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Submitted Electronically

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

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

Re: CFTC and SEC Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (RIN-3038-AF71)

Dear Mr. Kirkpatrick and Ms. Countryman:

We are hereby submitting the comments of The Digital Chamber ("**TDC**") in response to the joint request for public comment issued by the Securities and Exchange Commission (the "**SEC**") and the Commodity Futures Trading Commission (the "**CFTC**" and together with the SEC, the "**Commissions**") regarding potential ways to draw clearer regulatory lines with respect to innovative products that may implicate both SEC and CFTC regulatory interests (the "**Joint Title VII Products RFC**").[1]

In response to the Joint Title VII Products RFC, TDC respectfully submits the following requests:

(i) the Commissions should interpret the "any interest" element of the SBS Single Security Prong (as defined in the Joint Title VII Products RFC) and the SBS NBSI Prong (as defined in the Joint Title VII Products RFC) as the right to receive the economic returns of the referenced security or narrow-based security index ("**NBSI**");

(ii) the Commissions should clarify that the "directly affects" condition of the SBS Event Contract Prong (as defined in the Joint Title VII Products RFC) should be narrowly construed to only cover events that both expressly reference an issuer and are reflected in the issuer's financial statements, financial condition, or financial obligations;

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1 *See* Joint Request for Comment, Commodity Futures Trading Commission and Securities and Exchange Commission, *Joint Request for Comment on Further Definition of ''Swap'' and ''Security- Based Swap'' and on Alternative Compliance*, 91 FED. REG. 37873, 37875 (June 24, 2026).

(iii) the SEC should update the alternative compliance mechanism set forth in Rule 18a-10 under the Securities Exchange Act of 1934 (the "**Exchange Act**") to restore the $250 billion Maximum Fixed-Dollar Threshold (as defined herein) and increase the 10% Threshold (as defined herein) to forty-nine percent (49%);

(iv) the Commissions should apply the existing anti-fraud and anti-manipulation frameworks under the Exchange Act and the Commodity Exchange Act (the "**CEA**") to novel and innovative products;

(v) the Commissions should implement appropriate transitional relief in connection with potential reclassification of novel and innovative products; and

(vi) the Commissions should reform the process for requesting interpretations of the characterization of Title VII instruments.

TDC is submitting a separate letter to the Commissions that provides TDC's policy recommendations on the regulatory regimes for swaps, security-based swaps ("**SBS**"), and mixed swaps under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**").

TDC applauds the Commissions for their efforts to advance much-needed regulatory clarity for markets for novel and innovative products, particularly as Congress continues its work on critically important market structure legislation. TDC welcomes further engagement with the Commissions on these issues.

I. Background on The Digital Chamber

TDC is the leading global trade association dedicated to the digital asset and blockchain industry, representing more than 250 diverse member companies across the ecosystem, including digital asset exchanges, leading banks and investment firms, and other market participants who build, use, and custodially support blockchain-based technologies.

TDC's mission is to advocate for a clear and workable legal environment for the digital asset industry so that market participants understand their regulatory obligations and feel safe to develop and deploy digital asset and blockchain solutions across commercial, technological, and social use cases, promoting growth and responsible innovation, particularly in the United States.

II. TDC Requests the Commissions Interpret the "Any Interest" Element of the SBS Single Security Prong and the SBS NBSI Prong as the Right to Receive the Economic Returns of the Referenced Security or NBSI

In the Joint Title VII Products RFC, the Commissions request comment on whether further clarification is required regarding when a swap, option, or future is based on "any interest" in a security or group or index of securities, particularly when the swap, option, or future is not based on the value of that security or group or index of securities.[2] The Commissions ask parallel questions regarding the SBS Single Security Prong and the SBS NBSI Prong.[3]

TDC requests the Commissions interpret the phrase "any interest" in the SBS Single Security Prong and the SBS NBSI Prong to mean the right to the economic returns of the referenced security or NBSI (*e.g.*, a right to the dividends, distributions, and/or cash flows associated with a security or security index referenced by an SBS). As further explained below, this interpretation of the "any interest" element is consistent with the Commissions' guidance regarding the distinguishing features of SBS, including total return swaps ("**TRS**") and tokenized SBS, as compared to other financial instruments (*e.g.*, loan participations). In addition, this interpretation provides an objective test for classifying financial instruments as SBS that accords with the Commissions' objective of defining SBS 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."[4]

- **Total Return Swaps**: In the 2012 Title VII Product Definitions Release, the Commissions described a TRS as a "Title VII instrument in which one counterparty, the seller of the TRS, makes a payment that is based on the price appreciation and income from an underlying security or security index . . . . The other counterparty, the buyer of the TRS, makes a financing payment that is often based on a variable interest rate . . . as well as a payment based on the price depreciation of the underlying reference. The 'total return' consists of the price appreciation or depreciation, plus any interest or income payments."[5]

  The Commissions' formulation of a TRS in the 2012 Title VII Product Definitions Release expressly divides the distinguishing features of a TRS into two components: (i) the price appreciation or depreciation of the underlying security or security index—*i.e.*, the **value** of the underlying security or security index; and (ii) the income or interest from the underlying security or security index—*i.e.*, the **right to the economic returns** of the reference security or security index. Put differently, the Commissions expressly framed the purpose of a TRS as "allowing the TRS buyer to receive payments based on the price appreciation and income of a security or security index without purchasing

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2 *See* Question 4 of the Joint Title VII Products RFC.

3 *See* Question 5 and Question 6 of the Joint Title VII Products RFC.

4 *See* Joint Final Rule, Commodity Futures Trading Commission and Securities and Exchange Commission, *Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 FED. REG. 48208, 48211 and 48297 (August 13, 2012) (the "**2012 Title VII Product Definitions Release**") (emphasis added).

5 2012 Title VII Product Definitions Release at 48264. TDC acknowledges that, depending on the underlying reference, a TRS may be classified as a "swap" under CEA Section 1a(47) that is regulated by the CFTC (*e.g.*, a TRS on a broad-based security index, a TRS on an exempted security, such as a U.S. Treasury, or a loan TRS based on two or more loans that are not securities). *See* 2012 Title VII Product Definitions Release at 48264 n.647. For purposes of the discussion in this letter, TDC is addressing TRS that are SBS under the SBS Single Security Prong and/or SBS NBSI Prong.

the security or security index"—*i.e.*, providing the TRS buyer with a synthetic right to economic returns.[6]

- **Tokenized SBS**: The SEC Staff January 2026 Statement on Tokenized Securities stated that an SBS "is a security that **generally provides synthetic exposure to**, among other things, either a referenced security or certain referenced events relating to an issuer of a security. A security-based swap typically **does not convey to the holder any equity, voting, information, or other rights** with respect to the referenced security. . . . For example, if the crypto asset provides on an executory basis for the **exchange, on a fixed or contingent basis, of one or more payments based on the value of a security**, but **does not also convey a current or future direct or indirect ownership interest** in an asset or liability that incorporates the financial risk transferred, that crypto asset may represent a security-based swap."[7] That is, the SEC has expressly acknowledged that a swap and an SBS involve the right to receive economic returns but generally do not convey an ownership interest in the underlying security.

- **Loan Participations**: The 2012 Title VII Product Definitions Release explains that the Commissions "**do not** interpret the swap and security-based swap definitions to include loan participations that **reflect an ownership interest in the underlying loan or commitment**. The Commissions believe that for a loan participation **to not be considered** a swap or security-based swap, the loan participation **must represent a current or future direct or indirect ownership interest** in the loan or commitment that is the subject of the loan participation . . . .[W]hether a loan participation is outside the swap and security-based swap definitions should be based on whether the loan participation **reflects an ownership interest in the underlying loan or commitment**."[8] Thus, the Commissions further indicated their view that a swap and an SBS generally provide exposure to the economic rights associated with the underlying reference asset, and that a financial product's conveyance of non-economic interests, such as ownership interests, often indicates that such product is neither a swap nor an SBS.

TDC Request: In light of the above considerations, TDC requests the Commissions clarify that "any interest" for purposes of the SBS Single Security Prong and SBS NBSI Prong be interpreted as the right to economic returns with respect to the reference security or NBSI underlying an SBS (*e.g.*, the right to receive dividends, distributions, or other cash flows associated with a security or security index referenced by an SBS). This interpretation is consistent with the Commission guidance described above, and accords with the Commissions' stated objective of including

[6] 2012 Title VII Product Definitions Release at 48264.

[7] Statement of the Division of Corporation Finance, Division of Investment Management, and Division of Trading and Markets, Securities and Exchange Commission, *Statement on Tokenized Securities* (Jan. 28, 2026) (emphasis added).

[8] 2012 Title VII Product Definitions Release at 48251 (emphasis added).

products as SBS "**only to the extent** that capturing these agreements, contracts, and transactions is **necessary and appropriate** given the purposes of Title VII."[9]

III. TDC Requests the Commissions Clarify that the "Directly Affects" Condition of the SBS Event Contract Prong Should Be Narrowly Construed to Only Cover Events that Both Expressly Reference an Issuer and are Reflected in the Issuer's Financial Statements, Financial Condition, or Financial Obligations[10]

Under Section 3(a)(68)(A)(ii)(III) of the Exchange Act, an SBS includes, in relevant part, a swap based on "the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in [an NBSI], provided that such event **directly affects** the financial statements, financial condition, or financial obligations of the issuer" (the "**SBS Event Contract Prong**").[11]

The Commissions seek further clarification regarding when an event should be considered to "directly affect" the financial statements, financial condition, or financial obligations of an issuer for purposes of the SBS Event Contract Prong. TDC posits that for an event to "directly affect" the financial statements, financial condition, or financial obligations of an issuer of a security or the issuers of securities in an NBSI, the relevant event must (i) **expressly reference** the issuer of a security or the issuers of securities in an NBSI, **<u>and</u>** (ii) **be reflected in** the financial statements, financial condition, or financial obligations of the relevant issuer (or issuers). This interpretation reads "directly affects" as providing a limiting factor as to the scope of contracts appropriately regulated as SBS.

The requested interpretation of "directly affects" as limited in scope to events that expressly reference the relevant issuer (or issuers) of securities is consistent with the discussion of the triggering events for credit default swaps ("**CDS**") in the 2012 Title VII Product Definitions Release. The 2012 Title VII Product Definitions Release states that "**with respect to a CDS, such events could include, for example, the bankruptcy of an issuer, a default on one of an issuer's debt securities, or the default on a non-security loan of an issuer**."[12] More specifically, the Commissions stated that "**if the payout** on a CDS on a single issuer of a security **is triggered by the occurrence of an <u>event relating to that issuer</u>, the CDS is a security-based swap under the third prong of the statutory [SBS] definition.**"[13] The Commissions stated further that "in the context of credit derivatives on asset-backed securities or [mortgage-backed securities], the events include principal writedowns, failure to pay principal and interest shortfalls."[14] Each of

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9 2012 Title VII Product Definitions Release at 48211.

10 This section responds to Question 7 of the Joint Title VII Products RFC. *See* Joint Title VII Products RFC at 37876.

11 15 U.S.C. § 78c(a)(68)(A)(ii)(III) (emphasis added).

12 2012 Title VII Product Definitions Release at 48267 (emphasis added).

13 2012 Title VII Product Definitions Release at 48267 (emphasis added).

14 2012 Title VII Product Definitions Release at 48267 n.682.

these events, including bankruptcy and default, expressly references the issuer (or issuers) and would be reflected in the financial statements, financial condition, or financial obligations of the issuer (or issuers).

Similarly, under the proposed interpretation, TDC posits that the following event contracts should be considered an SBS under the SBS Event Contract Prong:

1. An event contract based on whether an issuer's EBITDA will be over $300 million at the end of a given quarter (the event **expressly references the issuer** and would **be reflected in the issuer's financial statements and/or financial condition**).

2. An event contract based on whether an issuer's debt-to-equity ratio will be above 1.5 at the end of a given quarter (the event **expressly references the issuer** and would **be reflected in the issuer's financial statements and/or financial condition**).

3. An event contract based on whether an issuer will raise a given amount of debt in a given quarter (the event **expressly references the issuer** and would **be reflected in the issuer's financial statements, financial condition and/or financial obligations**).

By contrast, the proposed interpretation **excludes** from the scope of SBS **event contracts that reference the actions of third parties** (*e.g.*, competitors, suppliers, government agencies) because such event contracts do not expressly reference the relevant issuer, and are not reflected in the issuer's financial statements, financial condition, or financial obligations.

TDC Request: TDC requests the Commissions interpret the "directly affects" condition in the event contract prong of the SBS definition to mean that the triggering event (i) **must expressly reference** the issuer of a security or the issuers of securities in an NBSI, **and** (ii) **must be reflected in** the financial statements, financial condition, or financial obligations of the relevant issuer (or issuers). This interpretation (i) provides principled, objective criteria upon which to classify products under the SBS Event Contract Prong, (ii) reflects the Commissions' guidance as to the events causing CDS to fall within scope of the SBS Event Contract Prong, and (iii) accords with the Commissions' stated objective of including products as SBS "**only to the extent** that capturing these agreements, contracts, and transactions is **necessary and appropriate** given the purposes of Title VII."[15]

IV. Alternative Compliance Regimes

A. TDC Requests the SEC Update the Alternative Compliance Mechanism Under Exchange Act Rule 18a-10 to Restore the $250 Billion Maximum Fixed-Dollar Threshold and Increase the 10% Threshold to 49%

The Commissions request comment on circumstances in which one Commission's regulatory framework could "appropriately satisfy substantially similar requirements of the other

[15] 2012 Title VII Product Definitions Release at 48211 (emphasis added).

Commission (alternative compliance)" where trading in economically related or functionally similar product classes implicates both SEC and CFTC regulatory interests.[16]

TDC posits that existing alternative compliance regimes under Title VII of the Dodd-Frank Act and relevant regulations of the Commissions should continue to apply to innovative products in the swaps and SBS market, such as event contracts and tokenized SBS.

However, for the reasons explained below, TDC requests the SEC update Exchange Act Rule 18a-10 to (i) restore the original $250 billion fixed-dollar amount cap in Exchange Act Rule 18a-10(f), and (ii) raise the ten percent (10%) combined threshold of aggregate gross notional amount of swap and SBS positions in Exchange Act Rule 18a-10(a)(5) to forty-nine percent (49%).[17] These reforms would (i) enable Exchange Act Rule 18a-10 to continue to fulfill its policy purpose, (ii) significantly promote innovation and liquidity provision in the SBS market, and (iii) reduce frictions for dually-registered intermediaries by expanding the ability of entities that are dually-registered as swap dealers and SBS dealers (such entities, "**Dual SD/SBSDs**") that predominantly engage in a swaps business to elect to comply with the capital, margin, segregation, recordkeeping, and reporting requirements under the CEA and CFTC Rules.

When the SEC adopted the alternative compliance mechanism in Exchange Act Rule 18a-10, it emphasized that such mechanism was adopted in response to commenters urging the SEC to harmonize SBS capital, margin, segregation, recordkeeping, and reporting requirements for Dual SD/SBSDs that were "**predominantly** engaged" in a swaps business as the CFTC's regulatory interest in such firm would "greatly exceed the [SEC's] regulatory interest given the relative size of its swaps business as compared to its security-based swaps business."[18] Accordingly, Exchange Act Rule 18a-10 enables Dual SD/SBSDs to facilitate a certain level of SBS transactions without being subject to differing SBS and swap requirements for a firm that is **predominantly** a swap dealer.

Under Exchange Act Rule 18a-10(a)(5), the aggregate gross notional amount of a Dual SD/SBSD's outstanding SBS positions must not exceed the lesser of two thresholds as of the most recently ended quarter of the firm's fiscal year. The thresholds are: (i) the maximum fixed-dollar gross notional amount of open SBS specified in Exchange Act Rule 18a-10(f) (the "**Maximum Fixed-Dollar Threshold**"), and (ii) 10% of the combined aggregate gross notional amount of the firm's open SBS and swap positions (the "**10% Threshold**"). These thresholds were designed to limit the availability of the alternative compliance mechanism to firms whose SBS business "is **not a significant part of the [SBS] market** and that are **predominately engaged in a swaps**

[16] Joint Title VII Products RFC at 37876.

[17] *See* 17 C.F.R. § 240.18a-10(a)(5), (f).

[18] *See* Final Rule, Securities and Exchange Commission, *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security- Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers*, 84 FED. REG. 43872, 43943-44 (August 22, 2019) (the "**18a-10 Adopting Release**") (emphasis added); Final Rule, Securities and Exchange Commission, *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers*, 84 FED. REG. 68550, 68594-95 (December 16, 2019).

business as compared to a[n] [SBS] business."[19] The SEC emphasized that given the interrelated nature of the SBS and securities markets, the SEC "has a heightened regulatory interest in stand-alone SBSDs that will be significant participants in the [SBS] market."[20] Accordingly, the SEC stated that in establishing the alternative compliance mechanism in Exchange Act Rule 18a-10, "the Commission sought to calibrate the maximum-fixed-dollar and 10% thresholds to exclude stand-alone [security-based swap dealers ("**SBSDs**")] that will be significant participants in this market."[21]

When the SEC adopted Exchange Act Rule 18a-10 in 2019, it stated its view that a stand-alone SBSD with a gross notional amount of outstanding SBS of no more than $50 billion would "not be a significant participant in the SBS market."[22] However, the SEC implemented a transitional $250 billion Maximum Fixed-Dollar Threshold for a three-year period to account for significant changes in the SBS market and regulatory developments and to provide firms that are predominantly engaged in a swaps business with a "substantial amount of leeway to develop their security-based swaps business without managing the level of that business to the lower $50 billion threshold."[23] The SEC stated further that if the SBS business of such firms develops to a degree that the $50 billion threshold would require them to refrain from taking on additional business, the SEC may "assess whether the amount of the additional business that causes them to exceed the threshold makes them a significant participant in the [SBS] market."[24] In addition, the SEC staff's economic analysis of Exchange Act 18a-10 focused on the Maximum Fixed-Dollar Thresholds as the SEC staff viewed the 10% Threshold as "likely [to] be the **greater** of the two thresholds for stand-alone SBSDs that are also registered as swap dealers,"[25] and thus not the operative threshold for Dual SD/SBSDs seeking to avail themselves of the alternative compliance mechanism.

As the SEC correctly anticipated when discussing its rationale for establishing the transitional $250 billion Maximum Fixed-Dollar Threshold, the SBS market has undergone significant economic and regulatory developments since the adoption of Exchange Act Rule 18a-10 in 2019. The SEC staff's 2026 report on the definitions of "security-based swap dealer" and "major security-based swap participant" states that as of December 31, 2024, the total notional amount of all open SBS positions attributed to market participants was approximately $16.7 trillion.[26]

[19] 18a-10 Adopting Release at 43944 (emphasis added).

[20] 18a-10 Adopting Release at 43944.

[21] 18a-10 Adopting Release at 43944.

[22] 18a-10 Adopting Release at 43944-45.

[23] 18a-10 Adopting Release at 43945.

[24] 18a-10 Adopting Release at 43945.

[25] 18a-10 Adopting Release at 44031 (emphasis added).

[26] Notice and Request for Comment, Securities and Exchange Commission, *Staff Report on the Definitions of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant"*, 91 FED. REG. 24038, 24041 (May 4, 2026) (the "**2026 SEC SBS Market Report**").

Moreover, as the SEC stated in the 2026 SEC SBS Market Report, "[o]ver 99% of 2024 new trade activity in SBS was non-CDS, with CDS representing less than 1% of 2024 new trade activity."[27] Measured against the 2024 notional size of the SBS market, a Dual SD/SBSD whose SBS business comprised $250 billion of SBS notional would constitute approximately **1.5%** of the total notional amount of all open SBS positions attributed to market participants. Thus, such Dual SD/SBSD would not be a significant part of the SBS market. Accordingly, restoring the $250 billion Maximum Fixed-Dollar Threshold would be consistent with the SEC's policy goals in adopting the alternative compliance mechanism and would reflect the development of the SBS market since the adoption of Exchange Act Rule 18a-10 in 2019.

TDC Request: In light of the foregoing considerations, TDC requests the SEC restore the Maximum Fixed-Dollar Threshold to $250 billion in order for Exchange Act Rule 18a-10 to continue to fulfill its policy purpose and achieve the Commissions' goals of regulatory harmonization, reducing duplicative regulation, and reducing frictions for dually registered intermediaries.

In addition, in light of the expansion of the SBS market and innovative developments in SBS products, TDC also requests the SEC increase the 10% Threshold to 49%. A Dual SD/SBSD whose SBS business comprises 49% of its overall swaps and SBS business combined would be predominantly engaged in a swaps business. The CFTC's regulatory interest in such a firm would thus "exceed the [SEC's] regulatory interest given the relative size of [such firm's] swaps business as compared to its security-based swaps business."[28]

B. TDC Requests the Commissions Apply the Existing Anti-Fraud and Anti-Manipulation Frameworks Under the Exchange Act and CEA to Novel and Innovative Products

The Commissions request comment on how they might best deter market manipulation and trading on material non-public information under alternative compliance regimes.[29] Furthermore, the Commissions seek public comment on what steps they should take to ensure robust surveillance and oversight of cross-market activities.[30]

TDC Request: TDC requests that, consistent with (i) the application of existing alternative compliance regimes under Title VII of the Dodd-Frank Act, and (ii) existing regulatory guidance published by the Commissions,[31] the Commissions apply the existing robust CFTC and SEC anti-

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[27] 2026 SEC SBS Market Report at 24041.

[28] 18a-10 Adopting Release at 43943-44.

[29] Joint Title VII Products RFC at 37877.

[30] Joint Title VII Products RFC at 37877.

[31] *See, e.g.*, Division of Enforcement, Commodity Futures Trading Commission, *Advisory on Enforcement Authority over Event Contracts* (February 25, 2026); Statement of the Division of Corporation Finance, Division of Investment Management, and Division of Trading and Markets, Securities and Exchange Commission, *Statement on Tokenized Securities* (Jan. 28, 2026).

fraud and anti-manipulation regulatory frameworks to novel and innovative products such as SBS event contracts and tokenized SBS.

C. TDC Requests the Commissions Implement Appropriate Transitional Relief in connection with Potential Reclassification of Novel and Innovative Products

TDC Request: The Commissions should provide a transitional framework to mitigate any market and/or regulatory disruptions that may result from actions of the Commissions to further define "swap" and "security-based swap" to address novel and innovative derivatives products. For this purpose, TDC requests the Commissions utilize the following mechanisms, as appropriate:

1. **Staggered Compliance Dates**: In implementing the product definitions under the 2012 Title VII Product Definitions Release, the Commissions staggered the compliance dates of certain final rules in order to provide market participants with sufficient time to address the regulatory changes.[32] The Commissions should adopt a similar approach to any future product definition rulemaking.

2. **No-Action and Interpretive Relief**: In implementing the product definitions under the 2012 Title VII Product Definitions Release, the SEC granted temporary relief and interpretive guidance to make it clear that "a substantial number of the requirements of the Exchange Act did not apply to [SBS] as a result of the revised definition of 'security' that [went] into effect on July 16, 2011."[33] The Commissions should similarly issue no-action relief and interpretive relief, as necessary, in connection with any future product definition rulemaking.

3. **Exemptive Authority**: Exchange Act Section 36 and CEA Section 4(c) set forth the scope of the Commissions' exemptive authority with respect to the Title VII framework.[34]

D. TDC Requests the Commissions Reform the Process for Requesting Interpretations of the Characterization of Title VII Instruments

Exchange Act Rule 3a68-2 and CFTC Rule 1.8 establish a process for parties to request a joint interpretation regarding the characterization of a Title VII instrument (or class thereof).[35] These

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32 *See* 2012 Title VII Product Definitions Release at 48304-05.

33 *See* 2012 Title VII Product Definitions Release at 48304-05; *see also* Exemptive Order and Request for Comment, Securities and Exchange Commission, *Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of "Security" to Encompass Security-Based Swaps and Request for Comment*, 76 FED. REG. 39927 (July 7, 2011); Exemptive Order, *Order Extending Certain Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of "Security" to Encompass Security-Based Swaps and Request for Comment*, 82 FED. REG. 8467 (January 25, 2017).

34 *See* 15 U.S.C. § 78mm; 7 U.S.C. § 6(c).

35 *See* 17 C.F.R. § 240.3a68-2; 17 C.F.R. § 1.8.

regulations provide that any person may submit a request to the Commissions to provide a public joint interpretation of whether a particular Title VII instrument is a swap, an SBS, or a mixed swap.

In adopting Exchange Act Rule 3a68-2 and CFTC Rule 1.8, the Commissions expressly recognized that there may be Title VII instruments (or classes of Title VII instruments) that may be difficult to categorize definitively as swaps, SBS, or mixed swaps.[36] Exchange Act Rule 3a68-2 and CFTC Rule 1.8 attempt to provide a formal mechanism for resolving uncertainty about whether an instrument falls within SEC jurisdiction, CFTC jurisdiction, or the jurisdictions of both Commissions.[37] The Commissions used the process outlined in Section 718 of the Dodd-Frank Act as a model for joint Commission review to appropriately categorize Title VII instruments.[38]

However, these regulations have not generated a large body of published interpretations and have been underutilized even as markets for various novel derivatives products, such as event contracts and tokenized SBS, have developed in the years since the 2012 adoption of the regulations. This is due in significant part to certain inefficient and inflexible aspects of the existing process established by these regulations.

TDC Request: The Commissions should reform the procedural framework for requesting joint interpretations regarding the characterization of Title VII instruments in order to streamline the process, provide more efficiency and flexibility, and provide opportunity for affected participants to respond in light of the development of novel derivatives products. This would be consistent with the Commissions' policy goals of promoting innovation, harmonizing regulations, and reducing regulatory frictions.

More specifically, TDC requests the Commissions reform the procedural framework for requesting interpretations regarding the characterization of Title VII instruments along the following lines:

- Provide a 120-day review timeframe for requests for joint interpretation regarding the characterization of Title VII instruments (or classes of Title VII instruments) whereby the Commissions:[39]

    (i) commence review by written determination no later than 10 days after the receipt of a complete submission;

[36] *See* 2012 Title VII Product Definitions Release at 48294.

[37] *See* 2012 Title VII Product Definitions Release at 48294.

[38] *See* 2012 Title VII Product Definitions Release at 48295.

[39] The 120-day review period would start on the day the Commissions receive the request for joint interpretation; provided, that, if the Commissions receive such request on a calendar day that is not a business day, the start date of the review period will be the business day immediately following the calendar day on which the Commissions received the request.

(ii) provide an initial response/request for information to the requesting party (or requesting parties) by day 30, subject to a 30-day extension for provision of such initial response/request for information; and

(iii) by day 120, either:

A. issue a joint interpretation that includes written findings detailing the factors and analysis relied upon to determine the regulatory classification of the product for which a request was submitted and explaining the consistency of the Commissions' analysis with comparable prior determinations and/or guidance, or provide the reasons for any departure, or

B. issue a public statement expressly declining to provide a joint interpretation and providing a detailed explanation of the reasons for such decision.[40]

TDC also requests the Commissions:

- provide timely notice and meaningful opportunity for a requesting party to respond to any requests for information from the Commissions regarding a product for which a request is submitted;
- consider whether particular categories/classes of novel products consistently present the same regulatory considerations and concerns, and therefore could benefit from streamlined regulatory treatment; and
- provide additional, detailed guidance on the information to be provided by a requesting party, including what the Commissions consider to be "material information" regarding the terms of a novel or innovative product for which a request is submitted.

TDC believes that the reforms proposed above would help to ensure that novel and innovative derivatives products that raise regulatory classification issues do not fall into regulatory gaps. Furthermore, the reforms will facilitate the Commissions to fulfill their responsibilities to oversee the regulatory regime established by Title VII of the Dodd-Frank Act by making sure that Title VII instruments are appropriately characterized, and thus appropriately regulated.

V. Conclusion

The Digital Chamber is grateful for the opportunity to comment on the Commissions' Joint Title VII Products RFC and supports the Commissions' goal of drawing clearer regulatory lines with respect to innovative products that may implicate both SEC and CFTC regulatory interests.

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[40] TDC believes that its proposed framework below is generally consistent with the CFTC's approach to reforming the process for making public interest determinations for event contracts under CFTC Rule 40.11, which provides a clear timetable and opportunity for response by affected parties. *See* Notice of Proposed Rulemaking, Commodity Futures Trading Commission, *Prediction Markets; Public Interest Determinations*, 91 FED. REG. 35806, 35838-43 (June 12, 2026).

Through increased regulatory clarity, market participants will be empowered to engage in market innovation, which will work to the benefit of the United States' capital markets. Accordingly, TDC believes the Commissions' aims here are correct and stands ready to engage further with the Commissions on these issues.

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TDC thanks the many members who contributed their time and expertise towards the development of this letter, including but not limited to, Josh Lawler, Partner at Zuber Lawler, and Jump Crypto.

Respectfully submitted,

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