

January 28, 2021

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

**Via Electronic Submission**

Re: CFTC Review of Proposed ErisX NFL Futures Contracts (Industry Filing 20-004)

Dear Mr. Kirkpatrick:

The American Gaming Association (AGA) appreciates the Commodity Futures Trading Commission (CFTC or Commission) providing an opportunity to comment on the ErisX NFL futures contracts. We submit this comment to share how the legal, regulated sports betting industry has grown across the country, as well as our recommendation that the Commission seek input from state, tribal, and federal stakeholders that play a role in regulating the sports betting industry.

The AGA is the national trade group representing the \$261 billion U.S. casino industry, which supports 1.8 million jobs and generates \$41 billion in annual tax revenue for critical public services, including education, public safety, and infrastructure. Today's gaming industry is not only a great source of entertainment, but also an economic driver and community partner in 44 states and the District of Columbia. AGA members include commercial and tribal casino operators, gaming suppliers and manufacturers, legal sportsbooks, and other gaming-affiliated entities. As champions for the gaming industry, the AGA works in Washington, D.C. and across the country to ensure sound public policy that supports growth, innovation, and reinvestment.

In May 2018, the U.S. Supreme Court struck down the Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. § 3701 *et seq.* (1992), a decades-old, federal law that prevented states other than Nevada from allowing legal, regulated, single-game wagers on both collegiate and professional sports. This federal prohibition inadvertently created a massive illegal market – along with myriad, associated public policy problems. The Supreme Court's decision was a win for millions of Americans who seek to participate in sports wagering in a safe, legal, and regulated manner.

States and sovereign tribal nations can now set their own policies to legalize and regulate sports betting in an effective manner that protects consumers and creates tax benefits for local communities. In less than three years, [24 states and Washington, D.C.](#) have joined Nevada in legalizing sports betting. The AGA anticipates continued momentum behind state legalization efforts, and we will continue to advocate for [policies](#) that promote a safe and accessible marketplace.

States and tribal jurisdictions with legalized sports betting have established robust regulatory frameworks overseen by gaming regulators. Thousands of regulators across the country oversee licensing of gaming companies and their key employees, including extensive background checks.

Regulators work directly with gaming companies and other industry stakeholders to ensure the integrity of the sports betting products and the games on which wagers are placed along with implementing robust consumer protection standards.

The AGA acknowledges that the current statutory and regulatory construct for sports betting poses challenges for some sports book operators and appreciates that the proposed ErisX contracts seek to address a legitimate commercial need for some marketplace participants. However, some AGA members also believe these proposed contracts will have limited utility for their individual operations and pose potentially complex legal and policy questions that should be fully explored by the CFTC before they are approved.

At the federal level, such questions include whether other federal agencies will view participation in these contracts as consistent with the laws they enforce, as well as whether these contracts would be subject to the federal excise tax that applies to sports wagers. *See* 26 U.S.C. § 4401. State licensed sports books currently pay a tax equal to .25 percent of the amount of every wager, while wagers that are not authorized by a state are subject to a 2 percent tax on the amount wagered.

Additionally, the CFTC would be well-served to solicit the input of state and tribal gaming regulators. Entities that will be eligible to participate in the ErisX contracts are either currently regulated or could potentially be regulated if gaming regulators determine these contracts qualify as sports betting or gaming under their state or tribal laws.

The AGA appreciates the novel approach that has been presented to address an area of potential commercial exposure. While CFTC approval of these contracts may ultimately prove to be in the public and industry's benefit, it advances no one's interests if these contracts are approved and later become the subject of legal challenges or create legal uncertainty for participants. Therefore, the AGA recommends CFTC strongly consider proactively engaging federal and state agencies with enforcement and/or regulatory interests around gaming-related activities to ensure that the Commission's decision is fully informed. This could be accomplished by using the Commission's Market Risk Advisory Committee to seek additional input from government and other interested stakeholders.

Sincerely,



Christopher Cylke  
Senior Vice President, Government Relations