

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 1**

**RIN 3038-AF71**

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 230, 240 and 241**

**[Release No. 33-11424; 34-105735; File no. S7-2026-21]**

**RIN 3235-AN79**

**Joint Request for Comment on Further Definition of “Swap” and “Security-Based Swap”  
and on Alternative Compliance**

**AGENCY:** Commodity Futures Trading Commission; Securities and Exchange Commission.

**ACTION:** Joint request for comment.

**SUMMARY:** The Commodity Futures Trading Commission (“CFTC”) and the Securities and Exchange Commission (“SEC”) (together, the “Commissions”) request public comment on potential ways to draw clearer regulatory lines with respect to innovative products that may implicate both SEC and CFTC regulatory interests. The Commissions also request public comment on potential approaches to enable alternative compliance.

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Comments may be submitted by any of the following methods:

**CFTC Comment Submission**

You may submit comments, specifically referencing “Joint Request for Comment on Further Definition of ‘Swap’ and ‘Security-Based Swap’ and on Alternative Compliance” and RIN 3038-AF71, by any of the following methods:

**Regulations.gov:** Go to <https://www.regulations.gov> and press the “Search” button, then proceed as follows:

1. Under Refine Documents Results—check the box to “Only show documents open for comment”;

2. Under Agency—select “See More” and check the box for “Commodity Futures Trading Commission,” then press the Apply button;

3. Identify this proposal in the list of CFTC documents open for comment, press the “Comment” button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this proposal on [www.federalregister.gov](http://www.federalregister.gov), click the “Submit A Public Comment” button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to Regulations.gov.

**Mail:** Send to—Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

**Hand Delivery/Courier:** Address to—CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through Regulations.gov are encouraged.

All comments must be submitted in English or, if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments

(regardless of submission method) will be published without review for, and without removal of, any personal identifying information or information your business may consider confidential.

If you wish to submit confidential information for the Commission's consideration, please contact the CFTC personnel listed in this Notice under **FOR FURTHER INFORMATION CONTACT** before making any submission. Please also carefully review the Commission's procedures in 17 CFR 145.9 for requesting confidential treatment under the Freedom of Information Act (FOIA) of information submitted to the Commission.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as—without limitation—obscene language, threats of violence, solicitations for commercial sales or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments on the merits of this proposal, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

### **SEC Comment Submission**

#### *Electronic Comments:*

- Use the SEC's internet comment form (<https://www.sec.gov/comments/s7-2026-21/joint-request-comment-further-definition-swap-security-based-swap-alternative-compliance#no-back>); or

- Send an email to *rule-comments@sec.gov*. Please include File Number S7-2026-21 on the subject line.

*Paper Comments:*

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-2026-21. This file number should be included on the subject line if email is used. To help the SEC process and review your comments more efficiently, please use only one method of submission. The SEC will post all comments on the SEC's website (<https://www.sec.gov/rules-regulations/public-comments/s7-2026-21>). Do not include personally identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

**FOR FURTHER INFORMATION CONTACT:**

*CFTC*: Division of Market Oversight, at 202-418-5000, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St. NW, Washington, DC 20581.

*SEC*: Office of Derivatives Policy, Division of Trading and Markets, at (202) 551-5870, or Office of Chief Counsel, Division of Corporation Finance, at (202) 551-3500, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

## SUPPLEMENTARY INFORMATION:

### I. Introduction

Financial market participants are operating in an increasingly convergent financial ecosystem.<sup>1</sup> Financial markets are evolving rapidly and becoming more interconnected through global technologies.<sup>2</sup> New trading models, digital infrastructure, and onchain, automated systems are increasingly blurring traditional jurisdictional lines.<sup>3</sup>

Against this backdrop, the SEC and CFTC have committed to coordinate, as appropriate, in areas of common regulatory interest where collaboration can enhance regulatory effectiveness and market integrity.<sup>4</sup> In matters involving common jurisdiction, the SEC and CFTC seek to coordinate to reduce regulatory gaps and provide greater certainty regarding regulatory responsibility in support of efficient markets and lawful innovation.<sup>5</sup>

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Title VII”)<sup>6</sup> established a comprehensive regulatory framework for swaps and security-based swaps (“SBS”). Title VII allocated regulatory authority between the CFTC and the SEC and provided the Commissions with joint authority to further define terms.<sup>7</sup>

Title VII added section 1a(47)(A) to the Commodity Exchange Act (“CEA”),<sup>8</sup> which defines “swap” to include any agreement, contract, or transaction that satisfies one or more of six

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<sup>1</sup> See SEC & CFTC, Memorandum of Understanding between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission regarding Harmonization in Areas of Common Regulatory Interest (Mar. 11, 2026), available at: <https://www.sec.gov/files/mou-sec-cftc-2026.pdf>.

<sup>2</sup> See *id.*

<sup>3</sup> See *id.*

<sup>4</sup> See *id.* at 1.

<sup>5</sup> See *id.*

<sup>6</sup> Pub. L. 111-203, 124 Stat. 1376 (2010), available at <https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>.

<sup>7</sup> See Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208 (Aug. 12, 2012) (“Product Definitions Adopting Release”) (describing the various authorities).

<sup>8</sup> 7 U.S.C. 1a(47)(A).

prongs: (i) it “is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind”; (ii) it “provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence”; (iii) it “provides on an executory basis for the exchange . . . of 1 or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset . . . or liability that incorporates the financial risk so transferred;” or it satisfies one or more of the three other prongs in that definition.<sup>9</sup>

CEA section 1a(47)(B) excludes certain instruments that otherwise may satisfy one or more of these six prongs. Specifically, CEA section 1a(47)(B) contains, among others, exclusions 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 of 1933 (“Securities Act”) and the Securities Exchange Act of 1934 (“Exchange Act”);<sup>10</sup> any note, bond, or evidence of indebtedness that is a security;<sup>11</sup> security

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<sup>9</sup> 7 U.S.C. 1a(47)(A)(i)-(vi).

<sup>10</sup> 7 U.S.C. 1a(47)(B)(iii).

<sup>11</sup> 7 U.S.C. 1a(47)(B)(vii).

forwards intended to be physically settled;<sup>12</sup> futures;<sup>13</sup> security futures products;<sup>14</sup> and SBS.<sup>15</sup>

Thus, by statute, these instruments are not subject to the same regulatory treatment as swaps.

In addition, Title VII added Section 3(a)(68)<sup>16</sup> of the Exchange Act, which defines “security-based swap” as any agreement, contract, or transaction that is a swap (without regard to the “swap” definition’s exclusion for SBS) and is based on: (i) “an index that is a narrow-based security index<sup>17</sup> [(“NBSI”)], including any interest therein or on the value thereof” (“SBS NBSI Prong”); (ii) “a single security or loan, including any interest therein or on the value thereof” (“SBS Single Security Prong”); or (iii) “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” (“SBS Event Contract Prong”). A “mixed swap” contains elements of both a “swap” and a “security-based swap.”<sup>18</sup>

In 2012, the Commissions jointly adopted rules and interpretations to, among other things, further define the terms “swap,” “security-based swap,” and “security-based swap agreement.”<sup>19</sup>

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<sup>12</sup> 7 U.S.C. 1a(47)(B)(ii).

<sup>13</sup> 7 U.S.C. 1a(47)(B)(i).

<sup>14</sup> *Id.*

<sup>15</sup> 7 U.S.C. 1a(47)(B)(x).

<sup>16</sup> 15 U.S.C. 78c(a)(68).

<sup>17</sup> A narrow-based security index is defined in 7 U.S.C. 1a(35) and 15 U.S.C. 78c(a)(55). 15 U.S.C. 78c(a)(68)(E) includes a rule of construction stating that, for purposes of the “security-based swap” definition, an index means an index or group of securities, including any interest therein or based on the value thereof.

<sup>18</sup> *See* Product Definitions Adopting Release, 77 FR 48208, 48210 n.10 (stating, “A mixed swap is defined as a subset of security-based swaps that also are based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer)”). The Commissions have stated that the scope of mixed swaps is, and is intended to be, narrow. Product Definitions Adopting Release, 77 FR 48208, 48291.

<sup>19</sup> *See* Product Definitions Adopting Release, 77 FR 48208.

In recent years, market participants have sought to develop a range of innovative products and structures of products that may raise interpretive questions under the Title VII framework. Market participants have sought clarity from the Commissions regarding the regulatory lines for agency oversight of innovative products and structures. Market participants have also sought clarity about compliance where products or structures may touch on the regulatory interests of both Commissions. For example, market participants are raising questions about whether certain event contracts are swaps, SBS, or mixed swaps, or types of instruments that fall within statutory exclusions from the “swap” definition. Beyond that, market participants also have raised interpretive questions about other innovative products and product structures within the Title VII framework.

In light of this background, the SEC and CFTC solicit comment on ways to provide clarity, as necessary, to unlock access to innovative products in U.S. financial markets.

## **II. Request for Comment on Definitional Clarity**

The Commissions jointly request public comment on potential ways to draw clearer regulatory lines for agency oversight of innovative products that may implicate the regulatory interests of both Commissions. The Commissions request comment on principled, objective criteria that could be used to provide additional clarity for these products within the Title VII framework. Public input will help the Commissions evaluate potential steps in light of technological developments, accumulated experience, and evolving market practices.

1. What types of event contracts or other innovative products or product structures that may touch on the regulatory interests of both Commissions have raised interpretive questions for market participants, and how should those questions be resolved? In the context of these innovations, is additional clarification necessary to provide

- principled, objective criteria for distinguishing between swaps, mixed swaps, SBS, or other securities or instruments that are excluded from the definition of “swap”? What characteristics do event contracts share or not share with other products that may be classified as swaps, mixed swaps, SBS, or other securities or products excluded from the “swap” definition? Taking into account the rules and interpretations the Commissions adopted in the Product Definitions Adopting Release, should the Commissions issue new or revised rules or interpretations to address these innovations?
2. As discussed above, several exclusions from the definition of “swap” are set forth in CEA section 1a(47)(B). Is additional regulatory clarity necessary with respect to application of these exclusions? For example, are there areas where principled, objective criteria could further clarify the definitional lines?
  3. Similarly, is there a need for greater clarity regarding the definitional lines between swaps, SBS, and mixed swaps? Is there a need for greater clarity regarding the scope and application of the SBS NBSI Prong, the SBS Single Security Prong, and/or the SBS Event Contract Prong?
  4. Is there a need for greater clarity 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?
  5. Regarding the SBS NBSI Prong, is there a need for additional clarity regarding when a swap is based on “an index that is [an NBSI] including any interest therein or on the value thereof”? Should the Commissions further address the circumstances when a

swap does or does not satisfy the SBS NBSI Prong? For example, what additional clarity, consistent with CEA section 1a(35) and Exchange Act section 3(a)(55), might the Commissions provide with respect to the characterization of contracts referring to potential changes to the composition of an NBSI, as opposed to changes in the price or value of an NBSI? The Commissions have adopted rules addressing tolerance periods and grace periods for products referencing securities indexes traded on designated contract markets, swap execution facilities (“SEFs”), foreign boards of trade, security-based SEFs, or national securities exchanges, where the securities index temporarily moves from broad-based to narrow-based or from narrow-based to broad-based.<sup>20</sup> Should the Commissions revise or clarify those rules or provide additional clarity, transition rules, or safe harbors for products that are based on a securities index that transitions between narrow-based and broad-based, or vice versa?

6. Regarding the SBS Single Security Prong, is additional clarity necessary regarding when a swap is based on “a single security or loan, including any interest therein or on the value thereof”? Should the Commissions further address the circumstances when a swap does or does not satisfy the SBS Single Security Prong?
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? Should the Commissions further address the circumstances when a swap does or does not satisfy the SBS Event Contract Prong? How should any further clarifications relate to the Commissions’ rules and guidance

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<sup>20</sup> See 17 CFR 240.3a55-2; 17 CFR 240.3a55-3; 17 CFR Part 41.

on credit default swaps in the Product Definitions Adopting Release,<sup>21</sup> and should such rules and guidance be revised or clarified?

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]”. 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”? 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? 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?

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<sup>21</sup> See Product Definitions Adopting Release, 77 FR at 48267.

9. Any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act is excluded from the “swap” definition.<sup>22</sup> In light of innovative products and product structures, but mindful of the existing structured notes market, is there a need to further clarify whether a particular instrument is a note, bond, or evidence of indebtedness that is a security, and thus excluded from the definition of “swap” pursuant to CEA section 1a(47)(B)(vii), as compared to a swap or SBS? For example, what consideration should be given to whether the financial instrument is issued pursuant to an indenture qualified under the Trust Indenture Act of 1939?<sup>23</sup> What consideration should be given to whether the terms of the instrument reflect a lender-borrower relationship? Are there different or additional criteria relevant to distinguishing notes, bonds, and other evidence of indebtedness that are securities from swaps or SBS?
10. Security forwards, if intended to be physically settled at the time the contract is entered into, are excluded from the definitions of “swap” and “security-based swap.”<sup>24</sup> In the Product Definitions Adopting Release, the Commissions declined to provide a bright-line test for determining whether a security forward is intended to be physically settled. In light of innovative products and product structures, should the Commissions provide additional clarity as to the meaning of the phrase “for deferred shipment or delivery, so long as the transaction is intended to be physically settled” in the exclusion from the definition of “swap” set forth in CEA section 1a(47)(B)(ii)? What approach should be taken?

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<sup>22</sup> 7 U.S.C. 1a(47)(B)(vii).

<sup>23</sup> 15 U.S.C. 77aaa-77bbbb.

<sup>24</sup> 7 U.S.C. 1a(47)(B)(ii).

11. Any contract of sale of a commodity for future delivery (or option on such a contract), as well as any security futures product, is excluded from the “swap” definition.<sup>25</sup> Is there a need for greater clarity from the Commissions regarding the treatment of futures, including security futures, in the context of innovative markets? For example, is there a need for greater clarity regarding whether a cash-settled “perpetual” contract referencing an equity security could be treated as a security future? What effects could the introduction of such products have on liquidity formation, price discovery, and hedging activity, particularly with regards to the derivatives and underlying cash equity markets?

### **III. Request for Comment on Alternative Compliance**

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 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?

13. Title VII provides that the Commissions may adopt rules to further define terms included in Title VII, but it also limits the exemptive authority of each Commission over certain provisions related to swaps and SBS. In light of these provisions, under what circumstances should the Commissions consider/pursue joint or coordinated notice registration, tailored rules, rules of procedure, tailored trade reporting rules,

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<sup>25</sup> 7 U.S.C. 1a(47)(B)(i).

- deemed filing, or other joint or coordinated approaches to facilitate alternative compliance?
14. What considerations should guide surveillance, examination, and enforcement under an alternative compliance approach? How could enhanced sharing of information and data<sup>26</sup> help fulfil the Commissions' regulatory mandates under an alternative compliance approach? How could the Commissions more effectively coordinate to examine and enforce their regulatory requirements?
15. Under an alternative compliance regime, how could the Commissions best deter market manipulation and trading on material non-public information? What steps should the agencies take to ensure robust surveillance and oversight of cross-market activities?

#### **IV. General Request for Comment and Data**

The Commissions are requesting comments from the public on all aspects of these questions. The Commissions encourage commenters to provide data-driven input.

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<sup>26</sup> See *supra* note 1.

**V. Regulatory Planning and Review**

This request for comment is a significant regulatory action under Executive Order 12866, as amended, and has been reviewed by the Office of Management and Budget.

Issued in Washington, DC, on June 18, 2026, by the Commodity Futures Trading Commission.

Robert Sidman,  
*Deputy Secretary of the Commission.*

By the Securities and Exchange Commission.

Dated: June 18, 2026.

**Vanessa A. Countryman,**  
*Secretary.*

**NOTE:** The following appendix will not appear in the Code of Federal Regulations.

**Joint Request for Comment on Further Definition of “Swap” and “Security-Based Swap”  
and on Alternative Compliance – CFTC Voting Summary**

On this matter, Chairman Selig voted in the affirmative. No Commissioner voted in the negative.