Gemini Space Station, Inc.
On behalf of Gemini Titan, LLC, Gemini Olympus, LLC, and Gemini Galactic Markets, LLC
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VIA ELECTRONIC SUBMISSION

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

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

Re: Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance—Release No. 33-11424; 34-105735; File No. S7-2026-21; RIN 3038-AF71; RIN 3235-AN79

Dear Secretary Kirkpatrick and Secretary Countryman:

Gemini Space Station, Inc. and its affiliates (collectively, "Gemini") respectfully submit this letter in response to the joint request for comment (the "Joint RFC") issued by the Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC," and together with the CFTC, the "Commissions") on June 18, 2026, regarding further definition of "swap" and "security-based swap" ("SBS") under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Title VII"), and regarding potential approaches to alternative compliance.

I. Statement of Interest

Gemini has a direct and substantial interest in the questions the Joint RFC raises because Gemini's corporate family already operates on both sides of the jurisdictional line the Joint RFC addresses:

- Gemini Titan, LLC ("Titan") is registered with the CFTC as a designated contract market ("DCM") and lists event contracts for trading.
- Gemini Olympus, LLC ("Olympus") is registered with the CFTC as a derivatives clearing organization ("DCO") and clears and settles the contracts Titan lists. Olympus is in the process of expanding its risk management framework to support margined products, consistent with the DCO risk management requirements of 17 CFR Part 39.
- Gemini Galactic Markets, LLC ("Galactic") is a FINRA member broker-dealer registered with the SEC that operates as an introducing broker in NMS-listed securities, has been approved by FINRA for an alternative trading system ("ATS") for the trading of digital asset securities, and has applied to register as a futures commission merchant ("FCM") with the capacity to carry margined positions.

Taken together, Titan, Olympus, and Galactic are close to the kind of vertically integrated, dually regulated platform that the Commissions' March 11, 2026, memorandum of understanding on harmonization in areas of common regulatory interest (the "MOU") identifies as a candidate for a coordinated path to "appropriately tailored and regulated" treatment. Gemini's experience building parallel compliance infrastructure on both the CFTC and SEC sides of its business gives it a concrete, operational perspective on where the current definitional lines create genuine ambiguity, and where duplicative—rather than complementary—regulation adds cost without adding customer or investor protection.

Gemini's interest in these questions reflects a broader industry and company trajectory toward integrated, multi-product platforms—what Gemini has described as a "super app" for the markets economy, bringing crypto, equities, derivatives, and event-contract products together under a single regulated umbrella. Gemini has described this ambition publicly: "Crypto was just the beginning. Our goal is to bring many financial products, from crypto to equities to derivatives, under one regulated platform." Consistent with that trajectory, Gemini launched commission-free equities trading for eligible U.S. users in July 2026, and Olympus's DCO registration is intended, among other things, to support Gemini's eventual expansion into perpetual futures of various sorts. Realizing that model responsibly, however, depends on a jurisdictional framework that classifies novel, cross-cutting products consistently and predictably, regardless of which Commission's registrant offers them.

Gemini's comments below use two categories of products to illustrate where the current definitional lines create the most consequential ambiguity, for Gemini and for the broader set of market participants pursuing similar products: event contracts that reference a security or an issuer's reported performance (including contracts that settle on an issuer's reported financial or operating results, or "KPI-linked event contracts"), and perpetual contracts referencing equity securities and securities indexes. Gemini believes contracts in both categories should be capable of being offered with regulatory certainty, consistent with the framework each Commission has already begun to develop. Section II below sets out Gemini's three principal recommendations—on event contract classification, on perpetual and security futures products, and on alternative compliance—because a coherent, predictable jurisdictional framework benefits the market as a whole, not any single platform or product. Section III then addresses the Joint RFC's remaining questions on definitional clarity.

Gemini is not alone in raising these issues. Cboe Exchange, Inc. has filed a proposed rule change, currently pending before the SEC, to list "binary options overlying key performance indicators ('KPIs') reported by certain issuers of stock" (File No. SR-CBOE-2026-061; Release No. 34-105877), and Nasdaq MRX has filed a related proposal to list "Outcome Related Options" referencing the Nasdaq-100 Index and the Nasdaq-100 Micro Index. Both filings confirm that the Commissions' own regulatory apparatus already contemplates KPI-linked and index-linked binary contracts as exchange-listed securities options—not swaps. Separately, and as discussed further in response to Question 11 below, a growing number of market participants are seeking to list perpetual contracts referencing equity indexes and other asset classes under the CFTC's recently established framework for such products. Gemini respectfully submits that the same economic instrument should not be regulated differently depending on the type of registrant or venue offering it, provided comparable listing, surveillance, and disclosure standards apply. Gemini's comments below are offered in that spirit.

II. Gemini's Principal Recommendations

Gemini addresses three matters first, ahead of the Joint RFC's remaining questions, because these are where the current ambiguity is most consequential across the market: the classification of event contracts referencing a security or an issuer's reported performance (Questions 1–3, 4, 6, and 7–8); the treatment of perpetual contracts referencing equity securities and securities indexes (Question 11); and the potential for alternative compliance to reduce duplicative registration for dually regulated market participants like Gemini (Questions 12–15).

A. Event Contract Classification (Questions 1–3, 4, 6, and 7–8)

Questions 1–3: Event Contracts and the Swap / SBS / Excluded-Security Boundary

The event contracts raising the most acute interpretive questions are KPI-linked event contracts—contracts that settle based on whether a specific, publicly reported metric of a named issuer (for example, quarterly revenue, earnings per share, or a subscriber or unit-sales figure disclosed in the issuer's SEC filings or earnings releases) meets, exceeds, or falls short of a stated threshold. These contracts sit at the intersection of three possible classifications: (i) a swap, if treated as an ordinary event contract under CEA section 1a(47)(A)(ii); (ii) an SBS, under the "SBS Event Contract Prong" of Exchange Act section 3(a)(68)(iii); or (iii) an excluded security—a "put, call, straddle, option, or privilege" on a security—under CEA section 1a(47)(B)(iii).

Gemini recommends that the Commissions adopt a principled, two-step test to resolve this ambiguity across event contracts generally, not just KPI-linked contracts:

- Step one: Issuer nexus. Does the contract's payout depend on the occurrence of an event tied to a single, identified issuer of a security (or the issuers within a narrow-based security index), as opposed to a broad-based, macroeconomic, or non-issuer-specific event? If the latter, the contract should presumptively remain a swap subject to CFTC jurisdiction, consistent with the Commissions' stated intent to keep the SBS categories narrow relative to the broad swap definition.

- Step two: Structural form. If the contract has an issuer nexus, does it have the structural characteristics of a standardized option—fully collateralized or premium-paid at inception, a fixed and disclosed strike or threshold and expiration set by the platform (rather than individually negotiated bilateral terms), and a binary or otherwise capped payout—as opposed to the ongoing, bilateral payment obligations characteristic of a swap? If so, the contract should be treated as an excluded "put, call, straddle, option, or privilege" on a security under CEA section 1a(47)(B)(iii), and therefore as an ordinary security rather than a swap or SBS. If the contract has an issuer nexus but lacks these structural characteristics (for example, because it involves ongoing variation payments or individually negotiated terms), it should be analyzed as an SBS under the Event Contract Prong.

This framework has the advantage of tracking economic substance rather than labels or venue, and of aligning with how the Commissions already appear to be analyzing the Cboe and Nasdaq MRX filings referenced above. Gemini urges the Commissions to confirm through interpretive guidance or rulemaking that this analysis applies equally to functionally identical instruments offered outside the national securities exchange context, including through an SEC-registered broker-dealer operating an ATS.

Gemini's proposed framework is not intended to force a single, exclusive answer as between CFTC and SEC/FINRA regulation for this category of product. A fully collateralized, standardized, binary event contract with an issuer nexus has the structural characteristics of both a listed CFTC event contract and an excluded securities option, and Gemini requests that the Commissions confirm that such a contract may be offered through either channel—as a CFTC-regulated event contract listed on a registered DCM, or as an SEC- or FINRA-regulated security offered through a broker-dealer, ATS, or national securities exchange—at the offering platform's election, so long as the requirements applicable to the chosen channel are satisfied. This is not a novel proposal: security futures products have long been eligible for listing on either a registered national securities exchange or a designated contract market, through the notice-registration framework Congress created for that purpose (CEA section 5f; Exchange Act section 6(g)), precisely because Congress recognized that instruments implicating both Commissions' interests could be safely offered through either regulatory channel without requiring a registrant to satisfy both regimes in full. Gemini asks the Commissions to extend a functionally similar dual-pathway approach to KPI-linked and other issuer-specific event contracts, and, as discussed in response to Question 11 below, to perpetual contracts referencing single-name equities or narrow-based indexes. Gemini's recommendations on alternative compliance in response to Questions 12–13 below are intended to supply the mechanism that makes this dual pathway workable in practice.

Questions 7–8: The SBS Event Contract Prong and the Securities Option Exclusion

Gemini addresses Questions 7 and 8 next and as one because, taken together, they determine whether a given KPI-linked or security-referencing event contract is (a) an ordinary excluded security, (b) an SBS, or (c) a swap—the same three-way classification introduced in response to Questions 1–3 above. Question 8 asks when an event contract referencing a security should be treated as an excluded "put, call, straddle, option, or privilege" on that security; Question 7 asks when an event instead "directly affects" an issuer's financial statements, financial condition, or financial obligations for purposes of the SBS Event Contract Prong. Gemini recommends that the

Commissions apply these two questions as sequential steps of a single test: the structural inquiry under Question 8 first, and the substantive Event Contract Prong inquiry under Question 7 only for contracts that clear the issuer-nexus threshold but do not have the structural form of an excluded option.

On Question 8, Gemini recommends that a fully collateralized or premium-paid, standardized, binary-payout contract referencing a single issuer's reported KPI, or a security or index, be treated as an excluded "put, call, straddle, option, or privilege" under CEA section 1a(47)(B)(iii)—and therefore as an ordinary security rather than a swap or SBS—regardless of whether it is listed on a national securities exchange, traded through an SEC-registered ATS, or offered on some other SEC- or FINRA-regulated venue, so long as the venue applies comparable listing, disclosure, and surveillance standards. The pending Cboe and Nasdaq MRX filings referenced above are directly relevant here. Both proposals contemplate exchange-listed, standardized binary options—Cboe's referencing issuer-reported KPIs and Nasdaq MRX's referencing the Nasdaq-100 and Nasdaq-100 Micro Indices—that are economically indistinguishable from the KPI-linked event contracts described above. If the Commissions confirm that instruments of this kind are securities options when listed on a national securities exchange, Gemini urges the Commissions to confirm that the same economic instrument, offered with comparable investor protections through a registered broker-dealer's ATS, receives the same classification. A rule that turns solely on the type of registered venue, rather than on the instrument's economic substance and the protections actually applicable to customers, would not serve the Joint RFC's stated goal of a "level playing field" for "established firms and new entrants alike," regardless of whether they are registered with the SEC or the CFTC.

On Question 7, for contracts that have an issuer nexus but lack this structural form—for example, because they involve ongoing variation payments or individually negotiated terms rather than a standardized, prepaid structure—Gemini recommends an objective test for the Event Contract Prong: an event "directly affects the financial statements, financial condition, or financial obligations" of an issuer if, and only if, the event consists of the reporting, confirmation, or restatement of a specific line item or metric that appears in, or is derived directly from, the issuer's financial statements or its periodic or current reports filed under the Exchange Act (for example, Forms 10-K, 10-Q, or 8-K) or in the issuer's furnished earnings materials. Under this test, contracts settling on GAAP or IFRS financial statement line items—revenue, net income, earnings per share, debt covenant compliance, and the like—would satisfy the Event Contract Prong and be treated as SBS.

Gemini recommends a complementary safe harbor: contracts settling on metrics that merely correlate with, but are not themselves reported in, an issuer's financial statements or Exchange Act filings (for example, third-party estimates of web traffic, app-store rankings, or other externally sourced proxies for issuer performance) should presumptively fall outside the Event Contract Prong, and should instead be evaluated under the general swap definition described in response to Questions 1–3 above. This gives market participants and the Commissions a workable, document-based line—tied to what the issuer has actually reported—rather than a case-by-case economic materiality inquiry for every new contract.

Question 4: "Any Interest" in a Security

As used in the Single Security and NBSI Prongs, Gemini recommends that "any interest therein" require a genuine economic or ownership-type linkage to the referenced security itself—for example, a conversion right, a securities-lending or repo-type interest, or a payment obligation that tracks the security's price, value, or yield—and that it not be satisfied merely because an instrument's settlement depends on a fact about the security's issuer. Consider a contract that settles on whether a designated regulator, such as an antitrust authority reviewing a pending acquisition or the U.S. Food and Drug Administration reviewing a pending product application, approves or denies a matter involving the issuer by a stated date. Such a contract plainly has an issuer nexus and the outcome may be highly consequential to the issuer's business, but the contract has no formulaic, ongoing linkage to the price, value, or level of the issuer's equity security and conveys no ownership-type interest in it; the regulator's decision is a discrete event, not a value-tracking mechanism.

The same is true of issuer-specific event contracts generally, including the KPI-linked contracts discussed above: their connection to the issuer should be analyzed under the combined Event Contract Prong / securities-option framework described above, rather than through the Single Security or NBSI Prongs' separate and unrelated "any interest" gateway. Confirming this distinction would prevent the same issuer-specific event contract from being pulled toward SBS status through two different and inconsistent routes, and would let the Event Contract Prong—the provision Congress actually designed for event-driven, issuer-specific contracts—do that work.

Question 6: The SBS Single Security Prong

Gemini recommends that the Single Security Prong be clarified to apply only where a contract's payment obligations are based on the price, value, or level of a single security—and that contracts whose payout instead turns on the occurrence of an issuer-specific event (without direct reference to the security's price or value) be analyzed exclusively under the Event Contract Prong discussed in the responses above. Treating the same contract as potentially subject to two different SBS prongs, each with different interpretive histories, creates avoidable uncertainty.

B. Perpetual and Security Futures Products (Question 11)

Perpetual contracts—futures-style instruments with no fixed expiration that use a periodic funding rate, rather than convergence to a settlement date, to keep their price tethered to a reference market—have moved from a niche offshore product to a central, live regulatory question in 2026. On May 29, 2026, the CFTC took three coordinated actions: it approved KalshiEX LLC's bitcoin-referencing perpetual futures contract for listing on a registered DCM, the first Commission approval of a crypto asset perpetual contract; it issued a policy statement (91 Fed. Reg. 33,160 (June 3, 2026)) inviting DCMs to submit perpetual contracts referencing other asset classes—including, expressly, "equity securities and narrow-based security indexes"—for voluntary Commission review under CFTC Regulation 40.3; and, through its Market Participants Division, it issued an interpretive and no-action letter (CFTC Letter No. 26-17) addressing a registered FCM's intermediation of customer access to a foreign-listed perpetual futures venue.

The market has moved quickly to take the Commission up on that invitation. On August 18, 2026, Kalshi filed with the CFTC to list a perpetual contract referencing the MerQube U.S. Large Cap Index—a broad-based equity index tracking the 500 largest U.S.-listed companies—alongside a separate perpetual contract referencing the spot price of copper. Because both instruments reference broad-based or physical-commodity benchmarks, Kalshi's filings do not squarely test the boundary between the CFTC's and the SEC's jurisdiction. But the Policy Statement's own inclusion of "equity securities and narrow-based security indexes" among the asset classes meriting "independent analysis" confirms that a single-name equity perpetual, or a perpetual referencing a narrow-based security index, is coming and has not yet been definitively classified. Gemini believes the Joint RFC is the right vehicle to resolve that question before, rather than after, the first such product is filed—particularly given that CME Group has already sued the CFTC over its approval process for the initial round of perpetual contracts, underscoring how much is at stake in getting the jurisdictional line right the first time, on a durable, jointly supported basis rather than through unilateral, single-Commission action that invites litigation.

Gemini recommends that the Commissions extend the same broad-based/narrow-based distinction that Congress already drew for security indexes generally to perpetual contracts specifically:

- Broad-based reference assets. A cash-settled perpetual contract referencing a broad-based security index (or a non-security commodity) should continue to be treated as an ordinary CFTC-regulated future, consistent with the CFTC's approach to broad-based index futures generally and with its recent approval of KalshiEX's bitcoin perpetual.
- Single-name and narrow-based reference assets. A cash-settled perpetual contract referencing a single equity security, or a narrow-based security index, should be treated as a security future—and regulated accordingly, with the attendant CFTC/SEC joint oversight under CEA section 1a(47)(B)(i) and the existing security futures product framework—where it incorporates standardized daily (or more frequent) mark-to-market and funding-rate mechanics, margin requirements, and position limits comparable to existing security futures products, and where the reference security or index has a sufficiently deep, active, and continuously traded market to support a reliable funding-rate mechanism, mirroring the analysis the CFTC applied to bitcoin's spot market in approving the KalshiEX contract.

Providing this path now would allow price discovery and hedging activity in single-name and narrow-based equity perpetuals—activity that, absent a clear framework, is likely to migrate offshore or proceed under jurisdictional uncertainty—to occur instead on regulated, transparent, onshore markets, consistent with the Joint RFC's stated interest in the effects of such products on liquidity formation and the underlying cash equity markets. It would also spare market participants, and the Commissions, the litigation risk that has already materialized around the first generation of perpetual contract approvals. Gemini notes that Titan and Olympus, like other similarly registered DCMs and DCOs, are positioned to list and clear such products once the classification question is resolved, but Gemini's interest in this question is not limited to its own product plans: a clear, joint framework benefits every market participant weighing whether to bring this activity onshore.

C. Alternative Compliance (Questions 12–15)

Questions 12–13: A Workable Standard for "Substantially Similar" and Coordinated Registration

Gemini's own build-out illustrates why an outcomes-based "substantially similar" standard, paired with a coordinated registration mechanism, would meaningfully reduce duplicative compliance burdens without reducing investor or customer protection. As Olympus expands its DCO risk management program to support margined products, and as Galactic pursues FCM registration to carry margined products alongside its existing broker-dealer (and eventual ATS) registration, Gemini's corporate family will soon be required to maintain two largely parallel sets of capital, margin, and customer-asset-protection infrastructure for functionally similar risk—one on the CFTC side and one on the SEC/FINRA side—within a single affiliated group.

This alternative-compliance framework is also the mechanism that operationalizes the dual-pathway approach Gemini proposes in response to Questions 1–3 and 7–8 above for KPI-linked and other issuer-specific event contracts, and in response to Question 11 for single-name and narrow-based equity perpetuals. If a contract meeting Gemini's proposed structural criteria may be offered either as a CFTC-regulated event contract or as an SEC/FINRA-regulated security, at the offering platform's election, then a platform that lists such a contract on a registered DCM should not separately be required to satisfy parallel SEC-side registration or disclosure requirements for the same contract, and a platform that instead offers the same contract as a security through a broker-dealer, ATS, or national securities exchange should not separately be required to satisfy parallel CFTC-side requirements. The functional "substantially similar" standard and coordinated registration mechanism Gemini recommends below are intended to produce that result, consistent with the notice-registration model Congress already established for security futures products.

Gemini recommends that "substantially similar" be assessed functionally, across the following pillars, rather than by comparing rule text line by line:

- Capital adequacy: comparing the CFTC's FCM minimum financial requirements (17 CFR 1.17) to the SEC's broker-dealer net capital rule (17 CFR 240.15c3-1).
- Margin sufficiency: comparing a DCO's risk management and margin standards under 17 CFR Part 39 (including 17 CFR 39.13) to the SEC's margin requirements for security-based swap dealers (17 CFR 240.18a-3), the CFTC's uncleared swap margin rules (17 CFR Part 23, Subpart E), and FINRA Rule 4210.
- Customer asset protection: comparing commodity customer segregation requirements (17 CFR 1.20, Part 22, and Part 190) to the SEC's customer protection rule (17 CFR 240.15c3-3).
- Market surveillance and conduct standards: comparing a DCM's core principles under CEA section 5(d) to Regulation ATS and applicable FINRA rules.

Where an entity or its affiliate already satisfies one Commission's standard within a given pillar for a given product or risk type, Gemini recommends that the other Commission permit a streamlined notice filing or deemed-compliance mechanism for the corresponding requirement, conditioned on an information-sharing arrangement between the Commissions (or their

designated self-regulatory organizations) sufficient to allow each Commission to confirm the substitute compliance remains adequate on an ongoing basis. This would allow a dually regulated corporate family such as Gemini's to rely on a single, appropriately calibrated risk management and capital framework for economically similar exposures, rather than building and maintaining two complete, largely duplicative frameworks side by side.

Question 14: Surveillance, Examination, Enforcement, and Data Sharing

Gemini supports enhanced data sharing between the Commissions consistent with the MOU, and recommends that, for corporate groups with affiliated CFTC and SEC/FINRA registrants, the Commissions and the relevant self-regulatory organizations coordinate examination schedules and scope rather than conducting fully separate, sequential examinations that cover overlapping risk. Gemini's centralized clearing function (through Olympus) and its compliance and surveillance infrastructure will, once Galactic's FCM registration is complete, span both the derivatives and securities sides of its business; a single coordinated examination cycle addressing shared risk areas—capital, margin, and customer protection chief among them—would be more efficient for both the Commissions and Gemini than duplicative parallel review, without any reduction in supervisory coverage.

Question 15: Market Manipulation and Material Nonpublic Information

Gemini recommends that the Commissions develop a shared or interoperable surveillance data standard, informed by the existing Consolidated Audit Trail framework, so that potential manipulation or trading on material nonpublic information spanning an issuer's equity, options, and event-contract markets can be detected across venues and regulators rather than only within a single market. This is particularly important for KPI-linked event contracts, which raise materially the same concerns already addressed in the equity markets by the insider trading prohibitions and by Regulation FD. Gemini recommends that the Commissions consider clarifying that existing insider trading and Regulation FD principles apply to trading in KPI-linked event contracts on the basis of material nonpublic information about the referenced issuer's performance, regardless of whether the contract is ultimately classified as a security, an SBS, or a swap.

III. Responses to Remaining Definitional Clarity Questions

The following responses address the Joint RFC's remaining questions on definitional clarity. While less central to Gemini's immediate concerns than the matters addressed in Section II above, each affects the predictability of the classification framework within which Gemini and other market participants operate.

Question 5: The SBS NBSI Prong—Composition Changes and Transition Rules

Gemini supports clarification that a change in the composition of a narrow-based security index ("NBSI"), standing alone, should not require a fresh classification analysis where the contract's economic terms are otherwise unchanged; the relevant question should remain whether the contract is based on the value or level of the index. Gemini also supports revisiting the existing tolerance-period and grace-period rules in 17 CFR 240.3a55-2 and 240.3a55-3. At least one commenter in the 2012 rulemaking sought to extend the three-month grace period for index

migration between narrow-based and broad-based status to six months, and the Commissions declined. Gemini submits that a longer grace period, or a facts-and-circumstances safe harbor keyed to the frequency and predictability of index rebalancing, would reduce unnecessary product disruption without compromising the narrow scope the SBS categories are intended to have.

Question 9: Notes, Bonds, and Evidence of Indebtedness

Although less central to Gemini, this exclusion is relevant to Galactic's FINRA-approved but not-yet-operative ATS business, which is expected to trade tokenized and other digital asset securities, including privately placed tokenized notes. Gemini supports using indenture qualification under the Trust Indenture Act of 1939 and the presence of a genuine lender-borrower relationship as primary factors, as the Joint RFC suggests. Gemini also recommends that the Commissions confirm that recording an instrument on a distributed ledger, or issuing it in tokenized form, does not by itself affect whether the instrument is a note, bond, or evidence of indebtedness that is a security; the relevant factors should be the same ones long applied to conventional debt instruments—stated principal and maturity, a fixed or determinable interest or yield component, and the substance of the obligor-holder relationship—applied without regard to the technology used to record or transfer the instrument.

Question 10: Security Forwards and Physical Settlement

Gemini agrees that a rigid bright-line test may be difficult to administer given the variety of settlement mechanics across both traditional and digital asset security markets, but supports a multi-factor safe harbor that would give market participants meaningfully more certainty than the existing facts-and-circumstances approach. Relevant factors should include whether: (i) either party has the unilateral right to elect cash settlement in lieu of delivery; (ii) actual transfer of the security—or, for a tokenized security, the token or ledger entry representing beneficial ownership—occurs within a disclosed, commercially reasonable timeframe consistent with the relevant market's ordinary settlement cycle; and (iii) the contract lacks the standardized position-offsetting, netting, or margining mechanics typical of swaps. Gemini submits that a workable safe harbor along these lines would reduce uncertainty for spot and forward transactions in digital asset securities without disturbing the narrow scope Congress intended for the swap and SBS definitions.

IV. General Request for Comment and Data

Gemini would welcome the opportunity to provide the Commissions and their staffs with additional data or examples—including with respect to Titan's and Olympus's operating experience as a CFTC DCM and DCO, and Galactic's operating experience as an SEC/FINRA broker-dealer—and respectfully requests a meeting with the SEC's Division of Trading and Markets and Division of Corporation Finance and the CFTC's Division of Market Oversight to discuss the matters raised in this letter in greater detail.

V. Conclusion

Gemini appreciates the Commissions' effort to revisit these definitional questions and respectfully requests that the Commissions: (1) confirm, through interpretive guidance or rulemaking, that fully collateralized, standardized, binary event contracts with an issuer nexus—including KPI-linked event contracts—are analyzed under the structural framework described in response to Questions 1–3 and 7–8 above, and may be offered through either a CFTC-registered DCM or an SEC- or FINRA-regulated venue at the offering platform's election, so that economically identical instruments receive consistent treatment regardless of the pathway chosen; (2) adopt the objective, filings-based test for the SBS Event Contract Prong described in response to Questions 7–8; (3) extend the broad-based/narrow-based distinction described in response to Question 11 to perpetual contracts, so that single-name and narrow-based equity perpetuals are classified before, rather than after, the first such product reaches the Commissions; and (4) adopt an outcomes-based "substantially similar" standard for alternative compliance, paired with a coordinated registration or notice-filing mechanism along the lines of the existing security futures product framework, so that a platform's compliance with one Commission's requirements for a given product is recognized as sufficient without duplicative compliance with the other's, as described in response to Questions 12–13. Gemini also urges the Commissions to act on the remaining questions on definitional clarity addressed in Section III above, each of which affects Gemini's ability, and the ability of other market participants, to bring new, regulated products to market with confidence in their classification.

Gemini thanks the Commissions for the opportunity to comment and would be pleased to provide additional information as may be helpful.

Respectfully submitted,

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