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August 26, 2026

BY ELECTRONIC SUBMISSION

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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 File No. S7-2026-21; SEC RIN 3235-AN79

Andreessen Horowitz ("a16z" or "we") appreciates the opportunity to submit the following comments in response to the joint request for comment issued by the Securities and Exchange Commission (the "SEC") and the Commodity Futures Trading Commission (the "CFTC," and together with the SEC, the "Commissions") on further definition of "swap" and "security-based swap" and on alternative compliance (the "Joint RFC").[1] We support the Commissions' stated objective of drawing clearer regulatory lines for innovative products that implicate both Commissions' regulatory interests, and we particularly welcome the Joint RFC's recognition that public input on "principled, objective criteria" can help "unlock access to innovative products in U.S. financial markets."[2]

a16z is a venture capital firm that invests in seed, venture, and growth-stage technology companies, focused on AI, bio and healthcare, consumer, crypto, enterprise, fintech, games, infrastructure, and companies building toward American dynamism. As of 2026, a16z has more than $100 billion of regulatory assets under management across multiple funds, with more than $9.8 billion in committed capital for crypto funds. In crypto, we primarily invest in companies using blockchain technology to develop protocols that people will be able to build upon to

[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).

[2] 91 Fed. Reg. at 37875 (requesting "principled, objective criteria that could be used to provide additional clarity for these products within the Title VII framework" and stating that the Commissions "solicit comment on ways to provide clarity, as necessary, to unlock access to innovative products in U.S. financial markets").

launch internet businesses, including protocols and applications that enable the issuance, trading, and settlement of financial instruments onchain.

Although the Joint RFC does not directly address blockchain technology, the Commissions' decisions on the issues it raises will significantly affect whether and how U.S. public securities markets move onchain. The development of that market structure will be driven by tokenization—the creation of a digital asset on a distributed ledger to represent a financial instrument. That pathway should not be limited to traditional gatekeepers, such as issuers and transfer agents. Rather, it should be open to third parties that can create tokenized instruments that reference securities without requiring the referenced issuer's participation.[3] Such an approach is the best way to effectively scale U.S. securities markets onchain in the near term. The Commissions' decisions with respect to the classification of swaps, security-based swaps ("SBS"), and other products, will be critical to enabling these third-party instruments—and, more broadly, the innovative markets and products made possible by blockchain technology—to be developed and offered in the United States, consistent with their stated goal of ensuring that "America will lead the next era of financial innovation."[4] In this response, we outline how the Commissions' decisions with respect to the Joint RFC can deliver this goal.

First, we address third-party tokenization model instruments that are properly characterized as securities. In particular, we recommend that the Commissions confirm that instruments created by third parties to reference securities without the referenced issuer's participation may, depending on their structure and operation, be characterized as securities rather than swaps or SBS, whether because the instrument is itself a note that is a security (Question 9) or because the transaction is a contract for the deferred sale of the referenced security intended to be physically settled (Question 10). This characterization is appropriate

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[3] Generally, there are three pathways for tokenizing securities. First, an issuer can tokenize its own securities (for instance, using a distributed ledger as the company's stockholder ledger), but that requires the issuer's election, charter and bylaw amendments, and new operational infrastructure. Second, an intermediary, such as a transfer agent, can issue tokenized securities on an issuer's behalf. This approach preserves the intermediary stack and adds a technology layer. Third, a third party can create a new instrument that provides economic exposure to a reference security without the referenced issuer's involvement. Third-party tokenization generally takes two forms: custodial models, in which the third party acquires and custodies the underlying security and issues tokens against it; and programmatic models, which use autonomous smart contracts to reference the underlying security without anyone holding it. Custodial models are valuable and are appropriately advancing under the SEC's current initiatives. Their scale, however, is bounded by float availability and custodial capacity, and they retain the custody risks that intermediation rules must address. The programmatic pathway requires neither issuer participation nor custody of the underlying. It therefore has substantial capacity to scale across U.S. securities markets. The Commissions' recent joint guidance on token taxonomy already recognizes third-party issued tokenized securities, describing tokenization by "third parties unaffiliated with the issuers of such securities, which may involve the third party issuing a separate security that derives its value from or is otherwise linked to the subject security." Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, 91 Fed. Reg. 13714, 13720 (Mar. 23, 2026).

[4] *See* SEC Chairman Paul S. Atkins, The SEC's Approach to Digital Assets: Inside "Project Crypto" (Nov. 12, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-111225-secs-approach-digital-assets-inside-project-crypto.

based on the substantive features of these instruments and is critical to bringing U.S. securities markets onchain and to guard against markets for these instruments developing offshore.

Second, we address blockchain-based instruments referencing securities that are properly characterized as derivatives and remain subject to Title VII, such as cash-settled perpetual contracts referencing equity securities. For these instruments, the Commissions should confirm that equity perpetual contracts may be treated as security futures (Question 11), modernize the security futures rulebook to accommodate non-expiring contracts, and use the alternative compliance framework contemplated by the Joint RFC both to coordinate the two Commissions' requirements for products in the jurisdictional seam and to recognize venues whose prefunded, automated architecture achieves Title VII's objectives without traditional intermediation (Questions 12 through 15). These decisions will determine whether perpetual contract markets that already exist offshore can develop under U.S. oversight and whether the Commissions' harmonization initiative reaches the market structures where trading actually occurs.

This comment addresses (I) the organizing principle that unifies our responses (regulatory treatment should follow counterparty dependence, not economic reference) and its impact on U.S. markets; (II) the exclusion for notes, bonds, and evidences of indebtedness (Question 9); (III) the exclusion for security forwards (Question 10); (IV) the treatment of cash-settled perpetual contracts referencing equity securities (Question 11); and (V) alternative compliance (Questions 12-15).

This comment letter does not address certain items relating to instrument construction and market integration that warrant further consideration by the Commissions. For example, the discussion of tokenized notes contemplates only unlevered, fully collateralized instruments and therefore presupposes, among other things, the healthy functioning of market makers; effective mechanisms for buy-ins or replacement of collateral supporting closed-out positions; appropriate management of risks arising from concentrated exposure; and appropriate mitigation of platform risk. These and related considerations concerning market structure, collateral mechanics, counterparty concentration, and operational resilience merit separate and careful consideration by the Commissions.

I. Regulatory Treatment Should Follow Counterparty Dependence, Not Economic Reference

The Joint RFC asks for principled, objective criteria. We propose one organizing principle, which informs our responses: **regulatory treatment should follow counterparty dependence, not economic reference.**

Title VII of the Dodd-Frank Act responded to a specific market failure. Swaps were bilateral, over-the-counter executory contracts whose performance depended on each counterparty's continued willingness and ability to pay over the life of the contract. They traded in opaque, unregulated marketplaces, in which uncollateralized credit exposure accumulated undetected across the financial system.[5] The structural features of the Title VII regime address that risk profile: mandatory clearing, where required, interposes a creditworthy counterparty; margin requirements collateralize exposures, including for the substantial portion of the market that lawfully remains bilateral and uncleared; dealer registration and business-conduct standards police entities that extend and manage credit; and execution and post-trade reporting mandates address opacity. The regime regulates counterparty dependence.

That framework provides a principled basis for distinguishing swaps from other instruments: An instrument warrants regulation as a swap only when the holder's payoff depends on the ongoing performance and creditworthiness of an identifiable counterparty with executory obligations. An instrument does not warrant regulation as a swap when the holder instead holds a freestanding claim that is fully funded at issuance, non-executory as to the holder, and freely transferable, with performance secured by an issuer's general credit (e.g., a holder of an exchange-traded note ("ETN") relies on its issuer's general credit) or by segregated assets (e.g., holders of asset-backed instruments rely on segregated assets).

Blockchain-based instruments offer their own novel mechanism for securing performance that warrants consideration. They can utilize autonomous code to achieve functionality that traditionally required an ongoing counterparty relationship and associated credit exposure, thereby eliminating the counterparty risk that Title VII was designed to address. For example, a tokenized note may reference an underlying security, be issued by autonomous smart contracts, and have performance secured by collateral escrowed in and enforced automatically by such smart contracts. Although holders of such tokenized notes still face risks from collateral quality and code reliability, they do not face risk from platform insolvency because the collateral securing performance is escrowed in a smart contract rather than held on any venue's or intermediary's balance sheet. Consequently, no counterparty's failure can impair the holder's claim.

The remaining risks—collateral quality and code reliability—are risks that securities laws and market-integrity rules, not Title VII, address through disclosures, anti-fraud and anti-manipulation rules. Title VII is an overlay that Congress created to mitigate a different risk—the risk of mutual counterparty credit exposure accumulating over the life of an executory contract. Where that risk is structurally absent, Title VII's application would impose intermediation without adding protection. Applying a framework designed for bilateral, uncleared OTC derivatives to such instruments would not accomplish the regulatory objective and would foreclose peer-to-peer exchange on disintermediated platforms.

[5] *See* Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48208 (Aug. 12, 2012) ("Product Definitions Adopting Release").

The principle applies with equal force to instruments that remain derivatives. A perpetual contract involves ongoing, executory obligations, so it remains within Title VII's perimeter; recording it on a blockchain does not change what it is. What the architecture changes is how the contract's counterparty risk is managed: positions can be prefunded before they open, losses can be capped at posted collateral through automated liquidation, and settlement can be enforced by escrowed collateral rather than guaranteed by an intermediary's balance sheet. Where a venue's architecture minimizes the counterparty dependence that cannot be eliminated, compliance obligations that exist to manage that dependence should be calibrated to the dependence that remains, whether by permitting compliance with one Commission's framework to satisfy the other's substantially similar requirements or by recognizing that autonomous, fully collateralized protocols can achieve Title VII's regulatory objectives through different mechanisms, including, for example, through entity-based obligations that apply to businesses operating user-facing applications rather than to software protocols.

The foregoing principle organizes each of our responses. It explains why the instruments discussed in Questions 9 and 10 should remain subject to securities laws and it explains why perpetual contracts remain derivatives under Question 11. Further, it explains why alternative compliance under Questions 12 through 15 should calibrate obligations to the counterparty dependence that persists.

II. Notes, Bonds, and Evidences of Indebtedness (Question 9)

A. *The Existing Structured Notes Market Already Draws the Correct Line*

The Commissions should confirm, through interpretive guidance or joint rulemaking, that an instrument satisfying the objective criteria below is a note, bond, or evidence of indebtedness that is a security. Such an instrument is therefore excluded from the "swap" definition under CEA section 1a(47)(B)(vii) and the "security-based swap" definition under section 3(a)(68) of the Exchange Act, regardless of what its return references or the form or medium in which it is issued or recorded.[6]

The Joint RFC states that the Commissions are "mindful of the existing structured notes market."[7] That market provides the right starting point because it demonstrates that the distinction between notes and swaps has never turned on economic substance alone. An ETN or equity-linked note is economically similar to a prepaid total return swap because the holder's return is determined by the performance of a reference security or index, and the instrument often provides no principal protection. Yet these instruments have been offered for decades as

[6] 7 U.S.C. 1a(47)(B)(vii).

[7] 91 Fed. Reg. at 37876 (Question 9).

registered debt securities, not swaps or SBS, and the Joint RFC correctly does not question that treatment.[8]

We urge the Commissions to adopt criteria that codify the structural distinction between instruments that expose holders to counterparty risk in the manner of swaps or SBS and instruments, such as ETNs, that avoid such risk, regardless of the instrument's economic reference. Accordingly, an instrument should be treated as a note, bond, or evidence of indebtedness that is a security, rather than as a swap or SBS, where the instrument (1) constitutes a freestanding claim, (2) is fully funded at issuance, (3) is non-executory as to the holder, and (4) is freely transferable.

These criteria map directly onto the absence of the risks Title VII regulates. For instance, a fully-funded instrument that is non-executory as to the holder, and enforced against escrowed collateral generates no counterparty credit exposure that clearing, margin, or dealer regulation could reduce. Further, a clear, objective test does not create an evasion risk. The Commissions retain the anti-evasion rules adopted in the Product Definitions Adopting Release,[9] and instruments "willfully structured" to evade Title VII remain fully reachable. More fundamentally, the criteria foreclose evasion by relabeling because they are substantive rather than formalistic. Finally, the Commissions can administer these criteria from the face of the instrument—for blockchain-based instruments, public code and onchain records make the criteria verifiable.

Establishing these objective criteria is critical to bringing U.S. securities markets onchain and to guard against markets for these instruments developing offshore. By confirming that many third-party tokenization model instruments are securities—or at least not swaps or SBS—the Commissions would avoid application of Title VII's intermediation requirements on top of the securities laws for instruments that present none of the risks those requirements were designed to manage. Such instruments would remain subject to securities laws—their offer and sale remain subject to registration or exemption, to disclosure obligations, and to the antifraud rules, exactly as ETNs are today. That securities characterization would allow such instruments to trade through peer-to-peer onchain markets.

By contrast, recharacterizing third-party tokenization model instruments as swaps or SBS would subject them to regulatory frameworks that foreclose off-exchange peer-to-peer trading by retail participants and require transactions to occur on a registered national securities exchange pursuant to an effective registration statement without advancing Title VII's objectives.[10]

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[8] Structure distinguishes an ETN from an equity swap. An ETN is issued, fully funded at purchase, freely transferable, and non-executory as to the holder. An equity swap is bilateral and executory on both sides and depends on each party's ongoing performance. The ETN holder bears issuer credit risk, which securities disclosure addresses. The parties to an equity swap bear each other's performance risk over the life of an executory contract, which Title VII addresses, through margining and otherwise.

[9] 17 CFR 1.6; see Product Definitions Adopting Release, 77 Fed. Reg. at 48297-48301.

[10] Exchange Act § 6(l), 15 U.S.C. 78f(l) (prohibiting any person from effecting a transaction in a security-based swap with or for a person that is not an eligible contract participant unless the transaction is effected on a registered

Importantly, this approach would also impede the development of U.S. onchain markets as offshore peer-to-peer markets for these instruments continue to grow rapidly. Whether these markets remain outside the U.S. regulatory perimeter or can develop within it will depend largely on how the Commissions address the definitional issue in Question 9.

Further, confirmation that these instruments are securities would be consistent with the stated goals of the Commission with respect to its regulatory approach to blockchain technology under "Project Crypto."[11] Securities characterization leaves the SEC with a full toolkit (exemptions, safe harbors, suitability standards, and tailored registration) to calibrate how these instruments trade. By contrast, swap or SBS characterization would foreclose retail peer-to-peer trading off-exchange by statute and limit the Commissions' exemptive authority, as the Joint RFC itself acknowledges in Question 13.[12] Definitional precision now preserves the Commissions' future flexibility and ensures the agencies can deliver on the stated goals of "Project Crypto."

B. *Trust Indenture Act Qualification and the Lender-Borrower Relationship*

Question 9 asks what consideration should be given to an instrument's issuance under an indenture qualified under the Trust Indenture Act of 1939 and whether its terms reflect a lender-borrower relationship.[13] Neither factor should be a prerequisite to an instrument's treatment as a note that is a security, and thus excluded from the swap and SBS definitions. Treating either as a necessary condition would be overly restrictive and would destabilize the existing market the Joint RFC is properly mindful of.

Most notes that are indisputably securities are not issued under qualified indentures. Notes offered under Rule 144A, Regulation S, and other exemptions, as well as medium-term note programs relying on Trust Indenture Act exemptions, constitute a large share of the debt securities market. Indenture qualification may provide sufficient evidence that an instrument is a bona fide debt security, but it cannot sensibly be required in order to avoid SBS status.

The "lender-borrower relationship" framing in the Joint RFC presents a more subtle problem. If it means fixed principal and periodic interest, the criterion would exclude much of the structured notes market. ETNs, for example, are senior unsecured obligations whose returns are entirely index-linked and that frequently lack principal protection. No one would describe an ETN purchaser as a "lender" in the colloquial sense. The correct formulation is an issuer-investor relationship: the holder has a funded claim against the issuer or dedicated collateral and bears the

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national securities exchange); Securities Act § 5(e), 15 U.S.C. 77e(e) (requiring an effective registration statement for offers and sales of security-based swaps to persons who are not eligible contract participants).

[11] *See supra* note 4.

[12] 91 Fed. Reg. at 37877 (Question 13) (noting that Title VII "limits the exemptive authority of each Commission over certain provisions related to swaps and SBS").

[13] 91 Fed. Reg. at 37876; Trust Indenture Act of 1939, 15 U.S.C. 77aaa et seq.

associated credit risk. That is "evidence of indebtedness" within the meaning of Securities Act section 2(a)(1), whether or not principal is protected. It is also consistent with the Supreme Court's instruction in *Reves v. Ernst & Young* that notes are presumptively securities, with the presumption rebutted primarily in circumstances where such instruments are delivered in commercial or consumer contexts rather than investment contexts.[14]

C. *Form Neutrality*

Neither CEA section 1a(47)(B)(vii) nor the securities laws condition an instrument's characterization on the medium in which it is recorded. The Commissions' joint token taxonomy guidance states the principle directly: "A security is a security regardless of whether it is issued, or otherwise represented, offchain or onchain."[15] An instrument satisfying the criteria above is a note whether evidenced by a paper certificate, a book entry, or a token recorded on a public blockchain. And, as discussed above, the statutory definitions make clear that a security is neither a swap nor an SBS. Securities recordkeeping has already migrated from certificates to intermediated book-entry systems without any suggestion that the migration altered instrument characterization. Blockchain-based records likewise do not alter that analysis.

III. Security Forwards (Question 10)

We offer two focused clarifications regarding the exclusion for security forwards intended to be physically settled.[16]

First, the Commissions should confirm that delivery of a security in tokenized or digital form, including delivery of a security entitlement through onchain settlement infrastructure, constitutes physical settlement for purposes of the exclusion. As securities settlement migrates onchain, token delivery will increasingly be the ordinary means by which securities "change hands." The exclusion should be settlement-medium neutral for the same reasons that instrument characterization should be form neutral.

Second, the Commissions should confirm that intent to physically settle is assessed at contract formation, and that a bona fide right and capability to take delivery of the security

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[14] Reves v. Ernst & Young, 494 U.S. 56, 65-67 (1990); *see also* Kirschner v. JP Morgan Chase Bank, N.A., 79 F.4th 290, 300-07 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 823 (2024) (applying the *Reves* family-resemblance factors and holding that syndicated loan notes were not securities where, among other things, the operative documents used the terminology of commercial lending rather than investment, referring to purchasers as "lenders" and to the instruments as loans made under a credit agreement rather than notes purchased under an offering document, and distribution was limited to sophisticated institutions). *Kirschner* confirms that the *Reves* analysis turns on whether an instrument is bought and sold as an investment, not on whether it exhibits the features of traditional lending. A criterion conditioning the note exclusion on a traditional lender-borrower relationship would invert that analysis: purchasers of the instruments addressed in this letter are investors, not lenders, and instruments bought and sold as investments are the instruments most clearly within the term "note" as the securities laws use it.

[15] 91 Fed. Reg. at 13720.

[16] 7 U.S.C. 1a(47)(B)(ii).

satisfies the exclusion even where the holder may alternatively elect cash settlement. The Product Definitions Adopting Release appropriately declined to adopt a bright-line test in favor of a facts-and-circumstances approach.[17] We do not ask the Commissions to abandon that approach, but only to confirm these two data points within it. The clarifications would protect redemption-in-kind structures in which a token entitles its holder to the underlying security—an increasingly important design as tokenized securities infrastructure matures.

IV. Cash-Settled Perpetual Contracts Referencing Equity Securities (Question 11)

A. *Characterization*

A cash-settled perpetual contract referencing an equity security is appropriately treated as a security future, consistent with the CFTC's recent treatment of perpetual-style contracts on commodities as futures eligible for DCM listing, and with its policy statement on perpetual-style derivatives, which the CFTC itself identified equity-based perpetual contracts as products that "would benefit from review by the [CFTC] and the U.S. Securities and Exchange Commission."[18] Cash settlement and the absence of a fixed expiry do not, by themselves, remove a product from security-future treatment. This characterization follows existing precedent, and it channels these products into the security futures regime. This regime is appropriate given that it is the one framework in existing law that was expressly designed for joint SEC-CFTC oversight, with its notice-registration architecture under which a designated contract market notice-registers with the SEC as a national securities exchange and intermediaries notice-register across agencies.[19] The alternative characterization, as a security-based swap under the single-security prong of Exchange Act section 3(a)(68), would impose the most restrictive possible outcome (no retail access except on a registered national securities exchange pursuant to an effective registration statement) through statutory provisions the Commissions have limited authority to adapt to market needs.[20]

B. *The Security Futures Rulebook Requires Modernization for Perpetual Structures*

The characterization above requires no rulemaking—the Commissions can confirm through joint interpretation or guidance that existing law classifies these contracts as security futures. Adapting the security futures rulebook, by contrast, calls for the Commissions to exercise existing exemptive and standard-setting authority, including their joint authority to

[17] Product Definitions Adopting Release, 77 Fed. Reg. at 48227-48242 (discussing the forward exclusions).

[18] *See* Order Approving KalshiEX LLC BTCPERP Futures Contract, In re Request for Approval by KalshiEX LLC of the BTCPERP Futures Contract (CFTC May 29, 2026); Policy Statement Concerning the Listing of Perpetual Contracts, 91 Fed. Reg. 33,160, 33,161 & n.5 (June 3, 2026).

[19] Exchange Act § 6(g), 15 U.S.C. 78f(g) (notice registration of national securities exchanges trading security futures); Exchange Act § 15(b)(11), 15 U.S.C. 78o(b)(11) (notice registration of futures commission merchants as broker-dealers); *see also* CEA § 4f(a)(2), 7 U.S.C. 6f(a)(2).

[20] Exchange Act § 3(a)(68)(A)(ii)(II), 15 U.S.C. 78c(a)(68)(A)(ii)(II); *see supra* note 10.

modify security futures listing standards by order, as they have done for American Depositary Receipts, exchange-traded funds, and debt securities.[21] History shows why both steps are necessary. When the Commodity Futures Modernization Act of 2000 lifted the Shad-Johnson prohibition and created security futures products under joint jurisdiction, the resulting market failed: dual-regulatory burdens, dual-registration requirements, and margin treatment left U.S. single-stock futures trading thin and ultimately dormant (though U.S. exchanges have recently returned to the framework), while demand for single-name equity derivatives migrated to other instruments and other jurisdictions. The lesson is that a workable rulebook is necessary to create a functional market. If the Commissions leave the security futures regime unmodified, the products could remain offshore despite the availability of the legal characterization.

Security futures rules include provisions related to an expiring contract that converges to and settles against the underlying security. A perpetual contract never expires and never settles against the underlying; its price is tethered to the reference security by a funding-rate mechanism (periodic payments calculated under a published formula and collected and distributed across long and short open interest on an aggregate basis, calibrated to the gap between the contract price and the reference price, rather than flowing bilaterally between identified counterparties) rather than by terminal convergence. Rules keyed to expiration and final settlement therefore require either: (i) confirmation from the Commissions that these rules do not apply; (ii) exemptive relief, or (iii) perpetual-specific analogs (final settlement price procedures, expiration-keyed listing standards, and delivery-based concepts have no application to an instrument that never expires, and funding-rate methodology and oracle integrity standards should take their place).

The Commissions should similarly provide guidance with respect to perpetual-specific standards for the regulatory-halt requirement, under which trading in a single-stock security future must halt whenever a regulatory halt is instituted in the underlying security.[22] One rationale for the rule (that an expiring contract must price against the security at settlement) does not apply to perpetuals and, consequently, more tailored guidance would be helpful. On the other hand, the rule's information-integrity rationale (pausing derivative trading while material information about the underlying disseminates) applies to perpetual structures with full force. In all cases, perpetual-specific standards should address how funding-rate calculations, liquidations, and collateral requirements operate during a halt of the underlying, and should distinguish regulatory halts (where coordination is warranted) from ordinary market closures (where perpetual trading serves the same price-discovery function that index futures have long served overnight).

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[21] *See* Joint Order Modifying the Listing Standards Requirements Under Section 6(h) of the Securities Exchange Act of 1934 and the Criteria Under Section 2(a)(1) of the Commodity Exchange Act, Exchange Act Release No. 34-44725 (Aug. 20, 2001) (American Depositary Receipts); 67 Fed. Reg. 42,760 (June 25, 2002) (exchange-traded funds, trust issued receipts, and closed-end fund shares); 71 Fed. Reg. 39,534 (July 13, 2006) (debt securities).

[22] 17 CFR 41.25; 17 CFR 240.6h-1 (providing that trading of a security futures product based on a single security shall be halted at all times that a regulatory halt has been instituted for the underlying security); *see* also Cash Settlement and Regulatory Halt Requirements for Security Futures Products, 67 Fed. Reg. 36740 (May 24, 2002).

C. *The Peer-to-Peer Pathway: Extending an Accepted Principle*

The Commissions should extend the CFTC's "direct access" model to security futures, as described below. Retail participants today trade directly on regulated swaps and futures markets. Disintermediation is an established feature of CFTC-regulated markets when the credit-risk rationale for intermediation is absent. The CFTC has already recognized that full collateralization can eliminate the need for intermediation. It has designated fully collateralized, non-intermediated contract markets and registered derivatives clearing organizations in which participants access the market directly, without futures commission merchants, precisely because fully collateralized contracts generate no credit exposure for an intermediary to manage.[23]

In existing non-intermediated swaps and futures registrations, "fully collateralized" has meant that maximum loss is prefunded in full. For perpetual derivatives, a leveraged position does not satisfy that definition literally. The relevant functional standard is prefunded and debt-free: every position is collateralized before it opens, automated liquidation caps losses at posted collateral, no participant can incur an obligation to the venue or to any counterparty exceeding what it has posted, and residual gap risk is absorbed by prefunded insurance mechanisms rather than by an intermediary's balance sheet.

Under that standard, the function that futures commission merchant intermediation exists to serve (managing customer credit risk) has no object, which is the principle the existing registrations establish. The Commissions should accordingly recognize a category of prefunded, debt-free, cash-settled security futures, including perpetual structures, eligible for non-intermediated trading where margin, liquidation, and settlement are performed automatically by the venue.

We recognize that direct retail access raises protection questions that intermediaries have historically addressed. Those protections are compatible with non-intermediated architecture. For instance, the Commissions may appropriately condition retail access on leverage limits and on the standardized, plain-language risk disclosure (collateralization levels, liquidation mechanics, oracle sources, and the material differences between synthetic exposure and share ownership), implemented as listing standards or safe-harbor conditions at the application layer. Where a decentralized smart contract protocol rather than a centralized platform is utilized for trading, entity-based regulatory obligations should attach to the businesses operating user-facing

[23] *See* LedgerX, LLC, Order of Registration as a Derivatives Clearing Organization (CFTC July 24, 2017); LedgerX LLC, Order of Designation as a Contract Market (CFTC June 24, 2019); Kalshi Klear LLC, Order of Registration as a Derivatives Clearing Organization (CFTC Aug. 28, 2024); KalshiEX LLC, Order of Designation as a Contract Market (CFTC Nov. 3, 2020).

applications, not to the protocol itself.[24] We develop this framework further in Section V in connection with Questions 12 through 15.

D. *Market Effects*

Question 11 asks what effects these products could have on liquidity formation, price discovery, and hedging for futures and security futures. The evidence from digital asset markets is substantial. Perpetual contracts are the dominant trading instrument in those markets, with volumes that are a multiple of spot volumes, and that activity overwhelmingly occurs on offshore venues today. The funding-rate mechanism demonstrably anchors perpetual derivatives prices to reference prices.[25] These markets exist and will continue to grow, meaning that the Commissions' decisions will determine whether they develop under U.S. oversight, with U.S. investor protections and U.S. market-integrity surveillance, or offshore without them.

V. Alternative Compliance (Questions 12 Through 15)

A. *"Substantially Similar" Should Be Measured by Regulatory Outcomes (Question 12)*

We support the alternative compliance concept proposed, and we urge the Commissions to define "substantially similar" by reference to regulatory objectives and outcomes rather than rule-by-rule identity. We understand this to align with the longstanding substituted compliance or mutual recognition frameworks in place for cross-border regulatory assessments. Requirements administered by the two Commissions differ in text and mechanics while serving common objectives; an outcomes-based standard permits compliance with one framework to satisfy the other wherever the objective is achieved.

The same logic supports recognizing when regulatory objectives are achieved by technological architecture. Consider the mapping for a fully collateralized autonomous trading protocol. Escrowed collateral with automated liquidation achieves the settlement-guarantee objective of clearing. A public, immutable ledger recording every order, position, and transaction

[24] *See* a16z, Response to Request for Input on All Recommendations for the CFTC in the President's Working Group on Digital Asset Markets Report, Comment No. 113958, CFTC (Nov. 28, 2025) (the "a16z CFTC Safe Harbor Submission") (Proposals I-III); a16z & DeFi Education Fund, Recommendations Regarding a Safe Harbor for Applications from the Broker Registration Requirements of the Securities Exchange Act of 1934 (Aug. 13, 2025) (the "Broker Safe Harbor Submission"); *see also* Miles Jennings et al., An Economic Analysis of Safe Harbor for Blockchain Applications, a16zcrypto (Apr. 7, 2026).

[25] *See, e.g.*, Songrun He et al., Fundamentals of Perpetual Futures (2024) (deriving no-arbitrage prices for perpetual contracts and finding that deviations diminish as markets develop); Will Gornall et al., Perpetual Futures and Basis Risk: Evidence from Cryptocurrency (2025) (finding that perpetual contracts hold liquidity better than dated futures during large price movements); Shaunda Devens, Weekend Trading: Price Discovery in Hyperliquid's Weekend Markets, Blockworks Research (Aug. 3, 2026) (measuring a median deviation of 4.31 basis points between perpetual contract prices referencing equities and their reference prices while the underlying markets were open); Hyperliquid Policy Center, Perpetual Futures as Complements to Dated Futures (Aug. 21, 2026) (finding that perpetual contract prices formed while benchmark markets were closed predicted reopening prices).

achieves the objectives of trade reporting and audit-trail requirements, in a form available to both Commissions simultaneously (and the public) in real time. Permissionless, non-discriminatory access achieves the objective of impartial-access requirements. Deterministic, self-executing settlement eliminates the failure modes that much of the intermediary rulebook polices. The Commissions should recognize when Title VII's objectives are met by technical architecture, and reserve entity-based compliance obligations for the entities whose conduct actually presents the remaining risks.

B. *Coordinated Registration and Tailored Rules (Question 13)*

The Joint RFC asks when trading in "economically related or functionally similar product classes implicates both SEC and CFTC regulatory interests" such that alternative compliance is appropriate (Question 12), and when the Commissions should pursue joint or coordinated notice registration and tailored rules (Question 13). The products discussed in this letter sit squarely within that description: tokenized instruments referencing securities and perpetual security futures are economically related to products regulated by each Commission, and the venues on which they trade implicate both Commissions' regulatory interests. Against that backdrop, we propose three actions:

First, the Commissions should extend the security futures notice-registration model to the innovative products discussed in this letter that sit in the jurisdictional seam (cash-settled perpetual contracts referencing equity securities or narrow-based security indexes, and other single-name equity derivatives bearing the recognized characteristics of futures contracts) under the model's established structure: a single primary regulator, one registration, one primary rulebook, and notice registration with the other Commission. Joint oversight through notice registration, rather than dual registration, fits these products because each Commission's regulatory interest is distinct and complementary. In particular, the SEC's interest runs to the integrity of the underlying cash equity market and its disclosure and insider trading regimes, while the CFTC's runs to derivatives market mechanics, including margin methodology, funding calculations, and liquidation practices. This model has functioned for two decades, requires no new statutory authority, and directly supports the characterization of equity perpetuals as security futures discussed in Section IV.

Second, the Commissions should codify the direct-access venue model that the CFTC has to date implemented through individual registration and designation orders. DCM designation and derivatives clearing organization registration have already accommodated fully collateralized venues whose participants access the market directly. What is missing is generalization and a securities-side counterpart. On the CFTC side, the Commission should adopt guidance or acceptable practices under its Part 38 and Part 39 frameworks specifying the conditions (prefunded positions, automated liquidation, no extension of credit, and no custody of participant assets beyond posted collateral) under which direct participant access satisfies the core principles, so that new entrants need not depend on bespoke orders. On the SEC side, no counterpart exists. In addition, Exchange Act section 6(c)(1) requires a national securities exchange to deny membership to persons other than registered broker-dealers and their associated persons. The Commissions should clarify the extent to which section 6(c)(1) applies to a designated contract market that notice-registers as a national securities exchange under section 6(g) to trade security futures. To the extent it applies, the SEC could use its general exemptive authority under Exchange Act section 36, which Title VII does not restrict with respect to security futures as it does for SBS, to permit direct member access to venues meeting the conditions described above, subject to the retail protections described in Part IV.C. Obligations under this codified category should be scaled to the actual risk profile of a venue that takes no custody, extends no credit, and exercises no discretion.

Third, for venues that are autonomous protocols, the Commissions should adopt a safe harbor built on objective, verifiable decentralization criteria, with entity-based obligations attaching at the application layer. We have proposed the architecture for such a safe harbor in detail in prior submissions to both Commissions: protocols qualify where they are autonomous (operating solely through predetermined rules in source code, with no person or group having unilateral authority to alter the system's functionality), permissionless, credibly neutral, and non-custodial, while the businesses operating user-facing applications remain identifiable, jurisdictionally accountable, and subject to appropriately tailored conduct obligations.[26] The Joint RFC's observation that Title VII limits each Commission's exemptive authority over certain swap and SBS provisions reinforces rather than undermines this approach: where exemptive authority is limited, the lawful tools are definitional precision (Sections II through IV above) and tailored registration categories adopted through joint or coordinated rulemaking, for which sections 712(d), 717, and 718 of the Dodd-Frank Act supply existing authority.[27]

C. *Trading Is Not Dealing (Question 13)*

For any of these pathways to produce liquid markets, the Commissions should also clarify what constitutes "dealing." The statutory definitions and the Commissions' own interpretations distinguish dealers from traders by reference to customer relationships. In the Entity Definitions Adopting Release, the Commissions identified the hallmarks of dealing as accommodating demand from counterparties, holding oneself out as a dealer, and making markets as part of a customer-facing regular business, while stating that they would "consider, but not formally adopt" the body of case law interpreting the dealer-trader distinction. Dealing turns on intermediating for customers as part of a regular business, not on the frequency or passivity of a participant's own-account trading. Recent case law is consistent with this understanding—in 2024, the U.S. District Court for the Northern District of Texas vacated the SEC's expanded dealer rules, reasoning that a "dealer" must be in the business of customer-order

[26] a16z CFTC Safe Harbor Submission, *supra* note 24 (setting out the Qualifying Protocol conditions of autonomy, permissionlessness, credible neutrality, and non-custody, and the Qualifying App conditions).

[27] Dodd-Frank Act §§ 712(d), 717, 718, Pub. L. 111-203, 124 Stat. 1376 (2010) (joint further-definition authority; coordinated rulemaking and registration provisions; process for novel derivative products).

facilitation and that the rules unlawfully swept in traders "that do not have customers.[28] The operative point is the customer-relationship frame the Commissions themselves articulated in 2012. The principle applies with particular force to non-intermediated and protocol-based venues: a participant supplying liquidity to a pre-funded, non-intermediated venue for its own account has no customers, extends no credit, and intermediates for no one. Under the customer-relationship frame, that activity is not dealing.

The Commissions should confirm that this activity does not constitute "dealing" and, thus does not trigger swap dealer, security-based swap dealer, or Exchange Act section 15(a) broker-dealer registration. Without that confirmation, the liquidity these markets require will not form onshore, and the registration architecture will have reimported the intermediation costs that the structures at issue were designed to eliminate. For any product that remains a swap or an SBS notwithstanding the clarifications requested above, the Commissions should provide an exclusion from the dealing analysis for cleared, on-venue liquidity provision. The CFTC's floor-trader exclusion offers a template, but its conditions have proven difficult to satisfy in practice, including for market makers streaming continuous prices, and relief should be crafted to work more broadly: an objective, conditions-based exclusion for own-account liquidity provision on cleared or prefunded venues. The SEC should also recalibrate the de minimis threshold for non-CDS SBS dealing toward parity with the CFTC's swap threshold.

D. *Surveillance, Examination, and Enforcement (Question 14)*

Cross-market surveillance is the hardest problem in the current system because transaction data is fragmented across swap data repositories, exchange audit trails, and reporting facilities that the Commissions must reconcile after the fact. Public blockchains invert this architecture, providing simultaneous, real-time, complete, and immutable access to every order, position, and transaction on a public protocol, without waiting on counterparties to respond to requests. We recommend that the Commissions: (1) jointly build or procure shared onchain analytics capability; (2) provide that onchain records satisfying specified standards are deemed to satisfy applicable reporting obligations, an application of the "deemed filing" concept Question 13 raises; and (3) focus examinations on the application layer and on the mechanisms that constitute genuine risk surfaces for these markets, principally oracle integrity and collateral mechanics.

Use of public protocols does not require new enforcement theories. Antifraud and anti-manipulation authority under CEA section 6(c)(1) and Rule 180.1, and Exchange Act

[28] Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," 77 Fed. Reg. 30596, 30608 (May 23, 2012) (identifying customer-facing accommodation of demand as a hallmark of dealing and stating that the Commissions would "consider, but not formally adopt" the body of court decisions and SEC releases interpreting the dealer-trader distinction); *see also* Nat'l Ass'n of Private Fund Managers v. SEC, No. 4:24-cv-00250-O, 2024 WL 4858589 (N.D. Tex. Nov. 21, 2024) (vacating Exchange Act Rules 3a5-4 and 3a44-2); Crypto Freedom Alliance of Texas v. SEC, No. 4:24-cv-00361-O, 2024 WL 4858590 (N.D. Tex. Nov. 21, 2024) (companion decision) .

sections 9(a) and 10(b), attach to persons, not to venues.[29] Disintermediating a venue does not permit wrongdoing, and the permanence of onchain records means that misconduct, once identified, is fully documented.

E. *Manipulation and Material Nonpublic Information (Question 15)*

On manipulation, transparency is the underappreciated variable. Spoofing, wash trading, and layering are more detectable on venues where every order and every counterparty relationship is publicly recorded than in markets where surveillance depends on intermediary reporting. Full collateralization independently caps the payoff of manipulation strategies that depend on defaulting on losing positions. The genuine manipulation surface specific to these markets is the oracle, and we urge the Commissions to address it directly, including by adopting manipulation-resistant oracle standards (multi-source aggregation, time-weighted pricing, and resilience to short-lived price dislocations) as listing standards and as safe-harbor conditions, as noted in Sections II and IV. Naming the real risk and regulating it directly will do more for market integrity than preserving intermediary gatekeeping that addresses risks these markets do not present.

On material nonpublic information, existing law already reaches trading in derivatives on equities while in possession of MNPI, including through Exchange Act section 20(d).[30] The question is detection, and here again the architecture helps: transactions are permanently recorded, positions are traceable across venues, and identity obligations concentrated at the application layer (consistent with the framework in Question 13) give the Commissions a workable perimeter without requiring surveillance obligations of autonomous code. We support coordinated cross-market surveillance on the Inter-Market Surveillance Group model, fed by onchain data to which, unlike in any legacy market, both Commissions have unmediated access.

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[29] 7 U.S.C. 9(1); 17 CFR 180.1; 15 U.S.C. 78i(a), 78j(b).

[30] 15 U.S.C. 78t(d).

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We greatly appreciate the opportunity to provide comments on these important matters, and we welcome engagement with the Commissions and their staffs on any of the issues discussed herein.

Sincerely,

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