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November 18, 2026

VIA ELECTRONIC SUBMISSION

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

Re: Further Definition of "Swap" — Proposed Rule Regarding Event Contracts (RIN 3038–AF82) and Interim Final Rule to Exclude Casino-Style Gambling Products (RIN 3038–AF81)

Dear Mr. Kirkpatrick:

Cboe Global Markets, Inc. ("Cboe") appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "Commission" or "CFTC") October 9, 2026 proposed rule to include certain event contracts, including those based on sports, politics, cultural, and weather-related events, within the definition of "swap" (the "Proposed Rule")[1] and its interim final rule excluding casino-style gambling products from that definition (the "Interim Final Rule" and, together with the Proposed Rule, the "Releases").[2] Because the Releases both address the definition of "swap" in the Commodity Exchange Act (the "CEA") and raise a number of overlapping statutory, interpretive, and procedural questions, Cboe submits a single letter addressing both.

I. Introduction

Cboe operates a designated contract market ("DCM"), a swap execution facility ("SEF"), and a derivatives clearing organization ("DCO") regulated by the Commission, as well as national securities exchanges for equities and options registered with the Securities and Exchange Commission ("SEC"). Cboe's SEC-registered exchanges first received SEC approval to list and trade binary options on broad-based securities indexes in 2008.[3] Cboe therefore brings direct

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1 *Further Definition of "Swap" – Inclusions*, RIN 3038-AF82 (Oct. 15, 2026), 91 FR 66022 (Oct. 19, 2026) ("Proposed Rule").

2 *Further Definition of "Swap" To Exclude Casino-Style Gambling Products*, RIN 3038-AF81 (Oct. 15, 2026), 91 FR 65969 (Oct. 19, 2026).

3 *See* Securities Exchange Act Release No. 57850 (May 22, 2008), 73 FR 31169 (May 30, 2008).

experience with both regulatory regimes and with the products that sit within the jurisdiction of each. Cboe has also submitted several comment letters to the Commission on "event contracts," including its May 2026 letter in response to the CFTC and SEC joint request. The views expressed herein build on those submissions.

As the CFTC continues to push forward in permitting DCMs offering "event contracts" to self-certify a wide variety of products as "swaps"—often with little or no analysis as to whether a particular contract in fact qualifies as a "swap" under the CEA—Cboe's central concern is straightforward: any rulemaking concerning "event contracts" must preserve the statutory line that Congress drew between swaps and securities (a term that includes security-based swaps). "Event contracts" that are structured as binary options based on the value of a security, which includes binary options on key performance indicators ("KPIs") that issuers report in their SEC filings, or a securities index are securities; specifically, they are securities options excluded by statute from the swap definition. The SEC—the sole agency charged with interpreting the term "security" under the federal securities laws—recently confirmed this in approving Cboe's rule filing to list and trade binary KPI options.[4] In that approval, the SEC (and SEC Chairman Atkins in a separate statement) confirmed that how a product is structured and how it functions should be determinative in categorizing that product as a swap, a securities option, or a security-based swap (or something else). The label that a venue opts to attach to a product cannot control the analysis or override statutory definitions, and the expression "commonly known to the trade" within the definition of "swap" cannot serve as the basis to amend statutory definitions or reallocate oversight responsibilities established by Congress.

Cboe has threshold concerns, applicable to both Releases, regarding how they articulate the scope of the CFTC's authority, the joint-rulemaking requirement codified in Dodd-Frank, and the process by which the Releases were issued. Those common concerns relating to the Releases are addressed in Section II; Section III addresses issues specific to the Proposed Rule; and Section IV addresses the Interim Final Rule.

4 *See* Securities Exchange Act Release No. 106659 (Oct. 13, 2026), 91 FR 65854 (Oct. 16, 2026).

II. Common Concerns

The CFTC's Authority to "Further Define" the Statutory Definition of "Swap" Permits Clarification in Accordance with the CEA, Not Amendment of the CEA

Section 712(d) of the Dodd-Frank Act authorizes the CFTC and the SEC to "further define" the term "swap."[5] That authority permits the agencies to clarify the boundaries Congress established; it does not permit them to expand the definition of "swap" to reach instruments Congress expressly excluded—particularly when those exclusions involve Congressionally defined terms themselves—or to redraw the statutory lines altogether. Congress made a clear decision to exclude securities options, security futures, and security-based swaps (other than mixed swaps) from the definition of "swap" in order to preserve jurisdictional boundaries for those products[6]; the CFTC cannot unilaterally use its interpretive authority to erase those key statutory distinctions and unilaterally expand its jurisdiction to products that Congress specifically excluded.[7] Whether the CFTC is adding a category of products to the definition of "swap," as in the Proposed Rule, or carving a category out of it, as in the Interim Final Rule, the touchstone must remain the statutory text of Section 1a(47) of the CEA, including the exclusions set forth in Section 1a(47)(B).

Further Definition of "Swap" Requires Joint Action with the SEC

Section 712(d)(1) of the Dodd-Frank Act requires the CFTC and the SEC to further define "swap" jointly. In the Releases, the SEC's participation is reflected only in a footnote stating that the SEC "joins." The statute requires that the agencies "jointly adopt" such rules; an incidental footnote reference does not satisfy this statutory requirement. Rather, consistent with past practice when engaging in Dodd-Frank rulemaking on these definitions, the CFTC should refrain from taking action until the SEC itself issues both the Proposed Rule and the Interim Final Rule, through the standard notice-and-comment process, so that the agency responsible for securities and security-based swaps formally and publicly addresses the demarcation between its jurisdiction and that of the CFTC.

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5 The statute requires further that any such joint rulemaking shall be done in consultation with the Board of Governors of the Federal Reserve. *See* Dodd-Frank Sec. 712(d)(1). The CFTC indicates it has met this consultation requirement by "sharing" the Releases. *See* Swap NPR at 66023 n.3; Swap IFR at 65970 n.2. "Sharing" a proposal—and, especially, an interim final rule—is not sufficient to meet this statutory consultation requirement.

6 7 U.S.C. § 1a(47)(B)(i) (excluding security futures products); (iii) (excluding options on securities or securities indexes subject to the federal securities laws); (x) (excluding security-based swaps).

7 *See, e.g.*, 7 U.S.C. § 2(a)(1)(A) ("Except as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State . . ."); 2(a)(1)(C)(i)(I) ("Except as provided in subclause (II), this chapter shall not apply to and the [CFTC] shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities . . ., including any group or index of such securities, or any interest therein or based on the value thereof.").

The Insufficient Comment Period

Comments on both Releases are due November 18, 2026, and neither Release explains the rationale for such an abbreviated comment period. Given the significance of the questions presented, including the jurisdictional treatment of products involving billions of dollars in transactions, Cboe respectfully submits that the CFTC should provide a full comment period and consider extending the current deadline, particularly given that the Releases were both issued on the same day and each with the same minimum comment period.

III. The Proposed Rule: Inclusion of Certain Event Contracts in the Swap Definition

The Existing Securities Options Exclusion Already Applies to Securities-Based "Event Contracts"

In the Proposed Rule, the CFTC proposes to add new paragraph (G) to paragraph (2)(i) of the swap definition in Rule 1.3 by defining "swap" to encompass "[e]vent contracts, including those based on sports-, politics-, cultural, and weather-related events." Although the CFTC's intent is to "clarify" that certain "event contracts" are within the CFTC's jurisdiction, the term "event contract" is itself nowhere defined in statute or rule. Thus, the CFTC is seeking to "further define" the term "swap" with an undefined term, which is an approach apt to create more questions than it purportedly solves.

Cboe notes that paragraph (2)(ii) in the definition of "swap" in Rule 1.3 also applies to the definition, and that provision specifically provides that the term "swap" does not include any product described in paragraph (2)(i) "that is otherwise excluded by section 1a(47)(B)" of the CEA. Rule 1.3, even as proposed to be amended, therefore confirms that the exclusions from "swap" continue to include options on any security or group or index of securities under Section 1a(47)(B)(iii) (the "securities option exclusion"). Accordingly, by the terms of the Commission's own rule structure, "event contracts" that are securities options are not swaps. The Commission acknowledges in a footnote that the Proposed Rule does not reach event contracts that are security-based swaps or other SEC-regulated instruments.[8]

Cboe requests that any adopting release state expressly that (i) an event contract that is a put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 and the Securities Exchange Act of 1934, is excluded from the definition of "swap" under the securities option exclusion, and (ii) an event contract that is a security-based swap, other than a security-based swap as described in Section 1a(47)(D) of the CEA, is excluded

[8] *See* Proposing Release at 66023 n.5 ("Certain event contracts may be security-based swaps or other instruments subject to the SEC's jurisdiction.").

from the definition of "swap" under Section 1a(47)(B)(x) of the CEA, in each case regardless of whether the contract is characterized as an "event contract." Cboe also emphasizes that the SEC should actively participate in rulemaking related to rules that address the jurisdictional boundaries between the CFTC and the SEC in connection with such products, as the statutory framework requires.

Regulators Should Adopt a Functional Classification Approach for Securities-Based Event Contracts

Both the CFTC and the SEC have long recognized that an instrument's functional nature—how it is structured and how it operates in terms of payout events and cash flows—determines its proper characterization and the regulatory framework that applies to it.[9] That principle is not unique to the agencies: the Supreme Court and the federal courts of appeals have consistently classified financial instruments according to their economic substance rather than the name the parties or a trading venue attach to them.[10] Event contracts that are structured such that they pay a fixed amount or nothing upon the occurrence of a specified outcome are, in structure and function, binary options. It follows that an event contract referencing a security or securities index (including an interest in or value of a security or securities index) is a securities option, not a swap (and therefore also not a security-based swap). The CFTC cannot, by adding the term "event contract" to the swap definition, convert every binary option into a swap. In light of this limitation, Cboe urges the CFTC to adopt the following classification test:

> "Event contracts" that are structured as binary options on a security, a group or index of securities, or based on the value of or an interest in a security or securities index are not swaps (i.e., they are excepted by the securities option exclusion).[11]

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9 See Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208, 48211 (Aug. 13, 2012) (joint CFTC and SEC release) (explaining that the agencies will look to the form and substance of a product, rather than the label attached to it, such as "insurance," in determining whether it is a swap or security-based swap, and that functionally or economically similar products should be treated alike).

10 See, e.g., SEC v. W.J. Howey Co., 328 U.S. 293, 298 (1946) (investment contract analysis disregards form for substance and focuses on economic reality); Tcherepnin v. Knight, 389 U.S. 332, 336 (1967) ("form should be disregarded for substance and the emphasis should be on economic reality"); United Housing Found., Inc. v. Forman, 421 U.S. 837, 848–49 (1975) (name given to an instrument is not dispositive); Reves v. Ernst & Young, 494 U.S. 56, 61 (1990) (Congress intended to regulate investments "in whatever form they are made and by whatever name they are called"); Landreth Timber Co. v. Landreth, 471 U.S. 681, 686–87 (1985) (instrument's characteristics, not label alone, determine whether it is a security); Caiola v. Citibank, N.A., 295 F.3d 312, 325–27 (2d Cir. 2002) (cash-settled, synthetic options on a security treated as options on that security under the federal securities laws); CFTC v. Zelener, 373 F.3d 861, 866–68 (7th Cir. 2004) (classification of contracts under the CEA turns on the terms and operation of the contracts themselves).

11 7 U.S.C. § 1a(47)(B)(iii). That provision excepts from the definition of swap "any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including

> For example, "event contracts" structured as binary options referencing KPIs are among items referenced by a company in public disclosures to investors that an issuer reports in its SEC filings. They are based on information material to the value of the issuer's securities and are therefore "based on the value of" those securities.

Consistent with Cboe's prior letters, and with the SEC's recent analysis in approving Cboe's binary KPI options, "event contracts" meeting this test should not be listed on DCMs. Although the SEC and the SEC Chairman have noted that products based on issuer KPIs that are structured differently may qualify as "swaps" or other CFTC products, it follows, too, that binary options that are structured like those approved by the SEC to list and trade on Cboe—that is, structured as binary options based on the value of a security—are not "swaps."

The Statutory Prongs in the Definition of "Swap" Do Not Override the Securities Option Exclusion

The list of instruments covered by the swap definition in Section 1a(47)(A) of the CEA begins with the phrase "[e]xcept as provided in subparagraph (B)." The statutory exclusions from the "swap" definition therefore control in every case: a securities option is not a swap even if it would otherwise satisfy one (or more) of the "swap" definition's prongs. The CFTC reads broadly the prong covering contracts tied to an event with a "potential" financial, economic, or commercial consequence. Index and KPI event contracts readily satisfy that prong, as they are tied directly to securities values and issuer financial results; however, satisfying the prong does not make them swaps. The securities option exclusion in Section 1a(47)(B)(iii) continues to apply.

Likewise, the CFTC contends that event contracts are swaps because they are binary options on "excluded commodities," a statutory category that includes securities indexes. Applied to index contracts, the Commission's reasoning would treat a binary option on the S&P 500 Index as a swap—yet the statute separately excludes options on securities indexes from the swap definition. Indeed, the Commission's own advance notice of proposed rulemaking recognized that event contracts may be security-based swaps or other SEC-regulated instruments.[12]

DCM Self-Certification Does Not Establish That Securities-Based Contracts Are "Commonly Known to the Trade" as Swaps

The Commission's lead argument—that event contracts are "commonly known to the trade" as swaps—rests substantially on DCM self-certification practice. The fact that DCMs may have self-certified securities-based contracts, such as contracts on the S&P 500 Index, the Nasdaq-100

> any interest therein or based on the value thereof, that is subject to (i) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and (ii) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)."

[12] *See* Proposing Release at 66023 n.5.

Index, and issuer KPIs, does not convert those securities into swaps. A market participant cannot simply label an instrument a swap and thereby override the Congressionally mandated carve-outs for securities options and security-based swaps. Cboe requests that the final rule make clear that DCM self-certification of securities-referenced contracts is not evidence that those contracts are commonly known to the trade as swaps, and that the securities option exclusion applies regardless of how a DCM may label a product as part of a self-certification filing.

Cboe's May 2026 Letter

The Proposed Rule cites Cboe's May 2026 letter in support of the "commonly known to the trade" argument, noting Cboe's statement that event contracts generally fall within the swap definition "absent a statutory exception." Cboe appreciates that the release includes that qualifier, but the Proposed Rule does not address what the exception covers, which was the central point of Cboe's letter: securities-based contracts, such as those on the S&P 500 and Nasdaq-100, are securities, fall within the securities option exclusion, and should be delisted from any DCMs currently offering them. Cboe's prior comments should not be read as support for treating such contracts as swaps.

IV. Interim Final Action Should Not Become the Standard for CFTC Rulemaking

The Interim Final Rule took effect upon publication in the Federal Register, with the Commission invoking the Administrative Procedure Act's "good cause" exception to forgo both advance notice and comment and the customary 30-day delayed effective date. Comments are being accepted only after the fact. As courts have repeatedly stated, the "good cause" exception should be "narrowly construed and only reluctantly countenanced."[13] "The exception is not an 'escape clause'; its use 'should be limited to emergency situations.'"[14] The Commission cites confusion among the courts, state enforcement actions, and the economic stakes of prediction markets as the basis for invoking the exception; however, the questions the rule addresses have been the subject of litigation and public debate for an extended period, which undercuts the urgency that the good cause exception requires.[15]

As a matter of principle, Cboe respectfully cautions that interim, good cause action should not serve as the template for deciding event contract jurisdiction or for Commission rulemaking more generally. Jurisdictional determinations of this significance benefit from full public participation before they take effect, and market participants rely on the predictability that the ordinary notice-

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13 *Utility Solid Waste Activities Grp. V. EPA*, 236 F.3d 749, 754 (D.C. Cir 2001) (quoting *Tennessee Gas Pipeline Co. v. FERC*, 969 F.2d 1141, 1144 (D.C.Cir.1992) (quoting *New Jersey v. EPA*, 626 F.2d 1038, 1045 (D.C.Cir.1980))).

14 *Id*. (quoting *American Fed'n of Gov't Employees v. Block*, 655 F.2d 1153, 1156 (D.C.Cir.1981)).

15 *See Illinois Bankers Ass'n v. Raoul*, 834 F.Supp.ed 773, 786 (N.D. Ill. 2026) ("Further, agencies cannot manufacture their own emergencies to invoke the good cause exception.") (citing *Chamber of Com. v. DHS*, 504 F. Supp. 3d 1077, 1088 (N.D. Cal. 2020) (collecting cases holding that agencies' delays of six or more months belied their findings of good cause)).

and-comment process provides. Cboe urges the Commission to treat the comments received on the Interim Final Rule as it would comments on a proposal, and to be prepared to revise the rule in light of them.[16]

V. Conclusion

Cboe appreciates the CFTC's efforts to bring clarity to the regulatory treatment of "event contracts." Cboe respectfully requests that the CFTC and the SEC, acting jointly: (i) confirm in the text of any final rule that event contracts that are structured as binary options on a security or securities index, including those based on the value of or an interest in a security or securities index (including issuer-reported KPIs), are securities options excluded from the swap definition; (ii) confirm that a DCM's classification of a product as part of the self-certification process in itself does not establish that such contracts are "commonly known to the trade" as swaps; and (iii) commit to refraining from relying on interim, good cause action for future determinations of event contract jurisdiction except in the circumstance of a true emergency. Cboe would welcome the opportunity to discuss these comments with the Commission and its staff.

Sincerely,

s/Patrick Sexton

Patrick Sexton
EVP, General Counsel, and Corporate Secretary
Cboe Global Markets, Inc.

CC: Vanessa Countryman, Secretary of the Securities and Exchange Commission

[16] *Id.* at 788 ("The APA alone does not require agencies claiming the good cause exception to pursue post-promulgation notice and comment, although the practice is common.").