

November 30, 2021

**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 injunction against the OSHA vaccine mandate remain?” 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 injunction against the OSHA vaccine mandate remain?” contract (Contract). The contract is intended to be listed on roughly a monthly basis. The principle strike variables are:

- Target date (“<date>”)
- Expiration Date (“<expo\_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**

**New Contract Submission: Will the injunction against the OSHA vaccine mandate remain?**

**Ticker: VAXMAND**

**Kalshi Contract Category: Political Decision**

**Vaccine Mandate**

**November 30, 2021**

**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The “Will the OSHA vaccine mandate be struck down or withdrawn?” Contract is a contract relating to whether the OSHA vaccine mandate will remain in force on a given date. 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.

Earlier this fall, President Joseph R. Biden directed the Occupational Safety and Health Administration (OSHA) to issue a vaccine mandate for millions of workers around the country. On November 4, 2021, OSHA released the mandate to the Federal Register (and published on November 5), called the “COVID-19 Vaccination and Testing Emergency Temporary Standard” (or ETS). It is distinct from the COVID-19 Health Care ETS, which was issued on June 17, 2021. Details on the new ETS can be found at <https://www.osha.gov/coronavirus/ets2>. Many groups have promised to swiftly challenge the legality of the mandate in court. This Contract is designed to help those impacted by the ETS, including workers and consumers who wish to work and shop in environments free from COVID, mitigate the risk that the mandate is struck down or stayed.

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 Agencies or the Underlying related to the Contract arises, Kalshi retains the authority to designate new Source Agencies and Underlying for that Contract and to change any associated Contract specifications after the first day of trading. Those new Source Agencies 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 "COVID-19 Vaccination and Testing Emergency Temporary Standard" is not in effect on <date> (please see Appendix A for definitions), 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

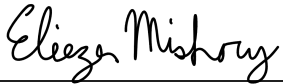
would trigger a Market Outcome of “Yes” are included below in the section titled “Payout Criterion” in Appendix A.

**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](mailto:ProductFilings@kalshi.com).

  
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By: Eliezer Mishory  
Title: Chief Regulatory Officer  
Date: November 30, 2021

**Attachments:**

Appendix A - Contract Terms and Conditions

Appendix B (Confidential) - Further Considerations

Appendix C (Confidential) - Source Agencies

Appendix D (Confidential) - Compliance with Core Principles

**APPENDIX A – CONTRACT TERMS AND CONDITIONS**

**TERMS OF CONTRACTS TRADED ON KALSHI**

**Official Product Name: Will the injunction against the OSHA vaccine mandate remain?**

**Ticker and Rulebook: VAXMAND**

## VAXMAND

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

**Underlying:** The Underlying for this Contract is decisions and filings from the federal judicial system of the United States, including the Supreme Court, appellate courts and district courts issued by <date> regarding the Occupational Safety and Health Administration’s “COVID-19 Vaccination and Testing Emergency Temporary Standard”. The Underlying also includes notices from the Occupational Safety and Health Administration. Revisions to the Underlying made after Expiration will not be accounted for in determining the Expiration Value.

**Instructions:** Lower court filings and decisions may be found at <https://www.uscourts.gov/court-records/find-case-pacer>. Supreme Court slip opinions can be found at <https://www.supremecourt.gov/opinions/slipopinion/21>. Comments on writs of certiorari or other judicial orders from the Supreme Court can be found here: <https://www.supremecourt.gov/opinions/relatingtoorders/21>. The OSHA website for the ETS (<https://www.osha.gov/coronavirus/ets2>) may also be used to determine if the mandate itself has been withdrawn.

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 Agencies:** The Source Agencies are federal courts as well as the Occupational Safety and Health Administration.

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

**Issuance:** After the initial Contract, Contract iterations will be listed on an as-needed basis at the discretion of the Exchange and corresponding to the risk management needs of Members.

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

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

**Payout Criterion:** The Payout Criterion for the Contract encompasses the Expiration Values that contain a ruling such that the Occupational Safety and Health Administration’s (OSHA) COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) is not in effect on



<date> due to judicial action, or a notice by OSHA that the aforementioned ETS has been withdrawn by OSHA in its entirety by <date>. Some further clarifications are below:

1. A district or appellate court issuing a nationwide injunction is encompassed in the Payout Criterion, so long as the injunction is operative on <date>. A nationwide injunction is also sometimes referred to as a universal injunction, national injunction, or absent-party injunction and these terms shall be understood to share the same meaning for the purpose of this Contract. A “stay” of the Occupational Safety and Health Administration’s COVID-19 Vaccination and Testing Emergency Temporary Standard is also encompassed in the Payout Criterion and is understood to share the same meaning as a nationwide injunction for the purpose of this Contract. It is worth flagging that injunctions do not erase rules from the books. Rather, they “enjoin the executive from enforcing the statute” or rule.<sup>1</sup> As a consequence, an injunction against enforcing OSHA’s COVID-19 Vaccination and Testing Emergency Temporary Standard shall be understood to share the same meaning as “not being in effect due to judicial action”.
2. A nationwide injunction against only part of the Occupational Safety and Health Administration’s COVID-19 Vaccination and Testing Emergency Temporary Standard is encompassed in the Payout Criterion. For example, if only the vaccination part (and not the testing part) of the Occupational Safety and Health Administration’s COVID-19 Vaccination and Testing Emergency Temporary Standard is struck down, then that outcome is still encompassed in the Payout Criterion. An injunction need not be permanent to be encompassed in the Payout Criterion, so long as the injunction is operative on <date>.
3. If a higher court stays, overturns or overrules that injunction by <date>, then that prior injunction is not relevant for the Payout Criterion unless that high court decision is also later overturned, overruled or stayed. Please see Example 1 in the Examples and Guidance Section for illustration of this principle. If this occurs by <date>, the action to stay, overturn, or overrule is not relevant for the Payout Criterion.
4. If, by <date>, the Supreme Court finds that OSHA’s COVID-19 Vaccination and Testing Emergency Temporary Standard is in entirety or in part unconstitutional or otherwise strikes down the ETS in part or in its entirety, then that outcome is encompassed in the Payout Criterion.
5. Injunctions that are not nationwide are not encompassed in the Payout Criterion. Moreover, findings from lower courts that OSHA’s COVID-19 Vaccination and Testing Emergency Temporary Standard is unconstitutional but does not enjoin the executive from enforcing the ETS are not encompassed in the Payout Criterion. Please see Example 2 in the Examples section for illustration of this principle.

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<sup>1</sup> [https://www.supremecourt.gov/opinions/URLs\\_Cited/OT2017/16-476/16-476-3.pdf](https://www.supremecourt.gov/opinions/URLs_Cited/OT2017/16-476/16-476-3.pdf)

6. If the Occupational Safety and Health Administration's COVID-19 Vaccination and Testing Emergency Temporary Standard in its entirety is withdrawn by the agency itself, then that outcome is encompassed in the Payout Criterion.

As of November 30, 2021, should no subsequent judicial action be taken by <date>, the Contract would resolve to Yes, because the currently operative judicial ruling is a ruling from the U.S. Court of Appeals for the Fifth Circuit that issued a nationwide injunction against enforcing the ETS.<sup>2</sup>

**Examples:** The following examples are provided for convenience only.

*Example 1:* The United States District Court for the Eastern District of New York issued a nationwide injunction against President Donald Trump's January 27, 2017 executive order on migration. That injunction was later stayed by the U.S. Supreme Court. Should such a sequence of events occur by <date> regarding OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard, then that outcome is **not** encompassed in the Payout Criterion, since the Executive Order would be in effect on <date>. Had the District Court injunction occurred by <date> but the Supreme Court decision staying the injunction occurred after <date>, then that outcome **is** encompassed in the Payout Criterion.

*Example 2:* In 2018, the United States District Court for the Northern District of Texas issued a ruling declaring the entirety of the Affordable Care and Patient Protection Act unconstitutional. However, no nationwide injunction was issued and the law remained in effect as the case worked its way through the appeals process. Had such a sequence of events occurred by <date> regarding OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard, then that outcome is **not** encompassed in the Payout Criterion, since the ETS would be in effect on <date>.

*Example 3:* On November 6th, 2021, the U.S. Court of Appeals Fifth Circuit ruled the following: "Before the court is the petitioners' emergency motion to stay enforcement of the Occupational Safety and Health Administration's November 5, 2021 Emergency Temporary Standard (the "Mandate") pending expedited judicial review. Because the petitions give cause to believe there are grave statutory and constitutional issues with the Mandate, the Mandate is hereby STAYED pending further action by this court." This ruling is understood to be a stay of enforcement of the ETS. Therefore, if that ruling remains operative on <date> (that is, it has not been overruled), then that outcome **is** encompassed in the Payout Criterion. Further information is available at: <https://www.ca5.uscourts.gov/opinions/unpub/21/21-60845.0.pdf>

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

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<sup>2</sup> <https://www.ca5.uscourts.gov/opinions/pub/21/21-60845-CV0.pdf>

**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 initial iteration of the Contract will be the same day as the Expiration Date. The Last Trading Time will be the same as the Expiration time.

**Settlement Date:** The Settlement Date of the initial iteration 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 <expo\_date>.

**Expiration time:** The Expiration time of the initial Contract iteration 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 at least one of the Source Agencies 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.