OKLAHOMA INDIAN GAMING ASSOCIATION
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Via Electronic Mail: publicroundtables@CFTC.gov
Caroline Pham, Acting Chairperson
Commodity Futures Trading Commission
Three Lafayette Centre
Washington, DC 20581

Re:Prediction Markets Roundtable: Oklahoma Indian Gaming Association Comments Regarding Sports-Related Events Contracts

Dear Chairperson Pham:

The Oklahoma Indian Gaming Association ("OIGA") welcomes the opportunity to submit feedback and suggestions in advance of the Commodity Futures Trading Commission's ("CFTC") Prediction Markets Roundtable concerning sports-related event contracts ("Sports Contracts"). OIGA is a non-profit organization of Oklahoma Indian tribes engaged in gaming activity which aims to advance the welfare of the Indian peoples economically, socially, and politically through the development of sound policies and practices with respect to the conduct of gaming enterprises in Indian country.

OIGA strongly urges the CFTC to make it clear that Sports Contracts are prohibited from being listed, or made available, for clearing or trading. Trading of Sports Contracts is gaming, violates state and federal law, and is contrary to public policy for various reasons. Importantly, allowing Sports Contracts to be listed and traded will interfere with the sovereign right of tribes and states to exercise their police power to regulate gaming within their respective territories – a right long recognized by courts throughout the United States. Additionally, listing and trading Sports Contracts would decimate the value of the bargained-for-exchange made between tribes and states in their gaming compacts when tribes agree to share their gaming revenues – contributing billions to state governments – in exchange for substantial exclusivity over gaming in their state. Lastly, listing and trading Sports Contracts will siphon critically needed revenue that supports tribal and state governments, and their citizens, by providing an end-run around tribal and state regulation of sports betting. Moreover, Sports Contracts directly violate the Commodity Exchange Act ("CEA"), and the plain language of the CTFC's implementing regulations, because they involve gaming and violate state and federal laws. Any determination that Sports Contracts comply with the CEA would therefore run afoul of the plain text of the CEA and its implementing regulations.

I.Sports Contracts Violate Public Policy.

As discussed below, Sports Contracts are categorically contrary to the public interest under 7 U.S.C. § 7a-2(c)(5)(C) and 17 C.F.R. § 40.11(a)(1). In addition to these statutory and regulatory violations, Sports Contracts violate public policy for several reasons. First, Sports Contracts diminish tribal and state sovereignty. Second, Sports Contracts deteriorate the value of tribes' bargained-for exclusivity to offer sports betting pursuant to compacts under the Indian Gaming Regulatory Act ("IGRA"). Third, Sports Contracts threaten to cut off vital revenue streams from sports betting conducted pursuant to valid gaming compacts that provide funding to tribal and state governments upon which both tribal and state citizens rely. Fourth, unlike sports betting regulated by tribes and states, Sports Contracts do not operate under robust regulations to address problems such as gambling addiction, problem-gambling, or match-fixing, and they do not provide funding for states to mitigate the negative externalities of gaming.

Tribes are sovereign nations with primary jurisdiction over their lands and citizens, and as such, they maintain the power to establish laws, regulate activities, and manage resources without interference, to a certain extent, from state or federal governments. In 1987, the Supreme Court recognized tribes' inherent sovereign right to offer gaming on tribal lands. *See California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). In 1988, the IGRA was enacted to facilitate government-to-government relationships between tribes and states with respect to gaming regulation. 25 U.S.C. § 2701 *et seq*. The IGRA also codified tribes' "exclusive right to regulate gaming activity on Indian lands," *id.* § 2702, subject to limited exceptions. As for states, gaming regulation has been recognized at the heart of the police powers guaranteed by the TenthAmendment of the United States Constitution. *See, e.g., W. Va. Ass'n of Club Owners & Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 302 (4th Cir. 2009). An essential component of tribal and state sovereignty is the ability to enact laws for the benefit and protection of their citizens – which includes gaming laws. Allowing Sports Contracts to be traded on a national exchange would create a federal loophole to tribal and state sports betting regulations, effectively preempting a whole swath of laws enacted by sovereign governments seeking to protect the health, welfare, and safety of their citizens. This would impermissibly infringe on tribal sovereignty and run afoul of federalism principles enshrined in the Constitution.

During IGRA compact negotiations, tribes have negotiated for substantial exclusivity to offer certain types of Class III gaming. Specifically, OIGA member tribes negotiated the following protection in Oklahoma:

> The parties acknowledge and recognize that this Compact provides tribes with substantial exclusivity and, consistent with the goals of IGRA, special opportunities for tribal economic opportunity through gaming within the external boundaries of Oklahoma in respect to the covered games. In consideration thereof, so long as the state does not change its laws after the effective date of this Compact to permit the operation of any additional form of gaming by any

> such organization licensee, or change its laws to permit any additional electronic or machine gaming within Oklahoma, the tribe agrees to pay the following fees . . ..

Oklahoma Model Tribal-State Gaming Compact ("Model Compact"), Part 11(A) (codified at 3A Okla. Stat. § 281). Generally speaking, exclusivity in IGRA compacts is a bargained-for benefit, often resulting from years of government-to-government negotiations between sovereigns. By encroaching on the sports betting market, Sports Contracts therefore infringe upon that exclusivity and undermine the sovereign rights of tribes and states, protected by the IGRA, to negotiate mutually beneficial gaming compacts.

Additionally, sports betting conducted pursuant to IGRA compacts, or in accordance with state gaming regulations, afford both tribes and states substantial revenue streams that fund important government services. Sports Contracts, however, diminish the market share for regulated sports betting, which reduces revenues for tribal and state governments. For tribes, this revenue funds essential tribal government services, which directly benefits the lives of their tribal citizens. This revenue is critical for tribal governments because they oftentimes do not have access to revenue sources typically available to sovereign governments, such as taxes or unimpeded land and natural resource development. For states, in addition to receiving revenue under IGRA compacts, the tax revenue from sports betting is significant. For example, in states that have legalized sports betting, at least $1.8 billion in taxes was collected in fiscal year 2023. *See* Adam Hoffer, *Bets on Legal Sports Markets Pay Off Big for States, Sportsbooks, and Consumers*, Tax Foundation (Dec. 10, 2024) (accessible here). States generally impose high tax rates on sports betting operators to fund state programs to regulate and mitigate impacts of gaming. *See id.*; Adam Hoffer, *Online Sports Betting Taxes by State, 2024*, Tax Foundation (Sept. 17, 2024) (accessible here).

Finally, despite sharing all the hallmarks of gaming, and indeed qualifying as "Class III gaming," as discussed below, Sports Contracts and registered exchanges are not required to provide the same public health and consumer safety measures as lawful gaming operations. Moreover, Sports Contracts and registered exchanges are likewise not required to share revenue with state governments meant to defray the costs of addressing such impacts. Thus, while potentially facilitating certain harmful impacts, Sports Contracts and registered exchanges are not required to help prevent, counteract, or mitigate such impacts in contravention to the public wellbeing. In addition, it is significant that some states have decided not to allow sports betting at all, which means tribes in those states are unable to offer sports betting under the IGRA. Sports Contracts and registered exchanges would impose sports betting without any regard to the public policy determinations made by the elected leaders in those jurisdictions.

II. Sports Contracts Are Contrary to the Public Interest.

While it is clear, as discussed above, that Sports Contracts are contrary to public policy – particularly with regard to tribal and state sovereign rights – they are also *per se* contrary to the public interest. As such,

we respectfully urge the CFTC to prohibit Sports Contracts pursuant to its authority under the CEA's "Special Rule."

A. Sports Contracts Constitute "Class III Gaming" Under the IGRA.

Sports Contracts necessarily constitute "Class III gaming" under the IGRA because they are neither Class I nor Class II gaming, as defined by the act, and they constitute "sports betting." In 1988, Congress enacted the IGRA "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). The IGRA established the National Indian Gaming Commission ("NIGC") as an independent Federal regulatory authority "to protect such gaming as a means of generating tribal revenue." 25 U.S.C. § 2702(3). Under the IGRA, Indian gaming is "not only 'a source of substantial revenue' for tribes, but the lifeblood on 'which many tribes ha[ve] come to rely.'" *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1032 (9th Cir. 2022) (quoting *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1097, 1099–1100 (9th Cir. 2003)). In fact, Indian gaming has become the most successful economic development initiative ever for Indian Country, lifting many tribes out of poverty and providing them with critical funding for education, healthcare, infrastructure, and cultural preservation.

Pursuant to section 2710(d)(3)(A) of the IGRA, Indian tribes and states are authorized to negotiate compacts to regulate "Class III gaming" on a government-to-government basis. Under the IGRA, Class III gaming includes "all forms of gaming that are not [C]lass I gaming or [C]lass II gaming," which the NIGC has interpreted to mean various casino games, such as slot machines and banked card games, and, importantly here, sports betting. *See* 25 C.F.R. § 502.4. In fact, many tribes offer sports betting pursuant to Tribal-State Class III gaming compacts ("IGRA compact(s)"). *See e.g.*, 2021 Seminole Compact, Part III.F(5) (defining term "Covered Games" to include sports betting) (accessible here); Third Amendment to the Lac Courte Oreilles Band of Lake Superior Chippewa Indians and the State of Wisconsin Gaming Compact of 1991, at 1–2, 6–8 (Sept. 14, 2022) (permitting the tribe to, among other things, offer retail sports betting on lands within its reservation under amendments to its IGRA compact) (accessible here); Shoal Water Bay Indian Tribe and the State of Washington Class III Gaming Compact, Appendix S: Sports Wagering, §§ 3.1, 3.3, 4 (Sept. 15, 2021) (permitting the tribe to offer mobile and retail sports wagering within its reservation under its IGRA compact) (accessible here); Tribal / State Compact between the Mississippi Band of Choctaw Indians and the State of Mississippi, § 4.21 (Jan. 29, 1993) ("'Sports pool' means the business of accepting wagers on sporting events by any system or method of wagering other than the system known as the pari-mutuel method of wagering; provided, however, that such wagers shall be allowable under this Compact only if such wagers are allowed on non-Tribal lands under the laws of the State.") (accessible here). While OIGA member tribes have not yet compacted with Oklahoma for Class III sports betting, their current IGRA compact – the Model Compact – explicitly permits supplements, which has occurred previously. *See, e.g.*, 3A Okla. Stat. § 280.1 (providing a Model Compact supplement for ball and dice games).

While neither the IGRA, nor its implementing regulations, expressly define "sports betting," the term is generally understood to mean "staking or risking . . . something of value upon the outcome of . . . a sporting event . . . upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome." 31 U.S.C. § 5362(1)(A) (definition of "bet or wager" under the Unlawful Internet Gambling Enforcement Act). In turn, the term "sporting event"may entail a variety of factors surrounding sports competitions. For example, New Jersey defines "sports event" to mean not only the sport game itself, but "any portion thereof." N.J. Stat. § 5:12A-10; *see also id.* (defining "sports book" as "the business of accepting wagers on any sports event by any system or method of wagering, including but not limited to single-game bets, teaser bets, parlays, over-under, moneyline, pools, exchange wagering, in-game wagering, in-play bets, proposition bets, and straight bets").

Here, Sports Contracts purport to do the exact type of activity which falls within the generally accepted bounds of "sports betting." Because an event contract is one that is for an allowable commodity "based upon the occurrence, extent of an occurrence, or contingency [of an event] . . . by a designated contract market or swap execution facility . . .," 7 U.S.C. § 7a-2(c)(5)(C)(i), a *sports* event contract therefore, would be an event contract based upon the occurrence or outcome of a sporting event (or any part thereof). This means that Sports Contracts, as contracts with a value dependent upon the outcome of certain sporting events, inherently represent sports betting activity.

Regardless of whether Sports Contracts constitute Class III gaming under theIGRA – which they do – they are expressly prohibited by both the CEA and the CFTC's implementing regulations because they "involve . . . gaming."

B.Sports Contracts "Involve . . . Gaming" Under Federal Case Law.

In *KalshiEX LLC,* the United States District Court for the District of Columbia adopted KalshiEX LLC's (Kalshi) definition of "gaming," as the term is used in the CEA, to mean "playing games" and "playing games for stakes." *KalshiEX LLC v. CFTC*, No. 23-3257, 2024 WL 4164694, *8 (D.D.C. Sept. 12, 2024). Under the definition advocated by Kalshi and adopted by the District Court, Sports Contracts also involve gaming. As the District Court explained, Congress intended to prohibit sports betting through the CEA. *Id.* at *12. Specifically, according to the CEA's legislative history, Senator Lincoln (the drafter of the 2010 amendments to the CEA) remarked during "colloquy on the Senate floor . . . that the provision ultimately enacted as Section 5(c)(5)(C) of the CEA was intended to 'prevent gambling through futures markets' and restrict 'event contract[s] around sporting events such as the Super Bowl.'" *Id.* In that colloquy, Senator Lincoln stated that the intent of ````the 2010 Dodd-Frank amendments to the CEA was "to protect the public interest from gaming contracts." 156 Cong. Rec. S5906 (2010). Senator Feinstein asked if the intent of the legislation was to empower the CFTC "to determine that a contract is a gaming contract if the predominant use of the contract is speculative as opposed to a hedging or economic use." *Id.* Senator Lincoln responded:

> That is our intent . . . to prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed "event contracts." It would be quite easy to construct an "event contract" around *sporting events* such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament. These types of contracts would not serve any real commercial purpose. Rather, they would be used solely for gambling.

Id. at S5906-7 (emphasis added).

The District Court in *KalshiEX* distinguished the Congressional control contracts at issue in that case because "elections bear little relation to 'sporting events.'" *KalshiEXLLC*, 2024 WL 4164694, at *9. The District Court concluded that "event contracts related to any of the sporting events the senator mentioned on the floor could implicate the gaming category," and "[a]ll these [sports] events can easily be construed as gaming; they can even be construed as games played for stakes (cash prizes and trophies, for example)." *Id.* at *12. During oral arguments in the D.C. Circuit, Kalshi further clarified its definition of "gaming," confirming to the judges that sports betting would be covered because "sports are games." Thus, Sports Contracts clearly involve gaming, as evidenced by the District Court's sound reasoning in *KalshiEX*, Congress' clear intent and the CEA's legislative history, and Kalshi's on-the-record statements.

C. Sports Contracts Are Prohibited Under the CEA's "Special Rule," 7 U.S.C. § 7a-2(c)(5)(C), and the CFTC's Implementing Regulations, 17 C.F.R. § 40.11(a)(1), Because They Involve Gaming.

The CEA's "Special Rule" provides that the CFTC may determine that contracts involving certain enumerated categories (which includes "gaming") are contrary to the public interest and, as a result, are prohibited from being listed or traded. 7 U.S.C. § 7a-2(c)(5)(C). In particular, the "Special Rule" provides:

> (i) Event Contracts
> In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency . . . by a designated contract market . . . , the [CFTC] may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—
>
> (I) activity that is unlawful under any Federal or State law;
> (II) terrorism;
> (III) assassination;
> (IV) war;
> (V) gaming; or
> (VI) other similar activity determined by the [CFTC], by rule or regulation, to be contrary to the public interest.

(ii) Prohibition

No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

7 U.S.C. § 7a-2(c)(5)(C). Thus, Congress clearly intended to prohibit any event contract involving gaming as contrary to the public interest.

The CFTC's implementing regulations, in turn, make the categorical determination that event contracts involving gaming are contrary to the public interest. *See* 75 Fed. Reg. 67282, 67288–89 (Nov. 2, 2010) (explaining that CFTC was enacting §40.11(a)(1) "[p]ursuant to [the authority granted in 7 U.S.C. § 7a-2(c)(5)(C]" to determine whether certain contracts are contrary to the public interest); 76 Fed. Reg. 44776, 44786 (July 27, 2011) (same). As such, the CFTC's implementing regulations also expressly prohibit event contracts involving "gaming" from being listed for trading or accepted for clearing on or through a registered entity. Specifically, 17 C.F.R. § 40.11(a)(1) provides, in relevant part:

Prohibition. A registered entity shall not list for trading or accept for clearing on or through the registered entity any of the following:

(1) An agreement, contract, transaction, or swap based upon an excluded commodity . . . that involves, relates to, or references . . .*gaming* . . ..

(Emphasis added); *see also* 7 U.S.C. § 7a-2(c)(5)(C).

Even if the CTFC were to determine that Sports Contracts do not involve gaming– which they do – the agency would still have the authority to prohibit such contracts because they concern a "similar activity" to gaming. 7 U.S.C. § 7a-2(c)(5)(C)(i)(VI); 17 C.F.R. § 40.11(a)(2). As discussed in more detail below, the CFTC has several reasons for determining, in its broad discretion, that Sports Contracts are contrary to the public interest.

Accordingly, because Sports Contracts clearly involve gaming, or at the very least concern "similar activity" to gaming, they are therefore prohibited under the CEA and its implementing regulations.

D.Sports Contracts Are Prohibited Because They Are Unlawful Under State Laws.

Section 40.11(a)(1) of the CEA's implementing regulations also prohibits event contracts that involve "an activity that is unlawful" under any state law. States' police powers are an essential component of their sovereignty and guaranteed by the TenthAmendment of the United States Constitution. The longstanding authority of states to regulate matters of health, safety, welfare, and

morals is fundamental to the federalist system enshrined in the Constitution. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996). This is especially true with respect to state regulation of gambling. It is well established that the regulation of gambling is a core police power of the state. *See Ah Sin v. Wittman*, 198 U.S. 500, 505–06 (1905) ("The suppression of gambling is concededly within the police powers of a state."); *Johnson v. Collins Entm't Co., Inc.,* 199 F.3d 710, 720 (4th Cir. 1999) ("The regulation of gambling enterprises lies at the heart of the state's police power."); *Hawkeye Commodity Promotions, Inc. v. Vilsack*, 486 F.3d 430, 439 (8th Cir. 2007) ("A state's police power encompasses controlling gambling . . . ."); *United States v. Washington*, 879 F.2d 1400, 1401 (6th Cir. 1989) ("The enactment of gambling laws is clearly a proper exercise of the state's police power . . .."); *W. Va. Ass'n of Club Owners & Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 302 (4th Cir. 2009) ("[R]egulating gambling is at the core of the state's residual powers as a sovereign in our constitutional scheme."). For over a century, the state police power to regulate gaming, specifically, has been affirmed by the Supreme Court and the federal government as a core exercise of state sovereignty. Sports betting is a form of gaming. *See, e.g.*, 25 C.F.R § 502.4(c) (defining "Class III gaming" to expressly include sports betting); *see also Is Sports Betting Considered Gambling?*, Kindbridge (July 27, 2023) (accessible here).

In 2018, the U.S. Supreme Court held in *Murphy v. NCAA* that the Professional and Amateur Sports Protection Act ("PASPA"), Pub. L. No. 102-559, was unconstitutional and that states could legalize sports betting. 584 U.S. 453, 486 (2018). According to the Congressional Research Service, since the U.S. Supreme Court's ruling in *Murphy*, 38 states and the District of Columbia have legalized (and regulated) sports gambling. Approximately 20 states prohibit online sports betting and nearly a dozen states prohibit all forms of sports betting. In Oklahoma, there currently exists a general sports betting prohibition. 3A Okla. Stat. § 262(H); *see also* 21 Okla. Stat. §§ 941, 982, 991.

Sports Contracts effectively enable citizens in every state to gamble on sports online, including in states like Oklahoma that have enacted laws prohibiting sports betting, and on tribal lands. Sports Contracts, therefore, they are in direct conflict with state laws that prohibit retail or online sports betting. Allowing Sports Contracts to be traded on a federal exchange would usurp a core police power of states to regulate gaming within their borders. Thus, section 40.11(a)(1) of the CEA's implementing regulations prohibits Sports Contracts because Sports Contracts involve an activity – sports betting – that is unlawful under many states' laws.

E.Sports Contracts Are Prohibited Because They Are Unlawful Under the Federal Wire Act and the IGRA.

Section 40.11(a)(1) of the CEA's implementing regulations also prohibits event contracts that involve "an activity that is unlawful" under any *federal* law. In this case, the Sports Contracts are prohibited by section 40.11(a)(1) because they are unlawful under the federal Wire Act. 18 U.S.C. § 1084. Under the Wire Act, no one may "knowingly use a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers . . . on any sporting event or contest . .

.." *Id.* § 1084(a). U.S. Courts of Appeals and the U.S. Department of Justice ("DOJ") have interpreted the Wire Act to prohibit interstate online sports betting.

For example, the Fifth Circuit held that the Wire Act prohibits only interstate transmissions of wire communications related to online sports betting. *In re MasterCard Int'l Inc.*, 313 F.3d 257, 262–64 (5th Cir. 2002). The DOJ Office of Legal Counsel issued an opinion in 2011 supporting the Fifth Circuit's interpretation that the Wire Act applies only to interstate sports betting. However, in 2018, after the Supreme Court overturned the PASPA in *Murphy v. NCAA*, the DOJ issued another opinion concluding that the Wire Act prohibits a broader scope of interstate gambling communications. In response to the DOJ's 2018 opinion, the First Circuit reaffirmed what the Fifth Circuit previously decided, and held that "[l]ike the Fifth Circuit, and the district court in this case, we therefore hold that the prohibitions of section 1084(a) apply only to the interstate transmission of wire communications related to 'any sporting event or contest.'" *N.H. Lottery Comm'n v. Rosen*, 986 F.3d 38, 61–62 (1st Cir. 2021).

Since the First Circuit's determination in 2021, no other Court of Appeals has considered the question of whether the Wire Act prohibits more than just interstate gambling communications related to sporting events. But according to case law and DOJ opinions interpreting the Wire Act, interstate online sports betting is uniformly considered an unlawful activity under federal law. Therefore, listing or trading Sports Contracts, which requires the interstate transmission of sports wagers, is prohibited under 17 C.F.R. § 40.11(a)(1).

In addition to violating federal law under the Wire Act, Sports Contracts also violate the IGRA and its implementing regulations. First, as discussed above, Sports Contracts constitute Class III gaming. And under the IGRA, Class III gaming activity conducted on Indian lands is lawful only when such activity is: (1) authorized by a tribal ordinance or resolution; (2) located in a state where such gaming is permitted; and (3) conducted pursuant to an IGRA compact. 25 U.S.C. § 2710(d)(1). Because Sports Contracts are not geographically restricted so as to avoid Indian lands – and are, therefore, offered *on* Indian lands – Sports Contracts must be conducted pursuant to an IGRA compact. *See e.g.*, *Coeur d'Alene Tribe v. Idaho*, 842 F. Supp. 1268, 1282 (D. Idaho 1994) (finding that state lottery conducted on Indian lands in the absence of a tribal gaming ordinance or compact violated the IGRA). Across the board, Sports Contracts are neither authorized by a tribal ordinance or resolution nor conducted pursuant to Tribal-State gaming compacts, and directly contravene IGRA compacts. As such, Sports Contracts also violate federal law under the IGRA.

F. If Sports Contracts Do Not Involve Gaming or Violations of State and Federal Law, They Involve "Similar Activity" Contrary to the Public Interest.

Sports Contracts involve gaming and activity that is unlawful under both federal and state law. However, the CFTC may provide clarification to preclude future challenges by exercising its authority under the Special Rule to make the official determination that Sports Contracts involve activity

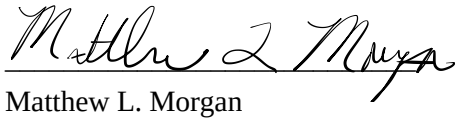
similar to gaming and are thus prohibited as contrary to the public interest. This would allow the CFTC to close any perceived "loophole" to the Special Rule under the CEA and its implementing regulations. It would also allow the CFTC to tailor a rule to prohibit federal sports betting without disrupting state and tribal sports betting regulatory schemes.

The Special Rule allows the CFTC to prohibit event contracts that involve one of the five enumerated categories or "other similar activity determined by the [CFTC], by rule or regulation, to be contrary to the public interest." 7 U.S.C. § 7a-2(c)(5)(C)(i)(VI); 17 C.F.R. § 40.11(a)(2). If Sports Contracts are not covered by the text of the statute, they are at the very least a "similar activity" to gaming, and similarly contrary to the public interest. As discussed in detail above, there are ample reasons for the CFTC to use its broad discretion to determine that Sports Contracts violate public policy and are contrary to the public interest. Therefore, Sports Contracts, which effectively allow nationwide sports betting, may be determined by the CFTC to be similar to "gaming" and similarly contrary to the public interest.

Conclusion

For all of the reasons stated above, we respectfully urge the CFTC to enforce the CEA Special Rule and its regulations and prohibit Sports Contracts.

Respectfully submitted,



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