

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
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- **Industry Filing 22-002**
- **Review and Public Comment Period of KalshiEX Proposed Congressional Control Contracts Under CFTC Regulation 40.11**

Dear Mr. Kirkpatrick.

Thank you very much for giving us the opportunity to comment on your Review and Public Comment Period of KalshiEX Proposed Congressional Control Contracts Under CFTC Regulation 40.11 (Industry Filing 22-002).

The Commodity Futures Trading Commission (CFTC or Commission) announced the beginning of a review of KalshiEX, LLC's (KalshiEX) proposed contracts on which political party will be in control of each chamber of the U.S. Congress (Congressional Control Contracts) under CFTC Regulation 40.11(c). KalshiEX, a designated contract market, voluntarily submitted the Congressional Control Contracts for CFTC review.

I would like to raise the following concerns that I have regarding these proposed Congressional Control Contracts.

Congressional intent

Section 745(b) of the Dodd-Frank Act amended Section 5c of the Commodity Exchange Act by adding the following under new (c)(5)(C)(i) concerning event contracts, which states that:

“EVENT CONTRACTS.—In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section

1a(2)(i)), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—

- (I) activity that is unlawful under any Federal or State law;
- (II) terrorism;
- (III) assassination;
- (IV) war;
- (V) gaming; or
- (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.”

The proposed Congressional Control Contracts (which are political event contracts) clearly “involve” an element of gaming, and are contrary to the public interest.

Lack of definite economic rationale

Certain event contracts serve a useful economic purpose. For example, weather derivatives covering snowfall or hurricanes offer protection against actual suffered losses. Entities can use such derivatives in risk management to protect against actual suffered losses caused by adverse or unexpected weather conditions. I would argue that the proposed Congressional Control Contracts offer no such protection against actual suffered losses. Whilst weather is purely random, the defined political events and their ramifications are based on future human decisions, which can vary, but are certainly not random. I must say that I find the concept of using the proposed Congressional Control Contracts to protect against actual suffered losses caused by political control to be quite perverse.

Additional arguments raised by KalshiEX are not sufficient

According to KalshiEX: “Contracts on political control of Congress available to US participants have been trading for nearly a decade. Since 2014, a similar contract has been available for trading on an unregistered trading venue that purports to operate under a No-Action Letter that was issued by the Division of Market Oversight in 2014 and granted relief to operate without complying with a number of aspects of the Commodity Exchange Act and Commission Regulations.”¹ KalshiEX goes on to say that: “The Exchange is proposing to bring such contracts onto a fully regulated exchange operating under the core principles applicable to a DCM, with participant funds safeguarded at a DCO operating under the core principles applicable to a DCO. The Exchange believes it is time to offer these widely used but unregulated contracts on a fully regulated basis so that U.S. persons can hedge risks arising from political control on a market with robust safeguards and transparency”.

Whilst this is – on the surface – a reasonable argument, I am not yet convinced that it is sufficient to outweigh the negative aspects associated with the proposed Congressional Control Contracts: that they “involve” an element of gaming; and that there is no definite

¹ See KalshiEX submission, 19 July 2022 available at: <https://www.cftc.gov/sites/default/files/filings/ptc/22/08/ptc082422kexdcm001.pdf>

Please note that the comments expressed herein are solely my personal views

economic rationale for the proposed contracts. I am also not convinced that the Commission bears any responsibility to allow the proposed Congressional Control Contracts just because similar contracts are traded elsewhere. On the contrary, I would strongly recommend that the Commission should forbid all such contracts.

Yours sincerely

C.R.B.

Chris Barnard