



September 25, 2022

Via Electronic Submission

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

RE: *CFTC Review of KalshiEx Proposed Congressional Control Contracts Under CFTC Regulation 40.11*

Dear Mr. Kirkpatrick:

Intercontinental Exchange Inc. (“ICE”) is submitting comments to the Commodity Futures Trading Commission (“CFTC” or “Commission”) for consideration regarding its review of the KalshiEx proposed congressional control contracts¹ (“Proposal or Proposed Review”). ICE operates regulated derivatives exchanges and clearing houses located in the United States, Europe, Canada and Singapore. ICE respectfully offers the following comments on the Proposed Review.

ICE supports product innovation in the futures markets. America’s financial markets have thrived through innovation and regulated exchanges develop new products to meet market demand and to allow market participants to hedge risks. To that end, it is crucial that the CFTC establish a transparent, accountable, and consistent process for new products so that regulated exchanges have certainty regarding regulatory requirements.

In the case of the KalshiEx contracts, there appears to be confusion on the application of the CFTC regulations and the standards implemented. CFTC Rule 40.11(a) sets forth a prohibition on the trading and clearing of any event contract that “involves, relates to, or references” “terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law;” or “an activity that is similar to an activity enumerated in 40.11(a)(1) of this part, and that the Commission determines, by rule or regulation, to be contrary to the public interest.” The KalshiEx congressional control contract does not appear to be captured by any of the enumerated activities in 40.11(a); Congressional elections are not terrorism, assassination, war, or gaming.²

The Commission should also apply its rules uniformly and fairly across its contract markets. ICE notes the disparate treatment between the KalshiEx event contracts which were put out for a 90-day

¹ CFTC, Release Number 8578-22, CFTC Announces Review and Public Comment Period of KalshiEx Proposed Congressional Control Contracts Under CFTC Regulation 40.11, Aug. 26, 2022, avail. at <https://www.cftc.gov/PressRoom/PressReleases/8578-22>.

² ICE supports and agrees with Commissioner Pham’s dissent and analysis on this point. Her dissent is available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement082622>.



review and CME's recently launched event contracts which were allowed to be self-certified.³ ICE believes it is imperative that the Commission implement clear processes and consistently apply regulation.

ICE understands the specific consideration given to election contracts, however the length of time for the CFTC to decide on KalshiEx's political event contracts is concerning. A prolonged delay in receiving clarity on listing new products is a disservice to the regulated exchange and market participants. In addition, a prolonged delay impedes the exchange's ability to be competitive. In this situation, an extended review period by the Commission will take KalshiEx beyond the event to which the contract relates: the mid-term elections. The process to list new products, including staff review, should be completed within a timeframe that fosters innovation and should not delay new products coming to market.

ICE appreciates the opportunity to comment on the Proposal. ICE shares the Commission's goals of promoting transparency, accountability and predictability and facilitating effective oversight. ICE respectfully requests that the Commission consider its comments in light of those goals.

Sincerely,

Trabue Bland
Senior Vice President, Exchanges
Intercontinental Exchange Inc.

³ Because of the different approach taken with the CME, questions regarding the advisability of a contract that invites retail speculation on the settlement price of an exchange's own futures contracts will be left for determination by the marketplace--precisely the opportunity that KalshiEx was denied with respect to its contracts when the Commission incorrectly invoked Regulation 40.11.