July 24, 2023

Christopher Kirkpatrick

Secretary of the Commission

U.S. Commodity Futures Trading Commission

Three Lafayette Centre

1155 21st Street, N.W.

Washington, D.C. 20581

**Re: CFTC Review of KalshiEx Proposed Congressional Control Contracts Under CFTC Regulation 40.11, Industry Filing 23-01**

Dear Mr. Kirkpatrick:

In response to the U.S. Commodity Futures Trading Commission’s (“CFTC” or “Commission”) Questions on the KalshiEX LLC (“Kalshi”) Contracts for Public Comment,[[1]](#footnote-1) I write on behalf of a client and related interests looking to clarify matters of suitability - both of exchange operator and beneficial ownership - as well as the Commission’s role in fostering open and competitive markets.

**On Suitability of Ownership**

The most pressing concerns we see do not regard the legality of the proposed contracts, but rather the intent and capacity of the registrant to maintain public trust in regulated markets and the democratic process. This is evidenced by the singular theme tying together nearly every comment submitted for Industry Filing 23-01: Whether approval would undermine the integrity of U.S. elections.

Accordingly, we believe it to be material to the Commission and the public that it is understood and disclosed where the beneficial ownership of Kalshi comes from. We further have reason to understand that there have been efforts to sanitize this concern in recent weeks through the use of secondary market activity. We therefore respectfully request that the Commission fully investigate and consider this and its findings, including any whistleblower allegations, towards any final disposition on the proposed contracts concerning U.S. elections.[[2]](#footnote-2)

**On Suitability of Operator**

On assessing the intent and capacity of the registrant to maintain public trust, we must also consider the potential of Kalshi’s alleged history of demonstrated non-compliance. Potential allegations, including those alleged by a whistleblower, not only suggest the willful failure to disclose beneficial ownership interests that are contrary to the public interest, but also a history of deceiving the Commission and investing little to no resources into core competencies such as market surveillance and regulatory compliance.

Accordingly, if the proposed contracts are to be made available to the public, we respectfully request that the Commission resolve the following sufficient to satisfy public interest concerns and capacity requirements under DCM Core Principle 2: If Kalshi lacks the capacity to administer its existing duties as a DCM, how can it then safeguard the integrity of U.S. elections?[[3]](#footnote-3)

**On Competition**

Sovereign influence is unfortunately not potentially limited to Kalshi as dozens of prominent venture capital and private equity firms have recently been disclosed as conduits of Saudi Arabia’s sovereign wealth fund, for example.[[4]](#footnote-4) We would note as well that during recent hearings before Congress, both the Chair of the CFTC and the Chair of the U.S. Securities and Exchange Commission (“SEC”) have been questioned about ownership of their regulated entities.[[5]](#footnote-5) While not prohibited in many instances, we would submit that a benefit of the doubt simply should not be conferred to those attempting to safeguard a cornerstone of the U.S. democratic process - particularly when operating with unfair political influence under presumed immunity.[[6]](#footnote-6)

Likewise, given that this was not done through a rulemaking applicable to all current or potentially involved parties, which contributes to the purported anti-competitive nature of Kalshi’s exclusivity to the proposed contracts in the event of approval, we are concerned that the Commission may be stymying competition by providing neither transparency nor the ability for peers to reasonably compete by means of other event contracts prior to the 2024 U.S. election cycle. This sentiment is reinforced by the industry’s commonly stated belief that Kalshi has repeatedly leveraged the Commission to advance an anti-competitive agenda regarding competitors Polymarket and PredictIt.[[7]](#footnote-7) At best, this projects the appearance of impropriety unbefitting of a federal agency. At worst, this suggests that the Commission is picking winners and losers in highly contested verticals, or otherwise supporting a monopoly on these contracts in the United States.

**On Congressional Control Contracts**

To be clear, we support the notion that the proposed contracts are legally permitted under the Commodity Exchange Act (“CEA”) and Commission regulations, as the law on this favors approval as it does for similar event contracts proposals by new and/or competing regulated exchange operators. We agree with the commenters that have already filed comments supporting these contracts from a legal and policy perspective. However, we believe that the suitability of the ownership and operator in question effectively frustrates - or should at least give pause to - the possibility of approval in the present case, and in any event, needs to and should be considered by the Commission.

We look forward to engaging more directly with the Commission and Commission staff on this matter in the coming weeks and working together on attaining appropriate transparency on its resolution.

Sincerely,

A close-up of a pair of scissors

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1. CFTC, Release No. 8728-23, *CFTC Announces Review of Kalshi Congressional Control Contracts and Public Comment Period*, Jun. 23, 2023, avail. at <https://www.cftc.gov/PressRoom/PressReleases/8728-23>. [↑](#footnote-ref-1)
2. We note that the above concern about beneficial ownership may not have been reviewed or may not be known to the Commission through the Division of Market Oversight’s rule enforcement review (“RER”) process for registered exchanges. RERs are also no longer publicly available, so the public would also not know either way whether beneficial ownership was addressed and/or found to be a concern. [↑](#footnote-ref-2)
3. 17 CFR § 38.150(b). [↑](#footnote-ref-3)
4. *See* https://www.sanabil.com/en/home; *see also* https://www.axios.com/2023/04/04/saudi-arabias-sovereign-wealth-fund-vc-pe-portfolio (highlighting the scope of investment activity as well as the level of investor turnover in the months since disclosure). [↑](#footnote-ref-4)
5. For example, CFTC Chair Behnam was questioned about whether foreign entities could buy FTX’s CFTC registration in the bankruptcy proceeding, and SEC Chair Gensler has been asked about the extent of Chinese investment in Prometheum, the novel and first SEC-registered digital assets broker dealer. [↑](#footnote-ref-5)
6. *See* https://www.wsj.com/articles/liv-golf-pga-tour-lawsuit-saudi-arabia-sovereign-immunity-a8a76b10 (discussing how Saudi Arabia’s Public Investment Fund has already attempted to leverage sovereign immunity in similar legal challenges). [↑](#footnote-ref-6)
7. *Did Kalshi Kill PredictIt? Friday’s Decision On Election Wagering Will Be Revealing*, Jun. 23, 2023, avail. at https://www.usbets.com/did-kalshi-kill-predictit. [↑](#footnote-ref-7)