April 30, 2026

The Hon. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St. NW
Washington, D.C. 20581

Via CFTC Comments Portal

Re: **Prediction Markets, RIN 3038-AF65**

To Whom It May Concern,

Dear Secretary Kirkpatrick:

The Cowlitz Indian Tribe (Cowlitz) submits these comments in response to the Commodity Futures Trading Commission's (CFTC's) Advance Notice of Proposed Rulemaking (ANPRM) seeking comments on the regulation of prediction markets. *Cowlitz strongly opposes any rulemaking that would purport to authorize prediction markets to offer sports (or other) events contracts under the Commodities Exchange Act (CEA) outside the reach of existing federal, state and tribal laws that regulate gaming.*

The Cowlitz Indian Tribe

The Cowlitz Indian Tribe is a federally recognized tribe located in southwest Washington. In 2017, after navigating significant legal requirements and obtaining extensive federal approvals, we opened the ilani Casino Resort on our Reservation near Ridgefield, Washington. This gaming facility is the major economic driver not only for our Tribe, but also for the surrounding community. We operate ilani according to the strict statutory and regulatory requirements in the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701, *et seq.*, and our Tribal-State Gaming Compact with the State of Washington.

We underscore that the federal IGRA also incorporates elements of state law in the federal Indian gaming regulatory structure, and those elements are captured within the Tribal-State Gaming Compact. IGRA requires that we use the revenue from our gaming operations to fund government programs, make charitable contributions, and cover local impact costs. Without gaming revenue, we would be forced to heavily rely on federally appropriated dollars to provide services to our tribal members.

Several operators of prediction markets have been offering event contracts on sports (and other) events. These event contracts are essentially bets on the outcome of a sporting event – they are clearly sports betting -- and they are offered online without regard to IGRA, state gaming laws, tribal laws, or Tribal-State gaming compacts. This is despite the fact that events contracts that involve gaming or that violate federal or state law are prohibited under the CFTC's own rules. *See* 17 C.F.R. § 40.11(a)(1). We already see the serious, negative impacts this illegal activity is having on our tribal gaming operations and revenue.

As explained in more detail below, Cowlitz urges that the CFTC must adopt regulations, consistent with the Commodity Exchange Act's (CEA's)"Special Rule," to prohibit prediction markets from offering futures contracts that involve gaming or that violate federal or state law.

The CEA Prohibits Use of Futures Contracts for Gaming

In 2000, the Commodity Futures Modernization Act significantly deregulated certain types of derivatives markets, creating a regulatory void that contributed to the highly risky credit default swaps that proved to be a key factor in the 2008 Financial Crisis. Congress stepped in to address this regulatory void by enacting the Dodd-Frank Act of 2010, which instructed the CFTC to consider the public interest when determining whether to prediction markets may list or trade of futures contracts (including events contracts). More specifically, Dodd-Frank established a "Special Rule" by which the CFTC is to determine

whether an event contract involves contracts that are "unlawful under any federal or state law;" or involve "gaming[.]" 7 U.S.C. § 7a-2(c)(5)(C).

Senator Blanche Lincoln, a key drafter of the Dodd-Frank amendments, explained that this provision was intended to 'prevent gambling through futures markets' and restrict 'event contract[s] around sporting events such as the Super Bowl.'" She added that the intent of the 2010 Dodd-Frank amendments to the CEA was "to protect the public interest from gaming contracts." 156 Cong. Rec. S5906 (July 15, 2010). In response to a question posed by Senator Feinstein regarding whether the intent of the law was to empower the CFTC "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 Lincoln responded:

> *That is our intent . . . [to] 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.*

Id.

As noted by Senator Lincoln and under a plain reading of the law, Congress clearly intended the CEA to prohibit any event contract involving gaming as contrary to the public interest.

Further, it is questionable whether a sporting event can reasonably meet the definition of "commodities" under the CEA. For that reason, it is questionable whether such activity is within the scope of either the CEA or the CFTC's regulatory jurisdiction. *See* 7 U.S.C. § 2(a)(1)(A) ("The Commission shall have exclusive jurisdiction . . . with respect to accounts, agreements..., and transactions involving swaps or contracts of sale of a

commodity for future delivery . . . ."); 7 U.S.C. § 1a(9) (defining the term "commodity" to mean certain tangible goods like wheat, cotton, or corn); *id.* § 1a(19)(iv) (defining the term "excluded commodity" to mean, among other things, "an occurrence, extent of an occurrence, or contingency . . . that is . . . associated with financial, commercial, or economic consequences."). Sporting events simply are not "associated with financial, commercial, or economic consequences," and, therefore, so-called Sports Contracts are not within the bounds of activity governed by the CEA. Betting on the outcome of sporting events is gambling and comes within the jurisdiction of state and tribal governments.

The CFTC's Rulemaking Cannot Amend Federal Law

The federal Wire Act, 18 U.S.C. § 1084, provides that no one may "knowingly use a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers . . . on any sporting event or contest . . . ." *Id.*, § 1084(a). The federal courts and the U.S. Department of Justice ("DOJ") interpret the Wire Act to prohibit interstate online sports betting. Particularly pertinent from our perspective, these so-called Sports Contracts also offend IGRA by facilitating wagering on the outcome of sports events, a Class III gaming activity. Class III gaming activities on Indian lands are only lawful where such activity is: (1) authorized by a tribal ordinance or resolution; (2) located in a state where such gaming is permitted; and (3) conducted pursuant to a Tribal-State Gaming Compact. 25 U.S.C. § 2710(d)(1).

It is black letter law that an agency's rulemaking process cannot be used to amend federal statutory law. *See Virginia v. EPA*, 597 U.S. 697, 142 S. Ct. 2587 (2022); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 120 S. Ct. 1291 (2000); and *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 134 S. Ct. 2427 (2014). Any revision to the CFTC regulations authorizing prediction markets to offer sports events contracts runs afoul of the plain text of the CEA and its implementing regulations and disregards the plain meaning of

the term "gaming," generally, and the term "sports betting," [1] specifically, as those terms are commonly understood.

When the CFTC adopted its regulation at 17 C.F.R. § 40.11(a)(1) prohibiting event contracts that "involve . . . gaming," the CFTC correctly made a Final Determination that those contracts are contrary to the public interest under 7 U.S.C. § 7a-2(c)(5)(C)(i). *See* 7 U.S.C. § 7a-2(c)(5)(C)(ii) ("No agreement, contract, or transaction determined by the [CFTC] to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading through a registered entity."). While such contracts clearly are contrary to the public interest, if an event contract "involves . . . gaming[,]" that contract is categorically prohibited and no further public interest determination by the CFTC is necessary under the plain meaning of the terms of the CEA and its implementing regulations.

Other than efforts by certain commercial entities to abuse the availability of event contracts under the CEA, by offering sports betting disguised as derivatives, swaps, or legitimate event contracts, nothing in the law has changed. Sports betting is what it is: gambling. Interstate or "federal" sports betting is illegal in the United States. Unauthorized and unregulated gambling is contrary to public policy and attempts to characterize it as an "investment" on the financial markets constitutes a fraud upon the public.

The Public Interest Requires Regulation of Gambling

Gambling is associated with certain vulnerabilities, including potential social harms and is susceptible to abusive and wrongful practices by unscrupulous actors. This is precisely why Congress sought to exclude gaming under the CEA as a matter of public interest. On the other hand, gaming is a form of entertainment enjoyed by many Americans who find it fun and exciting. The revenues it produces, where permitted, flow directly

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

and/or indirectly to tribal and state governments to be used for vital public purposes. Determining whether to authorize gaming activities is a question of public policy historically left to state and tribal governments which weigh and balance the costs and benefits of allowing gaming and determine the scope of permissible gaming activities and the applicable rules.

Most states legally permit some form of gaming, though two prohibit it outright as a matter of criminal law. With the enactment of IGRA in 1988, most tribal governments have adopted gaming laws authorizing gaming activities within tribal jurisdictions. Of these, many tribes, like Cowlitz, have entered gaming compacts with state governments pursuant to IGRA, which allow for what is statutorily referred to as Class III gaming activities. 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. Through such gaming compacts, tribal and state governments negotiate not only the scope of gaming permitted, but the regulatory structure and standards that apply to such gaming activities.

In weighing and balancing the costs and benefits of gaming, the key consideration is the public interest and how best to protect it from the acknowledged harms and vulnerabilities associated with gambling. Tribal governments, like state governments, have invested heavily in regulatory systems to monitor, audit, and enforce compliance with laws, regulations, and internal control systems as a means not only of safeguarding tribal gaming revenues, but to prevent unlawful practices harmful to the public interest, including safeguards designed to protect consumers. Licensing and background requirements are designed to prevent infiltration by criminal elements. Gaming regulations go beyond operational procedures—they address gambling addiction, problem gaming, the adjudication of patron complaints, and the prevention of cheating and money laundering. Such rules, regulations, processes, and procedures are designed to facilitate integrity in the conduct of gaming, mitigate potential threats and harms, and to protect the public interest through the deployment of robust regulation.

Indian Country has worked hard to build a tribal gaming industry that is not only prosperous, but that also plays by the rules; acknowledges, respects, and protects the public interest; and actively shields itself from criminal infiltration, criminal activities, and money laundering through strict regulation. Sports betting on the futures market is vulnerable to all the harms commonly associated with gambling with virtually none of the protections provided under tribal, federal (IGRA), and state regulatory frameworks.

The anonymity associated with trading on the predictions market alone makes it vulnerable to money laundering and corruption. Add to that the self-certification allowed to registered entities and the lack of a regulatory framework specific to gaming, and the potential for corrupt practices is obvious. Already there have been numerous scandals revealing the vulnerabilities of the predictions markets to abuse, corruption, and corrupt practices from insider trading to market manipulation to outright fraud. When it comes to wagering, there is a cogent and longstanding public policy basis for excluding gambling activities from listing and trading on the predictions markets. Gambling is not a financial investment and calling it something else does not change its fundamental character nor its need for a strong, active regulatory framework to protect its integrity.

Proponents of the use of so-called "Sports Contracts" under the auspices of the CEA seek to conduct sports betting free of the costs and responsibilities of a responsible, well-regulated legal framework. Sports betting dressed up as investments on the prediction markets under the CEA is a fiction fabricated by commercial interests as an end run around responsible state and tribal regulation of sports betting activities and a means to by-pass public policies restricting, regulating, or prohibiting sports betting. Furthermore, Sports Contracts directly violate the CEA and the plain language of the CFTC's implementing regulations because they involve gaming, violate state, tribal, and federal laws, and are contrary to the public interest. For these reasons, the Tribe opposes any change to the CFTC's regulations that would permit events contracts to facilitate gaming activities under the CEA.

To adopt a regulation that classifies sports betting as a derivative, event contract, swap or other financial instrument not only stretches the reach of the CFTC far beyond what Congress intended in the CEA, but it also would undermine federal Indian law and policy, encroach upon the legally protected rights and interests of American Indian and Alaska Native tribal governments, and encroach upon the inherent sovereignty of tribal governments. It would constitute an improper intrusion on the sovereignty of tribal governments, and infringe upon state sovereignty as well.

Conclusion

The Cowlitz Indian Tribe strongly urges the CFTC to affirm its current interpretation of the CEA and clarify that sports-related events contracts are prohibited from being listed or made available for clearing or trading. Trading of Sports Contracts is gambling. It violates state, tribal, and federal law and is contrary to public policy. Allowing Sports Contracts 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. This right is fundamental to the authority of state and tribal governments to regulate or even prohibit activities that they deem contrary to the public interest.

We urge the CFTC to maintain and enforce the CEA Special Rule and its regulations and affirm that sports contracts are prohibited from listing and trading on financial markets pursuant to the CEA.

Sincerely,

COWLITZ INDIAN TRIBE

Bill Iyall (Apr 30, 2026 16:00:28 PDT)

William B. Iyall, P.E.
Tribal Chairman