



VIA EMAIL

July 26, 2023

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

Re: KalshiEX, LLC's Purported Rebuttal of Better Markets' Comment Letter That Brags About Support from a Notorious Election Gambler Provides the CFTC With Yet More Reasons to Reject Its Proposal to Unleash Gambling on U.S. Elections

Dear Chair Behnam,

Thank you for putting KalshiEX, LLC's ("Kalshi") radical attempt to unleash gambling on U.S. elections in the form of a self-certification of its congressional control event contracts proposal out for public comment ("Proposal"). Kalshi's Proposal is little more than a sneaky and dangerous backdoor attempt to get the CFTC to legalize widespread gambling on U.S. elections. That raises very serious issues relating to our democracy, including those arising from allowing \$100 million bets that will undoubtedly incentivize improper if not illegal election interference. That is in addition to, among other things, the fact that the Proposal violates the CEA and CFTC rules, as Better Markets detailed in a [comment letter](#) filed on July 24, 2023. As you no doubt know, Members of Congress, hundreds of advocacy groups, experts, and citizens have also filed [more than 1,000 comments in opposition](#) to Kalshi's Proposal.

There is already more than ample basis in the record for the CFTC to reject Kalshi's Proposal. We nonetheless write to address a number of assertions made by Kalshi in a supplemental filing devoted exclusively to trying but failing to address the compelling points made in Better Markets' comment letter. Moreover, we wish to point out that Kalshi's supplement filing actually provides the CFTC with yet more reasons to reject its Proposal.

- 1. Kalshi's highlighted "progressive" supporter is a notorious election gambler who proves that election manipulation is real, and that abuse of inside information is inevitable.**

Kalshi's attempted rebuttal begins by bragging about a supposed "progressive," Sean McElwee, who supports Kalshi's Proposal to bet on the outcome of elections. However, Kalshi fails to inform the CFTC that McElwee is a [notorious election gambler](#). While the head of a Democratic polling and consulting company, Data for Progress, McElwee reportedly bet against the same campaigns he was hired to help win:

"At that earlier poker night, Sean had demurred when one of his buddies asked if he ever bet on races he was working. But the next time he hosted a game, Sean showed off a pair of pink high-tops he had bought with the **money he'd made betting against [his own client] Nina Turner**, the more-liberal candidate in the Democratic Ohio primary. "I was polling for Nina Turner's super PAC," he announced to the table. "So I knew Shontel Brown was going to win."

McElwee has also admitted to commissioning polls for the sole purpose of gaining inside information to make more informed bets. While the head of Data for Progress, McElwee [also encouraged his staff to gamble on election outcomes](#). Another part of McElwee's strategy reportedly was to work closely with the [2nd largest Democratic donor](#) in the 2022 election cycle, none other than crypto criminal FTX's former CEO [Sam Bankman-Fried](#). They were so close that McElwee reportedly worked with SBF in deciding who SBF should donate to in Congressional races. FTX officers "donated [nearly \\$80 million](#) to political candidates and causes." Thus, McElwee, working with FTX's former CEO and maybe others, had the money, data, inside information, and incentive to swing elections to cover his bets. This is just one example of the type of election interference and insider trading that can be expected to plague U.S. elections if Kalshi's Proposal is allowed.

Moreover, while it isn't known how much Kalski supporter McElwee was betting to engage in this nefarious conduct, we doubt it was as much as \$100 million, which is what Kalshi is proposing as a supposed "position limit" for just one type of trader. However, given the big money backing Kalshi and their undoubted outsized expectations for profits, there will almost certainly be billions if not tens of billions of dollars ultimately at stake on a wide range of elections. The economic incentives will be to generate as much betting in as large amounts as possible. That will present very powerful incentives that many people will not be able to resist to engage in activities that will put their bets in the money via inappropriate if not illegal conduct.

Tellingly, Kalshi's claims of fighting insider trading on their platform hinges on their trading prohibitions. Those are purportedly aimed at preventing individuals with inside information from placing bets on their exchange. However, Kalshi has not disclosed any specific measures for identifying such individuals and their affiliates or for monitoring bets made by these supposedly prohibited individuals. For example, who is going to monitor whether a household member of an employee associated with a "major" polling organization is placing a bet based on their inside polling information like McElwee?

Regarding Kalshi's claims, we note that [others](#) have pointed out that Kalshi's beneficial owner may be an undisclosed foreign entity (which raises control, affiliate, disclosure, and other serious issues) and that Kalshi allegedly has a history of deceiving the CFTC:

"On assessing the intent and capacity of the registrant to maintain public trust, we must also consider the potential of Kalshi's alleged history of demonstrated non-compliance. Potential allegations, including those alleged by a whistleblower, not only suggest the willful failure to disclose beneficial ownership interests that are contrary to the public interest, but also a history of deceiving the Commission and investing little to no resources into core competencies such as market surveillance and regulatory compliance."

"Sovereign influence is unfortunately not potentially limited to Kalshi as dozens of prominent venture capital and private equity firms have recently been disclosed as conduits of Saudi Arabia's sovereign wealth fund, for example. We would note as well that during recent hearings before Congress, both the Chair of the CFTC and the Chair of the U.S. Securities and Exchange Commission ("SEC") have been questioned about ownership of their regulated entities. While not prohibited in many instances, we would submit that a benefit of the doubt simply should not be conferred to those attempting to safeguard a cornerstone of the U.S. democratic process - particularly when operating with unfair political influence under presumed immunity."

Finally, Kalshi's closing claim that its "Contract will also only be on the outcomes of Congressional control, which individuals have near-zero impact on" is rebutted by McElwee's conduct. Individuals like McElwee, who have access to insider polling information and near unlimited resources through individuals like SBF making campaign contributions, funding dark money groups, and secretly creating front groups can have a significant impact on these elections, including in the U.S. Senate, where partisan control was determined by a single seat as recently as last Congress.

And, of course, as we pointed out in our comment letter, the mere fact that Kalshi's Proposal relates to the partisan control of Congress is meaningless. There can be no doubt that innumerable similar "contracts" will be offered if Kalshi succeeds in getting this one approved. In no time at all, people will almost certainly be able to bet on every election from the President to the local dog catcher. It is a fraud on the public to suggest otherwise.

2. Protecting election integrity transcends partisan affiliations.

For some reason, Kalshi, a well-funded, private, profit maximizing company, believes it's important for the CFTC and the public more broadly to believe that it represents the "progressive view" on promoting gambling on democracy and makes the objectively inaccurate

claim that “progressives have explicitly rebuked” Better Markets’ opposition to its gambling Proposal.

Kalshi’s attempt to unleash gambling on U.S. elections has nothing to do with whether one is or is not a “progressive.” Defending democracy, opposing gambling on U.S. elections, and being against election interference are bipartisan and nonpartisan. Just one example is former Republican CFTC Commissioner Jill Sommers who voted against a prior election gambling proposal by Nadex and who voiced opposition to a prior proposal by Kalshi, asking the critical and still relevant [question](#):

“When we think about what happened in 2020, do we really want another excuse for the American people to question the integrity of our elections?” said former CFTC Commissioner Jill Sommers, who voted against the Nadex proposal. “This is not something we want to be introducing into federally regulated financial markets.”

The political situation in the country today is much more explosive than it was in 2012 when the CFTC rejected Nadex’s proposal. At this perilous time when democracy is under attack and the public has grave concerns about the integrity of elections, all Americans regardless of where they are on the political spectrum should – and do – oppose Kalshi’s attempt to maximize profits at the expense of election integrity.

3. Kalshi’s handful of “progressive” supporters are vastly outweighed by many more authoritative, informed, and credible progressive opponents.

Kalshi’s claim to represent the “progressive view” on gambling on elections based on the support of 5 individuals entirely ignores the more than 1,000 progressive Members of Congress, advocacy groups, experts, and concerned citizens who have oppose them and share Better Markets’ views on the Proposal.

As detailed above, Kalshi’s first cited support for its “progressive” bone fides, McElwee, is regarded as a disgraced political consultant who reportedly secretly bet against his own clients and used inside information. We will leave it to others to debate Kalshi’s second cited “progressive” supporter, but we will note that his curious 2022 letter in support suffers from a long list of omissions: It is based on unsupported speculation far beyond any expertise he has ever purported to have; it fails to mention the CEA, CFTC rules, or any other appropriate authority; it fails to acknowledge or address Kalshi’s breathtaking claim that the CFTC is somehow the appropriate agency to make such momentous decisions about democracy; it would appear to violate Harvard University’s policy regarding the use of its letterhead and implied endorsement; and it fails to disclose what compensation, if any, he received for this letter and/or the assistance he received in drafting it.

Even if one assumes arguing gambling on elections might provide some useful analytic information and, however inconceivable, that could somehow outweigh the many downside threats to democracy and elections, there are numerous other key unasked and unanswered questions: How will the CFTC police “markets” that gamble on elections? Where will it get the additional staff and technology resources to do this? How will it provide “investor” protections to the likely millions if not tens of millions of retail gamblers subjected to predatory gamified apps all designed to induce as much trading in as big amounts as possible? What impact will this influx of retail speculators have commodities markets? How will these new responsibilities interfere with the CFTC fulfilling its many critically important roles that all Americans depend on, i.e., regulating and policing the activities of actual producers and purchasers seeking to price, hedge, and deliver commodities from coast to coast? Those are just some of the critical issues ignored by Kalshi’s second “progressive” supporter.

Kalshi’s third cited supporter is a crypto lobbyist who, on behalf of the CEO of the Crypto Council for Innovation (CCI), of which FTX was a founding member, tried to get Better Markets to support crypto. That failed lobbying effort included recruiting support for FTX’s and SBF’s special interest legislation before FTX blew itself up and its CEO SBF was arrested, costing its customers and investors tens of billions of dollars. We don’t recall FTX or SBF in anyone’s progressive hall of fame.

That, of course, isn’t Kalshi’s only connection to FTX. It was reported that Kalshi bid to purchase FTX’s LedgerX from bankruptcy. Kalshi website also [states](#) that it “is partnered with LedgerX (d/b/a/ FTX US Derivatives)...” One could reasonably wonder if there are other still undisclosed connections, affiliations, relationships with SBF’s FTX and its activities.

Finally, it is objectively clear that progressives join Better Markets in opposing Kalshi’s Proposal and gambling on democracy. For example, [letters of opposition](#) have been filed with the CFTC by Congressman John Sarbanes, Congressman Jamie Raskin, Public Citizen, Common Cause, Americans for Financial Reform, Center for American Progress, Action Center on Race and the Economy, Interfaith Center on Corporate Responsibility, Oxfam America, Progressive Change Institute, Revolving Door Project, and hundreds of other organizations and citizens.

4. Better Markets’ sole concern is promoting and protecting the public interest – not maximizing profits and wealth extraction at the expense of our democratic institutions and the integrity of elections.

Unlike Kalshi, Better Markets does not have the backing of some “[of the biggest names on Wall Street and Silicon Valley](#)” and doesn’t have Kalshi’s apparently unlimited resources to hire an army of lawyers and lobbyists to promote its profit maximizing activities, as exemplified by the incredibly quick turnaround of a very carefully crafted 33-page attempted rebuttal of our 22-page comment letter. However, Better Markets apparently alone in Washington D. C. actually

rejected FTX's and SBF's money which came in the form of a bribe of "\$1 million or more" in exchange for Better Markets supporting their predatory auto-liquidation crypto proposal before the CFTC. Instead, we led the very lonely fight against FTX and SBF before it collapsed into bankruptcy and its CEO was arrested. We continue to be leading crypto critics – including of many firms and activities "backed by some of the [same] biggest names on Wall Street and Silicon Valley" -- because we prioritize customer and investor protections as well as financial stability, not short-term profit maximization and bonuses.

The fact that some of the biggest names on Wall Street and Silicon Valley, gamblers, big money backers, crypto cheerleaders, paid lobbyists, and their many deep-pocketed allies oppose our positions here is irrelevant. The facts and law are what count and, as detailed in [our comment letter](#) and those from [many others](#), that's what compels an outcome here that rejects Kalshi's Proposal.

We will not otherwise respond to the many other inaccuracies and omissions in the purported rebuttal, other than to note that much of it is merely argumentative, and large parts amount to little more than Kalshi saying "trust us." Considering the above and many other concerns and issues raised by others, that is little comfort given the very real threat to election integrity and democracy itself.

Thank you for your attention to these matters.

Sincerely,



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