Navajo Nation Comments in Response to Advance Notice of Proposed Rulemaking published on March 26, 2026, in the Federal Register, Vol. 91, No. 50 p.12516 regarding Prediction Markets, RIN 3038–AF65

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I. The Navajo Nation Opposes Any Changes to the Regulations that would allow Gaming on Prediction Markets

The Navajo Nation submits these comments in response to the Commodity Futures Trading Commission's ("CFTC") Advance Notice of Proposed Rulemaking ("ANPRM") published on March 26, 2026, in the Federal Register, Vol. 91, No. 50 p.12516. The Navajo Nation strongly opposes any revision of the CFTC's regulations that authorize the use of designated contract markets ("DCMs") to facilitate gaming in any capacity, including through wagering on the outcome of sporting events, under the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 1 *et seq*. Further, the Navajo Nation urges the Commission to enforce a prohibition of event contracts on sporting events from being the listed, traded, or cleared on prediction markets.

II. All Event Contracts on Sporting Events Are Gaming, Which the CFTC Prohibited as an Area of Public Interest.

The ANPRM asks what factors the Commission should consider in determining the scope and public interest implications of "gaming" under CEA section 5c(c)(5)(C)(i)(V). The Navajo Nation's answer is straightforward: Event contracts on sporting events are gaming and gaming is already prohibited.

a. Event Contracts on Sporting Events Are Gaming

The CFTC must consider the lack of difference between hedging on an event contract and wagering when considering the elements in either. Hedging against the outcome of a sporting event on a DCM is no different from betting on the outcome of a sporting event: both are gaming. An event contract whose value depends on the outcome of a sporting event, under any ordinary understanding of the term, is a wager. It is "staking or risking . . . something of value upon the outcome of . . . a sporting event . . . upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome."[1] Calling such a thing an "event contract" or a "derivative" does not change its fundamental character or turn it into a financial investment.

Further, any argument that sporting events are "associated with financial, commercial, or economic consequences," and, therefore, governed by the CEA fails to recognize the true, and broad, nature of gaming. Gaming is no longer just the traditional idea of standing at a table in a formal casino wagering on the fall of the roulette ball. The category of sports betting, especially those bets performed digitally, has made it clear that such an antiquated idea can no longer contain the entirety of what is gaming. Sporting events, while "games" in the dictionary definition of the word, are now clearly understood to include gaming—i.e., the act of placing wagers or bets on the

[1] 31 U.S.C. § 5362(1)(A) (definition of "bet or wager" under the Unlawful Internet Gambling Enforcement Act).

outcomes of such games. The rise of sports books and event wagering regulated by states and tribes has made this clear. What the CFTC cannot do is use the manner of placing a wager as the determinative factor for whether it falls under the CEA. The mere fact that an event contract for a sporting event occurs on a DCM cannot transform what is otherwise gaming into a regulated financial instrument.

b. Gambling is contrary to the public interest.

When Congress enacted the Dodd-Frank Act of 2010, it empowered the CFTC to use public interest standards to evaluate event contracts—by implementing a special rule granting the CFTC discretionary power to review and prohibit contracts related to " . . . gaming, or other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest." The CFTC exercised this authority by codifying 17 CFR § 40.11, which places a blanket prohibition on registered entities from listing or accepting for clearing a contract or swap "that involves, relates to, or references . . . gaming, or an activity that is unlawful under any State or Federal law." Therefore, if an event contract "involves . . . gaming," it is categorically prohibited and no further public interest determination is necessary. Adopting this regulation was a correct Final Determination that such event contracts are contrary to the public interest under 7 U.S.C. § 7a-2(c)(5)(C)(i). Nothing in the law has changed since the CFTC made that determination. The only difference is that commercial interests have found a way to dress up sports wagering as "event contracts" and list them on designated DCMs. Any revision to the CFTC's regulations that would permit such gambling through event contracts, even with limited exception to form or format, would run afoul of the plain text of the statute. It is black letter law that the rulemaking process cannot be used to amend federal statutory law.[2]

Gaming is an area of public interest—not only because the CEA clearly designates it as such, but also because it is historically and currently associated with vulnerabilities, such as potential social harms, and is susceptible to abusive and wrongful practices at the same time as being a form of entertainment enjoyed by many Americans. Where properly regulated, gaming generates revenues that support vital public services. Congress recognized the need to balance these competing considerations and deliberately left the decision of whether and how to authorize gaming to state and tribal governments—the governments closest to the communities affected. Those governments weigh the costs and benefits of gaming, define the scope of permissible activities, and establish the rules and regulatory structures necessary to protect the public interest. The CFTC's attempt to insert itself into this space through the reclassification of sports wagers as financial instruments upends that carefully calibrated balance. It should not use this ANPRM to weaken the already existing CEA requirements and established regulations that prohibit registered entities from listing swaps that are "contrary to the public interest."[3]

III. Event Contracts on Gaming Events Violate Federal Law and Intrude on Tribal and State Sovereignty

The ANPRM asks what types of CEA section 5c(c)(5)(C) activities are unlawful under any Federal or State law. The answer is simple: event contracts on gaming events are affirmatively unlawful under multiple federal and state statutes.

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[2] *See West Virginia v. EPA*, 597 U.S. 697 (2022); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000).
[3] 7 U.S.C. §§ 7a-2(c)(5)(C)(i).

a. Indian Gaming Regulatory Act

Event contracts on sporting events offend the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701 *et seq.*, by facilitating wagering on the outcome of sports events — a Class III gaming activity — outside the framework Congress expressly established. Class III gaming encompasses a broad array of gaming activities from slot machines to card and table games to wagering on racing and sports events. Class III gaming on tribal lands is lawful only where: (1) authorized by a tribal ordinance or resolution; (2) located in a state that permits such gaming; ***and*** (3) conducted pursuant to a Tribal-State Gaming Compact.[4] Event contracts traded on prediction markets satisfy none of these requirements. As required under IGRA many tribal governments, including the Navajo Nation, have adopted laws authorizing gaming activities within tribal jurisdictions and entered gaming compacts with state governments allowing for Class III gaming activities on tribal lands. By negotiating these gaming compacts, tribal and state governments set not only the scope of gaming permitted, but the regulatory structure and standards that apply to such gaming activities.

Tribal-State Gaming Compacts and tribal regulatory frameworks do not come without sincere negotiation and consideration on the part of states and tribes. Tribes have built significant statutory and regulatory systems to monitor, audit, and enforce compliance with state and tribal laws, regulations, and internal control systems as a means not only of safeguarding gaming revenues, but also to prevent practices harmful to the public interest and to protect consumers. The Navajo Nation is no exception. The Navajo Nation Gaming Ordinance ("Gaming Ordinance"), 5 N.N.C §§ 2001 et seq., authorizes gaming as a means of vital economic growth that is "dependent upon public confidence and trust that such activities are conducted honestly and . . . free from criminal and corrupt elements" in facilities "designed and maintained to assure the safety and comfort of patrons."[5] The Gaming Ordinance authorizes the creation of regulations by the Navajo Nation Gaming Regulatory Office ("NNGRO") to oversee all gaming activities within the Navajo Nation, including specifying the licensing and background requirements for gaming employees; addressing operational procedures for gaming facilities and operators, problem gambling, the adjudication of patron complaints; and specifying the types of accounting, security, and record keeping required. Use of such robust rules, regulations, processes, and procedures account for the vulnerabilities and potential social harms of gaming at the same time as being designed to facilitate integrity in the conduct of gaming, mitigate potential threats, and protect the public interest. Pertinent to this ANPRM, so-called event contracts offend IGRA by facilitating wagering on the outcome of sports events—a Class III gaming activity—outside the lawful and carefully considered framework Congress established.

b. Tribal and State Sovereignty.

The ANPRM asks what factors the Commission should consider in making a public interest determination. Determining whether to authorize gaming is a question of public policy that is reserved for state and tribal governments. The Navajo Nation — like every other tribal government that has chosen to authorize gaming — has carefully weighed the costs and benefits of gaming and made a sovereign determination about what activities to permit, under what conditions, and subject to what regulatory safeguards. Any CFTC action authorizing event contracts on sporting events

[4] 25 U.S.C. § 2710(d)(1) (emphasis added).
[5] 5 N.N.C. § 2001(B)

overrides these sovereign determinations, effectively permitting unregulated sports wagering across the reservation and across every other tribal and state jurisdiction without their consent. This would constitute an extraordinary and unprecedented intrusion upon the sovereignty of both tribal and state governments, inconsistent with principles of American federalism and contrary to settled federal Indian law and policy.

IV. Prediction Markets Lack the Regulatory Safeguards that Protect the Public Interest in Gaming

The ANPRM asks what aspects of responsible gaming standards the Commission should consider in its public interest determination. The Navajo Nation submits that this question answers itself: prediction markets lack virtually every safeguard that tribal and state gaming regulators require as a condition of authorizing gaming.

The Navajo Nation, through the NNGRO, requires comprehensive background investigations for all gaming employees, conducts regular audits and on-site inspections, enforces detailed internal control standards for accounting, security, and record-keeping, operates programs to address problem gambling, adjudicates patron complaints, and actively prevents criminal infiltration and money laundering. These are not voluntary best practices; they are binding regulatory requirements enforced by a dedicated government agency with full-time compliance staff. Similar frameworks exist across tribal and state jurisdictions nationwide.

Prediction market platforms offering event contracts on sporting events operate under none of these safeguards. They rely on self-certification to list contracts; they allow unidentified trading; and they lack gaming-specific regulatory oversight. The anonymity inherent in prediction market trading makes these platforms vulnerable to money laundering, market manipulation, and fraud. There have already been numerous scandals revealing these vulnerabilities. The CFTC's own regulatory framework for DCMs—designed for commodity derivatives and financial instruments—was never designed to regulate gambling and does not include the consumer protections, integrity safeguards, or responsible gaming standards that tribal and state gaming frameworks require.

The ANPRM also asks how the CFTC should factor into its public interest determination the characteristics of market participants who trade event contracts involving gaming, noting that these participants may tend to be younger. The Navajo Nation shares this concern. Problem gambling disproportionately affects younger populations, and the digital, app-based format of prediction markets makes them particularly accessible to young people—including young Navajo citizens—without the responsible gaming protections that tribal and state regulators require. Permitting event contracts on sporting events without these safeguards would expose vulnerable populations to unregulated gambling.

V. The CFTC Must Engage with Tribal Governments

Finally, the Navajo Nation is compelled to address the CFTC's failure to engage in direct, government-to-government consultation with tribal nations before issuing this ANPRM. Federal policy, including Executive Order 13175 and its progeny, requires federal agencies to engage in meaningful consultation with tribal governments before undertaking regulatory actions that have

substantial direct effects on Indian tribes. The proliferation of event contracts on sporting events on prediction markets has enormous implications for tribal sovereignty, tribal gaming revenues, and the regulatory frameworks that tribes have built over decades under IGRA.

Despite these far-reaching impacts, the CFTC has relegated tribal nations to the same public comment process available to any member of the general public—a process inadequate for the magnitude of the interests at stake and inconsistent with the federal government's trust responsibility to tribes. Tribal nations are not mere stakeholders. They are sovereign governments to which the United States owes protection and support for tribal self-governance and sovereignty. Tribes have a direct and legally protected interest in the regulation of gaming within their jurisdictions. The Navajo Nation calls upon the CFTC to initiate formal, government-to-government tribal consultation before proceeding with any rulemaking arising from this ANPRM.

VI. Conclusion

The CFTC's failure to prohibit the misuse of the CEA has allowed the unchecked growth of prediction market platforms offering event contracts on sporting events. These platforms offer event contracts on sporting events across state lines, outside of the appropriate and lawful state and tribal regulatory framework; but they are not financial instruments, they are interstate wagers and as such are unlawful under the CEA and its implementing regulations.

Allowing event contracts on sporting events to be listed and traded interferes with the sovereign right of tribal and state governments to exercise their police power to regulate gaming within their respective jurisdictions. To adopt a regulation that classifies sports betting as a derivative, event contract, swap, or other financial instrument would stretch the reach of the CFTC far beyond what Congress intended in the CEA, undermine federal Indian law and policy, encroach upon the legally protected rights and interests of tribal governments, and intrude upon the inherent sovereignty of both tribal and state governments.

This ANPRM should not be a vehicle for weakening the CFTC's existing prohibition on gaming-related event contracts, and the Navajo Nation urges the Commission to affirm and enforce that prohibition. The Navajo Nation urges the CFTC to affirm its current interpretation of the CEA and clarify that gaming in any capacity, including wagering on sporting events, is prohibited from being listed or made available for clearing or trading; it is gambling, it violates state, tribal, and federal law and is contrary to public policy.

On behalf of the Navajo Nation,

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