August 24, 2026

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

Re: Joint Request for Comment on Further Definition of “Swap” and “Security-Based Swap” and on Alternative Compliance; CFTC RIN 3038-AF71; SEC Release Nos. 33-11424 and 34-105735; File No. S7-2026-21

Rose Bowlus Law, APC (“RBL”) appreciates the opportunity to comment on the Joint Request for Comment issued by the Commodity Futures Trading Commission (“CFTC”) and the Securities and Exchange Commission (“SEC,” and together, the “Commissions”) regarding further definition of “swap” and “security-based swap” and potential approaches to alternative compliance.

RBL is a boutique business law firm in Rancho Santa Fe, California, with an office in Burlingame, California. The firm specializes in commodities, securities, financial services law, and business transactions. RBL advises clients on regulatory and transactional issues involving commodities, securities and financial services products, including OTC derivative transactions. From that perspective, RBL supports the Commissions’ effort to provide greater clarity for innovative products that may implicate both CFTC and SEC regulatory interests.

RBL’s principal recommendation is that the Commissions should provide clear, objective, and technology-neutral guidance for product classification. Innovative market participants need to know, before launching or transacting in a product, whether the product will be treated as a swap, security-based swap, mixed swap, securities option, security future or forward, structured note, or other instrument by seeking direct guidance from the Commissions on an anonymous, expedited and simple basis (using secure artificial intelligence or other modern day technologies) until the Commission has obtained enough understanding and data around such instruments so as to properly classify them for the public. In this manner, lawful products can thrive without discouraging innovation in regulated U.S. markets.

RBL also recommends that the Commissions preserve the statutory exclusions from the definition of “swap” unless the economic substance of a product clearly requires treatment as a swap, security-based swap, or mixed swap. Similarly, the Commission should deploy the use of modern technologies to analyze economic substance in a manner that assists in formulating clear carve outs. The Commissions should also be careful not to disturb market treatment for securities options, structured notes, security forwards intended to be physically settled, futures, and security futures products unless economic substance can be shown to create a need for

interruption. These categories are important to existing markets, and uncertainty around their treatment could create unnecessary disruption.

For products that reference securities, issuers, or securities indexes, RBL recommends that the Commissions distinguish between direct economic exposure to a security or issuer and indirect event-based exposure. A product should not be treated as based on an “interest in” a security merely because the referenced event “may” change investor sentiment or the market price of a security. Many economic, political, regulatory, and corporate events may indirectly impact securities prices as a consequence of event-based products. If that indirect connection were enough, the boundary between swaps, security-based swaps, securities options, and event contracts could become impossible to administer.

RBL also supports the Commissions’ consideration of alternative compliance where a product or activity implicates both agencies’ interests. Alternative compliance could reduce duplicative regulation and make the U.S. markets more efficient, provided that it is carefully limited. RBL recommends that alternative compliance be available only where the two regulatory frameworks are substantially similar in objective, scope, supervisory outcome, reporting output, and enforcement backstop. Alternative compliance should not reduce investor protection, customer protection, market integrity, or regulatory transparency.

If the Commissions pursue an alternative compliance framework, RBL recommends that they establish a clear public process after spending time and collecting data from firms who seek guidance. Market participants should know who among themselves should request alternative compliance, what information must be provided, how long review will take, whether relief is product-specific or class-wide, and how relief may be modified or revoked. Public guidance or orders will be more useful once the accumulation of the private, one-off determinations suffice to aid the Commissions in offering more conclusive guidance. Similarly situated market participants will better understand how the Commissions are applying a soundly constructed alternative framework.

Finally, RBL recommends that any future framework, including any new interpretations or rules apply prospectively and include a reasonable transition period. Market participants have built products, documentation, compliance systems, and reporting processes around the existing framework, whether by way of their legal resources or counterparties. If the Commissions clarify or modify the treatment of certain products, impacted firms should have time to update documentation, systems, reporting workflows, and venue arrangements without unnecessary market disruption.

RBL respectfully recommends that the Commissions:

1. Provide clear, objective, and technology-neutral criteria for product classification, supplemented by a secure, anonymous, expedited, and simple process through which market participants may seek direct guidance from the Commissions, including through the appropriate use of artificial intelligence and other modern technologies;

2. Preserve statutory exclusions from the definition of “swap” unless a product’s economic substance clearly requires treatment as a swap, security-based swap, or mixed swap, and avoid disturbing existing market treatment of securities options, structured notes, physically settled security forwards, futures, and security futures absent a demonstrated economic-substance basis for doing so;
3. Clarify that indirect or consequential effects on the value of a security or issuer should not, standing alone, cause an event-based or other product to be treated as a security-based swap, securities option, or other securities-based instrument;
4. Develop alternative compliance only where the applicable regulatory frameworks are substantially similar in regulatory objective, scope, supervisory outcome, reporting output, and enforcement backstop, and where alternative compliance would not reduce investor protection, customer protection, market integrity, or regulatory transparency;
5. Establish a clear process for confidential or individualized guidance while the Commissions develop experience with novel products and alternative compliance requests, and use the resulting accumulated data and determinations to develop public guidance, joint interpretations, or joint orders once sufficient experience exists to establish clear and consistently applicable standards; and
6. Apply any new interpretation or rule prospectively and provide an appropriate transition period so that affected market participants can update documentation, compliance systems, reporting processes, and venue arrangements without unnecessary market disruption.

RBL appreciates the Commissions’ consideration of these comments and supports continued coordination between the CFTC and SEC to promote regulatory clarity, market integrity, and responsible innovation.

Respectfully submitted on behalf of
Rose Bowlus Law, APC,

Dr. Tripti Prasad Thakur
Law Clerk
Rose Bowlus Law, APC
301 California Dr #7, Burlingame, CA 94010
tpthakur@rosebowluslaw.com
(704) 778-8037