

## **Securities Regulation Daily Wrap Up, EXCHANGES AND MARKET**

### **REGULATION—CFTC opens review of Kalshi political event contracts, (Aug 29, 2022)**

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Ahead of the U.S. midterm elections, the CFTC is evaluating whether to allow an exchange to list event contracts based on political control of the U.S. Congress.

The CFTC announced it is reviewing a submission by KalshiEX, LLC, a registered exchange, regarding political event contracts that KalshiEX proposes to list for trading. The proposed contracts would be based on which political party will be in control of each chamber of the U.S.

Congress. The CFTC has opened public comment on the submission until September 25 and said it will attempt to issue an order by October 28.



**Proposed political contracts.** In its [voluntary submission for review](#), Kalshi stated that contracts on political control of Congress have been available to U.S. participants for nearly a decade. Without referring to PredictIt by name, Kalshi noted that event contracts have been offered by that entity on an unregistered basis since 2014 in reliance on CFTC no-action relief.

According to the submission, the proposed contracts would be binary and cash-settled. They would be based on the question: “Will be in control of the ?” and settle based on the party affiliation of the Speaker of the U.S. House of Representatives or the President Pro Tempore of the U.S. Senate.

In a [blog post](#), Kalshi stated that trading on elections is commonplace in democracies abroad like the United Kingdom, Ireland, and Australia. The exchange added that election contracts attract large volume, particularly on American elections.

“It is time to bring election markets home, into the light, and onto a fully regulated exchange that brings their hedging and forecasting power to all individuals and businesses, while ensuring proper participant and marketplace protections are in place,” said the exchange.

**CFTC review.** In a [press release](#), the CFTC said it determined that the contracts may involve, relate to, or reference an activity enumerated in CFTC Regulation 40.11(a) and section 5c(c)(5)(C) of the Commodity Exchange Act (CEA).

CFTC Regulation 40.11 provides that registered entities may not list event contracts relating to terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law. Registered entities also may not list event contracts that are similar to such activities and that the Commission determines, by rule or regulation, to be contrary to the public interest.

The regulation also provides for the CFTC to conduct a 90-day review.

As part of its review, the CFTC is requesting public comment on [17 questions](#) relating to the Kalshi submission. Among other issues, the questions probe:

- Do the proposed contracts involve gaming?
- Could these or other election-based contracts affect the integrity of elections—or the perception of election integrity?

- Could the contracts undermine federal campaign finance laws or regulations?
- Do the contracts present possibilities for manipulation? For example, could candidate campaign committees or political action committees manipulate the contracts by trading on internal, non-public polling data?

**Iffy chances?** Although Kalshi cited PredictIt as an example of an entity that has offered similar contracts for years, the comparison may not help the exchange. The CFTC recently [withdrew its no-action relief](#) for PredictIt, stating that the trading platform’s operator, Victoria University, has not operated its market in compliance with the terms of the relief.

In withdrawing the PredictIt relief, the CFTC noted the platform had represented, among other things, that its event contract market would be not-for-profit and operated only for academic research purposes. These conditions would not be true for Kalshi.

**Commissioner Pham dissent.** Commissioner Caroline Pham issued a [dissent](#) to the Commission’s decision to pursue a 90-day review and stay. Among other objections, Pham said the underlying activity is political control, which is not one of the enumerated excluded activities in CFTC Regulation 40.11. Pham added that the 90-day review essentially “runs out the clock” on Kalshi’s ability to list contracts for the November 2022 elections.

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