



VIA EMAIL

June 23, 2023

The Honorable Rostin Behnam
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: KalshiEX, LLC's Listing Congressional Control Event Contracts for Trading by Certification.

Dear Chair Behnam:

Better Markets¹ applauds the Commission for scheduling an open meeting to consider the commencement of a 90-day review, pursuant to Commission Regulation 40.11(c), concerning KalshiEX, LLC's ("Kalshi") congressional control event contracts.

We wish to address several critical concerns with Kalshi's congressional controls event contracts submission. First, the congressional control event contracts offered by Kalshi do not comply with the CEA or the CFTC's regulations. Second, Kalshi failed to properly comply with the submission requirements mandated by CFTC regulation 40.2(a)(3) prior to listing its contracts for trading. Third, Kalshi should be subjected to an investigation for filing what appears to be, at best, a misleading certification and the potential intent to circumvent the CFTC's review process. Fourth, in light of Commissioner Pham's prior conduct regarding Kalshi related to this matter (as set for in the [pending complaint before the CFTC Inspector General](#)²) and Kalshi's subsequent

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

² See Better Markets Ethics Complaint Regarding CFTC Commissioner Caroline Pham's Apparent Public Disclosure of Highly Confidential, Nonpublic, Internal, Factual and Legal Discussions Regarding the Pending Application of KalshiEx, LLC (Dec. 8, 2022), <https://bettermarkets.org/wp->

actions regarding this pending matter, we respectfully request that Commissioner Pham be required to recuse herself from any involvement in any matter related to Kalshi, including the pending matter.

1. Congressional control contracts conflict with the Commodity Exchange Act and violate CFTC regulations on event contracts.

Event contracts relating to the partisan control of Congress would (1) violate the statutory and regulatory framework applicable to event contracts; (2) constitute prohibited “gaming” under state and federal law; (3) undermine public faith in our markets and elections; (4) fail to serve the primary purpose of the futures markets as a viable hedging and price discovery mechanism; and (5) be against the public interest. We detailed these issues in our September 25, 2022 [comment letter](#), which is incorporated as if fully set forth here.

In addition to the obvious fact that the CFTC is not designed, intended, or set up to regulate gambling, the introduction of political control event contracts, if permitted, would be a significant deviation from the core principles and historical foundations of the futures markets. **The primary purpose of those markets is to serve as a mechanism for hedging risk and facilitating price discovery for physical commercial purchasers and producers of commodities that are vital to every American family.** Those markets do not exist to promote, facilitate, or enable widespread speculative gambling among retail traders. While limited speculation is allowed to enhance market liquidity and support the critical functions of derivatives markets, excess speculation is expressly prohibited, and these markets are not intended or designed to function as casinos or serve predominantly speculative activity.

Furthermore, widespread gambling on our elections through the simple click of a button is far removed from the purpose, function, and importance of the electoral processes. Such activities undermine the sanctity and democratic value of elections, turning them into speculative spectator sports. Better Markets agrees with the [statements you made on the Odd Lots Podcast](#) regarding the new and entirely different role the CFTC would have to assume if political contracts were allowed. The prospect of the CFTC assuming the role of an "election cop" raises valid concerns about the misalignment of that role with the CFTC’s mandate and with the original intent and objectives set forth by Congress. This situation presents not only legal implications but also broader policy considerations. It prompts questions regarding the suitability of this financial regulatory body being heavily involved in overseeing and policing gambling on the country’s electoral processes. Therefore, it is important for the CFTC to carefully evaluate all these implications and potential consequences when it deliberates on whether to allow a political event contract in the derivatives marketplace.

[content/uploads/2022/12/Better_Markets_Letter_CFTC_Ethics_Complaint_Pham.pdf](#); *see also* Better Markets Ethics Complaint Regarding CFTC Commissioner Caroline Pham’s Apparent Public Disclosure of Highly Confidential, Nonpublic, Internal, Factual and Legal Discussions Regarding the Pending Application of KalshiEx, LLC (Dec. 12, 2022), <https://bettermarkets.org/wp-content/uploads/2023/06/LTR-CFTC-Inspector-General-re-Pham-12-12-22-.pdf>.

Lastly, it is important to note that Regulation 40.11(a)(2) includes a provision that empowers the Commission to prohibit event contracts that are deemed to be contrary to the public interest. This provision clearly recognizes that there are certain forms of trading that are not enumerated in the statute that are against the public interest, and it broadly empowers the CFTC to prohibit them if, in its Congressionally delegated discretion, it determines them to be against public policy. If mass gambling on the outcome of our federal elections does not fall within that category, it is challenging to envision what would. Just as we would never allow traders to place bets on predicting the occurrence of a school shooting, we must similarly protect the integrity of our elections by refusing to permit gambling on our democratic process. Particularly now, when many already question the fairness and validity of our elections and electoral process, preserving the integrity of our electoral system and safeguarding the fundamental principles of democracy should always take precedence over any potential private gains derived from speculative market activities.

2. Kalshi failed to properly comply with the submission requirements provided in CFTC regulation 40.2(a)(3).

Kalshi is now seeking to bypass the approval process outlined in Regulation 40.3, which it had previously initiated with the Commission. After receiving public advice from Commissioner Pham, which is the subject of a pending complaint filed with the CFTC IG (see footnote 2 above), and apparently acting on that advice, Kalshi withdrew that application and is now pursuing the self-certification route under Regulation 40.2. However, Kalshi has apparently failed to meet a key condition in Regulation 40.2(a)(3)(iv) that requires Kalshi to certify that the contracts to be listed comply with the CEA and Commission regulations.

In its submission of a concise explanation and analysis of the product, as required under Regulation 40.2(a)(3)(v), Kalshi used language that appears to certify that the event contracts comply with the CEA and CFTC regulations. However, in the actual certification document required under Regulation 40.2(a)(3)(iv), Kalshi did not certify that the event contracts comply with the CEA and CFTC regulations. In fact, Kalshi only included language in the certification document from regulation 40.2(a)(3)(vi) which certifies that Kalshi posted a notice of pending product certification with the CFTC and a copy of the submission on its Web site. It would appear noteworthy that Kalshi only included certification language in a document that does not require a signature from a representative of the exchange.

In contrast, Kalshi's previous Regulation 40.2 submissions included statements certifying the compliance of their contracts with CEA and CFTC regulations along with a signature from a representative. However, as stated in the above paragraph, in its recent Regulation 40.2 submission, Kalshi did *not* certify that its political control contracts are in compliance with the CEA and CFTC, which would make sense in light of the points we make above and in our prior [comment letter](#). We would suggest that, notwithstanding the impression Kalshi was apparently intending to convey, this is a de facto admission by Kalshi that its event contracts do not comply with the CEA and CFTC regulations. Regardless, Kalshi has failed to meet the necessary regulatory requirements. The CFTC should require Kalshi to remove its political control contracts

due to its failure to comply with the regulatory requirement put in place to ensure legal compliance and protect market integrity.

3. The CFTC should commence an investigation of Kalshi.

In light of these developments, the CFTC should initiate an investigation into all those involved in or connected to the filing of a potentially false certification. That is, even if Kalshi is deemed to have certified compliance notwithstanding our concerns set forth above, that certification would appear to be false. Kalshi has apparently certified compliance even though it must have understood that the CFTC was going to reject the prior contract application on the ground that its event contract was not in compliance with the law. Merely withdrawing that prior application to avoid that decision after being improperly informed that it was forthcoming and then submitting a self-certified contract does not change the fact that the contract was not and is not in compliance with the CEA or CFTC rules. In general, the filing of an inaccurate if not false certification, in addition to potentially circumventing the CFTC's rigorous review process, must not be taken lightly. The apparently deliberate attempt to mislead the public and the CFTC through a self-certification process that fails to meet regulatory requirements would seem to highlight Kalshi's disregard for the established rules that are specifically designed to uphold market integrity.

Such actions not only call into question the credibility of Kalshi as a market participant but also erode public trust in the entire regulatory framework. It is the responsibility of the CFTC to ensure that market participants adhere to the highest standards of transparency, honesty, and compliance. By apparently flouting these principles, Kalshi could set a dangerous precedent that could compromise the fairness and stability of the futures markets. Therefore, a thorough investigation of the basis for and validity of the certification is necessary, and appropriate consequences should be imposed to deter such conduct in the future if warranted by the investigation. Upholding the integrity of the market requires swift and decisive action against any party found to have violated the rules and regulations established for the protection of market participants and the public.

4. Commission Pham should be required to be recused from any Kalshi matter including this pending matter.

Kalshi's actions regarding its political control derivative contract proposal, including its previous decision to withdraw its application just before the CFTC was to vote on it, is deeply troubling. Moreover, the public advice provided by Commissioner Pham to Kalshi to take that action and deprive the CFTC of the ability to rule on that application raises very serious concerns. Given these circumstances, it is important for the CFTC to commence an additional investigation into the sequence of events that led to Kalshi's withdrawal from the Regulations 40.3 review and subsequent submission under Regulations 40.2.

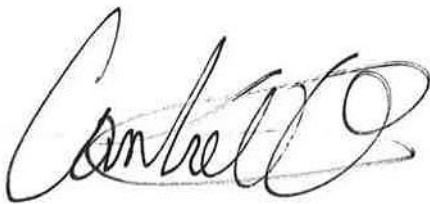
The timing of Kalshi's withdrawal, occurring on May 22, 2023, right before the anticipated adverse ruling by the CFTC and following numerous deadline extensions at the request of Kalshi, raises the possibility of a calculated attempt to manipulate the regulatory process. That this was done with the apparent benefit of confidential internal CFTC information provided by

Commissioner Pham amplifies those concerns. Such conduct not only undermines the fairness and transparency of the markets but also jeopardizes the trust and confidence of market participants as well as the public. The CFTC must take decisive action to safeguard market integrity by thoroughly examining Kalshi's actions and any potential misconduct by involved parties.

A CFTC Commissioner appearing to act as an advisor if not de facto ally of a private firm with a matter pending before the CFTC – and evidently publicly disclosing highly confidential CFTC information on internal deliberations and decisions – raises profound concerns about possible violations of law and ethics. It also threatens to undermine the credibility of the regulatory system and erode public trust in the fairness and impartiality of the market oversight. That Kalshi apparently acted on that advice, avoided a likely adverse determination, and now seeks to unilaterally obtain approval via a potentially misleading submission, only intensifies the concerns. Given that, as well as Commissioner Pham's prior conduct specifically related to Kalshi in this very matter and the complaint against that Commissioner currently pending before the CFTC IG, we respectfully suggest that Commissioner Pham be required to recuse herself from any involvement in any matter related to Kalshi, including this pending matter.

Thank you for your attention to these matters.

Sincerely,



Cantrell T. Dumas
Director of Derivatives Policy

cdumas@bettermarkets.org

Better Markets, Inc.
2000 Pennsylvania Avenue NW
Suite 4008
Washington, DC 20006
(202) 618-6464

<http://www.bettermarkets.org>

cc: Commissioner Kristin N. Johnson
Commissioner Christy Goldsmith Romero
Commissioner Summer K. Mersinger
Commissioner Caroline D. Pham