United States Senate

WASHINGTON, DC 20510

November 2, 2026

The Honorable Paul S. Atkins
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The Honorable Michael S. Selig
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Chair Selig and Chair Atkins,

We write regarding the growing number of equity-linked products that are being offered on CFTC-regulated platforms. We are concerned that these products are being permitted to trade without SEC oversight and the stronger investor protections provided under the SEC's jurisdiction.

Yes-or-no event contracts tied to equities and security indexes are already being offered as swaps on CFTC-regulated platforms. So, too, are contracts tied to company performance measures, which are so bound up in corporate performance that they are functionally equivalent to stock. Another similar product, perpetual contracts tied to individual stocks, is currently pending before the CFTC for review through November 2, 2026.

The recent proliferation of these products for retail trading raises serious concern that products tied to the same underlying securities may be offered on different platforms under different regulatory standards. As a result, investors will have different protections depending on where a product is traded for economically equivalent transactions. These issues are particularly important as retail investors already have access to some of these products and additional offerings are being considered. Our concerns are compounded by the ability of market participants to self-certify to the CFTC, in effect choosing to sidestep SEC oversight and the much stronger rulebook and more rigorous approval process that applies to securities and security-based swaps.

We urge the SEC and CFTC to ensure that perpetual futures tied to individual stocks do not move forward for trading until the outstanding questions regarding oversight and investor protections are addressed. We also urge the SEC to assert jurisdiction over derivatives contracts tied to company performance measures and for the CFTC to reject or at least delay these products until the jurisdictional lines between the agencies is consistent with the law governing security-based swaps.

Further, we request that you provide responses to the following questions:

1. Have your agencies reached an agreement on how responsibility for overseeing these products will be divided? If so, what is the statutory basis for that arrangement, and is it reflected in a written memorandum of understanding or other documentation?

2. Will trading venues offering these products be subject to cross-market surveillance and insider trading requirements?

3. What are the differences in suitability and other customer protections to retail investors trading these products on SEC versus CFTC regulated venues? What are the differences in insider trading law administered by the two agencies?
4. Is the CFTC's self-certification regime appropriate for products that are marketed to retail investors or that many market participants view as securities or security-based swaps?
5. What requirements will apply to the segregation and protection of customer assets if a platform becomes insolvent under the SEC versus the CFTC's rules?
6. Will protections comparable to those available to customers in securities markets, including SIPC coverage where applicable, be required or available?

As these markets develop, it is important that the rules governing comparable products are clear and that gaps in oversight do not emerge because a product trades on a different platform. Consistent regulatory treatment is key to preserving market integrity, preventing arbitrage, and maintaining confidence in the U.S. financial system. We also need to keep our capital markets attractive to companies looking to raise money and to Americans saving for retirement. As these products develop, we should evaluate their impact on long-term investment and wealth building, including whether they shift activity away from owning shares in companies and toward shorter-term trading.

We appreciate your prompt attention to these issues.

Sincerely,

Mark R. Warner
United States Senator

Catherine Cortez Masto
United States Senator

Angela D. Alsobrooks
United States Senator

Chris Van Hollen
United States Senator

Jack Reed
United States Senator

Amy Klobuchar
United States Senator