BETTER MARKETS

KALSHI

FAQ

Frequently Asked Questions: Kalshi's Attempt to get the CFTC to Unleash Gambling on U.S. Elections via Prediction Markets

March 21, 2024

For more than a year, KalshiEX, LLC ('Kalshi'), a commodities futures exchange, has attempted to get the Commodities Futures Trading Commission ("CFTC") to allow traders to bet on U.S. elections via so-called "event contracts," which are the basis of prediction markets. Better Markets has opposed this effort because gambling on elections is a bad idea, it's contrary to the law and public policy, and the CFTC has no experience, expertise, or basis for regulating and supervising betting on US elections. Kalshi's proposal is nothing more than a sneaky backdoor attempt to unleash election gambling – and likely election interference – on Americans. Fortunately, the CFTC agreed with Better Markets and rejected Kalshi's request, protecting democracy, markets, investors, and all Americans who depend on the CFTC to do its real job regulating the derivatives and commodities markets. As always happens now, Kalshi sued the CFTC and the case is currently pending before a federal court. Below are answers to frequently asked questions about Kalshi's proposal.

Q: Aren't predictive markets a good idea and wouldn't adding elections to these markets provide insights into the democratic process and public policy?

Better Markets doesn't have a position on the value or wisdom of prediction markets in general. However, such markets that involve gambling on *elections* pose a number of especially serious dangers. Moreover, they simply have no business being regulated and overseen by the CFTC.

The CFTC is the smallest, least funded, and most overwhelmed U.S. financial regulatory agency, but its mission and mandate is vital to every American. The CFTC's job includes supervising and policing the multitrillion-dollar derivatives and commodities markets. Those are the markets that determine the price and availability of critical products like cereal, bread, gas, oil, and everything that involves plastics. They are supposed to do all that with a budget of only $300 million or so a year – yes, $300 million to supervise and regulate multitrillion-dollar markets. They don't even have the funding they need to do their current job.

Moreover, the CFTC is simply not the right agency to deal with issues like gambling, elections, election interference, political corruption, and the myriad other issues that relate to and could arise from Kalshi’s proposal. It would be like asking the Federal Election Commission (“FEC”) to oversee and regulate multitrillion dollar derivatives and commodities markets – no one would seriously propose that and no one should be allowed to do the opposite, which is what Kalshi is trying to do.

Q: Why is Kalshi’s rejected proposal so threatening to Democracy?

In the current environment, where public concern about the integrity of our democracy and elections has never been higher, we cannot allow an activity that will further undermine and raise serious questions about our democratic process. Moreover, it’s highly likely to incentivize if not guarantee election interference.

Had Kalshi's proposal been approved, those who placed bets (including those up to $100 million) might try to interfere with elections to ensure they won their bets. For example, some could have been highly incentivized to spend money to flip a race that was on the margin, including using false "October surprises," highly targeted social media campaigns, or last-minute charges that couldn’t be rebutted or disproved before the polls opened. It does not take much money to use social media to influence elections, and this is especially true for local elections and primaries, where there are fewer voters—the type of election that would eventually become the subject of betting contracts if Kalshi’s were approved. Thus, a bettor standing to win millions of dollars or more might think spending a few thousand dollars to sway a race was a good investment even if it was a subversion and corruption of democracy.

These concerns are not unrealistic or farfetched. There have already been numerous reported examples of betting fans trying to interfere with sports events. And there is the very recent example of the Super Bowl streaker. A guy bet $50K that there would be a streaker during the Super Bowl, which would pay $375,000 if there was a streaker. He himself streaked at the Super Bowl, was arrested, and paid a $1,000 fine. Thus, he netted $374,000 from his $50,000 bet after paying the fine. That’s not interfering with an election, but manipulating or interfering with (at least) local elections will not be that much more difficult.

Q: What does gambling on elections have to do with commodity markets?

Nothing! That’s why the CFTC has zero experience, expertise, or basis for regulating and supervising betting on US elections.

Commodity markets, which the CFTC oversees, exist for hedging and price discovery. They exist so commodities—everything from corn, wheat, oil, and gas to many other real products that are absolutely vital to every single American—are actually produced and affordably priced. The markets are not intended to serve as a casino to wager on the future of our democracy.

For hundreds of years, commodity markets have allowed actual producers and purchases of actual commodities to determine the future price through so-called price discovery. They have also allowed commercial businesses to hedge against the risk of commodity price changes to ensure those essential products could be affordably and consistently delivered to all Americans.

Because those markets need sufficient liquidity, speculators are allowed, but only in very limited numbers. Speculation is very carefully limited because it can overwhelm those markets and undermine the goal of price discovery and stable pricing. Increasing speculation in the way Kalshi is proposing would result in excess speculation, which the law specifically prohibits because it is so harmful to American consumers.

Q: What specifically was Kalshi trying to get the CFTC to approve?

Kalshi sought approval from the CFTC to offer so-called binary event contracts based on the election outcome and partisan control of Congress. Traders would have been able to purchase a contract that essentially bets on whether Democrats or Republicans would win control of the House of Representatives and the Senate. Bets of up to $100 million would have been permitted, depending on the type of gambler.

While the rejected proposal was limited to betting on the partisan control of Congress, its approval would have opened the floodgates for traders to wager on the outcome of all sorts of elections, from the local dogcatcher to presidential elections.

Q: What are Better Markets' objections to Kalshi's application?

Better Markets' filed a comment letter with the CFTC detailing its objections (available here), but here are several key points:

- **The law expressly prohibits "gaming" contracts**, which is what Kalshi is proposing, and it also requires the CFTC to reject contracts that are illegal under state law. Numerous states protect the integrity of their elections by outlawing gambling on elections.
- **Gambling is not a commodity.** Commodities include wheat, gas, soybeans, pork, cattle, and similar real-world products that are critically important to every American. The commodity markets exist so that Americans pay fair and stable prices for the necessities of life, including cereal for breakfast, bread for lunch sandwiches, gas for the car, and a host of other essential goods.
- **Commodity markets are not speculative markets** like equity markets and excess speculation is expressly prohibited. Commodity markets were set up so that commercial producers and purchasers can engage in price discovery and hedge against price changes in the commodities they use in their businesses and sell to their customers. The Kalshi contract

has no consistent, credible price discovery or hedging function, and it would flood the markets with retail speculators, violating the law against excess speculation.

- **Democracy and elections are foundational principles** for our country and are not appropriate subjects for gambling and betting. Just as we would not allow traders to place bets on when or where they believe the next school shooting will occur, so too must we protect our elections by refusing to allow gambling on our democratic process.

Q: Who else opposed Kalshi?

Members of Congress opposed Kalshi. Representatives John P. Sarbanes (D-MD 3) and Jamie Raskin (D-MD 8) filed a comment letter against the proposal. Senators, including Jeffrey Merkley (D-OR), Sheldon Whitehouse (D-RI), Edward Markey (D-MA), Elizabeth Warren (D-MA), and Chris Van Hollen (D-MD), also sent a joint letter to the CFTC expressing concerns over the proposal.

A diverse coalition, including Public Citizen, Americans for Financial Reform, and the Revolving Door Project, also opposed Kalshi's applications. In addition, more than 1,300 comments, many from concerned individuals, were filed with the CFTC on Kalshi's proposal and many if not most urged the CFTC to reject it.

Q: How does the Kalshi proposal gamify finance?

Kalshi's proposal is another example of the deeply troubling trend toward the "gamification" and "retailization" of finance. In this increasingly common pattern, everyday investors are lured into new financial products and services, justified by claims that the offerings represent beneficial "democratization" or "innovation." Yet, as we have seen with the gamification of retail trading that fueled the meme stock frenzy, the result is typically massive wealth accumulation for a few sponsors and issuers but massive losses suffered by the majority of retail investors. Ironically, it has been reported that gamified retail trading apps like Robinhood have already caused an increase in calls to gambling addiction hotlines. Pushing retail investors directly into gambling will only increase these addictive activities with all their social and economic harms.

Q: Why did the CFTC reject Kalshi's proposal?

The CFTC issued a well-grounded, thoughtful, 23-page Order rejecting Kalshi's application. As the CFTC Order, Chair Behnam's statement, and most of the 1,378 public comments made clear, Kalshi's proposal fell under numerous provisions of the Commodities Exchange Act that provide for heightened public interest scrutiny and rejection. Moreover, at a time when there are already historically high concerns about the integrity of our elections, the CFTC properly evaluated the multiple fatal flaws in Kalshi's self-certified contract and decided that it was a clear violation of public policy as well.

Q: Where does Kalshi's lawsuit against the CFTC case stand?

Kalshi's lawsuit claims that the CFTC's denial exceeded the agency's statutory authority under the Commodity Exchange Act (CEA) and was arbitrary and capricious under the Administrative Procedure Act (APA). In reality, just the opposite is true. The CFTC acted well within its authority, properly applied the law, and correctly concluded that this contract would harm the public interest.

Kalshi filed its opening brief in support of its motion for summary judgement on January 25, 2024 and the CFTC filed its brief on February 26, 2024. Better Markets filed an amicus brief on March 4, 2024 supporting the CFTC's decision. Briefing in the case is scheduled to conclude on April 10 and the court is expected to schedule an oral argument thereafter. That will be followed by a decision, which undoubtedly will get appealed.

As explained in our brief, Congress specifically foresaw the dangers posed by event contracts, and it authorized the CFTC to prohibit those that pose the greatest threats. Among them are contracts that involve gaming or activity that is unlawful under state law, and Kalshi's election gambling contract falls into both categories.

We also highlight the multiple harms these contracts would inflict, first and foremost by undermining the integrity of our elections. The election process in this country is already under assault, and a financial product that invites election interference will further compromise the electoral process and further erode the public's already shaken confidence in our nation's most important democratic institution. Gambling on elections would create powerful new incentives for bad actors to interfere with our elections and sway voters outside of the democratic process. The use of AI, 'deepfakes' and social media to manipulate voters and influence election outcomes has already become all too real. The potential to "win" tens if not hundreds of millions of dollars from an election gambling contract such as Kalshi's will undoubtedly intensify the danger of interference given the promise of quick profits. As we also explained in our brief, these contracts pose yet additional threats. The market in Kalshi's contract would be especially susceptible to manipulation, harming other investors, and that manipulation would be difficult to detect and prevent. Moreover, investors would be enticed into these risky bets with the increasingly prevalent use of gamification gimmicks, causing widespread investor losses. And if approved by the court, they would cripple the CFTC's ability to prevent a rash of other similar gambling contracts, multiplying the harm many times over.

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Better Markets is a public interest 501(c)(3) non-profit based in Washington, DC that advocates for greater transparency, accountability, and oversight in the domestic and global capital and commodity markets, to protect the American Dream of homes, jobs, savings, education, a secure retirement, and a rising standard of living.

Better Markets fights for the economic security, opportunity, and prosperity of the American people by working to enact financial reform, to prevent another financial crash and the diversion of trillions of taxpayer dollars to bailing out the financial system.

By being a counterweight to Wall Street's biggest financial firms through the policymaking and rulemaking process, Better Markets is supporting pragmatic rules and a strong banking and financial system that enables stability, growth, and broad-based prosperity. Better Markets also fights to refocus finance on the real economy, empower the buyside and protect investors and consumers.

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