Office of the Chief and Council
Kirk E. Francis
Chief
Mark Sockbeson
Vice-Chief

Penobscot Nation
12 Wabanaki Way
Indian Island, Maine 04468
Phone: (207) 817-7349
Fax: (207) 827-6042

April 30, 2026

Michael S. Selig
Chairman
Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581
Via the CFTC Comments Portal; https://comments.cftc.gov/

Re: Prediction Markets – RIN 3038-AF65

Dear Chairman Selig and Secretary Kirkpatrick:

The Penobscot Nation submits these comments in response to the Commodity Futures Trading Commission's (CFTC) Advance Notice of Proposed Rulemaking (ANPRM) on Event Contracts published in the Federal Register on March 16, 2026. While we provide answers to some specific questions listed in the ANPRM, we request that the CFTC consider all the information contained herein as a response to each question.

The Penobscot Nation and Government Gaming Activities

The Penobscot Nation is a federally-recognized tribal government located in Maine. Our headquarters are located on Indian Island in Penobscot County, which is also where many of our citizens reside. However, the Tribe currently has over 123,000 acres in land holdings. Although our lands historically covered much of what is now the State of Maine, our land holdings became scattered after the enactment of a land claim settlement between us, Maine and the federal government in 1980. Our various territories can be a three-hour drive from each other. Additionally, our land base includes about 200 islands located within approximately 80 miles of the Penobscot River. Most of our land is undeveloped forest land. Being located in a rural area, we have limited economic resources and rely on the federal government to meet its trust and treaty obligations by providing us with federal funds for certain programs that we then leverage for additional competitive grant funding.

The Penobscot Nation does not operate a gaming facility. We do, however, offer online sports betting to consumers who are located within the borders of the State of Maine. This is

being done pursuant to state law and not under federal law. As of now, this is the only gaming activity being conducted by the Penobscot Nation, and the revenues generated from these limited gaming activities go towards essential government functions, programs and services for our citizens.

Sports betting in Maine, like most other states, is a recent phenomenon resulting from a U.S. Supreme Court case in 2018. Prior to 2018, Congress prohibited all forms of sports betting, with a couple of exceptions. As described below, Maine legalized sports betting in 2022, and the Penobscot Nation begin operating sports betting in late 2023.

In 1992, Congress sought to prohibit all forms of sports betting in the United States through enactment of the Professional and Amateur Sports Protection Act ("PASPA"). While several state governments were exempted from the nationwide prohibition, gambling on sporting events was generally prohibited at the federal level for more than 25 years.

On May 14, 2018, the United States Supreme Court, in *Murphy v. NCAA*, struck down PASPA as violating the Tenth Amendment's anti-commandeering doctrine. *Murphy* returned oversight of sports betting to local tribal and state government policymakers. In the eight years since the *Murphy* decision, sports betting has grown slowly on a tribe-by-tribe and state-by-state basis. Several states chose to continue the prohibition against sports betting for religious, moral, and other reasons. Two states, Utah and Hawaii, criminally prohibit nearly all forms of gambling within their jurisdictions. Maine legalized online sports betting in 2022, and the Penobscot Nation launched sports betting in November 2023. Maine law restricts sports betting to persons 21 years of age and older, and betting on in-state college teams is prohibited. The state collects a 10% tax from the sports betting revenue and uses it for government programs, such as problem gambling programs among other things. The Penobscot Nation established a gaming commission that oversees our sports betting operations, and we are also regulated by the state's gambling control unit agency. We use our portion of the revenues from sports betting for government services and programs to our citizens, such as health care, public safety. Our hope is to expand that to investment in infrastructure on our lands in the coming years.

Penobscot Nation is not opposed to prediction markets. However, we are opposed to prediction markets that infringe on our sovereignty or interfere with the long-established legal framework between the federal, state and tribal governments governing the conduct of gaming activities. For those reasons, our comments contained herein are focused on the proliferation of event contracts (and swaps) being offered on prediction markets that relate to sport events, which we view as illegal forms of gaming.

General Comments on the ANPRM

In Penobscot Nation's view, there are several problems in the ANPRM that make the notice an inappropriate framework for the development of new or revised regulations.

First, the ANPRM offers no reason to alter the CFTC's existing regulation prohibiting designated contract markets (DCMs) from listing any contract that "involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law." 17 C.F.R. § 40.11(a)(1).

Second, the CFTC has not adequately consulted with tribal governments concerning matters in the ANPRM that directly implicate our sovereign interests, and the opportunity to submit comments in response to the ANPRM is not a substitute for government-to-government consultation.

Third, the ANPRM is premised on the erroneous position that the CFTC has exclusive jurisdiction over every contract posted for trade on DCMs, including those that may implicate sports betting and gaming. The CFTC seems to believe that its jurisdiction can be defined (and subsequently, redefined) by the choices of the financial community it claims to regulate in the name of "innovation" and not by the laws enacted by Congress conferring its authority or the intent behind such laws. *See* CFTC Release No. 9194-26 ("This begins the process of new rulemaking grounded in a rational and coherent interpretation of the Commodity Exchange Act, while reassuring the American people that the CFTC will exercise its exclusive jurisdiction over prediction markets."). Whether Congress gave the CFTC jurisdiction, much less exclusive jurisdiction, over prediction market activities that have nothing to do with the purpose of the Commodities Exchange Act (CEA) and the mission of the CFTC is a major question.

Fourth, the scope of CFTC's jurisdiction, and the assessment of matters such as the public interest in trading on DCMs must consider tribal and state government interests and regulatory determinations by sovereign tribal and state governments. The CFTC does not have carte blanche to expand its regulatory authority to fit the apparent desire of the prediction markets to "trade on anything."[1] Event contracts on sport events is sports betting. Sports betting that is being conducted through prediction markets registered with and licensed by the CFTC violates tribal, federal, and state laws, including the IGRA, which expressly provides tribal governments with exclusive authority to regulate gaming on Indian lands in partnership with states and the National Indian Gaming Commission (NIGC).

The CFTC must fulfill its statutory responsibilities and enforce its existing regulations against event contracts involving gaming, which we believe include event contracts related to sport events. The CFTC should immediately issue guidance reaffirming that sports-related event contracts are gaming and categorically prohibited as contrary to the public interest pursuant to the CFTC's existing regulations, and the CFTC should take swift and decisive enforcement action against prediction markets that offer these illegal gambling instruments.

Government-to-Government Consultation Needed with Indian Country

Before proposing any rule that could directly affect tribal governments, the CFTC should engage in early, meaningful government-to-government consultation with affected tribes; notice-and-comment rulemaking is not a substitute for consultation. Independent agencies are not exempt from this duty to consult with tribal governments when federal actions have tribal implications. The CFTC has acknowledged that its authority over prediction markets – particularly sports-betting event contracts – raises federalism and tribal implications.[2] Yet it did not consult with Tribal governments or states about those implications before issuing the ANPRM.

[1] https://kalshi.com/sign-up.

[2] The CFTC filed an amicus brief in the case *North American Derivatives Exchange Inc. v. Nevada* in which both states and tribes have asserted that CFTC exclusive authority over event contracts for sporting events and casino style gambling would have federalism and tribal implications.

The obligation to conduct government-to-government consultation with Tribal Nations has been reaffirmed across administrations, including during the Trump Administration, which repeatedly recognized Tribal Nations as governments and emphasized the need for agencies to engage Tribes on federal actions with tribal implications.[3]

Beyond agencies' express obligations under Executive Order 13175, tribal consultation reflects the United States' treaty and trust responsibilities and duty to promote the long-standing federal policy of tribal self-determination.[4] Accordingly, agencies must consult with tribal governments early when contemplated regulations or policies may have substantial direct effects on tribes. The ANPRM would substantially affect tribal government gaming operations, and tribes have decades of regulatory expertise. Issuing regulations in this area without meaningful consultation would violate Executive Order 13175, the government-to-government relationship with Tribal Nations, and principles of federalism, which apply to independent agencies no less than to those covered by Executive Order 13175 and 13132.

Answers to Specific Questions in the ANPRM

Because the focus of the Penobscot Nation's comments is on the unlawful sports betting and gaming activity currently taking place on prediction markets, we do not address every question published in the CFTC's ANPRM. Below are responses to the specific questions that seemed most relevant to our concerns.

B. Public Interest

Question 7: As described above, CEA section 5c(c)(5)(C) provides for the Commission to make a determination that event contracts are "contrary to the public interest" if the event contracts involve any of five listed activities or "other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest." In general, what factors should the Commission consider in making a public interest determination under this section?

Event contracts involving sport events are gaming and the CFTC's existing regulations already deem gaming contracts as contrary to the public interest. If the CFTC decides to revise the relevant provisions in its regulations, it should only do so to clarify that event contracts related to sport events – particularly those already prohibited or regulated by tribal or state governments as gaming – are contrary to the public interest.

The CFTC has authority to determine that an event contract is "contrary to the public interest" if the contract involves (1) activity that is unlawful under any Federal or State law; (2) terrorism; (3) assassination; (4) war; (5) gaming; or (6) other similar activity determined by

[3] ***See*** Exec. Order No. 13,175, § 8, 65 Fed. Reg. 67,249, 67,252 (Nov. 9, 2000) ("Independent regulatory agencies are encouraged to comply with the provisions of this order.")

[4] *See* Admin. Conf. of the U.S., Recommendation 2025-2, *Consultation with State, Local, and Tribal Governments in Regulatory Policymaking*, 90 Fed. Reg. 27515, 27519 (June 27, 2025).

the CFTC, by rule or regulation, to be contrary to the public interest.[5] Under Regulation 40.11(a)(1), the CFTC has already determined that those five enumerated activities are contrary to the public interest and DCMs are prohibited from listing contracts involving them.[6]

The Special Rule in the CEA was intended to "assure that the [CFTC] has the power to […] prevent gambling through futures markets."[7] Section 5c(c)(5)(C) provides that contracts involving "gaming," unlawful activity, or other enumerated categories "shall not" be listed or made available for trading.[8] The statute thus establishes a rule of decision: once a contract "involves" gaming, it is per se contrary to the public interest and barred from trading on a registered entity. This is a categorical prohibition, not a balancing test. The only legally relevant inquiry is whether the contract "involves" gaming. If it does, the CFTC lacks authority to permit its listing and should direct DCMs offering such contracts to immediately stop doing so.

Sports-related event contracts clearly involve gaming because they are wagers on the outcome of sporting events. Federal law defines a "bet or wager" as staking something of value on the outcome of a contest or sporting event with the expectation of receiving value based on that outcome.[9] State laws are to the same effect, encompassing wagers on any aspect of a sporting event, including proposition and in-play betting.[10] No material distinction exists between these wagers and sports-related event contracts. These contracts therefore "involve" gaming within the meaning of Regulation 40.11 and are prohibited.

Even if the existing statute and regulation did not impose a categorical bar, which they do, sports-related event contracts are clearly contrary to the public interest for several reasons. They lack any bona fide economic purpose. The CEA is designed to regulate markets that facilitate hedging, risk transfer, and price discovery tied to commercial activity. Sports-related event contracts do none of these things. They are not linked to underlying economic exposure and do not mitigate risk; they exist solely to enable speculative wagering.

Additionally, sports-related event contracts present acute and unmanageable risks of manipulation. Unlike traditional derivatives markets, these contracts are vulnerable at the level of the underlying event. Outcomes may be influenced by a limited number of actors—players, referees, or insiders—creating risks of match-fixing, point-shaving, and insider exploitation. These risks are inherent, not incidental, and fall outside the CFTC's institutional competence.

Sport event contracts also pose substantial and foreseeable harms to consumers. These products are designed for retail participation and encourage gambling behavior indistinguishable

---

[5] 7 U.S.C. § 7a-2(c)(5)(C)(i).

[6] *See, e.g.*, *Provisions Common to Registered Entities*, 76 Fed. Reg. 44776, 44786 (Jul. 27, 2011) (explaining that the CFTC's "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.'" (citation modified)).

[7] *See* 156 Cong. Rec. S5906 (daily ed. Jul. 15, 2010) (colloquy between Sens. Feinstein and Lincoln, in which Sen. Lincoln thanks Sen. Feinstein and Chairman Dodd, for whom the Act is named, for encouraging Sen. Lincoln to include this provision in the Act).

[8] 7 U.S.C. § 7a–2(c)(5)(C).

[9] *See* 31 U.S.C. § 5362(1)(A).

[10] *See, e.g.*, N.J.S.A. § 5:12A-10.

from sports betting. They expose participants to addiction risks, financial loss, and target underage consumers. Allowing prediction markets "to continue offering sports-related event contracts to 18-year-olds, even though the CFTC issued a regulation that prohibits [prediction markets] from listing gaming contracts, is not in the public interest."[11]

The leading prediction market, Kalshi, has been aggressively advertising its products as legalized sports betting since January 2025. The company has taken a national approach and focused on large consumer markets in states that have refused to legalize sports betting. One advertisement by prediction market Kalshi says it is "The First Nationwide Legal Sports Betting Platform." In March 2025 Kalshi ran advertisements during the college basketball tournament in Texas and California – where all sports betting is illegal – that said "Make $ on March Madness" and "Legal in Texas" and "Legal in California." Another advertisement said "Sports betting is officially legal in Texas with Kalshi. The first federally regulated exchange where you can bet on real outcomes." Again, all sports betting is illegal under state law in Texas and California. Thus, these prediction markets are offering contracts on sport event outcomes and intentionally misleading consumers and purposefully thwarting state laws.

Sport event contracts conflict with established tribal, federal, and state law. Sports wagering is comprehensively regulated under state law and, on Indian lands, under IGRA and tribal law. The CEA expressly identifies contracts involving unlawful activity as contrary to the public interest.[12] These contracts undermine tribal sovereignty and conflict with the federal Indian policy promoting tribal economic development and self-sufficiency.[13] Sports-related event contracts pose an existential threat to tribal government gaming by violating tribal gaming exclusivity, eroding tribal bargaining power in Class III gaming compact negotiations with states, and reducing tribal gaming revenue that provides vitally needed services, programs and infrastructure to tribal communities.

For all of these reasons, event contracts that involve gaming, including sports-related event contracts, are contrary to the public interest.

Question 13: Why, or why not, would it be appropriate for the Commission to propose any changes to its regulations related to its public interest determination?

The CFTC should not amend its regulations regarding public interest determinations, because there has been no adequate justification for doing so. The CFTC's existing regulations prohibit the listing of certain "event contracts" that are deemed to be contrary to the public interest. This includes contracts related to subjects identified by Congress in statute that involve: (1) "activity that is unlawful under any Federal or State law," (2) "terrorism," (3) "assassination," (4) "war," and (5) "gaming."[14] Until there is a clear rationale presented for why one of these

[11] *See KalshiEX LLC v. Hendrick*, No. 2:25-cv-575, 2025 WL 3286282, at *13 (D. Nev. Nov. 24, 2025) (citing 17 C.F.R. § 40.11(a)).

[12] *See* 7 U.S.C. § 7a–2(c)(5)(C).

[13] *See* 25 U.S.C. § 2702(1); 25 U.S.C. § 5302(b); *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring).

[14] 7 U.S.C. § 7a-2(c)(5)(C)(i).

categories should not be considered contrary to the public interest, we see no reason for why the CFTC should allow event contracts to be offered related to any of them.

With regards to the category of "gaming," we have seen arguments by some prediction markets that suggest that the offering of event contracts on sport events is not gaming. This is nonsensical. In determining whether an activity is "gaming," the CFTC can look to existing definitions of the term in federal law, such as the Unlawful Internet Gambling Enforcement Act ("UIGEA"), which defines "gaming" as:

> the staking or risking by any person of something of value on the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.

31 U.S.C. § 5362(1)(A). The CFTC can also look to the legislative history of the 2010 amendments made by Congress to the CEA. Senator Blanche Lincoln, then-Chair of the Senate Committee on Agriculture, Nutrition, and Forestry and author of the 2010 Dodd-Frank amendments, clearly stated in a 2010 Colloquy with then-Senator Diane Feinstein that the legislation was intended to empower the CFTC "to prevent the trading of futures and swaps markets that would allow citizens to profit from devastating events and also prevent gambling through futures markets."[15] Senator Feinstein stated it was "very important to restore the CFTC's authority to prevent trading that is contrary to the public interest," because "derivatives traders have bet billions of dollars on derivatives contracts that served no commercial purpose at all and often threaten the public interest."[16] Senator Feinstein asked Senator Lincoln whether the intent of the legislation was to "define 'public interest' broadly so that the CFTC may consider the extent to which a proposed derivative contract would be used predominantly by speculators or participants not having a commercial or hedging interest."[17] Senator Feinstein inquired further as to whether the CFTC would have "the power to determine that a contract is a gaming contract if the predominant use of the contract is speculative as opposed to a hedging or economic use."[18] And Senator Lincoln confirmed:

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

[15] 156 Cong. Rec. S5906 (daily ed. Jul. 15, 2010).

[16] *Id.*

[17] *Id.*

[18] *Id.*

156 Cong. Rec. S5906-07 (daily ed. Jul. 15, 2010). Congress clearly considered whether event contracts on sport events are gaming and concluded that they were.

The CFTC should not undertake substantive amendments to its public interest regulations because the existing framework already fully implements Congress's directive. Regulation 40.11 clearly provides that event contracts that "involve, relate to, or reference… gaming" are contrary to the public interest and may not be listed or traded.[19] Instead of changing its regulations related to public interest determinations, the CFTC should issue guidance reaffirming that sports-related event contracts involve gaming and are categorically prohibited under Regulation 40.11. Additionally, it should exercise its authority under § 40.11(c) to suspend or review self-certified contracts that raise gaming concerns before listing. Furthermore, the CFTC should require prior approval, rather than self-certification, for categories of contracts that implicate gaming, including sports-related event contracts.

C. Activities Listed in CEA § 5c(c)(5)(C)

Question 15: CEA section 5c(c)(5)(C) lists five activities, and provides that if an event contract involves any such activity, the Commission may determine that the event contract is contrary to the public interest. What factors should the Commission consider in determining the scope of these five listed activities? What aspects of these activities would be relevant to the Commission's public interest determination?

The CFTC's existing regulations already deem these five activities to be contrary to the public interest. Unless, the CFTC can provide a justified reason for eliminating or restricting those five activities as contrary to the public interest, we do not believe the relevant portion of the regulation should be revised.

The 2010 Dodd-Frank Act amended the CEA at 7 U.S.C. §7a-2 ("Common Provisions Applicable to Registered Entities") to include a special rule for CFTC review and approval of event contracts and swaps. The special rule provides that the CFTC may determine that "agreements, contracts, or transactions are *contrary to the public interest* if [they] involve – activity that is unlawful under any federal or state law; terrorism; assassination; war; gaming; **or** other similar activity determined by the Commission by rule or regulation, to be contrary to the public interest." (emphasis added). On July 27, 2011, the CFTC implemented this provision through a rulemaking process, which found that swaps and contracts relating to "gaming" or "activity that are unlawful under any State or Federal law" *are contrary to the public interest*. CFTC's regulation provides that "[a] registered entity shall not list for trading or accept 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

[19] 17 C.F.R. § 40.11(a)(1).

Act, that involves, relates to, or references terrorism, assassination, war, *gaming*, *or an activity that is unlawful under any State or Federal law*…."[20]

Question 16: The first listed activity is an "activity that is unlawful under any Federal or State law." What types of event contracts could potentially involve such activity? What steps should the Commission appropriately take in order to determine which State laws may be involved in a particular event contract? What steps should the Commission appropriately take in order to determine which Federal laws, such as the Exchange Act, may be involved in a particular event contract? If an event contract involves an activity that is unlawful under some State laws, but not others, how should this conflict be resolved? What public interest factors should the Commission consider for event contracts involving unlawful activity?

Section 5c(c)(5)(C) authorizes the CFTC to prohibit event contracts that involve activity unlawful under federal or state law, and Regulation 40.11(a)(1) bars the listing of contracts that violate such laws. These provisions reflect the principle that CFTC-regulated derivatives markets must not be used to facilitate conduct that sovereign governments have made unlawful. Where an event contract implicates unlawful activity, it is contrary to the public interest and must be prohibited. Additionally, because Tribal government gaming is regulated by IGRA, and violation of Tribal gaming laws or Tribal-State gaming compacts required by IGRA, are violations of federal law.

Sports-related event contracts violate federal laws, including IGRA. Sports betting constitutes Class III gaming under IGRA, which is lawful on Indian lands only when it is authorized by tribal law, conducted in a state that permits the gaming activity, and carried out pursuant to a Class III Tribal-State gaming compact that is approved by the Secretary of the Interior.[21] Sports-related event contracts offered by prediction markets on Indian lands violate IGRA, unless expressly authorized by a Tribal-State compact.[22]

Additionally, sports-related event contracts violate the federal Wire Act, which provides "[w]hoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate… commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest… shall be fined under this title or imprisoned not more than two years, or both."[23]

The CEA clearly did not impliedly repeal IGRA or the Wire Act. The Supreme Court has made clear there is a "strong presumption that repeals by implication are disfavored and that Congress will specifically address preexisting law when it wishes to suspend its normal

---

[20] *See* 17 C.F.R. § 40.11 (emphasis added); 76 Federal Register 44786 (July 27, 2011) (noting that the new rule's prohibition of "gaming" contracts "is consistent with Congress's intent to 'prevent gambling through the futures markets'").

[21] *See* 25 U.S.C. § 2710(d)(1), (d)(7)(B)(vii); *see also* 25 C.F.R. § 502.4(c).

[22] *See, e.g., Coeur d'Alene Tribe v. Idaho*, 842 F. Supp. 1268, 1282 (D. Idaho 1994) (holding that the state lottery could not operate on Indian lands absent compliance with IGRA).

[23] 18 U.S.C. § 1084(a).

operations in a later statute."[24] The CEA cannot be read to repeal any part of IGRA or the Wire Act "unless the intention of the legislature to replace is clear and manifest."[25] No such "clear and manifest" intent can be drawn from the 2010 Dodd-Frank Act, because that Act did not address sports betting or Indian gaming.[26]

In determining which federal or state laws may be implicated by an event contract related to sport events, the CFTC merely needs to reach out to the states, tribal nations, and other relevant federal agencies and trade associations. The federal National Indian Gaming Commission tracks existing Tribal-State gaming compacts, and the Indian Gaming Association and American Gaming Association track all the states that have legalized some form of sports betting. It would not be difficult or burdensome for the CFTC to gather this information and track it.

Question 19: The fifth activity is gaming. What factors should the Commission consider in determining the scope and public interest implications of this activity? [This responds to questions 19(a)-(f)]

As described in other parts of these comments, the CFTC should look to other Federal laws that define and regulate gaming, consult with Indian Country, look to Tribal and State laws, and confer with the National Indian Gaming Commission.

In addition, we think it is clear that contracts that replicate wagering on contingent events—particularly sports outcomes—constitute "gaming" within the meaning of Section 5c(c)(5)(C) and Regulation 40.11. The CFTC has already made this determination by rule. It should not narrow that prohibition but enforce it.

Question 21: Why, or why not, would it be appropriate for the Commission to propose any changes to its regulations related to the activities listed in CEA section 5c(c)(5)(C)?

"Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change." *Env't Def. Fund v. United States Env't Prot. Agency*, 124 F.4th 1, 15 (D.C. Cir. 2024) (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016)). An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books. And the agency must show that there are good reasons for the new policy*." F.C.C. v. Fox Television Stations, Inc*., 556 U.S. 502, 515 (2009) (citation omitted). Yet the ANPRM disregards the substance of the existing rule and fails to address whether there is any reason for changing it. We do not believe there is any reason to change it.

---

[24] *KalshiEX LLC v. Martin*, 793 F. Supp.3d 667, 684 (D. Md., Aug. 1, 2025) (citing *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018)).

[25] *Shoshone-Bannock Tribes v. U.S. Dep't of Interior*, 153 F.4th 748, 759 (9th Cir. 2025).

[26] *See generally* KalshiEX, LLC v. Flaherty, No. 25-1922, 2026 WL 924004 (3d Cir. Apr. 6, 2026). The recent decision handed down by the Third Circuit also fails to address how recognizing the exclusive jurisdiction of the CFTC over sports betting on prediction markets would effectuate an implied repeal of other federal gaming laws, such as the Indian Gaming Regulatory Act, despite Congress not so much as suggesting its intent to repeal such gaming laws.

We do not believe it is appropriate for the CFTC to propose any changes to its regulations related to the activities listed in CEA section 5c(c)(5)(C). We merely want the CFTC to ensure its existing regulations with respect to those enumerated activities. By refusing to enforce its existing regulations the CFTC undermines its own mission to promote the integrity, resilience, and vibrancy of the U.S. derivatives market through sound regulation, yielding its regulatory powers to private, non-federal entities and essentially, reducing itself to a document archive for DCM filings. If, as recent court filings by the CFTC claim, the CEA granted the CFTC exclusive jurisdiction over regulation of event contracts, then the CFTC must also police DCM compliance with the Core Principles and existing regulations, including exercising the CFTC's authority to review contracts under the Special Rule and prohibiting such contracts from trade.

F. Types of Event Contracts and Other Issues

Question 33: As noted above, event contracts may be covered by the statutory definition of the term "swap" in CEA section 1a(47)(A). What aspects of prediction markets are relevant to whether event contracts should, or should not, appropriately be classified as swaps? What aspects, if any, distinguish event contracts from other types of swaps? The definition in CEA section 1a(47)(A)(ii) includes an event contract that "is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." What potential financial, economic, or commercial consequences underlie event contracts? Similarly, CEA section 1a(47)(A)(i) includes an event contract that is an option "based on the value, of . . . financial or economic interests or property of any kind." How are any event contracts based on the value of financial or economic interests or property? What idiosyncratic risks embedded in event contracts differentiate them from other commodity derivative instruments?

Although the prediction markets have at times suggested in litigation that state and tribal regulation of sports betting can coexist with CFTC jurisdiction, that suggestion is not consistent with the CEA. If the CFTC takes the position that all sports wagers are swaps, then pursuant to section 2(e) of the CEA, sports wagers may only be made on a DCM. We understand that the CFTC and many prediction markets have attempted to waive away this concern by distinguishing sports bets on a DCM from sports bets at a state regulated sports book by claiming that because there is no house taking a stake in the wager on a DCM, it is distinct from the type of sports betting states regulate. There is nothing in the definition of swap, however, that depends on whether the sports event contract involves a "house" or a direct trade with another bettor or trader. In fact, many forms of state and tribally regulated gaming do not involve a "house." In parimutuel betting on horse races for example, all bets on a particular race are pooled together. Odds on the race are determined by the bets placed, and the pool is shared among those that correctly predict the outcome of the race after the track takes its commission, commonly referred to as a "takeaway." It is unclear why this would be considered a state regulated bet when made at a horse track and a federally regulated contract when self-certified by a DCM. It is the same activity.

CONCLUSION

These prediction markets' illegal online sports betting products directly harm the State of Maine, the Wabanaki Tribal Nations, and the consumers located in Maine who cannot easily

identify the difference between legalized online sports betting and the illegal products offered by prediction markets. These prediction markets pay no taxes to the State, contribute nothing to problem gambling programs, and offer no consumer protection. More, the legalized sports betting system in Maine was specifically designed to provide economic development opportunities for the Tribal Nations in Maine, who have long struggled to meet the basic needs of our communities. Prediction markets offering illegal sport event contracts within the State steal away from the Tribal Nations monies we use for infrastructure, education, health care, housing, law enforcement and other basic governmental services.

For the foregoing reasons, the CFTC should reaffirm that sports-related event contracts are prohibited under the CEA and existing CFTC regulations, decline to undertake redundant rulemaking, and instead issue clear guidance and enforcement actions against prediction markets to ensure compliance.

Sincerely,



Kirk Francis
Chief