

Comment with respect to Industry Filing 23-01 “KalshiEX Congressional Control Contracts”

My name is Timothy McDermott. I am currently the CEO of TeraExchange, a Commission-registered swap execution facility, and I also am and have been since 2020 a public director of Kalshi. That said, I am submitting this comment in my personal capacity and nothing in this comment should be deemed to reflect the position of TeraExchange or Kalshi.

Prior to my current roles, I held a variety of positions at Nadex between 2008 and 2019, including as CEO, General Counsel, and as a Board member, and then even earlier with compliance at the Chicago Mercantile Exchange. More than ten years ago, I was a critical part of Nadex’s engagement with the CFTC regarding its efforts to list political event contracts. That Commission, in my view, made the wrong decision, and I believe the events of the last decade confirm that the current Commission should take a different approach. Kalshi’s contracts are compliant with the law, and very clearly would provide a large amount of social value in the form of hedging, price basing, and forecasting.

Kalshi previously submitted a proposal for listing Congressional Control Contracts that, following an extensive comment period which considered many of the same questions posed by the Commission here, was ultimately withdrawn. See Industry Filing 22-002 at <https://comments.cftc.gov/>. I believe that many of the comments submitted in response to that earlier Commission request for comment are equally responsive and helpful to the Commission’s current review. Accordingly, in the appendix to this submission I have listed a number of prior submissions, including a Comment that I had previously submitted, which prior submissions are incorporated herein in response to the current request for comment.

In addition, the Commission’s current request for comment asks a few new questions. While a number of these new questions are addressed directly or indirectly by the comments cited above, I will add some additional points in direct response to those new questions:

11. ... 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 believe this requirement of 5000-lot size increments limits the hedging utility of these contracts to market participants who are looking to hedge exposures lower than \$5,000 or at increments within the \$5,000 interval. That said, this type of limitation is present with respect to many, many derivatives contracts that are sized for large, institutional market participants.

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 for commodities, market-based interest rate curves, etc.) that are generally used for pricing commodity derivative products within the Commission’s jurisdiction?

Obviously, polling data is an important factor in any political or election market. While political polls are not regulated by a government entity per se, certainly such data is closely watched and

it “regulated” by public opinion and close scrutiny by the media and political strategists of all stripes, giving certain polls more influential weight for individual market participants than other polls. Similarly, both unregulated markets in the United States, like PredictIt and the Iowa Electronic Market, and regulated foreign markets, like Betfair, that track the same or similar political events should offer both price forming information (and arbitrage opportunities with further price forming impacts)

As I believe political strategist James Carville said in the 1992 presidential election contest, “It’s the economy, stupid”. Clearly, this comment highlights the critical importance of the state of the economy in elections, and especially national elections like presidential and Congressional elections. Accordingly, the same economic data that traders of bond futures or equity market futures rely on to assist in pricing those contracts (including the types of data listed in this question) will be relevant to pricing political or election contracts.

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?

Consistent with the comments I made in support of Kalshi’s previous filing, I don’t believe the additional limitations on market participation are necessary to achieve the regulatory objectives addressed in this question. That said, to the extent such additional limitations on market participation are deemed to be necessary, these limitations should marginally further limit the susceptibility of the contracts and/or markets for the contracts to manipulation.

Moreover, while I believe that Kalshi’s original proposal was adequate in this regard, the limitations on participation would further restrict 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. Of course, financial markets on political elections have existed for a very long time, and I am unaware of any instances of undue influence or election manipulation that have arisen in connection with even the unregulated operations in the United States of such markets as Intrade, PredictIt, Iowa Electronic Market, Polymarket, Gnosis or Augur over the prior three decades. A regulated market such as Kalshi should be even less susceptible to such activity, with or without the additional limitations on participation.

Finally, this question should not be evaluated without giving at least some consideration to the benefits of transparency and price discovery that a regulated prediction market can bring to elections to make them less susceptible to manipulation.

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?

This seems extremely unlikely. It may be that the Commission may consult with or request information from other entities (e.g., the Federal Election Commission) to better understand an underlying election process. But the Commission would be no more likely to get involved in the electoral process (overseen by the States, Congress and the Courts) or political fundraising (overseen by the Federal Election Committee) than it would be to get involved in the setting of the Fed Funds Rate (on which various regulated markets have listed event contracts) by the Federal Open Markets Committee.

Respectfully,

Timothy G. McDermott

Appendix

Unique Number	Name	Link
69586	David S	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69586&SearchText=
69587	Joshua White	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69587&SearchText=
69588	Aaron Kreider	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69588&SearchText=
69589	Jason Pipkin	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69589&SearchText=
69590	Nicholas Kross	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69590&SearchText=
69591	Sam Kaplan	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69591&SearchText=
69592	Wesley T. Mathieu	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69592
69593	James M Mazur	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69593
69594	Robert Hobernick	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69594
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69597	Kenny Thompson	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69597

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69602	John Lund	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69602
69603	Cody Crunkilton	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69603
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69626	Drew Richards	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69626
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69630	Trevor Kelton	https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69630
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