March 29, 2022

**SUBMITTED VIA CFTC PORTAL**
Secretary of the Commission
Office of the Secretariat
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
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 the Supreme Court's ruling in *Students for Fair Admissions, Inc. v. President
& Fellows of Harvard College* be a victory for the petitioners?" 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 the Supreme Court's ruling in *Students for Fair Admissions, Inc. v. President &
Fellows of Harvard College* be a victory for the petitioners?" contract (Contract). The Exchange intends to
list the contract once. The Contract's terms and conditions (Appendix A) includes the following strike
conditions:

- **<complete/partial>** (the kind of ruling)

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 the Supreme Court's ruling in** *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* **be a victory for the petitioners?**
**Rulebook: SFFA**
**Kalshi Contract Category: Political Decision**
**SFA v. Harvard**
**March 29, 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 the Supreme Court's ruling in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* be a victory for the petitioners?" Contract is a contract relating to the outcome of a lawsuit against Harvard College alleging racial discrimination in admissions. 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.

On January 24, 2022, the Supreme Court granted the writ of certiorari to *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* (which was consolidated with *Students for Fair Admissions, Inc. v. University of North Carolina*) . In the case, the petitioner ask the Supreme Court to examine two questions:

1. Should this Court overrule Grutter v. Bollinger, 539 U.S. 306 (2003), and hold that institutions of higher education cannot use race as a factor in admissions?

2. Title VI of the Civil Rights Act bans race-based admissions that, if done by a public university, would violate the Equal Protection Clause. Gratz v. Bollinger, 539 U.S. 244, 276 n.23 (2003). Is Harvard violating Title VI by penalizing Asian-American applicants, engaging in racial balancing, overemphasizing race, and rejecting workable race-neutral alternatives?

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. 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", 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. Please see Appendix A for the binding  description of the criterion by which the Market Outcome could be "Yes".  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: March 29, 2022

**<u>Attachments:</u>**

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 the Supreme Court's ruling in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* be a victory for the petitioners?**
**Rulebook: SFFA**

# SFFA

**Scope:** These rules shall apply to this contract.

**Underlying:** The Underlying for this Contract is Judgments of the Court and Opinions of the Court from the Supreme Court of the United States (collectively called "rulings") in the case of *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*. Dissenting and concurring opinions are not included in the Underlying. Revisions to the Underlying made after Expiration will not be accounted for in determining the Expiration Value.

**Instructions:** Slip opinions can be found [here](.).[1] Click on *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*. 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 Supreme Court of the United States.

**Type:** The type of Contract is a Binary Contract.

**Issuance:** This contract will be issued once.

**Payout Criterion:** The Payout Criterion for the Contract encompasses the Expiration Values that contain a ruling that results in a <complete/partial> petitioner victory. The petitioners are *Students for Fair Admissions, Inc*.

If the value of <complete/partial> is "complete", then only a ruling that institutions of higher education that receive federal financial assistance cannot use race as a factor in admissions to institutions of higher education that receive federal funding is encompassed in the Payout Criterion.

If the value of <complete/partial> is "partial", then only a ruling that certain uses of race as a factor in admissions schemes that include those of Harvard College are impermissible (either on constitutional or statutory grounds) but does not rule that institutions of higher education that receive federal financial assistance cannot use race as a factor in admissions at all, is encompassed in the Payout Criterion.

Please note that if the Supreme Court remands the case to lower courts without making any other determination and then re-hears the case, that subsequent ruling is outside of the scope of this contract. Only the initial ruling is considered in the scope of this contract.

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[1] https://www.supremecourt.gov/opinions/slipopinion/22

**Examples to illustrate <complete/partial>:**

| Ruling | "Complete" | "Partial" |
|---|---|---|
| A ruling upholding Harvard's method of race-based admissions<br><br>*Examples of similar rulings:*<br>1. The case *Fisher v. University of Texas* was heard by the Supreme Court twice. In the second instance (*Fisher II*)[2], the Supreme Court held that "the race-conscious admissions program in use at the time of petitioner's application is lawful under the Equal Protection Clause."<br>2. The U.S. Court of Appeals for the First Circuit upheld Harvard's admissions scheme in the *Students for Fair Admissions v. President & Fellow of Harvard College*[3]. The Supreme Court upholding the First Circuit's ruling thus constitutes upholding Harvard's method of race-based admissions<br>3. In *Grutter v. Bollinger*[4], the Supreme Court upheld the University of Michigan's affirmative action program. | No | No |
| A ruling dismissing the suit on standing or other procedural grounds. | No | No |
| A narrow ruling in *SFFA v. Harvard* that strikes down Harvard's method of race-based admissions without ruling on the constitutionality or legality of using race as a factor in admissions broadly.<br><br>*Examples of similar rulings:*<br>1. In *Bakke v. University of California Regents*, the Supreme Court ruled that the University of California's particular method of race-based admissions (quotas) was unconstitutional, but upheld the use of race as a factor in admissions through other means.[5]<br>2. In *Gratz v. Bollinger,* the Supreme Court ruled that | No | Yes |

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[2] https://www.supremecourt.gov/opinions/15pdf/14-981_4g15.PDF
[3] http://media.ca1.uscourts.gov/pdf.opinions/19-2005P-01A.pdf
[4] https://www.law.cornell.edu/supct/pdf/02-241P.ZO
[5] https://www.loc.gov/item/usrep438265/

| | | |
|---|---|---|
| the University of Michigan's affirmative action program was unconstitutionally mechanistic.[6] However, it did not rule on the use of race in admissions to institutions of higher education that receive federal funding more broadly. | | |
| A ruling remanding the case back to lower courts, without prohibiting the use of race as a factor in admissions to institutions of higher education that receive federal funding while the case is being re-heard<br><br>*Examples of similar rulings:*<br>1. The case *Fisher v. University of Texas* was heard by the Supreme Court twice. In the first instance (*Fisher I*), the Appeals Court held in favor of the University. The Supreme Court vacated that decision and issued it to be re-heard. It did not, however, rule that in the intermediary that the University of Texas's affirmative action plan or any other plan was impermissible.[7] | **No** | **No** |
| A ruling remanding the case back to lower courts that also prohibits the use of race as a factor in admissions to institutions of higher education that receive federal funding while the case is being heard<br><br>*Examples of similar rulings:*<br>1. The Supreme Court has never ruled on an affirmative action case using this method. However, in other contexts, they have imposed an injunction on policies while the case is being re-heard. | **Yes** | **No** |
| A complete prohibition on the use of race as a factor in admissions to institutions of higher education that receive federal funding | **Yes** | **No** |
| A ruling that restricts the use of race in admissions to institutions of higher education, but also rules that Harvard College's admissions scheme is permissible<br><br>*Examples of similar rulings:*<br>1. From above, *Grutter v. Bollinger* fits this mold. It upholds the University of Michigan's law school | **No** | **No** |

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[6] https://www.law.cornell.edu/supct/pdf/02-516P.ZO
[7] https://www.supremecourt.gov/opinions/12pdf/11-345_l5gm.pdf

| admissions scheme while imposing limitations on the permanent nature of race-conscious admissions | | |
|---|---|---|

**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 of the Contract will be the same as the Expiration Date. The Last Trading Time will be the same as the Expiration Time.

**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 first 10:00 AM ET following the release of the Supreme Court judgment or opinion in *Students for Fair Admissions, Inc. v. Presidents & Fellows of Harvard College*, or December 31, 2024.

**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.