September 18, 2026

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

Washington, DC 20549-1090
Mr. 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 (Release Nos. 33-11424; 34-105735; File No. S7-2026-21*)***

Dear Ms. Countryman and Mr. Kirkpatrick:

The American Securities Association (ASA)[1] appreciates the opportunity to comment on the joint request for comment issued by the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) regarding the definitions of "swap" and "security-based swap" and potential alternative compliance approaches.

ASA writes to urge the Commissions to reaffirm that instruments based on a single security, a narrow-based security index, or an event directly affecting an issuer's financial statements, financial condition, or financial obligations are securities or security-based swaps subject to SEC jurisdiction.

I. <u>The SEC Retains Jurisdiction Over Instruments Tied to Individual Public Companies</u>.

Congress drew a deliberate line in Title VII, defining instruments based on a single security, a narrow-based security index, or a qualifying issuer event as security-based swaps subject to SEC jurisdiction. The Commodity Exchange Act, in turn, excludes those instruments, along with options on securities and on groups or indexes of securities, from the CFTC's "swap" jurisdiction.[2]

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[1] ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.
[2] Securities Exchange Act of 1934 § 3(a)(68)(A), 15 U.S.C. § 78c(a)(68)(A), added by Dodd-Frank § 761(a)(6); Commodity Exchange Act § 1a(47)(B)(iii), (x), 7 U.S.C. § 1a(47)(B)(iii), (x).

That jurisdictional divide was not accidental. A derivative linked to a public company's securities can be used to move the price of that security, and material nonpublic information can be simultaneously exploited in the cash and derivatives markets. Congress addressed both risks directly — extending the Exchange Act's antifraud and anti-manipulation provisions to security-based swaps, and confirming the SEC's authority to regulate options on securities and on groups or indexes of securities, notwithstanding any other provision of law.[3]

ASA is concerned that the current self-certification regime allows a trading venue to select its own regulator by unilaterally labeling a security-based swap or equity option a "swap" and self-certifying it for CFTC-regulated trading. Under that regime, listings may begin the next business day, without public comment or affirmative approval.[4] This dynamic is already visible in key performance indicator (KPI) binary options, equity index binary options, and equity-linked perpetual derivatives. Our objection is to that process, not to the products moving through it.

ASA supports the introduction of KPI products. They will provide useful information about issuer performance and give investors new tools to hedge issuer-specific risk. A product tied to a public company's reported financial metrics should reach investors through the framework Congress built for securities, whichever venue lists it. Cboe's pending proposal to list binary KPI options under Section 19(b) demonstrates that this path is both available and workable.[5]

Venues respond to incentives, and when a venue's own characterization determines its regulator, trading migrates toward the path of least resistance. Left unaddressed, a growing volume of trading tied to U.S. public companies will occur outside the protections Congress built specifically for the securities markets. This creates a risk that an issuer's insiders may know not only whether a metric will be met, but when and how it will be reported. Detecting that requires visibility into trading in the issuer's securities alongside the derivative.

II. <u>Investor Protection & Market Integrity Recommendations for Contracts</u>.

Regardless of how the Commissions resolve the jurisdictional question, certain product features warrant limits.

ASA does not support the approval of equity-linked swaps, options or securities futures that: (1) allow around-the-clock trading; (2) allow 20x- 100x leverage; or (3) use a privately held

[3] Exchange Act §§ 9(j), 10(b), 15 U.S.C. §§ 78i(j), 78j(b), as amended by Dodd-Frank § 762(d); Exchange Act § 3(a)(10), 15 U.S.C. § 78c(a)(10) (defining "security" to include a security-based swap); Exchange Act § 9(h)(1), 15 U.S.C. § 78i(h)(1) ("Notwithstanding any other provision of law, the Commission shall have the authority to regulate the trading of any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities.").
[4] 17 C.F.R. § 40.2(a).
[5] Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend its Rules To Permit the Listing of Binary Options Overlying Key Performance Indicators ("KPIs") Reported by Certain Issuers of Stock, Exchange Act Release No. 34-105877 (July 10, 2026), 91 Fed. Reg. ___ (July 15, 2026) (File No. SR-CBOE-2026-061).

company as the reference entity to price the derivative product. We do not believe these features serve the interests of American retail investors or the integrity of our markets.

Allowing financial instruments to reference privately held companies would create public price discovery and liquidity for private companies without the disclosure and compliance obligations that come with being public. That would give companies a reason to stay private longer, cutting directly against Chairman Atkins's desire for private companies to go public *and stay public*.[6]

If the Commissions nonetheless approve such products, we recommend conditioning approval on requirements that they: (1) trade only during regulated equity exchange market hours, (2) carry customer margin no less protective than Regulation T's 2:1 limit, and in no event permit leverage exceeding the institutional standard under Section 15F(e) of the Exchange Act,[7] and (3) reference only the prices, metrics, and qualifying events of publicly traded U.S. companies.

These are modest conditions. They would preserve the benefits of these products while protecting investors and maintaining the integrity of our public equity markets.

III. <u>Conclusion</u>.

ASA urges the Commissions to confirm that any instrument based on a single security, a narrow-based security index, or a qualifying issuer event is a security or a security-based swap subject to SEC jurisdiction. A venue's label does not change that, and neither does its choice of where to file.

ASA thanks the Commissions for their consideration of these views and welcomes the opportunity to discuss them further.

Sincerely,

Christopher A. Iacovella
President and Chief Executive Officer
American Securities Association

[6] Paul S. Atkins, Chairman, U.S. Sec. & Exch. Comm'n, Remarks at the Stanford Rock Center for Corporate Governance (May 26, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-052626-remarks-stanford-rock-center-corporate-governance.

[7] 15 U.S.C. § 78g; 12 C.F.R. pt. 220. The SEC has separately limited leveraged single-stock ETFs to 2x exposure. Rules adopted pursuant to Exchange Act § 15F(e), 15 U.S.C. § 78o-10(e), prescribe initial margin of 15% of notional for equity exposures under the standardized schedule. See 17 C.F.R. § 23.154(c); 17 C.F.R. § 240.18a-3