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April 30, 2026

Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Center, 1155 21st Street NW
Washington, D.C. 20581

Re: Advance Notice of Proposed Rulemaking – Prediction Markets (RIN 3038-AF65)

Secretary Kirkpatrick:

I write on behalf of the Quapaw Nation ("Nation") Business Committee to submit written comments regarding the Commodity Futures Trading Commission's ("CFTC") Advance Notice of Proposed Rulemaking ("Notice") for so-called "prediction markets."[1]

1. Introduction.

The Nation is a sovereign Indian tribe that is federally-recognized pursuant to several treaties with the United States. The Treaty of 1833 established the Quapaw Nation's present day reservation, located in what is now northeastern Oklahoma, as a "permanent homeland."[2] The Nation owns and operates three tribal gaming facilities: Downstream Casino Resort ("DCR"), Quapaw Casino, and Saracen Casino Resort. DCR and Quapaw Casino are located on trust lands within the Quapaw Reservation. Saracen Casino Resort ("Saracen"), which the Nation operates pursuant to state law rather than the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* ("IGRA"), is located in Arkansas.

The Nation and our neighbors realize significant economic benefits from the Nation's three gaming facilities. The Nation uses its gaming revenue to fund social services for its members, environmental remediation projects, and other endeavors that promote the health and welfare of communities on the Quapaw Reservation. Visitors who travel to DCR, Quapaw Casino, and Saracen bring sales and tax revenue to communities along their routes. In addition, our gaming facilities are job creators: in 2025 our casinos employed 1,046 people, including 59 tribal members, 113 Native Americans, and 874 non-Indian people. This is particularly important in light of the fact that Ottawa County, OK and Jefferson County, AR, where the Nation's three gaming facilities

[1] 91 Fed. Reg. 12516 (March 16, 2026) ("2026 ANPR").
[2] Treaty with the Quapaw, May 13, 1833, 7 Stat. 424, Art. II.

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are located, both lag behind in most socioeconomic indicators.[3] In sum – when the Nation's gaming facilities thrive, the Nation, its members, and our neighbors likewise thrive.

Prediction market platforms, especially those that offer what is essentially sports betting without complying with the legal and regulatory frameworks imposed on every other entity that conducts sports betting, pose a serious threat to the Nation's gaming operations. By extension, these platforms threaten the Nation and our neighbors' economic security. Many other tribes face a similar threat, which is why several tribes and tribal organizations have either brought lawsuits against prediction market platforms or participated as *amici* in support of state lawsuits against the platforms.[4]

The potential economic harm that the Nation will incur if prediction markets are allowed to offer gaming activities free from regulation means that we have a significant interest in the CFTC's rulemaking on this subject. Because of our interest, we submit the comments included in this letter for the CFTC's consideration.

Our comments provide the Nation's general position regarding the CFTC's role in regulating prediction markets and then respond to certain questions included in the Notice. However, our silence on the other questions should not be construed as indicating that the Nation has no position on those questions. Rather, we have devoted our attention to these questions because of the short turnaround time on the CFTC's comment period for the Notice. As noted in Section 6 of this letter, we urge the CFTC to undertake a meaningful and thorough government-to-government consultation process with the Nation and other tribes in light of the potential impacts of prediction markets on tribal gaming operations.[5] This will allow the Nation and other tribes to adequately review and provide input on potential rulemaking by the CFTC related to prediction markets. In any event, we reserve the right to provide further comment beyond the public comment period and to request government-to-government consultation with the CFTC as our Business Committee deems necessary.

2. To the extent that the CFTC has discretion to permit gaming-related event contracts, the CFTC should maintain the prohibition on such contracts.

The Commodities Exchange Act ("CEA"), 7 U.S.C. § 1 *et seq.*, established the CFTC and empowered it to regulate certain types of financial transactions "involving swaps or contracts of sale of a commodity for future delivery."[6] The Dodd-Frank Act of 2010 amended the CEA to, *inter alia*, create special rules for so-called "event contracts."[7] These rules provide that:

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[3] *Quick Facts, Ottawa County, Oklahoma*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/ottawacountyoklahoma/POP060210 (last visited April 28, 2026); *Quick Facts, Jefferson County, Arkansas*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/jeffersoncountyarkansas/PST045224 (last visited April 28, 2026). For example, the poverty rate in both counties is approximately double the national average.

[4] *See, e.g, Blue Lake Rancheria, et al. v. Kalshi Inc., et al.*, No. 25-cv-06162-JSC, 2026 WL 1076004 (N.D. Cal. 2026).

[5] The Nation's submission of this comment does not substitute for government-to-government consultation.

[6] 7 U.S.C. § 2(a)(1)(A). The Nation disagrees with, and does not concede, the position taken by various prediction market platforms that the CEA gives the CFTC "exclusive jurisdiction" over their contracts. *See Blue Lake Rancheria*, 2026 WL 1076004, at *1.

[7] 7 U.S.C. § 7a-2(c)(5)(C).

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> the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve--(I) activity that is unlawful under any Federal or State law; (II) terrorism; (III) assassination; (IV) war; (V) gaming; or (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.[8]

Legislative history related to the Dodd-Frank amendments shows that Congress never intended for the CEA to allow event contracts that functioned as gaming activities. Senator Blanche Lincoln, who drafted the amendments, stated that the provisions referred to above were meant to "prevent gambling through futures markets" and would "protect the public interest from gaming contracts and other events contracts."[9] In response to a question regarding whether the CFTC would be empowered to "determine that a contract is a gaming contract if the predominant use of the contract is speculative as opposed to a hedging or economic use," Senator Blanche said:

> [t]hat is our intent. 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 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.[10]

Congress' intent is clear: the amendments to the CEA were intended to give the CFTC the tools it needs to prohibit, rather than facilitate, event contracts as a vehicle for gaming activities. Consistent with this legislative intent, the CFTC's own existing regulations expressly prohibit event contracts that "involve[], relate[] to, or reference[]…"gaming" from being listed for trading or accepted for clearing on or through a registered entity.[11]

Notwithstanding this regulation, the CFTC has not taken any action to regulate prediction markets that offer sports betting and other gaming activities. We acknowledge that "gaming" is undefined in both the CEA and the CFTC's regulations. We also acknowledge that these prediction markets, in their own self-interest, have adopted creative explanations for why their offerings are not "gaming." However, an activity that involves wagering money on an event happening or not happening during a sports match, with a payout for correct wagers, could only reasonably be considered gaming.

The CEA, its legislative history, and the CFTC's current regulations are clear: event contracts that involve, relate to, or reference gaming are prohibited. Assuming that the CFTC has discretion to amend its regulations to authorize these types of event contracts, the Nation would fully oppose such a change.[12] Instead, we would request that the CFTC focus on enforcing the existing regulatory framework against prediction market platforms that are currently violating it.

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[8] *Id*.
[9] 156 Cong. Rec. S5906 (2010).
[10] *Id*.
[11] 17 C.F.R. § 40.11(a)(1).
[12] The Nation does not concede that the CFTC has discretion in this context.

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To the extent that the CFTC sees an amendment to its regulations as necessary, we offer the comments below.

3. Event contracts for gaming are contrary to the general public interest, the public interests described in the CEA, and public interests that uniquely implicate tribes.

Section C.15 of the Notice states that:

> CEA section 5c(5)(C) lists five activities, and provides that if an event contract involves any such activity, the [CFTC] may determine that the event contract is contrary to the public interest. What factors should the [CFTC] consider in determining the scope of these five listed activities? What aspects of these activities would be relevant to the [CFTC]'s public interest determination?[13]

The Nation interprets the first question as asking what factors the CFTC should consider in determining whether an activity falls within the scope of "gaming." Section 4 includes recommendations for a proposed definition of gaming. Responsive to this question, the Nation recommends certain factors for the CFTC to consider to the extent the CFTC may consider a broader public interest than is set forth at Section 3(a) of the CEA, as discussed *infra*.

First, the CFTC should consider the potential for manipulation in gaming-related event contracts and the public interest in protecting against such market manipulation. Tribal and state laws relating to gaming include procedures for identity verification to attempt to, *inter alia*, prevent individuals who may impact the results of gaming outcomes from participating in bets or wagers.[14] Despite these procedures, there are still incidents of market manipulation within gaming, although the design of the regulatory framework is intended to assist with the identification of incidents of manipulation.[15] Notably, this is not an unfamiliar problem for so-called prediction markets, which are not required under existing laws to utilize similar procedures.[16] The lack of regulatory procedures for verification of market participants should incentivize the CFTC to continue to prohibit gaming-related event contracts.

Second, the CEA should consider the potential impacts on market participants. Problem gaming is a recognized mental health diagnosis that is connected to "gambling behavior that is damaging to a person or their family" such that a person may gamble even when they lack sufficient resources to bear the risk or where doing so may cause significant financial or other harms to them or their families.[17] Tribes and states that permit gaming often include requirements related to problem gaming resources, as well as mechanisms to prevent or limit certain market participants in order

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[13] 2026 ANPR at 12521.
[14] *See e.g.*, Conn. Gen. Stat. § 12-864.
[15] *See e.g.*, David Purdum, *NBA bans Raptors' Jontay Porter for gambling violations*, ESPN (Apr. 17, 2024), https://www.espn.com/nba/story/_/id/39962406/nba-bans-raptors-jontay-porter-gambling-violations.
[16] Benjamin Weiser and Jonah E. Bromwich, *Soldier Used Classified Information to Bet on Maduro's Ouster, U.S. Says*, THE NEW YORK TIMES (Apr. 23, 2026), https://www.nytimes.com/2026/04/23/nyregion/polymarket-maduro-indictment-soldier.html.
[17] National Council on Problem Gambling, *FAQs: What is Problem Gambling?*, https://www.ncpgamb ling.org/help-treatment/faqs-what-is-problem-gambling/.

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to address this problem.[18] If the CFTC can and does allow gaming-related event contracts, it is possible, if not likely that individuals who suffer from or are susceptible to problem gaming might participate.[19] This factor should incentivize the CFTC to maintain a prohibition on gaming-related event contracts because of the potential social harms of allowing market participants that suffer from mental health issues to purchase event contracts based on the outcome of events without any regulatory oversight. The Nation discusses this point further in Section 5.

In addition to these broader public interests that the CFTC should consider, Section 3(a) of the CEA lists enumerated public interests relevant to the CFTC's regulatory regime: "providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities."[20] The enumerated public interests support the purpose of permitting traditional event contracts related to commodity prices (e.g., whether the price of aluminum will exceed or be below a certain value) because such event contracts allow the market to aggregate information about the sentiment of market participants and manage price risks. Conversely, gaming-related event contracts would be a poor mechanism to achieve those ends as, for example, the result of a sports event is determined by the participants in it and is not linked to market sentiment (e.g., seventy percent of a prediction markets users believing the Oklahoma City Thunder will make the Western Conference Finals in the National Basketball Association's playoffs does not have any correlation to whether such an event will occur).[21] There is no inherent value of price information or of assessing price risks that gaming-related event contracts would provide to unrelated market participants leaving the only meaningful purpose of purchasing such event contracts for such market participants to be gaming.[22] In other words, these gaming-related event contracts do nothing to advance the public interests listed in Section 3(a) and therefore the CFTC cannot find gaming-related event contracts to be in the public interest.

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[18] *See e.g.*, 4 C.R.S. § 44-30-531 (Colorado law requiring licensees to promote responsible gaming); Conn. Gen. Stat. § 12-863 (Connecticut law detailing responsible gaming requirements, including offer of voluntary self-exclusion process); Tribal State Compact Between the Quapaw Tribe of Oklahoma (O-Gah-Pah) and the State of Oklahoma, § 9(b) (requiring the Nation to deny entry to individuals with a history of problem gambling).

[19] While proponents of allowing gaming-related event contracts focus in on the distinctions between an "event contract" and the process undertaken to place a bet at a sportsbook or through a mobile sports betting application, it is difficult to see the distinction for a problem gambler between placing a bet that Shai Gilgeous-Alexander will score over thirty points in a given game and purchasing an event contract dependent on the outcome that Shai Gilgeous-Alexander will score thirty or more points in a given game. There is not a sufficient difference in the market or the product for the CFTC to permit the problem gambler to purchase the event contract without the same protections they would have under tribal or state law.

[20] 7 U.S.C. § 5(a).

[21] In other words, for traditional "swaps", the market participants for such "swaps" are also participating more broadly in the market and there is some value in allowing the transactions for that reason (i.e., the market participants have a meaningful stake in the outcome and the pricing for it). Even more unique event contracts (e.g., relating to the weather in a particular area) more directly impact traditional commodities and pricing concerns in this way, as well. As discussed here, this is not true of sporting events, where it cannot be said that market participants have any meaningful stake in or benefit in knowing the price of Lu Dort having a certain number of rebounds.

[22] To the extent there is any value, it would only be to provide such price information to bettors, which already functionally occurs through the setting and adjustment of odds by bookmakers, or to allow bettors to hedge their bets (i.e., there is little, if any, non-gaming purpose for gaming-related event contracts that aligns with the CEA's enumerated public interests).

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The CFTC further inquires at Section C.19(c) as to how the responsible innovation and fair competition goals in CEA Section 3(b) may be served by gaming-related event contracts.[23] As discussed further in this Section 3 and in Section 5, such goals cannot be served by gaming-related event contracts. The provision of gaming-related event contracts is not "innovative"; it is offering largely unregulated gaming to market participants contradictory to congressional intent. The lack of regulatory protections and disregard for tribal and state law can also not be characterized as "responsible". Further, the proponents of gaming-related event contracts rely upon circular logic that gaming-related event contracts cannot be bets or wagers as understood under tribal or state gaming laws because they are structured as event contracts.[24] In spite of this, for all intents and purposes, the gaming-related event contracts offered by prediction markets today look, feel, and operate for the market participant functionally the same as betting at a sportsbook or through a mobile sports betting application. The fair competition goals would also not be served by gaming-related event contracts as tribal and state gaming operations are required to comply with a complex but necessary regulatory framework as discussed further herein to provide similar products and services to the market, which the CFTC argues prediction markets are not subject to.[25] In total, allowing gaming-related event contracts does not foster responsible innovation or fair competition but instead rewards an irresponsible attempt by prediction markets to flout tribal, state, and federal law.

Separate from the CEA's enumerated public interests and the considerations relevant to the general public discussed *supra*, there are other public interests which are implicated here specifically for tribes. The proposition of allowing prediction markets to provide gaming-related event contracts is likely to negatively impact the gaming industry, including tribal gaming. Tribal gaming and the economic opportunities that it provides are integral components of tribal sovereignty and self-determination, which are important public interests.[26] In 2024, tribal gaming generated $43.9 billion in revenue.[27] Many tribes dedicate such revenues to important governmental programs that benefit "tribal sovereignty, job growth, infrastructure, education, and important social, health, and welfare programs in tribal communities."[28] These benefits are not solely limited to tribal communities, as the Nation, in addition to supporting its governmental services and programs, also employs hundreds of non-Natives from surrounding communities and provides important contributions to non-Native communities in Oklahoma, Kansas, Missouri, and Arkansas.

In addition to the economic impacts on tribes and states that permit gaming, the CFTC should consider the legal and jurisdictional implications of permitting gaming-related event contracts.

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[23] 2026 ANPR at 12521.
[24] *See e.g.,* Brief for the CFTC, *North American Derivatives Exchange, Inc. et al. v. The State of Nevada et al.*, Case No. 2:25-cv-00978-APG-BNW, Dkt. No. 37.2 at *24–26 ["CFTC Amicus"].
[25] *Id*. at *31.
[26] *See Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 510 (1991) ("Congress[] desire[s] to promote the goal of Indian self-government, including its overriding goal of encouraging tribal self-sufficiency and economic development.") (citing *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216 (1987)) (internal quotations omitted); *also see Breakthrough Mgmt. Group, Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1183 (10th Cir. 2010) ("One of the ways that Congress has promoted tribal sovereignty through economic development is … the authorization of Indian gaming.") (citing 25 U.S.C. § 2702(1))).
[27] Tribal Business News Staff, *Tribal gaming revenues hit record $43.9B as growth streak continues*, TRIBAL BUSINESS NEWS (Jul. 31, 2025), https://tribalbusinessnews.com/sections/gaming/15230-tribal-gaming-revenues-hit-record-43-9-billion-fourth-straight-year-of-growth.
[28] *Id*. (quoting National Indian Gaming Commission Vice Chair Jeannie Hovland).

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Currently, as an example, the Nation operates its gaming properties through its own laws and regulations, a Tribal-State Compact with the State of Oklahoma for DCR and Quapaw Casino, an Arkansas state license for Saracen, and federal law, including IGRA and its implementing regulations. This legal framework addresses licensure, problem gaming, anti-money laundering, and a host of other regulatory concerns that are protective of market participants, the market, and the public interest. While the CFTC operates under a legal and regulatory framework that is designed to protect the public interest as set forth in the CEA, it has no significant coverage of the types of concerns that are widely addressed by tribes and states throughout the country. The CFTC would have to completely overhaul and introduce a significant new regulatory regime if it were to permit gaming-related event contracts. Such a significant change in the CFTC's regulations, however, is far beyond the purpose of the CFTC or its purview as set forth in the CEA.

4. The CFTC should look to tribal, state, and federal gaming laws to define "gaming" for purposes of the CEA.

Section C.19(a) of the Notice asks "What sources should inform the [CFTC]'s determination of the scope of the term 'gaming'?"[29] The Nation interprets this question as asking for existing definitions of "gaming" that may serve as the basis for the CFTC to develop a definition for "gaming" within its regulations. There are a wealth of definitions of "gaming" or "gambling" for the CFTC to draw from under tribal, state, and federal law.[30] While these sources include some variance in defining "gaming", there is a general consistency across jurisdictions that should inform the CFTC's approach.

The Nation requests that the CFTC adopt a definition of "gaming" that is at least adequately scoped to prevent "event contracts" being used as a vehicle for gambling on sporting events and contests.[31] In particular, the Nation requests that the CFTC adopt a definition of gaming similar to the State of Connecticut's definition of "sports wagering", as follows:

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[29] 2026 ANPR at 12521.

[30] *See e.g.*, 31 U.S.C. § 5362(1)(A) (defining "bet or wager" as "the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome") and 31 U.S.C. § 5362(10)(A) (defining "unlawful Internet gambling" to mean to "place, receive, or otherwise knowingly transmit a bet or wager by any means…."); 18 U.S.C. § 1084 (prohibiting "being engaged in the business of betting or wagering knowingly us[ing] a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest…."); 25 U.S.C. § 2703(6)-(8) (defining "class I gaming", "class II gaming", and "class III gaming"); Nev. Rev. Stat. § 463.0193 (defining "sports pool" to mean "the business of accepting wagers on sporting events or other events by any system or method of wagering."); Conn. Gen. Stat. § 12-850(34) (defining "sports wagering" to mean:

> risking or accepting any money, credit, deposit or other thing of value for gain contingent in whole or in part, (A) by any system or method of wagering, including, but not limited to, in person or through an electronic wagering platform; and (B) based on (i) a live sporting event or a portion or portions of a live sporting event, including future or propositional events during such an event; or (ii) the individual performance statistics of an athlete or athletes in a sporting event or a combination of sporting events.).

[31] The Nation does not concede that the CFTC should not be concerned with other types or aspects of "gaming", but given the comments of Senator Lincoln and Senator Feinstein included *supra* and the current activities of prediction markets, the prohibition of sports wagering through "event contracts" is the greatest concern. Moreover, sports wagering constitutes the highest likelihood of abuse through "event contracts" as there are no current prediction markets structuring event contracts to replicate other common games such as bingo, table games, or slot machines.

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> Gaming means the staking, risking, or accepting of anything of value for gain contingent in whole or in part, on the outcome of a contest or game involving skill or chance, including, but not limited to, (i) a live sporting event or a portion of a live sporting event, including future or propositional events during such an event; or (ii) the individual performance statistics of an athlete or athletes in a sporting event or a combination of sporting events.

Event contracts involving sports and contests are distinct from event contracts generally because allowing transactions related to the outcomes of sporting events and contests does not "provid[e] a means for managing and assuming price risks, discovering prices, or disseminating pricing information…."[32] Sporting events and public contests for individuals other than the participants in such events or contests are primarily for entertainment. While there are potential economic consequences associated with particular outcomes in such events and contests, these consequences are generally either directly associated with the persons and entities involved or too local and/or varied to be meaningfully quantified in support of a market for price information.[33] Any transaction based on the outcome of such events or contests by market participants is therefore primarily for gaming purposes, as market participants do not have any other meaningful economic interests in a particular result.

5. Market participant demographics and responsible gaming standards demonstrate that event contracts relating to gaming are contrary to the public interest.

The CFTC includes questions in Section C.19(d)-(e) relating to how the CFTC should consider the demographics of market participants and responsible gaming standards, respectively, in making its public interest determination relating to potential event contracts involving gaming.[34]

The CFTC's primary public interest considerations are as set forth in Section 3(a) of the CEA, as discussed *supra*. The demographics of market participants and their vulnerabilities, while potentially worthwhile considerations under certain of the CFTC's obligations (e.g., to prohibit contracts meant to defraud or mislead) are not necessarily meaningful with respect to these enumerated public interests. Further, the posture of inquiring about such considerations related to

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[32] 7 U.S.C. § 5(a).

[33] The Nation acknowledges that in the CFTC Amicus, the CFTC put forth in support of permitting gaming-related event contracts that "sporting events are economic enterprises that generate billions of dollars in economic activity and materially affect both regional and national markets." CFTC Amicus, at *29. However, this ignores, *inter alia*: (i) the intent of the prediction markets in providing and advertising the products as swaps; (ii) the ability or ease with which minors, problem gamblers, organized crime, terrorists, or other parties who should be excluded from accessing such markets may participate; and (iii) existing, regulated means by which such price information is captured. This is not to say there is not a meaningful distinction between "gaming" and transacting in "swaps", but that the CFTC should not ignore the practical realities of how markets for gaming-related event contracts are and will be used and the extreme likelihood that such use will be against the public interest. The foregoing not to concede that the allowance of gaming-related contracts is prohibited and that the CFTC does not have discretion to permit them.

[34] 2026 ANPR at 12521.

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event contracts involving gaming belies the purpose of the CEA, where, as discussed *supra*, Congress clearly intended to prohibit such event contracts.[35]

As to the broader public interests, however, demographics and responsible gaming favors weigh against a finding that gaming-related event contracts are in the public interest. Allowing prediction market platforms to offer sports gambling through event contracts undermines various regulatory mechanisms meant to protect vulnerable demographics. For example, a federal court in Ohio noted that people ages 18 through 20 had "unrestricted access" to gaming-related events contracts through prediction markets – even though they were prohibited from legal sports gaming under state law.[36] This demographic is "particularly vulnerable to problem gambling."[37] Granting unrestricted access to gaming to a demographic that is particularly vulnerable to problem gaming, with no mechanisms for imposing responsible gaming standards, is plainly contrary to the public interest.

The CFTC does not have the capacity to implement responsible gaming standards.[38] It also cannot show, consistent with federal principles applicable to rulemaking, that the benefits of regulations that permit gaming-related events contracts would outweigh the costs associated with the implementation of responsible gaming standards (setting aside all other costs associated with such regulations). If the CFTC is going to undertake a rulemaking, it must "design its regulations in the most cost-effective manner to achieve the regulatory objective."[39] To the extent that an intended regulation may also have certain benefits, the CFTC must show that "only upon a reasoned determination" do the "benefits of the intended regulation justify its costs."[40]

The ability to bet or wager (or as may be argued to be distinct by prediction markets, to purchase an event contract relating to) the outcome of sporting events may be participated in by individuals who are susceptible to problem gaming. Each tribe and state that permits gaming requires some level of responsible gaming standards, which can include *inter alia*, the ability to bar participation temporarily or permanently and the ability to set limits on amounts wagered.[41] The offer of such programs and the associated evaluation, monitoring, and enforcement related thereto constitute significant costs for tribal, state, and federal regulators. If the CFTC were to allow gaming-related event contracts, then it could reasonably be expected to have to implement such programs. This would represent a significant increase in the scope of the CFTC's responsibility and relatedly a significant increase in its costs. It is difficult to understand how any benefit to offering such event contracts, for which there are already separate markets with existing regulatory structures, could

[35] Moreover, as noted above, event contracts relating to gaming do not in any way promote or protect the public interests listed in Section 3(a) of the CEA.
[36] *Kalshiex, LLC v. Schuler*, 2026 WL 657004 at *10, n. 9 (S.D. Ohio 2026).
[37] *Id.*
[38] *See Kalshiex, LLC v. Hendrick*, 2025 WL 3286282 at *13 (D. Nevada 2025) ("Whatever one's views are on gambling, there is no question that some segment of the population will suffer from problem gambling, but neither DCMs nor the CFTC is equipped to address those issues the same way state gaming regulators and licensed entities are.").
[39] Exec. Order No. 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993) at Sec. 1(b)(5).
[40] *Id*. at Sec. 1(b)(6).
[41] *See* n. 18 *supra*.

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outweigh the significant increase in responsibility and cost for the CFTC and the federal government.[42]

It is not clear that the CFTC would even have jurisdiction to require that prediction markets adopt problem gaming standards. Notably, by considering these issues, the CFTC is apparently acknowledging that that these gaming-related event contracts are indeed "gaming" – just as any reasonable person would.

6. The CFTC should engage in a consultation process with the Nation and other tribes prior to developing any draft rules regarding prediction markets.

The federal government, including the CFTC, has a fiduciary trust obligation to protect the rights, interests, and resources of the Nation and its citizens.[43] This obligation is reflected in numerous federal statutes and policies.[44] It stems from tribes' cession of certain rights to vast swaths of land in reliance on federal promises to protect tribal welfare for future generations. The trust responsibility imposes duties on the federal government with respect to "any Federal government action" which relates to the Tribe.[45] This includes, but is not limited to, agency decision-making processes.[46]

The U.S. Supreme Court has stated that the federal trust obligation to the tribal governments should be judged by the "most exacting fiduciary standards."[47] Where tribal interests potentially conflict with other interests, the federal government cannot resolve conflicts through a "judgment call."[48] Instead, it must "resolve the conflicting claims in a precise manner that would indicate the weight given each interest before [it]."[49]

One way that the federal government executes its trust obligations is through government-to-government consultation with tribes. Each tribal government defines "consultation" in its own way. The Nation's standards are largely consistent with those adopted by the Bureau of Indian Affairs.[50] Consultation is a face-to-face meeting between principals that have decision-making authority over the matter at issue. Consultation is a two-way exchange of information with clarity

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[42] The reference to potential benefits is not a concession that allowing gaming-related event contracts would provide benefits. To the extent that there are benefits, the Nation believes that it would represent only a consolidation of the financial benefits of gaming to a limited number of national companies and away from a diversified gaming market benefitting tribes, states, and their respective citizens and residents.
[43] *See, e.g., U.S. v. Mitchell*, 463 U.S. 206, 225 (1983).
[44] *See, e.g., Seminole Nation v. U.S.*, 316 U.S. 286, 296-97 (1942).
[45] *See Northwest Sea Farms,* 931 F.Supp. at, 1519-20 (W.D. Wash. 1996) (citing *Nance v. Environmental Protection Agency*, 645 F.2d 701, 711 (9th Cir. 1981), *cert. denied*, 454 U.S. 1081 (1981)).
[46] *Id*.
[47] *Seminole Nation v. U.S.*, 316 U.S. 286, 297 (1942).
[48] *Pyramid Lake Paiute Tribe v. Morton,* 354 F. Supp. 252, 257 (D.D.C. 1973) (*modified on other grounds*, 360 F.Supp. 669 (D.D.C. 1973), *rev'd in part on other grounds*, 499 F.2d 1095 (D.C. Cir. 1974), *cert. denied*, 420 U.S. 962 (1975)).
[49] *Id*.
[50] *What is Tribal Consultation?*, BUREAU OF INDIAN AFFAIRS, https://www.bia.gov/service/tribal-consultations/what-tribal-consultation (last visited Feb. 5, 2026).

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on how the information will be used. Consultation requires appropriately advanced notice such that each party can adequately prepare.

Consultation that meets these standards gives the Nation an opportunity to communicate views directly to federal decision-makers. This in turn allows those decision-makers to understand the Nation's position, evaluate any conflicts between the Nation's interests and other interests, and resolve the conflicts "in a precise manner" consistent with the "most exacting fiduciary standards."

The federal trust obligation applies to the CFTC's proposed rulemaking here. Accordingly, the CFTC must act consistent with its fiduciary duties to the Nation and other tribes. In order to properly fulfill its obligations, the CFTC should initiate a meaningful and thorough consultation process with the Nation and other tribal governments. The consultation should be consistent with the standards described above and be lengthy enough to adequately solicit the views of any tribe that wishes to participate. Without engaging in this process, the CFTC cannot properly account for the perspectives of tribes and, consequently, any rulemaking by the agency will fail to appropriately resolve any conflicts between tribal and non-tribal interests. Given the many instances of litigation involving tribes and tribal organizations in opposition to prediction market platforms, such conflicts are already apparent.

7. Conclusion.

The Nation appreciates the opportunity to provide comments regarding this important matter and looks forward to continued engagement with the CFTC. If you have any questions or concerns regarding this letter, please contact Mr. Erick Giles at (207) 771-9248 or egiles@dwmlaw.com.

Sincerely,

Wena Supernaw

Wena Supernaw
Chair
Quapaw Nation Business Committee