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Submitted via Regulations.gov and the SEC Internet Comment Form

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Re: Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (CFTC RIN 3038-AF71; SEC Release Nos. 33-11424, 34-105735; File No. S7-2026-21)

Dear Secretary Kirkpatrick and Secretary Countryman,

Paradigm Operations LP ("Paradigm") is a frontier technology investment firm that invests and builds in crypto, AI, robotics, and across new frontiers from the earliest stages.[1] Paradigm supports the broad availability of well-regulated markets for innovative financial products, including perpetual derivative contracts and event-based instruments. Such markets are technologically innovative, a valuable source of information to the public, and a means for market participants to manage financial risk and hedge exposure to specific future outcomes.

Paradigm appreciates the opportunity to comment on the Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (the "Request") issued by the Commodity Futures Trading Commission (the "CFTC") and the Securities and Exchange Commission (the "SEC" and, together with the CFTC, the "Commissions").[2] This letter responds to Questions 8 and 11 of the Request, which concern different products but present the same core question of whether the definitional lines should be

[1] More information about Paradigm is available online at https://www.paradigm.xyz/.

[2] Securities Act Release No. 11424, Securities Exchange Act Release No. 105735, 91 FR 37873 (June 24, 2026) (File No. S7-2026-21), available at https://www.federalregister.gov/d/2026-12743. Paradigm has previously commented on the pending proposal of Cboe Exchange, Inc. to list binary options overlying key performance indicators, *see* Paradigm Comment on Notice of Filing of a Proposed Rule Change by Cboe Exchange, Inc. To Permit the Listing of Binary Options Overlying Key Performance Indicators (File No. SR-CBOE-2026-061; Release No. 34-105877) (Aug. 5, 2026), available at https://www.sec.gov/rules-regulations/public-comments/sr-cboe-2026-061, and has commented separately on the companion Joint Request for Comment on Data Reporting, *see* Paradigm Comment on Joint Request for Comment on Swap and Security-Based Swap Data Reporting (File No. S7-2026-22) (Aug. 24, 2026).

drawn according to the character and market structure of an instrument or according to labels and incidental formalities. In each case, and for the practical (rather than taxonomic) reasons explained below, the answer should be the former. Instruments of both kinds already exist and trade at scale; what the Commissions' answers will determine is whether they trade on U.S. venues subject to U.S. oversight, reporting, and surveillance.

I. Event Contracts Referencing Specific Securities (Question 8)

The boundary that Question 8 of the Request seeks to clarify sits at the intersection of three interrelated statutory provisions[3] with a long and thoughtfully developed history in derivatives regulation. Taken together, those statutory provisions have been historically and correctly interpreted to mean that an event contract is properly excluded from the definitions of "swap" and "security-based swap" as a security when—but only when—it is a "put, call, straddle, option, or privilege ***on*** any security."[4] The definitional rub at the heart of Question 8, then, is how the word "on" applies to particular event contracts.

Consistent with the Commissions' long-standing commitment to the functional terms in which those statutes are drafted, the answer to that question must turn on what an instrument does rather than on what it is called. Indeed, the SEC's staff recently confirmed as much, explaining that "the economic reality of the instrument rather than the name given to the instrument determines whether it is excluded" from the swap definition related to securities.[5] The CEA's own definition of "option" is likewise functional, reaching any agreement, contract, or transaction "of the character of, or . . . commonly known to the trade as," an option, privilege, put, or call.[6] In other words, neither Commission's regime turns on what a product is named; both point to the character of the instrument and to what determines its payout.

Paradigm accordingly urges the Commissions to confirm that an event contract is a "put, call, straddle, option, or privilege on" a security or a group or index of securities where—and only where—the contract's payout is determined by the price or value of a security (or of a group or index of securities). Such a contract is, in substance, a position on the value of securities: whether it pays, and in what amount, is determined by where the security or index trades.

By the same token, an event contract whose payout turns on anything other than price, level, or value of a security or securities index—such as the outcome of an election, a weather event, a macroeconomic data release, or a reported financial or operating metric of an issuer—is not a put, call, straddle, option, or privilege "on" a security. A contract on a specified occurrence does not become an option on a security because the occurrence concerns an issuer of securities or because securities prices may move when the occurrence resolves. Correlation with the value of

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[3] *See* Commodity Exchange Act (the "CEA") section 2(a)(1)(A), 7 U.S.C. § 2(a)(1)(A); CEA section 1a(47)(B)(iii), 7 U.S.C. § 1a(47)(B)(iii); Securities Act section 2(a)(1), 15 U.S.C. § 77b(a)(1); Exchange Act section 3(a)(10), 15 U.S.C. § 78c(a)(10).
[4] CEA section 1a(47)(B)(iii), 7 U.S.C. § 1a(47)(B)(iii). Contracts whose settlement depends on the level of a broad-based securities index present a distinct question, given Congress's separate treatment of broad-based index derivatives in CEA section 2(a)(1)(C)(ii)–(iii), and Paradigm does not address them here.
[5] Division of Corporation Finance, Division of Investment Management & Division of Trading and Markets, SEC, Statement on Tokenized Securities (Jan. 28, 2026), available at https://www.sec.gov/newsroom/speeches-statements/corp-fin-statement-tokenized-securities-012826-statement-tokenized-securities.
[6] 7 U.S.C. § 1a(36).

securities is a property of nearly every economically significant fact and, if it were the test, it would render irrelevant the categories Congress separated.

Such contracts are, instead, within the "swap" definition. The "swap" definition reaches any agreement, contract, or transaction that "provides for any purchase, sale, payment, or delivery . . . 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."[7] An event contract that pays a fixed amount depending on whether a reported financial or operating metric of an issuer, such as quarterly revenue or earnings per share, meets a specified threshold for a reporting period fits squarely in that definition.

Critically, neither the security-based swap event contract prong nor the binary form in which these contracts pay makes them security-based swaps or securities. ***First***, the security-based swap prong reaches a swap based on an event relating to a single issuer of a security, but only where "such event directly affects the financial statements, financial condition, or financial obligations of the issuer."[8] That requirement must do independent work: to affect, much less *directly* affect, a financial statement is to change it. A contract on a reported metric settles on what the financial statements say, and an event constituted by those same statements cannot, by definition, affect them. Read the other way, every figure an issuer publishes would satisfy the proviso and a limitation Congress wrote into the prong would do nothing.[9] ***Second***, the binary form of the payout is likewise beside the point. For example, the instruments in *SEC v. Banc de Binary*[10] were privileges "based on the value" of securities because they turned on whether a security's or an index's price rose or fell, not because of the form in which they paid. In short, binary structure describes how a contract pays; it says nothing about what determines whether it pays at all.[11]

In short, where the settlement determinant is the price or value of securities, the reference alone classifies the instrument as a security. But the inverse remains true: where the settlement determinant is any occurrence other than the price or value of securities, the instrument is not within that exclusion and is, instead, a swap. Paradigm urges the Commissions to confirm both sides of that proposition.[12] A test keyed instead to correlation with securities prices, or to an

[7] CEA section 1a(47)(A)(ii), 7 U.S.C. § 1a(47)(A)(ii).

[8] Exchange Act section 3(a)(68)(A)(ii)(III), 15 U.S.C. § 78c(a)(68)(A)(ii)(III).

[9] The security-based swap prong's lineage confirms the reading: it describes occurrences external to periodic reporting—a default, a failure to pay, a bankruptcy, a restructuring—that immediately alter an issuer's financial condition or obligations, which is why the rules the Commissions jointly adopted under it address credit default swaps and why Question 7 of this Request asks how any further clarification should relate to that guidance.

[10] 964 F. Supp. 2d 1229, 1237 (D. Nev. 2013). Although the conduct at issue spanned the enactment of the Dodd-Frank Act, the put, call, straddle, option, and privilege language of the definitions of "security" that the court applied predates the Dodd-Frank Act and was carried forward by it unchanged.

[11] A different instrument referencing the same metric may call for a different analysis. Congress directed the Commissions to treat functionally or economically similar products "in a similar manner," a directive the Commissions have long recognized "does not require identical rules." Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 712(a)(7)(A), 124 Stat. 1376 (2010) (codified at 15 U.S.C. § 8302(a)(7)(A)); Product Definitions Adopting Release, 77 FR at 48211 ("Title VII also calls on the agencies to treat functionally or economically similar products or entities in a similar manner, but does not require identical rules."). Whether another type of instrument could compliantly reference the same metrics would carry no implication for the classification of structurally distinct event contracts, which is the essential point for Question 8.

[12] Importantly, classification on the securities side of the line does not require that such contracts trade on any single venue. The framework Congress built already demonstrates that a product within the SEC's regulatory interest can

occurrence's materiality to an issuer, would unsettle a large class of contracts that have long traded under CFTC oversight, including those referencing macroeconomic releases, commodity data, weather, and elections. Uncertainty of that kind does not reallocate products between the agencies; it keeps them from being offered at all.

II. Futures, Security Futures, and Future Delivery (Question 11)

Question 11 is, in Paradigm's view, the most consequential definitional question in the Request. Perpetual contracts are the most significant derivative design innovation to emerge in recent memory, and they now account for the substantial majority of global trading volume in digital asset derivatives. Their appeal is overwhelmingly structural: by substituting a periodic funding payment for a terminal expiration, a perpetual collapses an entire strip of dated contracts into a single fungible instrument that a participant can hold for precisely as long as the exposure it hedges, without rolls, roll costs, or basis risk between contract months.

That design is also what places the perpetual at the center of Question 11. It is the first widely adopted derivative structure in decades to test the boundary between a futures contract and a swap, and the Commissions' answer will determine whether that boundary is drawn by reference to how an instrument is structured and traded or by reference to a single incidental feature: whether its settlement obligations happen to fall on one calendar date rather than on many. In other words, the core of this analysis, as the threshold question embedded in Question 11 recognizes, turns on whether a future (or security future[13]) can be cash-settled while remaining consistent with the CEA's requirement for "future delivery." The answer to that question is unequivocally yes.

As an initial matter, a physical settlement requirement cannot be squared with the futures markets as they currently exist. Cash settlement has been a fixture of listed futures for four decades and the overwhelming majority of dated futures are closed by offset before any delivery date, meaning that a terminal date is rarely the operative economic feature even of a conventional futures position. Indeed, the E-mini S&P 500 futures contract, among the most liquid equity index derivatives in the world, settles exclusively in cash, and countless other listed futures follow the same design. Consistent with that reality, the CFTC's own glossary defines "delivery" to include "[t]he tender and receipt of . . . the cash value of the commodity . . . used to settle a futures contract."[14]

Equally important, a perpetual provides for cash settlement at a future time no less than a dated future does. While settlement timing in a perpetual is fixed by the holder's exit rather than

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be listed by a designated contract market subject to the concurrent oversight of both Commissions, and the Commissions should preserve that flexibility rather than let classification alone dictate venue.

[13] If "future delivery" is satisfied by settlement at a future time through a transparent, rules-based convergence mechanism for a bitcoin perpetual, it is satisfied on the same terms for an equity perpetual. Paradigm therefore urges the Commissions to answer the digital commodity question and the equity question with a single analysis rather than two ad hoc ones. A joint confirmation would establish, across both agencies' regimes, that a fixed calendar expiration is not what makes a futures contract a futures contract, and that "future delivery" is a functional concept satisfied by transparent, rules-based settlement at future times.

[14] CFTC, CFTC Glossary: "Delivery" ("The tender and receipt of the actual commodity, the cash value of the commodity, or of a delivery instrument covering the commodity (e.g., warehouse receipts or shipping certificates), used to settle a futures contract."), available at https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm.

at inception, the CEA nowhere requires that it be fixed at inception. Economically, the instrument operates as a continuously rolled series of short-dated futures positions (with the roll embedded in the contract's design rather than executed manually by the position holder). A classification framework that treated the embedded roll differently from the manual roll would elevate form over substance.

And even if the Commissions were inclined to upset decades of established practice, there is no statutory reason to do so. The CEA does not affirmatively define "future delivery" and, instead, defines the term only by exclusion, stating that "future delivery" does not include "any sale of any cash commodity for deferred shipment or delivery."[15] The definition's sole function is to separate futures from forwards,[16] and says nothing about a fixed calendar expiration. What the text requires is that the parties' delivery and settlement obligations must arise after the contract is entered into. It does not require that those obligations be concentrated on a single fixed date.

As a result, DCM-listed perpetual contracts of the kind the CFTC recently approved—standardized, centrally cleared contracts subject to a transparent, rules-based mechanism forcing its price to converge to spot—are properly classified as futures.[17] In a dated future, convergence is compelled at a single terminal expiry where the obligation to make a settlement payment indexed to the spot reference price disciplines the contract price toward spot as expiry approaches. In a perpetual, convergence is compelled continuously where the periodic funding mechanism imposes a recurring cost on whichever side of the market is trading away from spot.[18] The only structural difference between the two instruments is the location in time of the convergence obligation, which is continuous, through the funding rate, rather than concentrated at a single terminal expiry. That is *a tighter tether to spot, not a weaker one* given that a dated future may trade at a substantial basis to spot for most of its existence since price discipline only bites as expiry approaches, whereas a perpetual faces price discipline at every funding interval.

To be sure, some courts have made general assertions that a futures contract provides for delivery "on a date certain" where the question was not of central relevance.[19] But the courts that

[15] CEA section 1a(27), 7 U.S.C. § 1a(27).
[16] For this reason, the futures analysis called for by Question 11 should not be conflated with the forward contract analysis called for by Question 10. Question 10 concerns the exclusion in CEA section 1a(47)(B)(ii) for a sale of a nonfinancial commodity or security for deferred shipment or delivery "so long as the transaction is intended to be physically settled." CEA section 1a(47)(B)(ii), 7 U.S.C. § 1a(47)(B)(ii); *see* Request, Question 10, 91 FR at 37876. That condition of intended physical settlement belongs to the forward exclusion and has been a perennial interpretive question in that context. It has no bearing on the futures exclusion in CEA section 1a(47)(B)(i), under which "[a]ny 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," with no condition of any kind as to the method of settlement. Request, 91 FR at 37876; *see* CEA section 1a(47)(B)(i), 7 U.S.C. § 1a(47)(B)(i). In the same subsection, Congress conditioned the forward exclusion on intended physical settlement and imposed no such condition on the futures exclusion.
[17] *See* Order Approving KalshiEX LLC BTCPERP Futures Contract (CFTC May 29, 2026) (the "Perpetual Contract Order"), available at https://www.cftc.gov/filings/documents/2026/orgdcmkexbtxperporder26601.pdf.
[18] *See* Perpetual Contract Order at 6–8; Policy Statement Concerning the Listing of Perpetual Contracts, 91 FR 33160, 33161 (June 3, 2026) (the "Perpetuals Policy Statement") (describing the funding rate as functioning "as a replacement to the traditional expiration-based convergence mechanism upon which a futures contract typically relies"), available at https://www.federalregister.gov/d/2026-11020.
[19] For instance, *Salomon Forex* described futures as agreements "providing for the future delivery of a commodity on a date certain," but did so in the course of distinguishing individually negotiated, off-exchange currency

have squarely confronted the question have rejected the premise that futures need fixed delivery dates as unsupported, clarifying that the absence of "a specified future delivery date" is "not determinative"[20] and recognizing that the traditional indicia of a futures contract are not invariable conditions of the CFTC's jurisdiction.[21]

Paradigm does not suggest that the absence of a fixed expiry is simply irrelevant or that any instrument with periodic payments based on value may be recharacterized as a future. Rather, an instrument that provides for settlement at future times by reference to the value of a commodity or security belongs on the futures side of the line where it is: (1) standardized as to its terms; (2) fungible, so that a holder can exit by offset rather than by negotiating with a counterparty; (3) traded multilaterally on a market that applies transparent, non-discretionary rules and in which performance of the contract is assured otherwise than by the credit of an individual counterparty; and (4) tethered to the underlying's spot price through a transparent, rules-based convergence mechanism, whether that mechanism operates at a terminal expiry or continuously through a funding rate. Those are the features that mark trading "in the contract" rather than in the commodity, and they are the features on which courts have relied in distinguishing futures from bilateral arrangements.

Question 11 closes by asking what effects cash-settled perpetual products could have on liquidity formation, price discovery, and hedging activity, particularly with regard to the derivatives and underlying cash equity markets. In each respect the effects are favorable, and for a common reason: a perpetual expresses a continuous exposure in a single continuous instrument, where a strip of dated contracts expresses it in a series of discrete ones.

- Liquidity improves because a market maker in a strip must quote, inventory, and hedge each expiry separately and carry the calendar risk between them, while a market maker in a perpetual supports one book and can therefore display greater depth at a tighter spread for the same risk budget.
- Hedging improves because the instrument matches the exposure: a hedger whose risk is of uncertain or indefinite duration need not choose between buying duration it does not need and rolling, and the cost of the hedge accrues observably at each funding interval rather than arriving in uncertain increments at predictable and widely known roll windows.
- Price discovery improves because order flow that would otherwise be dispersed across contract months informs a single reference, and because the funding rate publishes

transactions between sophisticated parties from exchange-style trading. *Salomon Forex, Inc. v. Tauber*, 8 F.3d 966, 971 (4th Cir. 1993).

[20] *CFTC v. Int'l Fin. Servs. (N.Y.), Inc.*, 323 F. Supp. 2d 482, 498 (S.D.N.Y. 2004) (rejecting as unsupported by any authority the argument that "without a fixed date for future delivery, a transaction cannot be a futures contract"); *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."); see also CFTC v. Zelener, 373 F.3d 861, 865–67 (7th Cir. 2004) (identifying standardization, fungibility, the guarantee of a clearing organization, and the ability to exit by offset as the features that mark trading "in the contract").

[21] *Chicago Mercantile Exchange v. SEC*, 883 F.2d 537, 542–44, 549 (7th Cir. 1989) ("[N]o one, not even the SEC, doubts that a contract may be a futures contract even though it provides for cash settlement. If delivery is not essential, then the 'traditional' elements of futures contracts are not invariable ingredients of the CFTC's jurisdiction.")

continuously what a dated market reveals only near expiry and only at the granularity of listed months: the market-determined cost of carrying the position.

In short, nothing in the CEA conditions futures treatment on physical settlement or on a fixed calendar expiration. What marks a futures contract is that it is standardized, fungible, traded multilaterally under transparent rules, and tethered to spot by a rules-based convergence mechanism—features that a DCM-listed perpetual possesses in full, and possesses continuously rather than only as expiry approaches.

The Commissions should therefore confirm what the structure itself makes plain: a perpetual contract is a contract of sale for future delivery. The consequence is practical. Classification as a swap would draw a standardized, centrally cleared, exchange-traded contract into a framework Congress built for bilateral institutional risk transfer, while classification as a future places it in the framework that already governs standardized, cleared products reaching non-institutional participants through registered intermediaries. The perpetual structure is not waiting on the Commissions in order to exist; it already accounts for most of the world's trading volume in digital asset derivatives. What is waiting is whether U.S. participants can reach it on a U.S. venue.

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The Request is an important step toward drawing two of Title VII's most consequential definitional lines. Paradigm commends the Commissions for taking up these questions jointly, and for pursuing the principled, objective criteria the Request describes rather than resolving the classification of innovative products one filing at a time. In answering Questions 8 and 11, the Commissions should adopt the confirmations set out above, which are directed toward giving market participants the clarity, predictability, and certainty the Request seeks.

If you have further questions regarding our comments on the Request, you can contact us at Stefan@Paradigm.xyz.

Sincerely,

/s/ Stefan Schropp

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