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August 24, 2026

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street NW
Washington, DC 20581

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

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 (Release Nos. 33-11424; 34-105735)

Via Electronic Submission

Dear Mr. Kirkpatrick and Ms. Countryman:

Introduction

Optiver is a global market-making firm that has been improving financial markets since 1986. By providing continuous, two-sided liquidity across markets around the world — including CFTC-regulated futures and SEC-regulated equities and listed options in the United States — we help make those markets more efficient, transparent, and stable. While we do not currently make markets in event contracts or equity "perpetuals," we provide continuous liquidity in closely related listed options, futures, and equity markets and follow these developments closely. We appreciate the Commissions' initiative

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in seeking objective, principled criteria to classify innovative products, and we offer the following comments in the interest of market improvement.[1]

Our central point is a simple one: classification should follow economic substance, not form or label. A product that delivers the economic exposure of an option on a security, or of a future on an equity, should be regulated as such — regardless of what it is called, how it is settled, or where it trades. Drawing the lines this way serves the Commissions' own goals of clarity and fair competition, protects investors, and preserves a level playing field between established, well-regulated products and newer look-alikes. Where products genuinely implicate both agencies, we support a workable alternative-compliance regime that reduces duplicative obligations without lowering substantive protection.

We focus our comments on the questions most directly connected to our activity as an options and derivatives market maker: the treatment of event contracts relative to options on securities (Q8); the treatment of cash-settled "perpetual" contracts referencing equities (Q11); the general principle of substance-over-form classification (Q1–Q4); and the Commissions' alternative-compliance framework (Q12–Q15). We do not address every question in the Request, and our silence on any point should not be read as agreement or disagreement.

I. Classification should turn on economic substance, not form or label (Q1–Q4)

The interpretive questions driving this Request — event contracts, on-chain and automated products, and cash-settled "perpetuals" — share a common feature: their economic payoff often resembles an option or a swap while their form does not map neatly onto a single statutory prong.[2] We encourage the Commissions to resolve these questions with objective, payoff-based criteria applied consistently across product types, rather than case-by-case determinations that participants cannot predict before a product launches. The most useful test asks whether a contract's return is a function of the price, value, or yield of a security, loan, or index; where it is, the security-based analysis should follow, whatever the contract is labeled. Where it is not, it may be better understood as an additive type of product enabling unique price discovery or risk management, and in some cases might be better understood as a commodity derivative.

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[1] 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, Release Nos. 33-11424; 34-105735 (June 18, 2026) (the "Request" or "RFC"). Question numbers herein (e.g., Q8) refer to the numbered questions in the Request.

[2] CEA § 1a(47), 7 U.S.C. § 1a(47) (defining "swap" and its statutory exclusions); Exchange Act § 3(a)(68), 15 U.S.C. § 78c(a)(68) (defining "security-based swap").

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We would favor revised interpretive guidance illustrated with concrete examples over entirely new rule text, and we urge the Commissions to keep the "mixed swap" category narrow. A broad reading of mixed swap multiplies dual-registration and dual-reporting burdens without a commensurate regulatory benefit.[3] A clear analytical sequence would remove much of the ambiguity the Request identifies. We'd suggest that first, the regulators determine whether an instrument is a swap or security-based swap on the basis of its economic reference, and that they reserve mixed-swap treatment for the genuinely dual-natured cases.

II. Event contracts that replicate options on securities should be regulated as options (Q8)

The line between an event contract and a "put, call, straddle, option, or privilege" on a security or index should turn on objective payoff structure. An instrument whose return is a function of the price or value of a security or index, resolved against a strike-like contingency, has the economic character of an option and should be treated consistently with options listed on national securities exchanges. Economically equivalent payoffs should face comparable listing, clearing, margin, and oversight requirements regardless of the venue on which they trade or the name they are given.

Many, though not all, of the currently available contracts forming the core offerings this Request asks about replicate the payoff of a binary option on a security or index while being marketed as "event contracts." This Request demonstrates that the Commissions are alert to the possibility that these products are structured precisely to avoid the securities options regime: exchange listing standards, position limits, margin methodology, customer-protection rules, best-execution and self-regulatory oversight, and the National Market System. In contrast, when event contracts instead touch on discrete aspects of a listed company's business, such as the number of vehicles Tesla will deliver in a quarter[4], they can be understood as additive to the overall picture of a company rather than duplicative of an existing equity option offering.

We urge the Commissions to classify strictly on economic substance, so that a security-referencing payoff cannot escape the options framework through labeling, novel settlement mechanics, or venue choice. A regime that permits functionally identical, options-like exposure to trade under a different rulebook could fragment price formation, dilute the protections investors receive on registered options exchanges, and disadvantage compliant liquidity providers on whom deep, orderly options markets

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[3] *See* Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48,208 (Aug. 13, 2012) (the "2012 Product Definitions Release").

[4] *See* Tesla Total Deliveries in Q3, Kalshi, available at: https://kalshi.com/markets/kxtsla/tesla-kpi/kxtsla-26octdeliv (last visited August 19, 2026)

depend. Where the Commissions conclude that a category of event contract is genuinely distinct from an option on a security, we encourage them to say so with objective criteria that a market participant can apply in advance.

III. Cash-settled equity "perpetuals" should also be classified by their equity exposure (Q11)

The Request asks whether a cash-settled "perpetual" contract referencing an equity security could be treated as a security future. In our view, classification should rest on the contract's economic exposure to the underlying equity, not on its open-ended tenor or continuous-funding mechanics. A contract whose return tracks an equity security is security-future-like and should carry the corresponding regime, including its margin, leverage, and customer-protection requirements.

The Request rightly asks about the effect of equity perpetual products on liquidity, price discovery, and hedging across both the derivatives and the underlying cash-equity markets. Fragmented or duplicative treatment of equivalent equity exposure would impair the ability of liquidity providers to hedge efficiently across venues, to the detriment of the very price discovery these products claim to enhance. Just as important, bringing the aggressive leverage, automated liquidation cascades, and funding-rate dynamics present in offshore crypto-perpetuals into the U.S. equity ecosystem raises real concerns around manipulation, gap-risk, and investor-protection.

IV. Alternative compliance should be outcomes-based and paired with cross-market surveillance (Q12–Q15)

Where a product genuinely implicates both agencies, we support allowing compliance with one Commission's framework to satisfy the other's where the two regimes are substantially similar. "Substantially similar" is best assessed primarily by regulatory objectives and outcomes — investor and market protection, transparency, and risk mitigation rather than by line-by-line rule comparison. Each agency's supervisory program and enforcement authority should be considered as supporting factors. An outcomes-based test avoids duplicative obligations where the underlying protections are functionally equivalent, and it is where alternative compliance can deliver the most benefit to firms active across both CFTC- and SEC-regulated products. Assessing similarity by outcomes should not become a race to the least demanding regime: where the two frameworks diverge, the more protective standard should govern, so that a product cannot use "substantial similarity" to a lighter-touch rulebook as a path around the protections the other regime requires.

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On mechanisms, we recognize the limits Title VII of the Dodd-Frank Act places on each agency's exemptive authority, and we therefore favor coordinated approaches that operate within existing statutory bounds — tailored rules, deemed-filing arrangements, harmonized rules of procedure, and coordinated trade-reporting rules that avoid double reporting of the same transaction. Joint or coordinated notice registration would meaningfully reduce duplicative registration burdens and should be designed to be administrable without new legislation.

Alternative compliance must not become a gap for participants to exploit. Oversight should rest on a clear allocation of primary responsibility, mutual recognition of each agency's supervisory work to avoid duplicative examinations, and robust information- and data-sharing built on a single, shared data set for a given product. Above all, the agencies should ensure cross-market surveillance that links activity in economically related CFTC- and SEC-regulated products, supported by interoperable data and consistent recordkeeping standards. A coordinated surveillance view across venues is the most effective safeguard against manipulation under any alternative-compliance regime.

Finally, while we note this Request is concerned first and foremost with definitional clarity, we would urge both Commissions' to consider the disincentive to liquidity providers inherent in the swap dealer *de minimis* registration threshold for cleared swap products. If the definitional questions at the core of this Request are resolved by treating event contract and perpetuals as swaps, the notional amount of these contracts traded would count toward the eight-billion-dollar swap dealer de minimis threshold for swap dealer registration. On other dockets we have repeatedly urged the Commissions to exclude cleared swaps from the de minimis calculation, and while this Request does not engage that question directly, it would bear on the health of these markets as a disincentive to the entry of diverse liquidity providers. Because cleared swaps obviate the counter-party credit risks attendant to the bilateral swaps market the Dodd Frank Act sought to address, we re-iterate the argument that we've made elsewhere that they should not count towards the *de minimis* threshold above which a liquidity provider would be required to register as a swap dealer, and suggest that both Commissions consider taking action to clarify that cleared swaps should be excluded from that calculation.

Conclusion

We commend the Commissions for seeking objective criteria to classify innovative products and for exploring a workable alternative-compliance regime. We ask that the Commissions (1) classify products by economic substance rather than form or label, keeping the mixed-swap category narrow; (2) treat event contracts that replicate options on securities as options, and equity "perpetuals" by their

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equity exposure, so that economically equivalent products bear equivalent regulation; and (3) build any alternative-compliance regime on an outcomes-based "substantially similar" standard, paired with coordinated mechanisms and rigorous cross-market surveillance.

We appreciate the Commissions' continued engagement on these issues and welcome the opportunity for further dialogue.

Sincerely,

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