



07/24/2023

VIA ELECTRONIC SUBMISSION

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington DC 20581

**Re: Commodity Futures Trading Commission Request for Information and Comment
for KalshiEX Congressional Control Contracts, Industry Filing 23-01**

Dear Mr. Kirkpatrick,

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or the "Commission") request for information and comment regarding KalshiEX LLC's ("Kalshi") proposed congressional control contracts.

CME Group, a corporate holding company, owns and operates multiple futures exchanges. Our exchanges offer the widest range of global benchmark products across all major asset classes. These products are widely used by market participants for risk management and price discovery. Throughout our corporate history, our exchanges have been involved in most of the major developments that serve as the basis for today's futures industry. For example, we had a front row seat at the very birth of futures trading, the standardization of futures contracts, the formation of the clearing process, as well as the initial introduction of financial futures, cash-settled contracts, and electronic trading. Over our long history, we have demonstrated ongoing leadership with respect to developing new products that have legitimate economic purpose.

Kalshi has recently proposed to offer derivatives contracts based on the outcome of elections in the U.S. Congress. In short, we believe that contracts based on elections are contrary to the public interest and the Commission should prohibit an exchange from listing them, as it has in the past.

The Commission does not currently allow exchanges to list event contracts based on political elections. North American Derivatives Exchange (“Nadex”) proposed listing very similar contracts a little over a decade ago. At that time, the Commission reviewed and correctly exercised its statutory authority to reject the filing.¹ In our view, nothing has changed. The Commission may now hear technical arguments seeking to call its authority into question. While reasonable minds can almost always differ on some point of law, the Commission should ignore this legal nitpicking that is beside the point. Congress clearly gave the CFTC specific statutory authority in this area.² The Commission chose to use that authority in 2012 to prevent event contracts that were based on the outcome of political elections. The analytical reasoning underpinning the Commission’s prohibition had a sound legal basis.³ That legal basis remains completely intact today. Thus, from our perspective, the CFTC has already correctly made this decision and that decision should stand.

We are also persuaded by the logic of certain questions recently raised by Chairman Behnam. The Chairman has asked whether a derivative contract on a political election might compel the Commission to attempt to act as an “election cop”.⁴ The question is pertinent because the Commission is obligated by Section 6(c) of the Commodity Exchange Act to police for fraud and manipulation in connection with any commodity in interstate commerce. For the contracts in question here, the underlying “commodities” are the relevant political elections. Therefore, the Commission must consider and potentially address the unfortunate possibility that fraud occurs in a political election underlying a contract. Do any of us really believe that Congress intended for the CFTC to play this role in the electoral process? Is this result in the public’s interest? For our part, we do not think Congress intended or wants this result, and we do not think such a result would be in the public’s interest.

Finally, and importantly, the Commission’s prior decision to prevent widespread adoption of these types of political contracts relied on a very compelling public policy rationale, and that rationale has never been stronger. The Commission made a finding in the Nadex Order that these types of instruments could “potentially be used in ways that would have an adverse effect on the integrity of elections”.⁵ Although some may attempt to argue that allowing these

¹ CFTC Order Prohibiting North American Derivatives Exchange’s Political Event Derivatives Contracts (April 2, 2012) (“Nadex Order”), available at <https://www.cftc.gov/PressRoom/PressReleases/6224-12>.

² In the Nadex Order, the Commission relied on its authority under section 5c(c)(5)(C)(i) of the CEA, which authorizes it to disapprove certain types of event contracts if it finds they are contrary to the public interest. The Commission has other statutory authority as well that may provide a separate basis for rejecting the contracts. For example, there is a legitimate question as to whether political election results are covered by the CEA’s “excluded commodity” definition or the event contract element of the “swap” definition, and if they are not, they cannot be the basis for a regulated contract offering by an exchange. The Commission also has plenary authority to regulate options under section 4c(b)-(e).

³ When the Commission rejected the Nadex filing in 2012 pursuant to section 5c(c)(5)(C)(i), it properly found that the contracts, considered as a whole, constituted gaming contracts and were contrary to the public interest. The Commission’s order further noted that several states had laws linking betting on election outcomes to gaming/gambling. To the extent any states prohibit or regulate betting on election outcomes, that further supports rejecting Kalshi’s proposal as contrary to the public interest. Allowing Kalshi to list the contracts would preempt state gaming laws by operation of section 12(e), doing an end-run around the states’ public policy determinations on gaming, for contracts that serve no meaningful economic purpose to justify receiving such a benefit.

⁴ See “CFTC Chair Rostin Behnam on the Fight to Regulate Crypto.” *Odd Lots* Podcast, published May 18, 2023, at 34:00. <https://podcasts.apple.com/us/podcast/odd-lots/id1056200096>

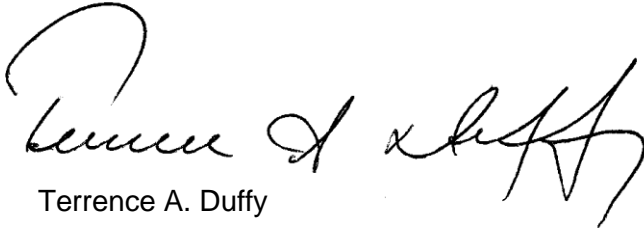
⁵ Nadex Order at p. 4.

contracts now is indeed in the public interest, based on our vantage point, and armed with the past ten years of experience, we would disagree.

In summary, we firmly believe the Commission should not change its mind on this topic now. And we are also quite sure that if it did entertain that possibility, and it conducted a credible review of the public interests involved, it would very quickly conclude that approving contracts like these was still obviously contrary to the public interest, just as it was 10 years ago. But we do not see any need to take this step. The Commission should be very comfortable relying on its past precedent here. Derivatives contracts on political elections have not been allowed and should not be allowed, for good reason.

CME Group appreciates the opportunity to comment on this matter and we would be happy to discuss any of our views with the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Terrence A. Duffy". The signature is fluid and cursive, with a large initial "T" and a stylized "D".

Terrence A. Duffy