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April 30, 2026

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Submitted via CFTC Comments Portal

Re: "Prediction Markets," RIN 3038-AF65; Cherokee Nation's Response to Advanced Notice of Proposed Rulemaking

Mr. Kirkpatrick:

In response to the Commodity Futures Trading Commission's ("Commission") March 16, 2026 advanced notice of proposed rulemaking,[1] I submit these comments on behalf of Cherokee Nation. Cherokee Nation is a federally-recognized Indian tribe that resides on and governs the Cherokee Nation Reservation in what is now northeast Oklahoma. I submit these comments in light of the Nation's long experience in the regulation of gaming, which is a topic on which you have requested comment.[2]

From the outset, I emphasize that Indian tribes are sovereign nations, to which the federal government, including the Commission, owes trust responsibilities. In light of the government-to-government relationships between Indian tribes and the United States, and the importance of gaming to tribal self-determination and self-government, the Commission should engage in government-to-government consultation with Indian tribes before it promulgates new rules that concern the scope of Commission jurisdiction or purport to determine what activity constitutes

[1] Prediction Markets, 91 Fed. Reg. 12516 (Mar. 16, 2026).

[2] Question 19 (91 Fed. Reg. at 12521).

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gaming."[3] In anticipation of such consultation, the Nation submits these comments, on which we will expand during consultation.

As described below, federal case law and statute recognize that the regulation and conduct of gaming by Indian tribes is a critical part of tribal self-government, self-determination, and economic development. By regulating and operating gaming on their Indian lands, Indian tribes have made remarkable strides over the past forty years, improving economic opportunities in Indian country and providing tangible benefits to their members' quality of life. This proven track record, both as a regulator and beneficiary of gaming, has informed the Nation's views on the meaning of gaming. Below, we provide recommendations to the Commission on how to define "gaming" in its regulations. This definition will ensure that, consistent with the express prohibition of gaming in the Commodity Exchange Act's ("CEA") special rule for review and approval of event contracts and swaps contracts ("special rule"),[4] and Congress's intent in passing the Dodd-Frank Wall Street Reform and Consumer Protection Act,[5] registered entities are not used as a platform for gaming. Additionally, we recommend that the Commission adopt new regulations that would control the process by which registered entities self-certify rules, rule amendments, and contracts or instruments, to ensure that registered entities like designated contract markets ("DCMs") do not abuse the self-certification process to engage in gaming.

I. Tribes Offer Gaming on Their Lands Pursuant to Federal Law.

In the 1970s and 80s, tribes began offering gaming on their reservations and other tribal lands, to address the lack of economic development on many such lands that was preventing tribes from raising governmental revenue and stifling opportunities for tribal members. In *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the Supreme Court concluded that such tribally-operated gaming on a reservation supports "traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development,"[6] and that the state or local regulation of

[3] *See* Exec. Order No. 13175, §§ 2, 5(b)(2)(A), 8, 65 Fed. Reg. 67249, 67249-51 (Nov. 9, 2000).

[4] 7 U.S.C. § 7a-2(c)(5)(C).

[5] Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[6] 480 U.S. at 216 (quoting and citing *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334-35 (1983)).

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tribally-operated gaming on a reservation "would impermissibly infringe on tribal government."[7] Congress responded to *Cabazon* by passing the Indian Gaming Regulatory Act ("IGRA").[8]

One of IGRA's fundamental premises is that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity."[9] Based on that premise, IGRA defines three types of gaming and describes a regulatory framework for each, managed by tribes, states, and the National Indian Gaming Commission ("NIGC"), an agency established by IGRA.[10] IGRA describes how these games are regulated and conducted within "Indian lands," which includes "all lands within the limits of any Indian reservation" and "any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power."[11]

Class I gaming is "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebration."[12] Class II gaming is composed of bingo, similar games, and certain card games conducted pursuant to state law limitations.[13] Class III gaming is all other gaming,[14] including wagering on competitive events like horse races or sporting events.[15]

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[7] *Id.* at 222.

[8] Pub. L. No. 100-497, 102 Stat. 2467 (1988), *codified at* 25 U.S.C. §§ 2701-2721; 18 U.S.C. §§ 1166-1168.

[9] 25 U.S.C. § 2701(5).

[10] *Id.* §§ 2703(6)-(8), 2704; *see id.* §§ 2705-2708.

[11] *Id.* § 2703(4).

[12] *Id.* § 2703(6).

[13] *Id.* § 2703(7).

[14] *Id.* § 2703(8).

[15] *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 785 (2014) (IGRA gaming "includes . . . horse racing"); *W. Flagler Assocs. v. Haaland*, 71 F.4th 1059, 1066 (D.C. Cir. 2023) (provisions concerning the operation of sports betting on Indian lands are "uncontroversial and plainly consistent with IGRA"), *cert. denied* 144 S. Ct. 2671 (2024); *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1032 (9th Cir. 2022) ("Examples of Class III gaming include . . . parimutuel horse-wagering." (quoting *Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 712, 715 (9th Cir. 2003))); S. Rep. No. 100-446, at 3, 13 (1988) (referring to "class III casino, parimutuel and slot machine gaming" and stating IGRA concerns, *inter alia*, "the

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Class I gaming is within the exclusive jurisdiction of Indian tribes.[16] Class II and III gaming must be undertaken pursuant to tribal law ordinances, approved by the tribe and the Chairman of the NIGC.[17] Class III gaming can only be undertaken pursuant to a compact, which must be negotiated and entered into by the tribe that proposes to engage in or authorize gaming, and the state where the gaming will take place.[18] As a matter of federal and tribal law, tribes must hold the sole proprietary interest in and responsibility for IGRA gaming operations.[19] Net revenues from tribal gaming must be used to "fund tribal government operations or programs," "provide for the general welfare of the Indian tribe and its members," "promote tribal economic development," "donate to charitable organizations," or "help fund operations of local government agencies."[20]

Cherokee Nation has entered into compacts with the State of Oklahoma, under which the Nation conducts and regulates gaming.[21] The Nation has adopted laws that govern the conduct of gaming within the Cherokee Nation Reservation. The Cherokee Nation Tribal Gaming Act establishes a regulatory framework for gaming *only* on land over which the Cherokee Nation exercises governmental power and which is held in trust or restricted fee status by the Nation or a citizen of the Nation.[22] The Cherokee Nation Gaming Commission has the sole authority to issue class II and III gaming licenses for gaming facilities on Indian lands and to promulgate regulations

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regulation of complex gaming enterprises such as pari-mutuel horse and dog racing, casino gaming, jai alai and so forth").

[16] 25 U.S.C. § 2710(a)(1).

[17] *Id.* § 2710(a)(2), (b)(1)(B), (d)(1)(A).

[18] *Id.* § 2710(d)(1)(C), (d)(3). In cases where tribes and states cannot negotiate to resolution, the Secretary of the Interior may issue procedures for tribal gaming after the tribe exhausts dispute resolution and litigation remedies. *Id.* § 2710(b)(vii).

[19] *Id.* § 2710(b)(2)(A), (d)(1)(A)(ii).

[20] *Id.* § 2710(b)(2)(B), (d)(1)(A)(ii).

[21] *See* Tribal Gaming Compact between Cherokee Nation & Okla. (2004), https://www.bia.gov/sites/default/files/dup/assets/as-ia/oig/pdf/508%20Compliant%202005.01.27%20Cherokee%20Nation%20Tribal%20State%20Gaming%20Compact.pdf; Okla. Cherokee Nation Off-Track Wagering Compact (2010), https://www.bia.gov/sites/default/files/dup/assets/as-ia/oig/pdf/508_compliant_2010.10.05_cherokee_nation_tribal_state_gaming_compact.pdf; Tribal Gaming Compact Supplement Between Cherokee Nation & Okla. (2018), https://www.bia.gov/sites/default/files/dup/assets/as-ia/oig/pdf/508%20Compliant%202018.08.17%20Cherokee%20%20compact%20amendment.pdf.

[22] 4 Cherokee Nation Code Annotated § 4(16) (defining "Indian lands" as used in the Cherokee Nation Tribal Gaming Act). The Cherokee Nation Code Annotated ("CNCA")—except for the most recent amendments to the Criminal Code, *see infra* footnote 26, is available at https://attorneygeneral.cherokee.org/media/5upcrg3j/word-searchable-full-code.pdf.

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for rules concerning authorized games and the equipment used in such games.[23] "Only a tribal enterprise wholly-owned by Cherokee Nation or its designated and approved agent or employee may apply for and receive" a class II or III gaming license, and gaming operations under such a license "must be conducted in facilities of Cherokee Nation."[24] Violations of Gaming Commission rules, Cherokee Nation or federal gaming laws, patron disputes, and terminations of licenses are heard by the Cherokee Nation Gaming Commission through a prescribed hearing process, and the Commission's decision can be appealed to Cherokee Nation District Court.[25] The Nation has otherwise criminally prohibited commercial gambling that is not "regulated or operated by Cherokee Nation [as] provided by law."[26]

II. For Tribes that Engage in Gaming, it is Fundamental to Tribal Self-Determination and Economic Development.

Tribally-owned gaming enterprises are critical components of tribal revenue generation. For many tribes, gaming plays a unique and indispensable role in providing revenues that they cannot obtain through the typical revenue-generating means used by other governments, like taxation.

Although the Supreme Court has recognized that "[t]he power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management,"[27] legal precedents have also sharply limited the circumstances under which tribes can tax the activities or real property of non-members, even on tribal reservations.[28] That has made

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[23] *See* 4 CNCA §§ 20, 22(A), 27(B), 30(B). The Cherokee Nation Tribal Gaming Act defines "gaming equipment" as "all electronic, electro-mechanical, mechanical, or other physical components utilized in the play of Class II and Class III games," *id.* § 4(9), and defines "gaming facility" as "any premises, buildings, facilities, improvements, and/or equipment used or maintained in connection with the conduct of gaming," *id.* § 4(10).

[24] *Id.* §§ 34-35.

[25] *Id.* ch. 6.

[26] Criminal Code, 21 CNCA §§ 981(1)(d), 982-983, 985, 987-988 (defining elements of criminal offenses of gambling); *id.* § 996 (defining the operation of gambling establishments, including places "where persons engage in such activity or congregate to play at any such game," as a nuisance punishable by law). The Cherokee Nation Criminal Code is available at https://attorneygeneral.cherokee.org/media/q5wjvyoa/title-21-amendments-updated-2021-04-06.pdf.

[27] *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982).

[28] *See Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 654-59 (2001) (finding tribe could only tax activities of non-Indians on the reservation when they involved consensual relationships with the tribe or its members or where "necessary to protect tribal self-government or control internal relations" (quoting *Strate v. A-1 Contractors*, 520 U.S. 438, 459 (1997))); *see also Plains Com.*

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tribally-owned businesses and tribal enterprises a critical component of funding tribal self-government. Whereas state governments in 2022 derived approximately 53% of their budgets from state-levied taxes and 3% from state-owned businesses, in the same year, a study of twenty-three tribes in Washington State determined that tribes funded approximately 51% of their budgets from tribally-owned enterprises and only 29% from taxes, leases, or other tribally-owned or controlled sources.[29] "Tribal gaming has helped overcome these impediments to raising general tax revenue and fostering economic development, both across Tribes and regions."[30]

Gaming, and the investments it enables that are described above, have made significant improvements in the day-to-day lives of Indian communities throughout the country. Since the Indian Regulatory Gaming Act was passed in 1988,

> the real income of Native people living on a reservation has grown by 63%, and the poverty rate for reservation families with children was down to 27% by 2018, compared to more than 47% in 1989. As incomes increase and employment stabilizes, reservation communities have seen other positive benefits: high school graduation rates have increased, the chances of committing a minor crime have been reduced, and the likelihood of voting in adulthood demonstrably increased—all alongside overall improved health, well-being, and economic outcomes.[[31]]

Bank v. Long Family Land & Cattle Co., 554 U.S. 316, 340 (2008) (finding Indian tribes have jurisdiction over conduct on non-Indian land, but not land itself); *see generally* Andrew Huff, Ctr. for Indian Country Dev., Fed. Rsrv. Bank of Minneapolis, *Taxation in Indian Country: An Overview of the Causes of Tax Inequity in Indian Country and Modern Reform Efforts* (2023), https://www.minneapolisfed.org/-/media/assets/papers/cicd-policy-discussion-papers/2023/taxation-in-indian-country-an-overview-of-the-causes-of-tax-inequity-in-indian-country-and-modern-reform-efforts.pdf.

[29] Joseph P. Kalt, Project on Indigenous Governance & Dev., Harvard Kennedy Sch. of Gov't, *Self-Government, Taxation, and Tribal Development: The Critical Role of American Indian Nation Business Enterprises* 6-7 (2024) ("Kalt"), https://ash.harvard.edu/wp-content/uploads/2024/10/Policy-Brief-8-Taxation-Enterprises-10-07-24-vFIN-for-DIST.pdf.

[30] Patrice H. Kunesh, *The Prediction Market Boom is Posing an Existential Threat to American Indian Gaming*, Brookings Inst. (Jan. 20, 2026) ("Kunesh 2026"), https://www.brookings.edu/articles/the-prediction-market-boom-is-posing-an-existential-threat-to-american-indian-gaming/.

[31] Kunesh 2026 (footnotes omitted) (citing Kalt; Patrice H. Kunesh, *The Power of Self-Determination in Building Sustainable Economics in Indian Country*, Econ. Pol'y Inst. (2022), https://www.epi.org/publication/the-power-of-self-determination-in-building-sustainable-

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Indian tribes in Oklahoma make a significant, and growing, contributions to the State's economy, both on- and off-reservation. In fiscal year 2023, tribal gaming in Oklahoma generated revenues of over $7.4 billion, representing close to 1/5 of tribal gaming revenues nationwide.[32] Tribal gaming in Oklahoma directly support 24,900 jobs that paid $1.2 billion in wages and benefits to employees in Oklahoma.[33] These employees are tribal and non-tribal: 36% of employees were members of a tribe, and 64% were not members of any tribe.[34] Consistent with IGRA, tribes use these revenues for a wide range of governmental purposes that benefit all Oklahomans. In 2023, for instance, tribes spent $2.4 billion in gaming revenues to fund tribal government programs, services, and operations, including $946 million in payroll.[35] Tribal governmental program payrolls include tribal members and non-members alike. Oklahoma gaming tribes spent $1.3 billion to provide health care services to tribal members and others in Oklahoma, and at least $147 million in payments to other governments and philanthropies.[36] And the payments that tribes make to states under IGRA gaming compacts also provide significant benefits to states. That is certainly true in Oklahoma: In fiscal year 2025 alone, tribes contributed over $221 million to the State's revenues under their tribal-state compacts.[37] The vast majority of these funds are used to fund public education in Oklahoma.[38]

Cherokee Nation is a major component of this economic engine in Oklahoma. Acting through tribal enterprises, Cherokee Nation has operated gaming in Oklahoma for over thirty-five years.[39] Under its compacts and tribal and federal law, the Nation currently operates ten IGRA

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economies-in-indian-country/; Randall Akee et al., *Place Based Economic Development and Tribal Casinos*, Nat'l Bureau of Econ. Rsch. (May 2025), https://www.nber.org/papers/w33744).

[32] *See* Kyle D. Dean, *The Economic Impact of Tirbal Nations in Oklahoma: Fiscal Year 2023*, at 18, 20 n.17 (2025), https://www.unitedforoklahoma.com/wp-content/uploads/2025/06/fiscal-year-2023-tribal-nations-economic-impact.pdf.

[33] *Id.* at 18.

[34] *Id.*

[35] *Id.* at 20 & n.18.

[36] *Id.* at 20-21.

[37] Okla. Off. of Mgmt. & Enter. Servs., *Oklahoma Gaming Compliance Unit Annual Report Fiscal Year 2025*, at 5 (2025), https://oklahoma.gov/content/dam/ok/en/omes/documents/gaming-compliance-report-2025-UA.pdf.

[38] Okla. Stat. tit. 3A, § 280(2).

[39] Chuck Hoskin Jr., Principal Chief, Cherokee Nation, *Celebrating 35 Years of Gaming Success*, Indianz.com (Dec. 15, 2025) ("*35 Years of Success*"),

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gaming facilities across northeast Oklahoma that offer class II and III games to patrons. Its enterprises currently generate more than $1 billion in revenue annually and employ over 4,000 people.[40] And the Nation makes annual revenue sharing payments to the State of Oklahoma under its compacts, which provide money that the State can use for any purposes.[41]

This success has been remarkable. But, as Principal Chief Chuck Hoskin, Jr. has explained:

> [T]he true measure of success lies not strictly in revenue or square footage—it lies in what this growth has meant for Cherokees. For thousands of citizens, gaming and hospitality have offered stable and meaningful employment. These are jobs that pay bills, allow parents to support their children and send grandchildren to college. They provide opportunities and enable bright futures.
>
> For communities, the benefits have rippled positively, as investments in roads and bridges, clean-water systems, health centers, and community infrastructure have lifted the quality of life for all. Through gaming success, we have helped to revitalize rural towns and created shared prosperity. It's an inherited value among our people to help our neighbors, and we are proud to be a steadfast community partner.[[42]]

This revenue has also enabled the Nation's investment in a diversified economic base, providing the seed money for numerous non-gaming businesses that provide a stable revenue stream that supports the economy on the Reservation.

In part as a result of its gaming enterprises, as well as its investments in capital, personnel, and community development enabled by gaming revenue, today, Cherokee Nation is "one of the largest producers, employers, providers of income, and purchasers of regional production in northeast Oklahoma."[43] In fiscal year 2023, the Nation provided employment to 14,567 people in the fourteen counties in which the Cherokee Nation Reservation is located, representing more than

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https://indianz.com/News/2025/12/15/chuck-hoskin-cherokee-nation-celebrates-milestone-in-tribal-gaming/.

[40] *Id.*

[41] *See* Tribal Gaming Compact between Cherokee Nation & Okla. Part 11.A (2004), https://www.bia.gov/sites/default/files/dup/assets/as-ia/oig/pdf/508%20Compliant%20 2005.01.27%20Cherokee%20Nation%20Tribal%20State%20Gaming%20Compact.pdf.

[42] *35 Years of Success*.

[43] Russell Evans, Econ. Impact Grp., *The Economic Impact of the Cherokee Nation: Fiscal Year 2023*, at 2 (2025).

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$785 million in labor compensation.[44] Those direct expenditures are multiplied through downstream impacts: "In total, the economic impact of the Cherokee Nation reaches almost $2.4 billion in output, providing employment opportunities to 14,567 workers and generating more than $785 million in labor income."[45]

The investment of money in the Nation and community is guided by fundamental principles of good governance and commitment to the welfare of the Cherokee Nation Reservation:

> "Cherokee Nation's economic impact is about more than dollars and data," Principal Chief Chuck Hoskin Jr. said. "It's a reflection of our deep commitment to the prosperity of the Cherokee people and the communities we call home. In addition to illustrating where our dollars go across the reservation and how those investments ripple through our communities, this report reminds us just how far each dollar reaches; creating opportunities, strengthening communities and building a better future for all."[46]

III. Recommendations.

We are aware that there are significant questions about the scope of the Commission's jurisdiction over event contracts, especially sports-related event contracts, that are the subject of ongoing litigation. In these comments, we focus on issues that do not require resolving these jurisdictional questions. In particular, we discuss which "agreements, contracts, or transactions" are contrary to the public interest because they constitute gaming, and therefore cannot be listed or made available for clearing or trading on or through a registered entity under the special rule in the Commodities Exchange Act.[47] We also give recommendations on how the Commission should ensure that products listed by registered entities are not gaming.

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[44] *Id.*

[45] *Id.* at 3.

[46] D. Sean Rowley, *Cherokee Nation $3.1 Billion Economic Impact Fuels Jobs, Growth, and Community Investments*, Cherokee Phoenix (Apr. 8, 2025), https://www.cherokeephoenix.org/money/business/cherokee-nation-3-1-billion-economic-impact-fuels-jobs-growth-and-community-investments/article_8348358a-6194-4789-9bb9-371ed311761c.html.

[47] 7 U.S.C. § 7a-2(c)(5)(C)(i)-(ii).

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The Commission Should Define "Gaming" In Line with Industry Practice and its Commonsense Meaning.

"Gaming" is not defined in the special rule,[48] or elsewhere in the CEA or the Commission's regulations. The Nation recommends that the CFTC adopt a definition of gaming so that it can police the contracts, transactions, or agreements offered by DCMs in a consistent and reliable manner. For the following reasons, the Commission should adopt a definition of gaming that prevents DCMs from emulating casinos or allowing users to risk something of value on the outcome or elements of rules-based competitive activities based on luck or skill, including sports.

Because "gaming" is not defined in the CEA, the Commission should "give it its ordinary meaning," derived from common usage.[49] Common usage can be illustrated by dictionaries or other provisions of federal law,[50] or "the meaning attached to it by those who are familiar with such parlance."[51] The Nation therefore describes below, in light of its intimate familiarity with the gaming industry, how the term "gaming" should be defined.

First of all, as a gaming regulator, the Nation emphasizes that gaming is a dynamic industry that relies on providing an enjoyable and entertaining experience to patrons. It is also a highly regulated industry, which in Indian country is subject to federal and tribal laws and regulations, as well as the terms of tribal-state compacts (or, in some cases, procedures issued by the Secretary of the Interior). As such, the activities encompassed by "gaming" may change over time as patron interests shift or regulatory regimes change. However, the constant is that gaming includes activities that are typically undertaken in casinos or other gambling establishments such as off-track betting sites and racetracks.

Therefore, the Commission's definition of gaming should encompass activities that traditionally or commonly take place at casinos. This will set a baseline that will prevent DCMs from departing from their traditional market function and Congress's intent in passing the Dodd-Frank Act. This approach is also consistent with that taken in IGRA, which does not define class II and III "gaming" but instead illustrates their meaning with reference to games commonly played in casinos, such as "the game of chance commonly known as bingo,"[52] "card games,"[53] "banking

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[48] *See* 7 U.S.C. § 7a-2(c)(5)(C)(i)(V).

[49] *United States v. Santos*, 553 U.S. 507, 511 (2008); *accord Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 568-69 (2012).

[50] *See Santos*, 553 U.S. at 511-12.

[51] *Oder of Ry. Conductors of Am. v. Swan*, 329 U.S. 520, 525 (1947).

[52] 25 U.S.C. § 2703(7)(A)(i).

[53] *Id.* § 2703(7)(A)(ii).

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card games, including baccarat, chemin de fer, or blackjack (21),"[54] and "electronic or electromechanical facsimiles of any game of chance or slot machines."[55] As with IGRA, the Commission's regulations could provide illustrations of activities that take place in casinos to strengthen the definition.

However, the Commission's regulations should not, and cannot, stop there. Gaming occurs in places other than casinos.[56] And because the gaming industry is also responsive to patron demands and changes in the regulatory environment, the games that gaming establishments offer change over time as they evaluate current offerings and adopt new ones. Moreover, the meaning of "gaming" is naturally understood more broadly than what has been offered in casinos or other gaming establishments. One court has noted that dictionaries define "gaming" (with some non-substantive variations) as "the practice or activity of playing games for stakes" and "the practice or activity of playing games."[57] Other dictionaries provide similar definitions.[58] "Stakes," in turn, are "something that is staked for gain or loss, *esp*: a sum of money or its equivalent risked" or "the prize set in any contest," and "to stake" is "to risk (as one's money or life) upon the issue of competition or upon a future contingency."[59] So, gaming is naturally understood as risking money on the outcome of a game.

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[54] *Id.* § 2703(7)(B)(i).

[55] *Id.* § 2703(7)(B)(ii).

[56] *See* S. Rep. No. 100-446, at 11 (1988) (referring to "rodeos, horse races, or other kinds of gaming with purses or prizes" that have been held "in conjunction with ceremonies, pow wows, feasts or other celebrations").

[57] *KalshiEX LLC v. Commodity Futures Training Commission*, 2024 WL 4164694, at *8 (D.D.C. Sept. 12, 2024) (quoting *Gaming*, Merriam-Webster.com, https://perma.cc/9JZW-SRS2; *Gaming*, Oxford English Dictionary, https://perma.cc/R99K-A2HD).

[58] *See Gaming*, Webster's Third New International Dictionary of the English Language Unabridged 933 (2002) ("Webster's Int'l") (gaming is "the act or practice of playing games for stakes").

[59] *Stake*, Webster's Int'l 2220; *accord* The American Heritage Dictionary of the English Language 1701 (5th ed. 2018) ("American Heritage") ("stakes" are "money or property risked in a wager or gambling game" or "the prize awarded the winner of a contest or race" and "to stake" is "to gamble or risk"). We also note that several dictionaries define "gaming" to simply mean "gambling." *Gambling*, Black's Law Dictionary (12th ed. 2024) (defining "gambling" as "[a]lso termed *gaming*" and "Indian gambling" as "[a]lso termed *Indian gaming*"); American Heritage 721 (defining gaming as "[g]ambling, especially casino gambling" and [t]he playing of games, especially video games"); *Game*, New Oxford American Dictionary 713 (3d ed. 2010) (defining verb "to game" as "play games of chance for money"). The definition we provide below would also cover activities commonly understood to be gambling.

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What is a game? A "game" is "[a] contest, for amusement or for a prize, whose outcome depends on the skill, strength, or luck of the players."[60] "Games" include both "games of chance," whose "outcome is determined by luck rather than skill," and "games of skill," in which "the outcome is determined by a player's superior knowledge or ability, not chance."[61] Whether the outcome is based on skill, luck, or some combination thereof, the "game" has been set up as a "contest" to amuse or to determine the award of a prize.

"Gaming" therefore encompasses risking something of value on a rules-based competitive activity, including sports. A person may engage in "gaming" by purchasing a contract pursuant to which he or she obtains something of value depending on the outcome of a game, the performance of competitors during the game, or whether certain events occur during the course of the game—i.e., types of offerings available on several DCMs that are virtually identical to wagers available on sports wagering platforms or through traditional sportsbooks. Such competitive activities also include contests that have *been put on for the purpose* of allowing players to place wagers on the outcome, i.e. to award a prize. Such games include wagering on the results of the random selection of numbers, colors, or objects by a person or algorithm, like occurs in Powerball or slot machines.

In light of the foregoing, the Commission should amend 17 C.F.R. § 40.11(b) to include a definition of "gaming" that improves on the definition it proposed in 2024,[62] to wit:

> "gaming" means any transaction, contract, agreement, or instrument which involves the staking or risking, by any person, of something of value upon:
>
> (1) an activity that has traditionally been undertaken for stakes in a casino or gambling establishment, such as, without limitation, the playing of bingo, slot machines, card games such as baccarat, blackjack (21), and poker, or table games such as roulette and craps;

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[60] *Game*, Black's Law Dictionary (12th ed. 2024).

[61] *Id.*; *see Game*, Webster's Int'l 933 ("game" is "a physical or mental competition conducted according to rules in which the participants play in direct opposition to each other, each side striving to win and to keep the other side from doing so" and defining "game of chance" as "a game (as a dice game) in which chance rather than skill determines the outcome" and "game of skill" as "a game (as chess) in which skill rather than chance determines the outcome"); *accord* American Heritage 720 ("[a] competitive activity or sport in which players contend with each other according to a set of rules"); New Oxford American Dictionary 713 (defining noun "game" as "a form of play or sport, esp. a competitive one played according to rules and decided by skill, strength, or luck").

[62] *See* Event Contracts, 89 Fed. Reg. 48968, 48992 (June 10, 2024) (proposing new 17 C.F.R. § 40.11(b)(1)).

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> (2) an outcome or occurrence that has traditionally been the subject of wagering in a casino or gambling establishment, such as, without limitation, the results of sport events or horse or dog racing;
> (3)
> (A) the outcome of an event involving players in competition with each other for amusement or to win a prize, or
> (B) the participation or performance of a player or competitor in any such event;
> (4) the outcome of an event or activity which was conducted to award something of value based on an outcome produced by the skill or luck of participants, such as, without limitation, a trivia contest, lottery, or random drawing; or
> (5) An electronic facsimile or simulation of any of the foregoing.

A. The Commission Should Retain its Determination that it is Contrary to the Public Interest for Registered Entities to Offer Gaming.

The Commission has already determined that any agreements, contracts, or transactions that involve gaming are contrary to the public interest, and it has already prohibited them.[63] Therefore, regardless of who has jurisdiction over these agreements, contracts, or transactions, the Commission should continue to prohibit them from being listed or made available for clearing or trading on or through a registered entity. That is consistent with the Commission's statutory mandate in the CEA.

By passing the special rule of the CEA, Congress made plain that the "listing of agreements, contracts, transactions, or swaps" concerning "gaming" is contrary to the public interest. The special rule authorizes the Commission to determine that any particular contract which concerns "gaming" is contrary to the public interest,[64] and it provides that any such agreement, contract, or transaction is prohibited.[65] When the Senate debated the provision of the Dodd-Frank Act that would codify the special rule, the author, Senator Blanche Lincoln, explained that this extension of authority was not simply a discretionary function, but instead was a conferral of authority by Congress to the Commission to prevent gaming by sham "event contracts" that mimic traditional financial products, but are actually gaming:

> The Commission 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

[63] 17 C.F.R. § 40.11(a).

[64] 7 U.S.C. § 7a-2(c)(5)(C)(i).

[65] *Id.* § 7a-2(c)(5)(C)(ii).

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> 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.[66]

When it promulgated 17 C.F.R. § 40.11, although it did not define "gaming," the Commission acknowledged that "its prohibition of certain 'gaming' contracts is consistent with Congress's intent to 'prevent gambling through the futures markets' and to 'protect the public interest from gaming and other events contracts.'"[67]

Congress's belief that registered entities should not offer wagering is well-founded. It is not in the public interest for registered entities to adopt a novel role as a platform for gaming, rather than serving their established role of providing hedging value to market participants. Event contracts offered by registered entities under the CEA provide hedging value to market participants against risks to the value of their investments. By contrast, gaming is a form of entertainment. It is generally done by players with no financial stake in the outcome of the events on which they are wagering, except for the wager itself. That is no less true of sports wagering. Typically, users place more than $1 billion dollars a month in legal sports wagers offered by sportsbooks.[68] And so-called "sports event contracts" offered on registered entities are being purchased and sold by millions of users.[69] This volume of users cannot possibly have any direct financial stake in the outcome of sporting events. Moreover, those numbers have skyrocketed during major sporting events, strongly suggesting that trades are being made by users immediately before or during games, rather than by market participants anticipating and hedging against risks from upcoming events.[70] There is no sensible reason for registered entities to become a platform for these activities.

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[66] 156 Cong. Rec. S5906-07 (2010) (statement of Sen. Lincoln).

[67] Provisions Common to Registered Entities, 76 Fed. Reg. 44776, 44786 (July 27, 2011) (footnotes omitted) (citing 156 Cong. Rec. S5906 (2010) (statement of Sen. Lincoln)).

[68] *See Commercial Gaming Revenue Tracker*, Am. Gaming Ass'n (Apr. 16, 2026), https://www.americangaming.org/resources/commercial-gaming-revenue-tracker/.

[69] Grant Mitchell, *Kalshi, Prediction Markets Stealing Market Space from Top Sportsbooks*, Yahoo! Fin. (Feb. 16, 2026), https://finance.yahoo.com/news/kalshi-prediction-markets-stealing-market-160600765.html (reporting Kalshi had 5.1 million active monthly users in early 2026 and about 90% of Kalshi's revenue is tied to sports contracts).

[70] Laya Neelakandan, *Kalshi Says Super Bowl Trading Volume Surpassed $1 Billion*, CNBC (Feb. 10, 2026), https://www.cnbc.com/2026/02/10/kalshi-super-bowl.html; Daniel O'Boyle, *March Madness Helps Kalshi Make $25M in Fee Revenue in Four Days*, Yahoo! Fin. (Mar. 25, 2026), https://finance.yahoo.com/markets/options/articles/march-madness-helps-kalshi-25m-

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Instead, it is the public interest for tribes, the federal government, and states to continue to regulate gaming under their established laws, which have served players and the industry well for decades. Tribes, the federal government, and states regulate to ensure fairness to players and prevent the influence of corrupt organizations. They can make decisions about when games are offered, and where, and who may participate in those games, in light of public policy. Registered entities cannot offer those same safeguards. Tribes, federal agencies created to regulate gaming like the NIGC, and states already do, applying knowledge learned through decades of experience. And their experience has led to remarkable successes, including the strides in tribal gaming described above, that have caused dramatic benefits in tribal economic self-sufficiency and economic development that registered entities could never offer.

Moreover, tribal regulation of gaming on Indian lands is itself an exercise of tribal sovereignty, as was recognized by the Supreme Court in *Cabazon* and by Congress in IGRA. Congress and the courts have repeatedly recognized that the promotion of tribal self-government and self-determination are in the public interest. If registered entities could offer gaming under the CEA, rather than under tribal ordinances and regulations, that would frustrate the exercise of tribal sovereignty by creating duplicative, conflicting, or confusing obligations and requirements that apply to the registered entities. Indeed, as the Commission is well-aware, disputes over tribal authority have already contributed to litigation over the meaning of federal law and over the proper forums for disputes over contracts offered on registered entities.

Because Section 40.11 already provides a prohibition on products that constitute gaming based on the Commission's determination that such products are contrary to the public interest, we recommend that you retain Section 40.11(a) in its current form.

B. The Commission Should Create a Mechanism to Allow for Petition of Review of Contracts or Categories of Contracts that Constitute "Gaming."

Currently, registered entities offer all, or almost all, of their event contracts under the self-certification process, by self-certifying rules, rule amendments, and contracts or instruments.[71] The Commission has the power to stay the effectiveness of a self-certification of a rule or rule amendment,[72] and the special rule contains mandatory language that an agreement, contract, or transaction that is contrary to the public interest may not be listed or made available for clearing

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120000672.html. The wagering on March Madness contracts is especially illustrative, as March Madness teams are operated by public entities or private non-profits which lack investors.

[71] *See* 7 U.S.C. § 7a-2(c)(1)-(2); 17 C.F.R. §§ 40.2, 40.6.

[72] 7 U.S.C. § 7a-2(c)(2).

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or trading through a registered entity.[73] However, to our knowledge, no event contracts that would fall under the definition of gaming described above are currently stayed, and none concerning sports have been disallowed by the Commission in recent years. And there is currently no provision in the Commission's rules for existing gaming regulators to opine on whether contracts constitute gaming, nor can third parties request the Commission stay or review a self-certification. Existing gaming regulators could assist the Commission in identifying agreements, contracts, and transactions that constitute gaming under the definition described above.

We therefore recommend that the Commission promulgate new regulations governing the self-certification process. Those new rules should require registered entities submitting event contracts to certify that their product would not constitute gaming as defined by the Commission. Registered entities should include with their self-certifications approval from the jurisdictions in which they intend to offer event contracts, stating that the self-certified event contracts are not gaming.

If registered entities do not provide approvals from the relevant jurisdictions, then their self-certifications should be stayed for ninety days. During that period, interested parties, including existing gaming regulators like tribes, other federal agencies responsible for gaming regulation like the NIGC or the Department of Justice, and states, should be allowed to file petitions with the Commission, challenging self-certified products that they believe violate the special rule. Such petitions should automatically extend the stay of the certification of such self-certified products until they can be reviewed by the Commission, within the ninety-day period described in the special rule.[74]

Additionally, interested parties should be able to file petitions on self-certifications that were submitted before this proposed amendment is adopted for event contracts that are still being offered on registered entities. Such petitions should be subject to the same automatic stay and review provisions.

The Commission should also adopt a process by which it can refer such petitions to state or tribal regulators to determine whether the event contracts, rules, or rule amendments constitute gaming. If the regulators so conclude, the Commission should prohibit those contracts.

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[73] *Id.* § 7a-2(c)(5)(C)(ii). We further note that, although the Commission must act on a registered entity's proposed new rule or rule amendment within ten (10) days of its filing with the Commission, *see id.* § 7a-2(c)(2)-(3), there is no such time limitation on the Commission's review of a contract or instrument.

[74] *See* 7 U.S.C. § 7a-2(c)(5)(C)(iv).

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We propose that this amendment could be made in a new subsection 40.13, as follows:

§ 40.13 Review of event contracts for compliance with prohibition on gaming.

(a) Any submission of an excluded commodity as defined in Section 1a(19)(iv) of the Act, made under § 40.2 must include, in addition to the requirements of that section, a certification that the product would not constitute gaming as defined in § 40.11(b). Such certification must include approval that the product does not constitute gaming, from the following jurisdictions,:
    1) any state in which the product would be offered for trade or exchange, and
    2) any federally-recognized Indian tribe in whose Indian country, as defined in 18 U.S.C. § 1151, the product would be offered for trade or exchange.

(b) If any submission made under § 40.2 fails to include the approval required by § 40.13(a), then no registered entity may list or trade that product until 90 days after its submission under § 40.2.

(c) During the 90-day period provided in § 40.13(b), any person may petition the Commission for review of the submission to determine whether it constitutes gaming under § 40.11(b).
    1) The petition shall clearly and succinctly describe (i) the identity of the person submitting the petition, (ii) the submission being challenged, and (iii) the legal basis for the challenge. The filing of a petition under § 40.13(c) shall initiate a 90-day review period, which shall commence on the date that the petition is received by the Commission.
    2) During the 90-day review period, the Commission may request the opinion of any state or tribe described in § 40.13(a), or any other federal agency or official, as to whether the product constitutes gaming as defined in § 40.11(b).
    3) The Commission shall issue an order approving or disapproving the product that is subject to a 90-day review under § 40.13(c) not later than 90 days subsequent to the date that the Commission commences review, or if applicable, at the conclusion of such extended period agreed to or requested by the registered entity.
    4) No registered entity may list or trade the product during the 90-day review period or such extended period agreed to or requested under § 40.13(c)(3).
    5) The Commission shall issue its determination in writing. If the Commission does not issue a determination, the product shall be considered gaming.
    6) No product determined to be or considered to be gaming under § 40.13(c)(5) shall be listed or made available for clearing or trading on or through a registered entity.

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(d) Within 90 days of the effective date of § 40.13, any state, federal agency or official, or federally-recognized Indian tribe may file a petition described in § 40.13(c), to initiate review of any product that may be listed for trading or accepted for clearing on or through a registered entity pursuant to a certification under § 40.2 or § 40.3 that occurred before § 40.13 went into effect.

C. The Commission Should Require Registered Entities to Require Trading Prohibitions for Individuals Located within Indian Country.

Finally, as noted above, gaming in Indian country is regulated by Indian tribes in the exercise of their self-government. In light of the tribal interest in self-government, we recommend that, in addition to the above prohibition on "gaming," the Commission also promulgate a new regulation which requires registered entities to prohibit people who are located on Indian lands, as defined by IGRA and its implementing regulations, from entering into contracts that constitute "gaming," as defined above, if doing so would violate tribal or federal law or a tribal-state IGRA compact. Such a rule is authorized by the provision of the special rule which provides that the Commission may prohibit agreements, contracts, or transactions that involve activities "similar" to prohibited categories like gaming when "determined by the Commission, by rule or regulation, to be contrary to the public interest."[75]

We propose this be done in a new Section 40.14, as follows:

§ 40.14 Prohibition on gaming in Indian lands.

Any submission made pursuant to § 40.2 or § 40.3 must provide, in addition to the information required by those sections, a description of the measures that the registered entity will implement to ensure the product proposed to be certified cannot be used for gaming in Indian country in violation of tribal or federal law, or of a tribal-state compact entered into and in effect under 25 U.S.C. § 2710.

I appreciate your attention to this matter.

Respectfully submitted,

DocuSigned by:
Chad Harsha
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Chad Harsha
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Cherokee Nation

[75] 7 U.S.C. § 7a-2(c)(5)(C)(i)(VI).