August 24, 2026

VIA ELECTRONIC SUBMISSION

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

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

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

Dear Mr. Kirkpatrick and Ms. Countryman:

The Blockchain Association ("BA") respectfully submits this comment letter in response to the Commodity Futures Trading Commission ("CFTC") and Securities and Exchange Commission's ("SEC" and together with the CFTC, the "Commissions") Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (the "Joint RFC").[1] BA supports the Commissions' efforts to draw clearer regulatory lines with respect to innovative products that may implicate their respective regulatory interests, and more generally to coordinate in areas where collaboration can enhance regulatory effectiveness and market integrity.[2] Successful coordination between the Commissions would be a decisive policy accomplishment, and one squarely in line with the harmonization goals the Commissions set for themselves in their March 2026 Memorandum of Understanding.[3]

BA is the leading nonprofit membership organization dedicated to advancing a pro-innovation policy environment for the digital asset industry. BA is composed of more than 100 members,

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[1] Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, 91 Fed. Reg. 37873 (June 24, 2026) (CFTC RIN 3038-AF71 and SEC File Number S7-2026-21).
[2] *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) (the "March 2026 SEC-CFTC Memorandum of Understanding"), *available at*: *https://www.sec.gov/files/mou-sec-cftc-2026.pdf*.
[3] Press Release, Commodity Futures Trading Commission, CFTC and SEC Announce Historic Memorandum of Understanding Between Agencies (Mar. 11, 2026), *available at*: *https://www.cftc.gov/PressRoom/PressReleases/9192-26*.

including software developers, infrastructure providers, investors, and others supporting the public blockchain ecosystem. BA works with its broad-based membership to seek regulatory clarity and to educate policymakers, regulators, and the courts about how blockchain technology can support a more secure, competitive, and consumer-friendly digital marketplace. The definitional issues raised in the Joint RFC implicate these interests, and we accordingly appreciate the Commissions' efforts to reduce regulatory gaps and provide greater certainty in support of efficient markets and responsible innovation.[4]

I. OVERVIEW

Although the Joint RFC raises many important issues, this letter focuses on one of considerable interest to our membership: harmonization of the Commissions' frameworks to enable the trading in U.S. markets of cash-settled "perpetual" contracts that reference an individual equity security ("equity perpetuals"). Several policy concerns underlie the importance of the Commissions' willingness to address equity perpetuals at this time.

First, regulatory uncertainty is presently a hindrance to development of these products in the United States. Our system is widely recognized as the global gold standard, yet it has not kept up with the pace of innovation. As a result, equity perpetuals trade exclusively in markets outside of the United States both on centralized exchanges and through decentralized on-chain trading protocols. Extensive demand for these products has resulted in the formation of deep and liquid markets. Consistent with the Trump Administration's policy of promoting U.S. leadership in digital assets and capital markets,[5] the Commissions should act to bring them home.

Second, the fact that this activity now occurs entirely outside of the U.S. regulatory perimeter deprives U.S. investors and markets of the benefits and protections applicable in the United States. These include clear risk disclosures that enhance investor understanding, maximal protections of investor assets such as through the Commissions' segregation requirements, and effective efforts to combat money laundering in the Commissions' respective jurisdictions. U.S. markets and regulators alike may also be losing the benefits of price discovery information

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[4] *See* March 2026 SEC-CFTC Memorandum of Understanding at 1.

[5] *Fact Sheet: The President's Working Group on Digital Asset Markets Releases Recommendations to Strengthen American Leadership in Digital Financial Technology*, The White House (July 30, 2025), https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-the-presidents-working-group-on-digital-asset-markets-releases-recommendations-to-strengthen-american-leadership-in-digital-financial-technology/.

common to perpetuals, including by operation of the funding rate mechanism and the ongoing process of determining the current fair value market price (or "mark price") of the asset.[6]

Third, the longer this activity remains offshore, the harder it will be to bring it onshore. Demand for equity perpetuals is already substantial, and it continues to grow. As offshore venues deepen their liquidity, refine their infrastructure, and build durable relationships with users, market participants develop entrenched habits and dependencies that are difficult to reverse. Liquidity tends to concentrate where it already exists, and once trading conventions, technology stacks, and user expectations settle around foreign platforms, later efforts to onshore these products will face the steep challenge of dislodging established incumbents. Acting now, while U.S. frameworks can still shape how these markets develop, is far more effective than attempting to redirect entrenched activity later. At the same time, the Commissions' current lack of visibility into these overseas markets creates the potential for manipulation, particularly where a contract references a U.S.-listed equity but is not subject to the cross-market surveillance and data-sharing arrangements that govern U.S. markets. That risk reflects the current absence of a domestic venue for these products, not any inherent risk in the products themselves, and it is best addressed by bringing this activity within the Commissions' existing market surveillance, trade reporting, and recordkeeping requirements. Indeed, the Commissions can enhance those systems through the acceptance of blockchain technology to take advantage of permissioned access to real-time trading data, reducing the need to rely exclusively on intermediaries to "push" trade reporting information to the Commissions.

None of these shortcomings is the result of a conscious policy choice. It is inherent in, and a new iteration of, the regulatory friction that can arise where novel products implicate the regulatory boundaries between the CFTC and the SEC. In that context, BA offers the following recommendations for equity perpetuals that can be implemented under existing statutory authority:

1) Utilize existing, statutorily prescribed joint regulation of security futures products with which the markets are already familiar to onshore equity perpetuals and enhance investor choice;

2) In edge cases, and where applicable based on specific facts and circumstances, utilize the Commissions' existing authority to regulate novel derivatives products that may straddle the jurisdictional boundary between the CFTC and the SEC; and

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[6] A perpetual contract's funding rate mechanism and mark price are typically based on a composite index price (or reference price) for the underlying equity. A reliable reference price can afford markets and regulators improved price discovery information, as discussed further below at footnote 21.

3) Develop a regulatory framework for equity perpetuals that focuses on technology-neutral functions and outcomes, rather than imposing pre-determined market infrastructure or reference price sources, or assuming a single off-chain technological stack.

BA believes that this framework will allow the Commissions to develop efficiently and effectively a harmonized regulatory framework that promotes future innovation within this space.

II. THE JOINT REGULATION OF SECURITY FUTURES PRODUCTS AND EQUITY PERPETUALS

Joint regulation of security futures products by the SEC and the CFTC established by the Commodity Futures Modernization Act of 2000 (the "CFMA")[7] can serve as a foundation for the harmonized regulation of equity perpetuals.

Prior to the CFMA, the Shad-Johnson Accord functioned for nearly twenty years as an effective ban on the development of markets for single-stock futures and narrow-based security index futures. The CFMA lifted this ban and created a joint CFTC-SEC regulatory framework for security futures products.

A security future is defined, in pertinent part, as a contract of sale for future delivery of a single security, including any interest therein or based on the value thereof.[8] The term "future delivery" is defined in the negative to exclude any sale of any cash commodity for deferred shipment or delivery without any further qualifications or requirements in respect of a contract expiration or settlement conditions.[9] "Security futures product," in turn, is a security future or any put, call, straddle, option, or privilege on any security future.[10]

The SEC and CFTC have joint jurisdiction over security futures products. Security futures are securities for purposes of the federal securities laws, including the Securities Exchange Act of 1934.[11] As a result, security futures products are subject to disclosure and recordkeeping provisions of the Securities Exchange Act of 1934 ("Exchange Act"), prohibitions on fraud and

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[7] Pub. L. 106-554, 114 Stat. 2763 (2000).

[8] Commodity Exchange Act ("CEA") § 1a(44), 7 U.S.C. § 1a(44); Securities Exchange Act of 1934 ("Exchange Act") § 3(a)(55), 15 U.S.C. § 78c(a)(55). Under these definitions, a security future can also be based on a narrow-based security index, as that term is defined in section 1a(35) of the CEA (7 U.S.C. § 1a(35)). Also, for purposes of these definitions, the term security means a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) or section 3(a)(10) of the Exchange Act (15 U.S.C. § 78c(a)(10)) except an "exempted security," as that term is defined by section 3(a)(12) of the Exchange Act (15 U.S.C. § 78c(a)(12)) (other than a "municipal security," as that term is defined by section 3(a)(29) of the Exchange Act (15 U.S.C. § 78c(a)(29)).

[9] CEA § 1a(27), 7 U.S.C. § 1a(27).

[10] *Id.* § 1a(45), 7 U.S.C. § 1a(45); Exchange Act § 3(a)(56), 15 U.S.C. § 78c(a)(56).

[11] Exchange Act § 3(a)(10), 15 U.S.C. § 78c(a)(10).

manipulation under Sections 9 and 10(b) of the Exchange Act, and investor protection measures that result from the regulation of SEC-registered market intermediaries (*e.g.*, broker-dealers) that make these products available to customers.

Because jurisdiction is joint, security futures products must be traded on facilities and through intermediaries that are registered with both the SEC and the CFTC, including through notice registration processes that were initially put into place shortly after the enactment of the CFMA.[12] This system of notice registration enables security futures products to trade either on an SEC-registered national securities exchange ("NSE") or on a CFTC-registered designated contract market ("DCM").

An NSE or a DCM may only list security futures products that meet prescribed criteria, including requirements that the underlying equity securities be registered under section 12 of the Exchange Act (unless as otherwise provided by a joint rule or order of the Commissions); that there be coordinated surveillance among the futures market, the underlying securities market, and related markets to detect manipulation and insider trading; that audit trails exist to facilitate those coordinated surveillance efforts; and, when necessary, that there be coordinated trading halts between the futures and underlying equity markets.[13]

Although trading in these products has been limited, the system is clearly effective in two related respects: (1) giving markets a choice between where and how to list security futures products; and (2) giving market participants a choice of where to trade, based on the characteristics of the available exchanges. Regulation of equity perpetuals should provide the same flexibility.

Because equity perpetuals are based on the price of single equity securities, they appear suitable for listing as security futures and security futures products. Features of equity perpetuals related to their price funding mechanism (*i.e.,* cash settlement and the absence of a fixed expiration date) do not contradict the future delivery requirements in the definition of security futures, since equity perpetuals do not involve the sale of a cash commodity for deferred shipment or delivery.

Additionally, this reading is consistent with the CFTC's recent treatment of economically comparable products. In appropriately approving the first perpetual contract to be listed on a CFTC-registered DCM, the CFTC concluded that a perpetual contract referencing the spot price of a digital commodity can be listed as a "contract of sale of a commodity for future delivery,"

[12] *Id.* § 6(g), 15 U.S.C. § 78f(g); see, for example, Registration of National Securities Exchanges Pursuant to Section 6(g) of the Securities Exchange Act of 1934 and Proposed Rule Changes of Certain National Securities Exchanges and Limited Purpose National Securities Associations, 66 Fed. Reg. 43721 (Aug. 20, 2001) (SEC File Number S7-10-01).

[13] Exchange Act § 6(h)(3), 15 U.S.C. § 78f(h)(3); CEA § 2(a)(1)(D)(i), 7 U.S.C. § 2(a)(1)(D)(i).

notwithstanding its use of a periodic funding-rate mechanism and its lack of a fixed expiration date. The CFTC reasoned that the funding-rate mechanism incentivizes the contract's price to converge toward the price of the underlying, and that this convergence, rather than any particular settlement or expiration term, is the defining characteristic of a future.[14] That analysis interprets the same statutory term of art, "future delivery," that governs the definition of a security future, and its logic applies with equal force here: an equity perpetual's cash-settlement and funding features no more remove it from the definition of a security future than they removed the digital-commodity perpetual from the definition of a futures contract. This conclusion is also consistent with the position BA advanced in its February 2026 petition to the CFTC, in which BA explained that neither the CEA nor any Commission regulation conditions "future delivery" on a fixed expiration date, and that perpetuals with continuous reference markets are appropriately regulated as futures rather than as swaps.[15]

Using the existing joint regulatory framework applicable to security futures products would apply the comprehensive investor protection framework applicable to those products to equity perpetuals and provide markets and market participants with the well-recognized advantages of listing and trading products in the United States. This sort of coordinated regulation of equity perpetuals, already evidenced by the Commissions' Joint RFC, would further the goals articulated in the March 2026 Memorandum of Understanding in which the Commissions reaffirmed their commitment to a March 2004 Memorandum of Understanding regarding the oversight of security futures products.[16]

III. THE JOINT REGULATION OF OTHER NOVEL DERIVATIVE PRODUCTS

Beyond equity perpetuals, discussed in Section II above, BA urges the Commissions to develop the framework for the regulation of equity perpetuals in a flexible manner to promote lawful innovation in this rapidly evolving sector. Useful statutory tools already exist. For example, sections 717 and 718 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")[17] enable the Commissions to address cooperatively the regulatory treatment

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[14] Order for Approval, In re KalshiEX, LLC (CFTC May 29, 2026) (approving the BTCPERP Contract as a futures contract under Section 5c(c)(4) of the CEA and Commission Regulation 40.3); see also Policy Statement Concerning the Listing of Perpetual Contracts, 91 Fed. Reg. 33160 (June 3, 2026).

[15] Petition of the Blockchain Association for an Order Under Section 4(c) of the CEA Regarding Perpetual Contracts (Feb. 24, 2026), *available at*: https://www.cftc.gov/media/13716/innovation_BlockchainAssn02242026/download.

[16] March 2026 SEC-CFTC Memorandum of Understanding at p. 6 affirming the Memorandum of Understanding between the Commissions Regarding the Oversight of Security Futures Product Trading and Sharing of Security Futures Product Information (Mar. 17, 2004), *available at*: *https://www.cftc.gov/sites/default/files/idc/groups/public/@internationalaffairs/documents/file/moubetweencftcandsec031704.pdf*.

[17] Pub. L. 111-203, 124 Stat. 1376 (2010).

of novel derivative products that may straddle the jurisdictional boundary between the CFTC and the SEC.

Section 717 of the Dodd-Frank Act revised both the CEA[18] and the Exchange Act[19] to establish a framework for concurrent jurisdiction over derivative products exempted by one agency on condition that the other agency also exercise oversight in order to ensure that there are no regulatory gaps related to a novel product. To the extent of any uncertainty, the related Section 718 of the Dodd-Frank Act, titled "Determining Status of Novel Derivative Products," affords the Commissions a structured process for resolving it in terms of whether a given product should fall under the jurisdiction of the SEC or the CFTC. Both Commissions have promulgated regulations to implement and operationalize Section 718 in the context of derivatives under their respective jurisdictions.[20]

As product development initiatives for these other novel derivatives evolve over time, BA believes that, where applicable, these statutory tools may effectively promote innovation in product development. BA views the addition of these tools to the federal securities and derivatives laws by the Dodd-Frank Act as being consistent with and complementary to the joint regulation of security futures products added by the CFMA some ten years earlier.

BA encourages the Commissions to use these statutory tools, where applicable, to allow for the concurrent development and regulation of *new* perpetual products as futures contracts, mixed swaps, security-based swaps and swaps, in each case depending on the unique design characteristics of perpetuals in the future.

IV. DEVELOP A TECHNOLOGY-NEUTRAL, OUTCOMES-ORIENTED REGULATORY APPROACH

BA encourages the Commissions to develop a regulatory framework for equity perpetuals that focuses on technology-neutral functions and outcomes, rather than mandating a single, uniform, pre-determined market infrastructure for these emerging derivative products. This approach is warranted and even necessary to encourage and enable lawful and appropriate innovation in this space, since equity perpetuals have already been developed and are trading in markets outside of the United States both on centralized exchanges and through decentralized on-chain protocols.

When traded on-chain (or on centralized exchanges that choose to rely on blockchain technology), BA believes that the previously discussed statutory tools can be deployed to

[18] CEA § 2(a)(1)(C)(i)(II), 7 U.S.C. § 2(a)(1) (C)(i)(II).
[19] Exchange Act § 3B, 15 U.S.C. § 78c-2.
[20] 17 C.F.R. § 40.12; and 17 C.F.R. § 240.3a68-2.

develop a regulatory framework that evaluates a trading system for equity perpetuals in a principles-based manner, based on whether that system satisfies relevant regulatory objectives including, but not limited to:

1. Visibility for the Commissions;
2. Transparency for market participants;
3. Readily available books and records;
4. Auditability;
5. Effective market surveillance;
6. Strong protections against manipulation;
7. Execution integrity;
8. Customer asset protection;
9. Financial integrity; and
10. Operational resilience.

In many cases, blockchain infrastructure and characteristics of perpetual contracts can further these objectives, and in some cases may do so more effectively than legacy infrastructure and derivatives. A tamper-resistant ledger can improve auditability. On-chain infrastructure can automate margining, settlement, access restrictions, and collateral movements. Public transaction histories can support surveillance and after-the-fact analysis. Wallet and permissioning tools can support whitelisting, access controls, and segregation of functions. Certain characteristics of perpetual contracts such as the use of reliable, independent reference prices for underlying equities may provide market participants and regulators with improved price discovery information.[21] Rather than being a substitute for regulation, these features of blockchain infrastructure and perpetual contracts can be used to effectively advance policy objectives in both on-chain, decentralized markets, as well as in centralized and intermediary-based markets, generally enabling choice for market participants.

BA encourages the Commissions to implement carefully a principles-based regulatory framework for equity perpetuals that allows choice of trading venues (*e.g.*, listing on DCMs and NSEs and utilizing their affiliated execution and clearing infrastructure or, where appropriate for a given product concept, decentralized means); encourages pathways for direct participant access and direct-to-clearing organization or non-intermediated clearing models, subject to

[21] Generally, a reference price will be more reliable when it is derived from a source that: (a) aggregates pricing contributions from independent market participants with direct involvement in price formation for the relevant instrument; (b) produces its reference price using manipulation-resistant aggregation and calculation methodologies, with sufficient published information for market participants to understand data recency, update frequency, data confidence, and validation mechanisms; (c) makes publisher identities, data sources, aggregation methodologies, and calculation logic public and available for inspection and audit; and (d) is periodically benchmarked against available securities information processor (SIP) data and verified against external sources.

risk-based conditions at least equivalent to those applicable to futures commission merchants and broker-dealer customer-protection, margin, default-management, and segregation standards; minimizes inefficiencies related to a product-by-product registration regime by facilitating trading venue-level transaction and data reporting to each Commission; and achieves the default-management, financial-integrity, and risk-management outcomes that the federal securities and derivatives laws require.

Blockchain-native structures may allow certain participants to interact with markets, collateral, and settlement systems without a traditional intermediary performing every function. Such structures can help reduce costs and democratize markets under the Commission's jurisdiction without compromising strong oversight. The Commissions should identify circumstances in which direct access can be permitted subject to appropriate risk-based conditions. Those conditions could include participant eligibility standards, disclosures, margin and default resources, automated liquidation controls, independent governance, operational resilience, customer asset protections, segregation or functional segregation, and clear responsibility for errors, outages, and defaults. The implementation of any intermediary oversight structure for equity perpetuals should be undertaken in a manner that does not impose broker-dealer registration requirements on proprietary traders that do not hold themselves out as broker-dealers or as being available to accommodate demand or make markets for customers or counterparties. The overarching regulatory objective should be to preserve the protections associated with intermediated models, where applicable, rather than protecting the architecture of intermediation for its own sake.

In sum, BA encourages the Commissions to harmonize the regulation of equity perpetuals by utilizing the existing statutory tools (*i.e.*, for the joint regulation of security futures products and for novel derivatives) in a manner that focuses on functions and outcomes in a technology-neutral manner, instead of assuming – or worse yet mandating – the use of legacy-style infrastructure.

V. ADDITIONAL ALTERNATIVE COMPLIANCE CONSIDERATION

As part of their consideration of alternative compliance mechanisms related to this regulatory harmonization exercise, BA encourages the SEC to consider increasing the current ten-percent (10%) threshold in Exchange Act Rule 18a-10.[22] As background, this rule allows stand-alone security-based swap dealers (SBSDs) registered as swap dealers with the CFTC to satisfy SEC requirements related to capital, margin, and segregation of assets by complying with equivalent CEA rules. If a SBSD relies on this rule, then the aggregate gross notional amount of its outstanding security-based swap positions must not exceed the lesser of two thresholds as of

[22] 17 C.F.R. § 240.18a-10.

the most recently ended quarter of the SBSD's fiscal year: (1) $50 billion; and (2) 10% of the combined aggregate gross notional amount of the SBSD's open security-based swap and swap positions. Since Rule 18a-10 was designed for CFTC-registered swap dealers who also register with the SEC as SBSDs, but remain predominantly CFTC swap dealers, it would be consistent with the rule's intent to increase the percentage cap from ten percent (10%) to potentially up to forty-nine percent (49%).

VI. CONCLUSION

Each day that there remains definitional and regulatory ambiguity causes liquidity, listing revenue, market data, jobs, and global standard-setting to migrate to offshore venues and to jurisdictions building their own frameworks. The United States must take the opportunity to lead. In that vein, BA supports the efforts of the SEC and the CFTC to draw clearer regulatory lines with respect to innovative products that may implicate their respective regulatory interests, and more generally to coordinate in areas of common regulatory interest where collaboration can enhance regulatory effectiveness and market integrity. We encourage the Commissions to remain appropriately focused on coordination to reduce regulatory gaps and provide greater certainty regarding regulatory responsibility in support of efficient markets and lawful innovation, and we appreciate the Commissions' consideration of these comments. BA would welcome the opportunity to meet with the Commissions and their staff and further engage on matters related to these comments.

Respectfully submitted,

By: /s/Summer K. Mersinger

Chief Executive Officer