January 17, 2025

SUBMITTED VIA EMAIL

Division of Market Oversight and Division of Clearing and Risk
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: KalshiEX LLC and Kalshi Klear LLC – Request to modify NAL 24-15

Dear Sir or Madam,

KalshiEX LLC ("Kalshi") and Kalshi Klear LLC ("Klear") hereby request modifications to NAL 24-15, as discussed herein.

I. Background

Kalshi is a Designated Contract Market ("DCM") that lists contracts on the outcome of various events ("Kalshi Contracts"). Klear is a Derivatives Clearing Organization ("DCO") that clears transactions occurring on Kalshi. Kalshi Contracts are swaps under the Commodity Exchange Act ("CEA"). CEA section 1a(47)(A), in relevant part, provides that "the term "swap" means any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." Kalshi Contracts provide for a payment that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence, and therefore are swaps. Kalshi Contracts are fully collateralized; each party to a Kalshi Contract is required to pay at the time of the transaction sufficient funds to cover the maximum possible loss that the party could incur upon liquidation or expiration of the contract.

To enhance transparency, promote standardization, and reduce systemic risk, Section 727 of the Dodd-Frank Act added to the CEA new section 2(a)(13)(G), which requires all swaps, whether cleared or uncleared, to be reported to swap data repositories ("SDRs"). This requirement was implemented in parts 43 and 45 of the Commission Regulations. DCMs such as Kalshi are required to report swaps traded on and/or pursuant to the rules of the DCM to SDRs under Commission Regulation 38.10. DCOs that clear swaps must maintain swap data in accordance with the requirements of part 45 of the Commission Regulations.

On October 4, 2024, the Division of Market Oversight ("DMO"), in conjunction with the Division of Clearing and Risk ("DCR", collectively "the Divisions"), granted relief to Kalshi

and Klear from SDR reporting and related requirements in NAL 24-15[1] ("NAL"). The "Background" section of the NAL noted that "Kalshi represents that the Kalshi Contracts [as defined in the NAL] 'are binary option contracts on the outcome of various events' and 'are swaps under the Commodity Exchange Act ('CEA')." Kalshi represents that the Kalshi Contracts "provide for a payment that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence, and therefore are swaps.'" (Footnotes omitted.)

The NAL did not define "binary option". A binary option has been understood as a contract with a settlement structure that (i) pays an absolute amount to the holder of one side of the contract and no payment to the counterparty, depending on the occurrence or non-occurrence of the event that is the subject of the contract, and (ii) whose settlement obligations do not vary based on the amplitude by which the price at expiration exceeds the strike or strike price, Kalshi and Klear request that the Divisions amend NAL 24-15 to expand the scope of contracts subject to no-action relief to include contracts with a binary payout structure and additionally contracts with a variable payout structure, as described in this request. Kalshi and Klear now intend to list and clear contracts that have a settlement structure that (i) can result in a payout to both counterparties to the contract (although by definition, only one side of the contract can profit, meaning receive a payout in excess of basis) and (ii) whose settlement obligations vary based on the amplitude by which the price at expiration exceeds the strike or strike price. These contracts will continue to be fully collateralized, as noted, and will accordingly have preset price caps and floors that limit potential profit and loss.

Additionally, the NAL included as condition (6) that, "No Kalshi participant clears a Kalshi Contract through a third-party clearing member." In November 2023 Kalshi submitted a petition to amend the DCM Designation Order to permit participants to clear contracts through third-party clearing members, and Kalshi's designation order was amended accordingly on January 17, 2025. In connection with that request, Kalshi requests that the Divisions amend the NAL to remove this condition.

II. Relevant Swap Data Requirements

A. *Relevant Rules and Regulations*

To enhance transparency, promote standardization, and reduce systemic risk, Section 727 of the Dodd-Frank Act added to the CEA new section 2(a)(13)(G), which requires all swaps, whether cleared or uncleared, to be reported to swap data repositories ("SDRs"). This requirement was implemented in parts 43 and 45 of the Commission Regulations. DCMs and DCOs are subject to various swap data reporting and recordkeeping requirements. Because Kalshi Contracts are swaps,[2] CEA section 2(a)(13)(G) requires that they be reported to an SDR.[3] Certain Commission regulations regarding swap data reporting and recordkeeping also apply. Relevant regulations applicable to Kalshi and to Klear include the following:

[1] 24-15 was issued as a supplemental NAL to 21-11 to expand the scope of no-action coverage to Kalshi Klear LLC.
[2] See 7 U.S.C § 1a(47)(A)(ii).
[3] *See* 7 U.S.C. § 2(a)(13)(G) (requiring that each swap, whether cleared or uncleared, be reported to a registered SDR).

- Commission Regulation 38.10 (relevant to Kalshi): "With respect to swaps traded on and/or pursuant to the rules of a designated contract market, each designated contract market must maintain and report specified swap data as provided under parts 43 and 45 of this chapter."[4]
- Commission Regulation 38.951 (relevant to Kalshi): "A designated contract market must maintain such records, including trade records and investigatory and disciplinary files, in accordance with the requirements of § 1.31 of this chapter, and in accordance with part 45 of this chapter, if applicable."[5]
- Commission Regulation 39.20(b)(2) (relevant to Klear): "A derivatives clearing organization that clears swaps must maintain swap data in accordance with the requirements of part 45 of this chapter."[6]
- Commission Regulation Part 43 (relevant to Kalshi): Part 43 generally sets forth rules relating to the reporting and public dissemination of swap data.
- Commission Regulation Part 45 (relevant to Kalshi and Klear): Part 45 generally sets forth various swap data recordkeeping and reporting requirements for DCMs and DCOs.

Collectively, these requirements are called here "the Relevant Regulations."

B. *Regulatory Purpose*

The stated goals of the swap data reporting rules, and the amendments thereto, are to mitigate systemic risk, enhance transparency to the public of pricing and trade data, promote standardization, and improve the regulatory experience for market participants.[7] More specifically, Part 43 of the Commission's regulations relate to the real-time public reporting of swap pricing and transaction data, which appear on the "public tape", and Part 45 relates to the regulatory reporting of swap data to the Commission – by swap dealers and other covered entities – in the interest of increasing insight into the swaps markets to assist with regulatory oversight. Moreover, the Commission's interests in swap data reporting rules, and the recent amendments thereto, align with Congress' stated purpose in directing the Commission to adopt real-time public reporting regulations,[8] as well as Congress' intent of improving reporting and transparency under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[9]

---

[4] 17 C.F.R. § 38.10.

[5] 17 C.F.R. § 38.951.

[6] 17 C.F.R. § 39.20(b)(2).

[7] *See* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2137, January 13, 2012 (Part 45 Final Rule); Statement of Chairman Heath P. Tarbert in Support of Final Rules on Swap Data Reporting (Sept. 17, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement091720c* (hereinafter, Tarbert, Final Statement).

[8] *See* 7 U.S.C. 2(13)(B) (stating ''[t]he purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to *enhance price discovery*.'') (emphasis added).

[9] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, section 727, Pub. L. 111–203, 124 Stat. 1376 (2010).

III. Requested modifications to NAL 24-15

Kalshi and Klear request that the Divisions (i) modify the scope of the NAL to include Kalshi Contracts described in this request that do not have a binary payout structure, and (ii) remove condition 6 from the NAL to permit the NAL to apply even if participants clear contracts through third-party clearing members.

Kalshi and Klear are not requesting modification to any of the other conditions.

IV. Undertakings

Should DMO and DCR grant the requested no-action relief, Kalshi and Klear undertake to do the following as it pertains to the Kalshi Contracts in order for the no-action relief to remain in effect:

1) Both Kalshi and Klear will require that all Kalshi Contracts be fully collateralized;
2) Kalshi will clear the Kalshi Contracts only through Klear;
3) Kalshi will publish on its website the following time and sales data for all Kalshi Contracts transactions promptly after execution thereof – trade timestamp, contract, quantity, and price (in USD);
4) Kalshi shall provide the Commission with transactional information as described in Commission Regulation 16.02;
5) Kalshi and Klear shall continue to comply with all swap reporting and recordkeeping requirements of the CEA and Commission regulations, other than the Relevant Regulations, including (without limitation) the applicable requirements of Parts 38 and 39 of the CFTC's regulations (the records described in this Undertaking 5 are referred to below as the "Required Records"); and
6) Kalshi and Klear shall keep the Required Records open to inspection upon request by any representative of the Commission, the United States Department of Justice, or the Securities and Exchange Commission, or by any representative of a prudential regulator as authorized by the Commission. Copies of all such records shall be provided at the expense of the producing party (Kalshi or Klear) to any representative of the Commission upon request. The producing party (Kalshi or Klear) shall provide copies of the Required Records either by electronic means, in hard copy, or both, as requested by the Commission, with the sole exception that copies of records originally created and exclusively maintained in paper form may be provided in hard copy only.

V. Justification

A. *Kalshi Contracts Merit Distinct Treatment*

Kalshi Contracts are primarily traded on a Central Limit Order Book by market participants ("Kalshi Members or Participants"). While legally classified as swaps, the Kalshi Contracts share most of the characteristics of exchange traded futures or options thereon (fungibility, offset, exchange traded with standardized terms on a single marketplace) with few of the indicia of traditional swaps (bilateral, traded over-the-counter and customized). Importantly, Kalshi Contracts are fully collateralized and potential market participant exposures associated with the

Kalshi Contracts are anticipated to be far lower than those associated with traditional swaps and with swaps market participants. Kalshi Contracts have no bearing on systemic risk or potential transmission of risk or contagion on systemically important financial institutions. Thus, the regulatory goals of Part 43 and Part 45 regulatory swaps reporting applicable to other swaps have limited to negligible application to Kalshi Contracts. This continues to be the case with the requested modifications. The introduction of FCMs and the inclusion of non-binary contracts does not increase the bearing on systemic risk, as all trading, including that intermediated by FCMs and on all contracts, will continue to be fully collateralized. Additionally, these developments do not render Kalshi Contracts less similar to futures contracts, which are not subject to SDR reporting.

Kalshi and Klear concur with the Commission's belief that price transparency fosters price competition and reduces the cost of hedging.[10] However, as Kalshi intends to continue to fully comply with Part 16 of the Commission's regulations – and to publish on its website relevant time and sales data for all transactions promptly after execution thereof – the goals of the swap data reporting rules, and the recent amendments thereto, of enhancing price transparency and reducing risk are satisfied without swap data reporting.

B. Prior NALs Suggest No-Action Relief is Appropriate

The most relevant prior No-Action relief is the relief that was granted a few months ago to Interactive Broker's exchange ForecastEX in NAL 24-09 ("IBKR NAL"). This letter was comparable to the relief previously granted in CFTC Letters Nos. 17-31, 17-32, and 21-11 (collectively, including the IBKR NAL, "Prior NALs").[11] However, the IBKR NAL did not include the restriction on participants clearing through third-party clearing members.[12]

Swap data reporting and recordkeeping requirements impose substantial operational and financial burdens on Kalshi and on Klear. Integrating with an SDR requires significant expenditures of engineering resources. The burden imposed by such requirements are significant, and consume valuable resources of new entrants and market innovators. Those resources can be put to better use through direct reporting to market participants and the CFTC. Moreover, the cost of reporting to the SDRs, in the context of the relatively small scale of the Kalshi Contracts, would be uneconomical, as the overall costs of reporting would not readily be passed through to end users or absorbed by Kalshi and Klear, while the regulatory value of such reporting, and its relationship to the policy goals of Part 43 and Part 45 reporting, is negligible.

Additionally, the Kalshi Contracts that do not have a binary payout structure are similar to the "spread contracts" that were included in the no-action relief granted to Nadex in NAL 17-31. Those spread contracts also did not have a binary structure. Like the spread contract, the Kalshi Contracts also have a defined price cap and floor. This Nadex NAL included these contracts in the no-action relief, and Kalshi's Contracts that do not have a binary payout would similarly be appropriately included in the no-action relief.

---

[10] *See* Statement of Commissioner Dan M. Berkovitz Regarding Amendments to the Swap Data Reporting Rules (Sept. 17, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement091720#_ftn2*.

[11] See CFTC Letter No. 17-31 (Jun. 30, 2017), available at https://www.cftc.gov/csl/17-31/download; CFTC Letter No. 17-32 (Jun. 30, 2017), available at https://www.cftc.gov/csl/17-32/download; CFTC Letter No. 21-11 (Apr. 22, 2021), available at https://www.cftc.gov/csl/21-11/download

[12] Note that ForecastEX's designation also did not include a prohibition on FCMs carrying customer accounts.

The Prior NALs resulted in the delivery of accurate and rapid reporting of swap data to both market participants and the Commission, and this will continue under the requested relief. Information can be publicly disseminated directly to the market quickly and reliably by Kalshi itself, without using an intermediary in the form of an SDR. As noted, Kalshi intends to continue to comply with Part 16 and will provide the Commission and the public with the information regarding transactions and markets that will satisfy the goals of increasing transparency and reducing risk. Thus, the relief previously granted to others would also serve the interests of the Commission and the market in this case by reducing burdens while still fully achieving the goals of swap data reporting.

Conclusion

Kalshi and Klear greatly appreciate the Divisions' time and attention to its request to modify NAL 24-15. If you have any questions or comments or require further information, please do not hesitate to contact me.

Sincerely,

Elie Mishory
KalshiEX LLC & Kalshi Klear LLC
emishory@kalshi.com

Certifications

I hereby certify that the material facts set forth in the attached letter dated January 17, 2025 are true and complete to the best of my knowledge.

If at any time prior to issuance of a Letter, any material representation made in this request ceases to be true and complete, I will ensure that Commission staff is informed promptly in writing of all materially changed facts and circumstances. If a material change in facts or circumstances occurs subsequent to the issuance of this Letter, KalshiEX LLC and Kalshi Klear LLC understand that they must promptly so inform Commission staff.

Elie Mishory
Eliezer Mishory
CRO – KalshiEX LLC
CCO – Kalshi Klear LLC