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To:
Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading
Commission
1155 21st St NW
Washington, DC 20581

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

August 24, 2026

Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (RIN 3038-AF71, File Number S7-2026-21)

Coinbase Global, Inc. (together with its subsidiaries, "**Coinbase**") appreciates the opportunity to respond to the joint request for comment (the "**RFC**") published by the Commodity Futures Trading Commission ("**CFTC**") and the U.S. Securities and Exchange Commission ("**SEC**") (together, the "**Commissions**") regarding regulatory approaches to innovative products.

Perpetual derivatives and prediction markets improve price discovery, liquidity, transparency, and capital formation by giving market participants new ways to make investments and manage risks. The byzantine jurisdictional lines between the CFTC and SEC, however, create inconsistent requirements for economically related products, and inhibit market participants' ability both to offer and to efficiently consolidate product offerings through a single U.S.-regulated tech stack.

The Commissions have the tools to address these issues. In this letter, we make three recommendations about how to use these tools: (1) foster alternative compliance frameworks that promote customer choice, competition, and innovation; (2) regulate equity perpetual derivatives as security futures; and (3) allow exchanges regulated by either Commission to list securities-related event contracts.

Coinbase looks forward to working with the Commissions on these matters.

Yours sincerely,

Scott Bauguess
Vice President,
Global Regulatory Policy
Coinbase

Julia Hueckel
Director,
Global Regulatory Policy
Coinbase

Introduction

The rise of perpetual derivatives and the rise of prediction markets represent two of the most consequential developments in financial markets in decades. These innovations began in the commodities markets — particularly digital commodities — and are now growing robustly in the securities markets. They create significant benefits for investors and issuers in terms of price discovery, liquidity, transparency, risk management, and capital formation.

Coinbase operates three regulated entities relevant to these markets. Coinbase Derivatives, LLC is a CFTC-registered designated contract market ("**DCM**"). Coinbase Financial Markets, Inc. is a CFTC-registered futures commission merchant ("**FCM**") and a member of the National Futures Association. Coinbase Capital Markets Corp. is an SEC-registered broker-dealer ("**BD**") and a member of the Financial Industry Regulatory Authority. Our response to the RFC[1] draws on our experience operating in both the regulated securities and derivatives markets, including with respect to perpetual derivatives and prediction markets.

Perpetual derivatives provide economic exposure over a trader's desired investment horizon without the accompanying costs, inconvenience, and market friction of rolling a position from contract to contract that accompanies dated futures contracts. Binary event contracts that relate directly or indirectly to securities ("**Securities-Related Event Contracts**") enable investors to isolate, for investment or hedging purposes, key factors that might impact price discovery and liquidity of the underlying or associated securities. Some Securities-Related Event Contracts relate to achievement of specified performance indicators ("**KPI Contracts**") and others relate to the occurrence, nonoccurrence, or extent of the occurrence of company events ("**Company Event Contracts**").

Significant volume in equity perpetual derivatives and Securities-Related Event Contracts already exists offshore, which, unfortunately for U.S. economic leadership, is where much of this financial innovation is occurring today. Although the categorization of many of these contracts should be clear (*e.g.*, many Securities-Related Event Contracts are swaps), definitional ambiguity and the jurisdictional split between the Commissions have impeded the onshoring of a significant portion of this activity. The resulting fragmentation is undesirable, slowing domestic market development, splintering liquidity, complicating cross-market oversight, and thus harming U.S. customers by creating an unlevel playing field globally that benefits international customers.

The RFC correctly identifies that two essential levers are needed to address this problem: definitional clarity and the recognition of circumstances in which compliance with one

[1] 91 Fed. Reg. 37,873 (Jun. 24, 2026).

Commission's regulatory framework could appropriately satisfy substantially similar requirements of the other Commission ("**alternative compliance**").

In Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**"), Congress equipped the Commissions with the precise tools needed to pair these approaches. Section 712 grants the Commissions further definitional authority over the terms "swap" and "security-based swap." Section 718 recognizes that novel products may have elements of both securities and commodity futures or options, and provides a mechanism to resolve overlapping classifications. And Section 717 provides reciprocal exemptive authority that allows each Commission to exempt products from its own regime on the condition that the other Commission exercises concurrent jurisdiction. Together, these tools allow the Commissions to move beyond rigid, mutually exclusive product classifications and toward a framework that promotes customer choice, competition, and responsible innovation while preserving robust oversight.

Accordingly, our response is organized around three principal recommendations:

Foster alternative compliance frameworks

The Commissions should pair definitional clarifications with exemptive relief that enables registrants of one Commission to offer products implicating the other Commission's regulatory interests, subject to conditions preserving concurrent jurisdiction for anti-fraud, anti-manipulation, and books and records access purposes; requiring cross-market coordination among exchanges; and establishing consistent minimum standards in competitively sensitive areas such as margin levels and listing standards.

Regulate equity perpetual derivatives as security futures

Perpetual derivatives bear all of the key characteristics of futures contracts: standardization, futurity, fungibility, and offset. The CFTC has already confirmed that perpetual derivatives involving digital commodities are commodity futures. The logical extension is that perpetual derivatives involving equity securities are security futures.

Confirming this point would bring needed definitional clarity and apply the appropriate regulatory framework to these markets and participants. The regulation of security futures under the Commodity Exchange Act ("**CEA**") and the federal securities laws embodies reciprocal alternative compliance, enabling DCMs and FCMs to offer security futures under CFTC rules via notice registration with the SEC, and national securities exchanges ("**NSEs**") and BDs to offer them under SEC rules via notice registration with the CFTC. Notice registration ensures that both Commissions can oversee the market and set consistent rules in core areas such as listing standards and margin requirements. It also promotes customer choice and competition by enabling a wider range of venues and intermediaries to offer the products, in all cases subject to compliance with joint rules in those core areas. And unlike other potential regulatory frameworks, such as the Dodd-Frank rules for security-based swaps ("**SBSs**"), the security futures framework is purpose-built to handle trading by retail investors on public exchanges.

Permit both NSEs and DCMs to list Securities-Related Event Contracts

The Commissions should use their Section 712, 717, and 718 authorities to allow Securities-Related Event Contracts to be listed as security futures, swaps, or securities options on both DCMs and NSEs, subject to conditions enabling coordinated inter-agency oversight between the SEC and CFTC. A DCM that is notice-registered with the SEC should be able to list Securities-Related Event Contracts as security futures, and an NSE that is notice-registered with the CFTC should be able to do the same.

This approach avoids forcing an artificial classification choice on products that have characteristics of multiple categories. The Commissions should also use their statutory authority to set product definitions to exclude Securities-Related Event Contracts listed as swaps on a DCM from regulation as SBSs, and the SEC should exempt such Securities-Related Event Contracts from regulation as securities options or security futures, subject to retention of SEC anti-fraud, anti-manipulation, and books and records access authority. Likewise, the Commissions should use their further definitional authority to exclude Securities-Related Event Contracts listed as securities options on an NSE from regulation as SBSs or swaps, and the CFTC should exempt such Securities-Related Event Contracts from regulation as security futures, subject to retention of CFTC anti-fraud, anti-manipulation, and books and records access authority.

Alternative compliance frameworks are the best approach to promoting responsible innovation and competition

The Commissions share core regulatory objectives in the derivatives markets: market integrity, financial stability, and customer protection. These objectives are served by promoting regulatory clarity and avoiding the application of overlapping or related statutory authorities to produce divergent regulatory outcomes for economically related products, which deters innovation and harms market participants.

In particular, the Commissions should avoid using highly technical definitional distinctions among product categories under the CEA and securities laws — securities options, security futures, SBSs, commodity options, and commodity futures — to carve up product categories into rigid, mutually exclusive classifications, an approach that produces multiple problems:

- **Uncertainty deters innovation.** When the applicable category for a novel product is uncertain because it has the characteristics of multiple categories, market participants often decline to offer the product at all. Those that do proceed face litigation from competitors — often incumbents — alleging that the product falls within a different category. They may also face regulatory enforcement for inadvertent noncompliance based on alleged miscategorization.

- **Fragmentation harms customers and markets.** Several problems occur when economically related products end up in different categories:

    - Most notably, this can prevent customers from trading all related products on a single platform. Put simply, fragmented liquidity in related products unnecessarily increases frictions, raises costs, and never improves the markets for customers.

    - Specifically, customers cannot hold and margin related positions in the same account at the same broker. This increases capital requirements for customers who must then fund gross, rather than net, margin obligations.[2] The costs are exacerbated by needing different service providers, which itself can engender risks, for economically related products.

    - More generally, duplicative compliance costs are borne by customers with no added regulatory benefit. Firms must build and maintain separate books and records, surveillance, and reporting systems for economically identical products, raising costs without any corresponding customer benefit.

    - The product consequence is that exchanges and brokers are forced to compete based on regulatory categorization rather than customer service and product quality. The lack of legal certainty is costly and confusing to market participants, and it can impede innovation and undermine competition.

    - The regulatory consequence is that oversight is fragmented, making it harder to police cross-market fraud and manipulation, maintain consolidated visibility into related positions, and prevent or respond to market crises.[3]

[2] The Commissions have separately recognized the costs fragmented margin requirements impose on market participants and the market at large. *See* Joint Request for Comment on Further Implementation of Portfolio Margining and Cross-Margining of Securities and Derivatives, 91 Fed. Reg. 39,579 (Jun. 30, 2026).

[3] *See, e.g.*, the May 6, 2010 flash crash, which demonstrated the risks of fragmented oversight across multiple regulatory jurisdictions.

Addressing market fragmentation within the U.S. by removing unnecessary regulatory complexity will drive both the demand for products by U.S. investors and the onshoring of demand currently served by offshore offerings.

To do this, the Commissions should pair definitional clarifications with exemptive relief to create safe harbors enabling alternative compliance for registrants of one Commission that offer products that implicate the other Commission's regulatory interests. This exemptive relief should include the following conditions:

- **Concurrent jurisdiction.** Preserve joint agency authority for anti-fraud, anti-manipulation, and books and records access purposes;
- **Cross-market coordination on market integrity.** Require cross-market coordination among exchanges in different registration categories for market-integrity purposes, including coordinated market halts and trade surveillance, consistent with what already applies under the security futures regime; and
- **Consistent minimum standards.** Prevent a race to the bottom by establishing consistent minimum standards in competitively sensitive areas, such as margin levels and listing standards.

These conditions protect investors and market integrity while removing the regulatory barriers that currently fragment markets and deter innovation.

Equity perpetual derivatives are best regulated as security futures

Equity perpetual derivatives provide ongoing exposure, without expiry, to the value of a security through the exchange of payments tied to a funding rate indexed to the security's spot price. These contracts enable cash-settled, leveraged exposure to a security without embedding the term risk of a conventional, dated futures contract.

As a result, they enable investors looking for long-term exposure to achieve their objective without the costs and frictions of rolling (i.e., closing out a position in an expiring future and putting on a new position corresponding to the next expiration) traditional, dated futures contracts. They also enable short-term traders to obtain synthetic financing without paying for duration they neither need nor want. They provide these benefits in a transparent, exchange-traded and centrally cleared format that is less risky than over-the-counter swaps. As a result, they promote liquidity formation and price discovery in the equity markets and provide significant hedging opportunities for investors.

These benefits have led equity perpetual derivatives to command significant volume and liquidity in offshore markets. The main reason they do not trade on U.S. domestic exchanges is a lack of definitional clarity. The Commissions should resolve this issue by confirming that equity perpetual derivatives are security futures.

Perpetual derivatives satisfy the legal criteria for classification as futures contracts

As Coinbase previously demonstrated in requesting confirmation that perpetual derivatives on digital commodities are futures contracts rather than swaps,[4] the legal analysis supports classification of perpetual derivatives as futures.

The CEA and the Securities Exchange Act of 1934 ("**Exchange Act**") do not define "futures contract." Courts and agencies assess each transaction "as a whole with a critical eye toward its underlying purpose"[5] by evaluating whether characteristics common to most futures contracts are present.[6] The "necessary factors" for a futures contract are: (1) futurity, including delivery in the future at prices or pricing formulas established at contract initiation; (2) risk transference, meaning contracts are undertaken principally to assume or shift price risk without transferring the underlying commodity; and (3) offset, meaning contracts can be satisfied through offset, cancellation, cash settlement, or other means calculated to avoid delivery.[7] Other identified characteristics include standardized units, margin requirements tied to price movements, clearing organizations guaranteeing counterparty performance, open and competitive trading in centralized markets, and public price dissemination.[8] Equity perpetual derivatives listed on a U.S. DCM or NSE would exhibit all of these characteristics.

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[4] *See* Request for No-Action Relief, Coinbase Derivatives, LLC (CFTC Staff Letter No. 26-17), available at https://www.cftc.gov/csl/26-17/request_letter/0/download.

[5] *See* CFTC v. Co Petro Mktg. Grp., Inc., 680 F.2d 573, 581 (9th Cir. 1982).

[6] See CFTC Interpretive Letter No. 98-73, Comm. Fut. L. Rep. ¶27, 449 (Oct. 8, 1998) (**Letter 98-73**); see, also Policy Statement Concerning Swap Transactions, 54 Fed. Reg. 30694, 30695 (July 21, 1989) (**Swap Policy Statement**); CFTC Interpretive Letter No. 97-01, Comm. Fut. L. Rep. ¶26, 937 (Dec. 12, 1996); *CFTC v. UForex Consulting*, 551 F.Supp.2d, 513, 529 (W.D.La. 2008), *CFTC v. Fleury*, 2010 WL 5146283 (S.D. Fl.) at *7 (**Fleury**).

[7] *See CFTC v. First Lexington Grp., LLC*, No. 03 CV 9124 (GBD) (S.D.N.Y. Mar. 24, 2008), available at https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enffirstlexingtongroup032408.pdf; *accord Fleury*, 2010 WL 5146283, at *9; Letter 98-73; Swap Policy Statement, 54 Fed. Reg. at 30,695.

[8] *Id.*

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Perpetual structure does not preclude futures categorization

Historically, exchanges have listed futures contracts with a finite term.[9] However, this is not a legal requirement: when evaluating contracts on intangible commodities, courts have repeatedly held that a specified future delivery or settlement date is not required. As the court in *Standard Forex II* explained: "While futures contracts generally have a specified future delivery date, or settlement date, that date is not always specified thus allowing some futures contracts to be of 'indefinite duration.'"[10]

The Seventh Circuit's decision in *CME v. SEC* is directly on point. There, the court concluded that contracts of "indefinite duration" can possess the attribute of "futurity" because futurity means "value that is set in the future" and exists where contracts provide for future executory payment obligations — not only where a contract has a final-settlement date and fixed term.[11] In *Zelener*, the CFTC itself took the position that transactions were futures contracts because customers' positions were held open indefinitely.[12]

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[9] Courts have described a futures contract as providing for the purchase or sale of a commodity "at a fixed date in the future." *Chi. Mercantile Exch. v. SEC*, 883 F.2d 537, 542 (7th Cir. 1989) (***CME v. SEC***).

[10] *Standard Forex II*, 1996 WL 435440, at *10, 1996 U.S. Dist. LEXIS 14778, at *29 (E.D.N.Y. July 25, 1996); *see also CFTC v. Int'l Fin. Servs. (N.Y.), Inc.*, 323 F. Supp. 2d 482, 498 (S.D.N.Y. 2004) ("As a matter of law, defendants wrongly characterize certain indicia of futures contract as essential features of such contracts."); *CFTC v. Int'l Foreign Currency, Inc.*, 334 F. Supp. 2d 305, 312 (E.D.N.Y. 2004) ("[T]he fact that Defendants' contracts failed to have a specified future delivery date is not determinative.").

[11] *CME v. SEC*, 883 F.2d at 541. The contracts at issue—"index participations" or "IPs"—were perpetual-term contracts based on the value of a securities index. The seller promised to pay the buyer the value of the underlying index on a "cash-out day," while the buyer paid in cash on the date of sale. *Id.* at 539. The IPs settled quarterly, with the seller owing the buyer a payment approximating dividends paid during the prior quarter. *Id.* The IPs thus resemble the perpetual derivatives in that (i) long-side holders were not subject to a binding, final-settlement date and (ii) they provide for executory payments (for the IPs, the seller's quarterly dividend payments; for the perpetuals, the funding payments) determined following initiation of the contract. Although long-side holders of the IPs could exercise, on a quarterly or semi-annual basis, their privilege to "cash-out" and thereby trigger the short-side holder's obligation to pay the value of the underlying index, delivery on the "cash-out" date was not the dominant characteristic of the IPs as final-settlement was not a binding obligation on both parties to the contract (*i.e.*, long-side holders would ordinarily never face an obligation to cash-out).

[12] *See CFTC v. Zelener*, 373 F.3d 861, 863 (7th Cir. 2004). Although the court ruled against the Commission, the facts are distinguishable. In *Zelener*, retail customers traded foreign exchange OTC with a company controlled by the defendant. Contracts were not identical and provided no right of offset. *Id.* at 867. By contrast, exchange-listed perpetual futures are standardized and may be offset at any time on a central limit order book.

The security futures regime is the appropriate policy fit for equity perpetuals

The Commissions should confirm that a cash-settled perpetual contract referencing a registered equity security is properly classified as a security future. Perpetual structure alone should not necessitate treatment as an SBS.

Security-future treatment would fit equity perpetuals within the existing notice-registration regime the Commissions implemented under the Commodity Futures Modernization Act. This regime was purpose-built to address products that implicate both agencies' regulatory interests in a coordinated fashion. It squarely addresses trading on exchanges by retail investors, including through disclosure and suitability rules. It provides margin rules and listing standards designed to prevent regulatory arbitrage vis-à-vis the listed options markets. It requires coordination of trading halts and participation in the Intermarket Surveillance Group.

By contrast, treating equity perpetuals as SBSs would push a product that is best suited for exchange trading and coordinated market oversight into a framework that is structurally mismatched to that market design. In particular, the SBS rules are designed for trading among eligible contract participants, with different margin rules, disclosure requirements, and dealer conduct rules tailored to an over-the-counter, institutional market for bespoke, individually negotiated transactions.

The Commissions should permit both NSEs and DCMs to list Securities-Related Event Contracts

Investors are increasingly interested in Securities-Related Event Contracts, but definitional ambiguity hinders exchanges and brokers from offering them in a well-regulated U.S. marketplace. Exchanges have sought to offer them as securities options, commodity futures, or commodity options, but those mutually exclusive approaches lead to undesirable fragmentation in liquidity and market oversight. A more promising approach would be for the Commissions to permit NSEs and DCMs to list Securities-Related Event Contracts as any of security futures, swaps, or securities options, subject to conditions enabling coordinated, inter-agency oversight.

KPI Contracts promote price discovery, liquidity, and capital formation

KPI Contracts are binary contracts that pay out based on whether — or the extent to which — a company achieves a specified performance indicator. Relevant metrics may relate to a company's official financial statements (*e.g.*, dividends, earnings, income, revenue), other financial matters (such as segment or product-line revenue), or purely operational statistics (such as number of products sold or customers).

KPI Contracts help investors isolate the effect that discrete aspects of a company's business have on overall performance, for hedging or investment purposes. They promote price discovery, liquidity, and capital formation. Consider a conglomerate with multiple business lines. Historically, no market-based method existed to determine what contribution each business line made to the company's stock price. KPI Contracts enable the market to isolate the likelihood of the company achieving a metric tied to a particular business or product. The correlation between a KPI Contract and the stock price reveals how much the market factors that business line's success into the stock price. A KPI Contract also enables an investor who is bullish on a company but bearish on one business line to hedge that view, making the investor more likely to invest in the company in the first place. Management gains a better understanding of how the market rewards allocating resources to one business over another, and the company can attract additional investors — both of which lower the cost of capital.

Finally, KPI Contracts allow investors to take a view on the financial performance of a company without having tick-size exposure to the price. This aids capital formation where an investor is certain that a company will outperform a stock price target, but is ambivalent as to how much.

Company Event Contracts offer similar benefits

A second category of innovative contracts is Company Event Contracts, which pay out based on the occurrence, nonoccurrence, or extent of the occurrence of a company-specific event — such as the likelihood of closing a merger, acquisition, divestiture, offering of securities, public listing, or key personnel matters.

Like KPI Contracts, Company Event Contracts help investors isolate how discrete events can impact overall company performance, with similar benefits to investors and issuers. For example, whether a company announces or closes a merger can be among the most material drivers of the company's stock price. But trading tied to a merger can also distort the market valuation of the target or acquiror. A continuously quoting Company Event Contract for the likelihood of closing a merger, acquisition, public listing or the like will benefit investors by providing a market-wide check on speculative trading at or around the time of merger announcements. A Company Event Contract tied to a merger provides a more precise pricing signal, which allows investors and management to make better investment and corporate decisions.

Securities-Related Event Contracts face definitional ambiguity under current law

Under the CEA, the CFTC has exclusive jurisdiction over swaps (including commodity options) and futures listed on a DCM,[13] except that securities options and SBSs are carved out from the swap definition and subject to SEC jurisdiction,[14] and security futures are carved out from the swap definition[15] and subject to joint agency jurisdiction under the CEA and securities laws.

To date, most Securities-Related Event Contracts have been listed as swaps on DCMs, on the basis that they provide for payments "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."[16] The events covered, however, do not "directly affect[] the financial statements, financial condition, or financial obligations" of the company.[17] These Securities-Related Event Contracts are accordingly not SBSs.[18]

Swap categorization is not uniform, however. For example, in 2006, CME listed credit event contracts as futures, based on their bounded risk and profit potential and lack of optionality.[19] More recently, the CFTC has explained that an event contract can be structured as a future if it has "the key characteristics of futures contracts such as standardization, futurity, fungibility, and offset."[20]

In addition, earlier this year, Cboe proposed to list KPI Contracts as securities options.[21] Cboe's product-categorization analysis provides that any reference to a measure or event that could be material to the value of a security — or could inform the level of a dividend or other payout — is sufficient to qualify the contract as a securities option. That analysis

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[13] 7 U.S.C. § 2(a)(1)(A).
[14] 7 U.S.C. §§ 1a(47)(B)(iii) and (x).
[15] 7 U.S.C. § 1a(47)(B)(i).
[16] 7 U.S.C. § 1a(47)(A)(ii).
[17] 15 U.S.C. § 78c(a)(68)(A)(ii)(III).
[18] The quintessential event that "directly affects the financial statements, financial condition, or financial obligations" of a company is a bankruptcy or default—which is why credit default swaps on a single company are regulated as SBSs. The announcements, statements, and personnel matters covered by most Company Event Contracts listed today do not have any similar direct effect, even if the event's indirect effects might cause it to be material. The SBS definition does not reference materiality to, or indirect effects on, the value of a security or an issuer's financial statements, condition, or obligations.
[19] *See* CME Group Comment Letter Re: Event Contracts (2006), available at https://www.cftc.gov/sites/default/files/files/submissions/filings/CMEComment1.pdf; *see also* CME Group Comment Letter 2, available at https://www.cftc.gov/sites/default/files/files/submissions/filings/CMEComment2.pdf.
[20] 91 Fed. Reg. 38,506, 38,509 (June 12, 2026).
[21] *See* SEC Release No. 34-105877 (Jul. 10, 2026) (proposed rule change by Cboe Exchange, Inc.), available at https://www.sec.gov/files/rules/sro/cboe/2026/34-105877.pdf.

rests primarily on pre-Dodd-Frank credit default option precedent[22] that CME challenged at the time and conflicts with Congress's clear intent under Dodd-Frank to regulate credit default swaps as swaps or SBSs. That precedent is inapposite to most KPI Contracts because, unlike the payout conditions of credit default options, the payout conditions of KPI Contracts do not reference any term of an underlying security.

Moreover, Cboe's analysis departs from the statutory definitions, which do not reference materiality to the value of a security or a direct or indirect tie to an interest in a security. Applied broadly, Cboe's test would sweep in a wide range of CFTC-regulated contracts. The price of oil, for example, is material to the value of many companies' stock prices. Coupon levels for all floating-rate bonds depend on interest rates. But oil futures and interest-rate swaps are plainly CFTC-regulated instruments. Cboe's proposed standard would also be nearly impossible to administer in practice, as the correlation of a KPI to the price of a security may be difficult to measure *ex ante* and will change over time.

Nasdaq has also suggested that Securities-Related Event Contracts should all be regulated as SBSs under an approach that treats any event referenced in an issuer's securities filings or other disclosures as a sufficient basis for SBS categorization of a contract referencing that event.[23] Like Cboe's test, that approach sweeps much too broadly. Companies disclose information regarding all sorts of events that clearly fall outside of the securities options and SBS definitions, such as macroeconomic events, regulatory or political changes, and technology developments.

For these reasons, the best analysis under current, post-Dodd-Frank law is that most Securities-Related Event Contracts listed today are swaps within the CFTC's jurisdiction. The recent Cboe proposal, however, illustrates the uncertainty and disagreement over how to categorize these contracts, with incumbents having natural incentives to categorize contracts in a manner that enables them, but not their competitors, to list the contracts.

Investors and issuers do not benefit from this attempted use of regulation as a shield from competition. Instead of drawing arbitrary lines where definitions are ambiguous, investors are served better by the agencies aligning on a consistent regulatory approach where categorization does not drive disparate regulatory or competitive outcomes, and permitting the activity to occur under the supervision of both agencies. Key to this outcome is ensuring both Commissions have visibility into trading to coordinate on policing insider trading and manipulation that could involve trading in securities alongside Securities-Related Event Contracts. The Commissions should exercise the tools Congress gave them to achieve this goal, as discussed below.

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[22] *See* SEC Release No. 34-55871 (Jun. 6, 2007).
[23] *See* Nasdaq Comment Letter Re: Prediction Markets and Public Interest Determinations (2026), available at https://downloads.regulations.gov/CFTC-2026-1189-1388/attachment_1.pdf.

Congress gave the Commissions flexible tools they should use to provide legal certainty for Securities-Related Event Contracts

Congress gave the Commissions tools purpose-built to resolve precisely these issues:

- Section 712 of Dodd-Frank grants the Commissions authority to further define the terms "swap" and "security-based swap."[24] The Commissions can use this authority to resolve whether and when they will treat Securities-Related Event Contracts as belonging to one regulatory category versus another.

- Section 718 recognizes that novel derivatives products may have elements of both securities and commodity futures or commodity options.[25] Clearly, Congress was acknowledging that characteristics of these products are not mutually exclusive. It stands to reason that market participants could reasonably categorize the same product in multiple ways. Securities-Related Event Contracts are a quintessential case: they have a nonlinear payout profile, like an option, but they are arguably future-like in that neither party pays a non-refundable premium, and whether payout takes place does not depend on an exercise of rights by one party or the other. They also clearly bear a relationship to an underlying security or issuer, but many of them are not tied to price, dividends, or other pecuniary interests, or events with direct financial consequences for an issuer.

- Section 717 amended the CEA and the Exchange Act to grant the SEC authority to exempt securities options on the condition that the CFTC exercise concurrent jurisdiction, and to grant the CFTC authority to exempt any agreement, contract, or transaction on the condition that the SEC exercise concurrent jurisdiction.[26] These tools enable the Commissions to fashion a regulatory framework for Securities-Related Event Contracts that is fit-for-purpose without letting rigid definitional distinctions drive the outcome.

The Commissions should permit trading of Securities-Related Event Contracts on both NSEs and DCMs under an alternative compliance framework

As noted above, Securities-Related Event Contracts can, at least in some instances, combine elements of securities options, futures contracts, and commodity options (*i.e.*, swaps). A case has been made to classify them in any of the categories, or as SBSs. In our view, rather than rigidly classifying Securities-Related Event Contracts, or different subsets of them, in one category versus another, the Commissions should use the tools

[24] Dodd-Frank Act § 712.
[25] Dodd-Frank Act § 718.
[26] Dodd-Frank Act § 717.

that Congress gave them in Dodd-Frank to enable trading of Securities-Related Event Contracts on both NSEs and DCMs under an alternative compliance framework.

To achieve this goal, we recommend that the Commissions take the following specific steps:

- First, given precedent for treating event contracts as futures, the Commissions should allow NSEs and DCMs to list Securities-Related Event Contracts as security futures. Permitting NSEs and DCMs to list them as security futures would have several benefits, including: enabling customers to trade Securities-Related Event Contracts alongside other CFTC-regulated event contracts, such as contracts relating to macro events, political events, and physical commodities; ensuring parity of margin treatment with listed securities options; requiring market-wide coordination of trading halts and participation in the Intermarket Surveillance Group; and preserving both Commissions' anti-fraud, anti-manipulation, and books and records access authority.

- Second, the Commissions should allow DCMs to list Securities-Related Event Contracts as swaps by (a) using their further definitional authority to exclude Securities-Related Event Contracts listed on a DCM as swaps from regulation as SBSs and (b) the SEC exempting such Securities-Related Event Contracts from regulation as securities options or security futures, subject to retention of SEC anti-fraud, anti-manipulation, and books and records access authority.

- Third, the Commissions should allow NSEs to list Securities-Related Event Contracts as securities options by (a) using their further definitional authority to exclude Securities-Related Event Contracts listed on an NSE as securities options from regulation as SBSs or swaps and (b) the CFTC exempting such Securities-Related Event Contracts from regulation as security futures, subject to retention of CFTC anti-fraud, anti-manipulation, and books and records access authority.

While investor protection and innovation are often framed as competing objectives, implementing this approach furthers both goals while remaining consistent with the statutory authorities enumerated above. Reducing the complexities introduced by the Commissions' overlapping jurisdiction will enhance the ability of investors, regulators, and traders to operate in the derivatives ecosystem and develop the novel products described in this response over the years to come.