February 10, 2022

SUBMITTED VIA CFTC PORTAL
Secretary of the Commission
Office of the Secretariat
U.S. Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

Re: KalshiEX LLC – CFTC Regulation 40.2(a) Notification Regarding the Initial Listing of the "Will Section 230 be weakened?" Contract

Dear Sir or Madam,

Pursuant to Section 5c(c) of the Commodity Exchange Act and Section 40.2(a) of the regulations of the Commodity Futures Trading Commission, KalshiEX LLC (Kalshi) hereby notifies the Commission that it is self-certifying the "Will Section 230 be weakened?" contract (Contract). The Exchange intends to list the contract on roughly an annual basis. However, if political circumstances change substantially, additional iterations of the Contract may be issued. The Contract's terms and conditions (Appendix A) includes the following strike conditions:

- **<date> (the target date)**

Along with this letter, Kalshi submitted the following documents:

- A concise explanation and analysis of the Contract;
- Certification;
- Appendix A with the Contract's Terms and Conditions;
- Confidential Appendices with further information; and
- A request for FOIA confidential treatment.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Elie Mishory
Chief Regulatory Officer
KalshiEX LLC
emishory@kalshi.com

KalshiEX LLC
Official Product Name: Will Section 230 be weakened?
Rulebook: SEC230
Kalshi Contract Category: Political Decision
Section 230 Changes
February 10, 2022

CONCISE EXPLANATION AND ANALYSIS OF THE PRODUCT AND ITS COMPLIANCE WITH APPLICABLE PROVISIONS OF THE ACT, INCLUDING CORE PRINCIPLES AND THE COMMISSION'S REGULATIONS THEREUNDER

Pursuant to Commission Rule 40.2(a)(3)(v), the following is a concise explanation and analysis of the product and its compliance with the Act, including the relevant Core Principles, and the Commission's regulations thereunder.

I. Introduction

The "Will Section 230 be weakened?" Contract is a contract relating to potential modifications to Section 230 of the Communications Act of 1934.[1] After careful analysis, Kalshi (hereafter referred to as "Exchange") has determined that the Contract complies with its vetting framework, which has been reviewed by the CFTC and formed part of the Exchange's application for designation as a Contract Market ("DCM") that was approved by the Commission.

The Communications Decency Act was passed in 1996 to protect children from seeing sexually explicit material on the Internet.[2] While much of the law remains relatively uncontroversial, one provision--the addition of Section 230 to the Communications Act of 1934--has become a flashpoint for conservatives and liberals alike. In particular, Section 230(c) declares that "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider" and that "No provider or user of an interactive computer service shall be held liable on account of (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph". In short, Section 230 provides two

[1] https://uscode.house.gov/view.xhtml?req=(title:47%20section:230%20edition:prelim)
[2] https://mtsu.edu/first-amendment/article/1070/communications-decency-act-of-1996#:~:text=Congress%20enacted%20the%20Communications%20Decency,explicit%20materials%20on%20the%20Internet.

critical protections to many websites, including Internet Service Providers (ISPs) and social media sites, that host content posted by others: it largely immunizes them from liability for content posted by others and it largely immunizes them from liability stemming from good faith efforts to moderate the content on their platform. There are notable exceptions to this immunity, particularly for intellectual property violations. As President, Donald Trump frequently attacked Section 230. On the campaign trail for President, Joe Biden also floated removing the section entirely.[3] Section 230 has been modified twice: a minor change in 1998 and a larger change in 2018 that carved out an exception to the immunizations for sex trafficking.

Further information about the Contract, including an analysis of its risk mitigation and price basing utility, as well as additional considerations related to the Contract, is included in Confidential Appendices B, C, and D.

Pursuant to Section 5c(c) of the Act and CFTC Regulations 40.2(a), the Exchange hereby certifies that the listing of the Contract complies with the Act and Commission regulations under the Act.

General Contract Terms and Conditions: The Contract operates similar to other binary contracts that the Exchange lists for trading. The minimum price fluctuation is $0.01 (one cent). Price bands will apply so that Contracts may only be listed at values of at least $0.01 and at most $0.99. Further, the Contract is sized with a one-dollar notional value and has a minimum price fluctuation of $0.01 to enable Members to match the size of the contracts purchased to their economic risks. The Exchange has further imposed position limits (defined as maximum loss exposure) of $25,000 USD on the Contract. As outlined in Rule 5.12 of the Rulebook, trading shall be available at all times outside of any maintenance windows, which will be announced in advance by the Exchange. Members will be charged fees in accordance with Rule 3.6 of the Rulebook. Fees are charged in such amounts as may be revised from time to time to be reflected on the Exchange's Website. Additionally, as outlined in Rule 7.2 of the Rulebook, if any event or any circumstance which may have a material impact on the reliability or transparency of a Contract's Source Agency or the Underlying related to the Contract arises, Kalshi retains the authority to designate a new Source Agency and Underlying for that Contract and to change any associated Contract specifications after the first day of trading. That new Source Agency and Underlying would be objective and verifiable. Kalshi would announce any such decision on its website. All instructions on how to access the Underlying are non-binding and are provided for convenience only and are not part of the binding Terms and Conditions of the Contract. They may be clarified at any time.

[3] https://www.theverge.com/2020/1/17/21070403/joe-biden-president-election-section-230-communications-decency-act-revoke

Furthermore, the Contract's payout structure is characterized by the payment of an absolute amount to the holder of one side of the option and no payment to the counterparty. During the time that trading on the Contract is open, Members are able to adjust their positions and trade freely. After trading on the Contract has closed, the Expiration Value and Market Outcome are determined. The market is then settled by the Exchange, and the long position holders and short position holders are paid according to the Market Outcome. In this case, "long position holders" refers to Members who purchased the "Yes" side of the Contract and "short position holders" refers to Members who purchased the "No" side of the Contract. If the Market Outcome is "Yes," meaning that a bill has become law between Issuance and <date> that eliminates Section 230 of the Communications Act of 1934 or modifies Section 230 of the Communications Act of 1934 such that the scope of the protections in Section 230(c) have been limited (please see Appendix A for the legally binding terms and conditions), then the long position holders are paid an absolute amount proportional to the size of their position and the short position holders receive no payment. If the Market Outcome is "No," then the short position holders are paid an absolute amount proportional to the size of their position and the long position holders receive no payment. Specification of the circumstances that would trigger a Market Outcome of "Yes" are included below in the section titled "Payout Criterion" in Appendix A.

CERTIFICATIONS PURSUANT TO SECTION 5c OF THE COMMODITY EXCHANGE ACT, 7 U.S.C. § 7A-2 AND COMMODITY FUTURES TRADING COMMISSION RULE 40.2, 17 C.F.R. § 40.2

Based on the above analysis, the Exchange certifies that:

- ❑ The Contract complies with the Act and Commission regulations thereunder.
- ❑ This submission (other than those appendices for which confidential treatment has been requested) has been concurrently posted on the Exchange's website at https://kalshi.com/regulatory/filings.

Should you have any questions concerning the above, please contact the exchange at ProductFilings@kalshi.com.

Eliezer Mishory

By: Eliezer Mishory
Title: Chief Regulatory Officer
Date: February 10, 2022

Attachments:

Appendix A - Contract Terms and Conditions
Appendix B (Confidential) - Further Considerations
Appendix C (Confidential) - Source Agency
Appendix D (Confidential) - Compliance with Core Principles

APPENDIX A – CONTRACT TERMS AND CONDITIONS

TERMS OF CONTRACTS TRADED ON KALSHI

Official Product Name: Will Section 230 be weakened?
Rulebook: SEC230

SEC230

Scope: These rules shall apply to this contract.

Underlying: The Underlying for this Contract is bills that have become law between Issuance and <date>, according to Congress.gov. Revisions to the Underlying made after Expiration will not be accounted for in determining the Expiration Value.

Instructions: Bills that have become law are available at https://www.congress.gov/search?q=%7B%22congress%22%3A%5B%22117%22%5D%2C%22source%22%3A%22all%22%2C%22bill-status%22%3A%22law%22%7D. The date of passage is clearly available on each bill's page These instructions on how to access the Underlying are provided for convenience only and are not part of the binding Terms and Conditions of the Contract. They may be clarified at any time.

Source Agency: The Source Agency is the Library of Congress.

Type: The type of Contract is a Binary Contract.

Issuance: The Exchange intends to list the contract on roughly an annual basis. However, if political circumstances change substantially, additional iterations of the Contract may be issued.

<date>: <date> refers to a calendar date specified by Kalshi. Kalshi may list iterations of the Contract corresponding to different statistical periods of <date>.

Payout Criterion: The Payout Criterion for the Contract encompasses the Expiration Values that contain a bill that eliminates Section 230 of the Communications Act of 1934 (47 USC 230) or modifies Section 230 of the Communications Act of 1934 (47 USC 230) such that the scope of the protections in Section 230(c) have been limited. One method by which the scope of protections in Section 230(c) can be limited is by amending Section 230(e) to add to the existing list of carve-outs to 230(c)'s protections. Examples of that method are included in the Examples section below. An Expiration Value that contains a bill that limits the applicability of Section 230 of the Communications Act of 1934 for some actions or providers while strengthening other protections (or removing other carve-outs) is still encompassed in the Payout Criterion.

Examples: These examples are provided for convenience only and may be modified or clarified at any time.

The S. 3398 (EARN IT Act of 2020, excerpted below)[4], should it become law between Issuance and <date>, is an example of a bill that is encompassed in the Payout Criterion. The bill adds to Section 230(e)'s carve outs to allow increased civil and criminal liability under 18 USC 2255.

SEC. 5. PROTECTING VICTIMS OF ONLINE CHILD SEXUAL ABUSE.

Section 230(e) of the Communications Act of 1934 ([47 U.S.C. 230(e)](47 U.S.C. 230(e))) is amended by adding at the end the following:

"(6) NO EFFECT ON CHILD SEXUAL EXPLOITATION LAW.—Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

"(A) any claim in a civil action brought against a provider of an interactive computer service under section 2255 of title 18, United States Code, if the conduct underlying the claim constitutes a violation of section 2252 or section 2252A of that title;

"(B) any charge in a criminal prosecution brought against a provider of an interactive computer service under State law regarding the advertisement, promotion, presentation, distribution, or solicitation of child sexual abuse material, as defined in section 2256(8) of title 18, United States Code; or

"(C) any claim in a civil action brought against a provider of an interactive computer service under State law regarding the advertisement, promotion, presentation, distribution, or solicitation of child sexual abuse material, as defined in section 2256(8) of title 18, United States Code.

S. 797 (PACT Act of 2021, excerpted below)[5] explicitly adds a provision to Section 230(c) of the Communications Act of 1934 that adds an additional "Protection Exemption" and thus, if it became law between Issuance and <date>, would be encompassed in the Payout Criterion.

SEC. 6. PROTECTION EXEMPTIONS.

(a) EXEMPTION FROM LIABILITY PROTECTION.—Section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)) is amended by adding at the end the following:

"(3) PROTECTION EXEMPTION.—

"(A) IN GENERAL.—Subject to subparagraph (B), the protection under paragraph (1) shall not apply to a provider of an interactive computer service, with respect to illegal content shared or illegal activity occurring on the interactive computer service, if the provider—

"(i) has actual knowledge of the illegal content or illegal activity; and

"(ii) does not remove the illegal content or stop the illegal activity—

"(I) within 4 days of acquiring that knowledge, subject to reasonable exceptions based on concerns about the legitimacy of the notice; or

"(II) if the knowledge is acquired from a notice that emanates from a default judgment or stipulated agreement—

"(aa) within 10 days of acquiring that knowledge; or

"(bb) if the provider seeks to vacate the default judgment or stipulated agreement under subparagraph (B)(i)(III) and the proceeding initiated under that subparagraph results in a determination that the default judgment or stipulated agreement should remain intact, within 24 hours of that determination.

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[4] https://www.congress.gov/bill/116th-congress/senate-bill/3398/text?q=%7B%22search%22%3A%5B%22S.+3398%22%2C%22S.%22%2C%223398%22%5D%7D&r=3&s=1

[5] https://www.congress.gov/bill/117th-congress/senate-bill/797/text?q=%7B%22search%22%3A%5B%22S.+797%22%2C%22S.%22%2C%22797%22%5D%7D&r=1&s=2

Other examples of bills that, if passed between Issuance and <date>, would be encompassed in the Payout Criterion are S. 2972 (a bill to repeal Section 230 of the Communications Decency Act)[6] and H.R. 277 (Limiting Section 230 Immunity to Good Samaritans Act)[7].

Minimum Tick: The Minimum Tick size for the referred Contract shall be $0.01.

Position Limit: The Position Limit for the $1 referred Contract shall be $25,000 per Member.

Last Trading Date: The Last Trading Date and Time will be the sooner of the date of the first 10:00 AM following the occurrence of an event which is encompassed in the Payout Criterion (whereupon the Last Trading Time will be 10:00 AM), or <date> (whereupon the Last Trading Time will be 11:59 PM).

Settlement Date: The Settlement Date of the Contract shall be no later than the day after the Expiration Date, unless the Market Outcome is under review pursuant to Rule 7.1.

Expiration Date: The Expiration Date of the Contract shall be the sooner of the date of the first 10:00 AM following the occurrence of an event that is encompassed in the Payout Criterion, the first 10:00 AM following Congress.gov updating for <date>, or one week after <date> .

Expiration time: The Expiration time of the Contract shall be 10:00 AM ET.

Settlement Value: The Settlement Value for this Contract is $1.00.

Expiration Value: The Expiration Value is the value of the Underlying as documented by the Source Agency on the Expiration Date at the Expiration time.

Contingencies: Before Settlement, Kalshi may, at its sole discretion, initiate the Market Outcome Review Process pursuant to Rule 6.3(c) of the Rulebook. Additionally, as outlined in Rule 7.2 of the Rulebook, if any event or any circumstance which may have a material impact on the reliability or transparency of a Contract's Source Agency or the Underlying related to the Contract arises, Kalshi retains the authority to designate a new Source Agency and Underlying for that Contract and to change any associated Contract specifications after the first day of trading.

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[6] https://www.congress.gov/bill/117th-congress/senate-bill/2972?q=%7B%22search%22%3A%5B%22section+230%22%2C%22section%22%2C%22230%22%5D%7D&s=5&r=1

[7] https://www.congress.gov/bill/117th-congress/house-bill/277/text?q=%7B%22search%22%3A%5B%22section+230%22%2C%22section%22%2C%22230%22%5D%7D&r=2&s=5