August 27, 2026

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Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
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Mr. Christopher Kirkpatrick
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Re: Joint Request for Comment on Further Definition of "Swap" and "Security Based Swap" and on Alternative Compliance, Release Nos. 33-11424 and 34-105735, File No. S7-2026-21

Executive Summary. This letter is submitted by former commissioners and senior officials of the Securities and Exchange Commission and the Commodity Futures Trading Commission from both political parties and who served under administrations of both parties. Writing in our individual capacities, we take no position on how any particular instrument should be classified. We urge the Commissions to approach the further definition of "swap" and "security-based swap," and any alternative compliance framework, with attention to economic substance and real-world consequences: similar risks should receive comparable treatment; additional regulatory burdens should yield additional regulatory benefits; overlapping requirements directed at the same risk should be coordinated rather than duplicated; and any framework should be calibrated to the risks an activity actually presents. Approached in this way, the Commissions can protect investors and market integrity, reduce incentives for regulatory arbitrage, and increase the likelihood that economically significant activity capable of being conducted safely does so under U.S. supervision.

Dear Secretaries,

The undersigned former commissioners and senior officials of the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"), affiliated with both political parties and having served under administrations of both parties, submit this letter in response to the Commissions' joint request for comment.[1] Writing solely in our individual capacities, and informed by our experience administering the federal securities and commodities laws, we offer these bipartisan observations in the shared conviction that the questions raised by the Commissions transcend party lines.[2]

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[1] Joint Request for Comment on Further Definition of "Swap" and "Security Based Swap" and on Alternative Compliance, Release Nos. 33-11424 and 34-105735, File No. S7-2026-21, 91 Fed. Reg. 37,873 (June 24, 2026), CFTC RIN 3038-AF71, SEC RIN 3235-AN79 (the "Request for Comment").

[2] The undersigned did not receive any compensation to participate in this letter. Kalshi Inc. sponsored the letter in engaging Bellementis PLLC to assist with drafting, but the views expressed herein are the result of a process independent from Kalshi Inc. Kalshi Inc. did not draft any portion of this letter, did not influence the views represented herein, and did not review the final letter before it was submitted.

In our experience, questions of jurisdiction are rarely important only because of where a line is drawn. These questions matter because the line determines the regulatory consequences that follow. The Request for Comment therefore offers an opportunity to consider not only how particular products fit within existing definitions, but whether the existing architecture continues to produce sensible results as markets evolve and what principles should guide any alternative approach.

We take no position on the proper classification of any particular instrument.[3] Instead, we offer several considerations that we believe may assist the Commissions as they develop their approach. Similar economic exposures presenting similar risks should generally receive comparable regulatory treatment. Different risks may justify different requirements. Where multiple regimes address substantially the same risk, additional regulatory burdens should produce additional regulatory benefits. The analysis should also account for the combined consequences for investors, customers, markets, competition, financial stability, and effective federal supervision.

Our experience counsels in favor of neither more regulation nor less regulation as an end in itself. The better objective is regulation proportionate to risk, coordinated where responsibilities overlap, and sufficiently flexible to remain workable as markets change.

I. The Consequences of Regulatory Boundaries

One lesson of administering financial regulation is that jurisdictional lines have consequences well beyond agency organization. They affect capital, margin, collateral, liquidity, reporting, market structure, product availability, and ultimately the price and choices available to customers.

Congress has directed both Commissions to consider those consequences. The Commodity Exchange Act requires the CFTC to consider costs and benefits, including efficiency, competitiveness, and the financial integrity of futures markets.[4] The Exchange Act directs the SEC to consider efficiency, competition, and capital formation and prohibits unnecessary burdens on competition.[5] Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act separately directs coordination concerning the regulation of swaps and security-based swaps.[6] We would therefore encourage the Commissions to consider not only the legal basis for a proposed approach, but the market behavior that approach is likely to produce.

The experience following the CFTC's implementation of the Dodd-Frank trade execution requirements is instructive. ISDA reported that the share of euro interest rate swap volume between European dealers and U.S. counterparties fell from approximately 25 percent before the October 2013 mandate to 9 percent afterward, and later to 6 percent.[7] Trading among European counterparties increased correspondingly. Commissioner Mark Wetjen subsequently observed that market participants were making structural decisions to avoid U.S. transaction requirements and warned that the resulting fragmentation could increase risk.[8] The lesson, in our view, is not that the underlying requirements were

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[3] Additionally, we express no view as to any pending litigation concerning these issues.
[4] Commodity Exchange Act § 15(a)(1), (2)(B); 7 U.S.C. § 19(a)(1), (2)(B).
[5] Securities Exchange Act of 1934 §§ 3(f), 23(a)(2); 15 U.S.C. §§ 78c(f), 78w(a)(2).
[6] Dodd-Frank Wall Street Reform and Consumer Protection Act § 752(a), 15 U.S.C. § 8325(a).
[7] International Swaps and Derivatives Association ("ISDA"), Revisiting Cross Border Fragmentation of Global OTC Derivatives: Mid-Year 2014 Update (July 2014); see also International Swaps and Derivatives Association, Cross Border Fragmentation of Global OTC Derivatives: An Empirical Analysis (Jan. 2014).
[8] Mark P. Wetjen, Commissioner, Commodity Futures Trading Commission, The Next Opportunity for Trans Atlantic Collaboration: Shaping a New Era for Swap Execution, Remarks Before the Cumberland Lodge Financial Services Policy Summit (Nov. 14, 2014).

necessarily mistaken. It is that regulation can relocate activity without eliminating either the demand or the risk. That consequence should be part of the analysis before a boundary is fixed.

That consideration is relevant today. Kalshi has publicly stated that offshore perpetual futures volume exceeded $90 trillion in 2025, compared with approximately $28 trillion in 2023. Bank for International Settlements ("BIS") research separately found that crypto-native exchanges accounted for 93 percent of trading volume in its sample of bitcoin futures markets as of July 2024. Those figures do not establish how much activity would migrate to the United States under a different framework. They establish that substantial markets exist outside it.[9]

We would therefore consider whether each approach under review is calibrated to the risks the activity actually presents, and whether such a framework offers a realistic path for legitimate activity to occur under U.S. supervision. The operative question is not simply which regulator applies the least demanding and burdensome standard, but rather which regulatory framework adequately addresses the risks at issue in a manner that also enables additional benefits. While attracting activity onshore is not itself a per se regulatory objective, there are certainly benefits worth considering where a properly calibrated framework also encourages activity to occur under U.S. oversight. Relevant considerations include domestic liquidity, regulatory access to data, enforceability of customer protections, competition, and whether offshore firms have meaningful incentives to enter the U.S. regulatory perimeter. Competitiveness is not a reason to diminish investor protection. It is one measure of whether a regulatory framework calibrated to risk can deliver that protection in practice.

II. Prior SEC and CFTC Coordination Offers Useful Lessons

The Request for Comment continues a long history of SEC and CFTC efforts to accommodate markets that do not fit neatly within a single regulatory category. The Shad-Johnson Accord established a negotiated boundary for futures on securities and securities indexes.[10] Congress revisited that settlement in the Commodity Futures Modernization Act of 2000, which authorized security futures and established joint SEC and CFTC regulation. Title VII of Dodd-Frank again divided authority, this time between swaps and security-based swaps, while expressly requiring coordination.[11] In 2012, the Commissions jointly adopted definitions and interpretations governing swaps, security-based swaps, mixed swaps, and related instruments.[12]

We draw two practical lessons from that history. First, jurisdictional settlements should be judged by the regulatory outcomes they produce, not simply by whether they resolve an immediate boundary dispute. Second, an architecture designed for one generation of products may require adjustment when technology, market structure, or product substitutability changes.

Security futures are worth examining in that spirit. Congress expressly authorized the product, but implementation required the accommodation of two different regulatory systems. The limited subsequent development of the U.S. security futures market does not establish that dual regulation was

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[9] Kalshi, Kalshi Launches First Ever Perpetual Futures in America (May 29, 2026); Maik Schmeling, Andreas Schrimpf & Karamfil Todorov, Crypto Carry, BIS Working Papers No. 1087, at 7 (rev. Oct. 2025). The Kalshi figures are the company's own unattributed estimates. The BIS sample concerns bitcoin futures generally and is not limited to perpetual futures.

[10] *See* Futures Trading Act of 1982, Pub. L. No. 97-444, § 101, 96 Stat. 2294 (codifying the December 1981 jurisdictional accord between the SEC and CFTC at former CEA § 2(a)(1)(B)); Securities Acts Amendments of 1982, Pub. L. No. 97-303, 96 Stat. 1409.

[11] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, tit. VII, §§ 712(a)(1)–(2), (d)(1), 124 Stat. 1376, 1641–46 (2010) (codified at 15 U.S.C. § 8302).

[12] *See* Further Definition of "Swap," "Security Based Swap," and "Security Based Swap Agreement"; Mixed Swaps; Security Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48,208 (Aug. 13, 2012).

the cause. It does, however, provide an experience from which the Commissions can ask a useful question: when two regimes apply, did each additional requirement add protection commensurate with its cost, or did the combination make an otherwise lawful product unnecessarily difficult to offer?

We would encourage the Commissions to use their March 2026 Memorandum of Understanding as an institutional foundation for that inquiry. It contemplates work on product definitions, clearing, margin and collateral, dually regulated entities, reporting, examinations, economic analysis, surveillance, enforcement, and a fit for purpose regulatory framework.[13] Those are precisely the areas in which coordination can turn overlapping jurisdiction into coherent supervision.

III. Consider the Regulatory System as a Whole

From an administrator's perspective, some products will inevitably implicate both Commissions and, in some cases, a prudential regulator. The appropriate comparison is not regulation against no regulation. It is among legitimate regulatory approaches that may complement one another, protect the same interest more than once, or impose different requirements directed at different risks.

We would therefore evaluate the regulatory result as a whole. On the benefit side, relevant considerations include customer protection, margin sufficiency, segregation, recovery in default, market integrity, price discovery, hedging utility, manipulation detection, regulatory visibility, and financial stability. On the cost side, relevant considerations include duplicative registration, reporting, records and examinations; capital and collateral requirements; fragmented netting; liquidity costs; barriers to entry; customer prefunding; product availability; and migration to less regulated markets.

A useful distinction is between complementary and duplicative regulation. Where two requirements address different risks, both may be necessary. But where they address the same risk and provide substantially equivalent protection, the Commissions should consider whether coordinated or alternative compliance can preserve the benefit without reproducing the burden. Framed economically, the relevant test is whether each incremental requirement yields a marginal protective benefit that justifies its marginal cost. A requirement that addresses a risk already fully addressed by another regime adds cost without a commensurate increase in protection; duplication of that kind is properly understood not as extra caution but as a net cost borne by investors and markets.

As a general observation, where the Commissions pursue a similar regulatory objective, a single effective compliance result may be sufficient. That principle does not require either Commission to surrender jurisdiction or distinct statutory responsibilities. A transaction report capable of satisfying both agencies' legitimate information needs, for example, need not be reproduced merely because two agencies require the information. The same reasoning may apply to recordkeeping, examinations, registration information, supervisory controls, and other requirements where the statutory objectives substantially coincide. We recognize that some regulatory overlap may be unavoidable; for example, the Commissions and prudential regulators may need to examine the same activity for distinct purposes. In those circumstances, the Commissions should coordinate so that legitimate overlap does not produce unnecessary cost or burdens to the extent possible.

Title VII contemplated precisely this sort of coordination. It requires the prudential regulators, the CFTC, and the SEC to consult periodically on capital and margin requirements and, to the maximum

[13] Memorandum of Understanding Between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission (Mar. 11, 2026); *see also* SEC and CFTC Announce Historic Memorandum of Understanding Between Agencies, Press Release 2026-26 (Mar. 11, 2026).

extent practicable, maintain comparable requirements.[14] The Request for Comment and the March 2026 Memorandum of Understanding provide an opportunity to carry that principle further.

IV. Investor Protection Includes the Costs Regulation Creates

In our experience, regulatory cost should not be treated as merely an industry concern. It can affect investors through price, liquidity, collateral, competition, product design, and access. Consider two structures that provide substantially similar economic exposure. A derivative may permit an investor to obtain exposure efficiently through margin but carry dealer, reporting, collateral, documentation, and infrastructure requirements. A structured or fully funded instrument may avoid some of those requirements but require more investor capital, provide less liquidity, or embed structuring and hedging costs in the return. Neither product is necessarily preferable. A useful question for the Commissions is whether materially different regulatory treatment reflects materially different risks, or whether regulation itself is determining which wrapper is economically viable.

The same concern arises within the derivatives markets. Relatively small changes in reference asset or structure can produce materially different capital, margin, reporting, or market structure consequences. Some distinctions are required by Congress. Others may be susceptible to interpretation, harmonization, alternative compliance, or exemptive relief.

Risk mitigation should matter as well. A regulatory regime designed principally to address counterparty exposure may impose substantial costs when applied without differentiation to an activity in which that exposure has been materially reduced through collateral, hedging, clearing, pass-through arrangements, or other structural protections. If different federal regimes recognize the same mitigants differently, that divergence deserves examination. The question is not which regulator is more stringent; rather, it is which treatment best reflects the risk the rule is intended to address.

Congress itself recognized that statutory definitions operate in context. Both the Securities Act and the Exchange Act introduce their definitions with the qualification "unless the context otherwise requires."[15] That textual direction does not displace the statutory definitions, but it counsels against applying them without regard to context, economic substance, statutory purpose, or the regulatory consequences that follow.

The agencies' exemptive authorities can also be useful in addressing some of the anomalies described above. Exchange Act Section 36 authorizes the SEC, by rule, regulation, or order, to exempt persons, securities, transactions, or classes thereof from Exchange Act provisions where necessary or appropriate in the public interest and consistent with investor protection.[16] The Commission also possesses broad exemptive authority under Section 28 of the Securities Act, which permits it, by rule or regulation, to exempt any person, security, transaction, or class thereof from provisions of the Act where the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.[17] That authority gives the Commission an additional means to address anomalous or duplicative regulatory outcomes without forcing every problem into a definitional solution. The Commodity Exchange Act likewise provides the CFTC substantial exemptive authority under Section

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[14] See 7 U.S.C. § 6s(e)(3)(D); 15 U.S.C. § 78o-10(e)(3)(D). Both provisions require periodic consultation on minimum capital and minimum initial and variation margin requirements and, to the maximum extent practicable, comparable requirements.
[15] Securities Act of 1933 § 2(a), 15 U.S.C. § 77b(a); Securities Exchange Act of 1934 § 3(a), 15 U.S.C. § 78c(a). Both provide that their statutory definitions apply "unless the context otherwise requires."
[16] Securities Exchange Act of 1934 § 36(a)(1), 15 U.S.C. § 78mm(a)(1).
[17] Securities Act of 1933 § 28, 15 U.S.C. § 77z-3.

4(c), subject to the conditions Congress prescribed.[18] These authorities do not permit either Commission to rewrite statutory definitions. They do permit the agencies, where the statutory conditions are satisfied, to test more proportionate approaches, address unnecessary duplication, and respond when application of the full regulatory regime would impose costs disproportionate to its incremental benefit. In our judgment, classification should therefore inform the analysis, but need not always end it.

V. Conclusion

The Request for Comment presents an opportunity to establish a durable framework for markets in which the jurisdictions and regulatory interests of the two Commissions increasingly intersect. We respectfully offer these observations grounded in statutory text, economic substance, regulatory purpose, and measurable outcomes. A useful approach could incorporate asking what each regulatory requirement contributes, what the combined framework costs, how those costs affect investors and markets, and whether the same protection can be achieved more coherently through coordination or alternative compliance. Such an approach would preserve the authority Congress assigned to each Commission. It would protect investors and market integrity. It would reduce incentives for regulatory arbitrage. And by focusing on supervision calibrated to the risks an activity presents, rather than on lowering standards to attract activity, it would make it more likely that economically significant activity capable of being conducted safely occurs within, rather than beyond, United States supervision.

We would add one final consideration concerning timing. Markets do not pause while agencies deliberate, and the offshore migration described above is already underway. Once trading activity and market leadership move abroad, they are difficult to win back. We would therefore encourage the Commissions to act expeditiously, rather than allow this inquiry to unfold over the course of months. That urgency is consistent with the direction of the President's Working Group, which has called on the agencies to coordinate to ensure efficient rulemaking processes.[19] Prompt and coordinated action would allow the Commissions to establish a durable framework that provides robust regulation while preserving the opportunity to bring legitimate activity within United States supervision.

These are not inherently partisan questions. Commissioners of both parties have long shared the same fundamental objectives: protecting investors and customers, preserving market integrity and financial stability, and maintaining strong and competitive U.S. markets. There will inevitably be differences over means. Those differences should not obscure the substantial common ground on ends. We respectfully offer these observations for the Commissions' consideration and appreciate the opportunity to comment.

[Signatures on following page.]

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[18] Commodity Exchange Act § 4(c), 7 U.S.C. § 6(c). Section 4(c) authorizes the CFTC, by rule, regulation, or order, to exempt transactions or classes of transactions from specified provisions of the Act when, among other statutory conditions, the exemption is consistent with the public interest and the purposes of the Act.

[19] President's Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology* (July 30, 2025).

Respectfully submitted,

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Former Chairman, CFTC

Hon. Brian Quintenz
Former Commissioner, CFTC

Hon. Sharon Brown-Hruska
Former Acting Chair/Commissioner, CFTC

Hon. Steven Wallman
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