

December 8, 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 rule that Congress did not impliedly strip federal courts of jurisdiction to adjudicate constitutional challenges to the structure of the FTC in *Axon Enterprise, Inc. v. Federal Trade Commission?*” 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 rule that Congress did not impliedly strip federal courts of jurisdiction to adjudicate constitutional challenges to the structure of the FTC in *Axon Enterprise, Inc. v. Federal Trade Commission?*” contract (Contract). The Exchange intends to list the contract on a one-time basis.

Along with this letter, Kalshi submits 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 rule that Congress did not impliedly strip federal courts of jurisdiction to adjudicate constitutional challenges to the structure of the FTC in *Axon Enterprise, Inc. v. Federal Trade Commission?*”

Rulebook: AXONFTC

Kalshi Contract Category: Political Decision

Axon Enterprise v. Federal Trade Commission

December 8, 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 rule that Congress did not impliedly strip federal courts of jurisdiction to adjudicate constitutional challenges to the structure of the FTC in *Axon Enterprise, Inc. v. Federal Trade Commission?*” Contract is a contract relating to the outcome of the aforementioned case. After careful analysis, Kalshi (hereafter referred to as “Exchange”) has determined that the Contract complies with its vetting framework.

On November 7, 2022, the Supreme Court heard the oral arguments in *Axon Enterprise, Inc. v. Federal Trade Commission*. Axon is a company that makes body cameras. In 2018, they purchased VieVue, which the Federal Trade Commission (“FTC”) subsequently challenged on antitrust grounds. Axon is alleging that the entire structure of the FTC, including their administrative courts and appeals process, is unconstitutional. Both the district court and the Ninth Circuit ruled in favor of the FTC, stating that Congress had impliedly precluded judicial review of FTC procedures. The Supreme Court granted a writ of certiorari regarding the following question:

Whether Congress impliedly stripped federal district courts of jurisdiction over constitutional challenges to the Federal Trade Commission’s structure, procedures, and existence by granting the courts of appeals jurisdiction to “affirm, enforce, modify, or set aside” the Commission’s cease-and-desist orders.

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 event 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," meaning that the Supreme Court has decided that Congress did *not* impliedly strip federal district courts of jurisdiction over constitutional challenges to (at least one of or a subset of) the Federal Trade Commission's structure, procedures, or existence (the previous clause is short-hand; 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: December 8, 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

Official Product Name: Will the Supreme Court rule that Congress did not impliedly strip federal courts of jurisdiction to adjudicate constitutional challenges to the structure of the FTC in *Axon Enterprise, Inc. v. Federal Trade Commission*?

Rulebook: AXONFTC

AXONFTC

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 *Axon Enterprise, Inc. v. Federal Trade Commission, et. al* (Docket Number 21-86). 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 *Axon Enterprise, Inc. v. Federal Trade Commission, et. al*. 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 an Event Contract.

Issuance: This contract will be issued once.

Payout Criterion: The Payout Criterion for the Contract encompasses the Expiration Values that contain a ruling in *Axon Enterprise, Inc. v. Federal Trade Commission, et. al*. that follow the following conditions:

- If the Supreme Court rules that Congress did **not** impliedly strip federal district courts of jurisdiction over constitutional challenges to (at least one of or a subset of) the Federal Trade Commission’s structure, procedures, or existence, then that outcome is encompassed in the Payout Criterion.
- If the Supreme Court rules that Congress did **not** impliedly strip federal district courts of jurisdiction over constitutional challenges to the Federal Trade Commission’s structure, procedures, or existence, but also sends the case back to the lower courts to be re-heard, then that that outcome is encompassed in the Payout Criterion.
- If the Supreme Court sends the case back to lower courts to be reheard without ruling that Congress did not impliedly strip federal district courts of jurisdiction over constitutional challenges to the Federal Trade Commission’s structure, procedures, or existence, then that outcome is not encompassed in the Payout Criterion.

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

¹ <https://www.supremecourt.gov/opinions/slipopinion/22>

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 *Axon Enterprise, Inc. v. Federal Trade Commission, et. al*, 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.