August 24, 2026

*via Regulations.gov*

Mr. Christopher J. Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

*via SEC Internet Comment Form*

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

**Re: Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (CFTC RIN 3038-AF71; SEC File No. S7-2026-21; RIN 3235-AN79)**

Dear Mr. Kirkpatrick and Ms. Countryman:

Solana Policy Institute ("SPI" or "we")[1] appreciates the opportunity to provide this comment letter in response to the Commodity Futures Trading Commission's ("CFTC" or "Commission") and Securities and Exchange Commission's ("SEC" and, together with CFTC, the "Commissions") Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (RIN 3235-AN79) (the "Request for Comment").[2]

SPI commends the decision of the Commissions to seek comment on ways to draw clearer regulatory lines with respect to innovative products that implicate both CFTC and SEC regulatory interests. SPI supports the Commissions' broader initiative to reduce regulatory gaps, eliminate unnecessary overlap, and provide greater certainty to regulated market participants.[3] The current division of jurisdiction, which has remained largely unchanged since the joint SEC-CFTC product definitions were adopted in 2012,[4] has produced offshoring and litigation risk for innovative products.

[1] Solana Policy Institute is a non-partisan, non-profit organization focused on educating policymakers on how decentralized public blockchain networks like Solana are the future of the digital economy—and why the people building on and using them need legal certainty to flourish.

[2] Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, 91 Fed. Reg. 37873 (Jun. 24, 2026).

[3] SEC and CFTC, Memorandum of Understanding between the U.S. Securities and Exchange Commission and U.S. Commodity Futures Trading Commission regarding Harmonization in Areas of Common Regulatory Interest (Mar. 11, 2026), https://www.sec.gov/files/mou-sec-cftc-2026.pdf.

[4] Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48208 (Aug. 13, 2012).

SPI supports the Commissions' initiative for four main reasons, each discussed in turn below. First, harmonization and regulatory clarity are needed because market participants often face uncertainty when determining whether a product falls within the jurisdiction of the CFTC, SEC, or both. Second, SPI supports coordinated SEC-CFTC guidance clarifying the application of the statutory definitions of swaps and security-based swap ("SBS") to event contracts. Third, SPI supports the development of lawful domestic pathways for appropriately regulated perpetual contracts. And fourth, SPI requests that the Commissions provide clarity regarding tokenized securities and synthetic exposure to underlying securities.

## I. SPI Supports the Commissions' Initiative To Provide Regulatory Clarity

### A. Overall Need for Harmonization and Regulatory Clarity

SPI supports further harmonizing SEC and CFTC swap definitions and strengthening coordination between the agencies. These efforts would provide market participants with greater regulatory certainty and enhance market integrity. Financial markets are increasingly interconnected, and onchain automated systems do not always fit neatly within existing jurisdictional lines. Market participants therefore need clear rules to operate efficiently and comply with applicable law. Without such clarity, market participants may be discouraged from developing or offering products in regulated U.S. markets. Clearer jurisdictional lines would better protect market participants, keep innovative onchain activity within the oversight of the SEC and CFTC, and reduce incentives to move onchain activity offshore.

The initiative also aligns with the United States digital asset policy framework[5] and would promote U.S. leadership and regulatory efficiency. For example, because narrow-based security index derivatives are subject to SEC oversight and broad-based security index derivatives are subject to CFTC oversight, a security index derivative may move from one regulator's jurisdiction to the other based on market events.[6] When product classification and applicable regulatory requirements can shift based on market events, it places U.S. market participants at a disadvantage relative to jurisdictions with a single regulator and one set of rules. A clearer, more coordinated framework would help keep this activity onshore and support American innovation and economic growth.

Regulatory uncertainty also imposes significant costs on innovation. Firms developing novel products that combine characteristics of securities and derivatives often must navigate overlapping regulatory regimes and structure products around regulatory ambiguity rather than commercial or risk management considerations. A modernized framework that reflects current market developments and provides predictable principles for distinguishing between SEC- and CFTC-regulated products would better serve market participants and investors alike.

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[5] Report, President's Working Group on Digital Asset Markets, Strengthening American Leadership in Digital Financial Technology (July 30, 2025) at 52-54, https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf.

[6] *See* Request for Comment, Question 5.

### B. Event Contracts

SPI supports coordinated SEC-CFTC guidance clarifying how the statutory definitions of swaps and SBS apply to event contracts.

Congress established distinct statutory standards for swaps and SBS that determine which agency has jurisdiction. The swap definition is deliberately broad. The Commodity Exchange Act ("CEA") defines a "swap" to include an agreement or transaction "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."[7] This event contingency prong is the textual foundation for the CFTC's determination that event contracts are a type of derivative contract based on the outcome of an underlying occurrence or event with a binary payoff structure. We agree with this analysis and support maintaining this approach to product review and regulation. The CFTC should be the primary regulatory authority for event contract markets.

By contrast, the Securities Exchange Act of 1934 ("Exchange Act") defines an SBS as "any agreement, contract, or transaction that . . . is based on . . . the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event **directly** affects the financial statements, financial condition, or financial obligations of the issuer."[8]

The different statutory formulations give rise to meaningful differences in the scope and application of the two provisions. The CEA's swap definition's "potential consequence" language is much broader than the Exchange Act definition's "directly affect" language for SBS. Congress could have used the same language as the swap definition to include events with a "potential effect" to the issuer, but it did not. Indeed, the definition of "mixed swap" in the Exchange Act, which appears in the same subsection as the SBS definition, also uses the term "associated with a **potential** financial, economic, or commercial consequence[.]"[9] The SBS event contract standard is deliberately narrow. As a result, most event contracts – except for those involving an event **directly** affecting the financial statements, financial condition, or financial obligations of the issuer – are swaps subject to the CFTC's jurisdiction.

Event contracts begin as a swap and become an SBS only when: (1) there is a nexus to a single issuer or the issuers of securities in a narrow-based security index; and (2) the "directly affect" requirement is satisfied. The Commissions should jointly provide additional guidance, including examples, on when an event "directly affects" an issuer's financial statements, financial condition, or financial obligations such that a related contract would be an SBS subject to SEC jurisdiction.

[7] CEA Section 1a(47)(A)(ii) (emphasis added).

[8] Exchange Act Section 3(a)(68)(A)(ii)(III) (emphasis added).

[9] Exchange Act Section 3(a)(68)(D) (emphasis added).

### C. Perpetual Contracts

SPI supports the development of lawful domestic pathways for appropriately regulated perpetual contracts in the United States. Perpetual contracts have become one of the most widely used derivatives products in global digital asset markets. Their structure is well suited for digital asset markets that never close because they allow market participants to maintain continuous price exposure in 24/7 markets without incurring the costs of rolling expiring contracts.

Because of historic regulatory uncertainty over how perpetual contracts should be classified in the United States, the market has developed largely on offshore venues, with the majority of trading occurring outside U.S. oversight and out of reach for U.S. market participants. As CFTC Chairman Michael S. Selig has explained, this outcome fragmented liquidity across foreign platforms, competitively disadvantaged American firms, and effectively barred U.S. participants from accessing these markets.[10] We agree with Chairman Selig that it is important that perpetual futures are developed domestically so that they are well regulated in the U.S. and U.S. market participants have access to the product.[11] Absent a workable domestic pathway, perpetual contract activity will continue to grow offshore, reducing protections to U.S. investors and market participants.

Permitting perpetual contracts to be offered through appropriately regulated U.S. market participants subjects them to the CFTC's oversight, including requirements relating to market integrity, financial and capital standards, customer protection, and recordkeeping and reporting requirements. Onshoring perpetual contracts converts unregulated offshore exposure into one governed by U.S. standards and is consistent with the CFTC's mandate to promote responsible innovation.

The CFTC's approach is consistent with the PWG Report's recommendation that the CFTC consider using its authority to establish a category of eligible contract participant ("ECP") that can engage in perpetual contracts activity through regulated intermediaries.[12] SPI supports the Commission's efforts to establish a workable domestic pathway for appropriately regulated perpetual contracts, including through case-by-case product review. The CFTC's Policy Statement likewise provides that Designated Contract Markets ("DCM") seeking to list perpetual contracts on other asset classes may do so through the case-by-case review process under CFTC Regulation 40.3, providing a pathway for perpetual contracts to expand responsibly.[13] SPI encourages the Commissions to continue developing this framework so that a broader set of appropriately regulated perpetual contracts can be offered to U.S. market participants under U.S. regulatory oversight.

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[10] Michael S. Selig, CoinDesk Op-Ed, What American Crypto Asset Perpetuals Mean for the Future of Crypto (May 29, 2026), https://www.cftc.gov/PressRoom/SpeechesTestimony/seligstatement052926.

[11] *Id.*

[12] PWG Report, *supra* note 5, at 53 ("[T]he CFTC should consider using its authority within CEA section 1a(18) to establish a category of eligible contract participants (ECPs) with the ability to engage in certain types of derivatives, including perpetual contracts, through additional regulated intermediaries (e.g., persons that are counterparties to a specified transaction conducted on or pursuant to the rules of an alternative trading system).").

[13] Policy Statement Concerning the Listing of Perpetual Contracts, 91 Fed. Reg. 33160 (June 3, 2026), https://www.federalregister.gov/documents/2026/06/03/2026-11020/policy-statement-concerning-the-listing-of-perpetual-contracts.

### D. Tokenized Securities

The Commissions should provide clarity regarding tokenized securities and synthetic exposure to underlying securities. The use of blockchain-based infrastructure should not, standing alone, alter the classification of a financial instrument. Synthetic tokenized securities, which include any crypto asset security that provides synthetic exposure to an underlying security, may be SBSs depending on their economic characteristics.

SEC staff has described a synthetic tokenized security as a crypto asset that constitutes its own separate security providing synthetic exposure to an underlying reference security, where the token is not an obligation of, and conveys no ownership interest in, the referenced issuer's security.[14] Importantly, these are fundamentally different from issuer-sponsored tokenized securities and third-party custodial tokenized securities.[15] Depending on their terms and the application of the statutory exclusions from the swap definition, certain products providing synthetic exposure to a security may constitute SBSs. Whether a given synthetic tokenized security is an SBS is a facts-and-circumstances analysis based on the economic characteristics of the instrument.

Clarity is needed because characterization as an SBS makes a tokenized security subject to the regulatory framework applicable to SBSs. This framework includes restrictions on transactions with non-eligible contract participants ("ECPs") and Securities Act of 1933 registration requirements for SBSs offered or sold to non-ECPs. From a practical standpoint, if a tokenized security is an SBS, retail access is effectively foreclosed.

SPI encourages the Commissions to provide coordinated guidance clarifying when a synthetic tokenized security is properly classified as an SBS. In particular, the guidance should: (1) articulate the economic characteristics that would make a synthetic tokenized security an SBS; and (2) address the practical consequences of SBS classification for retail access, including whether and how a compliant venue or exemptive pathway could permit non-ECP participation. Commission-level guidance, rather than staff-level guidance, would give market participants the certainty needed to structure compliant products.

## II. The Commissions Should Provide Clearer Jurisdictional Lines and Reduce Duplicative Regulation

SPI supports targeted reforms that would provide clearer jurisdictional lines, reduce duplicative regulation, and accommodate market participants offering innovative products across the SEC and CFTC regulatory regimes. The Commissions should consider:

- Supplementing or replacing the current facts-and-circumstances approach to classifying onchain and event-based products such as swaps, SBS, or mixed swaps with clearer, rules-based standards, objective factors, and examples.

[14] SEC, Statement on Tokenized Securities (Jan. 28, 2026), https://www.sec.gov/newsroom/speeches-statements/corp-fin-statement-tokenized-securities-012826-statement-tokenized-securities.
[15] *Id.*

- Confirming and narrowing the "mixed swap" category so that novel event contracts and tokenized derivatives do not default into dual regulation.

- Adopting alternative compliance mechanisms where the applicable SEC and CFTC requirements are substantially similar in purpose and outcome.

- Developing coordinated registration and filing processes for platforms subject to both regimes, such that market participants that offer both swaps and SBS products (including tokenized versions) have a single point of registration subject to mutually acceptable core principles.[16]

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SPI commends the Commissions' initiative to draw clearer regulatory lines with respect to innovative products that implicate both CFTC and SEC regulatory interests. SPI appreciates the opportunity to provide comments on these important matters and welcomes further engagement with the Commissions on these issues.

Respectfully submitted,

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[16] The PWG Report recommends that the SEC and CFTC "explore offering flexibility to allow registrants to offer multiple services within a single user interface." PWG Report, *supra* note 5, at 53.