CITADEL | Securities

September 9, 2026

Ms. Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Christopher J. Kirkpatrick, Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

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

Dear Ms. Countryman and Mr. Kirkpatrick:

We appreciate the opportunity to respond to the joint request for comment from the Securities and Exchange Commission ("SEC") and Commodity Futures Trading Commission ("CFTC") regarding the "swap" and "security-based swap" definitions and the potential availability of "alternative compliance" across the SEC and CFTC regulatory regimes.

As the leading market maker in the United States, we stand at the forefront of innovation in our financial markets, deploying the latest technology to deliver unmatched liquidity and competitive pricing to our clients. We welcome the introduction of new products that have the potential to further improve investment outcomes for the myriad participants in U.S. financial markets, including investors, issuers, producers, and commercial end-users.

Innovation should not and need not come at the expense of the investor protection and market integrity frameworks that have made our capital markets the best in the world. This is particularly important for novel products linked to U.S. publicly listed companies and their existing securities. Our securities markets are a key engine of U.S. economic growth, facilitating the efficient allocation of capital so that companies can invest and innovate, while enabling tens of millions of Americans to save for retirement, education, and other long-term financial needs. Protecting the integrity of our securities markets should remain paramount as new products emerge.

Congress established a comprehensive regulatory framework overseen by the SEC for securities products and clearly contemplated the inclusion of equity-linked derivatives, such as equity options and security-based swaps. Those jurisdictional lines protect not only investors, but also the integrity of the underlying securities markets through coordinated regulatory requirements, surveillance, and enforcement.

As discussed below, the SEC and CFTC should:

- Reaffirm that the SEC is the primary regulator of products linked to U.S. public companies and their securities. At the same time, the SEC should commit to the timely and efficient review of new product filings;
- Ensure that trading venues cannot use self-certification to circumvent SEC jurisdiction; and
- Provide clarity regarding the classification questions presented by equity-linked event contracts and perpetual derivatives.

I. The SEC is the Primary Regulator of Products Linked to U.S. Public Companies and Their Securities

The SEC is—and should remain—the primary regulator of products tied to U.S. public companies and their securities. Congress established a comprehensive regulatory framework overseen by the SEC for securities products, including securities options and security-based swaps. Congress established this framework for good reason: trading in equity-linked products directly implicates the integrity of the underlying securities markets, impacting our public companies and investors. Allowing equity-linked trading activity to migrate outside those established boundaries would separate that activity from the regulatory, surveillance, and enforcement framework specifically designed to oversee U.S. securities markets.

A. The Statutory Framework Places Equity-Linked Products Under SEC Oversight

Securities options and security-based swaps are securities subject to SEC oversight. The federal securities laws broadly define a "security" to include any put, call, option, or privilege on an individual security or group or index of securities, including any interest therein or "based on the value thereof."[1] Congress likewise assigned the SEC authority over swaps based on a single security or loan, a narrow-based security index, or "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 a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer" (referred to as a "qualifying issuer event").[2]

Congress was equally clear that these instruments do not belong under the CFTC's jurisdiction. The CEA specifically excludes both securities options and security-based swaps from the definition of swap.[3] And Section 2(a)(1)(A) of the CEA confines the CFTC's exclusive jurisdiction to swaps and enumerated futures and commodity contracts. The statutory framework thus draws a clear line: (i) equity options and (ii) security-based swaps based on a (a) single security, (b) narrow-based security index, or (c) qualifying issuer event are subject to SEC jurisdiction.

B. Equity-Linked Products Belong Within the SEC's Regulatory Framework

As noted above, the equities and options markets are critically important to the U.S. economy. The SEC, in conjunction with the securities self-regulatory organizations ("SROs"), has implemented an integrated regulatory and surveillance framework specifically designed to protect investors and safeguard market integrity. The SEC and SROs have decades of experience investigating insider trading and other manipulative trading practices involving public companies and maintain extensive cross-market surveillance capabilities across equities, options, and related products. These capabilities are particularly important for equity-linked derivatives because

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[1] 15 U.S.C. § 78c(a)(10).

[2] 15 U.S.C. § 78c(a)(68).

[3] 7 U.S.C. § 1a(47)(B)(iii) & (x).

misconduct may span markets: a derivative can be used to manipulate the underlying security and material nonpublic information concerning the issuer can be used to profit in both the cash equities and related derivatives markets. Effective oversight therefore requires the ability to surveil trading in equity-linked products together with activity in the underlying cash equities market.

Moving equity-linked products outside of the SEC regulatory framework would fragment that oversight. The CFTC does not administer the same integrated surveillance infrastructure for the underlying securities markets, and the result could be a parallel shadow market linked to U.S. equities that operates outside the surveillance and enforcement ecosystem specifically designed to protect market integrity.

The differences extend beyond surveillance. The SEC framework provides important protections relating to best execution, order handling and frontrunning, execution-quality disclosure, fair access, and trading venue transparency. In addition, trading halts are coordinated across related securities products. Moving equity-linked products outside the SEC's regulatory framework would therefore leave investors without the full benefit of important protections and market-integrity safeguards developed specifically for those markets.

II. Trading Venues Should Not Use Self-Certification to Circumvent SEC Jurisdiction

A trading venue should not be able to effectively choose its regulator for an equity-linked product based on its own unilateral characterization of such product. Yet the stark differences between the SEC and CFTC product approval processes create precisely that risk.

Under CFTC regulations, trading venues can *self-certify* that a new product complies with applicable legal requirements and begin trading as soon as the next business day, without soliciting public comment. The CFTC can only stay a self-certification under limited circumstances, and only reject a filing if it affirmatively concludes that it is inconsistent with the Commodity Exchange Act. This approach to new product offerings contrasts sharply with the SEC regime, where trading venues generally (i) bear the burden of demonstrating that a filing for a new product meets applicable legal requirements, (ii) provide an opportunity for public comment, and (iii) obtain affirmative SEC *approval* in a written order based on the administrative record before trading can begin.

Trading venues are already taking advantage of these different processes. For example, CFTC-registered DCMs have *self-certified* contracts on key performance indicators ("KPIs") reported by public companies in order to offer them for trading under the CFTC's exclusive jurisdiction, even though two securities options exchanges have sought SEC *approval* to list KPI contracts under the SEC's regulatory framework.[4]

Congress anticipated these types of jurisdictional disputes and established mechanisms for the Commissions—not individual trading venues—to resolve them. In particular, Congress directed the Commissions to treat functionally or economically similar products and entities in a similar

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[4] https://www.sec.gov/files/rules/sro/cboe/2026/34-105877.pdf and https://www.sec.gov/files/rules/sro/memx/2026/34-106182.pdf.

manner.[5] Congress also established a specific interagency process for resolving jurisdictional questions presented by novel derivative products that may implicate both agencies. The statutory framework therefore leaves no basis for allowing a trading venue to effectively dictate how particular instruments are classified. Questions regarding the proper regulatory classification of novel products should be resolved by the Commissions through faithful application of the statutory framework. In conjunction with resolving these classification questions, the SEC should commit to be timely and efficient in reviewing new product filings from registered entities.

III. Equity-Linked Products: Recent Case Studies

Recent developments regarding equity-linked event contracts and perpetual derivatives demonstrate the consequences of failing to enforce clear jurisdictional boundaries. Substantially similar equity-linked products are already being introduced or contemplated under competing regulatory classifications, with significant consequences for investors and U.S. financial markets.

A. Equity-Linked Event Contracts

As referenced above, KPI-linked binary options are securities under the federal securities laws. Section 3(a)(10) of the Exchange Act defines a "security" to include any put, call, or option on a security or group or index of securities, including any interest therein or "based on the value thereof." A binary option whose payoff depends on whether an issuer achieves a specific KPI is based on information that directly bears on the value of that company's securities. Such an instrument is therefore "based on the value of" the issuer's security and falls within the Exchange Act's definition of a security.

Moreover, even if such an instrument were characterized as a swap rather than an equity option, a contract based on an event relating to a single issuer that directly affects its financial statements, financial condition, or financial obligations would then fall within the statutory definition of a security-based swap. Either classification places the product squarely within the SEC's jurisdiction. The fact that these instruments pose novel risks relating to insider trading, including not only whether specific metrics will be met, but also whether and how they will be reported by the issuer, reinforces the case for SEC oversight. The Commissions should confirm that these products are securities subject to SEC jurisdiction and ensure that they are not permitted to trade outside the regulatory framework for securities.

Similar events have played out with respect to binary options on the performance of a securities index. While the federal securities laws expressly include within the definition of a "security" any put, call, or option on a security or group or index of securities, certain CFTC-regulated DCMs have *self-certified* these products as CFTC-regulated swaps. And similar debates may soon play out for 15 minute options contracts on single-name equities or equity indices. We note that, over time, SEC-regulated options exchanges have shortened the duration of available equity options contracts—from monthly to weekly to daily—and it would appear strange that a shorter duration would result in a different regulatory treatment under the statute. There is no principled basis for concluding that further shortening the duration transforms an equity option into a CFTC-regulated

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[5] 15 U.S.C. § 8302(a)(7).

derivative.

B. Equity-Linked Perpetual Derivatives

The CFTC recently approved certain perpetual derivatives to be classified as "futures" under its regulatory framework. This regulatory classification represents a departure from prior CFTC determinations, as well as how similar "contracts for difference" instruments are classified, and is being challenged in federal court.

It would appear premature to approve perpetual derivatives referencing other asset classes before the regulatory classification of the product category is firmly settled. The CFTC has recognized that its recent approval of digital asset-perpetuals does not establish the appropriate regulatory treatment of perpetuals referencing other asset classes. In its May policy statement, the CFTC made clear that "each asset class will raise different considerations and merit independent analysis and review based on their unique circumstances."[6] And yet, certain CFTC-regulated DCMs are now attempting to secure approval for perpetual derivatives referencing equity indices. Single-name equity perpetual derivatives, including on pre-IPO companies, are expected to follow.[7]

The policy considerations discussed above reinforce the importance of getting this classification right. Equity-linked perpetuals could lead to material trading activity tied to U.S. equities occurring outside of the SEC's regulatory framework for cash equities, raising important issues regarding cross-market surveillance and material nonpublic information. Key investor protections would not apply, such as execution-quality disclosures, fair access, and market access controls, while novel risks would be introduced, including automatic deleveraging during periods of market volatility. All of these consequences for retail investors must be carefully considered in conjunction with determining the appropriate regulatory framework.

IV. Conclusion

We welcome product innovation that has the potential to further improve outcomes for the diverse participants in U.S. financial markets, including investors, issuers, producers, and commercial end-users. Innovation can and should occur in an environment that upholds the rigorous investor protection and market integrity safeguards that have made the U.S. securities markets the best in the world. New products should succeed on their individual merits, rather than by taking advantage of distinctions between the SEC and CFTC regulatory frameworks. The Commissions should reaffirm that the SEC is the primary regulator of products linked to U.S. public companies and their securities while committing that the SEC will be timely and efficient in reviewing new product filings, ensure that trading venues cannot use self-certification to circumvent those statutory boundaries, and promptly resolve the classification questions presented by emerging equity-linked event contracts and perpetual derivatives.

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[6] https://www.govinfo.gov/content/pkg/FR-2026-06-03/pdf/2026-11020.pdf?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov.

[7] https://www.fow.com/insights/hyperliquid-and-trade-xyz-urge-sec-to-consider-pre-ipo-perpetuals.

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We appreciate the Commissions' consideration of our views and would welcome the opportunity to discuss these issues further.

Please feel free to contact the undersigned with any questions regarding these comments.

Respectfully,

/s/ Stephen John Berger

Managing Director

Global Head of Government & Regulatory Policy