PAYWARD

Via Electronic Submission

August 24, 2026

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

**Re: Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance; RIN 3235-AN79**

Dear Mr. Kirkpatrick:

Payward, Inc.[1] ("Payward") welcomes the opportunity to comment in response to the Commodity Futures Trading Commission's ("CFTC") and the Securities and Exchange Commission's ("SEC") (together, the "Commissions") Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (the "RFC").[2] We commend the Commissions on their efforts to draw clearer regulatory lines for innovative products that may implicate both CFTC and SEC regulatory interests and to develop potential approaches to enable alternative compliance.

Payward is a unified financial infrastructure platform that powers a family of products advancing an open, global financial system. Built on a single shared architecture, Payward enables customers to hold, trade, earn, pay, and invest across asset classes without friction or fragmentation. At its core, Payward provides the infrastructure layer behind Kraken and a growing set of purpose-built products. Our businesses include NinjaTrader Clearing LLC ("NinjaTrader"), a CFTC-registered futures commission merchant ("FCM"), which offers a wide range of futures to retail traders, Bitnomial LLC ("Bitnomial"), the first fully CFTC-licensed derivatives company in the United States built for digital assets, Kraken Securities LLC ("Kraken Securities"), an SEC registered broker-dealer and FINRA member, and Kraken Adviser LLC, an SEC Registered Investment Adviser ("Kraken Adviser").

**Executive Summary:**

1. **Issue Joint Guidance On Functional Classification.** The Commissions should promptly clarify how innovative products are classified based on their economic substance. Clear joint guidance or rulemaking would give regulated venues a predictable pathway to list products while preserving margin, clearing, surveillance, and customer-protection safeguards.

2. **Adopt A Technology-Neutral Look-Through Rule For Tokenized Assets.** A tokenized asset, whether a security or a commodity, should retain the regulatory classification of the underlying

[1] Payward official website, available at https://www.payward.com.
[2] Commodity Futures Trading Commission, "Joint Request for Comment on Further Definition of ''Swap'' and ''Security-Based Swap'' and on Alternative Compliance," RIN 3235–AN79, 91 Fed. Reg. 37873 (June 24, 2026).

asset it represents. This approach would prevent technology alone from creating new jurisdictional uncertainty and support consistent investor protections.

3. **Establish A Practical Alternative-Compliance Pathway.** Where CFTC and SEC requirements are substantively equivalent, compliance with one Commission's framework should be able to satisfy duplicative requirements of the other. A coordinated approach would lower unnecessary compliance costs, encourage activity on regulated U.S. venues, and strengthen market integrity.

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## I. Harmonization of CFTC and SEC Regulatory Frameworks for Innovative Products Promotes United States Leadership in Digital Asset Markets

Market participants are operating in an increasingly converging financial ecosystem where financial markets are evolving rapidly and becoming more interconnected across asset classes. New trading models, digital infrastructure, and onchain, automated systems are increasingly blurring jurisdictional lines. Payward has experienced this convergence firsthand. Our customers increasingly demand access to a broad suite of financial products through a single, integrated platform.

In light of this, we believe it is critical for the Commissions to coordinate in areas of common regulatory interest where collaboration can enhance regulatory effectiveness and market integrity. We support the Commissions' continued efforts to provide greater certainty regarding jurisdictional boundaries and to reduce duplicative and operationally impractical regulatory requirements, which is essential to fostering innovation in U.S. financial markets while maintaining robust customer protections.

### A. <u>Regulatory Uncertainty Has Driven Innovation Offshore</u>

Over the past several years, the absence of clear, harmonized regulatory frameworks for innovative products that may implicate both CFTC and SEC regulatory interests has imposed significant costs on U.S. market participants. Market participants have been forced to navigate a patchwork of guidance, enforcement actions, and no-action letters that have provided insufficient clarity on fundamental questions, including whether a given digital asset or derivative is a "swap," a "security-based swap," or some other instrument entirely. This uncertainty has had a chilling effect on innovation and investment in the United States, driving capital, talent, and trading volumes to offshore venues with far less oversight than U.S. regulated financial markets.

In recent years, market participants have sought to develop a range of innovative products that may raise interpretive questions under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Title VII"). Market participants have sought clarity from the Commissions regarding the regulatory lines for agency oversight of innovative products and with respect to compliance where products may touch on the regulatory interests of both Commissions. Given these concerns, Payward urges the Commissions to act decisively in resolving these interpretive questions.

### B. Harmonization Will Strengthen U.S. Markets and Enhance Customer Protection

Payward believes that harmonization of the Commissions' regulatory frameworks for innovative digital asset products, including whether a product should be treated as a "swap," a "security-based swap," or some other instrument, will yield several benefits, including the following:

1. **Increased U.S. competitiveness.** The U.S. risks relinquishing its historical leadership in financial markets if domestic regulatory frameworks continue to lag behind the pace of innovation. Other jurisdictions, including the European Union, the United Kingdom, Singapore, and Hong Kong, have made significant strides in developing fit-for-purpose regulatory regimes for digital assets and tokenized products. The Commissions should seize this moment to ensure that the United States remains the premier jurisdiction for lawful innovation in digital markets.

2. **Enhance market integrity.** A unified regulatory framework that addresses the jurisdictional lines for innovative products that may implicate both CFTC and SEC regulatory interests will encourage market participants to develop, list, and trade innovative products on regulated U.S. venues, rather than on unregulated or less-regulated offshore platforms that may lack adequate surveillance, transparency, and customer protection.

3. **Improve customer protection.** When market participants can clearly identify the applicable regulatory regime and compliance requirements for a given product, customers benefit from greater transparency, more reliable disclosure, and more effective enforcement.

4. **Reduce compliance costs.** Where trading in economically related or functionally similar product classes implicate both SEC and CFTC regulatory interests, there are circumstances in which compliance with one Commission's regulatory framework could appropriately satisfy substantially similar requirements of the other Commission. Duplicative and overlapping compliance obligations impose disproportionate costs on market participants, particularly emerging platforms and smaller exchanges that are critical to competition and innovation. An alternative compliance framework that recognizes the functional equivalence of the Commissions' regulatory requirements would reduce these costs while maintaining the protections that both agencies seek to achieve.

Payward respectfully urges the Commissions to issue clear, joint guidance, and, where appropriate, a joint rulemaking, that provides market participants with the regulatory certainty they need to engage in responsible innovation within the United States as discussed in greater detail below.

## II. The CFTC and SEC Should Make Clear That Perpetual Contracts Referencing Equity Securities Should be Treated as Security Futures

Question 11 of the RFC asks whether there is a need for greater clarity from the Commissions regarding the treatment of futures, including security futures, in the context of innovative markets, and specifically asks whether a cash-settled perpetual contract referencing an equity security could be

treated as a security future. The RFC also asks what effects the introduction of such products could have on liquidity formation, price discovery, and hedging activity, particularly with regard to the derivatives and underlying cash equity markets. Payward submits that the Commissions should provide clear guidance confirming that cash-settled perpetual contracts referencing an equity security should be treated as security futures. This classification is supported by the Commissions' statutory framework and policy objectives.

### A. Perpetual Contracts Referencing Equity Securities are Functionally Equivalent to Futures

Perpetual contracts are derivative contracts that have no fixed expiration date and rely on a periodic funding rate mechanism that is designed to maintain relative price parity with the underlying asset's spot price. While perpetual contracts lack a fixed expiration date, they are functionally equivalent to futures contracts in all other material respects: they are standardized agreements that reference the price of an underlying asset, they require the posting of margin, they settle periodically through a funding rate mechanism that is economically analogous to the daily settlement of futures, and they expose the holder to the same directional risk as a traditional futures contract. The treatment of perpetual contracts as futures is supported by the CFTC's order issued on May 29, 2026 permitting a registered DCM to list a perpetual contract referencing the spot price of bitcoin, which treated such contract as a future[3] and its ongoing consideration of other assets, such as storable energy commodities, as potentially permissible underlying assets for perpetual contracts.[4]

Any contract of sale of a commodity for future delivery (or option on such a contract), as well as any security futures product, is excluded from the "swap" definition under section 1a(47)(B)(i) of the Commodity Exchange Act ("CEA").[5] This exclusion reflects Congress's intent that futures and security futures products be regulated under their respective frameworks, meaning CFTC regulation for commodity futures, and joint CFTC-SEC regulation for security futures, rather than being treated as swaps or security-based swaps. This exclusion also supports the assertion that perpetual contracts referencing equity securities should be treated as security futures rather than as swaps or security-based swaps because their only distinguishing factor from traditional futures is the lack of an expiration date, which does not otherwise alter their functional equivalence to futures contracts.

A perpetual contract referencing an equity security shares the essential economic characteristics of a security future and should be classified accordingly, despite lacking a fixed expiration rate. This difference between a perpetual contract and traditional future is a structural difference, not an economic one. The funding rate mechanism in a perpetual contract effectively simulates the role of a traditional futures contract, continuously resetting the economic exposure of the parties in a manner

[3] See In the Matter of the Request for Approval by KalshiEX LLC of the BTCPERP Futures Contract, Order Approving KalshiEx LLC BTCPERP Futures Contract (May 29, 2026).
[4] Commodity Futures Trading Commission, Request for Comment on the Extension of Standard Futures Contracts to 24/7 Trading and on Perpetual Contracts Referencing Physically Delivered or Storable Energy Commodities, 91 Fed. Reg. 38334 (June 25, 2026).
[5] CEA Section 1a(47)(B)(i) (". . . The term "swap" does not include—(i) any contract of sale of a commodity for future delivery (or option on such a contract), . . . security futures product . . .").

that is functionally equivalent to maintaining a position in a series of short-dated futures. The Commissions should not permit this structural variation to create regulatory ambiguity where the economic substance is clear.

### B. Classification of Perpetual Contracts Referencing Equity Securities as Security Futures Provides a Clear, Existing Regulatory Pathway

Security futures are jointly regulated by the CFTC and the SEC under a well-established framework that includes robust requirements for margin, clearing, surveillance, and customer protection. Under the existing regulatory framework, security futures products that are futures on single stocks or futures on narrow-based security indexes are jointly regulated by the CFTC and SEC, while those that are futures on broad-based security indexes as solely regulated by the CFTC. Classifying perpetual contracts referencing equity securities as security futures would:

- Leverage the existing joint regulatory infrastructure that Congress established for security futures under the Commodity Futures Modernization Act of 2000, rather than requiring the creation of an entirely new regulatory category;

- Provide market participants with immediate clarity regarding applicable registration, margin, clearing, and reporting requirements;

- Ensure that the product benefits from the market surveillance and anti-manipulation protections already applicable to security futures; and

- Avoid the creation of regulatory gaps or overlapping jurisdiction that could arise if perpetual contracts referencing equity securities were classified as swaps, security-based swaps, or mixed swaps—categories that may trigger conflicting or unclear compliance obligations.

### C. The Introduction of Perpetual Contracts Referencing Equity Securities Would Have Positive Effects on Liquidity, Price Discovery, and Hedging

The introduction of perpetual contracts referencing equity securities on regulated U.S. venues would have significantly positive effects on liquidity formation, price discovery, and hedging activity, including in the following ways:

1. **Liquidity formation.** Perpetual contracts are among the most liquid products in global digital asset markets, accounting for the majority of trading volume on many major exchanges. Introducing perpetual contracts referencing equity securities on regulated U.S. venues would attract substantial trading activity that is currently conducted on offshore platforms, deepening liquidity in both the derivatives market and the underlying cash equity market. Over the past decade, retail traders have become a sizeable block of liquidity in public equity markets. This enables everyday Americans to take control of their financial lives.

2. **Price discovery.** The continuous nature of perpetual contracts, and the funding rate mechanism that anchors the perpetual contract price to the underlying spot price, contributes to efficient and transparent price discovery. These products would complement existing listed derivatives markets by providing an additional venue for price formation that operates on a 24/7 basis, a feature particularly valuable in markets for globally traded equities.

3. **Hedging activity.** Perpetual contracts provide market participants with a flexible and capital-efficient hedging tool. Unlike traditional futures contracts, perpetual contracts do not require periodic rolling, which reduces transaction costs and operational complexity for hedgers. In particular, perpetual contracts provide retail traders with a simpler tool to hedge price risk within their equity portfolios as compared to dated futures, which requires close management, especially around expiry. Making these products available on regulated U.S. platforms under a clear security futures classification would expand the hedging toolkit available to institutional and retail investors, asset managers, and market makers.

Payward therefore urges the Commissions to confirm that perpetual contracts referencing equity securities may be treated as security futures under existing law, and to issue any necessary joint rules or guidance to facilitate the listing and trading of such products on regulated exchanges.

## III. The CFTC and SEC Should Classify Tokenized Assets Based on the Underlying Asset They Represent

Question 1 of the RFC asks what types of event contracts or other innovative products or product structures that may touch on the regulatory interests of both Commissions have raised interpretive questions for market participants, and how those questions should be resolved. The question further asks whether additional clarification is necessary to provide principled, objective criteria for distinguishing between swaps, mixed swaps, security-based swaps, or other securities or instruments excluded from the definition of "swap", and whether the Commissions should issue new or revised rules or interpretations to address these innovations. Payward submits that one of the most significant and consequential categories of innovative products raising interpretive questions for market participants is tokenized assets. The Commissions should adopt a clear, principled framework providing that tokenized assets should be classified based on the nature of the underlying asset they represent, rather than on the technological medium through which they are issued or traded.

Tokenization is a process by which the economic rights and obligations associated with a traditional financial asset are represented as a digital token on a blockchain or distributed ledger. The token is a technological wrapper around the underlying asset. It does not create a new or different type of financial instrument. A tokenized share of common stock, for example, carries the same economic rights (dividends, voting, liquidation preference) as the corresponding non-tokenized share. Therefore, Payward urges the Commissions to adopt a "look-through" approach to the classification of tokenized assets, under which tokenized equity securities are regulated as traditional securities, tokenized commodities are regulated as traditional commodities, tokenized debt instruments are regulated as traditional notes, bonds, or evidences of indebtedness, and tokenized derivatives are

regulated as traditional derivatives. The use of blockchain technology for issuance, transfer, clearing, or settlement would not, in and of itself, alter the regulatory classification of the asset or the derivative referencing it.

This approach would provide consistent treatment for economically equivalent assets, reduce uncertainty for issuers and market participants, and preserve the protections applicable to the underlying product. Payward therefore recommends the Commissions adopt a "look-through" principle through joint interpretive guidance or rulemaking.

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Payward appreciates the opportunity to provide comments on this important CFTC initiative concerning the Commissions' "Swap" and "Security-Based Swap" definitions and an alternative compliance framework. We remain committed to working with the Commissions to help address longstanding interpretive questions in an effort to provide greater clarity for innovative products and more effective compliance frameworks.

Respectfully submitted,

/s/ Jonathan Jachym

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