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- Industry Filing 23-01
- Public Comment Period for KalshiEX Proposed Congressional Control Contracts

Dear Mr. Kirkpatrick.

Thank you very much for giving us the opportunity to comment on your Public Comment Period for KalshiEX Proposed Congressional Control Contracts (Industry Filing 23-01).

The Commodity Futures Trading Commission (CFTC) announced that it has commenced a review of contracts self-certified by KalshiEX, LLC (Kalshi) on which political party will be in control of each chamber of the U.S. Congress, under CFTC Regulation 40.11(c). Kalshi, a designated contract market, submitted the contracts to the CFTC following the close of business on June 12, 2023. The CFTC has 90 days subsequent to the date that it commences review, or if applicable, until the conclusion of such extended period agreed to or requested by Kalshi, to make a determination with respect to the contracts.

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.

Role of the CFTC

I agree with CFTC Chair Rostin Behnam’s statements about the impact that political event contracts could have on the role of the CFTC. During an Odd Lots podcast, Behnam stated that: “Imagine a situation where we have alleged fraud or alleged manipulation of an election, and someone coming to the CFTC and saying you know you have a contract listed on an election in X District in Y State, and we believe there was fraud because of hardware, software, news - you name it. You need to police that fraud. So without being too indirect what I'm trying to say is the CFTC could end up being an election cop and I don't think that's what Congress meant or intended for us to do”.¹

I agree with these statements. It would not be in the public interest for the CFTC to assume the role of “election cop”. Therefore I would strongly recommend that the Commission should forbid all such contracts.

Lack of definite economic rationale

Certain event contracts may 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 reliable or predictable 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, and not in line with the public interest.

¹ See <https://www.bloomberg.com/news/articles/2023-05-18/transcript-cftc-chair-rostin-behnam-on-the-fight-to-regulate-crypto?sref=mQvUqJZj>

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

Yours sincerely

C.R.B.

Chris Barnard