SEC/CFTC Comment Letter: Registered Debt Securities and the Original Purpose Of Dodd-Frank Title VII

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August 24, 2026

Via Electronic Submission @ regulations.gov

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

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

Re: Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance; SEC File Number S7-2026-21; CFTC RIN 3038-AF71

Dear Secretary Countryman and Secretary Kirkpatrick:

Ironlight Group Inc. ("Ironlight")[1] respectfully submits this comment in response to the Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (the "RFC"), 91 Fed. Reg. 37873 (June 24, 2026). We write to address Question 9, which asks whether further clarification is needed to distinguish notes, bonds, and other evidences of indebtedness that are securities from swaps or security-based swaps.

Our position is straightforward: fully registered, fully disclosed, and fully compliant debt securities already achieve the transparency and investor-protection objectives that motivated Congress to regulate swaps under Title VII of the Dodd-Frank Act. The statutory exclusion for notes, bonds, and evidences of indebtedness that are securities, codified in CEA Section 1a(47)(B)(vii) is not a loophole. It is the deliberate expression of Congress's judgment that instruments already subject to the full weight of federal securities regulation need not be subjected to duplicative swap oversight. The Commissions should reaffirm and preserve this principle, not narrow it.

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[1] Ironlight Group Inc. is an Austin-based financial technology company developing infrastructure for global tokenized securities markets. Ironlight operates an alternative trading system in compliance with Regulation ATS through its registered broker-dealer, a FINRA member firm, and serves institutional investors, wealth advisors, and fund managers seeking efficient, compliant, and transparent capital markets workflows. This letter is submitted on behalf of Ironlight and its business partners involved in the structuring, issuance, and distribution of tokenized structured note products.

I. Title VII Was Enacted to Address Opacity in Unregulated OTC Derivatives

The legislative history of Title VII leaves no ambiguity about what Congress was trying to fix. The problem was the vast, opaque, bilateral over-the-counter derivatives market that had grown to hundreds of trillions of dollars in notional value with virtually no regulatory oversight, no central clearing, no public reporting, and no transparency into the web of interconnected counterparty exposures that threatened the global financial system in 2008.

Senator Debbie Stabenow stated: "For too long the over-the-counter derivatives market has been unregulated, transferring risk between firms and creating a web of fragility in a system where entities became too interconnected to fail." 156 Cong. Rec. S5905 (daily ed. July 15, 2010).

Senator Christopher Dodd described Title VII's purpose as ensuring that "over-the-counter derivatives would be regulated" through "tough requirements for central clearing, exchange trading, capital margin, and reporting that are critical to reducing systemic risk." 156 Cong. Rec. S3601 (daily ed. May 12, 2010).

The Commissions recognized this targeted purpose in the 2012 joint product definitions rule, citing the Financial Crisis Inquiry Commission's conclusion that the prohibition on OTC derivatives regulation under the Commodity Futures Modernization Act "was a key turning point in the march toward the financial crisis." 77 Fed. Reg. 48208 (Aug. 13, 2012) *citing "Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States"* (Jan. 27, 2011). Congress formally titled the legislation the "Wall Street Transparency and Accountability Act of 2010": transparency and accountability for instruments that previously had neither.

II. Registered Debt Securities Already Provide the Transparency Title VII was Designed to Create

The entire regulatory apparatus of Title VII, including central clearing, exchange trading, trade reporting, margin requirements, and capital standards, was constructed to impose on swaps the same type of transparency and risk management that the securities laws already impose on registered securities. Title VII built from scratch, for OTC derivatives, what the Securities Act and the Exchange Act have required of registered securities for nearly a century.

A registered structured note issued under a WKSI shelf registration is subject to:

(a) Securities Act registration, including a base prospectus and pricing supplement disclosing all material terms, risk factors, payoff mechanics, and issuer financials.

(b) Exchange Act reporting, including periodic filings that keep the market informed of the issuer's financial condition.

(c) FINRA supervisory requirements, including Reg BI suitability review, complex-product supervisory controls under FINRA Notice 12-03, and balanced disclosure standards under FINRA Notice 05-59.

(d) Antifraud provisions under Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5.

(e) ATS reporting and regulatory oversight under Regulation ATS.

These obligations already accomplish what Title VII was designed to achieve for swaps: the instruments are registered, publicly disclosed, distributed through regulated channels, and subject to comprehensive antifraud enforcement. There is no opacity. There is no hidden bilateral exposure. There is no regulatory gap for swap regulation to fill.

III. The Notes/Bonds Exclusion Reflects Deliberate Congressional Design

The statutory structure of CEA Section 1a(47)(B) makes Congress's intent clear. It contains a series of interlocking exclusions, each designed to prevent Title VII from overriding existing, functioning regulatory regimes:

- Subsection (B)(i) excludes securities futures products.
- Subsection (B)(iii) excludes options on securities subject to the Securities Act and Exchange Act.
- Subsection (B)(v) excludes contracts for the purchase or sale of securities on a fixed basis.
- Subsection (B)(vi) excludes contracts for the purchase or sale of securities on a contingent basis.
- Subsection (B)(vii) excludes notes, bonds, or evidences of indebtedness that are securities.

Under *Reves v. Ernst & Young*, 494 U.S. 56 (1990), a "note" is presumed to be a "security" from the outset: because the Securities Act and the Exchange Act define "security" to include "any note," courts "begin with a presumption that every note is a security." *Id. at 65*. That presumption yields only where the instrument bears a "strong family resemblance" to a narrow, judicially recognized list of non-security notes, such as consumer-financing paper or notes secured by a home mortgage or a small business's assets, *id. at 64-65*, assessed under four factors: (i) the motivations of a reasonable buyer and seller; (ii) the instrument's plan of distribution; (iii) the reasonable expectations of the investing public; and (iv) whether another regulatory scheme sufficiently reduces the instrument's risk to make securities regulation unnecessary. *Id. at 66-67*. A registered structured note offered under a WKSI shelf registration is purchased for investment, not to finance a consumer purchase or a business's working capital; it is distributed to the investing public through FINRA-regulated broker-dealer channels; and it is already subject to the full disclosure and antifraud regime of the Securities Act and the Exchange Act. It does not resemble any item on the Reves list, and the fourth factor confirms, rather than rebuts, its status as a security. These notes are therefore "securities" as defined in Section 2(a)(1) of the Securities Act of 1933, the very definition CEA Section 1a(47)(B)(vii) invokes to exclude "any note, bond, or evidence of indebtedness that is a security" from the swap definition. Because Reves resolves the security question in the affirmative, the exclusion applies on the statute's own terms, without regard to whether the instrument also happens to share economic features with a swap.

The line Section 1a(47)(B)(vii) draws should not turn on payout mechanics (many registered notes, like many swaps, reference an index, a rate, or an asset's performance) but on the character of the risk the holder bears. A noteholder has funded the issuer: it pays the purchase price up front, holds a balance-sheet claim against a single obligor, and, apart from awaiting repayment, owes no further performance of its own. That is a funded, non-executory credit exposure to the issuer, which is precisely the risk that registration, prospectus disclosure, and periodic reporting are designed to surface. A swap counterparty, by contrast, bears bilateral counterparty performance risk: both sides owe ongoing, mutual performance over the life of the contract, exposure runs in both directions, and no funding of the counterparty occurs at inception. Exchange-traded notes illustrate why this distinction, rather than the presence of index-linked or derivative-like payouts, should govern the exclusion. ETNs are registered, and function, as senior unsecured debt obligations of the issuing bank whose return tracks a reference index, a payout profile that can look a great deal like a swap. Yet an ETN holder is not a swap counterparty; it is an unsecured creditor of the issuer, bearing the same funded credit risk as any other bondholder. When Lehman Brothers filed for bankruptcy in 2008, holders of its ETNs had no collateral and no bilateral counterparty to call on. They stood in line with Lehman's other unsecured creditors and recovered only a fraction of their investment. That outcome is the hallmark of issuer credit risk, not swap counterparty risk, and it is exactly what Securities Act registration and Exchange Act reporting are calibrated to disclose. The Commissions should articulate the Section 1a(47)(B)(vii) exclusion accordingly: an instrument is a note, bond, or evidence of indebtedness excluded from the swap definition where the holder's exposure is funded, non-executory issuer credit risk, even where its payout is indexed to the same reference assets that might otherwise underlie a swap.

This architecture reflects Congress's systematic determination that instruments already regulated as securities do not present the risks Title VII was designed to address. The Commissions acknowledged this in the 2012 product definitions release: "The Commissions are aware of nothing in Title VII to suggest that Congress intended" for instruments already subject to established regulatory regimes "to be regulated as swaps or security-based swaps." 77 Fed. Reg. at 48211.

The Commissions further stated that they "have sought to further define the terms 'swap,' 'security-based swap,' and 'mixed swap' to include agreements, contracts, and transactions only to the extent that capturing these agreements, contracts, and transactions is necessary and appropriate given the purposes of Title VII, and to exclude agreements, contracts, and transactions to the extent that the regulation of such agreements, contracts, and transactions does not serve the statutory purposes of Title VII, so as not to impose unnecessary burdens." *Id*.

That principle should govern the Commissions' approach to Question 9. The question is not whether a structured note shares some features with a swap. The question is whether subjecting a fully registered, fully disclosed, fully collateralized debt security to swap regulation serves the statutory purposes of Title VII. It does not.

IV. The Commissions Should Adopt a Clear, Purposive Standard

We respectfully urge the Commissions to adopt the following principle in any further guidance on the notes/bonds exclusion:

A financial instrument that is (a) issued as a note, bond, or evidence of indebtedness under a Securities Act registration statement, (b) documented under conventional securities terms (not ISDA or swap-style terms), and (c) distributed through FINRA-regulated channels, via permissioned networks on transparent blockchain, with applicable investor-protection standards, qualifies for the exclusion under CEA Section 1a(47)(B)(vii) and should not be classified as a swap or security-based swap.

This standard is faithful to the text of the statute, consistent with the legislative history, and aligned with the Commissions' own stated approach of excluding instruments "to the extent that the regulation of such agreements, contracts, and transactions does not serve the statutory purposes of Title VII." It would provide the market certainty that issuers, investors, and infrastructure providers need while preserving the Commissions' authority to address genuine evasion through the existing anti-evasion framework under Dodd-Frank § 721(c) / 17 C.F.R. § 1.6.

The Commissions' concern about instruments that are structured as notes in form but function as swaps in substance is legitimate. The answer to that concern is the facts-and-circumstances, anti-evasion test, not a blanket narrowing of the exclusion that would sweep in instruments that are registered, transparent, and fully compliant with the securities laws. A structured note issued under a WKSI shelf with full prospectus disclosure, distributed through a FINRA-regulated ATS via blockchain, and settled through compliant infrastructure is not hiding in the shadows of the OTC market. It is operating in the most regulated, most transparent part of the capital markets. Subjecting it to duplicative swap regulation would impose costs without advancing the goals Congress set in 2010.

Title VII was Congress's response to the opacity, interconnection, and systemic fragility of the unregulated OTC derivatives market. Its purpose was to bring into the light instruments that had operated in darkness. Registered debt securities were never in the dark. They have been subject to the most comprehensive disclosure and investor-protection regime in the world since 1933. The statutory exclusion for notes, bonds, and evidences of indebtedness that are securities reflects Congress's recognition of that fact. The Commissions should reaffirm and preserve this exclusion, and adopt clear, principle-based criteria that give market participants the certainty to innovate within the existing securities regulatory framework.

We appreciate the opportunity to comment and would welcome the opportunity to discuss our views with the Commissions' staff.

Respectfully submitted,

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