

Public Statements & Remarks

Statement of Chairman Rostin Behnam Regarding CFTC Order to Prohibit Kalshi Political Control Derivatives Contracts

September 22, 2023

Today's Order prohibits listing or otherwise making available for clearing or trading certain Congressional Control Contracts on or through KalshiEx LLC ("Kalshi") based on findings that such political event contracts involve both gaming and activity that is unlawful under State law, and are contrary to the public interest.^[1] The Commodity Exchange Act (CEA) enumerates certain categories of commodities for which derivatives may be contrary to the public interest if listed on an exchange. These include contracts that involve gaming or activity that violates State or Federal Law. Kalshi's Congressional control contracts fall into both of these categories. Betting or wagering on elections, as proposed by Kalshi, meets the definition of gaming. And in many states, betting or wagering on elections is prohibited by statute or common law. The analysis conducted, determinations reached, and process followed resulting in the Commission's Order are squarely within our duty and discretion.

The Commission's consideration of the Congressional Control Contracts and ultimate vote was guided by careful analysis of statutory language and Congressional intent, and informed by the 1,378 public comments^[2] submitted in response to questions aimed at informing our review.

The Commission has previously considered whether other event contracts that involve political events could satisfy the application of the prongs of the public interest test embedded in the CEA. For almost two decades, registered and prospective registered entities alike have attempted to develop and list products that would elude the definition of gaming and essentially reduce key facets of the democratic process to a source of revenue for some, fascination and entertainment for others, and, critically, an unmandated duty for the CFTC. The approval of political event contracts of the type presented in the Order would require the CFTC to exercise its oversight and enforcement authorities in the manner of an election cop. Our new authorities would per se include monitoring elections, candidates, and countless participants in the political machinations that proliferate in the media and cyberspace in an effort to prevent manipulation and false reporting within the political system—something that the CFTC currently lacks the mandate to do.

It makes sense for the CFTC to have authority to combat fraud, manipulation, and false reporting in underlying commodity markets. But it is impractical for the CFTC to combat them in the underlying market here—a political contest. The implications of such authority are vast, and could extend in a multitude of directions beyond the election itself, political fundraising and polling, to name just two.

For these reasons, I agree with the Commission's determination today that Kalshi's Congressional control contracts should be prohibited.

[1] See CEA section 5c(c)(5)(C)(ii); 7 U.S.C. § 7a-2(c)(5)(C)(ii).

[2] <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7394>
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