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Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance

SEC File No. S7-2026-21; CFTC RIN 3038-AF71

GENERAL COMMENTS

Comment of Novig: Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance

SEC File No. S7-2026-21; CFTC RIN 3038-AF71; SEC RIN 3235-AN79; 91 Fed. Reg. 37,873 (June 24, 2026)

August 24, 2026

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

Dear Ms. Countryman and Mr. Kirkpatrick:

Novig appreciates the opportunity to comment on the Commodity Futures Trading Commission's and Securities and Exchange Commission's Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance. Novig owns a designated contract market that lists event contracts and therefore writes from the perspective of a CFTC-regulated exchange with a direct interest in the jurisdictional lines the Commissions are considering.

This comment focuses on the questions in the Request for Comment that bear on event contracts, security-referencing event products, related equity derivatives, and the coordination of SEC and CFTC oversight, principally Questions 1–4, 6–8, and 11–15. It does not attempt to address the separate questions concerning narrow-based security index transition rules, structured notes, or physically settled security forwards except where those subjects illuminate the same definitional principles. Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, Securities Act Release No. 33-11424, Exchange Act Release No. 34-105735, File No. S7-2026-21, 91 Fed. Reg. 37,873 (June 24, 2026) ("Joint Request for Comment" or "Request for Comment").

Recommendation 1. The Jurisdictional Boundary Should Follow the Economic Function of the Instrument

Before delving into the statutory questions, it is worth taking a step back and assessing what these markets are actually doing. The statutory text of course controls, and the Recommendations that follow address it directly. But the economic function of the instruments supplies useful context for reading that text, particularly at the margins, where an interpretation can be linguistically plausible and still make very little sense of the regulatory division Congress created.

Financial markets do several different things. They let businesses raise capital. They let people transfer risks they already have. And they let people take positions to express an opinion on uncertain future states of the world, with the resulting trading producing prices that aggregate information and competing views. There is plenty of overlap at the edges, but the basic institutional division is familiar. Securities regulation is principally concerned with the instruments through which investors finance and participate in enterprises, while derivatives regulation is principally concerned with transferring risk and creating tradable exposure to changes in prices, rates, conditions, and future events.

This is not a novel account of what the securities laws are for. When a company issues stock, investors supply capital and receive an ownership interest in the enterprise. When it issues debt, they supply capital and receive a creditor claim. Secondary trading does not put new money in the issuer's bank account, of course, but what changes hands is still the capital instrument created through that relationship, and a liquid secondary market makes the primary instrument more valuable and the issuer's access to capital more effective. The Supreme Court's cases reflect the same basic conception. *Howey* described an investment contract in terms of the "placing of capital" with an expectation that others would put it to productive use, while *Forman* and *Reves* likewise looked past labels to the economic relationship the instrument created. See *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298–99 (1946); *United Hous. Found., Inc. v. Forman*, 421 U.S. 837, 848–58 (1975); *Reves v. Ernst & Young*, 494 U.S. 56, 66 (1990).

SEC Chairs from quite different administrations have described the agency's mission in essentially the same terms. Gary Gensler, while advocating an expansive application of the securities laws to crypto, put the historical point particularly plainly: "The Securities Act of 1933 was about companies raising money from the public." Gary Gensler, Chair, SEC, *Kennedy and Crypto* (Sept. 8, 2022). Chair Paul Atkins has similarly described the public markets as "the anchor of American capital formation," emphasizing the liquidity, transparency, price discovery, and accountability that make those markets useful to businesses seeking capital. Paul S. Atkins, Chair, SEC, Statement on Proposing Releases for Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, and Registered Offering Reform (May 19, 2026). There is a reason both descriptions begin with capital formation rather than with the much broader category of things people buy because they hope the price will go up.

Profit motive cannot sensibly define the SEC's jurisdiction because people speculate for profit in stocks, wheat, oil, currencies, interest rates, and plenty of other things. The useful question is what instrument they bought and what economic relationship that instrument creates. An event contract ordinarily looks nothing like an investment relationship. Suppose a contract asks whether Apple will release a foldable iPhone before December 31. Apple does not issue the contract, receive the trader's money, or owe the trader anything. The trader acquires no share, debt claim, voting right, residual interest, or other claim against Apple. Apple appears in the question because Apple is what the question is about. That is quite different from Apple being the economic object of the investment.

The distinction becomes even clearer if we ask what exposure the trader actually wanted. A trader who thinks a pharmaceutical company will receive FDA approval can express that view by buying the company's stock, but stock is a fairly blunt instrument for doing so. She wanted FDA exposure and gets management, financing, litigation, interest rates, the rest of the pipeline, competitors, manufacturing, and the equity market thrown in. If an event contract exists, she can instead trade the proposition she actually has a view on. That does not make the event contract a substitute share of stock. It shows why the two instruments perform different functions.

Nor can the fact that an event moves a stock price be enough to turn the event contract into a securities derivative. Securities prices react to almost everything. Oil prices matter enormously to Exxon, interest rates matter to banks, weather matters to insurers and utilities, elections matter to regulated industries, and tariffs matter to manufacturers. A crude-oil contract does not become an SBS when Exxon's stock develops a high oil beta, and an election contract does not become an SBS because one company has a great deal riding on the outcome. The stock price tells us what securities investors think the event means for the company. It does not tell us what the separate contract on the event is.

Derivatives markets exist precisely because people often want narrower exposures. The Commodity Exchange Act describes the public purposes of derivatives markets as including "managing and assuming price risks, discovering prices, or disseminating pricing information." CEA § 3(a), 7 U.S.C. § 5(a). A wheat future does not stop being a financial instrument because one trader is hedging a crop while the trader on the other side simply thinks wheat is cheap. Event markets work the same way. One participant may be hedging an exposure, another may think the market has the probability wrong, a third may provide liquidity, and their financially backed disagreement produces a price. Why a particular trader enters the market can differ without changing what the product is.

The functional analysis works in the other direction too, which is important because this is not an argument for putting anything with the words "event contract" on the CFTC side. A total return swap on Apple stock rises and falls with Apple stock and recreates the economics of holding the security. A conventional call creates an economic right with respect to the security. Those

products derive their character from the capital instrument itself even though neither requires the trader simply to purchase the shares.

Question 11's equity perpetual makes the same point. A perpetual contract that continuously gives the holder gains and losses based on a single stock looks very different from a contract on whether the company launches a product because it is designed to provide continuing exposure to the stock itself. Calling it a "perpetual" rather than a future, swap, or other securities-linked derivative does not answer the statutory question, but its economics tell us where to begin. The Commissions should determine which securities-linked category fits the exposure the product actually creates rather than allowing the product's marketing name to do the classification work.

An issuer-related event contract is different because its economic object remains the event. FDA approval may add billions of dollars to a pharmaceutical company's market capitalization overnight, but the FDA contract still settles on what the FDA did. A CEO departure may move a stock dramatically, but the trader in the event market did not buy exposure to the magnitude of the stock move. A product launch may transform the company's prospects, but a contract on the launch does not thereby become a claim on the company. The securities market incorporates the event into the value of the capital instrument; the event market prices the event itself.

None of this requires the SEC to ignore event markets that matter to securities. An issuer-related event market can generate information highly relevant to securities surveillance, insider-trading investigations, manipulation inquiries, or issuer disclosure. But a regulator's legitimate interest in information from a market is not the same thing as primary jurisdiction over the product traded there. Where activity in one market matters to another regulator, the natural response is to share the information and coordinate surveillance rather than redefine one product as another.

Congress supplied the statutory definitions, and those definitions control the analysis that follows. The economic distinction nevertheless provides a useful check on how they are read. A product that represents or recreates exposure to a security looks naturally like a securities derivative. A contract on an independently defined event does not become one merely because the event matters enormously to shareholders. The statutory language should be read in a way that preserves that difference, not in a way that makes it disappear.

Recommendation 2. The Statutory Definition of "Security-Based Swap" Should Be Construed Narrowly as Applied to Issuer-Related Event Contracts

Questions 6 and 7 of the Joint Request for Comment ask how far the definition of "security-based swap" extends when a contract concerns a single security, a single issuer, or an event involving that issuer. The better reading is narrow because Congress did not give the SEC jurisdiction over every derivative concerning a public company or every contract whose settlement event may affect the value of that company's securities. It identified particular relationships between a swap and a security, loan, issuer, or issuer financial obligation that make

the swap security-based, and those limits matter most precisely where an event matters to investors without itself being the security.

Section 3(a)(68) itself supplies the structural clue by separately addressing swaps based on a single security or loan, including an interest therein or on the value thereof, and swaps based on the occurrence or nonoccurrence of an event relating to a single issuer when that event directly affects the issuer's financial statements, financial condition, or financial obligations. Congress thus distinguished a contract based on the security from a contract based on an event relating to the issuer, a distinction that would do very little work if every event expected to affect the stock price could simply be relabeled a contract “based on” the security.

The separate issuer-event provision should therefore inform the interpretation of the single-security provision. The two provisions can overlap, but the single-security language should not be read so broadly that the specific limits Congress placed on issuer-event contracts become practically meaningless. Congress knew how to address contracts based on events concerning issuers because it did so expressly and added the requirement that the event directly affect specified financial attributes. A reading of “based on a single security” that captures any issuer event expected to move the stock would allow that limitation to be bypassed in most of the cases where it matters.

A total return swap on Company X stock presents the ordinary case because its economics rise and fall with the security, as does a contract paying the appreciation in Company X stock over a specified period. The same can be true of a synthetic instrument that never delivers shares but objectively recreates the economics of holding them.

A contract asking whether Company X will launch a new product before December 31 is different because it settles on the product launch itself, not on the stock. The launch may matter enormously to Company X and may move its stock by twenty percent in a day, but the stock is reacting to information about the event. That reaction does not make the event derivative a derivative on the stock.

The alternative becomes unworkable quickly because securities prices react to almost everything. Oil prices matter to oil companies, interest rates to banks and real estate companies, elections to regulated businesses, weather to insurers and agricultural companies, and tariffs to manufacturers. A contract on any of those subjects may correlate strongly with a particular security and may be used by traders who have a view about that security, yet a crude-oil contract does not become an SBS when Exxon's stock develops a high oil beta, and an election contract does not become an SBS because one public company has a lot riding on the election. Congress did not make SBS jurisdiction turn on an event study.

Question 4 raises the same issue more generally by asking when a swap, option, or future is based on “any interest” in a security or group or index of securities even when the instrument is not based on the value of that security or index. “Interest” should still describe an actual

economic or legal interest in the security or index. A fact that happens to matter to its holders is not an interest in them. In the single-security prong, the antecedent is the "single security or loan," so an interest "therein" is an interest in that security or loan and a contract "on the value thereof" is a contract on its value. The language prevents synthetic or derivative interests from escaping merely because the holder does not own the security directly, but it does not convert every election, weather event, FDA decision, oil price, piece of legislation, competitor product, or CEO succession that shareholders care about into an interest in the stock itself.

Nasdaq proposes a much broader reading in this docket, arguing that an event contract whose settlement depends on a metric or occurrence disclosed in an issuer's SEC filing or through Regulation FD is, "on its face, an interest in that issuer's securities." Nasdaq, Inc., Comment Letter, RIN 3038-AF65, at 4 (July 31, 2026), incorporated by reference in File No. S7-2026-21 (Aug. 6, 2026). That confuses the source of information used to resolve a contract with the economic interest created by the contract. An issuer's disclosure of vehicle deliveries, subscriber counts, a product launch, or another operating fact tells investors something about the issuer, but it does not make the disclosed fact an interest in the stock. If disclosure through the securities laws were enough by itself, the separate issuer-event prong would lose much of its function because nearly every important issuer event is eventually disclosed in an SEC filing or through Regulation FD. Disclosure rules tell issuers what information investors should receive, not which disclosed facts are themselves securities.

The separate issuer-event provision makes that reading particularly hard to avoid. Congress did not say that every event relating to an issuer is a security-based swap. It required that "the event directly affects the financial statements, financial condition, or financial obligations of the issuer." If the broader single-security language already captured every issuer event expected to affect the stock, this separate limitation would have little practical significance.

The word "directly" therefore has to do real work because nearly every material event involving a company eventually has financial consequences. A successful product launch may increase sales, FDA approval may increase expected future profits, a new CEO may improve the company's prospects, a lost customer may reduce expected revenue, and a political event may alter the regulatory environment. If those downstream effects are enough, "directly" collapses into "materially," "predictably," or "ultimately," leaving the statutory word with almost nothing to do.

The more natural line is between an event that itself operates on the issuer's financial position or obligations and an event whose financial consequences arrive through the business. A debt default, a restructuring that changes principal, maturity, priority, or payment terms, a bankruptcy, or a failure to make a required payment all operate directly on the issuer's financial condition or obligations. They do more than change expectations about what the business may earn later.

A product launch sits on the other side of that line because, however commercially important it may be, the event itself is the launch and the financial effects follow afterward. Hiring an executive, obtaining a permit, announcing new technology, or reaching an operational milestone can change investor expectations immediately without themselves changing a financial obligation, financial statement, or existing financial condition.

“Financial condition” should not be read so broadly that it defeats the distinction because Congress placed the phrase between “financial statements” and “financial obligations,” neighboring terms that concern identifiable financial attributes of the enterprise. Under the familiar principle of noscitur a sociis, that context supports reading “financial condition” as the issuer's actual financial state rather than every fact capable of changing the market's estimate of future value. See *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995). The securities laws' own disclosure architecture points the same way. Item 303 of Regulation S-K requires management's discussion and analysis of “financial condition” and “results of operations” as distinct subjects, and the financial-statement rules in Regulation S-X organize financial condition around the balance sheet — assets, liabilities, liquidity, and capital resources — as something separate from operating performance. See 17 C.F.R. § 229.303; 17 C.F.R. pt. 210. Within the securities regime itself, “financial condition” is not a synonym for everything that may bear on future results. Ordinary usage matches. An SEC staff educational resource describes a balance sheet as reflecting a company's “financial condition at a specific point in time” through its assets, liabilities, and equity. SEC, Office of the Advocate for Small Business Capital Formation, What Is a Balance Sheet? (2026). If “financial condition” instead means every development that may ultimately change revenue or enterprise value, it becomes a residual category for nearly every material corporate event and “directly” again has almost no work left to do.

Reported financial metrics deserve the same analysis, and they survive it. A contract on whether Company X reports EPS above $2.00 or revenue above $10 billion settles on the issuer's disclosure of a result, and the disclosure is the specified event. A report reveals a financial condition, but it does not create or alter one. The results were what they were before the press release, and announcing them changes no asset, liability, obligation, or line item it communicates the line item. The event prong asks whether the event directly affects the issuer's financial statements, financial condition, or financial obligations, and an event whose entire function is to disclose existing results affects none of those things in the operative sense. A default, by contrast, changes the issuer's obligations at the moment it occurs. And if we frame the contract as settling on the metric itself, rather than on the report, we get the same result. A financial result is the content of the financial statements, not an occurrence that operates on them, and the prong's own exemplars bankruptcy and default are events that act on the issuer's financial position, not entries within it. Nor is a reported-metric contract “based on” the security under the single-security prong, because it creates no exposure to the security's price, value, or return. That distinction is why “corporate event” is too broad a category to classify. An operating fact that may later flow through to earnings, the issuer's report of the earnings number, and a default that

directly alters a financial obligation are three different legal relationships. Only the last operates on the attributes the statute specifies.

The Commissions' original implementation of Title VII cuts the same way. In the 2012 Product Definitions Adopting Release, the Commissions explained that the issuer-event provision "applies generally to event-triggered swap contracts" and illustrated it with bankruptcy and defaults on an issuer's debt securities or non-security loans. Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48,208, 48,267 (Aug. 13, 2012) ("Product Definitions Adopting Release"). The Commissions' treatment of the prong in that release centered on credit default swaps, the paradigmatic security-based event derivatives. That history does not mean that only credit products can ever fall within the event prong. But it does identify default and bankruptcy as paradigmatic events that themselves operate on the issuer's financial condition or obligations.

A CDS shows what is distinctive about a security-based event derivative because it does more than express a view that a company might default. It transfers credit exposure associated with the issuer's obligations, and the reference entity, reference obligation, notional amount, credit event, and settlement architecture all arise from that credit relationship. The event matters because it operates directly on the financial risk the derivative was designed to transfer.

An event contract that pays $1 if Company X defaults and zero otherwise is one of the paradigmatic issuer events the Commissions identified in 2012 and the statutory event prong does not require a contract to reproduce every feature of a CDS before it can qualify. An event contract on an actual issuer default can fall within the SBS event prong because default itself directly affects the issuer's financial obligations. The workable distinction is between events like default that operate on the specified financial attributes and operating or regulatory events whose financial consequences arise through the business afterward.

For Question 7, the existing CDS guidance should be preserved for genuine credit products but clarified at one point. The statement that the issuer-event prong applies generally to event-triggered swap contracts should not be read to make every significant issuer event analogous to a CDS. Bankruptcy and default are strong examples because the event itself operates on the issuer's financial condition or obligations. Product launches, regulatory approvals, and similar operating events require the separate "directly affects" analysis Congress wrote into the statute.

Materiality cannot supply the missing link because securities-law materiality is intentionally broad, a CEO departure, FDA approval, major customer loss, or election may all matter to a reasonable investor deciding whether to buy, sell, or hold a security. That tells us what securities investors care about when valuing the issuer. It does not tell us whether a separate derivative on the information is itself security-based.

Material nonpublic information raises the same product-versus-conduct distinction. An issuer-related event market may involve information that is material and nonpublic for purposes of the federal securities laws and may therefore create legitimate surveillance or enforcement concerns, but that does not answer the product-classification question any more than the SEC's interest in information generated in commodities, credit, options, or other markets gives it primary jurisdiction over those instruments.

Nor should classification turn on the fact that a trader could have expressed a similar thesis by buying or selling stock. Traders routinely choose among instruments that are related but economically quite different. A trader who believes a drug will receive FDA approval can buy the pharmaceutical company's stock, but in doing so she also takes exposure to every other part of the company, such as management, financing, other products, litigation, interest rates, competitors, and the broader equity market. She may prefer an event contract precisely because she does not want those exposures. Choosing one instrument instead of another does not make the two instruments equivalent.

Actual economic replication is different. A total return swap can recreate the economics of holding stock even though no shares change hands, so physical delivery is not the test. The relevant question is the objective economic exposure created by the instrument, not whether a trader regards two different products as alternative ways to express the same thesis.

The public-private distinction approaches the point from another angle. Imagine an event contract asking whether a privately held biotechnology company will receive FDA approval before year-end. If the company completes an IPO while the contract is outstanding, the proposition, payout, and trader exposure do not change. Only the financing status of the referenced company changes. Congress plainly can make issuer status relevant where the statute says so, and the issuer-event provision does exactly that. But the example illustrates why public-company status alone cannot answer whether the contract is "based on" a security or whether the relevant event "directly affects" the specified financial attributes.

For that reason, the Commissions should avoid tests based on materiality, expected stock-price impact, correlation, or general securities-market relevance, each of which would make jurisdiction unstable and difficult to determine before trading. Identical contracts could be classified differently for different issuers or as markets reassessed the importance of the event, and a macroeconomic contract could become a CFTC product in one setting and an SBS in another whenever one public company happened to be unusually sensitive to it.

A more administrable approach is to focus on the instrument itself by asking three questions. Does it economically index to, or create or objectively replicate exposure to, the price, return, value, yield, or performance of a security or loan? Does it create exposure to an issuer financial obligation? For an issuer event, does the specified event itself operate directly on the issuer's financial statements, actual financial condition, or financial obligations rather than settling on an

independently defined fact whose occurrence may later affect expectations, enterprise value, or securities prices? Those questions track the economic relationships Congress actually described.

On that framework, the first set of instruments belongs naturally within the SBS regime, while the ordinary independently defined event contract does not merely because the market expects some downstream effect on the issuer's securities.

The Commissions should also identify facts that are insufficient standing alone to establish SBS status, including that the referenced entity is public, the event is material to investors, the stock is expected to move, the contract and security are highly correlated, the information could constitute material nonpublic information, or a trader could have expressed a related view by buying or shorting the stock. Those facts may be highly relevant for other regulatory purposes without establishing the statutory relationship between the derivative and the security.

Categorical treatment of broad event labels would create its own problems because the same nominal category can contain very different legal relationships. A litigation contract on whether a court permits discovery may alter expectations about ultimate liability without changing any financial obligation, while a final judgment that immediately creates a fixed payment obligation is different. Reported revenue differs from an operating metric that may contribute to future revenue. And a merger closing may itself alter assets, liabilities, cash, goodwill, or capital structure while an earlier procedural milestone in the same transaction may not. Regulatory, accounting, and other corporate developments present the same pattern, which is why the legal test should turn on what the specified event itself does. However, labels attached to broad classes of events obscure exactly that.

The resulting rule is narrow without being formalistic. Synthetic exposures to securities remain security-based, single-name CDS and other instruments directly tied to issuer credit or financial obligations remain security-based, and instruments that create or objectively replicate economic exposure to the price or return of a single security remain security-based. What does not follow is that every contract concerning a public company becomes security-based because the event matters to investors, appears in a securities filing, or affects the value of the company's stock.

For Questions 6 and 7, then, the Commissions should confirm that a swap is “based on” a single security or loan where the instrument is economically indexed to the security or loan or otherwise creates or objectively replicates exposure to it. “Any interest therein or on the value thereof” should likewise refer to an actual economic interest in, or exposure based on the value of, the security or loan itself, not merely to an issuer fact disclosed in a securities filing. And an issuer-related event should satisfy the separate event prong only where the occurrence of the event itself directly operates on the issuer’s financial statements, financial condition, or financial obligations. Materiality, disclosure status, correlation, expected stock-price impact, and downstream business consequences should not be sufficient standing alone. A novel event contract that uses a security price as a single settlement observation presents a harder question

because the trigger is stated in terms of the security's value, but the product still does not transmit the security's return. The trader receives the same fixed amount whether the stock clears the threshold by one cent or by $150. The price reference therefore matters, but it should not by itself resolve the single-security analysis or erase the distinction between a discrete terminal condition and continuing exposure to the security's value. Recommendation 4 explains why the Commissions should ultimately preserve a CFTC-side path for those fixed-payout terminal event contracts to the maximum extent the statutes permit.

That reading gives meaningful effect to each part of the statutory definition and preserves the line Congress drew between securities exposure and event exposure. It also sets up the separate question addressed next. The question is when an instrument referencing a security is not a swap or security-based swap at all because it is properly characterized as an option on a security.

Recommendation 3. Event Contracts Fit Naturally Within the Statutory Definition of "Swap"

Recommendation 2 explains why investor attention and possible stock-price effects do not make an issuer-related event contract an SBS, but those contracts do not sit in some undefined space between the SEC and CFTC. Congress wrote event-contingent contracts directly into the statutory definition of "swap."

Section 1a(47)(A)(ii) of the Commodity Exchange Act includes an agreement, contract, or transaction that provides for a purchase, sale, payment, or delivery dependent on the occurrence, nonoccurrence, or extent of occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence. That language is unusually well matched to event contracts because a contract paying according to whether a regulator approves a drug, a company launches a product, a merger closes, an election occurs in a particular way, or another economically consequential event happens is not being squeezed by analogy into a statute written for something else. Congress expressly included contingent payments based on events with potential financial, economic, or commercial consequences.

The word "potential" matters because Congress did not require the event actually to produce a financial, economic, or commercial consequence, much less directly alter an existing financial relationship. Association with a potential consequence is enough. That language is notably broader than the SBS event provision, which requires an issuer-related event that actually "directly affects" specified financial attributes of the issuer, and the difference is difficult to treat as accidental.

Section 1a(47)(A)(ii) supplies the natural starting point for event contracts. The swap definition contains overlapping prongs and a contract need satisfy only one, so the fact that some event contracts may also resemble options or fit another part of the definition does not diminish an

event-contingency provision that quite literally reaches payment based on whether an economically consequential event occurs.

The analysis should keep the statutory questions distinct. Whether the instrument satisfies one or more affirmative swap prongs. Whether an express exclusion such as the securities-option or futures exclusion removes it from "swap", and with it from "security-based swap," since an SBS must be a swap determined without regard only to the exclusion of SBS themselves Third, whether the instrument satisfies the narrower SBS definition. The exclusions operate directly on the statutory definitions, so nothing turns on the order of exposition. What matters is that an exclusion does not distort the antecedent question whether the contract satisfies the affirmative swap definition in the first place.

The contrast with the SBS definition sharpens the point because Congress used broad language for event-based swaps, requiring only an event associated with a potential financial, economic, or commercial consequence, while the issuer-event prong becomes security-based only when the event directly affects the issuer's financial statements, financial condition, or financial obligations.

The provisions fit together naturally. The swap definition establishes a broad category of economically or commercially consequential event contracts, and the SBS definition assigns the narrower subset of issuer-related event derivatives to the SEC when the additional statutory conditions are satisfied. An Apple product launch plainly has potential commercial or economic consequences and can therefore support an event swap, but it does not follow that the launch itself directly affects Apple's financial statements, financial condition, or financial obligations.

That difference in wording should do real work because otherwise the broad event language in the swap definition would largely disappear whenever the event involved a securities issuer, even though Congress chose to write a broad event category first and a more demanding issuer-event rule for the subset that crosses onto the SEC side.

The history of the CFTC's treatment of event contracts supports that reading. Event and prediction markets were already a known regulatory issue before Dodd-Frank. In its 2008 Concept Release, the CFTC expressly considered "event, prediction, and information markets," including markets based on elections and other nontraditional events. Concept Release on Appropriate Regulatory Treatment of Event Contracts, 73 Fed. Reg. 25,669 (May 7, 2008). Many of those contracts did not resemble conventional agricultural or financial futures and did not necessarily have a direct relationship to an underlying cash-market price. The Commission nevertheless treated them as raising questions under the Commodity Exchange Act.

Congress enacted Dodd-Frank against that backdrop without leaving evidence that Section 1a(47)(A)(ii) was specifically a response to the 2008 Concept Release, so the chronology should not be oversold. Event markets were already a visible category of CFTC-regulated or potentially CFTC-regulated products, and Congress then enacted a swap definition that expressly included

contracts whose payments depend on events or contingencies having potential financial, economic, or commercial consequences.

The event-contingency language also did not appear from nowhere in 2010. Section 206A of the Gramm-Leach-Bliley Act, as added by the Commodity Futures Modernization Act of 2000, had already defined "swap agreement" using materially the same formulation. The formulation covered a purchase, sale, payment, or delivery dependent on an event or contingency associated with a potential financial, economic, or commercial consequence. Gramm-Leach-Bliley Act § 206A(a)(2), 15 U.S.C. § 78c note. Dodd-Frank carried that language into the operative CEA definition used to allocate Title VII jurisdiction.

The structure of Dodd-Frank confirms that Congress affirmatively contemplated CFTC-regulated event contracts. The same statute that enacted the event-contingency prong added CEA section 5c(c)(5)(C), which addresses agreements, contracts, transactions, or swaps "based upon the occurrence, extent of an occurrence, or contingency" and authorizes the Commission to determine that such contracts are contrary to the public interest, and therefore may not be listed or made available for clearing or trading on a registered entity, if they involve activity that is unlawful under Federal or State law, terrorism, assassination, war, gaming, or other similar activity. CEA § 5c(c)(5)(C), 7 U.S.C. § 7a-2(c)(5)(C); see 17 C.F.R. § 40.11. Congress thus gave the CFTC a specific screening mechanism for event contracts in the same legislation that wrote event-contingent payments into the swap definition. That provision does not itself answer which issuer-related event contracts cross into SBS territory, but it confirms that event contracts are an affirmative part of the CFTC framework rather than a residual category that exists only when the securities laws have nothing to say.

The CFTC's current interpretation is consistent with that history. In its 2026 prediction-market proposal, the Commission expressly identifies Section 1a(47)(A)(ii) as one of the provisions under which event contracts can qualify as swaps and recognizes that an event contract can satisfy more than one swap prong depending on its structure. Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35,806 (June 12, 2026). The Joint Request for Comment likewise recognizes that an instrument may satisfy one or more of the statutory swap prongs.

There is nothing anomalous about overlap among the swap prongs because Congress wrote overlapping categories, and an event contract need not be declared "really" an option or forced to resemble a conventional risk-transfer swap before it can fall within CFTC jurisdiction. Section 1a(47)(A)(ii) supplies an independent event-contingency route.

That structure also answers the objection that a contract must transfer a participant's preexisting commercial risk before it can satisfy the swap definition, because Congress did not put that limitation in the event-contingency prong.

The Commodity Exchange Act once contained a much more explicit economic-purpose requirement for exchange-traded contracts. Under the former economic-purpose test, the CFTC

considered whether a contract could reasonably be expected to be used for hedging or price-basing on more than an occasional basis. Congress repealed that statutory requirement in the Commodity Futures Modernization Act of 2000, and the CFTC withdrew the implementing guideline. The Commission's 2026 prediction-market proposal discusses that history and does not treat the repealed test as a threshold jurisdictional requirement. Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35,806 (June 12, 2026).

The repeal history matters because Congress plainly knew how to require traditional hedging or price-basing utility when it wanted to, yet Section 1a(47)(A)(ii) asks instead whether payment depends on an event or contingency associated with a potential financial, economic, or commercial consequence.

Section 1a(47)(A) makes the same distinction in another way. Subparagraph (A)(iii) separately reaches instruments that provide for the transfer of financial risk associated with changes in financial or economic interests or property. Congress thus knew how to define swaps by reference to risk transfer and did so in a neighboring provision. If (A)(ii) were also limited to contracts transferring a participant's preexisting financial risk, much of the independent event-or-contingency language in (A)(ii) would duplicate the work already being done by (A)(iii). The sounder reading gives both provisions something to do. (A)(iii) addresses instruments defined by financial risk transfer, while (A)(ii) independently reaches contingent payment instruments tied to events having potential financial, economic, or commercial consequences.

Hedging can of course be important in event markets, but it is not a prerequisite to product status. Some participants will use event contracts to hedge discrete risks, others will trade because they think the market has mispriced the event, and still others may supply liquidity or use the price as information, without changing the statutory character of the standardized contract.

The Commission's own recent work keeps the same questions separate. Its 2026 prediction-market proposal treats economic function as relevant to the public-interest inquiry under Section 5c(c)(5)(C) while recognizing the CEA's broader jurisdictional provisions for event contracts, and the 2008 Concept Release likewise acknowledged that the former economic-purpose test for exchange trading was not necessarily congruent with the scope of CFTC jurisdiction. See Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35,806 (June 12, 2026). A contract can therefore fall within the Commission's jurisdiction even if a separate CEA provision supplies a reason to restrict whether or how it may be listed.

An argument that a particular event contract should not be listed, or should be restricted under another provision of the CEA, is still an argument about what the CFTC should do with a product within its jurisdiction. It is not evidence that the product belongs to another regulator. Jurisdiction asks whether the Commission has authority over the instrument, while permissibility

asks what the Commission may or should allow once jurisdiction exists, and collapsing the two would turn every objection to listing a product into an argument that the product is somehow not a CFTC-regulated derivative in the first place.

The statutory phrase "potential financial, economic, or commercial consequence" is also broader than "financial instrument" or "existing commercial risk," comfortably reaching an FDA decision, product launch, election, weather event, or other contingency with potential economic or commercial effects without requiring those effects ever to materialize.

Read against the narrower SBS language, the breadth of the CEA event prong becomes especially clear. Consider again an FDA-approval contract involving a public pharmaceutical company. The approval has an obvious potential commercial consequence, so the event-contingency swap provision has an easy application. Whether the contract also falls within the SBS definition is a separate and narrower question. Under Recommendation 2, the fact that approval may dramatically increase the company's value does not itself mean the approval directly affects the company's financial statements, financial condition, or financial obligations.

A single-name CDS illustrates the point from the other direction. A CDS may fall comfortably within the broad event-contingency concept because payment can depend upon default or another credit event. But it also creates exposure directly tied to the issuer's credit obligations and can satisfy the narrower SBS definition. Once it does, the statutory exclusion for security-based swaps removes it from the ordinary CFTC swap category and places it on the SEC side.

The broad swap category and narrower SBS category therefore operate as Congress designed them to operate. An instrument can first satisfy the general definition of swap and then satisfy the additional characteristics that make it an SBS. The statute expressly instructs that SBS status is determined by considering whether the instrument would otherwise be a swap without regard to the exclusion of SBS from the final swap definition. The classification exercise necessarily proceeds through these overlapping categories. Nothing requires a regulator to choose a single product label at the outset.

The mixed-swap provisions reinforce the same structure because Congress expressly contemplated instruments that satisfy the SBS definition while also possessing characteristics that implicate the broader swap definition and created a regime to manage that overlap. Congress therefore expected securities-related and broader swap characteristics to coexist in one instrument, which is a reason to apply the event-contingency prong according to its terms and let the later SBS and mixed-swap provisions handle the additional characteristics when they are actually present, rather than narrow the event prong whenever securities appear somewhere in the economic story.

Longstanding CFTC enforcement also confirms that prediction-style contracts are not some new category of financial activity that first appeared with modern prediction exchanges. The

Commission brought actions against Trade Exchange Network and later Intrade over event-contract markets in which customers bought and sold positions based on the outcome of future events. See *CFTC v. Trade Exchange Network Ltd.*, No. 1:12-cv-1902 (D.D.C. Aug. 3, 2015) (memorandum opinion on summary judgment). Those cases were framed principally through the commodity-option provisions rather than the modern event-contingency prong, and they therefore do not establish that every prediction contract is a swap under Section 1a(47)(A)(ii). They do establish something more basic. The CFTC has treated event and prediction contracts as derivatives subject to the Commodity Exchange Act for decades.

Earlier CFTC treatment of prediction contracts as options likewise does not force modern event contracts into a single traditional product box, because Congress later enacted a swap definition under which one contract may satisfy multiple prongs, including an express event-contingency prong. The modern inquiry is therefore broader than asking which preexisting label the product most closely resembles.

There is no need for this comment to resolve every possible boundary between swaps and futures. The CEA separately excludes contracts of sale of a commodity for future delivery from the swap definition, and the Commission has recognized that event products may be structured in different ways under the CEA. For present purposes, the important point is jurisdictional. The taxonomic question can be set aside. Whether a particular CFTC-side event product is best characterized as a swap, an option, or another CEA instrument does not convert it into an SEC product. Where Section 1a(47)(A)(ii) applies, however, it provides a particularly direct affirmative basis for swap status.

The securities-option exclusion raises a more important question because it can move an instrument out of the swap/SBS framework and into the federal securities regime. But that is properly treated as an exclusion from, rather than a reason to distort, the affirmative swap analysis. A contract that provides for payment based on an economically consequential event can satisfy Section 1a(47)(A)(ii). The next question is whether some separate statutory provision removes it from the definition.

The Commissions should say so directly. Where a contract provides for payment or delivery dependent upon an objectively defined event or contingency associated with a potential financial, economic, or commercial consequence, Section 1a(47)(A)(ii) supplies an affirmative basis for treatment as a swap. No separate showing of traditional hedging utility, preexisting commercial exposure, or subjective risk-transfer purpose should be required.

Applied to an ordinary issuer-event contract, the classification sequence is straightforward. Determine whether the instrument falls within one or more affirmative swap prongs, whether an express exclusion such as the securities-option or futures exclusion removes it from both definitions, and whether it satisfies the narrower SBS definition. That sequence will often lead directly from the event-contingency swap provision, through the narrower SBS tests in

Recommendation 2, to CFTC-regulated swap status unless some separate exclusion changes the result. This sequencing also fits the overall statutory structure because Congress first provided a broad CFTC-side category for derivatives whose payments depend on events associated with potential financial, economic, or commercial consequences, then identified the narrower issuer-related circumstances that make such an instrument security-based, and separately excluded genuine securities options and other specified instruments from the swap definition.

The difficult question presented by securities-related event contracts is therefore not whether a contingent event contract can be a swap, which Congress answered in the statutory text, but when an instrument referencing a security or securities issuer is genuinely an "option on" the security and thus falls within the separate securities-option exclusion addressed in Recommendation 4.

Recommendation 4. The Securities-Option Exclusion Should Be Limited to Instruments That Are Actually Options or Privileges on Securities

Question 8 asks when a contract that would otherwise fall within the swap or SBS framework is excluded because it is a "put, call, straddle, option, or privilege on" a security. Conventional cases are easy enough, a call on a stock is a securities option, and so is a cash-settled version that preserves the economic relationship of that option. The real question begins when the contract stops looking like a conventional option and starts looking like a discrete event contract.

The ordinary option supplies the starting point. Here, a call gives its holder the right, but not the obligation, to buy the underlying security at a specified price, while a put gives the corresponding right to sell. Physical delivery is not indispensable, however, because in *Caiola v. Citibank, N.A.*, the Second Circuit rejected the argument that cash-settled equity options fell outside the securities laws merely because the holder could not demand delivery of the stock. 295 F.3d 312, 325–27 (2d Cir. 2002). The contracts preserved the economic relationship to the referenced securities even though settlement occurred in cash.

Caiola therefore supplies an important anti-formalism principle. A conventional option does not cease to be an option because the parties replace delivery of the shares with a cash payment that preserves the economic value of the option position. But the case does not turn every event contract into an option merely because a security appears somewhere in the story. The statutory question remains whether the contract is actually an option or privilege on the security.

Fixed-return securities options make the boundary harder because the SEC has long treated at least some terminal-price, fixed-payout products as securities options. In 2007, the SEC approved American Stock Exchange Fixed Return Options on individual stocks and exchange-traded funds that paid a fixed amount depending on whether the underlying security finished above or below a specified strike, and the Options Clearing Corporation likewise described all-or-nothing cash-settled options with a fixed exercise settlement amount. Securities

Exchange Act Release No. 34-56251, 72 Fed. Reg. 46,523 (Aug. 20, 2007); Securities Exchange Act Release No. 34-56875 (Nov. 30, 2007). That history is relevant and should not be wished away, but it still has to be fitted into the post-Dodd-Frank allocation Congress later created.

SEC v. Banc de Binary Ltd. is best treated as contrary authority rather than as the organizing principle for the modern boundary. It supports the proposition that at least some fixed-payout event contracts can fall within the securities definition as "privileges" based on the value of securities, but it did not answer the Title VII allocation question the Commissions are now confronting. 964 F. Supp. 2d 1229, 1236–37 (D. Nev. 2013). The useful lesson is therefore limited, as neither the product label nor the absence of a conventional exercise right decides the current statutory question, which should turn on the modern definitions and the economic exposure the product actually creates.

The statutory text should be read with both lessons in mind because Congress referred to a "put, call, straddle, option, or privilege on" a security, a set of neighboring terms that all describe securities-linked rights and therefore counsels against treating "privilege" as a generic synonym for any contingent payment involving a public company. See *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995). The CEA uses the same vocabulary the same way. Section 4c(b) governs any transaction that "is of the character of, or is commonly known to the trade as," an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty," or "decline guaranty," 7 U.S.C. § 6c(b), treating "privilege" as a member of the option family, consistent with the term's historical use on the exchanges, where puts and calls were long traded as "privileges." At the same time, the parenthetical reaching an interest in or based on the value of the security prevents a purely formal insistence on physical delivery or a conventional payoff formula, allowing the exclusion to capture synthetic and cash-settled forms without turning it into an exclusion for every event that may affect a security.

The easier distinction is between a contract on the security and a contract on an independently defined event involving the issuer. A cash-settled call on Apple stock remains organized around the stock and the economics of an option on that stock, while a contract paying if Apple launches a foldable iPhone gives the holder no right to buy or sell Apple shares, does not settle by observing their value, and does not calculate its payout from the value of exercising any right with respect to them. It asks whether Apple launched a product. The launch may move the stock, but a causal effect on the stock is not itself an option or privilege on the stock.

The same distinction is why KPI contracts should be analyzed metric by metric rather than by the vocabulary printed on the rulebook. Cboe has proposed KPI event contracts whose settlement value is a financial or operating metric disclosed by an issuer and whose rules use familiar option terms such as exercise price, expiration, exercise settlement amount, and automatic exercise. Securities Exchange Act Release No. 34-105877, File No. SR-CBOE-2026-061 (July 10, 2026). Those mechanics may be convenient for operating the product, but they do not establish that the contract is an option on the issuer's stock. An event contract on reported revenue settles on an

issuer disclosure that, for the reasons given in Recommendation 2, reveals financial results rather than directly affecting them, and an event contract on vehicle production, users, or another operating KPI is further still from the statutory prongs. Calling a threshold a "strike," or the resulting payment an "exercise," does not by itself manufacture the economic right that makes a contract an option.

The point-in-time single-stock event contract is the harder case because its settlement condition looks directly to a security price, which gives the SEC a serious textual argument and makes the historical treatment of fixed-return options relevant. But the economics still differ sharply from stock ownership, a total return swap, or a conventional call. The holder receives no proportional return from the stock, gets exactly the same dollar whether Apple closes at $250.01 or $400, and has no decision whether to exercise a right to acquire or dispose of the stock. The product is therefore a fixed-payout event-contract exposure to whether a terminal condition is satisfied, not a continuing position in the magnitude of the stock's gains and losses.

Those differences should matter to where the Commissions draw the line even if the price reference makes the statutory analysis harder. A fixed-payout terminal event contract creates exposure to whether a price threshold is crossed, but it does not transmit the security's return or become more valuable at settlement because the stock moves farther beyond the threshold. Treating that product as an SEC instrument simply because the yes-or-no condition is stated in terms of a stock price would make the reference variable do more work than the economic exposure. The Commissions should therefore construe "based on" and "option or privilege on" narrowly enough, where the statutory text permits, to preserve a CFTC-side path for fixed-payout terminal event contracts. If they conclude that the text or controlling precedent places some such products on the securities side, the SEC should use its available exemptive authority, and the two agencies should use alternative compliance to the maximum extent permitted, so that a product with event-like economics is not forced into the entire securities regulatory apparatus on the strength of a yes-or-no condition stated in terms of a stock price. The reference to price properly informs the statutory analysis, but it should not by itself dictate the regulatory result.

The hardest question is the point-in-time contract. The examples form a useful continuum. FDA approval and a product launch are independently defined events. A reported-earnings contract settles on the issuer's disclosure of a result, which reveals the financial statements rather than directly affecting them. A terminal single-stock-price event contract sits closest to the line because it observes the security's value directly, though its fixed payout does not replicate or transmit the magnitude of that value. And a total return swap or conventional call is easy on the other side because it creates continuing securities exposure or securities optionality. The Commissions should avoid shortcuts in both directions by refusing to require physical delivery for genuine securities options while also refusing to treat option-market vocabulary, a fixed payout, or a connection to a public company as sufficient by themselves. The statutory question remains whether the product is a put, call, straddle, option, or privilege on the security, including

an appropriate interest in or based on the value of that security. However, a contingent contract on a different underlying event is not one.

This reading is also necessary to preserve the rest of the statutory scheme. Congress separately created a security-based-swap regime for swaps based on single securities and certain issuer events. If "option or privilege on a security" were read to reach any contingent issuer-related product whose event may affect the security's value, the securities-option exclusion could swallow much of the issuer-event analysis Congress separately wrote. A reading faithful to that structure means that conventional and genuinely securities-linked options remain securities and SBSs remain governed by the SBS definition, while independently defined event contracts remain subject to the swap analysis unless some separate exclusion applies.

Venue neutrality follows from the same analysis because Nasdaq, Cboe, a designated contract market, or any other regulated venue should not be able to change the statutory character of an economically identical product by changing the vocabulary used to describe it. A "strike" may simply be a settlement threshold, "exercise" may be automatic payment, and "expiration" may be the moment a factual proposition is resolved. Those features can be consistent with an option, but none substitutes for identifying the economic right the trader actually bought.

Question 8's reference to groups and indexes of securities should be handled the same way. A genuine option or privilege on a securities index, including an appropriate cash-settled form based on the index's value, remains within the securities-option exclusion where the statutory conditions are met, while an independently defined event involving one or more constituents does not become an option on the index merely because the event can move the index or affect constituent values. This comment does not take a position on the separate narrow-based-index transition questions in Question 5. The narrower point is simply that "on" a group or index should describe the economic right created by the product, not every event capable of affecting the group or index.

The Commissions can give the distinction practical effect by identifying factors that are insufficient standing alone. A fixed payout, fixed maximum payment, strike, expiration date, multiplier, automatic exercise convention, or listing on an options exchange should not independently establish that an issuer-event contract is a securities option. Nor should materiality to investors, expected stock-price effect, correlation with the security, or the fact that a trader could have expressed a related thesis in the stock. Those facts can appear on both sides of the jurisdictional line.

Conventional products remain straightforward because an instrument giving the holder an actual right to buy or sell a security is an option on that security, and a cash-settled or synthetic form that preserves the same economic relationship can fall within the exclusion without physical delivery. Newer event contracts whose settlement condition is a single observation of a security's price require the Commissions to confront the statutory "option" and "privilege" language

directly, taking account of historical SEC treatment, Banc de Binary, the modern Title VII definitions, and the product's actual economic rights.

Independently defined issuer-event contracts present the easier application because a product launch, regulatory approval, operating milestone, or other fact that is not itself the security's price or value should not fall within the securities-option exclusion on the ground that the event may affect the security or that the product is administered using option conventions. Such a contract may still be an SBS if it satisfies the issuer-event prong in Recommendation 2. Otherwise, if it satisfies Section 1a(47)(A)(ii), it remains within the CFTC-side event-contract framework unless another statutory provision changes the result.

For Question 8, the Commissions should preserve genuine securities options, including appropriate cash-settled and synthetic forms, without turning the securities-option exclusion into a general category for contingent contracts concerning securities issuers. The same analysis should apply to a security, group, or index. The product must actually be a put, call, straddle, option, or privilege on the referenced security or securities interest rather than an independent event that may affect its value, and point-in-time security-price event contracts should be addressed expressly by reference to the economic right and exposure they create, without assuming that a historical product label or a newer marketing label decides the case.

The remaining practical problem is making the distinctions in Recommendations 2 through 4 usable before trading begins, without forcing an exchange to wait for a later market reaction before learning which regulator it should have been dealing with all along.

Recommendation 5. The Commissions Should Adopt a Clear Classification Rule That Can Be Applied Before Trading Begins

The Request for Comment asks for “principled, objective criteria” that can provide clearer regulatory lines among swaps, SBSs, mixed swaps, and products excluded from the swap definition. Joint Request for Comment, 91 Fed. Reg. at 37,873. The preceding sections supply the substantive distinctions. What remains is to make them usable by an exchange before it offers the product for trading.

The 2012 Product Definitions Adopting Release already provides the procedural starting point by stating that swap or SBS classification should be determined “prior to execution, but no later than when the parties offer to enter into” the instrument and should not change during the life of an unchanged instrument merely because outside factors later change. Product Definitions Adopting Release, 77 Fed. Reg. at 48,262.

The 2012 rule is also the only practical one, because a market participant and the exchange both need to know which regulatory regime governs before trading begins, not after the product has traded and everyone has had a chance to see how some related market reacted.

The same release provides the substantive starting point by asking whether the agreement, contract, or transaction falls within the statutory definitions based on "its terms and other characteristics," while making clear that labels and form documents do not control. Product Definitions Adopting Release, 77 Fed. Reg. at 48,260. Event contracts require no different methodology.

The inquiry is straightforward to state even when some applications are difficult. Start with the contract, identify what makes it pay and what economic rights or exposure it creates, and then apply the statutory definitions and exclusions to those characteristics.

Some applications are easy because the economic object of the instrument is obvious. A total return swap on a single stock gives the holder economic exposure to that stock, a conventional call creates optionality with respect to it, a default contract presents the issuer-event and credit questions discussed in Recommendation 2, and an FDA-approval contract begins with a different object altogether, namely an agency decision.

The point-in-time single-stock event contract presents the hardest boundary case because its settlement condition itself observes the value of a security, putting the SEC-side textual argument at its strongest. Consider a contract that pays $1 if Apple stock is above $250 at 4:00 p.m. on a specified date. Historical SEC treatment of standardized Fixed Return Options is relevant, but the holder still does not receive Apple's return and gets the same dollar whether Apple is at $250.01 or $400. The contract therefore has some relationship to the security's value without recreating the economic exposure of stock, a total return swap, or a conventional option. The Commissions should not let the mere appearance of a security price end the inquiry, and they should ultimately draw the line so that fixed-payout terminal event contracts can remain in a CFTC-regulated framework where the statutes permit. If the agencies conclude otherwise for a particular structure, exemptive relief and alternative compliance should be used to avoid duplicative regulation that follows from the label rather than the product's economic function.

The Commissions themselves recognize that this distinction remains to be drawn. Question 8 asks when an event contract that references a security should be treated as an option on that security and what distinguishes event contracts that are swaps or SBSs from fixed-payout products already traded as standardized securities options. Joint Request for Comment, Question 8. If reference to a securities price ended the inquiry, there would be little reason to ask the question.

Leaving these lines unresolved imposes the cost at exactly the wrong time. If the classification of a securities-referencing product remains genuinely debatable until enforcement or litigation, the market participant learns which regulator governed only after the trades already exist. The point of the present rulemaking exercise should be to move that answer to the front of the process, where product classification belongs.

The same discipline applies to events that affect securities prices. If an FDA approval has been expected for months, the stock may barely move when approval arrives. If the identical approval is a surprise, the stock may rise fifty percent, but the legal character of the event contract cannot sensibly depend on how surprised equity traders happened to be.

Actual stock-price impact is particularly difficult to reconcile with the Commissions' existing approach because it is not known when the product is offered. The agencies have already said that the swap/SBS classification is to be made before execution and no later than the offer, and that the classification of an unchanged instrument does not migrate later because outside facts change. Product Definitions Adopting Release, 77 Fed. Reg. at 48,262. A rule that waits to see how much a stock moves would answer the jurisdictional question at precisely the time the Commissions have said the answer should already be known.

Expected stock-price impact is scarcely more workable because markets price expectations. A commercially enormous event can produce almost no movement when everyone expected it, while a relatively small development can produce a large move when nobody did. A jurisdictional test based on expected impact therefore becomes a prediction about probabilities and surprise rather than an application of the statutory definitions Congress actually wrote.

Materiality has the same defect because product launches, regulatory approvals, management changes, lawsuits, factory closures, and lost customers can all matter to investors without turning contracts on those events into securities products. The reality is that materiality tells us that securities investors care about the event, not what the other contract is. Using that concept as the jurisdictional test would also sit uneasily with Congress's narrower choice of "directly affects" in the issuer-event prong.

Correlation is no better because oil prices move energy stocks, interest rates matter to banks, weather matters to insurers and utilities, and elections can matter to entire industries without turning a contract on oil, rates, weather, or an election into a securities derivative whenever the statistical relationship becomes strong enough. Otherwise jurisdiction would move with the regression coefficient rather than the instrument the participant actually bought.

A standardized contract also cannot sensibly change regulatory character according to why a particular trader bought it. One participant may use an event contract instead of stock, another may hedge a business exposure, a third may simply have a view on the event, and a fourth may arbitrage it against securities or other derivatives. Congress sometimes makes intent relevant in particular statutory exclusions, and intent matters where the statute says it does. However, absent such language, the better question is what the product does. Why one holder chose to trade it answers nothing about what it is.

Names and venues should likewise be irrelevant to classification because the Commissions have already said that the terms and characteristics of the instrument, rather than the form contract or terminology chosen by the parties, control. Product Definitions Adopting Release, 77 Fed. Reg.

at 48,260. Calling a threshold a strike and payment an exercise cannot transform an issuer-event contract into a securities option, just as calling a genuine securities derivative an event contract cannot move it out of SEC jurisdiction. Economically identical products should not change statutory character when they move from one venue to another.

The Commissions' 2012 rule against changing an instrument's classification during its life supplies a further check because an unchanged product should not migrate between Title VII categories merely as outside circumstances evolve. Product Definitions Adopting Release, 77 Fed. Reg. at 48,262. If a contract concerns a private company that later conducts an IPO, the offering may create new securities-law interests but does not rewrite the economic rights in a contract already entered into. Newly offered contracts can be classified under the circumstances then existing, while the outstanding instrument remains what it was unless its own terms change.

Later developments can still matter enormously for manipulation, fraud, insider trading, surveillance, disclosure, or enforcement, and a dramatic stock move may give both agencies a strong interest in the surrounding trading. That regulatory interest, however, is a conduct question, and it supplies no reason to retroactively change what product was traded.

Genuinely difficult cases will remain, which is why the Commissions created a joint interpretation process in 2012 through which any person may request a determination whether an instrument or class is a swap, SBS, or mixed swap and through which the agencies coordinate when a proposed product raises a characterization question. See 17 C.F.R. § 1.8; 17 C.F.R. § 240.3a68-2; Product Definitions Adopting Release, 77 Fed. Reg. at 48,294–96. That process is a reason to make the ordinary rule clearer, not a reason to make every product an open-ended facts-and-circumstances exercise. Most products should be classifiable from their terms and economic characteristics, while the genuinely hard cases can use the process the agencies built for hard cases.

The rule the Commissions should state is an ordinary one. Look at the contract before it is offered for trading, identify what determines payment and what economic rights or exposure the contract creates, and apply the statutory definitions and exclusions to those characteristics. Materiality, expected or realized stock-price impact, correlation, a particular trader's purpose, the product's name or venue, public-company status, or the mere appearance of a security price in one settlement condition should not determine jurisdiction standing alone.

That rule will not eliminate hard questions, but it will put them where Congress put them. A single-stock event contract may require careful analysis of what it means to be “based on” a security or to constitute an option or privilege “on” that security, while an issuer-event contract may require careful analysis of whether the event “directly affects” the issuer's financial statements, financial condition, or financial obligations. The answer should come from the statute and the economic character of the contract, not hindsight about what happened in another market.

A clear product boundary also does not require either Commission to ignore markets regulated by the other, because event markets can produce information relevant to securities surveillance and securities trading can reveal conduct relevant to an event market. The remaining question is therefore how the agencies should address legitimate cross-market concerns without turning regulatory interest into product jurisdiction.

Recommendation 6. Cross-Market Concerns Should Be Addressed Through Coordination, Not by Expanding Product Jurisdiction

Some event contracts concerning public companies will plainly matter to the SEC. A market on whether the FDA will approve a company's principal drug, whether an acquisition will close, whether a CEO will depart, or whether a major product will launch may contain information relevant to the company's securities. Trading in those markets may therefore raise legitimate questions about insider trading, manipulation, issuer disclosure, and suspicious activity in related securities.

The SEC can have a legitimate regulatory interest in a market without being the primary regulator of the product traded there, and Congress has already built that distinction into Title VII.

The clearest example is the statutory category of "security-based swap agreement." These are swaps that remain under the CFTC's primary regulatory authority even though a material term is based on the price, yield, value, or volatility of securities. See Exchange Act § 3(a)(78), 15 U.S.C. § 78c(a)(78). The 2012 Product Definitions Adopting Release explains the resulting division. Title VII gives the CFTC jurisdiction over SBSAs while preserving SEC authority in instances of fraud, manipulation, or insider trading. Product Definitions Adopting Release, 77 Fed. Reg. at 48,320–21. The operative provisions expressly preserve that authority, with Exchange Act section 10(b) and Securities Act section 17(a) reaching fraud in connection with security-based swap agreements by their terms. 15 U.S.C. § 78j(b); 15 U.S.C. § 77q(a).

Congress therefore confronted a class of CFTC products that could matter significantly to securities markets without responding by turning those products into securities or SBSs. It preserved CFTC product jurisdiction while giving the SEC authority where securities-law concerns actually arise.

Congress and the Commissions also addressed the practical consequence of that division, namely that the SEC needs enough information about a CFTC market to identify conduct relevant to its own responsibilities. The solution was access to information rather than duplicative product regulation. In implementing the SBSA provisions, the Commissions coordinated books-and-records requirements and recognized the value of giving the SEC access to information concerning CFTC-regulated SBSAs without making it the primary product regulator. See Product Definitions Adopting Release, 77 Fed. Reg. at 48,320–22.

Not every issuer-related event contract is itself an SBSA, because that definition has its own statutory requirements, which a stock-price effect from an FDA approval does not by itself satisfy. Congress has already rejected the premise that securities-market relevance and primary SEC product jurisdiction are the same thing.

The Commissions have recently adopted the same principle more broadly. Their March 2026 Memorandum of Understanding begins from the premise of respecting each agency's statutory mandate and makes clear that the agreement does not alter, expand, or limit either agency's jurisdiction. It then provides for greater information and data sharing, coordinated surveillance priorities, complementary analytical capabilities, and cooperation in cross-market examinations, risk monitoring, surveillance, and enforcement. Memorandum of Understanding Between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Regarding Harmonization in Areas of Common Regulatory Interest (Mar. 11, 2026) ("2026 MOU"). The Commissions' subsequent joint request for comment on harmonizing their portfolio-margining frameworks reflects the same approach. See Exchange Act Release No. 34-105781 (June 26, 2026).

Those propositions belong together because a jurisdictional boundary does not require either regulator to avert its eyes from the other side. Rather, it requires each to regulate the products Congress assigned to it while sharing the information necessary to police conduct that crosses markets.

The MOU supplies practical tools for doing exactly that by providing for information sharing concerning issues of common regulatory interest, including specific incidents, events, and activities, along with enhanced data-sharing and analytical capabilities and coordination on examinations, market surveillance, risk monitoring, and enforcement, allowing information relevant to one agency's responsibilities to cross the jurisdictional line without changing which agency regulates the product. 2026 MOU §§ II–III.

Questions 14 and 15 ask how those tools should be used, including how enhanced information sharing can help each Commission fulfill its mandate, how surveillance and enforcement should be coordinated, and how manipulation, material nonpublic information, and cross-market surveillance should be addressed. Joint Request for Comment, Questions 14–15. Those concerns are real, but stretching the definitions of security, SBS, or securities option is a particularly indirect way to solve them.

An FDA-approval contract shows how the division can work in practice. The CFTC and the relevant DCM can surveil the event contract and enforce the rules applicable to that market, while the SEC surveils the issuer's stock and SEC-regulated derivatives and enforces the securities laws there. If the same person trades aggressively in both markets immediately before a confidential regulatory decision, the agencies should compare the activity. Seeing both sides of

the trade solves the regulatory problem more directly than pretending the two products are the same thing.

Manipulation illustrates the same point because a person might try to influence the event itself, the source used for settlement, the event-contract price, a related security, or several of those things at once. Conduct can cross jurisdictional boundaries even when the products do not, so each Commission should apply the authority Congress gave it and coordinate where the conduct overlaps.

CFTC jurisdiction also does not mean an issuer-related event market is unregulated. DCM Core Principle 4 requires a designated contract market to have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices. CEA § 5(d)(4), 7 U.S.C. § 7(d)(4). The CFTC's 2026 prediction-market proceedings likewise ask directly about inside information, manipulation, surveillance, and cross-market conduct. See Prediction Markets, 91 Fed. Reg. 12,516, 12,522–23 (Mar. 16, 2026). Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35,806 (June 12, 2026). These are already questions within the CFTC's regulatory framework.

If the agencies conclude that existing rules governing nonpublic information or other conduct in event markets leave a real gap, they should address that gap directly under the statutes and authorities governing those markets. A concern about conduct is not a tool for changing the statutory classification of the product.

Questions 12 and 13 ask how alternative compliance should work when economically related or functionally similar products implicate both agencies, and the sensible comparison is regulatory function rather than textual identity. Requirements are substantially similar when they address the same regulatory risk and produce a comparable result, taking account of the products and persons covered, the information collected, the supervisory and compliance controls, and the responsible regulator's ability to examine and enforce. Two rules do not need the same words or filing form to do the same job.

That does not mean a roughly comparable regime should displace a requirement Congress assigned to the other Commission, because any material gap still has to be covered. But where the primary regulator already requires substantially equivalent surveillance, books and records, reporting, or supervisory controls, building the same system a second time to serve another Commission's regulatory interest adds cost without necessarily adding protection. A second copy of the same report is not a second layer of market protection. The sensible task is to identify the uncovered requirement, if any, and regulate the difference rather than duplicate everything around it.

Security futures offer a ready precedent for Question 13 because Congress subjected them to joint SEC-CFTC jurisdiction without requiring every market to build a second full regulatory

identity from scratch. A CFTC-designated contract market can notice-register with the SEC as a national securities exchange solely for security futures and use documents already filed with the CFTC to satisfy SEC informational requirements, while an SEC-regulated exchange can become a designated contract market in security futures by notice filing with the CFTC and receive statutory exemptions from otherwise duplicative CEA provisions. Exchange Act § 6(g), 15 U.S.C. § 78f(g); CEA § 5f, 7 U.S.C. § 7b-1. Congress thus supplied a working example of joint jurisdiction implemented through notice registration, reused filings, tailored requirements, and relief from duplication.

The Commissions should use the same tools when an innovative product genuinely triggers overlapping requirements, preferring coordinated notice registration, deemed filing, a single submission available to both agencies, tailored trade reporting, and reliance on one set of books, records, and surveillance systems where those mechanisms give both Commissions the information and enforceable protections they need. If statutory limits on exemptive authority prevent one Commission from waiving a particular obligation, the answer is a joint rule or tailored procedure within the agencies' authority, not two parallel compliance systems that do the same work twice.

Alternative compliance should solve the operational problem that remains after classification rather than blur the classification itself. One agency may be the primary product regulator, both may have conduct or surveillance interests, and some products, such as security futures, may genuinely be subject to both regimes, so the compliance architecture should reflect those differences. Overlap is not a reason to collapse the underlying definitions.

The March 2026 MOU proceeds on the same premises of respecting statutory mandates, reducing unnecessary duplication, establishing clear regulatory responsibility, sharing information, and coordinating cross-market surveillance and enforcement. 2026 MOU §§ I–III. Issuer-related event contracts and other innovative products provide a straightforward place to put those principles into practice.

Even substantial relevance to securities markets does not itself determine product jurisdiction. A CFTC-regulated event product should remain a CFTC-regulated product, while information from that market that bears on the SEC's responsibilities should be available to the SEC and used within the authority Congress gave it over securities-market conduct. The SBSA framework already embodies a version of that division because the SEC can receive and use information from a CFTC-regulated product, and can exercise the securities-law authority Congress preserved, without that informational or enforcement interest converting the product into an SEC-regulated instrument. The agencies' coordination tools can handle the same basic problem where the product is not an SBSA.

The agencies should coordinate closely, but coordination does not require treating two different questions as one, namely which agency regulates the product, and which agency has a legitimate

interest in conduct connected to it. Modern markets will often give both agencies an interest in the same facts without giving both agencies primary jurisdiction over the same instrument.

Putting the Pieces Together: A Proposed Classification and Coordination Framework

The recommendations above can be reduced to a relatively simple framework. The point is not to eliminate every hard case. Financial regulation rarely offers that luxury. The point is to make the ordinary cases easy, identify what actually makes the hard cases hard, and give exchanges and market participants an answer before they begin trading rather than after the market has developed.

The framework should proceed in six steps.

1. Start with the contract. What economic position did the trader actually buy?

The first question is the simplest one. What determines payment, and what exposure does the instrument create? A total return swap on Apple stock gives the trader continuing exposure to Apple stock. A contract on whether Apple launches a new product gives the trader exposure to whether Apple launches the product. Those may be related economic propositions, but they are not the same position.

This first step does not replace the statutory definitions. It tells the regulator what instrument it is applying those definitions to. Labels should not do the work. Calling a threshold a “strike,” a payment an “exercise,” or an instrument a “perpetual,” “option,” or “event contract” cannot change the economic rights the contract actually creates.

2. Ask whether the contract fits an affirmative CEA swap provision.

For event contracts, the natural starting point is CEA section 1a(47)(A)(ii), which reaches agreements providing for a payment or delivery dependent on an event or contingency associated with a potential financial, economic, or commercial consequence. The statute does not require the participant to prove that she entered the contract to hedge an existing commercial exposure, and it does not require the event ultimately to produce the anticipated economic consequence.

If the contract satisfies that provision, it begins within the statutory swap framework unless another provision changes the result. That is not the end of the analysis because Congress separately excluded specified instruments from “swap” and separately identified the subset of swaps that are security-based swaps. But it is the correct place to begin.

3. Ask whether the contract is actually based on a security or loan.

The fact that an event concerns a public company is not enough. Nor is the fact that shareholders care about it, that it appears in an SEC filing, or that the market expects the stock to move.

The relevant question is whether the instrument itself is economically indexed to, or creates or objectively replicates exposure to, the price, return, value, yield, or other legally relevant interest in the security or loan. A total return swap on a single stock presents the straightforward case. An event contract on FDA approval does not become a swap "based on" the pharmaceutical company's stock simply because approval may cause that stock to rise dramatically.

This distinction should work in both directions. The Commissions should not stretch the single-security provision to capture independently defined events, but neither should an instrument escape securities treatment merely because its drafter gives a security-linked position a new name.

4. For issuer-event contracts, ask what the specified event itself does.

Where the contract is based on an event relating to a single issuer, the separate issuer-event provision supplies the more specific question. Does the event itself "directly affect" the issuer's financial statements, financial condition, or financial obligations?

Default and bankruptcy show what directness looks like. The event itself operates on a financial obligation or financial condition. A merger closing may do the same where consummation itself transfers cash, creates or assumes liabilities, changes assets or goodwill, or alters the issuer's capital structure.

Product launches, FDA decisions, vehicle deliveries, sporting results, management changes, and ordinary operating milestones ordinarily present a different relationship. They may have enormous financial consequences. They may be material to investors. They may move the stock immediately. But their financial effects arrive through the business rather than because the event itself operates on the financial attribute identified by Congress.

Reported financial results deserve the same event-specific analysis. A report of revenue or EPS reveals the result. It does not create or alter it. The fact that the content of a disclosure is financial does not by itself make the disclosure an event that directly affects the financial statement it communicates.

The Commissions therefore should not substitute "materially affects," "significantly influences," "is predictive of," or "matters to investors" for the statutory phrase "directly affects." Those concepts can be important for securities regulation without answering the product-classification question.

5. Apply the statutory exclusions according to the economic rights the instrument creates.

A product that otherwise satisfies a swap provision may nevertheless be excluded because it is a future, a securities option, or another instrument Congress expressly removed from the swap definition.

Here too, substance should control. A conventional call on a security remains a securities option. Cash settlement does not necessarily change that result where the instrument preserves the economic relationship of an option on the stock. At the same time, an independently defined event involving a public company does not become an "option or privilege on" the company's securities simply because an options exchange uses a strike, expiration date, exercise convention, or fixed payment to administer the contract.

A contract that uses a single stock price as its settlement condition presents the harder case because the contract directly observes the value of the security. The Commissions should acknowledge that difficulty rather than resolve it through labels. A fixed event contract that pays the same amount whether a stock finishes one cent or $150 beyond a threshold does not create the same economic exposure as stock ownership, a total return swap, or a conventional call. To the maximum extent the statutory text permits, the Commissions should preserve a CFTC-regulated path for such fixed terminal contracts. If the statutes compel securities treatment for a particular structure, the agencies should use available exemptive and alternative-compliance tools rather than allow a single price observation to trigger unnecessary duplication.

6. Once the product is classified, deal separately with the other Commission's legitimate regulatory interests.

Product jurisdiction is not the same thing as regulatory interest. An issuer-related event contract may properly remain a CFTC-regulated product while generating information that is extremely important to the SEC. The reverse can also occur.

The proper response is coordination. The Commissions should share transaction, position, order, and surveillance information where activity in one market is relevant to the other's responsibilities. They should coordinate surveillance and enforcement where conduct crosses markets. And where a product genuinely triggers obligations under both regimes, they should use notice registration, deemed filing, alternative compliance, and reliance on substantially equivalent books, records, reporting, and surveillance systems rather than require the same regulatory function to be performed twice.

A second regulator's interest in a trade does not make the trade a second product.

The Framework Should Be Applied Before Trading Begins

These six steps should be applied to the terms and characteristics of the instrument before it is offered for trading. That follows the approach the Commissions adopted in 2012 and is essential to an exchange-traded market. The exchange, clearinghouse, market participants, and regulators all need to know which regime governs when the product is listed, not after everyone has observed what the stock did, how material the event proved to be, or why particular customers decided to trade.

An unchanged contract should likewise not migrate between regulatory categories because outside facts later change. A surprising FDA decision does not create a different financial instrument from an expected FDA decision. A contract concerning a private company does not acquire different economic rights merely because the company later becomes public. Later events may create new surveillance, enforcement, disclosure, or conduct issues, but those questions should be addressed as such rather than through retroactive product reclassification.

For the same reason, the Commissions should state expressly that the following facts are insufficient standing alone to determine product jurisdiction: the referenced company's status as a public issuer, the event's materiality to investors, disclosure of the event under the federal securities laws, the presence of material nonpublic information, expected or realized stock-price impact, statistical correlation with a security, the reason a particular trader entered the position, the venue or terminology used to describe the product, or the fact that a trader could have expressed a similar view through a security.

Those facts may matter enormously for other regulatory purposes. They simply answer different questions.

What the Framework Produces

The practical results are intuitive:

Contract	Treatment under the proposed framework	Reason
Contract on whether the FDA approves Drug X	CFTC-side event contract	The contract settles on agency action. The commercial and securities consequences flow from approval rather than constituting the event itself.
Contract on whether Apple launches a specified product	CFTC-side event contract	The economic object is the launch, not Apple stock. A resulting stock-price reaction does not change the contract's exposure.
Contract on whether Company X reports EPS above $2.00	CFTC-side under the proposed interpretation	The report reveals a financial result. It does not itself create or alter the

		issuer's financial condition or obligation.
Contract on whether an issuer defaults on specified debt	SBS-side	Default itself directly operates on the issuer's financial obligation.
Contract on whether a merger closes	Depends on the transaction, and can be SBS-side	Consummation may itself change cash, assets, liabilities, goodwill, securities, or capital structure.
Fixed contract paying if Apple stock is above $250 at a stated time	Hard case. Preserve a CFTC-side path where the statutes permit	The contract observes the security's value directly but does not transmit the magnitude of the security's return.
Total return swap on Apple stock	SBS-side	The instrument creates continuing economic exposure to the stock's return.
Perpetual contract providing continuing gains and losses based on Apple stock	Securities-linked. Apply the security-futures or other appropriate securities-linked definition according to its structure	The economic object is continuing exposure to the security itself, not a discrete independent event.

No framework will eliminate every boundary question, and the Commissions need not pretend otherwise. Congress and the Commissions have already provided a joint interpretation process for genuinely difficult classification questions. That process should remain available for the unusual cases.

But unusual cases should not obscure the ordinary rule. Start with what the contract pays on and what economic position it creates. Apply the affirmative swap provisions. Apply the narrower SBS provisions where the contract actually creates securities exposure or the specified issuer event itself directly affects the financial attributes Congress identified. Apply the exclusions according to the economic rights they cover. Make that determination before trading begins. Then address legitimate cross-market concerns through coordination rather than by changing what the product is.

That framework gives each part of the statute something to do, gives market participants a rule they can actually apply, and gives both Commissions access to the information and authority they need without requiring every market that interests both regulators to become regulated twice.

Conclusion

The products described in the Request for Comment may be new, but the jurisdictional problem is familiar because Congress created one regime principally for securities and the capital instruments and investment relationships they represent, another for derivatives that transfer risk or create exposure to uncertain economic events, and specific rules for the places where those categories overlap.

Those rules should be applied according to what the instrument actually does. An event concerning a public company does not become a securities product merely because shareholders care about the answer. The issuer-event prong requires the event itself to directly affect the issuer's financial statements, financial condition, or financial obligations, while the securities-option exclusion applies to an actual put, call, straddle, option, or privilege on a security or securities interest, including appropriate cash-settled or synthetic forms. The CEA, meanwhile, expressly reaches contracts whose payments depend on events or contingencies associated with potential financial, economic, or commercial consequences. The same functional approach works in the other direction, so a new wrapper that actually creates continuing single-stock exposure should be analyzed as a genuine securities-linked derivative, including under the security-futures framework where its terms satisfy that definition.

The Commissions should make those lines clear enough to apply before trading begins by classifying the contract from its terms and economic characteristics rather than later stock-price movements, materiality, correlation, labels, or a particular trader's reason for entering it. Genuinely difficult products can use the joint mechanisms the agencies have already created for difficult classification questions.

A clear jurisdictional line also leaves no regulatory gap because the SEC may have a substantial interest in activity surrounding a CFTC-regulated event contract just as the CFTC may care about conduct touching securities markets, and information sharing, cross-market surveillance, coordinated enforcement, and appropriate alternative compliance can address those intersections. Where both regimes genuinely apply, notice registration, deemed filing, tailored reporting, and similar tools can reduce duplication without changing what the product is.

An FDA decision or product launch can move a company’s stock dramatically without turning a contract on that event into a contract on the stock. A merger closing may itself alter assets, liabilities, cash, goodwill, or capital structure, while a reported financial metric presents a different relationship. The contract settles on disclosure of a result that reveals the financial

statements rather than directly affecting them. Classification should follow the event specified and the rights created, not the subject's importance to shareholders or the prices of other instruments that react.