

December 28, 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 OpenAI be held civilly liable for violating the copyright of The New York Times in <court>?” 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 OpenAI be held civilly liable for violating the copyright of The New York Times in <court>?” contract (Contract). The Exchange intends to list the contract on a custom basis. The contract will be initially listed after close-of-business on December 28; it is listed as December 29, 2023 because of limitations of the Commission's online submission portal. The Contract’s terms and conditions (Appendix A) includes the following strike conditions:

- <date> (the target date)
- <court> (the target court)

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 OpenAI be held civilly liable for violating the copyright of The New York Times in <court>?

Rulebook: NYTOAI

Kalshi Contract Category: Science/Technology

NYT OpenAI lawsuit

December 28, 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 OpenAI be held civilly liable for violating the copyright of The New York Times in <court>?” Contract is a contract relating to the New York Times’ recent lawsuit against OpenAI and Microsoft. After careful analysis, Kalshi (hereafter referred to as “Exchange”) has determined that the Contract complies with its vetting framework.

On December 27, 2023, the New York Times sued OpenAI and Microsoft in federal court, alleging copyright infringement because large language models such as GPT-3 used the Times as training data.<sup>12</sup>

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

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<sup>1</sup> <https://www.nytimes.com/2023/12/27/business/media/new-york-times-open-ai-microsoft-lawsuit.html>

<sup>2</sup> [https://nytco-assets.nytimes.com/2023/12/NYT\\_Complaint\\_Dec2023.pdf](https://nytco-assets.nytimes.com/2023/12/NYT_Complaint_Dec2023.pdf)

\$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 OpenAI/Microsoft have been found civilly liable for copyright infringement against the Times in <court>, 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: Xavier Sottile  
Title: Head of Markets  
Date: December 28, 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 OpenAI be held civilly liable for violating the copyright of The New York Times in <court>?**

**Rulebook: NYTOAI**

## NYTOAI

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

**Underlying:** The Underlying for this Contract is judgments of <court> regarding The New York Times' lawsuit against OpenAI issued between Issuance and <date>. Revisions to the Underlying made after Expiration will not be accounted for in determining the Expiration Value.

**Source Agency:** The Source Agency is Public Access to Court Electronic Records.

**Type:** The type of Contract is an Event Contract.

**Issuance:** The Contract will be listed on a custom basis in accordance with the case's movement through the judicial system.

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

**<court>:** <court> refers to a particular Court of the United States specified by Kalshi. For the initial iteration of the Contract, <court> will have a value of the District Court for the Southern District of New York. If it is appealed successfully, <court> will take the value of relevant reviewing court, which can include a district court, circuit court, or Supreme Court.

**Payout Criterion:** The Payout Criterion for the Contract encompasses the Expiration Values that any of the respondents have been found civilly liable for any of the counts alleged by the Times.

**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 sooner of the date of the first 10:00 AM ET following the occurrence of an event encompassed by the Payout Criterion, (whereupon the Last Trading Time will be 10:00 AM ET), an announcement by the Times that they have fully settled the claims against OpenAI, or <date> (whereupon the Last Trading Time will be 11:59 PM ET).

**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 date of the first 10:00 AM ET following the occurrence of an event that is encompassed in the Payout Criterion, an announcement by the Times that they have fully settled the claims against OpenAI, or the first 10:00 AM ET after <date>.

**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.