

August 8, 2024

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: “Event Contracts” RIN number 3038-AF14

The American Gaming Association (AGA) appreciates the Commodity Futures Trading Commission (CFTC or Commission) providing an opportunity to comment on proposed amendments to its rules concerning event contracts in certain excluded commodities.

This comment letter begins by offering a short background regarding the gaming industry, particularly the development of regulated sports-betting since *Murphy v. N.C.A.A.*, 138 S. Ct. 1461 (2018). The AGA then addresses three points concerning the proposed event contracts rule (the “Proposal”): (1) the Commission should clarify that the Proposal is not intended to conflict with state regulated gaming activity; (2) the AGA opposes the rule to the extent it forecloses the possibility of an institutional futures market for sports-betting operators to hedge legitimate commercial risks; and (3) the CFTC should clarify that gaming itself is not contrary to the public interest.

**I. Background**

The AGA is the national trade group representing the \$329 billion U.S. casino industry, which supports 1.8 million jobs and generates \$53 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 47 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 and a few others from allowing legal, regulated, wagers on collegiate and professional sports. This federal prohibition 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 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. Pursuant to state compacts and the Indian Gaming Regulatory Act, sovereign tribal nations are able to do the same. In six years, the landscape has transformed, and 38 states and Washington, D.C. now have legal, regulated sports betting. And as evidenced by the more than \$363 billion wagered through licensed sports books since PASPA's repeal, it is clear that it serves the public interest for Americans to have legal channels available to bet on sports.

**II. The CFTC Should Clarify that the Proposal Does Not Conflict with State Regulated Activity**

The AGA notes that, on its face, the Proposal does not appear to affect state regulated activity related to sports betting or legal gaming. But the Proposal also lacks any mention or recognition that it is explicitly *not* intended to conflict with state regulated gaming activity.<sup>1</sup>

Out of an abundance of caution, the AGA therefore requests that the Commission: (1) clarify its intent to ensure the Proposal does not set up a conflict between federal regulation and state law, *i.e.*, expressly acknowledge continuation of existing, regulated business models; and (2) clarify it will not pursue CEA and CFTC rule violations, where a company is authorized under state law to enter into or offer such contracts.

**III. The Commission Should Allow for a Regulated Market for Sports-Betting Operators to Hedge Risk**

In addition to the prior clarification, the AGA urges the Commission to revise the Proposal to clearly allow licensed gaming entities to use event contracts on sports contests to hedge against legitimate commercial risk. As the Commission notes, gaming is a rapidly evolving field, and institutions in the space should have access to a safe, regulated market to hedge commercial risk. This can be achieved in a way that safeguards the public interest while working in concert with state and tribal regulatory regimes to support the stability and growth of the regulated sports betting market.

**IV. The Commission Should Clarify that Gaming is Not Contrary to the Public Interest**

The Commission should emphasize that gaming is not contrary to the public interest. When Dodd-Frank passed in 2010, sports-betting was legal in Nevada and a few other states; in 2024,

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<sup>1</sup> See *also* Dissenting Statement of Commissioner Caroline D. Pham on Event Contracts Proposal (May 10, 2024) (“State-regulated sportsbooks, in trying to comprehend where the Commission’s gaming derivatives begin and traditional bets end, will be captured in this confusion and question the need to register with the Commission as exchanges.”).

it is legal in 38 states and Washington, D.C. The AGA respectfully requests that the Commission avoid declaring this legal, regulated industry as being contrary to the public interest.

The Commission should clarify that the Proposal is not intended to conflict with state regulated gaming activity. As the Commission also notes, gaming is a rapidly evolving field. A regulated market where operators can hedge exposure to legitimate business risks would serve an important commercial purpose. The Commission should evaluate options for narrowing the Proposal to permit such trading. And finally, 38 states and Washington, D.C. have decided that some form of regulated gaming is in their public interest; the Commission should not undermine those conclusions. The AGA stands ready to engage with the CFTC to ensure regulations allow for appropriate innovation and product development to meet the bona fide commercial needs of the sports betting ecosystem as it continues to mature.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Cylke". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Cylke  
Senior Vice President, Government Relations  
American Gaming Association