SWANS

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Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
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Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
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Re: Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance; RIN 3038-AF71; RIN 3235-AN79; Release Nos. 33-11424 and 34-105735; File No. S7-2026-21

Dear Mr. Kirkpatrick and Ms. Countryman:

The founders of SWANS, a company in formation *("**SWANS**")* appreciate the opportunity to comment on the Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (the *"**Joint Request**")* issued by the Commodity Futures Trading Commission (the *"**CFTC**"*) and the Securities and Exchange Commission (the *"**SEC**"*, and together with the CFTC, the *"**Commissions**"*).

SWANS expects to list cash-settled event contracts in the near future. The intended focus of SWANS is the *"**catalyst markets**"*: contracts on economically significant, objectively verifiable determinations (e.g. regulatory, corporate, scientific, and macroeconomic), away from gaming or entertainment outcomes.

We sometimes refer to these instruments as "***catalyst contracts**"* as they allow market participants to isolate exposure to a specific catalyst whose effect is otherwise embedded, together with many other factors, in conventional instruments. Like other derivatives prices, the prices of such contracts may reflect risk premia, hedging demand, liquidity, and capital constraints in addition to expected outcomes, and should not be read as unbiased estimates of event probabilities. These events correspond to economic exposures that exist independently of the event-contract market: monetary-policy decisions affect financing costs and portfolio values, macroeconomic releases affect rates and asset allocation, and regulatory and clinical outcomes influence capital deployment.

SWANS offers these comments from the perspective of a prospective market operator.

The Commodity Exchange Act (the *"**CEA**"*) recognizes that transactions subject to it are *"affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through liquid, fair and financially secure trading facilities."*[1] Well-designed event contracts serve that core purpose: market participants bear discrete, dated risks that cannot be transferred efficiently through instruments keyed to continuous prices, and what is novel is the underlying, not the mechanism. The treatment of gaming and entertainment contracts is the subject of a separate proceeding, on which SWANS takes no position here; its resolution should neither delay nor cloud the classification of economically significant event contracts, and the criteria adopted here should apply

[1] Commodity Exchange Act § 3(a), 7 U.S.C. § 5(a).

uniformly. The classification problem is also practical: a venue must determine before listing whether a product is a swap, a security-based swap (*"**SBS**"*), a mixed swap, a securities option, or a future, and the criteria must therefore be objective and predictable enough to apply ex ante from the terms of the contract.

Summary

The Commissions request "principled, objective criteria" for distinguishing swaps, SBS, mixed swaps (instruments having elements of both), and instruments excluded from the swap definition. The comments below concern event contracts on economically significant events, or "catalysts". The overarching objective of these comments is **harmonization**: uniform, predictable treatment of all event contracts under a coherent, coordinated framework. By harmonization, SWANS means functional unification: the Commissions issuing coordinated interpretations that classify each type of event contract predictably from its terms, paired with alternative compliance so that a single venue and a single registration can serve the entire catalyst market, whatever the formal classification of any individual contract. The objective is a common supervisory outcome across contracts that differ only in statutory label to remove unnecessary infrastructural and registration duplication between them.

To that end, SWANS respectfully suggests that the Commissions:

A. **Ground classification in the settlement predicate and the reference object (Questions 1 and 3)**. "Event contract" describes an economic structure, not a statutory category. Classification should begin with two questions: what fact or condition legally determines settlement, and what is the object to which that condition refers.

B. **Interpret the SBS Event Contract Prong by the line between direct and indirect effects (Question 7).** The SBS definition captures a swap based on an event relating to a single issuer where the event "directly affects the financial statements, financial condition, or financial obligations of the issuer" (the *"**SBS Event Contract Prong**"*). SWANS suggests that an event be treated as directly affecting those items only where the settlement event is **itself a financial fact of the issuer**: a credit or insolvency event, a payment or other financial obligation, or the content of its financial statements. Where the financial effect is indirect, the prong would not be satisfied: regulatory determinations, scientific and clinical outcomes, operational milestones, product introductions, and quantities measured by parties other than the issuer would fall in that category, and contracts settling on them, referencing no security and no value of any security, **would not be security-based swaps**.

C. **Define the "value" of a security in straightforward terms (Questions 8, 4, and 6).** SWANS suggests that the value of a security be understood as what the security is worth in the market: its market price, yield, or a magnitude derived from them. The issuer's fundamentals (e.g. its revenues and margins) are, in economic terms, what that value reflects, but as a statutory matter they are financial facts of the issuer, and the statute addresses them, where it addresses them at all, through the SBS Event Contract Prong. Issuer disclosure of an event does not make a contract on that event an interest in the issuer's securities. An event contract referencing no security's price or "value" would not be an option on any security and would not satisfy the value-based prongs of the SBS definition; whether it is an SBS would turn solely on the interpretation in Recommendation B.

D. **Consider a harmonized pathway under which cash-settled event contracts could be listed as futures contracts (Questions 1, 2, 3, and 11).** The CFTC has recently acknowledged that "*an event contract may also be structured in other ways, including as a futures contract.*"[2] A futures

[2] *Prediction Markets; Public Interest Determinations*, 91 FR 35806, 35808 (June 12, 2026).

contract is **excluded from the swap definition** and would therefore fall outside the SBS framework.

E. **Ensure that one venue and one authorization serve the whole catalyst market (Questions 12 and 13).** Under Recommendations A through D, qualifying contracts would be swaps or futures under the CEA; for them, SWANS suggests that a single registration should suffice. On the question whether compliance with one Commission's requirements should satisfy the other's where the two are "substantially similar", SWANS answers yes: "substantially similar" should mean that the two frameworks address the same risks and produce the same supervisory results, not that rule texts match word for word; and the vehicle should be a streamlined notice to the SEC, with the SEC retaining complete data access and its antifraud, antimanipulation, and insider trading authority fully intact, and subject in all respects to the statutory limits on each Commission's authority.

F. **Map established market-integrity controls onto each contract's referenced event (Questions 14 and 15).** A listed event contract concentrates trading interest that already exists, dispersed, in the securities and options markets into a single surveilled order book. Four distinct risks (i.e. trading-venue manipulation, reference-market manipulation, resolution manipulation, and information abuse) warrant distinct, risk-based controls calibrated to the particular event rather than rigid universal restrictions. **Coordination should reduce duplication but not oversight.**

Sections I through V develop these recommendations.

I. A Proposed Interpretation of the SBS Event Contract Prong (Question 7)

The statutory definition of a security-based swap reaches an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, "*provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer*." The proviso is the operative limit, and SWANS respectfully suggests that the Commissions give it content through the following interpretation:

> An event relating to a single issuer *"**directly affects** the financial statements, financial condition, or financial obligations of the issuer"* where the event on which the contract settles, by the terms of the contract, is: (i) a credit or insolvency event of the issuer, including a default, failure to pay, bankruptcy, restructuring, acceleration, or an alteration of the issuer's capital structure; (ii) the incurrence, modification, or breach of a payment obligation, covenant, or other financial obligation of the issuer; or (iii) the **content of the issuer's financial statements**, including any reported financial measure, ratio, or restatement.
>
> An event **external** to the issuer's financial reporting and financial obligations (including a determination by a governmental or regulatory authority, a scientific or clinical outcome, an operational milestone, the introduction or release of a product, the outcome of a competition, or a quantity measured and published by a party other than the issuer) **does not satisfy the prong**, notwithstanding its economic significance to the issuer, because any effect of such an event on the issuer's financial statements, financial condition, or financial obligations is **indirect**: it is realized, if at all, through subsequent commercial results, accounting recognition, and market reassessment.

The statutory word *"directly"* must be given effect: virtually every material event concerning an issuer affects its finances through commercial and market channels, and if economic consequence sufficed, *"directly"* would do no work. The narrower reading distinguishes **events that are themselves financial**

facts of the issuer from events whose consequences are mediated by future sales, accounting recognition, and market repricing; it is the only administrable reading, fixing classification at listing from the terms of the contract; and it is consistent with the Commissions' 2012 joint rulemaking, which situated the prong in the credit default swap context.[3] The statutory context points the same way: *"financial condition"* appears alongside *"financial statements"* and *"financial obligations"*, and read in that company it is directed at the issuer's financial position (assets, liabilities, liquidity, capital, and solvency) rather than at every development bearing on commercial prospects or market valuation, which does not confine *"financial condition"* to booked accounting entries, but does mean it cannot be read as a synonym for anything capable of affecting enterprise value. Monetary-policy decisions, commodity prices, and regulatory changes move enterprise values across whole industries; economic materiality alone therefore cannot supply an administrable boundary between swaps and issuer-event SBS.

Application. A contract settling on whether a governmental authority approves a drug application, or on the announced outcome of a clinical trial, settles on an event external to the issuer's financial facts. SWANS acknowledges the serious argument that an approval, as an economically valuable authorization, affects the issuer's financial condition; in SWANS's view, however, materiality and valuation impact cannot themselves suffice, because no line item, covenant, or obligation is altered by the event itself, and the resulting revenues depend on subsequent production, pricing, reimbursement, adoption, competition, and execution. Under the proposed interpretation, such contracts would not be security-based swaps, unless the governmental action itself imposes a monetary liability, determines a financial-statement item or solvency condition, or produces a comparably immediate effect on the issuer's financial position. A contract settling on an announced operational metric (e.g. quarterly vehicle deliveries above a threshold) would likewise fall outside the prong, while a contract settling on whether the issuer's reported revenue exceeds a threshold references the content of the financial statements and would satisfy it. A contract settling on a quantity measured and published by a party other than the issuer (i.e. an independent data provider's volume measure, a governmental statistical release) would fall outside the prong a fortiori, because it does not reference the issuer's reporting at all; correlation with financial performance is a property of nearly every economic time series and is not the statutory test. And if economic consequence governed, a contract on the outcome of a sporting competition would become an SBS whenever a participating team's owner is a listed issuer.

SWANS emphasizes the limits of what it proposes: contracts settling on default, bankruptcy, failure to pay, restructuring, a judgment imposing a monetary liability, or an issuer's reported financial measures would satisfy the prong, and each statutory object retains content, *"financial condition"* through credit events, *"financial obligations"* through payment and covenant events, *"financial statements"* through contracts on reported measures.

II. A Proposed Understanding of the "Value" of a Security (Questions 8, 4, and 6)

Event contract describes an economic structure, not a statutory category, and the distinction between an event contract and another derivative on a security lies in the settlement reference: a listed binary option settles by reference to the price of the underlying security, while an event contract settles on an objectively verifiable event, pays a fixed amount, references no security's price, value, or yield, and involves no delivery of any security. Two contracts may share an identical binary payoff while referencing fundamentally different things: a contract paying if a named stock closes above a stated price is expressly dependent on the value of a security, while a contract paying if a governmental agency takes a specified action depends

[3] *Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 FR 48208, 48267 (Aug. 13, 2012).

on an independently defined event, even where that action substantially moves securities prices, so neither binary settlement nor labels should determine classification.

SWANS suggests, the value of a security is **what the security is worth in the market**: its price, its yield, direct fundamentals, or a magnitude computed from them. A regulatory approval or a delivery figure is information relevant to the value of a security; neither is the value of the security, and a contract that settles on such an event is **a contract on the event itself, not a contract on the value of any security**. The structure of the SBS definition supports this reading: were *"value"* read to capture any event bearing on what a security is worth, the Event Contract Prong, with its carefully drafted proviso, would be superfluous, and for the same reason, settlement on a metric the issuer happens to disclose should not, without more, bring a contract within the definition. The prongs of the SBS definition may overlap: a single-name credit default swap may reference a security or loan while also paying on a credit event. But in that context the instrument itself references the security or obligation, which is different from treating information about an issuer as an interest in its securities merely because that information enters the federal disclosure regime. Disclosure, price sensitivity, and relevance to investors are properly considerations, not independently sufficient conditions, and each prong should retain meaningful independent operation. SWANS requests that the Commissions state expressly, in any guidance issued in response to the Joint Request, what constitutes the *"value"* of a security for these purposes.

III. A Proposed Pathway: Cash-Settled Event Contracts Listed as Futures (Questions 1, 2, 3, and 11)

Classification should begin with the settlement predicate and the reference object; standardization, fungibility, futurity, centralized trading, and closability by offset are characteristics event contracts may share with futures, but should not by themselves determine classification. An event contract may be structured as a futures contract as recently acknowledged by the CFTC[2].

The structure of event contracts supports that pathway. A futures contract imposes **symmetric**, **bilateral obligations**: both parties are bound to settle at the contract's final value, and both post margin. A cash-settled event contract has the same anatomy. Settlement is automatic, with no election, exercise, or lapse. There is no strike in the classical sense of a purchase price, because the contract's terms define the event that constitutes the settlement value itself. And unlike an option premium paid for a right that may be exercised or abandoned, the amount paid on execution funds a binding, symmetric settlement obligation: on a fully collateralized market it functions as margin, fully pre-funding a bounded settlement value with no election or lapse. SWANS accordingly recognizes that event contracts share many characteristics with futures, which could support their categorisation as futures.

IV. Alternative Compliance for Dual-Character Contracts (Questions 12 and 13)

The Joint Request asks whether, where trading in economically related or functionally similar product classes implicates both Commissions' regulatory interests, compliance with one Commission's regulatory framework could appropriately satisfy *"substantially similar"* requirements of the other Commission, and how *"substantially similar"* should be viewed. SWANS suggests that the standard be assessed by regulatory objectives and supervisory outcomes rather than textual identity: whether the alternative framework addresses the same risks, subjects the registrant to comprehensive supervision, and provides the other Commission timely access to the information it needs, with material gaps closed through targeted conditions rather than duplicative compliance with a second framework.

The underlying objective is regulatory interoperability: many functions of a regulated market (matching, participant identification, order controls, risk management, market data, audit trails, surveillance, settlement governance, recordkeeping) are common across product categories, and the sound design is common infrastructure with regulatory and product-specific overlays where required, so that correct statutory classification never compels unnecessary duplication of market infrastructure. The Commissions' parallel joint request for comment on swap and SBS data reporting offers a further opportunity to pursue common data definitions and technical representations even where the ultimate reporting destination differs.

At the market level, SWANS suggests that where an event contract is determined to be an SBS or mixed swap, compliance with the CFTC's framework should be deemed to satisfy the substantially similar SBS execution and clearing requirements, subject to SEC access to trade and position data, notice filings, and undiminished SEC antifraud, antimanipulation, and insider trading authority. Coordination should reduce duplication; it should not reduce oversight.

V. Market Integrity (Questions 14 and 15)

The risks these questions address (manipulation and trading on material nonpublic information around significant events) are not created by listed event contracts; they exist today in conventional markets, dispersed across instruments and proxy positions.

A listed event contract concentrates that trading into a single surveilled order book with identified participants, cleared positions, and an objective settlement benchmark against which anomalous trading is visible, converting a diffuse surveillance problem into a concentrated one. The central task is not to invent a new concept of market integrity but to map established control families onto each contract's information structure, reference mechanism, and resolution process.

Four risk categories warrant distinct controls:

1. Trading-venue manipulation (e.g. spoofing, layering, wash trading), addressed through order and message surveillance and enforcement as on any listed market.
2. Reference-market manipulation, which arises only where settlement depends on a market-generated price or fixing and calls for cross-market surveillance, with traditional concerns such as marking the close having direct analogues.
3. Resolution manipulation, meaning interference with the outcome or with the process and data that determine it (e.g. acting to cause or prevent the event itself, tampering with a measurement source, falsifying or corrupting reported data, or improperly influencing the reporting party), addressed through authoritative and tamper-resistant resolution sources, clear source hierarchies, predetermined fallbacks, retained evidence, and transparent dispute processes.
4. Information abuse, addressed through information barriers, participant measures proportionate to the risk each event presents, and enhanced surveillance around information-release windows.

For a contract resolved by an agency determination, trading on the venue cannot alter the agency's decision, so the weight falls on resolution governance and privileged-information controls rather than reference-market surveillance. Because the population holding relevant nonpublic information around such events (sponsors, government personnel, investigators, monitoring committees, vendors) can be broader than in traditional issuer markets, controls should be risk-based and capable of escalation rather than premised on a static perimeter; and because fragmentation of economically related exposures across markets itself creates surveillance costs, coordinated data access and cross-market surveillance between the Commissions improve detection for both.

Several of these risks are reduced by the design of the market itself, before any added control: the exchange sets no odds, takes no side, and holds no position, and so has neither the incentive nor the capacity to distort outcomes; futures commission merchants add screening; and objective settlement, with authoritative sources, ordered fallbacks, and time-stamped cutoffs, removes subjective determination. SWANS supports the controls the Joint Request contemplates around scheduled determinations, with controls risk-based and calibrated to the particular event rather than imposed as rigid universal restrictions that would drain liquidity when hedging demand is greatest.

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VI. Conclusion

Definitional ambiguity does not eliminate demand for event-risk transfer; it determines whether that demand is met in bespoke, uncleared bilateral arrangements outside the Commissions' sight, or on transparent, margined, surveilled United States venues. Over the longer term, if reference-based allocation continues to generate substantial friction for an economically coherent class of event instruments, Congress may wish to consider whether a specific statutory framework would provide a more durable allocation; the immediate priority, however, is clearer classification and greater interoperability within the framework as it stands.

To that end, SWANS respectfully invites the Commissions to consider: classification grounded in the settlement predicate and the reference object; a limiting principle under which issuer disclosure and securities-price relevance do not, without more, make an event contract an interest in a security; meaningful limiting content for *"directly affects",* focused on the event's immediate nexus to the issuer's financial position rather than economic materiality alone; a clear distinction between contracts settling on a security's price or value and contracts settling on independently defined events; a harmonized pathway under which qualifying cash-settled event contracts may be listed as futures contracts, excluded from the swap definition; alternative compliance assessed by regulatory objectives and supervisory outcomes, on common infrastructure with product-specific overlays; and surveillance mapped to the distinct risks of trading-venue manipulation, reference-market manipulation, resolution manipulation, and information abuse. The overarching objective of these comments is **harmonization**: uniform, predictable treatment of all event contracts under a coordinated framework. This functional unification should be global rather than confined to the overlap between the swap and SBS definitions: it should reach every contract in the catalyst market, so that a single venue and a single registration serve all of them, differing only in statutory label and never in the infrastructure required to list them.

SWANS is grateful for the Commissions' initiative in seeking public input on these questions. SWANS would welcome continued engagement with the Commissions and their staffs as this work proceeds, and remains available to provide further detail on any aspect of these comments. Questions concerning this submission may be directed to Levon Dermanoukian, Chief Executive Officer at levon.dermanoukian@swanseventexchange.com, or Mehdi Sonthonnax, Chief Risk Officer at mehdi.sonthonnax@swanseventexchange.com.

Best regards,

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