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Submitted via the Federal eRulemaking Portal and SEC Internet Comment Form

Re: Comments by the California Nations Indian Gaming Association in Response to Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, CFTC RIN 3038-AF71; SEC File No. S7-2026-21; 91 Fed. Reg. 37873 (June 24, 2026)

Dear Secretary Kirkpatrick and Secretary Countryman:

The California Nations Indian Gaming Association (“CNIGA”) submits these comments in response to the Commodity Futures Trading Commission's ("CFTC") and Securities and Exchange Commission's ("SEC") (collectively, the "Commissions") Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, CFTC RIN 3038-AF71; SEC File No. S7-2026-21; 91 Fed. Reg. 37873 (June 24, 2026) ("RFC"). CNIGA is a non-profit comprised of sovereign, federally recognized Indian Tribes that regulate and conduct gaming under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701, *et seq*. and its tribal gaming laws. CNIGA’s member Tribes have a direct sovereign interest in the RFC because of its potential impacts on IGRA and Indian gaming in general, which is a vital source of funding for our member Tribes’ respective governments. The CFTC's recent erroneous interpretation of "swap" as applied to "prediction markets" known as "sports event contracts" infringes on Tribal sovereignty. It violates IGRA by enabling gambling on sovereign Indian lands. This unlawful activity is also causing immediate and significant economic harm to our member Tribes by reducing Tribal gaming revenue that supports essential governmental services, including health care, education, housing, elder and youth services, and public safety for Tribal citizens.

The Commissions must reject any overbroad reading of "swap," "security-based swap" ("SBS"), or "mixed swap" that would encompass sports betting or any other forms of gaming that would enable federally regulated derivatives exchanges to function as online gambling platforms.

Further, the Commissions should take the following actions to uphold and comply with the law:

1. Clarify that "swaps," "security-based swaps," and "mixed swaps" do not include contracts that involve gaming, including sports wagering or other forms of gambling;
2. Clarify that swaps require bona fide financial, economic, or commercial risk, including legitimate hedging or price-discovery functions, and that market-implied odds, public sentiment, or wagering probabilities generated by gambling activity do not constitute the type of price discovery protected by the Commodity Exchange Act ("CEA");
3. Clarify that the outcome of a sporting event, game, contest, or athletic performance is not an event or contingency "associated with a potential financial, economic, or commercial consequence" within the meaning of CEA, 7 U.S.C. § 1a(47)(A);
4. Clarify that attenuated downstream economic effects from gaming outcomes, such as effects on hotels, restaurants, advertising, media, vendors, franchises, or local economic activity, cannot satisfy the CEA's requirement that a swap be tied to a financial, economic, or commercial consequence;
5. Confirm that the CEA does not preempt, repeal, or displace IGRA, Tribal gambling laws, Tribal-State gaming compacts, or the sovereign authority of Tribal gaming regulators to regulate gaming on Indian lands; and
6. Engage in meaningful government-to-government consultation with Indian Tribes in accordance with Executive Order 13175 and the federal Indian trust responsibility before taking any action that may impair Tribal sovereignty, reduce Tribal gaming revenue, or conflict with Class III Tribal-State gaming compacts.

I. The Problem: Prediction Market Gambling

Congress enacted Title VII of the Dodd-Frank Act in 2010 to establish a comprehensive federal framework for regulating the previously opaque over-the-counter derivatives market that largely gave rise to the 2008 financial crisis. Title VII of the Dodd-Frank Act amended the CEA and the Securities Exchange Act of 1934 ("SEA") to establish a comprehensive regulatory framework for swaps and SBS "to reduce risk, increase transparency, and promote market integrity within the financial system."[1] Title VII divided regulatory responsibility between the CFTC and SEC: the CFTC generally administers the CEA's regulation of "swaps," while the SEC regulates SBSs, and products possessing material characteristics of both are treated as "mixed swaps" and are regulated concurrently by both Commissions. The Commissions' 2012 Product Definitions Adopting Release ("Adopting Release") further interpreted those statutory

[1] Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 Fed. Reg. 41398, 41398 (July 14, 2011).

categories and the jurisdictional boundary between them.[2] Nothing in Title VII or the Adopting Release suggests that Congress intended the new definitions of these financial instruments to convert ordinary sports wagers or any other forms of gambling into federally regulated financial derivatives or to authorize nationwide gambling through derivatives exchanges.

The CEA defines "swap" to include any agreement, contract or transaction that satisfies one of six prongs, subject to certain exceptions.[3] One of the exceptions is for an SBS, which is defined to include any swap that is based on: an index that is a narrow-based security index ("NBSI"), including any interest therein or on the value thereof ("SBS NBSI Prong"); a single security or loan, including any interest therein or on the value thereof ("SBS Single Security Prong"); or the occurrence, nonoccurrence or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in an NBSI, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer ("SBS Event Contract Prong").[4] Swaps on broad-based security indexes ("BBSIs") are generally within the CFTC's jurisdiction. There are also "mixed swaps" that contain elements of both a swap and an SBS and are under the concurrent jurisdiction of both the SEC and CFTC.[5]

The CFTC historically recognized the distinction between derivatives regulation and gambling regulation. In regulations adopted in 2011 following Dodd-Frank,[6] the CFTC prohibited registered entities from listing event contracts that involve, relate to, or reference "gaming" or activities unlawful under State or federal law.[7] In 2024, the CFTC proposed to strengthen the existing categorical prohibition against event contracts that involve "gaming," and emphasized that it "is not a gaming regulator" and lacks both the statutory mandate and institutional expertise to oversee gambling-related activity. Permitting such contracts to trade on CFTC-regulated markets would infringe on tribal sovereignty and allow "bets or wagers on contests or games" to evade established legal regimes and consumer protections governing gambling.[8]

Then in December 2024, the North American Derivatives Exchange ("Crypto.com") self-certified event contracts that replicate sports wagers, thereby allowing consumers across the United States to participate in sports betting, including in jurisdictions where online sports betting is illegal and within Tribal sovereign jurisdictions.[9] Other prediction-market platforms quickly replicated this model, and by December 2025 commercial sportsbooks including DraftKings, FanDuel, and Fanatics also began operating sports wagering event contracts through

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[2] Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48208 (Aug. 13, 2012).
[3] 7 U.S.C. § 1a(47).
[4] 7 U.S.C. § 1a(47)(B)(x); 15 U.S.C. § 78c(a)(68).
[5] 7 U.S.C. § 1a(47)(D); 15 U.S.C. § 78c(a)(68)(D).
[6] *See* Provisions Common to Registered Entities, 76 Fed. Reg. 44776 (July 27, 2011).
[7] *See* 17 C.F.R. § 40.11(a)(1).
[8] Event Contracts, 89 Fed. Reg. 48968, 48982–83 (June 10, 2024).
[9] PYMNTS, *Crypto.com Debuts Sports Event Trading Product* (Dec. 23, 2024), https://www.pymnts.com/cryptocurrency/2024/crypto-com-debuts-sports-event-trading-product/.

federally regulated exchanges in jurisdictions where they cannot lawfully operate under state or tribal law.[10]

On February 4, 2026, the CFTC withdrew its 2024 proposal to affirm its categorical prohibition against sports event contracts involving gaming.[11] Then, on June 12, 2026, the CFTC proposed new regulations that are clearly designed to allow event contracts that replicate sports betting and open the door for the CFTC to claim jurisdiction over other forms of gambling, including poker.[12]

As a result, gaming-related event contracts listed and traded on CFTC-regulated exchanges are driving an unprecedented nationwide gambling expansion. According to recent estimates, annual prediction-market trading volume was between $51 billion and $64 billion in 2025; that volume is expected to increase to approximately $240 billion in 2026 and is projected to reach $1 trillion by 2030.[13] This wagering consists primarily of sports event contracts that replicate online sports betting for retail consumers,[14] but will likely expand to other forms of traditional gaming.[15]

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[10] *See DraftKings Debuts Predictions App, Entering Prediction Markets*, DraftKings (Dec. 19, 2025), https://www.draftkings.com/draftkings-debuts-predictions-app-entering-prediction-markets ("Event contracts will be available across 38 states, expanding the Company's total addressable market, including sports event contracts in certain states such as California, Florida, Georgia and Texas."); *FanDuel and CME Group Launch FanDuel Predicts to Give Customers the Power to Trade on Tomorrow's Headlines*, CME Group (Dec. 22, 2025), https://www.cmegroup.com/media-room/press-releases/2025/12/22/fanduel-and-cme-group-launch-fanduel-predicts.html ("sports contracts will be available across baseball, basketball, football, and hockey in states where online sports betting is not yet legal"); *Fanatics Launches Fanatics Markets, the First Prediction Market at the Intersection of Sports, Finance and Culture*, Fanatics (Dec. 3, 2025), https://investor.fanatics.com/news/news-details/2025/Fanatics-Launches-Fanatics-Markets-the-First-Prediction-Market-at-the-Intersection-of-Sports-Finance-and-Culture--2025-g7suBK0gon/default.aspx ("The Fanatics Markets app will launch today in Alaska, Delaware, Hawaii, Idaho, Maine, New Hampshire, North Dakota, Rhode Island, South Dakota and Utah.").

[11] David Pokima, *CFTC Formally Withdraws Biden-Era Proposal to Ban Sports and Political Prediction Markets*, Yahoo! Finance (Feb. 5, 2026), https://finance.yahoo.com/news/cftc-formally-withdraws-biden-era-083454212.html.

[12] Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35806 (proposed June 12, 2026).

[13] *See* Will Canny, *Prediction Market Volumes to Hit $1 Trillion by 2030 With Robinhood, Coinbase as Key Players, Bernstein Says*, CoinDesk (Apr. 15, 2026), https://www.coindesk.com/markets/2026/04/15/prediction-market-volumes-to-hit-usd1-trillion-by-2030-with-robinhood-coinbase-as-key-players-bernstein-says (reporting Bernstein's estimate that prediction-market volume reached $51 billion in 2025, is on pace to reach approximately $240 billion in 2026, and could reach approximately $1 trillion by 2030); Vince Dioquino, *Prediction Markets Grew 4X to $63.5B in 2025, But Risk Structural Strain: CertiK*, Yahoo! Finance (Feb. 10, 2026), https://finance.yahoo.com/news/prediction-markets-grew-4x-63-140103455.html (reporting CertiK's estimate that annual prediction-market volume increased from $15.8 billion in 2024 to approximately $63.5 billion in 2025).

[14] As of February 2026, sports event contracts accounted for approximately 87% of Kalshi's $39.7 billion in trailing-year trading volume. *See* Rena S. Miller & Karl E. Schneider, *Prediction Markets: Policy Issues for Congress*, CRS Report No. IF13187 (Mar. 20, 2026), https://www.congress.gov/crs-product/IF13187.

[15] *See* Jeff Edelstein, *It Seems the COO of Betr Just Built a Slot Machine on Kalshi*, InGame (Jun. 17, 2026), https://www.ingame.com/betr-coo-slot-kalshi/. According to a post on X, Alex Ursa, the COO of Betr, stated that he built a slot machine "on top of [Kalshi's] APIs" by combining the purchase and sale of multiple contracts in a

This rapid expansion of gambling is occurring in direct conflict with the CFTC's Regulation at 17 C.F.R. § 40.11(a)(1), which is still currently the law and categorically prohibits exchanges from listing or trading event contracts that involve, relate to, or reference gaming. Specifically, 17 C.F.R. § 40.11(a)(1) provides that "[a] registered entity shall not list for trading" any "contract" or "swap" that "involves, relates to, or references . . . gaming." Several federal district courts have recently expressly confirmed that § 40.11(a)(1) prohibits event contracts involving gaming.[16] In *Hendrick*, the court noted that sports-related event contracts may be characterized in various ways, "but at bottom, they are sports wagers," and "everyone who sees them knows it."[17] In *Schuler*, the court held:

> This Court does not endeavor to explain why the CFTC has not exercised its authority under the Special Rule or § 40.11(a) with respect to the sports-event contracts. But the agency's inaction is not proof that the sports-event contracts are regulated by or permissible under the CEA—and the Court has concluded they are not.[18]

The CFTC itself acknowledged § 40.11(a)'s broad prohibition on event contracts involving gaming in a recent litigation filing.[19] And though the CFTC has failed to enforce that broad prohibition,[20] "the agency's inaction is not proof that the sports-event contracts are regulated by or permissible under the CEA—*and . . . they are not*."[21]

Moreover, the proliferation of gambling on CFTC-regulated exchanges has occurred without any congressional mandate. In fact, the legislative history regarding the Dodd-Frank amendments to the CEA is clear that Congress never intended for federal derivatives exchanges to engage in sports betting or other forms of gambling. However, as discussed further below, the

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particular way. *Id.* Ursa's post on X also indicated that he built a roulette version the same way using Kalshi's platform. *Id.*

[16] *See KalshiEX, LLC v. Hendrick*, 817 F. Supp. 3d 1014, 1030 (D. Nev. 2025), *appeal filed*, No. 25-7516 (9th Cir. Nov. 25, 2025) ("[T]he CFTC has prohibited DCMs from listing contracts that involve gaming"); *see also KalshiEX, LLC v. Schuler*, No. 2:25-cv-1165, 2026 WL 657004, at *9 (S.D. Ohio Mar. 9, 2026), *appeal filed*, No. 26-3196 (6th Cir.) ("[T]he CFTC prohibits DCMs from listing any event contract 'that involves, relates to, or references . . . gaming[.]'"); *Ho-Chunk Nation v. Kalshi Inc.*, No. 3:25-cv-00698, 2026 WL 1284077, at *3 (W.D. Wis. May 11, 2026) ("By rulemaking, the CFTC has also concluded that event contracts involving enumerated activities are contrary to the public interest and, therefore, DCMs may not list them.").

[17] *Hendrick*, 817 F. Supp. 3d at 1029.

[18] *Schuler*, 2026 WL 657004, at *9.

[19] *See* Mem. of Law in Supp. of Pl.'s Mot. for Prelim. Inj. at 15–16, ECF No. 35, *CFTC v. New York*, No. 1:26-cv-03404 (S.D.N.Y. May 1, 2026) (acknowledging that "Rule 40.11 implements the Special Rule by *prohibiting DCMs from offering event contracts that involve[], relate[] to, or reference[] . . . gaming*." (emphasis added)).

[20] 17 C.F.R. § 40.11(a)(1) ("A registered entity *shall not* list for trading or accept for clearing . . . any agreement, contract, transaction, or swap based upon an excluded commodity . . . that involves, relates to, or references terrorism, assassination, war, *gaming*, or an activity that is unlawful under any State or Federal law." (emphasis added)).

[21] *KalshiEX LLC v. Williams*, 1:25-cv-08846, 2026 WL 2017466, at *9 (S.D.N.Y. Jul. 13, 2026), *appeal filed*, No. 26-1835 (2d Cir.) (emphasis added); *see also Schuler*, 2026 WL 657004, at *9 (same).

CFTC's claim of exclusive jurisdiction over sports betting (and potentially other forms of gaming) is an overreach of agency power that the major questions doctrine forbids.[22]

The CFTC's claims of exclusive jurisdiction over sports betting rest on the mistaken assumption that these gambling instruments qualify as "swaps" within the meaning of the CEA. To the contrary, sports event contracts are not swaps, because they lack any bona fide financial, economic, or commercial consequences, and they fail to serve any legitimate hedging, risk-management, or price-discovery purposes.[23] The Commissions must reject the CFTC's recent erroneous interpretation of "swap" that is enabling the unlawful proliferation of prediction market gambling.

II. Tribes Have a Direct Interest in the RFC.

Congress enacted IGRA in 1988 to provide a statutory basis for Indian gaming "to promote tribal economic development, tribal self-sufficiency, and strong tribal governments," and confirmed that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands."[24] IGRA requires gaming revenue to be used to fund Tribal government operations and programs, to promote economic development, and to support the general welfare of Tribes.[25] The statute established the National Indian Gaming Commission ("NIGC") as an independent federal regulatory authority "to protect such gaming as a means of generating tribal revenue."[26]

IGRA divides gaming into three classes, and prescribes a distinct regulatory regime for each. Class III gaming—which includes casino games, such as slot machines and banked card games, and, importantly here, sports betting—may be conducted on Indian lands only when it is authorized by tribal ordinance, located in a State that permits such gaming, and conducted in conformance with a Tribal-State compact approved by the Secretary of the Interior.[27] IGRA authorizes Tribes and States to negotiate class III gaming compacts on a government-to-government basis, and IGRA and the NIGC's regulations recognize that Tribes and States may allocate jurisdiction to govern online sports betting and internet gaming pursuant to the negotiated terms of a compact.[28] Many Tribes have negotiated for sports betting exclusivity in class III gaming compacts and agreed to share revenue with States in reliance on that exclusivity.

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[22] *See West Virginia v. EPA*, 597 U.S. 697, 723–24 (2022).
[23] *See* 7 U.S.C. § 1a(47)(A)(ii) (defining "swap" to include certain event-contingent agreements only where the event or contingency is "associated with a potential financial, economic, or commercial consequence"); *id.* § 1a(47)(A)(iii) (covering agreements that transfer financial risk associated with future changes in financial or economic interests or property); *id.* § 5(a)–(b) (recognizing CEA-regulated transactions as serving the public interest by providing a means for "managing and assuming price risks, discovering prices, or disseminating pricing information"); Adopting Release, 77 Fed. Reg. at 48213 (Aug. 13, 2012) (explaining that the Commissions sought to include agreements, contracts, and transactions only where necessary and appropriate to further the purposes of Title VII, and to exclude transactions where regulation would not serve those statutory purposes).
[24] 25 U.S.C §§ 2701(5), 2702.
[25] *Id.* § 2710(b)(2)(B).
[26] *Id.* § 2702(3).
[27] *Id*. § 2710(d)(1); 25 C.F.R. § 502.4.
[28] *See W. Flagler Assocs., Ltd. v. Haaland*, 71 F.4th 1059, 1061–62, 1066 (D.C. Cir. 2023), *cert. denied*, 144 S. Ct. 2671 (2024); 25 C.F.R. § 293.26.

IGRA's framework has made Indian gaming the most successful tribal economic-development initiative in U.S. history, substantially improving economic conditions for tribal citizens on Indian reservations.

All forms of class III gaming—including sports betting[29]—occurring on Indian lands are subject to regulation under IGRA's system of cooperative federalism, in which Tribes, States, and the federal government each play a role in the oversight of such gaming.[30] Critically, under this system, Congress expressly determined that "[c]lass III gaming activities shall be lawful on Indian lands *only if* such activities are[,]" among other things, "authorized by [tribal law and] . . . conducted in conformance with a Tribal-State compact."[31]

Prediction market operators are offering contracts that are virtually indistinguishable from traditional sportsbook wagers nationwide—including on Indian lands—without Tribal consent. Prediction market gambling poses an existential threat to Tribal economies. It diminishes the value of bargained-for exclusivity guaranteed in Tribal-State compacts that have been approved under the IGRA, and threatens to devastate Tribal gaming revenues that support Tribal governments and communities. The RFC thus directly affects Tribes' sovereign and economic interests.

III. Jurisdictional and Statutory Objections

A. The CFTC's Interpretation of Swap Violates the IGRA.

Sports event contracts accessible on Indian lands interfere with the sovereign authority of Tribes to regulate gaming within their territories. That authority is an inherent attribute of Tribal sovereignty that Congress recognized and protected through IGRA. By allowing sports betting and other gambling contracts to be offered through mobile applications and websites accessible on Indian lands without Tribal authorization, prediction market gambling circumvents Tribal sovereignty and the IGRA's express restrictions on class III gaming on Indian lands.

Sports betting is class III gaming under IGRA and the NIGC's regulations.[32] Class III gaming on Indian lands is lawful only if it is: (1) authorized by a Tribal ordinance or resolution; (2) located in a State that permits such gaming; and (3) conducted in conformance with a Tribal-State compact approved by the Secretary of the Interior.[33] Sports event contracts accessible on Indian lands violate IGRA because they constitute sports betting that is not authorized by tribal gaming ordinance or conducted pursuant to a Tribal-State gaming ordinance.[34]

The Commissions should not permit prediction market operators to do what IGRA directly prohibits, namely, offering sports event contracts on Indian lands—without Tribal

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[29] 25 C.F.R. § 502.4.
[30] *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1032 (9th Cir. 2022).
[31] 25 U.S.C. § 2710(d)(1) (emphasis added).
[32] 25 C.F.R. § 502.4.
[33] 25 U.S.C. § 2710(d)(1); 25 C.F.R. § 502.4.
[34] See *Ho-Chunk Nation*, 2026 WL 1284077, at *4, *7–10.

consent, without compact authorization, and without oversight by a Tribe's gaming commission or the NIGC. Such contracts are unlawful under IGRA and contrary to the public interest under the CEA. The Commissions should make clear that the term "swap" does not include gaming-related event contracts, that no gaming-related event contract may be offered or made accessible, and that such contracts certainly may not be offered on Indian lands without the affected Tribe's consent.

Congress did not authorize the Commissions to displace IGRA, override Tribal-State gaming compacts, or permit sports betting accessible on Indian lands without Tribal consent. Rather, the CEA and IGRA can easily be harmonized: the CEA governs derivatives markets serving legitimate commercial risk-management and price-discovery functions, while IGRA governs gaming on Indian lands. Congress did not enact the CEA to silently authorize a financial-market regulator to approve the very sports betting that IGRA—as well as other federal, state, and tribal laws—specifically regulates. Further, none of the language in the CEA demonstrates that Congress intended to override its "stated, unambiguous intent in passing IGRA: to ensure that 'Indian tribes have the *exclusive right to regulate* gaming activity on Indian lands.'"[35]

That conclusion is reinforced by the doctrine disfavoring implied repeals. Courts apply a "strong presumption that repeals by implication are disfavored and that Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute."[36] Congress's intent to repeal or displace an existing statutory framework must be "clear and manifest."[37] No such clear and manifest intent exists here. In fact, as discussed further below, Congress clearly and manifestly expressed the *opposite* intent, and enacted the Special Rule specifically to *prevent* event contracts from functioning as or facilitating gambling.

Nor may the Commissions construe the CEA to alter the fundamental structure of Indian gaming regulation through silence or implication. Courts presume that Congress does not hide sweeping changes to major regulatory schemes in vague or ancillary statutory language—Congress does not, as the Supreme Court has put it, "hide elephants in mouseholes."[38] That principle has special force here, where the CFTC's recent interpretation of "swap" purports to authorize sports betting on Indian lands and thereby intrude on Tribal regulatory authority without any clear statement from Congress. As the Western District of Wisconsin recognized in *Ho-Chunk Nation*, accepting that theory would have a "seismic impact on Indian tribes' authority to regulate gaming on tribal land."[39]

Settled canons of federal Indian law independently require the same result. Ambiguities in federal statutes affecting Tribal sovereignty must be resolved in favor of Tribes, and federal statutes should not be construed to abrogate Tribal rights absent a clear and unmistakable

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[35] *Ho-Chunk Nation*, 2026 WL 1284077, at *7, *9–10 (quoting 25 U.S.C. § 2701(5)).
[36] *Epic Systems Corp. v. Lewis*, 584 U.S. 497, 510 (2018).
[37] *Id.*
[38] *Id.* at 515.
[39] *Ho-Chunk Nation*, 2026 WL 1284077, at *10.

statement from Congress.[40] The Commissions should therefore resolve any interpretive doubt in favor of preserving IGRA, Tribal-State compacts, Tribal regulatory authority, and the federal Indian gaming framework—not in favor of a construction that would nullify them by implication. In short, Congress enacted IGRA to recognize Tribal sovereignty over gaming on Indian lands, and the Commissions should not interpret "swap" to dismantle that framework in violation of the statute.

B. The CFTC's Interpretation of "Swap" Violates the CEA.

The CEA defines "swap" as "any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery . . . that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence."[41] Sports event contracts simply do not fall under this definition.

First, looking at the plain language of the CEA, sports event contracts are not dependent on the *occurrence*, *nonoccurrence, or extent of the occurrence* of a sports event—i.e., whether the sports event occurs—but rather on the *outcome* of the sports event (or parts thereof)—i.e., which team wins. The Nevada District Court held that sports bets are not swaps for precisely this reason.[42] The Southern District of Ohio also rejected this theory because "absurd results would flow from defining a 'swap' to include a sports-event contract."[43] The Western District of Wisconsin similarly declined to read the CEA as impliedly repealing IGRA, in part, for this very reason.[44]

Second, other courts have rejected a reading of the term "event" as used in 7 U.S.C. § 1a(47)(A)(ii) to mean (and therefore allow DCMs to offer wagers on) "essentially anything that happens" because "[t]here would be no difference between *event* and *occurrence*, and the statute's other inclusive definitions of *swap* would serve little to no purpose as they would be subsumed by the all-encompassing *event* clause."[45] As one court reasoned, the term "event" means "a happening 'of some significance that took place or will take place, in a certain location, during a particular interval of time, *such as a particular sporting event*,'" but not "[i]ndividual actions and scores in individual sporting events."[46]

Third, there is no "financial, commercial, or economic consequence" associated with sports event contracts. Aside from whether the purchaser wins or loses their bet, sports event contracts have no direct financial consequences for the purchaser. To constitute a swap, the

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40 *See Bryan v. Itasca Cnty.*, 426 U.S. 373, 392 (1976).
41 7 U.S.C. § 1a(47)(A)(ii).
42 *Hendrick*, 817 F. Supp. 3d at 1023.
43 *Schuler*, 2026 WL 657004, at *6.
44 *See Ho-Chunk Nation*, 2026 WL 1284077, at *10 n.5.
45 *QCX LLC v. Nessel*, No. 1:26-cv-00710, 2026 WL 1166362, at *2 (W.D. Mich. Mar. 10, 2026).
46 *Id.* (quoting *N. Am. Derivatives Exch., Inc. v. Nev. Gaming Control Bd.* ("Crypto.com"), 815 F. Supp. 3d 1169, 1183 (D. Nev. 2025)) (emphasis added).

underlying event itself "must be inherently associated with a potential financial consequence."[47] "[E]xternalities like whether people bet on the event or contingency, or whether the event's occurrence or nonoccurrence causes downstream financial consequences, are not sufficient."[48] Without this limiting principle, *everything* would constitute a swap, which is clearly an absurd result contrary to Congress's intent. As the Western District of Michigan recently held,

> *Anything* can potentially have economic ramifications given enough attenuation and happenstance. Granted, the word "associated" *can* include the most remote of attenuated connections-upon-connections. But as the Supreme Court explained when interpreting the similar language of "relate to," reading the text "to extend to the furthest stretch of its indeterminacy" would "be to read Congress's words of limitation as mere sham" because "really, universally, relations stop nowhere." The Court rejected the idea that the provision at issue could imply chains of "infinite relations" or "infinite connections" and concluded that it had to "go beyond the unhelpful text and the frustrating difficulty of defining its key term" and "look instead to the objectives" of the statute "as a guide to [its] scope."[49]

In the CEA, Congress defined the term "swap" in a particular context. "If that context is ignored, the definition of the term 'swap' becomes so broad that it sweeps in any agreement or transaction dependent on anything happening that could conceivably result in any degree of financial consequence for anyone. This would intrude not only on the province of state gambling law but also contract law (service contracts), property law (mortgages), and family law (prenuptial agreements), among others."[50]

Finally, the CEA's own text forecloses the broad reading. The provision granting the CFTC jurisdiction over transactions involving swaps, 7 U.S.C. § 2(a)(1)(A), expressly provides that nothing in that section shall supersede or limit the jurisdiction conferred on other regulatory authorities under the laws of the United States or of any State. Reading "swap" broadly enough to capture sports betting would do exactly what that clause forbids—displace the long-recognized authority of States and Tribes to regulate sports betting. If all sports-betting contracts were swaps, then all sports betting would have to be conducted on a DCM[51]—a sea change Congress never intended. Sports event contracts are not swaps; they are wagers on contingent outcomes, and the statute does not permit their recharacterization as derivatives. In sum, the

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[47] *Hendrick*, 817 F. Supp. 3d at 1030–31; *see also QCX LLC*, 2026 WL 1166362, at *3 ("Reading *associated with* to require an inherent connection to those consequences rather than a downstream, attenuated consequence reins in the potential chains of association to infinity." (emphasis in original)).
[48] *Hendrick*, 817 F. Supp. 3d at 1028; *see also QCX LLC*, 2026 WL 1166362, at *3.
[49] *QCX LLC v. Nessel*, No. 1:26-cv-00710, 2026 WL 1895958, at *3 (W.D. Mich. June 17, 2026) (quoting *N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655–56 (1995)).
[50] *Id.* at *6.
[51] *See Crypto.com*, 815 F. Supp. 3d at 1185.

CFTC's interpretation of "swap" to encompass sports betting and other forms of gambling violates the CEA.

C. Congress Never Intended for "Swaps" to Encompass Sports Betting or Other Forms of Gambling.

The text and legislative history of the 2010 CEA amendments confirm that the CFTC was not established to regulate sports betting, let alone to serve as the nation's sole sports-betting regulator. The CFTC has said as much itself.[52] As it explained in 2024, the CFTC is not a gaming regulator and historically does not believe it has the statutory mandate or the specialized experience appropriate to oversee gambling, or that Congress intended the CFTC to exercise its jurisdiction or expend its resources in that manner.[53]

The legislative history of the Dodd-Frank amendments confirms that Congress intended to prevent gambling on federally regulated exchanges. Senator Blanche Lincoln, then-Chair of the Senate Committee on Agriculture, Nutrition, and Forestry and author of the Special Rule amendments, explained in a 2010 colloquy with Senator Dianne Feinstein that the legislation was meant to empower the CFTC "to prevent the creation of futures and swaps markets that would allow citizens to profit from devastating events and also *prevent gambling through futures markets*."[54] Senator Feinstein asked whether the CFTC would have the power 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."[55] Senator Lincoln confirmed that it would and identified sports betting as the paradigm case, explaining that the CFTC needs the power to prevent derivatives contracts that "exist predominantly to enable gambling through supposed 'event contracts,'" that "[i]t would be quite easy to construct an 'event contract' around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament," and that such contracts would serve no "real commercial purpose" and "would be used solely for gambling."[56] Congress thus understood, at the very moment it enacted the relevant provisions, that event contracts on sporting events should be prohibited.

The CFTC implemented that intent through 17 C.F.R. § 40.11(a)(1), which prohibits a registered entity from listing for trading any contract or swap that involves, relates to, or references gaming or an activity that is unlawful under any State or Federal law. At least one

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[52] Former CFTC leadership have also taken the position that the CFTC is not a gaming regulator, no less the nation's sole sports-betting regulator. In a recent letter responding to the CFTC's solicitation for comments on its proposed rule to amend its regulations at 17 C.F.R. § 40.11 to, among other things, effectively allow certain gaming-related contracts (including sports-betting contracts), Timothy G. Massad, former Chairman of the CFTC, wrote: "With this proposal on prediction markets, the agency seeks to justify a dramatic expansion of its jurisdiction that would make it the nation's regulator of sports betting and of betting and gambling more generally." *See* Letter from Timothy G. Massad, former CFTC Chairman, to Christopher Kirkpatrick, Secretary of the Commission, CFTC, at 1 (July 20, 2026), https://www.regulations.gov/comment/CFTC-2026-1189-0056. Mr. Massad, however, stated, "[t]his is a responsibility that was never given to it by Congress and one for which it is not suited." *Id.*

[53] *See* Event Contracts, 89 Fed. Reg. 48968, 48982–83 (June 10, 2024).

[54] 156 Cong. Rec. S5906 (daily ed. July 15, 2010) (statement of Sen. Lincoln) (emphasis added).

[55] *Id.*

[56] *Id.* at S5906–07.

federal court has recently confirmed that this regulation prohibits the listing of contracts involving gaming. In *Schuler*, the Southern District of Ohio explained that the CFTC's failure to enforce § 40.11(a)(1) against sports-event contracts does not make those contracts lawful, observing that agency inaction is not proof that the contracts are permissible under the CEA—and the court had concluded they are not.[57]

Courts have likewise rejected the premise that Congress silently made the CFTC a national gambling regulator. The Maryland District Court observed that it is highly unlikely Congress would have overridden state gambling laws without some indication in the text and legislative history that it intended to do so, and that the 2010 legislative history cuts against any finding that the CEA preempts state gaming laws.[58] Pointing to the same colloquy quoted above, the court concluded that the weight of the evidence strongly confirms that Congress did not intend the Special Rule to legalize sports betting nationwide or to displace the States' authority to regulate it.[59] The Nevada District Court put the point more bluntly, warning that reading the CEA to allow prediction markets to offer sports event contracts would upend the "traditional balance between state and federal regulation of gaming . . . with no expressed congressional intent to do so, with no federal gaming regulator to replace the States' regulatory infrastructures, and [be] contrary to the expressed congressional intent that CFTC exchanges should not become sports gambling venues."[60]

This conclusion follows from the CEA's basic purpose. The statute was enacted to regulate markets that serve actual hedging and financial functions—managing and assuming price risk, discovering prices, and disseminating pricing information through liquid, fair, and financially secure trading facilities.[61] The result of a sports game (or a part thereof) is not a commodity, a price index, a commercial input, an interest rate, a currency, or a financial benchmark. Sports event contracts do not manage price risk in the manner of futures, swaps, or other hedging instruments; they are not tied to any commercial exposure held by the participant, and they do not mitigate any pre-existing risk—they create risk for its own sake. A bettor who buys a contract on whether a team will win a particular game is not hedging anything; the participant is recreationally gambling. The Commissions should not interpret "swap," "security-based swap," or "mixed swap" to enable sports betting on federally regulated derivatives exchanges contrary to the intent of Congress.

D. The Major Questions Doctrine Prohibits the Commissions from Interpreting "Swap" to Effect a Sea Change in U.S. Gambling Regulation.

The CFTC's recent interpretation of "swap" threatens to displace long-standing, comprehensive Tribal and State gaming regulatory schemes, including Tribes' and States' cooperative regulatory schemes in Tribal-State gaming compacts, by purporting to place sports

[57] *Schuler*, 2026 WL 657004, at *9; *see also Williams*, 2026 WL 2017466, at *9.
[58] *KalshiEX LLC v. Martin*, 793 F. Supp. 3d 667, 683–84 (D. Md. 2025), *appeal filed*, No. 25-1892 (4th Cir.).
[59] *Id.* at 684.
[60] *Hendrick*, 817 F. Supp. 3d at 1029–30.
[61] *See* 7 U.S.C. § 5(a)–(b).

betting under the exclusive regulatory jurisdiction of the CFTC. The CFTC claims its authority to regulate sports betting arises from the 2010 amendments to the CEA that added "swaps" and "excluded commodities" to the statute at a time when online sports betting was understood to be prohibited by federal law. The significance of this claim and its potential disruption to sovereign stakeholders cannot be overstated. Under the Major Questions Doctrine, the CFTC must be able to identify "clear congressional authorization" to claim broad regulatory authority over "matters of great economic and political significance."[62] In other words, "something more than a merely plausible textual basis for the agency action is necessary."[63] Congress does not "use oblique or elliptical language to empower an agency to make a 'radical or fundamental change' to a statutory scheme."[64]

Sports betting is a matter of great economic and political significance that requires a clear statement from Congress before altering the regulatory framework. Gaming regulation has long been recognized as a core state police power.[65] The U.S. Supreme Court has also recognized that Tribes have inherent sovereign authority to regulate gaming on their Indian lands.[66] When Congress amended the CEA in 2010, sports betting was understood to be federally prohibited under the Professional and Amateur Sports Protection Act of 1992 ("PASPA"). That prohibition remained in place for almost another decade until the Supreme Court eventually held PASPA unconstitutional in 2018. In the years since, Tribes and States have made important policy choices regarding whether and how to authorize sports betting, and many have developed intricate regulatory frameworks to authorize and oversee legal sports betting while accounting for the distinct needs and policy priorities of their citizens. These carefully tailored regimes generate billions of dollars in taxes and governmental revenue, providing States and Tribes substantial resources to support their communities.[67] Other Tribes and States have chosen to prohibit sports betting within their sovereign jurisdictions.

The CFTC's recent interpretation of "swap" assumes that the 2010 CEA amendments were intended to override tribal, state, and other federal gaming laws as well as to legalize sports betting nationwide under the exclusive jurisdiction of the CFTC at a time when federal law was understood to broadly prohibit sports betting. This interpretation would require a "radical" and "fundamental" overhaul of IGRA, PASPA, and state gaming laws,[68] thus presenting a question of great "economic and political significance."[69] However, the CEA's text and legislative history

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[62] *West Virginia*, 597 U.S. at 721–23.
[63] *Id.* at 723.
[64] *Id.*
[65] *Murphy v. NCAA*, 584 U.S. 453, 474, 481–85 (2018).
[66] *Cabazon*, 480 U.S. at 207–14.
[67] *See, e.g.*, Dara Cohen, *Commercial Gaming Revenue Hits $78.7 Billion in 2025, Driving Record $18.1 Billion in Gaming Taxes Nationwide*, Am. Gaming Assoc. (Feb. 26, 2026) http://americangaming.org/commercial-gaming-revenue-hits-78-7-billion-in-2025-driving-record-18-1-billion-in-gaming-taxes-nationwide/.
[68] A substantial majority of sports event contract activity originates in states where online sports betting is otherwise unlawful—for example, California and Texas account for approximately 43% of all U.S. sports event contract volume. Jeff Edelstein, *So There's a Lot of Sports Betting Going On in California and Texas*, InGame (May 5, 2026), https://www.ingame.com/california-texas-prediction-market-volume/.
[69] *West Virginia*, 597 U.S. at 721, 723.

show that Congress intended the opposite; Congress actually wanted the CFTC to *prevent* gambling through derivatives markets,[70] not to become the nation's sports betting regulator. The CEA, as amended, expresses no "clear congressional authorization" for the CFTC to exercise such extraordinary and far-reaching authority. Nothing in the 2010 CEA amendments indicates that Congress intended to federalize the regulation of sports betting.

IV. Responses to RFC Questions

These comments do not respond individually to each question posted in the RFC. Instead, they address the threshold legal issue that should guide the Commissions' analysis of all the questions presented: whether contracts based on the outcome of sporting events, other gaming-related event contracts, or event contracts that function as or facilitate gaming fall within the statutory definition of a "swap" under the CEA in the first place. They do not. The RFC properly recognizes that market participants have raised interpretive questions concerning whether certain products, including sports contracts, are swaps, or instead fall within existing statutory exclusions. The Commissions therefore seek comment regarding whether additional "definitional clarity" is appropriate within the framework established by the CEA. The RFC describes the objective of this proceeding as providing clarity regarding the proper application of existing statutory definitions—not creating new categories of regulated products or expanding the jurisdiction conferred by Congress.

That understanding is consistent with the Commissions' own interpretation of their authority in the 2011 joint rulemaking implementing the CEA. There, the Commissions explained that Congress enacted "detailed and comprehensive" statutory definitions of "swap" and "security-based swap" and concluded that "extensive 'further definition' of the terms by rule is not necessary."[71] Rather, the Commissions understood their delegated authority to be one of clarification—providing interpretive guidance where uncertainty existed within the statutory framework enacted by Congress—not expanding that framework through administrative rulemaking.[72]

That principle should control this proceeding. Neither the CFTC nor the SEC may use the authority to "further define" statutory terms to broaden the scope of the CEA beyond what Congress enacted. Administrative agencies possess only the authority delegated by Congress. Accordingly, this proceeding should not be used to reinterpret the CEA so that contracts based solely on the outcome of sporting events (or any other gaming-related contract or contract that functions as or facilitates gambling) become "swaps." If Congress intended to subject sports wagering or gaming contracts to regulation under the Commodity Exchange Act, it could have done so expressly. It did not.

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[70] *See* 156 Cong. Rec. S5906–07 (daily ed. July 15, 2010) (statement of Sen. Lincoln)
[71] Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 Fed. Reg. 29818, 29821 (proposed May 23, 2011).
[72] *Id.*

These comments therefore focus on the question underlying the RFC. Before considering whether certain event contracts should be regulated as swaps—or whether additional regulatory guidance is warranted—the Commissions must first determine whether sports event contracts are "swaps" within the meaning of the CEA. Properly construed, they are not. Because sports event contracts constitute gaming rather than derivatives, they fall outside the statutory definition enacted by Congress, and the Commissions should reaffirm that the CEA does not extend to their regulation.

A. To the Extent that the Commissions Refine the Definition of "Swaps," the Commissions Should Distinguish Between Contracts Primarily Designed to Transfer Financial or Commercial Risk and Contracts Designed Principally for Gaming, Entertainment, or Wagering.

Sports event contracts listed on DCMs are not "innovation" when their principal function is to repackage an already familiar gambling product and to evade state and tribal laws that govern it. That is regulatory arbitrage, not innovation. This raises many interpretive questions under the CEA. Unlike traditional swaps, which Congress sought to regulate because they facilitate legitimate hedging and commercial risk, the outcome of a sporting event, game, contest, or athletic performance is not an event or contingency "associated with a potential financial, economic, or commercial consequence" within the meaning of the CEA. Therefore, sports event contracts challenge the historical boundary between derivatives regulation and gaming regulation.

The Adopting Release established functional principles for distinguishing swaps from other financial instruments by focusing on the economic substance of the transaction rather than its label.[73] Instead, "the key question is whether the agreement, contract, or transaction falls within the statutory definitions of the term 'swap,'" and the plain text of the CEA requires that the underlying of such transactions have commercial, financial, or economic consequences.[74] The problem therefore is not with the existing framework for defining "swaps" but with attempts to repackage recreational sports bets as legitimate derivative contracts despite the lack of any inherent commercial, economic, or financial risk justifying the regulation of sports bets as derivatives. Further, allowing federally regulated exchanges to list and trade sports wagering products on nationwide exchanges would undermine the statutory framework Congress carefully crafted for swaps, without any indication that Congress intended the CEA to displace IGRA or alter the federal government's longstanding respect for Tribes' and States' traditional authority over gaming, including sports betting.

The Commissions should apply a substance-over-form test focused on whether the contract serves a direct, identifiable, and independently existing financial or commercial purpose. A participant who has no preexisting exposure to a game result, point spread, total score, player statistic, or similar outcome creates the risk by entering the contract; that is characteristic of

[73] Adopting Release, 77 Fed. Reg. at 48260 n.604.
[74] *Id*. at 48260.

recreational gambling, not hedging. Further, the Commissions should reject attenuated economic consequences, generalized "market sentiment," or information aggregation as sufficient, because nearly any event may have downstream economic effects, and every wager produces an implied probability. Those features do not transform sports betting into price discovery concerning a commodity, asset, rate, liability, or other economic interest.[75] The Commissions should clarify that sportsbook-equivalent products are gaming products where they replicate traditional wagers, lack a bona fide hedging function, and are designed and marketed primarily for speculative entertainment. Doing so avoids an expansive interpretation that improperly permits prediction markets to evade specialized federal, tribal, and state gaming regimes.

B. The Commissions Should Expressly Recognize that Products Regulated as Gaming Under Federal, State, or Tribal Law Fall Outside the Intended Scope of the CEA, Absent Clear Statutory Direction From Congress.

The exclusions contained in the CEA, 7 U.S.C. § 1a(47)(B), reflect deliberate congressional decisions concerning products already regulated under other statutory regimes or products that do not implicate the systemic concerns underlying the CEA. No exclusion in § 1a(47)(B) expressly addresses gaming products. Sportsbook-equivalent event contracts or other gaming-related contracts that function as or facilitate gambling need not fit within an enumerated exclusion because they do not satisfy the affirmative definition of "swap" in the first instance. The Commissions should expressly recognize that products regulated as gaming under federal, tribal, or state law fall outside the CEA absent clear statutory direction from Congress, which, as discussed, does not exist. Such clarification would reduce jurisdictional uncertainty while respecting existing federalism principles.

C. The Underlying Events in Sports Event Contracts and Other Gaming-Related Contracts Are Neither a Commodity, a Security, Nor a Commercial Risk as Contemplated by Congress.[76]

The principal issue is not whether sports event contracts (and other gaming-related event contracts) should be classified as swaps, but whether Congress intended federal derivatives law to encompass products whose economic function closely resembles sports wagering or other forms of gambling.[77] The Commissions therefore should clarify that classification questions arise only after determining that the underlying of a contract appropriately falls within the purposes of the CEA.[78] Such clarification would reduce incentives for regulatory arbitrage

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[75] *See, e.g.*, *Hendrick*, 817 F. Supp. 3d at 1027–28 (ruling that to qualify as a swap under 7 U.S.C. § 1a(47)(A)(ii), the underlying "event or contingency must be inherently associated with a potential financial consequence, not just that the event or contingency may have some potential downstream financial consequence").
[76] *See* 7 U.S.C. §§ 1a(9), 1a(47); 7 U.S.C. § 2(e).
[77] *See* 7 U.S.C. § 7a-2(c)(5)(C).
[78] Adopting Release, 77 Fed. Reg. at 48214–16 (explaining that swap classification presupposes the existence of an instrument that falls within the statutory definition of a swap).

through product design while preserving coherent jurisdictional boundaries between the securities laws, derivatives regulation, and gaming regulation.[79]

The term "gaming" under the Special Rule, 7 U.S.C. § 7a-2(c)(5)(C), must be interpreted consistent with the statutory text, legislative history, and the CFTC's own precedent to be synonymous with gambling. The proper inquiry is functional, not formal. A contract involves gaming where it operates as a wager on an uncertain outcome outside the participant's control, lacks a bona fide hedging or commercial purpose, or is entered into primarily for speculative or entertainment value. This substance-over-form approach is consistent with the CFTC's own interpretation that a contract must be evaluated "as a whole" to determine whether it involves gaming or a similar prohibited activity.[80] Across federal statutes, CFTC precedent, and state and tribal law, gambling is consistently defined as risking value on the outcome of a contingent event outside the participant's control.[81] Gaming-related event contracts satisfy each of these elements. They replicate the economic structure of wagers, lack any legitimate economic purpose, and directly conflict with established regulatory regimes governing sports betting and other gaming, including tribal and state licensing systems and Tribal-State compacts under IGRA.

Accordingly, gaming-related event contracts represent the paradigmatic case of gaming under the Special Rule and fall squarely within the prohibition of 17 C.F.R. § 40.11(a)(1). That provision reflects Congress's understanding that not every event constitutes an appropriate subject for derivatives trading.

D. The Phrase "Any Interest" Should not be Interpreted Expansively.

Many gaming-related events may involve publicly traded companies without directly conveying exposure to securities ownership or value. That indirect relationship should not convert gaming products into SBS or swaps. Interpreting "any interest" consistently with traditional financial concepts requires a direct economic connection to ownership rights, payment obligations, governance interests, or measurable financial exposure, not an attenuated relationship to a public company. The Supreme Court has repeatedly emphasized that the federal securities laws focus on the economic realities of the instrument and the substantive rights and obligations it creates, rather than incidental or remote market effects.[82] Likewise, the statutory definitions of SBS and swap contemplate instruments that transfer or create identifiable financial risk or exposure, not products whose outcomes may merely or indirectly influence market sentiment or securities prices.[83]

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[79] *See id.*
[80] Event Contracts, 89 Fed. Reg. 48968, 48974 (June 10, 2024).
[81] *State* v. *One "Jack and Jill" Pinball Mach.*, 224 S.W.2d 854, 860 (Mo. Ct. App. 1949); *Commonwealth* v. *One Electro-Sport Draw Poker Mach.*, 443 A.2d 295, 298 (Pa. Super. Ct. 1981), *rev'd*, 465 A.2d 973 (Pa. 1983); *Harris v. Missouri Gaming Comm'n*, 869 S.W.2d 58, 62 (Mo. 1994), *abrogated by City of Aurora v. Spectra Commc'ns Grp., LLC*, 592 S.W.3d 764 (Mo. 2019).
[82] *See S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946); *Reves v. Ernst & Young*, 494 U.S. 56 (1990); *Landreth Timber Co. v. Landreth*, 471 U.S. 681 (1985).
[83] *See* 15 U.S.C §§ 78c (a)(68), 77b(a)(17); 7 U.S.C. § 1a(47).

Accordingly, a gaming event that may indirectly affect market sentiment or market prices should not, without more, constitute an "interest" in a securities market. Aside from whether the purchaser wins or loses their bet, sports-betting contracts and other gaming-related contracts have no direct financial consequences for the purchaser. To constitute a swap or to be based on "any interest," the underlying event itself "must be inherently associated with a potential financial consequence."[84] "[E]xternalities like whether people bet on the event or contingency, or whether the event's occurrence or nonoccurrence causes downstream financial consequences, are not sufficient."[85] Sports-betting contracts and other gaming-related contracts do not satisfy this requirement and therefore do not qualify as swaps.

E. The Phrase "Directly Affects" Should be Interpreted Narrowly.

Only events that directly alter an issuer's financial obligations, assets, liabilities, contractual rights, or legal rights should qualify as an SBS or swap. Political, sporting, entertainment, or similar events—even if economically significant—should not satisfy this standard. Congress deliberately required a direct, rather than indirect, connection between the referenced event and an issuer's financial condition. Broad interpretations of the Event Contract Prong could unintentionally encourage exchanges to list and trade sports event contracts and other gaming-related event contracts that are the functional equivalent of gaming, while arguing that indirect effects on publicly traded media companies, gaming operators, or sportsbook operators create sufficient connections to public issuers. Such interpretations would undermine the carefully crafted regulatory authority over gaming established by IGRA, without advancing the investor-protection objectives of the federal securities laws.[86]

CONCLUSION

For the foregoing reasons, the Commissions must reject any interpretation of "swap," "security-based swap," or "mixed swap" so expansive that it would transform federally regulated derivatives exchanges into online gambling platforms. Congress enacted the CEA to reduce risk, increase transparency, and promote market integrity within the financial system—not to create a federal license for sports betting or other forms of gambling. Consistent with that purpose, the Commissions should clarify that these definitions do not encompass contracts involving gaming; that a swap requires bona fide financial, economic, or commercial risk serving legitimate hedging or price-discovery functions; that the outcome of a sporting event or other game is not an event or contingency "associated with a potential financial, economic, or commercial consequence" under the CEA; and that attenuated downstream effects cannot satisfy that statutory requirement. The Commissions should further confirm that the CEA does not preempt, repeal, or displace IGRA, Tribal gambling laws, Tribal-State gaming compacts, or the authority of Tribal gaming regulators. Finally, before taking any action that may impair Tribal sovereignty, reduce Tribal gaming revenue, or conflict with Class III gaming compacts, the

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[84] *Hendrick*, 817 F. Supp. 3d at 1028.
[85] *Id.*
[86] *Cf. FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (explaining that courts should interpret statutory provisions in harmony with the broader statutory and regulatory framework enacted by Congress).

Commissions must engage in meaningful government-to-government consultation with Indian Tribes as required by Executive Order 13175 and the federal Indian trust responsibility.

Respectfully submitted,

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