

November 29, 2023

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 the mandatory repatriation tax is unconstitutional?” 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 the mandatory repatriation tax is unconstitutional?” contract (Contract). The Exchange intends to list the contract once. The Contract’s terms and conditions (Appendix A) includes the following strike conditions:

- **<date>** (the latest trading date)

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,

Xavier Sottile
Head of Markets
KalshiEX LLC
xsottile@kalshi.com

KalshiEX LLC

Official Product Name: Will the Supreme Court rule that the mandatory repatriation tax is unconstitutional?

Rulebook: MOOREUS

Kalshi Contract Category: Political Decision

Moore v. US outcome

November 29, 2023

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 the mandatory repatriation tax is unconstitutional?” Contract is a contract relating to the Supreme Court’s upcoming ruling in *Moore v. US*. After careful analysis, Kalshi (hereafter referred to as “Exchange”) has determined that the Contract complies with its vetting framework.

Moore v. United States is a case currently pending before the U.S. Supreme Court that addresses the issue of taxing unrealized income. The main issue revolves around the constitutionality of taxing unrealized sums, specifically in the context of foreign earnings that were not distributed to shareholders.

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. A new Source Agency can be added via a Part 40 amendment. 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 ruled in *Moore v. United States* that the Constitution does not grant Congress the power to tax unrealized income, 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.



By: Xavier Sottile
Title: Head of Markets
Date: November 29, 2023

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 the mandatory repatriation tax is unconstitutional?

Rulebook: MOOREUS

MOOREUS

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 *Moore v. United States* (Docket Number 22-800). 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 *Moore v. United States*. 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 *Moore v. US* that follow the following conditions:

- If the Supreme Court rules that the mandatory repatriation tax is unconstitutional, then that outcome is encompassed in the Payout Criterion.
- If the Supreme Court rules that the mandatory repatriation tax is unconstitutional, then that outcome is encompassed in the Payout Criterion but also sends the case back to the lower court to be re-heard, then 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 the mandatory repatriation tax is unconstitutional, then that outcome is not encompassed in the Payout Criterion.

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.

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

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 *Moore v. US*, 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.