



July 24, 2023

The Honorable Rostin Behnam
Chairman, Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Comment on KalshiEX LLC's Congressional Control Contracts

Dear Chairman Behnam,

The Center for American Progress (CAP) is writing to the Commodity Futures Trading Commission ("CFTC" or "the Commission") regarding CFTC's request for comment on KalshiEX, LLC's ("Kalshi") proposed Congressional control event contracts (the "Proposal"). CAP is an independent, nonpartisan policy institute dedicated to improving the lives of all Americans through bold, progressive ideas, as well as strong leadership and concerted action. As an organization dedicated to strengthening our democracy, we strongly object to Kalshi's proposal. Kalshi's bid is predicated on a misreading of CFTC jurisdiction under section 5c(c)(5)(C) of the Commodity Exchange Act ("CEA"), codified at 7 U.S.C. § 7a-2 and 17 C.F.R. § 40.11. Furthermore, these proposed Congressional control event contracts endanger American democracy by incentivizing election interference. CAP opposes the authorization of these proposed event contracts, as doing so would be against the public interest.

Kalshi's proposal makes numerous justifications,¹ but it fundamentally amounts to nothing more than betting on the results of elections. The CFTC got it right in 2012 when it did not allow the North American Derivatives Exchange ("Nadex") to host binary political event contracts regarding the results of various U.S. federal elections in 2012.² The Commission's conclusion that the political event contracts at issue in the Nadex proceeding constituted gaming under state and federal law and were contrary to the public interest³ should hold. Kalshi argues that the Nadex holding was incorrect because the underlying activity of political event contracts, elections, are not an excluded commodity. However, political event contracts taken as a whole are considered gaming,⁴ which is an explicitly excluded commodity.⁵ Kalshi's proposal is materially indistinguishable from the 2012 Nadex request and the Commission

¹ Comments from KalshiEX to Commission, Sept. 25, 2022, *available at* <https://www.cftc.gov/sites/default/files/filings/ptc/23/06/ptc0612232836.pdf>.

² "Order Prohibiting The Listing Or Trading Of Political Event Contracts" ("Nadex Order"), April 2, 2012, *available at* <https://www.cftc.gov/sites/default/files/stellent/groups/public/@rulesandproducts/documents/ifdocs/nadexorder040212.pdf>.

³ *Ibid.*

⁴ KalshiEX, "Comments Responding to the Commission's Specific Questions Related to KalshiEX, LLC's Proposed Congressional Control Contracts."

⁵ 7 U.S.C. § 7a-2(c)(5)(C).

should come to the same result. As the Commission previously cited in Nadex, the political event contracts at issue meet state and federal definitions of gaming, and should be examined as instances of gaming.⁶

Viewed as instances of gaming, Kalshi's proposed political event contracts would have deleterious effects on American democracy. Kalshi's proposal strikes at the very heart of democracy—when citizens vote, their task is to vote for the person they believe *should* win the election. But if voters could directly financially benefit from the results of an election, they would instead be incentivized to vote for the person they think (and potentially have bet) *will* win the election.

Kalshi's political event contracts would not only encourage voters to vote against their conscience, but would also threaten the integrity of our elections at large. If there is the possibility of acquiring material gain with the result of an election, participants may interfere with the electoral process. This may include, but is not limited to, disinformation campaigns in various mediums—including the use of generative artificial intelligence (AI), voter intimidation, and election hacking. Congressional officials have already voiced their concerns about algorithmic, AI-generated, and social-media-spurred disinformation in the 2024 general election;⁷ these proposed election wagers would only exacerbate the issue. This Commission has agreed with this fact in the past, stating in the Nadex order that these contracts “can potentially be used in ways that would have an adverse effect on the integrity of elections.”⁸

Though Kalshi's present proposal is limited to wagers regarding which party controls the chambers of the U.S. Congress, it is a slippery slope. If the precedent is set to allow this activity, Kalshi and its competitors could likely use its logic to set about creating betting contracts at other levels of government—from the local level to the presidency—and on every conceivable question. This possibility of wholesale betting on U.S. elections could make each individual election more contentious and open to the individualized targeting by malicious actors. This could happen both before and after the results are called. Some evidence suggests that electoral betting fueled the fire of election denial in 2020.⁹ At a time when Americans' faith in election integrity is regrettably low compared to two decades ago,¹⁰ it is against the public interest to introduce financial incentives to our electoral system that would damage it further. Any benefit that could possibly be attributed to these contracts pales in comparison to the threat to our election security and the sanctity of American democracy.

As such, CAP strongly urges the CFTC to deny the proposal set forth by Kalshi just as it correctly did a decade ago with Nadex. Kalshi's proposal to allow gambling on our elections is squarely against the public interest.

⁶ See Nadex Order, *supra* n. 2.

⁷ Tiffany Hsu and Steven Lee Meyers, “A.I.’s Use in Elections Sets Off a Scramble for Guardrails,” *NY Times*, June 25, 2023, available at <https://www.nytimes.com/2023/06/25/technology/ai-elections-disinformation-guardrails.html>.

⁸ Nadex Order, *supra* n. 2, at 4.

⁹ Elizabeth Howcroft and Krystal Hu, “As Trump refuses to concede, some bettors hold out too,” Reuters, Nov. 12, 2020, available at <https://www.reuters.com/article/us-usa-election-betting/as-trump-refuses-to-concede-some-bettors-hold-out-too-idUSKBN27S1P5>.

¹⁰ Justin McCarthy, “Confidence in Election Integrity Hides Deep Partisan Divide,” Gallup, Nov. 4, 2022, available at <https://news.gallup.com/poll/404675/confidence-election-integrity-hides-deep-partisan-divide.aspx>.