I've been involved in political trading on domestic markets (PredictIt) and overseas markets since 2016. It's no surprise that I wholeheartedly support the CFTC allowing Kalshi's proposed contract on Congressional control to be listed. This market is a valuable indicator for political news consumers and serves as an outlet for speculators (the majority) and hedgers (a smaller fraction) to gain or mitigate exposure to the economic impact of which party controls Congress.

However, having been in the prediction market business/hobby for some time, it's also clear that the Commission has serious concerns about allowing any markets on elections at all (see: their revocation of PredictIt's no-action letter) and that the odds of them allowing Kalshi's contract are quite small. Republican commissioners seem inclined to allow it (albeit on procedural grounds) while the Democratic commissioners, though publicly noncommittal, appear to be fundamentally uneasy with it. I happen to be a Democrat myself and I think I basically understand where they and some of the commenters opposed are coming from. In that spirit, I thank the Commission for their detailed questions and hope that the staff evaluating these letters finds my answers useful.

1. Do these contracts involve, relate to, or reference gaming as described in Commission regulation 40.11(a)(1) and section 5c(c)(5)(C) of the Commodity Exchange Act, or in the alternative, involve, relate to, or reference an activity that is similar to gaming as described in Commission regulation 40.11(a)(2) and section 5c(c)(5)(C) of the Commodity Exchange Act?

No.

A game is a self-contained contest of others whose outcome has no bearing on the real world. Monopoly is a game where players simulate many aspects of the economy; but whoever wins at your family's board game night probably did not take anyone's real money (I hope!). A baseball game is a wonderful sporting event - there are clear economic impacts on whether or not a city has a baseball team (hence why the CFTC has allowed Kalshi to list contracts, for instance, on whether the Oakland A's will be moving to Las Vegas), but there's little economic impact that depends on whether the A's win or lose any given game.

On the other hand, it matters quite a bit which party wins an election. Both Barack Obama and Mitch McConnell are famous for the phrase "Elections have consequences". Games only have consequences within the game environment; elections matter even for those who don't play.

My sense is that the Commission wants to define them as games purely because then it would have a clear statutory reason not to allow any markets on elections; the cart has come before the horse. I don't think this approach works, because I don't think anyone at the CFTC, staff or commissioner, actually thinks elections are as frivolous as a game of chess, roulette, or football. Part of the reason the Commission has taken this topic so seriously is precisely because it understands and, I suspect, completely agrees with the following statement:

Elections are not a game.

2. What role does the requirement that the contracts trade in multiples of 5000 and/or the position limits applicable to the contracts play in the analysis of whether the contracts involve, relate to, or reference gaming as described in Commission regulation 40.11(a)(1) and section 5c(c)(5)(C) of the Commodity Exchange Act? Are the position limits reasonably enforceable?

I don’t think contract minimums or position limits are material to the definition of gaming, which I’ve provided above. These seem to be entirely separable concepts to me. My guess is the commission agrees that these features don’t matter, and therefore they don’t have to consider the changes Kalshi has made when reaching their final determination in opposition. But as said above, elections are not a game.

Position limits are trivially enforceable by Kalshi’s software (which already imposes position limits for its other contracts). In this latest proposal, Kalshi will offer different limits to different user types. Determining which users qualify for which limit requires the effort of human review but is clearly doable.

3. Should the Commission consider whether similar offerings are available in traditional gaming venues such as casinos or sports books and/or whether taking a position on elections or congressional control is defined as gaming under state or federal law?

I don’t think any domestic casinos or sportsbooks offer election wagers (certainly they do abroad). And I don’t really think it’s my place as a commenter to say what the Commission should or should not consider; I am not fully familiar with the practices that govern its decision-making.

I do think, reading into where this question is coming from, that this is a good opportunity to state the obvious: people have bet, do bet, and will continue to bet on elections. Rich Americans get in airplanes and fly to the UK and wager lots of money on who will be President. Americans like me have used PredictIt to speculate on election outcomes. I think the commission looks at this and goes “hey, these people are gambling” and that’s true! People would absolutely use Kalshi’s proposed contract to speculate just as farmers have used wheat futures to speculate on the war in Ukraine (rather than to simply hedge their own crop). You can’t prevent humans from engaging in speculation - and to be fair I don’t think the CFTC believes that it can or that it’s part of their mission to ensure markets are as Puritanical as possible.

Really what this question suggests to me is that the Commission is trying to define elections as gaming by relying on flawed inferential logic: if people bet in casinos on games like roulette and football, and people also bet in casinos (albeit overseas) on elections, doesn’t that mean that elections are also games?

No. Just because some traders will use a contract speculatively does not mean that the contract’s underlying is a game. Nihilistic and callous-souled traders who think everything is a game and treat their election trading as such do not make elections themselves a game. The behavioral ecology of traders trading on an event is irrelevant to the underlying event. And for that matter, the venue where traders hedge exposure to an event does not change the nature of the event either. And in this case, the nature of elections is that they are serious events with clear and obvious economic impact. Elections are not games.

4. Do these contracts involve, relate to, or reference “an activity that is unlawful under any State or Federal law” as described in Commission regulation 40.11(a)(1) and section 5c(c)(5)(C) of the Commodity Exchange Act?

No, elections are lawful.

5. In determining whether these contracts involve an activity that is unlawful under any State or Federal law, should the Commission be influenced by whether state laws permit betting on the outcome of elections or other political outcomes and/or by the prohibition of interstate betting under Federal law?

Again I would defer to the Commission on what it should or should not consider. If there are states that outlaw any trading on who controls Congress, then perhaps the Commission should direct Kalshi to prevent residents therein from being participants. As for Federal law, the Wire Act is not relevant here in my view as it pertains to sports and games, and elections are not games.

6. Are the contracts substantively different from Nadex's previously proposed political event contracts such that the Commission's analysis should be different?

No. But the Commission's analysis in Nadex was simply, wholly, and flatly incorrect, as they assert that elections are games because they involve a "contest of others". But this definition is too broad, elections and games both involve contests of others, yes. However, in games the impact of the outcome is contained entirely within the game, aside from whatever emotional investment the participants or spectators have. The entire point of elections, as a contest of others, is precisely that the outcome does not remain self-contained to the election. Elections are not beauty contests. Elections are not games.

[As a side note, in section 5c(c)(5)(C) of the Commodity Exchange Act war and gaming are both separately listed as prohibited event categories. But surely war is a "contest of others" as the CFTC incorrectly defined gaming in its Nadex order? If the statute intended for "contest of others" to be the gaming standard, Congress could have omitted "war" as a prohibited underlying since doing so would be unnecessarily duplicative. Clearly though, war is NOT a game just as elections are not. War is statutorily banned separately from gaming; elections are not explicitly statutorily prohibited in the CEA.]

7. Are the contracts substantively different from Kalshi's previously proposed, and withdrawn, congressional control contracts? For reference, please see "CFTC Announces Review and Comment Period of KalshiEX Proposed Congressional Control Contracts Under CFTC Regulation 40.11"

The underlying is not substantively different, the contracts are different however in that they explicitly prohibit all potential types of insiders from participating. Contract minimums and position limits also vary meaningfully although I don't know if that qualifies as a substantive change or not.

8. Do the contracts serve a hedging function? What standard should be used in reviewing the contracts' hedging function? Is it sufficient that a contract could theoretically be used for hedging, or should an exchange provide evidence of demonstrated need by likely hedgers in the market? How often must a contract be used for hedging or what percentage of market participants or open interest must represent hedging use in order for a contract to serve a hedging function?

Yes, the contracts can serve a hedging function, despite the fact that the majority of participants will be speculators. Clearly which party has control over Congress has real implications for a broad swath of economic outcomes; and I don't think the Commission has a problem with having event contracts on some of these in specific, like tax rates or legislative outcomes. But writing contracts for the full spectrum of all possible economically meaningful actions a given Republican or Democratic Congress could take is onerous and would likely miss many such actions anyway. Some hedgers are interested in tax policy, some in energy policy, some in housing policy, some in action on reproductive rights, and so on. Congressional control is a major factor influencing all of these, thus a broad spectrum of hedgers will be able to use it to offset a substantial (but not total) portion of their risk.

I believe even a theoretical hedging utility is sufficient (let's say 1% or less of all open interest belongs to hedgers), and point out that this is going to be difficult to measure anyway (and I don't think the Commission is going to be getting into the public survey business any time soon, nor could it force a DCM to produce survey results, although perhaps I'm wrong there). Of course I think exchanges should be encouraged to produce testimonials from the hedgers that use them and that the Commission might find that useful, but even without something like that, the absence of evidence is not evidence of absence.

9. Are there unique economic risks tied to the outcome of congressional control that cannot be hedged via derivative products on equities, debt, interest rates, tax rates, asset values, and other commodity prices?

Yes. For example, non-exhaustively:

Reproductive rights (and I know the Commission understands that whether or not to give birth to a child is substantially influenced by the economic impact this will have on the family or individual's life).

Criminal justice. Who gets to participate in society and the economy and in what ways? See: the First Step Act of 2018.

Environmental and energy policy. The Commission, notably the Democratic commissioners and Chair Benham, care a great deal about climate change and how it stresses the economy. Congress passes laws that can influence how we adapt to and mitigate those impacts.

In these domains, specific event contracts can be written to handle some aspects of them (though again it is very challenging to anticipate all possible outcomes in any such contract), but there are no existing commodity or other such product in that list that offers a straightforward hedge against these eventualities, to my knowledge.

10. Are the economic consequences of congressional control predictable enough for a contract based on that control to serve a hedging function? Please provide tangible examples of commercial activity that can be hedged directly by the contracts or economic analysis that demonstrates the hedging utility of the contracts.

This is a fair and complex question. The direction in which each party wants to drive the car is predictable (this is what they campaign on). Whether they reach the specific destination in mind (think infrastructure act), end up somewhere merely nearby (think Build Back Better), or drive off the road entirely (think cap-and-trade from Obama's first term) is hard to predict. So broadly, yes the economic consequences are predictable. In very specific scenarios, they may not be.

For example, consider an agricultural company that would like to discard certain pollutants into a nearby stream and a fisherman that works the larger wetland into which the stream flows. These are both parties with a strong stake in whether or not Congress uses the Congressional Review Act to revoke the WOTUS (Waters of the US) rule. It's quite predictable that Republicans would try to do so (before the most recent 2022 midterms) and, in fact, a resolution of disapproval did in fact pass the Senate and House. If Republicans had not won the House, this would have no chance of making it to the President's desk (where it happened to be vetoed - of course if Republicans had won overwhelming majorities in both chambers they could have then overrode the veto).

Basically, there are entities and individuals for whom Republican control is good for their interests and for whom Democratic control is better, and they know this. This contract lets these entities hedge against the other party coming to power or split control.

11. Should the Commission consider contract and position sizes, size of trade requirements, and/or an exchange's intended customer base to help assess whether a contract is likely to be used for hedging in at least some cases? Does the requirement that all contracts listed on Kalshi must be fully-collateralized affect this analysis? Does the requirement that these contracts trade in multiples of 5000 and/or the position limits applicable to the contracts affect the analysis of the hedging utility of the contracts?

I'm not sure whether contract minimums or position sizes substantively influence the determination that the contracts can be used for hedging, as traders of all sizes have a hedging interest. It certainly is true that the proposed higher position limits means that bigger institutions can now meaningfully participate, while the proposed contract minimums may shut out smaller players, except at low prices. In any case, the contracts do fulfill a hedging role (although of course will be used largely by speculators, as is common in all of the markets the CFTC regulates).

12. Should the Commission consider the contract design and payout to help assess the hedging utility of the contract? For example, are binary contracts useful for hedging nonbinary economic events?

Yes, clearly binary contracts are useful for hedging nonbinary economic events. The Commission already allows and encourages event contracts (which are largely binary) on many other matters because of this. The price of oil is a scalar value; nonetheless there exist binary options and event contracts on whether oil closes at a specific strike price. I'm struggling a bit to understand where this particular question is coming from.

13. Do the contracts serve a price-basing function? For example, could they form the basis of pricing a commercial transaction in a physical commodity, financial asset, or service?

Actually, yes. While I don't know every market or asset out there, it's certainly the case that FOREX traders trading any pair involving the dollar are quite sensitive to election outcomes. Most recently, for example, a strong Republican victory in 2022 was expected to be dollar negative by some (the resulting weak Republican victory relative to expectations caused the dollar to gain).

14. Are the contracts contrary to the public interest? Why or why not?

Many commenters have written concerns here and I respect that they are sincerely felt. I do not believe, however, that the contracts are contrary to the public interest.

First, the contracts have a public benefit. They generate a simple probabilistic measurement of what traders think. (They don't measure reality - they measure what traders think reality is – an important distinction). Anyone can look at the market's price and see "well, people think this is 65% likely today". Changes in market price occur in response to changes in real world conditions, allowing interested citizens to see how much these events influence the perceived probability of the outcome. This is a real benefit that should not be overlooked.

Now, some commenters are concerned largely along "money in politics" lines, which I understand, though I think it's superficial. Here the money, while dependent on election outcomes, is not directly influencing the elections themselves. The money in politics that's bad is the money that's being spent to buy access to the politicians themselves. The Speaker of the House is not going to take your phone call because you made a fully collateralized trade on Republicans winning that chamber in 2022. On the other hand, if you made a big contribution to the RNC or a PAC, you might just get through to him.

15. Could the trading of these or other political control or election-based contracts affect the integrity of elections or elections within a chamber of Congress? Could they affect the perception of the integrity of elections or elections within a chamber of Congress?

Election integrity is an important concern. You do not want the Secretary of State or election administrator in some state to be taking a position on these contracts, which is why it's meaningful and important that Kalshi's proposed contract moots this point by excluding such participants.

16. Could the contracts be used to influence perception of a political party or its candidates' likelihood of success? To this end, could the contracts be used to manipulate fundraising or voting?

I do think market moves could be used in fundraising (they already have, for PredictIt, I believe) but I'm not sure how that's any different than fundraising appeals that rely on changes in polling averages, for instance. It's worth reminding the Commission here that markets on congressional control are going to exist forever into the future overseas and that therefore political parties or their candidates will have access to their market price to use in fundraising or to make themselves seem like they're doing well no matter how you decide on Kalshi's contract. In fact, the observation that you probably can't recall a candidate using this kind of information in their campaign despite its existence for the last century is a good indicator that this should not be a major concern.

Is the United Kingdom a stronger or weaker democracy than the USA? Is Australia? What about the United States in the early 20th century, when traders on the NYSE traded elections on the floor? There's no real academic literature on this that I'm aware of, but I think the Commission, which I believe to be logical and pragmatic, should recognize that thoughtfully-regulated political trading likely will not have a deleterious impact on our democracy given that it hasn't in others.

17. Could the contracts facilitate violations of, or otherwise undermine, federal campaign finance laws or regulations? For example, could the contracts make it easier to sidestep

prohibitions governing coordination between candidate campaign committees and political action committees?

Absolutely not. For one thing, the proposed Kalshi contract forbids campaigns or PACs from being participants. For another, literally how? Campaign-PAC coordination is like when the campaign releases B-roll of their candidate smiling in a library on their website so the PAC can use it in an ad. Or, illegally, an illicit phone call here or there. Or the PAC hosts a bus tour where the guest speaker just happens to be the candidate (literally happening right now with the DeSantis campaign). In what way can a market facilitate this? The market just prints a price. I am trying to imagine what the fear was when writing this and coming up empty. Like, if the campaign posts on its website “Gee it sure would be great if we had some air support given that we are under 25% to win Congress” and the PAC reads it and reacts accordingly? But they can already do that with the existing global marketplace? And polling averages? There’s something I’m missing here, but again, should be addressed by the contract prohibiting these entities from being participants.

18. Do the contracts present any special considerations with respect to susceptibility to manipulation or surveillance requirements?

On the CFTC’s side, I would like them to ask the DCM (Kalshi) to periodically provide them with a list of the largest position-holders and Kalshi’s affirmation that none of them meet the requirements to be excluded from the marketplace. I am not sure such a monitoring system would be possible given privacy concerns, but I think it would be worthwhile.

19. What is the price forming information for these contracts while the contracts are trading? If the price forming information includes polling and other election prediction information, is that information regulated? How does the price forming information compare to informational sources (e.g. government issued crop forecasts, weather forecasts, federal government economic data, market derived supply and demand metrics 3 for commodities, market-based interest rate curves, etc.) that are generally used for pricing commodity derivative products within the Commission’s jurisdiction?

It certainly includes polling, it includes world events, economic conditions, individual candidate performance and scandal, policy platforms, everything that goes into influencing who turns out to vote, who they want to vote for, and how many of them there are. There are already many event contracts the Commission has allowed to be listed that rely in part on price-forming information that is not provided by a government source. This is actually the entire point of event contracts and prediction markets: traders integrate information from as many sources as possible and their collective digestion of these inputs produces the market price.

The Commission is not concerned with needing to exert surveillance and regulatory scrutiny over the actions of OPEC even though OPEC’s actions are price-forming information that influence the price of oil. Several months ago there was a breaking news event that a US drone was shot down by Russia over the Black Sea and stock indices fell (causing event contracts listed by Kalshi and others and regulated by the CFTC to change in value). Is the Russia-Ukraine war now something that the CFTC needs to extend its regulatory scrutiny to? No. The Commission should make sure that DCMs are faithfully operating reasonable contracts, but obviously it can’t be expected to police the entire universe of price-forming information.

20. Should, and if so how would, the registered entity listing the contracts take steps to address possible manipulative and/or false reporting activity involving the price forming information for the contracts, while the contracts are trading?

I think Kalshi should be required to inform traders that they are subject to strict reporting requirements in these contracts that include periodically providing the CFTC with a list of the biggest traders by volume and open interest alongside Kalshi's research and affirmation that ensures these traders are not prohibited by the contract from participating. Pollsters are on the list of prohibited participants, Kalshi should be able to provide information to the CFTC that none of its biggest traders are pollsters.

21. Do Kalshi's limitations on market participation affect the susceptibility of the contracts and/or markets for the contracts to manipulation? Do the limitations affect the extent to which these markets could be used to influence perception of a political party or candidate or otherwise be implicated in attempted election manipulation? Are the limitations reasonably enforceable?

22. Should the Commission be responsible for surveilling, and enforcing against, possible manipulative and/or false reporting activity involving the price forming information for the contracts, while the contracts are trading?

Yes I think they dramatically reduce the susceptibility to manipulation or insider trading, and I think they are reasonably enforceable. This will require time and effort and Kalshi will likely need to conduct trader interviews and use public records to confirm that they are themselves nor are employees of a prohibited entity. The CFTC should play a role in ensuring Kalshi does this work fully, but should not otherwise be involved in the monitoring.

23. Could trading in the markets for the contracts obligate the Commission to investigate or otherwise become involved in the electoral process or political fundraising? If so, is this an appropriate role for the Commission?

I believe Chair Benham raised concerns around this in a podcast interview a while back. I don't see it. The role of the Commission, in my view, should be to ensure that the DCM is faithfully executing a well-designed contract. The Commission does not need to police all the underlying price-forming information, which as far as I know it does not do for other things under its jurisdiction. (But I may be wrong about that).

24. What other factors should the Commission consider in determining whether these contracts are "contrary to the public interest?"

I don't believe they are, so can't help you here. I will take this last opportunity to reiterate that elections are not a game; which means the Commission will probably need to rely on the "contrary to public interest" clause if it wants to ban markets on their outcomes under current statute.

Of course, there is another approach, which I hope the Commission takes. Permit Kalshi to list these contracts, and work with Kalshi to make sure they are appropriately enforced. If Congress decides at a later date to explicitly outlaw these markets, then so be it. Maybe there could be a market on that.