Iowa Tribe of Oklahoma
Gaming Commission

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Submitted via the Federal eRulemaking Portal and SEC Internet Comment Form

Re: Comments by Iowa Tribe of Oklahoma Gaming Commission 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 Iowa Tribe of Oklahoma Gaming Commission (the "ITOGC") 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"). The CFTC recently misinterpreted "excluded commodity" to expansively broaden what constitutes a swap to include certain "event contracts" involving gaming, and specifically sports betting.[1] Now, the Commissions must reject any overbroad reading of "swap," "security-based swap" ("SBS"), or "mixed swap" that encompasses sports betting or any other forms of gaming to protect federally regulated derivatives exchanges from functioning as online gambling platforms.

The ITOGC is the primary gaming regulator for the Iowa Tribe of Oklahoma (the "Tribe"), which is a sovereign, federally recognized Indian tribe that regulates and conducts gaming pursuant to sovereign tribal authority and laws, the federal Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701, *et seq*., and with respect to IGRA class III gaming, the Oklahoma Model Tribal Gaming Compact ("Compact"). The ITOGC and the Tribe have a direct sovereign interest in the RFC because the Commissions' interpretation of "swap," "security-based swap," and "mixed swap" has the potential to greatly impact the IGRA and the regulation of tribal gaming generally, which is a primary source of funding for the Tribe's government and essential governmental services, including health care, education, housing, elder and youth services, and public safety for tribal citizens and other local residents.[2]

The Commissions should take the following actions to uphold and comply with the law when interpreting which activity constitutes "swap," "security-based swap," or "mixed swap":

1. Clarify that permissible "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 the 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;

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[1] Commodity Futures Trading Commission's Notice of Proposed Rulemaking, RIN 3038–AF65, Docket No. CFTC 2026-1189, 91 Fed. Reg. 35806, 35809, 35819-20 (June 12, 2026) ("The Commission preliminarily believes that the increasing generality of clauses (i) to (iv) of the excluded commodity definition indicates a Congressional intent to include a very wide variety of measures and occurrences in the definition. . . . This interpretation carves out from the scope of the Special Rule event contracts based on a change in the price, rate, value, or levels of these measures, indices, and instruments."); *but see* 7 U.S.C. § 7a-2(5)(C)(i) (prohibiting the CFTC from approving event contracts involving gaming).

[2] *See* Comment on CFTC-2026-1189, CFTC-2026-1189-0001, Iowa Tribe of Oklahoma Gaming Commission (Jul. 28, 2026), https://downloads.regulations.gov/CFTC-2026-1189-0566/attachment_1.pdf.

5. Strengthen jurisdictional lines between regulatory authorities by reaffirming that the CEA does not preempt, repeal, or displace the 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 trust responsibility before taking action that may impair tribal sovereignty, reduce tribal gaming revenue, or conflict with class III Tribal-State gaming compacts, including in how the terms "swap" "security-based swap," and "mixed swap" are interpreted.

I. The Problem: Prediction Market Gambling

Congress enacted Title VII of the Dodd-Frank Act in 2010 to establish a comprehensive federal regulatory framework for the derivatives market that previously contributed to the 2008 financial crisis. Title VII of the Dodd-Frank Act amended the CEA and the Securities Exchange Act of 1934 ("SEA") "to reduce risk, increase transparency, and promote market integrity within the financial system" regarding swaps and SBS.[3] Title VII divided regulatory responsibility between the CFTC and SEC, and the Commissions adopted the 2012 Product Definitions Adopting Release ("Adopting Release") to further interpret those statutory categories and the jurisdictional boundary between them.[4]

The CEA defines "swap" to include any agreement, contract or transaction that satisfies one of six prongs, subject to certain exceptions.[5] 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").[6] 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.[7]

The CFTC historically recognized the distinction between derivatives regulation and gambling regulation. The CFTC prohibited registered entities from listing event contracts that involve, relate to, or reference "gaming" or activities unlawful under state or federal law.[8] Permitting such contracts to trade on CFTC-regulated markets would infringe on tribal sovereignty

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[3] 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).
[4] 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).
[5] 7 U.S.C. § 1a(47).
[6] 7 U.S.C. § 1a(47)(B)(x); 15 U.S.C. § 78c(a)(68).
[7] 7 U.S.C. § 1a(47)(D); 15 U.S.C. § 78c(a)(68)(D).
[8] *See* 17 C.F.R. § 40.11(a)(1); Provisions Common to Registered Entities, 76 Fed. Reg. 44776 (July 27, 2011).

and allow "bets or wagers on contests or games" to evade established legal regimes and consumer protections governing gambling.[9] Despite this prohibition, in December 2024, the North American Derivatives Exchange ("Crypto.com") self-certified event contracts that replicate sports wagers,[10] and other prediction-market platforms quickly followed. By December 2025 commercial sportsbooks including DraftKings, FanDuel, and Fanatics were operating sports wagering event contracts through federally regulated exchanges in jurisdictions where they cannot lawfully operate under state or tribal law.[11]

This rapid expansion of gambling is occurring in direct conflict with the CFTC's regulation at 17 C.F.R. Section 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. Section 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 Section 40.11(a)(1) prohibits event contracts involving gaming.[12] Sports-related event contracts may be characterized in various ways, "but at bottom, they are sports wagers," and "everyone who sees them knows it."[13] While the CFTC had not exercised its authority under the Special Rule or Section 40.11(a) to prohibit these sports-event contracts, "the agency's inaction is not proof that the sports-event contracts are regulated by or permissible under the CEA.".[14] Because these sports-events contracts constitute gaming in violation of Section 40.11(a), they remain unlawful.[15]

In a drastic about-turn from its prior stance, the CFTC has now issued new proposed regulations that are clearly designed to allow sports betting through event contracts and open the

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[9] Event Contracts, 89 Fed. Reg. 48968, 48982–83 (June 10, 2024).
[10] PYMNTS, *Crypto.com Debuts Sports Event Trading Product* (Dec. 23, 2024), https://www.pymnts.com/cryptocurrency/2024/crypto-com-debuts-sports-event-trading-product/.
[11] *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.").
[12] *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.").
[13] *Hendrick*, 817 F. Supp. 3d at 1029.
[14] *Schuler*, 2026 WL 657004, at *9.
[15] *Id.*

door for other forms of gambling through CFTC regulated markets, including poker.[16] 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.[17] The Commissions must reject the CFTC's recent erroneous interpretation of "swap" that is enabling the unlawful proliferation of prediction market gambling.

II. The Commission's Request for Comments Related to Prediction Market Gambling

It is refreshing to see the Commissions both involved in this RFC as they both are regulators of swaps activity. As seen in the promulgation of this RFC, despite claims to the contrary in various court cases and in the CFTC's prior proposed rule, the CFTC does not have exclusive jurisdiction related to event contracts traded as swaps. Instead, event contracts—particularly involving subjects like gaming—fall under the jurisdiction of multiple regulators.

On a foundational basis, neither the CFTC nor the SEC may use their 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.

Before considering whether certain event contracts should be regulated as swaps, 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 sports event contracts are outside the scope of a swap, and the CEA does not extend to their regulation.

This section focuses on specific questions posed in the RFC as they pertain to sports event contracts. This section does not seek to answer all question posed by the RFC.

Question 1. What types of event contracts or other innovative products or product structures that may touch on the regulatory interests of both Commissions have raised interpretive questions for market participants, and how should those questions be resolved? In the context of these innovations, is

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[16] Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35806 (proposed June 12, 2026).
[17] *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).

> *additional clarification necessary to provide principled, objective criteria for distinguishing between swaps, mixed swaps, SBS, or other securities or instruments that are excluded from the definition of "swap"? What characteristics do event contracts share or not share with other products that may be classified as swaps, mixed swaps, SBS, or other securities or products excluded from the "swap" definition? Taking into account the rules and interpretations the Commissions adopted in the Product Definitions Adopting Release, should the Commissions issue new or revised rules or interpretations to address these innovations?*

The Commissions must make clear the distinguishment between swaps and excluded gaming activity. Recent attempts to characterize online sports betting as "innovative products" capable of trade on CFTC markets have created confusion nationwide and upended traditional regulatory schemes, to the detriment of tribes, states, and the general public as a whole.

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."[18] Sports event contracts do not fall under the plain language of this definition. Sports event contracts do not depend on whether the sports event occurs, but rather on its *outcome* (or parts thereof)—i.e., which team wins. "Absurd results would flow from defining a 'swap' to include a sports-event contract."[19] Instead, sports event contracts concern the outcomes of events or contingencies. They concern, for instance, the winner of a game, or the relative distribution of points, or the other elements of the event.[20] Recently, courts have declined to read the CEA as impliedly repealing IGRA, in part, for this very reason.[21] Other courts have rejected a reading of the term "event" as used in 7 U.S.C. Section 1a(47)(A)(ii) to mean "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."[22]

Moreover, sports event contracts do not involve "events" or "contingencies" that are "associated with a potential financial, economic, or commercial consequence." To constitute a swap, the underlying event itself "must be inherently associated with a potential financial consequence."[23] "[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."[24] Without this limiting principle, *everything* would constitute a swap.

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[18] 7 U.S.C. § 1a(47)(A)(ii).
[19] *Schuler*, 2026 WL 657004, at *6.
[20] *See N. Am. Derivatives Exch.*, 815 F. Supp. at 1183–84, ("[A] boxing match could either take place (occurrence), not take place (nonoccurrence), or go only three rounds (extent of the occurrence).)"
[20] *Id.* at 1183 n. 9.
[21] Id. *See Ho-Chunk Nation*, 2026 WL 1284077, at *10 n.5
[22] *QCX LLC v. Nessel*, No. 1:26-cv-00710, 2026 WL 1166362, at *2 (W.D. Mich. Mar. 10, 2026).
[23] *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)).
[24] *Hendrick*, 817 F. Supp. 3d at 1028; *see also QCX LLC*, 2026 WL 1166362, at *3.

> *Anything* can potentially have economic ramifications given enough attenuation and happenstance. . .. [R]eading 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."[25]

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."[26] To do so would allow the trading of contracts on many sporting events or happenings within them that turn out to have no financial, economic, or commercial consequence at all.

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.[27] 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.[28] 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 CEA's own text forecloses broadly reading swaps to encompass sports betting. The provision granting the CFTC jurisdiction over transactions involving swaps, 7 U.S.C. Section 2(a)(1)(A) states it does not 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. Sports event contracts are not swaps; they are wagers on contingent outcomes, and the statute does not permit their recharacterization as derivatives. Interpreting "swap" to encompass sports betting and other forms of gambling violates the CEA.

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

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[25] *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)).
[26] *Id.* at *6.
[27] Adopting Release, 77 Fed. Reg. at 48260 n.604.
[28] *Id*. at 48260.

statistic, or similar outcome creates the risk by entering the contract; that is characteristic of recreational gambling, not hedging. Further, the Commissions should reject attenuated economic consequences, generalized "market sentiment," or information aggregation as sufficient, because nearly any event can 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.[29] 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.

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.[30] 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.[31] Such clarification would reduce incentives for regulatory arbitrage through product design while preserving coherent jurisdictional boundaries between the securities laws, derivatives regulation, and gaming regulation.[32]

Question 2. As discussed above, several exclusions from the definition of "swap" are set forth in CEA section 1a(47)(B). Is additional regulatory clarity necessary with respect to application of these exclusions? For example, are there areas where principled, objective criteria could further clarify the definitional lines?

The Commissions must strengthen statutory exclusions to provide clear definitional lanes. The exclusions contained in the CEA, 7 U.S.C. Section 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 Section 1a(47)(B) expressly addresses gaming products. However, gaming is expressly excluded from being the subject of lawful event contracts which constitute swaps falling under the CFTC's jurisdiction.[33] Courts have rejected the premise that Congress silently made the CFTC a national gambling regulator by overriding state gambling laws without some indication in the CEA's text or legislative history that it intended to do so.[34] Congress did not intend the Special Rule to legalize sports betting nationwide nor to displace the states' authority to regulate it.[35] The Commissions should expressly recognize that products regulated as gaming under federal, tribal, or state law fall

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[29] *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").

[30] *See* 7 U.S.C. § 7a-2(c)(5)(C).

[31] 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).

[32] *See id.*

[33] 7 U.S.C. § 7a-2(c)(5)(C)(i).

[34] *KalshiEX LLC v. Martin*, 793 F. Supp. 3d 667, 683–84 (D. Md. 2025), *appeal filed*, No. 25-1892 (4th Cir.).

[35] *Id.* at 684. See also *Hendrick*, 817 F. Supp. 3d at 1029–30.

outside the CEA absent clear statutory direction from Congress, which does not exist. Such clarification would reduce jurisdictional uncertainty while respecting existing federalism principles.

Moreover, sport 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 CEA was meant "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*."[36] While "[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," such contracts would serve no "real commercial purpose" and "would be used solely for gambling."[37] The purpose of the CFTC implementing 17 C.F.R. Section 40.11(a)(1) was to prohibit 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.

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.[38] 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.

Question 4. Is there a need for greater clarity regarding when a swap, option (including any put, call, straddle, option, or privilege), or future is based on "any interest" in a security or group or index of securities, particularly when the swap, option, or future is not based on the value of that security or group or index of securities?

Yes, there is urgent need for greater clarity to ensure "any interest" is not interpreted as *any and every interest that can be imagined whether it is reasonable or not*. 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 merely 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

[36] 156 Cong. Rec. S5906 (daily ed. July 15, 2010) (statement of Sen. Lincoln) (emphasis added).
[37] *Id.* at S5906–07.
[38] *See* 7 U.S.C. § 5(a)–(b).

rights and obligations it creates, rather than incidental or remote market effects.[39] Likewise, the statutory definitions of SBS and swap contemplate instruments that transfer or create identifiable financial risk or exposure, not products whose outcomes might indirectly influence market sentiment or securities prices.[40]

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."[41] "[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."[42] Sports-betting contracts and other gaming-related contracts do not satisfy this requirement and therefore do not qualify as swaps.

Question 7. Regarding the SBS Event Contract Prong, is additional clarity necessary regarding when an event "directly affects" the financial statements, financial condition, or financial obligations of an issuer? Should the Commissions further address the circumstances when a swap does or does not satisfy the SBS Event Contract Prong? How should any further clarifications relate to the Commissions' rules and guidance on credit default swaps in the Product Definitions Adopting Release, and should such rules and guidance be revised or clarified?

Yes, the Commissions must act to narrowly interpret the phrase "directly affects." 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—do 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. As the Southern District of Ohio explained, "[t]hese goals are better achieved when a 'swap' is understood as a transaction involving financial instruments and measures that traditionally and directly *affect commodity prices*."[43] Trades on the outcome of every purported "event or contingency" with *any* downstream financial consequences cannot possibly all relate to such "a national public interest," and opening the floodgates to all such trades does not serve this interest in any of the ways contemplated by Congress. Such interpretations would

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[39] *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).
[40] *See* 15 U.S.C §§ 78c (a)(68), 77b(a)(17); 7 U.S.C. § 1a(47).
[41] *Hendrick*, 817 F. Supp. 3d at 1028.
[42] *Id.*
[43] *Id.*

undermine the carefully crafted regulatory authority over gaming established by IGRA, without advancing the investor-protection objectives of the federal securities laws.[44]

Question 11. Any contract of sale of a commodity for future delivery (or option on such a contract), as well as any security futures product, is excluded from the "swap" definition. Is there a need for greater clarity from the Commissions regarding the treatment of futures, including security futures, in the context of innovative markets? For example, is there a need for greater clarity regarding whether a cash-settled "perpetual" contract referencing an equity security could be treated as a security future? What effects could the introduction of such products have on liquidity formation, price discovery, and hedging activity, particularly with regards to the derivatives and underlying cash equity markets?

Yes, the Commissions need to provide clearer guidance regarding the treatment of futures, including security futures, in the context of innovative markets. Particularly, the Commissions must take a firm stance that sports event contracts do not meet either element of "contracts of sale of a commodity for future delivery." [45] They do not involve a "commodity," which is limited to "goods and articles."[46] Neither can sporting events or the happenings therein be subject to "future delivery," unlike the "goods and articles" to which futures contracts explicitly relate.[47]

This is not the first time "innovative markets" have called into question the scope of futures under the CEA. In 2010, Congress responded to the CFTC's treatment of box office receipts contracts as "futures" by rapidly and expressly "amend[ing] the CEA definition of the term 'commodity' to explicitly exclude" such contracts.[48] Congress's clear intent was to provide a direct and forceful legislative fix to prevent the box office receipts from being improperly treated as

[44] *See 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).

[45] 7 U.S.C. § 2(a)(1)(A). The CFTC suggests that "[t]he definition of what constitutes a futures contract is not set out in the CEA but rather has been developed in court decisions." 91 Fed. Reg. at 35809. Of course, courts must apply statutes as written. Moreover, the cases relied upon by the CFTC for this conclusion all concern physical goods capable of future delivery, which distinguishes them from sports event contracts for the reasons described *infra*. *Commodity Futures Trading Comm'n v. Co. Petro Mktg. Grp., Inc.*, 680 F.2d 573, 581 (9th Cir. 1982) (involving petroleum); *Transnor (Bermuda) Ltd. v. BP N. Am. Petroleum*, 738 F. Supp. 1472, 1489 (S.D.N.Y. 1990) (same, and discussing how futures contracts allow market actors "to assume or shift price risk without transferring the underlying commodity"); *Commodity Futures Trading Comm'n v. Erskine*, 512 F.3d 309, 323–26 (6th Cir. 2008) (defining a futures contract as "an executory, mutually binding agreement providing for the future delivery of a commodity on a date certain where the grade, quantity, and price at the time of delivery are fixed").

[46] 7 U.S.C. § 1a(9). The definition of "commodity" also refers to "all services, rights, and interests . . . in which contracts for future delivery are presently or in the future dealt in." *Id.* Sporting events do not include any "services," "rights," or "interests." Moreover, on the CFTC's online list of "Designated Contract Market Products," which has 398 pages of contracts, there are only four pages of contracts with the type of "Future" and the category of "Event," plus three pages of contracts with the type of "Option on a Future" and the category of "Event," none of which resemble anything like a sports event contract. *See* Commodity Futures Trading Comm'n, *Designated Contract Mkt. Prods.* (last accessed July 27, 2026), [archive.ph/3xACR]. Many of these contracts involve weather, and assert that weather is an "excluded commodity." *See, e.g.*, *Initial Listing of One-Hundred and Forty-Four (144) Seasonal Strip Weather Futures and Options Contracts* 17 (May 14, 2024), [archive.ph/2iWCa].

[47] 7 U.S.C. § 2(a)(1)(A).

[48] 91 Fed. Reg. at 35814.

commodities.[49] Congress's actions show that the trading in contracts based on intangible things—like box office receipts or sport event contracts—are *not* based on commodities, and are therefore not derivatives subject to the Commission's authority. Congress's reasons apply with greater force to sports event contracts.

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 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,

By: Leslie Tanyan [signature]

Leslie Tanyan, Chair
IOWA TRIBE OF OKLAHOMA
GAMING COMMISSION

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49 At the House hearings on the issue, Congressman Goodlatte explained that every movie is a "unique product, very much unlike the next one," which he contrasted with established commodities like oil, corn, and currency which are fungible. Hearing to Review Proposals to Establish Exchanges Trading "Movie Futures" Before the Subcomm. on Gen. Farm Commodities and Risk Mgmt. of the H. Comm. on Agric., 111th Cong. 14 (2010).