THE FOUNDATION FOR SECURE MARKETS®

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Via Electronic Submission
Mr. Christopher Kirkpatrick
Secretary of the Commission
U.S. Commodity Futures Trading Commission
Three Lafayette Center
1155 21st St. N.W.
Washington, DC 20581

Ms. Vanessa Countryman
Secretary of the Commission
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2000

Re: **Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance**

The Options Clearing Corporation ("OCC") appreciates the opportunity to provide comment on the Commodity Futures Trading Commission's ("CFTC") and Securities and Exchange Commission ("SEC") (together "the Commissions") joint request for comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance ("Request").

OCC operates as a central counterparty ("CCP") under the jurisdiction of both the CFTC and the SEC. As a registered Subpart C derivatives clearing organization ("DCO") under the CFTC's jurisdiction, OCC clears and settles transactions in futures and options on futures. As a registered clearing agency under the SEC's jurisdiction, OCC is the sole clearing agency for equity options listed on national securities exchanges. OCC also provides central counterparty clearing and settlement services for securities lending transactions. OCC has been designated by the Financial Stability Oversight Council as a systemically important financial market utility under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and is therefore subject to prudential regulation by the Federal Reserve Board. OCC operates as a market utility and is owned by five options exchanges.

General Comments

OCC appreciates the opportunity to comment on this topic and believes that a straightforward means for exchanges and clearing houses to identify the legal and regulatory framework that a new product fits into can help facilitate responsible innovation. Regulatory clarity of this kind is important not only to exchanges and clearing houses, but also to the broader marketplace, including investors and other market participants who rely on predictable regulatory treatment when evaluating and adopting new products. Congress has provided a framework that leads to economically similar products falling under different regulatory regimes. This bifurcation was rooted in the distinct historical origins of the federal securities and commodities laws; however, increasingly related products can create uncertainty and additional regulatory hurdles for market participants seeking to bring innovative products to market. Given these economic similarities of many of the products that fit the various categories discussed in the Request, OCC believes that a continued focus on harmonization between the two Commissions is an ideal means to address these products. Further harmonization can help ensure that related products receive similar regulatory treatment regardless of which Commission's jurisdiction the product ultimately falls under. Specifically, the Commissions' efforts around portfolio margining could provide a means to effectively risk manage products across regulatory regimes. As discussed further below, OCC's experience as a dual registrant clearing products under both regulatory regimes offers a practical perspective on both the benefits of, and the current obstacles to, achieving this kind of harmonized treatment. OCC appreciates the Commissions' coordination on this topic, and on harmonization in general, and believes the efforts will promote appropriately similar regulatory treatment for all the products discussed in the Request. OCC's specific observations on the questions posed by the Commissions, discussed below, are intended to illustrate both the opportunities for, and the practical challenges to, achieving that goal.

Responses to Specific Questions Posed by the Commissions

Question 8
Some event contracts settle by reference to a security or group or index of securities (whether narrow-based or broad-based). While certain of these event contracts may generally fall within the prongs of the "swap" and "security-based swap" definitions described above, there is a statutory exclusion from the definitions of "swap" and "security-based swap" for "any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to [the Securities Act and the Exchange Act]". [1]

A. *Are there circumstances in which an event contract that references one or more securities should or should not be considered a "put, call, straddle, option, or privilege on" a security or group or index of securities for purposes of the exclusion from the definitions of "swap" and "security-based swap"?*

OCC does not believe additional guidance, rules, or exceptions are needed to determine when an event contract on a security or group or index of securities meets the exclusion from the definition of swap and security-based swap. When an event contract is an option on a security or group or index of securities, whether American style, European style, or otherwise, it meets the

[1] The Commissions' question has three distinct parts. For organizational purposes, OCC has labeled the parts as A, B, and C and responded separately to each part.

definition of a security[2] and the exclusion from the definition of swap and security-based swap.[3] The binary nature of the outcomes does not change the analysis or conclusion that the products are securities. If the event contract on a security or index of securities is not an option, it will fall into one of the other product categories depending on the specifics of the underlying.

Since at least 2006, OCC and National Securities Exchanges have treated binary options on securities and indexes as securities, and the SEC has approved regulatory filings to that end.[4] Currently, OCC clears binary options that settle based on an S&P 500 linked index as securities and National Securities Exchanges are likely to list additional binary options on varying indexes. While these options function like event contracts in that they offer an all or nothing settlement determined by whether the price of the security or index is at or over the strike price at expiration, the contracts meet the definition of security because they are options on the security or index.

B. *Is there a need for greater clarity regarding when an event contract is a "put, call, straddle, option, or privilege" on an "interest" in, or "based on the value" of, "any security…or group or index of securities" (whether narrow-based or broad-based), that is subject to the Securities Act and the Exchange Act and therefore not a swap or SBS?*

OCC believes that additional guidance on an appropriate analysis of what products are on an "interest" in or "based on the value" of a security could be helpful to market participants. Specifically, listing the factors the SEC considers when reviewing new options products that are on an interest in or based on the value of a security could be helpful to exchanges and clearing houses when listing new products and will help ensure that similar products receive uniform regulatory treatment.

OCC previously cleared credit default options, which were cash-settled, binary options that were automatically exercised upon the occurrence of specified credit events of a referenced entity or expired worthless. When approving these products, the SEC determined that they were based on the value of a security because it expected the price of the credit default option to be closely correlated with the yield spread of the debt securities issued by the referenced entity.[5] Similarly, the SEC found that the contracts were on an interest in a security because the payout was determined based on the coupon payments of a debt security therefore making the coupon payments an interest in a security.[6] However, this precedent cannot be directly applied to all types of options that may be on an interest in a security or based on the value of a security. This is especially true when the relevant security is equity rather than debt as was the case with the

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[2] See 15 U.S.C. § 78c(a)(10).
[3] See 7 U.S.C. § 1(a)(47)(B)(iii).
[4] See Exchange Act Release No. 34-56471 (Sep. 19, 2007), File No. SR-OCC-2007-08; Exchange Act Release No. 34-105537 (May 21, 2026), File No. SR-OCC-2026-003.
[5] Exchange Act Release No. 34-55871 (Jun. 12, 2007), File No. SR-CBOE-2006-84.
[6] Id.

credit default options. OCC believes that the factors the SEC will consider when making the determination would be helpful to exchanges and clearing agencies as they think about bringing new products to market.

OCC believes the same rationale could support issuing guidance as discussed in Question 4 "regarding when a swap, option (including any put, call, straddle, option, or privilege), 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" and Question 7 "Regarding the SBS Event Contract Prong, is additional clarity necessary regarding when an event 'directly affects' the financial statements, financial condition, or financial obligations of an issuer."

C. *What are the characteristics of event contracts based on a security or index that are swaps or SBS, that distinguish them from options on securities, including in particular binary options that already trade as standardized options on securities on national securities exchanges?*

The framework for event contracts established by Congress allows economically similar products to fit within the regulatory framework for securities, swaps, and security-based swaps. The distinguishing characteristic of many of these products is the structure of the contract rather than the economics of the contract. For example, a binary product that settles based on the price of a broad-based index can be structured to be a swap or a security without changing the economics or functionality of the product. In this example, whether the product is structured as an option or not would determine if it is a swap under the CFTC's jurisdiction or a security under the SEC's jurisdiction. This reality could underscore the importance of the Commissions' harmonization efforts in order to ensure that similar products receive similar regulatory outcomes. The Commissions' harmonization efforts around portfolio margining are particularly relevant to these discussions.[7] As a dual registrant, OCC clears products regulated by both Commissions and believes that both regimes provide effective risk management and consumer protections. Given the economic similarities between many of the contracts discussed in this Request, it is important and beneficial from a risk management and capital efficiency perspective to be able to comingle (separately for proprietary and customer positions) the products and the corresponding collateral that fall under the jurisdiction of both Commissions together in a single account.

Question 12

Where trading in economically related or functionally similar product classes implicates both SEC and CFTC regulatory interests, are there circumstances in which compliance with one Commission's regulatory framework could appropriately satisfy substantially similar

[7] CFTC and SEC, *Joint Request for Comment on Further Implementation of Portfolio Margining and Cross-Margining of Securities and Derivatives*, 91 Fed. Reg. 39579 (Jun. 30, 2026).

requirements of the other Commission (alternative compliance)? In this case, how should "substantially similar" be viewed? Should it contemplate scope, objectives and/or outcomes of requirements? Supervisory compliance programs? Enforcement authority? Other considerations/standards?

As a dual registrant clearing both securities and futures products, OCC understands the benefits that could come with alternative compliance. OCC emphasizes, however, that any alternative compliance regime should be available to all types of markets and product categories and not narrowly focused on a subset of registrants or products. In general, securities regulations are rules based while regulations for derivatives are largely principles based. This could set up the risk of regulatory arbitrage and a potential competitive disadvantage for national securities exchanges and clearing agencies. As described above, many of the products discussed in the Commissions' Request are economically similar and creating additional differences in the regulatory treatment of the products would not be beneficial for the overall market. Accordingly, to the extent that the regulators are considering alternative compliance with respect to some defined set of products, the opportunity for alternative compliance should be offered to all market participants, not just those governed by a specific regulator. Further, any alternative compliance should take into account the full regulatory regimes (including SRO filing requirements, exam coordination, and customer protection) to avoid creating further opportunities for regulatory arbitrage. Competition between markets registered with one or both Commissions is increasing and OCC believes the industry would be best served by ensuring a level playing field for all markets.

Rather than developing an alternative compliance regime, OCC believes that the Commissions' ongoing harmonization efforts are an ideal means to ensure similar products and risks are subject to similar regulatory treatment and appreciates the Commissions' efforts on this front. One specific area where further harmonization would help ensure a level playing field for both CFTC and SEC products is the timeline for receiving approvals for regulatory filings including those related to new products. Currently, the approval timeframes are very different depending on which Commission has jurisdiction over the product. Under the CFTC rules, new products can be self-certified one day prior to listing the product for trading[8] and any necessary DCO rule changes can typically be implemented following a 10-business day self-certification.[9] For new products under the SEC jurisdiction, however, approval of rule changes the SEC has 45 days to approve or disapprove a rule filing and can extend the time by 45 additional days if it determines that a longer period is appropriate.[10] The SEC can also institute proceedings to determine

[8] 17 C.F.R. § 40.2.
[9] 17 C.F.R. § 40.6; While the CFTC can stay self-certification "on the grounds that the rule or rule amendment presents novel or complex issues that require additional time to analyze, the rule or rule amendment is accompanied by an inadequate explanation or the rule or rule amendment is potentially inconsistent with the Act or the [CFTC's] regulations thereunder," the stay process is infrequently used.
[10] 15 U.S. Code § 78s(b).

whether to approve or disapprove the filing that can extend the time it has to make a decision to up to 240 days from the date the filing was published.[11] While this framework was established by statute, Congress expressly permits the SEC to approve rules in less than 30 days if the SEC "finds good cause for so doing and publishes the reason for the finding." OCC encourages a more harmonized process for regulatory filings. OCC believes this process would help to ensure that similar products receive similar regulatory treatment and that products falling under one Commission's jurisdiction do not have a competitive advantage over products under the other Commission's jurisdiction.

Further harmonization could also be an ideal means to ease burdens on dual registrants. As an example, harmonization of the governance rules for DCOs and clearing agencies would be beneficial for dual registrants. During 2024 and 2025, DCOs and clearing agencies were required to comply with new governance regulations issued by the CFTC (portions of §39.24) and SEC (§240.17ad-25). While these new governance requirements were intended to strengthen the oversight of clearing organizations' risk management, they created inconsistent requirements for dual registrants. These differing requirements have resulted in inefficiencies and a more complicated governance structure, such as multiple committees with overlapping mandates, that provide little additional benefit in terms of strengthening risk management or governance. Harmonizing the Commissions' governance rules could ease regulatory burden without weakening CCP governance frameworks.

Conclusion

OCC appreciates the opportunity to provide comment and commends the Commissions for seeking input regarding product definitions and alternative compliance. In general, OCC believes that continued efforts towards harmonization of Commissions' regulatory regimes is the most effective way to address the related products that fall under separate jurisdiction. OCC remains available to provide additional information or perspective that may assist the Commissions in their important work.

Sincerely,

Megan Malone Cohen

Megan Malone Cohen
General Counsel

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[11] *Id;* If the SEC institutes proceedings, it initially must make a determination within 180 days of the publication of the filing and can extend the review period for an additional 60 days.