

Questions on the KalshiEX, LLC “Will <party> be in control of the <chamber of Congress>?” Contracts for Public Comment

1. Do these contracts involve, relate to, or reference gaming as described in Commission regulation 40.11(a)(1) and section 5c(c)(5)(C) of the Commodity Exchange Act, or in the alternative, involve, relate to, or reference an activity that is similar to gaming as described in regulation 40.11(a)(2) or section 5c(c)(5)(C) of the Commodity Exchange Act?
2. Should the Commission consider whether similar offerings are available in traditional gaming venues such as casinos or sports books and/or whether taking a position on elections or congressional control is defined as gaming under state or federal law?
3. Do these contracts involve, relate to, or reference “an activity that is unlawful under any State or Federal law” as described in Commission regulation 40.11(a)(1) and section 5c(c)(5)(C) of the Commodity Exchange Act?
4. In determining whether any of these contracts involves an activity that is unlawful under any State or Federal law, should the Commission be influenced by whether state laws permit betting on the outcome of elections or other political outcomes and/or by the prohibition of interstate betting under Federal law?
5. Are the contracts substantively different than Nadex’s previously proposed contracts such that the Commission’s analysis should be different? For reference, please see “CFTC Order Prohibiting North American Derivatives Exchange’s Political Event Derivatives Contracts” (Apr. 2, 2012) available at <https://www.cftc.gov/PressRoom/PressReleases/6224-12>.
6. Do the contracts serve a hedging function? Are the economic consequences of congressional control predictable enough for a contract based on that control to serve a hedging function? Please provide tangible examples of commercial activity that can be hedged directly by the contracts or economic analysis that demonstrates the hedging utility of the contracts.
7. Are there unique economic risks tied to the outcome of congressional control that cannot be hedged via derivative products on equities, debt, interest rates, tax rates, asset values, and other commodity prices?
8. What standard should the Commission use in reviewing the contract’s hedging function? Is it sufficient that a contract could theoretically be used for hedging or, should an exchange provide evidence of demonstrated need by likely hedgers in the market? How often must a contract be used for hedging or what percentage of market participants or open interest must represent hedging use?
9. Should the Commission consider contract and position sizes and the exchange’s intended customer base to help assess whether a product is likely to be used for hedging in at least some cases? Are very small dollar value contracts targeted at individual retail customers likely to have hedging utility for such customers when the contracts offer positions on

macro level national political events? Does whether contracts are margined or fully-collateralized affect this analysis?

10. Should the Commission consider the contract design and payout when trying to assess the economic utility of the contract? For example, are binary contracts useful for hedging nonbinary economic events?
11. Do the contracts serve a price-basing function? For example, could they form the basis of pricing a commercial transaction in a physical commodity, financial asset, or service?
12. Are the proposed contracts contrary to the public interest? Why or why not?
13. Could the trading of these or other political control or election-based contracts affect the integrity of elections or elections within the chamber of Congress? Could it affect the perception of the integrity of elections within the chamber of Congress?
14. Could the contracts facilitate violations of, or otherwise undermine, federal campaign finance laws or regulations? For example, could the contracts make it easier to sidestep prohibitions governing coordination between candidate campaign committees and political action committees?
15. Do the contracts present any special considerations with respect to susceptibility to manipulation or surveillance requirements? For example, could candidate campaign committees or political action committees manipulate the contracts by trading on internal, non-public polling data?
16. Should campaign committees, political action committees, candidates for the House and Senate, and other entities involved in political fundraising and expenditures or likely to hold non-public information, or subject to Federal Election Commission oversight, be prohibited from participating in the contracts? Would such a prohibition help address federal campaign law or manipulation and surveillance concerns? How would such restrictions impact the Commission's determination of whether the contracts are contrary to the public interest?
17. What other factors should the Commission consider in determining whether these contracts are "contrary to the public interest?"