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Christopher J. Kirkpatrick
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Re: Commodity Futures Trading Commission Public Comment on Prediction Markets / RIN 3038–AF65

Mr. Kirkpatrick

On behalf of the National Tribal Gaming Commissioners & Regulators (NTGCR), I respectfully submit these comments regarding the Commodity Futures Trading Commission's (CFTC or Commission) proposed rulemaking addressing event contracts and prediction markets. NTGCR is an association of tribal gaming regulators representing federally recognized Indian tribes and sovereign governments that regulate Indian gaming conducted pursuant to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 et seq. Tribal gaming conducted under IGRA provides the primary governmental revenue source for many tribal governments and funds essential governmental services, including healthcare, education, housing, infrastructure, and public safety.

NTGCR respectfully urges the Commission to clarify that so-called "prediction markets" that allow users to stake money on uncertain future events—such as the outcomes of sporting events, elections, and other contingencies—constitute unlawful gaming rather than permissible derivatives activity under federal commodities law. As currently structured and marketed, these products are functionally indistinguishable from traditional forms of wagering. Permitting such products to operate outside established gaming regulatory frameworks risks undermining the comprehensive regulatory structure established by IGRA, as well as applicable federal and state gaming laws and longstanding public policy governing gambling activities.

Clarification from the Commission is therefore necessary to ensure that event-based contracts that function as gambling products are not permitted to evade longstanding gaming laws and regulatory safeguards by being characterized as financial derivatives. Such an outcome would

create regulatory inconsistency, disrupt existing lawful gaming markets operated under IGRA and state law, and threaten an essential source of governmental funding for tribal nations.

SUMMARY

The Commission has issued an Advance Notice of Proposed Rulemaking (ANPRM) concerning "Prediction Markets" and the listing of event contracts on Designated Contract Markets (DCMs) and Swap Execution Facilities (SEFs). The NTGCR submits these comments to assert that the CFTC must not permit private entities to use the Commodity Exchange Act (CEA) to conduct unregulated gaming and sports-betting operations that undermine tribal sovereignty, circumvent the Indian Gaming Regulatory Act (IGRA), and threaten tribal economic development.

The proliferation of prediction markets offering event contracts for sports and other events or games of chance poses significant regulatory risks. If the CFTC adopts an overly broad interpretation of the term "swap" under CEA section 1a(47) to encompass what is functionally sports betting, it will orchestrate a sub silentio reversal of congressional policy. This boundless interpretation would effectively nullify existing Tribal-State gaming compacts mandated by 25 U.S.C. § 2710(d) for Class III gaming, siphon critical gaming revenues away from tribal and state governments, and drastically diminish tribal self-determination as protected by the Indian Gaming Regulatory Act (IGRA).

The NTGCR strongly recommends a policy approach wherein the CFTC expressly affirms that event contracts constituting gaming—including sports betting—are definitively not "swaps" under the CEA and are inherently contrary to the public interest. The CFTC must respect the Major Questions Doctrine, recognizing that Congress did not authorize the Commission to become the nation's sole gaming regulator. Furthermore, the CFTC must fulfill its federal trust responsibility by engaging in rigorous, government-to-government consultation with Indian Tribes before enacting any rule that affects the $40+ billion tribal gaming industry.

BACKGROUND ON TRIBAL SOVEREIGNTY

Tribes have primary jurisdiction over their lands and the activities occurring thereon. Long before the advent of modern prediction markets, the inherent sovereign authority of Indian Tribes to conduct and regulate gaming activities on Indian lands was recognized and protected by federal law, including the Supreme Court's landmark decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

The federal government bears a solemn trust responsibility to protect tribal sovereign rights and resources. In passing IGRA, Congress explicitly sought to "promot[e] tribal economic development, self-sufficiency, and strong tribal governments". For tribal governments, gaming is not a mere "commercial" endeavor; it is an existential one. Tribal gaming revenues support thousands of jobs, fund critical government services, and represent "the lifeblood on which many tribes ha[ve] come to rely". Any CFTC action that allows private corporations to offer off-reservation, unregulated gaming under the guise of "event contracts" directly cannibalizes these revenues, violating the federal trust responsibility and crippling tribal economies.

LEGAL FRAMEWORK

The Indian Gaming Regulatory Act (IGRA) - In 1988, Congress enacted IGRA to provide a comprehensive statutory basis for the operation and regulation of gaming by Indian tribes, establishing the National Indian Gaming Commission (NIGC) to oversee these activities. Under IGRA, sports betting constitutes Class III gaming (25 U.S.C. § 2703(8)), which is strictly prohibited unless conducted pursuant to a federally approved Tribal-State compact (25 U.S.C. § 2710(d)(1)(C)). IGRA carefully balances the sovereign interests of Tribes, states, and the federal government and establishes comprehensive jurisdiction over all forms of gaming on Indian lands. This includes Class II gaming (such as bingo and peer-to-peer games), which is regulated exclusively by Tribes and the NIGC, and Class III gaming (which includes sports betting), which may occur only pursuant to a Tribal-State compact or secretarial procedures. By permitting private exchanges to list event contracts on sports, the CFTC would illegally bypass IGRA's exclusive regulatory framework, usurping the roles of the NIGC, the Department of the Interior, and the sovereign compacting parties.

Implied Repeal and the Indian Canons of Construction - If the CEA is interpreted to grant the CFTC exclusive jurisdiction over sports-betting event contracts, it would effectively strip Tribes and States of their longstanding authority over sports betting, functioning as an illegal implied repeal of IGRA. The Supreme Court mandates a "strong presumption that repeals by implication are disfavored". Furthermore, the Indian Canons of Construction dictate that statutes must be construed liberally in favor of Indians, with ambiguous provisions interpreted to their benefit (*Montana v. Blackfeet Tribe of Indians*).

The Major Questions Doctrine - The Major Questions Doctrine prevents federal agencies from asserting vast economic and political power without clear congressional authorization. Allowing the CFTC to preempt state and tribal gaming laws to authorize nationwide sports betting constitutes a "radical" and "fundamental" overhaul of federal policy, lacking any explicit statutory mandate from Congress.

Congressional Consideration of Event Contracts and the Importance of Legislative Resolution - Furthermore, the CFTC must stay its hand because Congress is actively examining event contracts and actively asserting its legislative authority over the boundaries of prediction markets. Since January 2026, lawmakers in both chambers have introduced more than ten bills specifically targeting prediction markets. Crucially, bipartisan legislation such as the "Prediction Markets Are Gambling Act" has been introduced to explicitly ban CFTC-registered entities from listing contracts that resemble sports bets or casino-style games, clarifying that Congress never intended to authorize sports gambling through the CEA. Similarly, the pending "STOP Corrupt Bets Act" proposes a sweeping ban on prediction market contracts based on sports and elections.

These legislative developments highlight that the classification and regulation of event contracts implicate profound questions of gambling law, tribal sovereignty under IGRA, and state consumer-protection regimes. The surge in congressional scrutiny demonstrates that the

treatment of these products is no longer a narrow derivatives-law debate, but a major question of public policy. Consequently, the CFTC must decline to resolve these jurisdictional conflicts through administrative rulemaking and should instead allow Congress to address the issue legislatively, thereby preserving the comprehensive regulatory structure of IGRA and respecting the legislative branch's active engagement on this matter.

The Private Nondelegation Doctrine - Permitting private exchanges to self-certify sports betting contracts and thereby preempt state and tribal law violates the Private Nondelegation Doctrine. *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936). The CFTC cannot constitutionally allow private, for-profit entities to govern their own sports-betting enterprises without mandatory agency oversight or advance public comment.

RESPONSES TO QUESTIONS 1–40

(Note: To address the Commission's extensive inquiry cohesively and avoid redundancy while fulfilling the required analysis, responses to interrelated sub-questions are grouped by their core subject matter as outlined in the ANPRM.)

Q1. "What factors should the Commission consider in determining whether to provide guidance or amend its regulations regarding how the DCM Core Principles in CEA section 5(d) apply to prediction markets? Are there specific points on which the Commission should provide guidance or adopt rule amendments? Why or why not?"

Direct Answer: The primary factor the Commission must consider is whether the application of DCM Core Principles conflicts with existing federal frameworks governing gaming, specifically IGRA. The CFTC should provide explicit guidance stating that DCM Core Principles do not permit the listing of event contracts that constitute gaming or sports betting.

Tribal Sovereignty Analysis: Allowing prediction markets to operate gaming activities under DCM rules blatantly ignores tribal sovereignty. Congress recognized that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands". Any CFTC guidance must respect this exclusive right and reject the premise that DCM registration supersedes tribal jurisdiction. Because prediction markets operate as borderless, internet-based platforms, their event contracts are inescapably accessible to users physically located on Indian lands. By authorizing these platforms, the CFTC would be authorizing gaming activities directly on Indian lands without tribal consent, directly violating Congress's finding in 25 U.S.C. § 2701(5) that Indian tribes possess the "exclusive" right to regulate gaming activity on Indian lands.

Economic Development Impact: If the CFTC amends its regulations to accommodate sports betting on DCMs, it invites unregulated private actors to drain market share from tribal gaming enterprises, devastating the economic foundation of tribal governments.

Legal Reasoning & Policy Recommendation: The CEA was never intended to replace IGRA. The CFTC must interpret its jurisdiction under the CEA in a manner that avoids an unlawful implied repeal of IGRA. The NTGCR strongly urges the Commission to adopt formal regulations

clarifying that the CEA does not extend to gaming activities uniquely governed by IGRA and therefore grants the CFTC no authority to act as a parallel gaming regulator.

Q2. "With respect to the following DCM Core Principles, what factors are relevant to prediction markets?" *(a) Core Principle 2 (impartial access and abusive trade practices); (b) Core Principle 2 (resolution criteria); (c) Core Principle 3 (manipulation); (d) Core Principle 4 (surveillance); (e) Core Principle 5 (position limits); (f) Core Principle 11 (financial integrity/margin); (g) Core Principle 20 (operational risk); (h) blockchain.*

Direct Answer: The most relevant factor across all DCM Core Principles is the inherent inability of the CFTC to enforce consumer protections, market integrity, and responsible gaming standards to the same degree as specialized tribal and state gaming regulators.

Tribal Sovereignty Analysis: Tribal regulators, acting pursuant to IGRA, enforce stringent standards to protect consumers and the integrity of the games. Prediction markets attempting to operate as DCMs bypass these sovereign regulatory structures. For instance, regarding dispute resolution (Q2b) and abusive practices (Q2a), tribal compacts provide robust, proven mechanisms. The CFTC lacks the specialized experience to oversee gambling disputes or identify gaming-specific manipulation (Q2c, Q2d). Tribal Gaming Regulators, by contrast, possess decades of specialized, on-the-ground experience in anti-money laundering (AML) protocols, match-fixing prevention, and the maintenance of overall game integrity. In attempting to regulate sports betting, the CFTC is straying far beyond its technical expertise.

Economic Development Impact: Allowing prediction markets to offer margin trading (Q2f) on sports bets—a practice strictly controlled or prohibited in regulated gaming markets—exposes consumers to massive financial ruin. This unregulated environment unfairly competes with safe, heavily regulated tribal gaming, harming tribal revenues.

Legal Reasoning & Policy Recommendation: The CFTC explicitly "is not a gaming regulator". Therefore, the CFTC should adopt guidance stating that compliance with DCM Core Principles cannot be achieved for event contracts based on sporting events or games of chance, as the Commission lacks the statutory mandate to regulate such activities.

Q3. "Are there aspects of the clearing of event contracts that the Commission should consider in applying the DCO Core Principles in CEA section 5b(c)(2)?..." (Encompassing Q3a-c regarding eligibility, risk management, and margin)

Direct Answer: The CFTC must consider that clearing sports bets or gaming contracts introduces unique systemic risks that DCOs are fundamentally unequipped to manage, as these contracts are essentially wagers rather than financial hedges.

Tribal Sovereignty Analysis: Tribal gaming operations are designed to ensure that the Tribe is the primary beneficiary and that gaming is conducted fairly. Introducing clearinghouses for

nationwide sports betting bypasses tribal authority and allows non-tribal entities to monopolize a market Congress reserved for tribal self-sufficiency.

Economic Development Impact: If DCOs clear these trades on margin (Q3c), it transforms traditional gaming into highly leveraged financial speculation, bypassing the consumer protections inherent in tribal gaming and diverting entertainment dollars away from tribal economies.

Legal Reasoning & Policy Recommendation: As argued in the Amicus Brief, these contracts "serve [no] real commercial purpose" and are "used solely for gambling". The CFTC should prohibit DCOs from clearing gaming-based event contracts entirely.

Q4. "Institutional traders... may enter into event contracts on prediction markets registered as SEFs... Are there aspects of prediction markets that the Commission should consider in applying these Core Principles?..."

Direct Answer: The CFTC must consider that allowing institutional traders to place massive wagers on sports through SEFs fundamentally alters the integrity of both the financial markets and the sporting events themselves.

Tribal Sovereignty Analysis & Economic Development: SEFs cater to large-scale capital. Permitting SEFs to become institutional gambling rings creates an uneven playing field that tribal governments—who operate under strict IGRA limitations—cannot match. This siphons institutional investment away from legitimate tribal enterprises.

Legal Reasoning & Policy Recommendation: The definition of a "swap" requires an association with a "potential financial, economic, or commercial consequence". The outcome of a sporting event does not meet this test. The CFTC must clarify that SEFs cannot list gaming contracts.

Q5. "What factors should the Commission consider in determining whether to provide guidance or amend any other of its regulations with respect to the listing, trading, and clearing of event contracts on prediction markets?..." (Encompassing Q5a-c regarding data reporting, wash sales, and disruptive practices)

Direct Answer: The Commission must recognize that data reporting, wash sale prohibitions, and disruptive trading rules under the CEA are tailored for commodities and financial instruments, not wagers.

Tribal Sovereignty Analysis: IGRA and Tribal-State compacts already contain comprehensive surveillance and data-reporting regimes specifically tailored to detect cheating, point-shaving, and gambling fraud. The CFTC's generic market rules cannot adequately replace these specialized tribal regulations.

Legal Reasoning & Policy Recommendation: Relying on standard CEA reporting data for sports betting ignores the specific risks of gambling. The CFTC should amend its regulations to clarify that the listing of gaming contracts is outside its purview.

Q6. "With respect to any rule changes that the Commission may propose for the foregoing reasons, what are the relevant considerations of costs and benefits?..."

Direct Answer: The primary cost the Commission must weigh is the catastrophic economic damage to tribal nations and the usurpation of their tribal sovereign regulatory authority.

Tribal Sovereignty Analysis: The "benefits" of expanding prediction markets accrue entirely to private, for-profit entities, while the "costs" are borne by Tribes whose economies are decimated by unregulated off-reservation competition.

Legal Reasoning & Policy Recommendation: Under CEA section 15(a), the CFTC is statutorily required to consider the costs and benefits of its actions, including "other public interest considerations." The CFTC must explicitly incorporate the preservation of tribal economic development into this analysis because Congress has already codified this as a paramount federal policy. Specifically, 25 U.S.C. § 2702 declares that the statutory purpose of IGRA is to promote "tribal economic development, self-sufficiency, and strong tribal governments," and to protect gaming as a means of "generating tribal revenue." A failure by the CFTC to weigh the cannibalization of the $40+ billion tribal gaming industry against this explicit congressional mandate would render any rule permitting these contracts arbitrary and capricious.

Q7 & Q8. "In general, what factors should the Commission consider in making a public interest determination under this section? How should the public interests set out in CEA section 3 inform the Commission's public interest determination under CEA section 5c(c)(5)(C)?"

Direct Answer: The CFTC must consider the devastating impact on established, federally protected tribal gaming markets. The public interest is severely harmed when federal agencies facilitate the circumvention of established legal frameworks, such as the IGRA.

Tribal Sovereignty Analysis: The public interests in CEA section 3(a)—managing price risks and discovering prices—have absolutely no relevance to whether a sports team wins a game. Conversely, protecting tribal self-determination is a paramount federal public interest.

Legal Reasoning & Policy Recommendation: The CFTC must apply CEA section 5c(c)(5)(C) to aggressively prohibit gaming. The NTGCR recommends that the CFTC ensure that any contract encroaching on activities traditionally regulated under IGRA be considered contrary to the public interest.

Q9 & Q10. "Are there any elements of the former 'economic purpose' test that should or should not be applied... What role do event contracts play in 'managing and assuming price risks, discovering prices, or disseminating pricing information'..."

Direct Answer: Event contracts based on sports or gaming play no role in managing price risks. The CFTC should revive the principles of the "economic purpose" test to filter out pure wagers.

Tribal Sovereignty Analysis: The purchaser of a sports-betting contract has no underlying commercial risk to hedge; they are simply gambling. Allowing such contracts under the guise of "price discovery" makes a mockery of financial regulation and unfairly competes with tribal gaming.

Legal Reasoning & Policy Recommendation: The Amicus Brief correctly notes that externalities, such as "whether people bet on the event," do not create a downstream financial consequence required to classify a contract as a swap. The CFTC must exclude contracts lacking genuine economic purpose.

Q11 & Q12. "What factors should the Commission consider in its effort to fulfill these purposes [CEA section 3(b)] with respect to prediction markets? How do event contracts compare to, or substitute for, insurance contracts?..."

Direct Answer: The CFTC cannot fulfill the purposes of CEA section 3(b) – preventing abusive sales practices—if it authorizes a massive, unregulated internet gambling market. Furthermore, event contracts on sports are not insurance; they are bets.

Tribal Sovereignty Analysis: Tribal governments invest heavily in responsible gaming protocols. Prediction markets lack these safeguards.

Legal Reasoning & Policy Recommendation: Treating a sports bet as "insurance" against a favored team losing is legally absurd. The CFTC must explicitly reject attempts to disguise gaming as insurance or hedging.

Q13 & Q14. "Why, or why not, would it be appropriate for the Commission to propose any changes to its regulations related to its public interest determination? ...what considerations of costs and benefits would be relevant..."
Direct Answer: It is highly appropriate and necessary for the Commission to amend its regulations to explicitly define sports betting and casino games as "gaming", which is contrary to the public interest.

Tribal Sovereignty Analysis & Economic Development: The cost of failing to act is the destruction of the tribal gaming industry. Amending the regulations to protect tribal gaming aligns with the federal trust responsibility.

Legal Reasoning & Policy Recommendation: Congress enacted the "Special rule" (5c(c)(5)(C)) specifically to disallow gaming on DCMs. The CFTC should finalize rules solidifying this prohibition.

Q15 & Q16. "CEA section 5c(c)(5)(C) lists five activities... What factors should the Commission consider in determining the scope... 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?..."

Direct Answer: The Commission must interpret these listed activities – especially "gaming" and "unlawful activity"—broadly to capture prediction markets that function as gambling. Event contracts on sports violate the Wire Act, IGRA, and numerous state laws.

Tribal Sovereignty Analysis: The premise of online prediction market operators allows sports betting and gaming to occur on Indian lands, contrary to tribal prohibitions. This violates IGRA and the core tenets of tribal sovereignty.

Legal Reasoning & Policy Recommendation: The CFTC should state that if an event contract allows placing a wager on an outcome traditionally governed by state or tribal gaming law, it is "unlawful" unless offered in compliance with IGRA. To ensure compliance with the public interest and the prevention of unlawful activity, the CFTC must, at a minimum, mandate that any prediction market utilizing event contracts implement strict geolocation and geofencing technologies. This is absolutely necessary to stop prediction markets from offering sports-related event contracts in jurisdictions where sports betting is illegal or where Indian Tribes hold exclusive rights to conduct Class III sports wagering pursuant to IGRA compacts.

Q17 & Q18. "The second and third listed activities are terrorism and assassination... The fourth activity is war..."

Direct Answer/Recommendation: While less relevant to gaming, these provisions demonstrate Congress's intent to prevent DCMs from profiting off socially destructive or morally fraught events. The CFTC should strictly prohibit these contracts.

Q19. "The fifth activity is gaming. What factors should the Commission consider in determining the scope and public interest implications of this activity?" (Encompassing Q19a-f regarding definitions, distinctions, abusive practices, demographics, and responsible gaming)

Direct Answer: Pursuant to the Commission's authority under CEA section 5c(c)(5)(C)(i)(V), "gaming" must be defined to include any contract dependent on the outcome of a sporting event, competitive contest, or game of chance. As Congress has already comprehensively defined and regulated gaming through IGRA (25 U.S.C. § 2703), the CFTC should look to established federal Indian law and state law definitions rather than creating a novel administrative standard. The CFTC must recognize that prediction markets entirely lack the rigorous background investigations, licensing, and responsible gaming standards mandated by tribal regulators under IGRA (25 U.S.C. § 2710(b)(2)(F)).

Tribal Sovereignty Analysis: Allowing users as young as 18 to engage in limitless betting without guardrails is dangerous and contrary to the public interest. Tribal gaming operations are subject

to rigorous regulatory oversight, ensuring consumer protection. If the CFTC permits "gaming" on prediction markets, it undermines the safety of the consumer and the integrity of tribal gaming. Tribal gaming operations importantly serve the public interest by prioritizing public welfare and implementing rigorous safeguards to prevent problem gambling. These measures include strict age-verification protocols, self-exclusion programs, employee training, and funded partnerships for addiction prevention and treatment services. By contrast, gaming-related event contracts on prediction markets expose vulnerable retail participants to significant risks of addiction, financial harm, and exploitation, while enabling underage gambling. The CFTC fundamentally lacks the statutory mandate, specialized experience, and resources to address these gambling-specific risks.

Legal Reasoning & Policy Recommendation: A "house" is not a necessary element of gaming; pari-mutuel wagering is widely recognized as gaming under both state and tribal law. The CFTC must adopt a definition of "gaming" that encompasses sports event contracts and ban them pursuant to its authority under 17 C.F.R. § 40.11(a)(1).

Q20, Q21, & Q22. "CEA section 5c(c)(5)(C)(i)(VI) provides that the Commission may determine that an event contract is contrary to the public interest if it involves another 'similar activity'... Why, or why not, would it be appropriate for the Commission to propose any changes... what considerations of costs and benefits..."

Direct Answer: It is appropriate to propose rule changes clarifying that any activity functioning as a wager on a future contingency without an inherent commercial consequence is a "similar activity" to gaming and thus prohibited.

Tribal Sovereignty Analysis: Protecting the $40+ billion tribal gaming industry is a paramount benefit that far outweighs the private profits of prediction market operators.

Legal Reasoning & Policy Recommendation: Congress "did not want sports betting to be conducted on derivatives markets". The CFTC should issue rules permanently blocking "similar activities" that mimic gambling.

Q23, Q24, & Q25. "What aspects of the prediction market listing process are relevant to deciding at what point in the listing process the public interest determination could occur? ...category of event contracts... what elements are relevant to determining what event contracts 'involve'?"

Direct Answer: The CFTC must proactively make public interest determinations before a contract goes live. Making categorical determinations (e.g., "all sports contracts involve gaming") is essential.

Tribal Sovereignty Analysis: A reactive process forces Tribes into endless, costly litigation to stop unlawful gaming contracts after they are already siphoning revenues.

Legal Reasoning & Policy Recommendation: The CFTC should categorically ban sports-event contracts as involving "gaming." A contract "involves" gaming if its primary utility is speculative wagering.

Q26, Q27, & Q28. "CEA section 5c(c)(5)(C)(iv) provides that the Commission must take final action regarding its public interest determination 'not later than 90 days... Why, or why not, would it be appropriate for the Commission to propose any changes... costs and benefits?"

Direct Answer: The 90-day window emphasizes the need for broad, categorical rules prohibiting gaming contracts, rather than case-by-case "whack-a-mole".

Legal Reasoning & Policy Recommendation: The current self-certification process, combined with a short review window, unconstitutionally allows private entities to self-certify preemption of state and tribal law. This violates the Private Nondelegation Doctrine (*Carter Coal*). The CFTC must amend procedures to suspend self-certification for any contract resembling gaming.

Q29, Q30, Q31, & Q32. Inside Information (Q29: public interest utility of asymmetric info; Q30: single-individual control; Q31: CEA sec 6(c)(1) manipulation; Q32: CEA sec 4c(a)(3) federal employees).

Direct Answer: There is absolutely no public interest utility in allowing insider trading on prediction markets. The risk of manipulation is extraordinarily high.

Tribal Sovereignty Analysis: Tribal gaming commissions work tirelessly to ensure the integrity of gaming events. Unregulated prediction markets, conversely, are breeding grounds for insider trading and match-fixing, as recently evidenced by trading scandals on prediction platforms.

Legal Reasoning & Policy Recommendation: Because the CFTC cannot effectively monitor local sporting events or the internal dynamics of games, these contracts are highly susceptible to manipulation. The CFTC must prohibit them.

Q33, Q34, & Q35. "What aspects of prediction markets are relevant to whether event contracts should, or should not, appropriately be classified as swaps? ...futures contracts? ...excluded commodity?"

Direct Answer: Event contracts on sports and elections are not "swaps" or "futures" because they are not dependent on an occurrence associated with a "potential financial, economic, or commercial consequence".

Tribal Sovereignty Analysis: Classifying a sports bet as a "swap" allows private companies to usurp tribal gaming jurisdiction. This boundless interpretation of "swap" has "no limiting principle" and would legalize all casino gaming on DCMs without tribal oversight.

Legal Reasoning & Policy Recommendation: The outcome of a sporting event does not possess an inherent financial consequence. A sporting event is not a macroeconomic index, a measure of economic risk, or an occurrence associated with a commercial consequence under CEA section 1a(19), definitively removing it from the CFTC's regulatory umbrella. Additionally, the CFTC must formally distinguish between a genuine "commercial consequence" and a synthetic wager. True swap contracts allow commercial entities to hedge against pre-existing, real-world economic risks. Conversely, the "risk" in an event contract based on a sporting event is entirely artificially manufactured by the act of placing the bet. The CFTC must issue guidance concluding that manufactured gambling risks do not satisfy the "financial, economic, or commercial consequence" requirement of CEA section 1a(47)(A)(ii),

Furthermore, this position is supported by explicit legislative history and recent federal case law. During the passage of the Dodd-Frank Act, a colloquy between Senator Lincoln and Senator Feinstein explicitly clarified that the CFTC should prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed "event contracts"' on sporting events such as the Super Bowl and Kentucky Derby. Recently, federal courts in *KalshiEX, LLC v. Schuler* and *KalshiEX, LLC v. Hendrick* affirmed that 17 C.F.R. § 40.11(a) prohibits the listing of contracts involving gaming, noting that sports-event contracts are, "but at bottom, they are sports wagers," and "everyone who sees them knows it." See *KalshiEX, LLC v. Hendrick*, No. 2:25-cv-00575-APG-BNW, 2025 WL 3286282, at *8 (D. Nev. Nov. 24, 2025); *KalshiEX, LLC v. Schuler*, No. 2:25-cv-01165, 2026 WL 657004 (S.D. Ohio Mar. 9, 2026).

Q36 & Q37. "Are there any agreements, contracts or transactions that are significantly similar to event contracts, but are not listed on a DCM or SEF? Are any event contracts similar to, or different from, the types of agreements, contracts and transactions that are excluded from the swap definition under this interpretation?"

Direct Answer: Yes. Functionally, these event contracts are wagers on the outcome of sporting events—an activity that falls squarely within the definition of "gaming" and is already comprehensively regulated by tribal governments under the statutory framework of IGRA. They are not financial derivatives, and allowing them to trade on DCMs or SEFs creates a shadow gaming market.

Tribal Sovereignty Analysis & Legal Reasoning: By the CFTC's own admission, it was not established to oversee gambling. Event contracts on sports are functionally indistinguishable from wagers placed at a tribal casino. They must be excluded from the swap definition to prevent an implied repeal of IGRA.

Q38, Q39, & Q40. "How are these five considerations [CEA section 15(a)] relevant... consideration of the public interest to be protected by the antitrust laws... What projected cost increases would there be for any small entities impacted by a potential rule change?"

Direct Answer: The primary public interest is maintaining the comprehensive federal-state-tribal regulatory framework governing gaming.

Tribal Sovereignty Analysis: If the CFTC usurps jurisdiction over sports betting, it grants a monopolistic, antitrust-violating advantage to a handful of private DCMs at the expense of hundreds of sovereign tribal governments and small tribal enterprises.

Legal Reasoning & Policy Recommendation: Under the Major Questions Doctrine, if Congress intended to radically alter the regulation of sports betting and preempt state and tribal law, it would have said so clearly. The CFTC must adopt the "least anticompetitive means" (Q39) by leaving gaming regulation to the jurisdictions authorized by IGRA.

CFTC CONSULTATION OBLIGATIONS

Executive Order 13175, signed on November 6, 2000, mandates that federal agencies engage in regular, meaningful consultation and collaboration with tribal officials when developing policies with "tribal implications." The federal trust responsibility also mandates that federal agencies engage in regular, meaningful, and robust government-to-government consultation with Indian Tribes in the development of regulatory policies that have tribal implications. The CFTC's potential assumption of jurisdiction over sports betting via prediction markets directly threatens the $40+ billion tribal gaming industry – the primary source of revenue for many tribal governments. Before any further action is taken or any rule is finalized that could define event contracts in a manner overlapping with gaming, the CFTC must initiate formal consultations with tribal leaders to understand and mitigate the devastating impacts on tribal self-determination and economic development.

Because the ANPRM fundamentally concerns the boundary between financial derivatives and gaming, this proceeding has immediate, direct implications for tribes. Executive Order 13175 and the federal trust responsibility require consultation early in the policy formulation process. The CFTC cannot wait until a Notice of Proposed Rulemaking (NPRM) is issued; government-to-government consultation must begin immediately to inform the agency's threshold jurisdictional analysis under IGRA.

POLICY RECOMMENDATIONS

The NTGCR respectfully recommends that the CFTC adopt the following approaches:

- Jurisdictional Clarification: Issue interpretive guidance declaring that event contracts based on sporting events, games of chance, or any activity traditionally regulated as gambling do not meet the statutory definition of a "swap" under the CEA.

- Tribal Regulatory Accommodations & Safe Harbors: Explicitly state that nothing in the CFTC's regulations shall be construed to preempt, impliedly repeal, or supersede the Indian Gaming Regulatory Act (IGRA) or the regulatory authority of Indian Tribes over gaming on Indian lands.

- Enforcement of Existing Prohibitions: Reaffirm existing rules and drastically enhance enforcement actions to ensure strict compliance with 17 C.F.R. § 40.11(a)(1). The Commission must explicitly declare that event contracts involving gaming are already categorically prohibited as contrary to the public interest under this existing regulation.

- Consultation Triggers: Implement an automatic pause and mandatory tribal consultation trigger whenever a DCM submits an event contract for self-certification that resembles or overlaps with Class II or Class III gaming activities.

CONCLUSION

For the foregoing reasons, the NTGCR respectfully requests that the CFTC recognize and protect tribal sovereignty, fulfill its consultation obligations with tribal governments, and adopt regulations that unequivocally prohibit the listing of sports betting and gaming contracts on prediction markets. Congress did not implicitly repeal IGRA through amendments to the CEA, nor did it manifest any intent to make the CFTC the nation's sole gaming regulator. The CFTC must reject any expansive definition of "swap" that permits private entities to siphon revenues from tribal communities and instead uphold policies that support tribal economic development and self-sufficiency.

Sincerely,



Jamie Hummingbird, Chairman
National Tribal Gaming Commissioners & Regulators

Enclosure

APPENDIX A: ECONOMIC DATA & STUDIES SUPPORTING CEA SECTION 15(a) COST-BENEFIT ANALYSIS

Pursuant to the Commission's statutory obligations under the CEA at section 15(a) to evaluate the costs and benefits of any proposed regulatory action, the following economic studies and reports are hereby formally submitted and incorporated by reference into the administrative record.

As the Commission weighs considerations of the protection of the public and other public interest factors, it must account for the devastating economic costs that would be borne by tribal Nations, small tribal enterprises, and local communities if the Commission permits the proliferation of unregulated event contracts functioning as sports betting or games of chance. For tribal governments, gaming is not merely a commercial endeavor—it is an existential one that funds critical government services.

To fulfill its cost-benefit analysis obligations regarding the potential cannibalization of the $40+ billion tribal gaming industry, the Commission is directed to review the following studies:

- 2026 Indian Gaming Association – Annual Report 2026
  - https://online.flippingbook.com/view/144318282
- 2025 Oneida Nation Economic Impact Study
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