Submitted Electronically

August 24, 2026

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

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:

The Digital Chamber ("**TDC**") respectfully provides this submission in response to the joint request for comment issued by the Securities and Exchange Commission (the "**SEC**") and the Commodity Futures Trading Commission ("**CFTC**" and together with the SEC, the "**Commissions**") regarding the definition of "swaps" and "security-based swaps" and on alternative compliance issued on June 24, 2026 ("**Joint Title VII RFC**").[1] We are submitting this letter in coordination with the letter submitted by Norton Rose Fulbright on behalf of TDC dated August 24, 2026, also in response to the Joint Title VII RFC (the "**Norton Rose Response Letter**").

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.

[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).

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TDC applauds the SEC and the CFTC for their efforts over the past eighteen months to advance much-needed regulatory clarity for U.S. digital asset markets, particularly as Congress continues its work on critically important market structure legislation.

While the Norton Rose Response Letter provides our members' feedback on specific requests for comment raised in the Joint Title VII RFC, we felt that it was also important to provide additional color on policy initiatives and actions that the Commissions should take if they determine that the statutory authority exists for them to do so or if Congress so provides.

Policy Considerations

The Commissions' Joint Title VII RFC initiative recalls an earlier effort to bring a securities-referencing product to regulated U.S. markets. The Shad-Johnson Accord of 1982 banned single-stock futures, and the Commodity Futures Modernization Act of 2000 lifted that ban and established joint SEC-CFTC oversight of security futures. Trading began in November 2002, but security futures never achieved meaningful liquidity in the United States, and OneChicago, the principal listing exchange, ceased trading in September 2020. Commentators have widely attributed that failure to the frictions of dual regulation, including duplicative registration, uncompetitive margin requirements, and unresolved jurisdictional questions, rather than to any lack of investor demand.

That history is directly relevant here. Products economically similar to those addressed in Joint Title VII RFC, including perpetual-style contracts referencing securities, are growing rapidly on non-U.S. venues outside the Commissions' oversight. The Commissions now have an opportunity to avoid repeating the security futures experience by harmonizing the treatment of these products onshore and establishing clear, durable frameworks. TDC respectfully urges the Commissions to act now, and below we set out potential interpretations and relief that would advance that goal.

To the Extent Authorized by Congress, a Pathway Should be Provided for Security-Based Swaps to Trade on SEC- or CFTC-Overseen Venues, with Platform-Level Reporting to Each Commission

A pathway should be provided for security-based swaps to be listed and traded on regulated, transparent venues overseen by the SEC or the CFTC, together with a streamlined process for reporting to each Commission. A clear, jointly endorsed pathway would allow these products to trade onshore under existing venue frameworks, rather than migrating to offshore platforms, while preserving each Commission's regulatory interest through venue-level reporting.

In providing this pathway, the Commissions should provide guidance on when providing liquidity in these products on a regulated venue is trading, not dealing activity. Liquidity is what makes a new product viable: it narrows spreads, supports price discovery, and lets participants enter and exit at fair prices; without it, trading interest stalls or stays offshore. In the majority of cases, that liquidity will be supplied by proprietary firms committing their own capital, not the capital of customers. Because dealer regulation exists to address customer-facing and bilateral credit risks that proprietary trading activity does not create, registration should follow customer relationships, not liquidity provision on centrally traded and cleared markets. Treating anonymous, on-venue liquidity provision as "dealing" would also stretch the "dealer" concept beyond its statutory limits—the very expansion a federal court in Texas rejected when it vacated the SEC's rules defining certain proprietary traders as dealers.[2]

Under this type of pathway, a security-based swap could be made available for trading through either of two existing channels. On the securities side, the product could be listed on a national securities exchange or traded on an alternative trading system ("ATS"), or on a security-based swap execution facility, subject to the SEC's oversight. On the derivatives side, the product could be listed on a designated contract market ("DCM") and cleared through a derivatives clearing organization ("DCO"), subject to the CFTC's oversight. In either case, the core safeguards of on-venue execution, pre-trade transparency, and central clearing would apply regardless of which Commission serves as the primary overseer.

To avoid duplicative registration and reporting burdens on market participants, the trading platform, rather than each participant, should be responsible for providing notice to and reporting into the SEC. Because these instruments are security-based swaps, platform-level reporting would give the SEC visibility into the activity whether the product is listed on an SEC-overseen or a CFTC-overseen venue, while the venue's primary regulator continues to oversee trading and clearing. This approach mirrors the notice-registration model Congress adopted for security futures and would preserve both Commissions' regulatory interests without subjecting venues or participants to two full, parallel regulatory regimes.

Centrally Traded and Cleared Contracts Are Distinct from Bilateral Swaps and Security-Based Swaps

Title VII of the Dodd-Frank Act responded to the risks of the bilateral, dealer-intermediated over-the-counter derivatives market: opaque pricing, uncollateralized counterparty credit exposure, and the accumulation of risk at dealers outside regulatory view. Contracts that are executed on a

2 See Nat'l Ass'n of Private Fund Managers v. SEC, No. 4:24-cv-00250 (N.D. Tex. Nov. 21, 2024) (vacating Exchange Act Rules 3a5-4 and 3a44-2); see also infra Part VII.B.

regulated trading venue through anonymous, all-to-all central limit order books and cleared through a registered clearing organization present a fundamentally different risk profile. Execution on-venue provides pre-trade transparency and trade practice surveillance; novation to a central counterparty extinguishes bilateral credit exposure and substitutes daily mark-to-market margin. TDC urges the Commissions, in responding to the definitional and alternative compliance questions in the Joint Title VII RFC, to recognize that centrally traded and cleared products are distinct from bilateral swaps and SBS, and to calibrate regulatory treatment accordingly.

The CFTC has already given effect to this distinction in its treatment of perpetual-style contracts. Perpetual-style contracts listed for trading on a designated contract market are futures contracts subject to the CEA framework for exchange-traded derivatives, not swaps.[3] This characterization follows from the statute: the CEA's swap definition expressly excludes "any contract of sale of a commodity for future delivery,"[4] and because the Exchange Act defines an SBS as an instrument that "is a swap" within the meaning of the CEA, a contract that is a future is neither a swap nor an SBS.[5] Event contracts listed on designated contract markets are subject to a distinct statutory framework—the special rule in CEA Section 5c(c)(5)(C) and the CFTC's regulations thereunder—but the policy considerations are the same: the CFTC regulates such contracts through the exchange-traded framework of venue registration, product self-certification and review, trade practice surveillance, and central clearing, not through the bilateral swap-dealer framework. In each case, on-venue execution and central clearing—rather than the bilateral, dealer-intermediated structure Title VII was enacted to address—define the appropriate regulatory treatment.

This distinction also supplies the most direct harmonization pathway available to the Commissions for exchange-traded products referencing securities. For futures on a single security or a narrow-based security index, Congress has already built the harmonized framework: the security futures provisions of the CEA and the Exchange Act provide for joint CFTC-SEC jurisdiction, notice registration of trading venues and intermediaries with the non-primary regulator, jointly established margin levels, and retail access through existing futures commission merchant and

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3 *See, e.g.*, CFTC Order regarding the listing of perpetual-style contracts by KalshiEX LLC (May 29, 2026); Policy Statement, Commodity Futures Trading Commission, 91 Fed. Reg. 33160 (2026) (addressing perpetual-style derivatives listed on designated contract markets as futures).

4 CEA Section 1a(47)(B)(i), 7 U.S.C. § 1a(47)(B)(i).

5 *See* Exchange Act Section 3(a)(68)(A), 15 U.S.C. § 78c(a)(68)(A) (defining an SBS as an agreement, contract, or transaction that "is a swap, as that term is defined under section 1a of the Commodity Exchange Act," that meets additional conditions).

broker-dealer channels.[6] TDC requests that the Commissions jointly confirm—exercising their joint interpretive authority under Section 712(d) of the Dodd-Frank Act—that centrally traded and cleared perpetual-style contracts referencing a single security or narrow-based security index may be listed and traded as security futures products (or, where the reference is a broad-based security index, as futures subject to the CEA), and that a contract's lack of a fixed expiration date does not defeat characterization as a contract of sale of a commodity for future delivery.[7] The CFTC's treatment of perpetual-style contracts listed on designated contract markets provides the template. For centrally traded and cleared event contracts relating to an issuer of securities, which do not fit the futures definition, TDC requests that the Commissions apply the same principle through the alternative compliance authority addressed in this letter: such contracts should be regulated under the exchange-traded framework of the listing venue's primary regulator—with notice-registration-style deference modeled on the security futures provisions—rather than under the bilateral SBS dealer framework, however the definitional questions posed in the Joint Title VII RFC are resolved.

Confirming this pathway would accomplish the harmonization objectives of the Joint Title VII RFC largely through frameworks Congress has already enacted, and would allow innovative products such as perpetual-style contracts referencing securities to be listed onshore, on regulated and surveilled venues, with central clearing, rather than continuing to trade exclusively on non-U.S. venues outside the Commissions' oversight. To the extent aspects of the security futures framework require modernization to accommodate these products, TDC encourages the Commissions to identify and address those requirements jointly, and TDC and its members stand ready to assist.

Dealer Registration Should Follow Customer Relationships, Not Liquidity Provision on Centrally Traded and Cleared Markets

The same distinction between centrally traded and cleared products and bilateral swaps should inform the Commissions' approach to dealer registration. The liquidity in nascent product classes addressed in this letter will be supplied principally by proprietary trading firms that commit their own capital to continuous two-sided markets on regulated venues. These firms have no customers: they do not solicit or accommodate counterparty demand, hold customer funds, or advise counterparties, and on an anonymous central limit order book they cannot know the identity of

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6 *See* CEA Sections 1a(31), 2(a)(1)(D), and 5f, 7 U.S.C. §§ 1a(31), 2(a)(1)(D), 7b-1; Exchange Act Sections 3(a)(55), 6(g), and 15(b)(11), 15 U.S.C. §§ 78c(a)(55), 78f(g), 78o(b)(11).

7 *See* Section 712(d)(1) of the Dodd-Frank Act, 15 U.S.C. § 8302(d)(1) (joint rulemaking authority regarding the definitions); *see also* 15 U.S.C. § 78c(a)(55)(B) (Commissions' joint authority over the security futures definition).

their counterparties at all. The dealer registration framework of Title VII—built to address the customer-facing and bilateral credit risks of the over-the-counter market—was not designed for this activity, and three targeted measures would ensure that it does not inadvertently foreclose liquidity provision in these markets.

First, the SEC should exclude cleared, on-venue activity from the SBS dealing analysis, paralleling the CFTC's floor-trader exclusion. The CFTC's swap dealer definition excludes from the dealing analysis cleared swaps entered into by a registered floor trader on or subject to the rules of a designated contract market or swap execution facility, subject to specified conditions.[8] That exclusion embodies precisely the distinction described above: where execution occurs anonymously on a regulated venue and the resulting position is novated to a central counterparty, the counterparty-facing risks that dealer regulation exists to address—mis-selling, opaque pricing, uncollateralized bilateral exposure—are absent, because the venue supplies pre-trade transparency and the clearinghouse stands as counterparty. There is no SEC analogue. TDC requests that the SEC adopt a parallel exclusion from the "security-based swap dealer" definition for firms trading for their own account in cleared SBS on or subject to the rules of a security-based swap execution facility or national securities exchange. Harmonizing this aspect of the two Commissions' dealer definitions falls squarely within the purposes of the Joint Title VII RFC.

Second, and at a minimum, the SEC should recalibrate the de minimis threshold for non-CDS SBS dealing. Under Exchange Act Rule 3a71-2, the de minimis exception for SBS dealing activity other than credit default swaps is $150 million in gross notional amount over the prior twelve months ($400 million during the phase-in period)—less than one-fiftieth of the $8 billion threshold applicable to swap dealing under CFTC rules.[9] Whatever the merits of that calibration for the dealer-intermediated single-name CDS market the Commissions confronted in 2012, it is unworkable for centrally traded products: a firm providing continuous two-sided liquidity on a registered venue would exhaust a $400 million annual notional threshold almost immediately, with the practical consequence that no firm could provide meaningful liquidity in new SBS products without first registering as an SBSD—a barrier that will predictably produce illiquid U.S. markets and continued migration of activity offshore. The SEC staff's recent report on the definitions of "security-based swap dealer" and "major security-based swap participant" provides the appropriate vehicle to revisit this calibration.[10] TDC requests that the SEC raise the non-CDS de

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8 *See* 17 CFR § 1.3 (definition of "swap dealer," paragraph (6)(iv)).

9 *See* 17 CFR § 240.3a71-2(a)(1)(ii)-(iii); 17 CFR § 1.3 (definition of "swap dealer," paragraph (4) (de minimis exception)).

10 *See* 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 (May 4, 2026).

minimis threshold to a level consistent with the CFTC's $8 billion threshold or, at a minimum, adopt a separate, substantially higher threshold for SBS executed on a registered venue and cleared through a registered clearing agency.

Third, the Commissions should reaffirm the dealer-trader distinction for anonymous central limit order book activity. In the 2012 Entity Definitions Release, the Commissions identified as hallmarks of dealing the provision of liquidity by accommodating demand from counterparties, holding oneself out as a dealer, and making markets as part of a customer-facing business.[11] A firm submitting two-sided orders into an anonymous, all-to-all central limit order book does none of these things: it does not know its counterparties, cannot accommodate their individual demand, and has no customer relationships. TDC requests that the Commissions confirm that such activity is properly analyzed as trading rather than dealing. Recent litigation regarding the outer bounds of the "dealer" definition underscores the need for the Commissions to articulate this boundary through interpretation rather than leaving it to enforcement or private litigation risk.[12]

These measures share a single principle: registration categories should follow customer relationships and the risks they create. A firm that trades exclusively for its own account, anonymously, on regulated venues, in cleared products, presents its risks to the clearinghouse and to itself—not to customers. Calibrating dealer registration accordingly is a precondition to liquid onshore markets in the products addressed elsewhere in this letter.

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We appreciate the opportunity to provide feedback on this important initiative and welcome further engagement with the Commissions as they evaluate potential changes to market operations and regulatory approaches in this rapidly developing area.

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11 *See* Joint Final Rule, Commodity Futures Trading Commission and Securities and Exchange Commission, *Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant,"* 77 Fed. Reg. 30596, 30607-20 (May 23, 2012) ("**2012 Entity Definitions Release**").

12 *See Nat'l Ass'n of Private Fund Managers v. SEC*, No. 4:24-cv-00250 (N.D. Tex. Nov. 21, 2024) (vacating Exchange Act Rules 3a5-4 and 3a44-2).

TDC thanks the many TDC members who contributed their time and expertise towards the development of this letter, including Jump Crypto and Josh Lawler, Partner at Zuber Lawler.

Sincerely,

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The Digital Chamber

Cc: Annemarie Tierney, Senior Strategic Adviser, The Digital Chamber