the prohibition bars only those products that satisfy the proffered definition, leaving room for a meaningful "case-by-case" evaluation set by clear guidelines. Further, the petition process would empower local regulators to take action to bring to the Commission's attention those products that may have evaded or otherwise escaped appropriate review.

To this end, we first recommend the revision of 17 C.F.R. § 40.2, as follows:

(a) Submission requirements. A designated contract market or a swap execution facility must comply with the submission requirements of this section prior to listing a product for trading that has not been approved under § 40.3; *provided*, that any intended trading product that is based upon or relates to gaming, as that term is defined in § 40.11 of this chapter, must be submitted to the Commission for review and approval under § 40.3 prior to any listing, with a copy of the submittal provided also to the local gaming regulatory jurisdiction(s) in which the product is intended to be offered for trading, and in addition to the other conditions set forth in this section, such submittal shall include certification from the jurisdiction or jurisdictions in which the product is proposed to be offered for trade that the product is either not prohibited by that jurisdiction's laws as unlawful gaming or that it is proposed to be offered in a manner that complies with the jurisdiction's regulation of the underlying gaming activity. A submission shall comply with the following conditions:

Next, we recommend the revision of 17 C.F.R. § 40.3, as follows:

§ 40.3 Voluntary and mandatory submission of new products for Commission review and approval.

(a) ~~Request~~Submission for approval. Pursuant to section 5c(c) of the Act, a designated contract market, a swap execution facility, or a derivatives clearing organization may request that the Commission approve a new product prior to listing the product for trading or accepting the product for clearing, or if a product was initially submitted under § 40.2 or § 39.5 of this chapter, subsequent to listing the product for trading or accepting the product for clearing; *provided*, that any intended trading product that is based upon or relates to gaming, as that term is defined in § 40.11 of this chapter, shall be submitted to the Commission for review and approval under this section prior to listing and may not be listed unless and until it receives Commission approval pursuant to paragraph (d)(2) of this section. A submission requesting approval shall:

. . . .

(d) Commission Determination

(1) Approval.

(i) Any product voluntarily submitted for Commission approval in compliance with paragraph (a) of this section shall be deemed approved by the Commission under section 5c(c) of the Act at the conclusion of the applicable review period under paragraph (c) of this section, unless the Commission issues a notice of non-approval to the registered entity under paragraph (d)(2) of this section within the applicable review period.

(ii) Any product required to be submitted for Commission approval in compliance with paragraph (a) of this section shall not be deemed approved unless and until the Commission issues a notice of approval to the registered entity, which notice shall include a specific finding and explanation as to the grounds on which the Commission has concluded the product is not based upon or related to gaming, as that term is defined in § 40.11 of this chapter. A notice of approval of a product required to be submitted for Commission approval in compliance with paragraph (a) of this section shall be a final agency action for purposes of 5 U.S.C. § 704.

Finally, consistent with established principles of cooperative federalism, we believe the Commission needs to integrate the expertise of local gaming regulators into its product review processes rather than peremptorily attempt to run over their authorities with an over-broad claim of preemptive jurisdiction. Not only would such approach improve the integrity of markets operating under the Commission's oversight, but it would better implement the CEA and Congress's intent while more substantively protecting the public's interest. To this end, we propose amending 17 C.F.R. § 40.11 to include the following as a new paragraph (d):

(d) Any State or Tribal gaming regulator may petition the Commission:
(i) in lieu of filing an appeal of final agency action, to challenge a final decision issued under paragraph (c)(2) of this section and request its stay or revision; or
(ii) to seek a prohibition of the offering of a product it alleges is based upon gaming, as that term is defined in paragraph (b) of this section, which product was not submitted for pre-approval pursuant to § 40.3 of this chapter or has not been the subject of a final decision issued under paragraph (c)(2) of this section.

We believe these procedural reforms are critical to ensure full and appropriate implementation of the CEA's prohibition against "gaming" products that are "unlawful under any Federal or State law," and we call on the Commission to act on this matter to protect the interests of those Tribal nations and States that are actively regulating gaming activities as part of their generation of critically needed public revenues. Not only are such reforms appropriate for implementing the CEA's prohibition against certain products based upon "excluded commodities," but implementing these regulatory changes would protect the integrity of the Commission's oversight of an emerging industry without unduly burdening reasonable innovation in commodity markets.

CONCLUSION

Thank you for the opportunity to comment during this pre-rulemaking proceeding. We will look forward to any further engagement with the Commission that would be appropriate to ensure the full and appropriate implementation of the CEA in accord with the Commission's mission.