IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KalshiEx LLC,	)	
Plaintiff,	)	
v.	)	Case No. 23-cv-03257-JMC
Commodity Futures Trading Commission,	)	
Defendant.	)	

MOTION OF PARADIGM OPERATIONS LP
FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Paradigm Operations LP ("Paradigm") respectfully moves this Court for leave to file an amicus curiae brief in support of Plaintiff KalshiEx LLC's Motion for Summary Judgment. In support of this motion, and under Local Civil Rules 7(m) and (o), Paradigm states as follows:

1. Paradigm is an American investment firm that backs entrepreneurs building companies and protocols that leverage crypto and related technologies at the frontier of innovation. Paradigm takes a hands-on approach to helping these projects achieve their full potential. It provides services that range from technical (mechanism design, smart contract security, and engineering) to operational (recruiting and regulatory strategy).

2. Paradigm has an interest in this case because prediction markets could be an impactful use case for crypto and related technologies in which Paradigm invests. Paradigm also has an interest in supporting the broad availability of regulated prediction markets, which are a valuable source of public information and allow market participants (including crypto investors and entrepreneurs) to hedge their exposure to specific events.

3. An amicus brief from Paradigm is desirable because Paradigm's investment experience gives it an on-the-ground view of how today's most innovative companies manage risk.

4. The matters asserted in Paradigm's brief are relevant to the disposition of this case because a key legal question before the Court is whether event contracts involving Congressional control are in the public interest. Paradigm's brief draws on Paradigm's market experience to give examples and explain multiple ways in which these event contracts are in the public interest.

5. Paradigm's position is not adequately represented by the parties because the parties lack Paradigm's real-world investment experience in crypto and related technologies.

6. This motion is filed one week after Plaintiff filed its Motion for Summary Judgment, and almost four weeks before Defendant's response is due. Therefore, granting this motion would not unduly burden the parties and would not unduly delay the Court's consideration of this case.

7. Counsel for Plaintiff has stated that Plaintiff consents to this motion.

8. Counsel for Defendant has stated that Defendant does not oppose this motion.

For these reasons, Paradigm respectfully requests that the Court grant this motion for leave to file the attached brief. A proposed order is also attached to this motion.

Dated: February 1, 2024

Respectfully submitted.

s/ Scott A. Keller

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Certificate of Service

I hereby certify that on February 1, 2024, I electronically filed the foregoing motion with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record who have consented to electronic notification.

s/ Scott A. Keller
Scott A. Keller

Counsel for Amicus Curiae

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KalshiEx LLC,	)	
	)	
Plaintiff,	)	
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v.	)	Case No. 23-cv-03257-JMC
	)	
Commodity Futures Trading Commission,	)	
	)	
Defendant.	)	

BRIEF OF PARADIGM OPERATIONS LP AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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Interest of Amicus Curiae

Paradigm Operations LP is an American investment firm that backs entrepreneurs building companies and protocols that leverage crypto and related technologies at the frontier of innovation. Paradigm takes a hands-on approach to helping these projects achieve their full potential. It provides services that range from technical (mechanism design, smart contract security, and engineering) to operational (recruiting and regulatory strategy).

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Corporate Disclosure Statement

Paradigm discloses the following information for the limited purpose of complying with Local Civil Rule 7(o)(5) and Federal Rule of Appellate Procedure 26.1. Paradigm has no parent corporation. No publicly held corporation owns 10% or more of Paradigm's stock. Paradigm reserves the right to supplement this disclosure statement if needed.

Local Civil Rule 7(o)(5) Statement

In accordance with Local Rule 7(o)(5) and Federal Rule of Appellate Procedure

Rule 29(a)(4)(E), Paradigm certifies that: (1) this brief was authored by counsel for Paradigm and not by counsel for any party, in whole or in part; (2) no party or counsel for any party contributed money to fund preparing or submitting this brief; and (3) no other person—beyond Paradigm and its counsel—contributed money that was intended to fund preparing or submitting this brief.

Introduction and Summary of Argument

A lot rides on U.S. Congressional elections: countless pieces of legislation, spending provisions, and confirmations of executive and judicial nominees become more (or less) likely. The uncertainty of these potential outcomes creates risks for businesses and individuals. Event contracts—like the ones Plaintiff KalshiEx LLC seeks to list on its exchange—advance two public interests. First, they allow parties directly impacted by political outcomes to mitigate risk by hedging. Second, they provide information that the public can use to better predict—and thus plan for—a given outcome.

Consider an entrepreneur who is building a crypto startup in the U.S. The likelihood that Congress will pass legislation that will impact the viability of U.S.-based crypto startups is directly affected by which party is in control of Congress, and by whether the government is divided. The entrepreneur may therefore want to buy an event contract that pays out depending on which party takes control of Congress in order to hedge its regulatory risk. Moreover, when market participants hedge substantial sums on a particular event contract, members of the general public—even those who never join the market—get valuable real-time information. Event markets might even be better predictors of electoral outcomes than public opinion polling—precisely because they require participants to put their own skin in the game.

In short, event contracts tied to Congressional control are a win-win. The entities who stand to lose most from one political outcome can mitigate their risk. And the public at large gains insight into what industry insiders think is likely to happen. Defendant Commodity Futures Trading Commission's Order thus errs in declaring that event contracts "are contrary to the public interest." Order 23.[1] The general public has a strong interest in seeing the Control Contracts listed on Kalshi's exchange. Allowing Congressional Control Contracts to trade at scale on regulated platforms such as Kalshi's will ensure that these important markets develop with investor protections and systemic integrity. For these reasons, the Court should grant Kalshi's Motion for Summary Judgment.

Argument

I. Control Contracts help businesses and individuals hedge financial risk.

Congressional power manifests in ways that create risk at aggregate and granular levels. Congressional Control Contracts provide a mechanism for market participants to mitigate those risks in ways that event contracts tied to specific policy outcomes do not.

A. Congressional action (or inaction) poses inherent financial risk.

The U.S. Congress wields many powers. The uncertainty surrounding how Congress will wield those powers is compounded by the uncertainties of future partisan control. Anyone subject to Congressional action—that is, everyone—has an interest in

[1] In this brief, citations to the "Order" refer to the Commission's order prohibiting Kalshi from listing the Control Contracts. And this brief's citations to the "MSJ" refer to Kalshi's Memorandum of Law in Support of Kalshi's Motion for Summary Judgment (ECF No. 17-1).

mitigating the risks associated with different potential outcomes.

Legislation. Congress's primary duty is to legislate: to create, amend, and repeal laws. Those laws can have drastic financial effects. Consider the "Farm Bill," which is a multiyear law that regulates several agricultural and food programs. The current Farm Bill includes provisions that guarantee that farmers can earn at least a minimum revenue for some crops. *E.g.*, Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490, 4509 (2018). But there is no guarantee that those provisions will be part of the *next* Farm Bill, creating financial risk for any farmer who relies on them.

Another example is the potential passage of a crypto market structure bill. Various proposed bills have been introduced on a bi-partisan basis. *See, e.g.*, Financial Innovation and Technology for the 21st Century Act, H.R. 4763, 118th Cong. (2023); Proving Reserves of Others' Funds Act, S.3087, 118th Cong. (2023); Clarity for Payment Stablecoins Act, H.R. 4766, 118th Cong. (2023). But the probability of any bill becoming law will significantly depend on which party is in control of Congress. Going back to the earlier example of a U.S.-based crypto entrepreneur, the uncertainty as to which party will control Congress will have a direct effect on the probability of market structure regulation being adopted and will therefore create significant financial risk for the startup.

Confirmations. Beyond legislation, each chamber of Congress has specific power to take independent action. The Senate, for instance, holds the exclusive power to confirm Presidential nominees for the Judicial and Executive branches. Therefore, anyone with an interest in who serves as the next Associate Justice of the U.S. Supreme Court, or as the Secretary of Agriculture, or as the Chairman of the Securities and Exchange Commission has an interest in the Senate's partisan composition.

Taxation. The House of Representatives has distinct powers, too. Notably, bills for raising revenue must originate in the House. For example, in 2021, a Democratic-controlled Congress passed the Infrastructure Investment and Jobs Act. Pub. L. No. 117-58, 135 Stat. 429 (2022). This legislation included two tax revenue provisions that specifically address crypto. *See* 26 U.S.C § 6045-45A (authorizing rulemaking that requires brokers to report sales of digital assets to the IRS); *id.* § 6050I (requiring businesses to treat digital assets as cash in transactions involving over $10,000). But, if implemented, these provisions are likely to cost the crypto industry tens, if not hundreds, of millions of dollars. *See, e.g.*, *Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions*, 88 Fed. Reg. 59576, 59619 (proposed Aug. 29, 2023) (to be codified at 26 C.F.R. pts. 1, 31, and 301) (estimating that, for reporting requirements under 26 U.S.C § 6045, "start-up costs" *alone* will reach "$749,925,000").

The likelihood of the next Congress passing any legislative fixes or alterations to these two provisions depends significantly on which party controls that Congress. Congressional Control Contracts would therefore provide a way for affected crypto firms to hedge their exposure to the potential implementation of these provisions.

B. Control Contracts allow stakeholders to hedge against the aggregate and granular risks that flow from partisan control.

Against that backdrop, Congressional Control Contracts offer the public significant value in at least two respects. First, they allow stakeholders to hedge against the aggregate risks that come with one party's control of Congress. *Who* wields the powers of Congress matters enormously across innumerable areas of public life. Second, Control Contracts permit hedging against specific policy outcomes. Both major political parties offer legislative agendas; Congressional Control Contracts allow stakeholders to mitigate the risks associated with the implementation of those agendas writ large.

1. Control Contracts allow parties to hedge aggregate risk.

When Congressional power shifts from one party to the other, the financial risks facing businesses and individuals shift too. But each specific risk may not always be knowable beforehand. As described above, changes in Congressional control can create aggregate risk in a myriad of ways, including through legislation, nominations, taxation, and more. That is true even when the change in control does not materially increase the risk of any particular legislative outcome.

Take, for example, a venture capital firm that invests in multiple different types of industries. That firm may be able to mitigate risk through multiple independent hedges—for example, one regarding the EPA's car emission standards, and another about the SEC's regulation of crypto. But there is no reason to prohibit that firm from the one-stop-shopping that a Congressional Control Contract offers. Such contracts give financial force to the truism that one Congress (or chamber) that seeks to aggressively regulate a particular industry can use its broad powers to undermine that industry in several ways. So too for a Congress that supports a given industry, because that support may evaporate if Congressional control changes hands.

Trying to manage these financial risks by anticipating *how* Congress will exercise its specific powers is like trying to buy homeowner's insurance based on *where* a fire could start—there are too many bases to cover. Just like a fire might start in a kitchen, electrical closet, or even outside, so too Congress might take adverse action through legislation, confirmations, taxation, and more. Control Contracts allow businesses to hedge *all* that risk using a single instrument—just like a homeowner buying a *single* insurance policy.[2]

2. Control Contracts allow parties to hedge specific outcomes.

Congressional Control Contracts offer the additional advantage of hedging against more granular outcomes that become more or less likely under one particular political party's rule. For example, during the 2002 Congressional election season, the President had specifically called on Congress to "guarantee all senior citizens prescription drug coverage." President's Radio Address (May 18, 2002), http://tinyurl.com/7ae26mf8. After the Senate Majority flipped in 2003—giving a single party control of the Presidency and both chambers—Congress did just that when it

[2] As Kalshi discusses, event contracts and insurance differ in important respects. MSJ 5, 36. Still, at a high level, both instruments allow the purchaser to address aggregate risks using a single instrument.

passed the Medicare Prescription Drug, Improvement, and Modernization Act, Pub. L. No. 108-173, 117 Stat. 2066 (2003), creating billions in new spending. *See* Jennifer O'Sullivan, Cong. Rsch. Serv., *Overview of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003* (Dec. 6, 2004), http://tinyurl.com/bdeezdjb. Viewing all this from 2002—before the Senate flipped—any number of businesses could have used Control Contracts to hedge the financial risks associated with that Act's passage.

Potential regulation of artificial intelligence provides a current example, as the political parties have expressed contrasting approaches. *Compare* Brendan Bordelon, *Top GOP senator teams up with key Dem on 'light-touch' AI bill*, Politico (Sept. 21, 2023), http://tinyurl.com/566nsmpf, *with* Derek Robertson, *Poll: AI is looking more partisan*, Politico (Jan. 23, 2024), http://tinyurl.com/46p34yz2. Control Contracts give businesses in the A.I. sector a tool to hedge the risks that they may see in specific Congressional action related to A.I. It is the same for businesses in many other sectors.

C. Control Contracts can also help hedge risks that are independent of official Congressional action.

Congressional control *itself* can also pose direct financial risks to businesses and individuals—even before considering what official action Congress might take. Consider again a crypto-focused startup that knows it will need to raise capital sometime *after* the next Congressional election. If the party that takes (or keeps) power seeks to aggressively regulate the startup's business or the crypto sector in general, then the startup's cost of capital may increase. The cost goes up not because of anything Congress has done, but rather because capital markets view the mere change in control as a meaningful factor affecting the startup's creditworthiness or viability. Control Contracts can help the startup manage that risk.

II. Event markets for Control Contracts are an accurate and useful predictive tool.

Event markets reveal collective wisdom. The prices for Control Contracts reflect a wide array of informed opinions about which political party will control each house of Congress. Because of that, the *price itself* represents the market's real-time prediction about what will happen in the next election. By observing these markets, members of the general public can harness the wisdom of crowds to help make better decisions—even without ever buying or selling in the market themselves. That wisdom helps the public make strategic decisions about how to structure their affairs. For these reasons, too, Control Contracts are in the public interest. *Contra* Order 23.

A. Event markets give an up-to-the-minute prediction of political outcomes.

Predictions are valuable only if accurate. Even though they do not offer predictive certainty, event markets do have several accuracy-enhancing features. First, event markets are accurate because of their inherent ability to adjust to new information in real time. As events unfold and new data becomes available, market participants swiftly incorporate this information into their hedging strategies. This continuous flow of information—and the immediate response of market actors—ensures that prices of event contracts are always reflective of the most current understanding and expectations regarding, *e.g.*, Congressional control. The "real time" nature of event markets separates them from polling data, which can lag for days.

Second, market participants have "skin in the game," meaning that they have a financial stake in whether a particular event comes to pass and are therefore highly motivated to try to accurately forecast event outcomes. In contrast, polling results are based on the potentially uninformed opinions of individuals selected at random. The vested interest of event-market participants leads to more precise and reliable market pricing.

Third, event markets are open to a wide array of buyers and sellers. Each participant brings their own unique preferences, objectives, and experiences to the table. These buyers and sellers can include hedgers seeking to mitigate risk, institutional investors who wish to diversify their portfolios, or even speculators looking to profit from future changes in contract prices. That diversity ensures that the market prices reflect a broad spectrum of perspectives. The interaction between these participants—each employing their own specific strategies and insights—contributes to the depth, liquidity, and efficiency of the market for event contracts, which in turn lowers the cost of hedging. For many event contracts, including Control Contracts, this holistic perspective is unavailable anywhere else.

Unlike polling data, Control Contracts do not suffer from sample bias, recency bias, survey bias, or any of the numerous other complicated pitfalls that weigh down the accuracy of political polling. They are real-time and open to informed individual and institutional participants, unlike polling, which uses retrospective snapshots in time of sampled individual voters. Indeed, professional statistician Nate Silver has recognized that "prediction markets are considerably more accurate than [even] peer reviewed scholarship." @NateSilver538, X (Jan. 13, 2024, 8:26 PM), http://tinyurl.com/3cf34rmz.

B. Predictions of political outcomes are useful for many purposes.

Reliable predictions of Congressional control play a crucial role in the strategic planning and decisionmaking processes of businesses and individuals. Predictions are an essential tool for navigating the uncertain and volatile political landscape. This foresight allows businesses to stay ahead of the regulatory curve, ensuring they are not caught off-guard by political shifts that could impact their revenue. Even individuals and businesses that do not use event contracts can use the data that event markets provide.

For individuals, accurate predictions of political outcomes can influence a wide range of personal financial decisions. Anticipated changes in government policy regarding taxes, 401ks, and healthcare can have direct implications for individual financial planning. By staying informed about potential political shifts, individuals can adjust their savings strategies and investment portfolios. Likewise, real estate investors and homeowners alike benefit from understanding how political outcomes might affect property values. Data from event markets allows individuals to make more informed decisions in all these areas.

Control Contracts give the public better data about the likelihood of political outcomes. That is why Harvard Professor and former economic advisor to President Obama Jason Furman has argued that "a liquid, well-regulated prediction market offering an accurate probability estimate of who is likely to control Congress would thus be highly valuable to price discovery." Jason Furman, *Comment Letter on KalshiEx Proposed Congressional Control Contracts Under CFTC Regulation 40.11*, at 2-3 (Sept. 18, 2022), http://tinyurl.com/43hxtppr. Just so. Business owners must make decisions based on what the economy will look like *in the future*. Individuals must make career and retirement decisions based on how much money they will need *in the future*.

Congress has a large degree of power to influence future financial outcomes. And the party that controls Congress has wide latitude to decide how that power will be used. Control Contracts are in the public interest because they help the public assess and plan for the actions Congress might take.

Conclusion

The Court should grant Plaintiff's Motion for Summary Judgment.

Dated: February 1, 2024

Respectfully submitted.

s/ Scott A. Keller

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Certificate of Compliance

Pursuant to Local Civil Rule 7(o)(5), and pursuant to Federal Rules of Appellate Procedure 29(a)(4)(G) and 32(g)(1), I certify that this brief complies with Local Rule 7(o)(4) because it contains fewer than 25 pages.

s/ Scott A. Keller
Scott A. Keller

Counsel for Amicus Curiae

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KalshiEx LLC, *Plaintiff*, v. Commodity Futures Trading Commission, *Defendant*.	)))))))))	Case No. 23-cv-03257-JMC

[PROPOSED] ORDER

Upon consideration of the Motion of Paradigm Operations LP ("Paradigm") For Leave to File an Amicus Curiae Brief in Support of Plaintiff KalshiEx LLC's Motion for Summary Judgment, and there appearing good cause to grant such leave,

It is hereby **ORDERED** that:

1. The Motion is **GRANTED**; and

2. The Amicus Curiae Brief submitted by Paradigm is deemed submitted and shall be considered part of the record in this matter.

____
The Honorable Jia M. Cobb
United States District Judge

Dated: ______________________, 2024

NAMES OF ATTORNEYS TO BE NOTIFIED OF ORDER UPON ENTRY

In accordance with Local Civil Rule 7(k), listed below are the names and addresses of the attorneys entitled to be notified upon entry of the [Proposed] Order:

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