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September 28, 2023

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
1155 21st St. NW
Washington, DC 20581

Dear Mr. Kirkpatrick,

The Futures Industry Association ("FIA") welcomes the opportunity afforded by the Commodity Futures Trading Commission ("Commission" or "CFTC") to comment on the impact of affiliations between certain CFTC-regulated entities, and to address various questions and comments made in the Commission's Request for Comment ("RFC")[1]. We appreciate the deliberative approach the Commission is pursuing in seeking comments to consider all aspects of affiliated entities and the conflicts that may arise between affiliated entities. As discussed below, FIA believes a considered review of the self-regulatory process is required. Whether or not such affiliations are permitted, FIA believes the conflicts of interest inherent in the current model of self-regulation should be addressed through appropriate governance and oversight. To this end, FIA generally supports the self-regulatory design embedded in the Commodity Exchange Act ("CEA") and the implementing regulations. We believe, however, that additional governance and oversight of the Joint Audit Committee ("JAC") program is needed to ensure its effectiveness and fairness in light of the significant changes to market structure that have occurred since its formation.

CFTC's Current Self-Regulatory Framework and its Multi-Tiered Design

As the Commission is aware, designated contract markets ("DCMs"), derivatives clearing organizations ("DCOs") and swap execution facilities ("SEFs") (collectively, "registered entities"), as self-regulatory organizations ("SROs"), have certain responsibilities for supervising the conduct of their members and participants.[2] Among other things, the CEA's Core Principles for DCMs, DCOs and SEFs require them to minimize conflicts of interest in their decision-making processes and establish a means for resolving conflicts of interest.[3] FIA understands and appreciates the

[1] Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities, June 27, 2023, https://www.cftc.gov/media/8826/rfcimpactaffiliations062823/download.
[2] It is worth noting that the definition of the term "self-regulatory organization" in CFTC Rule 1.3 includes DCMs, SEFs and registered futures associations, but not DCOs. CFTC Rule 39.17 does make a DCO responsible for enforcing its members' compliance with the DCO's rules, which is a self-regulatory function. 17 C.F.R. §§ 1.3 & 39.17.
[3] CEA §§ 5(d)(16) (DCM Core Principle 16), 5b(c)(2)(P) (DCO Core Principle P) & 5h(f)(12) (SEF Core Principle 12); 7 U.S.C. §§ 7(d)(16), 7a-1(c)(2)(P) & 7b-3(f)(12).

importance of evaluating the conflicts of interest that may arise between a registered entity and an affiliate of a registered entity. These conflicts can be even more pronounced if the affiliate acts as an intermediary such as a futures commission merchant ("FCM") or other market participant[4] with respect to transactions executed or cleared through the registered entity.

In considering the Commission's important questions, FIA highlights the checks and balances that already exist by having a tiered system of separate registrants. The self-regulatory privileges afforded to, and responsibilities imposed on, registered entities under the Commodity Exchange Act and Commission Regulations presuppose that registered entities have sufficiently differing interests from those of intermediary registrants so that the registered entities themselves are able to hold the intermediaries active in their marketplaces accountable for their compliance with laws, rules and regulations on a fair and impartial basis. This tiered and interdependent scheme of rules distribution is a critical feature of the U.S.'s well-regulated derivatives markets.[5] FIA is concerned that collapsing this existing multi-tiered ecosystem—with its inherent checks and balances—without proper analysis could undo the foundation on which the self-regulatory structure is premised.

At the same time, FIA believes that efforts to address conflicts of interest among market participants should not create unnecessary roadblocks to new market structures or heighten already considerable barriers to entry for new market participants. These comments reflect FIA's guiding view that the CFTC's regulatory structure, including its robust self-regulatory regime, should facilitate competition and innovation while continuing to protect market participants and customers from conflicts of interest.[6]

FIA Has Consistently Sought to Protect and Improve SRO Functions

FIA has long supported strong governance structures to promote the fairness and integrity of SRO functions. In light of the then-recent demutualization of exchanges and clearinghouses, FIA provided comments to the Commission in June 2004 and January 2006 advocating for a division

[4] The other types of market participants considered in the RFC are introducing brokers ("IBs"), commodity trading advisors ("CTAs"), and commodity pool operators ("CPOs").
[5] The Securities and Exchange Commission also recognizes the importance of separate entities in managing conflicts between registrants. In a recent speech, SEC Chair Gensler noted, "In … our securities markets, the exchange, broker-dealer, and clearing functions are separate. Separation of these core functions helps mitigate the conflicts that can arise with the commingling of such services." Gary Gensler, Chairman, Securities and Exchange Commission, "We've Seen This Story Before" Remarks before the Piper Sandler Global Exchange & Fintech Conference, available at: https://www.sec.gov/news/speech/gensler-remarks-piper-sandler-060823.
[6] We note that the RFC is primarily focused on the conflicts of interest which may arise in the context of a registered entity with a sole wholly-owned or majority-owned affiliated intermediary, and not a scenario which involves an industry-owned utility registered entity where there is not a sole affiliated intermediary to favor. As a result, FIA's comments are addressed to scenarios where a registered entity has a sole intermediary affiliate, essentially representing at least in part the creation of a vertical silo.

between the business and SRO functions of exchanges and clearinghouses. These comments recommended, among other things, that:

- A committee of an exchange's and clearinghouse's board of directors composed of independent directors be responsible for the SRO and designated self-regulatory organization ("DSRO") functions of the exchange and clearinghouse;
- There be more formal separation between the compliance and surveillance staff of exchanges, on the one hand, and the business staff on the other;
- A majority of the members of disciplinary panels be composed of knowledgeable independent panelists; and
- The Commission establish clear standards for DSROs and the allocation of firms among the DSROs.[7]

In 2007, the Commission adopted some of these recommendations regarding DCM SRO functions by issuing acceptable practices for minimizing conflicts of interest under DCM Core Principle 15 Conflicts of Interest, published in Appendix B to Part 38 of the CFTC's Regulations.[8] The Commission, however, did not address the governance of the DSRO under the auspices of the JAC program.

Just last year, FIA put extensive thought into the challenges created by affiliated entities in the context of FTX's proposal for the vertical integration of DCO, DCM and FCM functions. We shared the following observations:

- "[E]limination of FCMs from the clearing model does not remove the need for important customer protections and risk management functions that FCM clearing members currently provide;" and
- "Merely collapsing various entities into a single entity does not necessarily mean that the rules applicable to the surviving entity satisfy the wide-range of protections embedded throughout the pre-existing, multi-entity structure."[9]

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[7] *CFTC Study of Self-Regulation Position Paper of the FIA* (attachment to letter from John M. Damgard, President, FIA, to James Newsome, Chairman, CFTC, dated June 8, 2004), available at: https://www.cftc.gov/sites/default/files/files/foia/comment04/foicf0405c001.pdf; Letter from John M. Damgard, President, FIA, to Jean A. Webb, Secretary, CFTC, dated January 23, 2006, available at: https://www.cftc.gov/sites/default/files/files/foia/comment05/foicf0507c010.pdf.

[8] *Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations ("SROs")*, 72 Fed. Reg. 6936 (Feb. 14, 2007). Note that Core Principle 15 regarding conflicts of interest has since been renumbered as Core Principle 16.

[9] Letter from Walt L. Lukken, President and CEO, FIA, to Christopher Kirkpatrick, Secretary, CFTC (May 11, 2022), available at https://www.fia.org/sites/default/files/2022-05/FIA%20FTX%20Request%20for%20Amended%20DCO%20Registration%20Order%205.11.22.pdf.

FIA questioned "[w]hether [a combined DCO/FCM] could effectively and fairly perform all functions of an SRO, including whether it could audit its own entity, and whether it would adhere to and participate in the Joint Audit Committee and its standards." We suggested that the CFTC carefully consider "how . . . firms with common ownership . . . participate in markets that [the affiliated exchange] operates and what advantages they might receive relative to other trading firms that do not share common ownership."[10]

Our prior analysis informs our views regarding the more specific scenarios raised in the RFC.

A DCO's Affiliation with an FCM

The RFC's Questions 1 through 15 address potential conflicts where a DCO has an affiliated intermediary clearing transactions through it.

The RFC correctly notes that in cases where DCO SRO supervisory responsibilities are based on transparent, uniform parameters and are exercised without discretion vis-à-vis an individual member, there is less cause for concern regarding a DCO unfairly favoring its affiliate over other members. However, the DCO supervisory structure includes a number of discretionary decisions, and we urge the Commission to carefully consider the full range of DCO functions and whether they would be impacted by owned affiliates.

Many DCO supervisory activities require the DCO to exercise discretion. As noted in the RFC, these forms of discretion range from determining whether to investigate a member for compliance with its rules, deciding to bring a disciplinary action and, if so, assessing what disciplinary penalty is appropriate. Moreover, one of a DCO's most important SRO supervisory responsibilities is determining whether a member is in default. This necessarily involves the exercise of discretion, and invariably occurs in crisis situations. Common ownership may incentivize a DCO to delay defaulting its affiliated FCM, which raises a number of serious systemic risk and customer protection issues. Such delay could adversely affect the DCO's funding profile, undermine its ability to meet obligations to market participants, and ultimately increase the possibility that non-defaulting market participants' funds are used to meet the affiliated defaulting FCM's obligations.[11] In these scenarios, increased costs would likely be borne by other, non-affiliated FCMs and could make it more likely that the DCO proceeds further down the default waterfall to use of the general guaranty fund or even tear-ups. In plain terms, a DCO's delay in declaring its affiliate intermediary in default could threaten the integrity of the entire marketplace, from clearing members to end

[10] *Id.*

[11] Indeed, systemic risk could result from a DCO considering the impact to its affiliated entity in making *any* decisions concerning default. We further note that there is no requirement on DCOs with respect to the contribution of residual interest comparable to those imposed on FCMs.

customers.[12] Such a scenario played out in FTX's implosion, where FTX's trading affiliate Alameda Research had a tacit exemption from FTX's auto liquidation rules.[13]

Even margin determinations and calculations are not entirely free from DCO discretion. Initial margin calculations for each clearing member are dependent on, among other things, margin add-ons covering a range of factors such as large position concentration and stress scenarios, internal credit scores, and intra-day credit limits. FIA FCM members are concerned that a DCO may exercise its risk management discretion in ways relating to initial margin levels and margin calculations that are biased in favor of the affiliated FCM and/or against unaffiliated FCMs, especially where there is lack of transparency in the process.

At the very least, a DCO with an FCM affiliate would open the door to the appearance of unfair or unjustified favoritism in the DCO's supervision of the affiliate. Such perceptions could have untoward effects on competition. As one example, clearinghouses routinely conduct impact studies when considering revisions to margin parameters, and in doing so may collect sensitive financial and position information from clearing members. In this scenario, broad and effective conflict management, including strict information barriers, will be required.[14]

As another example, market participants may conclude that they should clear through the affiliated intermediary instead of other members of the DCO based upon a perception of favored treatment. Specifically, the market may assume that the DCO will favor its affiliate in various areas as far-ranging as commercial data arrangements, latency offerings, or oversight treatment. A robust regulatory framework subject to close Commission oversight would need to be implemented to ensure that competition is fair among all market participants, essentially, to protect against an undue restraint of trade or any material anticompetitive burden on trading as required by the applicable Core Principles for DCMs, DCOs and SEFs.[15]

Existing requirements for compliance, enterprise risk and risk management staff at a DCO would not mitigate the potential appearance of favoritism. The existing requirements do not provide for

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[12] The RFC correctly notes the possibility of market participants perceiving a higher level of contagion risk when a DCO is affiliated with a defaulting affiliated FCM, making "runs" on the DCO more likely.

[13] D. Nelson & J Schickler, *Alameda Had 'Secret Exemption' From FTX Liquidation Protocols, New CEO Says* (Coindesk May 9, 2023), available at: https://www.coindesk.com/business/2022/11/17/alameda-had-secret-exemption-from-ftx-liquidation-protocols-new-ceo-says/.

[14] The Commission's current regulations only prohibit an SRO's employees from sharing material, non-public information "where such employee has or should have a reasonable expectation that the information disclosed may assist another person trading any commodity interest . . . ." CFTC Rule 1.59(b)(ii); 17 C.F.R. § 1.59(b)(ii). Assuming that CFTC Rule 1.59's restrictions apply to DCOs (see footnote 2, noting that DCOs are not included in the definition of an SRO), they do not prohibit a DCO's employee from sharing such information to further a DCO's or a DCO's affiliated FCM's commercial interests.

[15] CEA §§ 5(d)(19) (DCM Core Principle 19), 5b(c)(2)(N) (DCO Core Principle N) & 5h(f)(11) (SEF Core Principle 11); U.S.C. §§ 7(d)(19), 7a-1(c)(2)(N) & 7b-3(f)(11).

independent reporting lines insulating such staff from the business interests of the DCO. For instance, the regulations only require a DCO's chief compliance officer ("CCO") to report to *either* the board *or* the DCO's senior officer.[16] Where a CCO reports to the DCO's board, CFTC Rule 1.64(b) (assuming it applies to DCOs)[17] only requires that 20 percent of the DCO's board be comprised of independent directors.[18] Neither do current CFTC rules insulate a DCO's enterprise risk officer ("ERO") or chief risk officer ("CRiO") from commercial pressures. Although both are to be sufficiently senior to be "independent," the Part 39 Regulations do not require either to report to a committee of independent directors.[19] In contrast, the *Acceptable Practices for Minimizing Conflicts of Interest under DCM Core Principle 16*[20] ("Core Principle 16 Acceptable Practices") require a DCM's chief regulatory officer ("CRO") to report to a board committee composed solely of public board directors, the Regulatory Oversight Committee ("ROC"), thus separating the interests of the DCM's SRO function from its business functions. For DCOs there is no comparable barrier between business and SRO functions. The Part 39 rules do not currently provide sufficient insulation between the business interests of the DCO and its SRO function to effectively mitigate conflicts that would be posed by a DCO exercising supervisory authority (to include risk management and enforcement) over an affiliate and competitors of its affiliate.

Strict information and governance barriers would need to be implemented between a DCO and an affiliated intermediary, as well as the DCO's regulatory function and market operations. And additional scrutiny would be required of the DCO's and intermediary's financial resources to understand the level of interconnectedness of the different entities' capital structures and whether the affiliated intermediary and/or DCO should be subject to heightened capital requirements. Notably, though, these mitigants would only be effective when underpinned by a robust regulatory framework and oversight.

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[16] CFTC Rule 39.10(c)(ii).

[17] *See* n.2, *supra*. As defined in CFTC Rule 1.3 the term SRO does not include DCOs. Thus, it is not clear CFTC Rule 1.64's requirements apply to a DCO in the course of carrying out its responsibilities to enforce its own rules.

[18] CFTC Rule 1.64(b). Compare Rule 1.64(b)'s 20-percent requirement with the requirement for NYSE Listed Companies to have a majority of their board directors be independent directors. NYSE Listed Company Manual Rule 303A.01, available at: https://nyseguide.srorules.com/listed-company-manual/09013e2c85c00744.

[19] *See* CFTC Rule 39.10(d)(4) (ERO "shall have the authority, independence, resources, expertise and access to relevant information necessary to fulfill the responsibilities of the position including access to the board of directors . . . or appropriate committee thereof . . ."); CFTC Rule 39.13 (although rule requires that a DCO's board of directors approve its risk management framework and the CRiO is responsible for making recommendations to the DCO's risk management committee or board, the CRiO is not required to report to the board or a board risk committee consisting of independent directors).

[20] CFTC Regulations Part 38 App. B; 17 C.F.R. Part 38 App. B (requiring a DCM's Chief Regulatory Officer to report to a Regulatory Oversight Committee of the Board of Directors composed solely of independent directors).

Although volume caps as suggested in RFC Question 15 could possibly serve as a partial mitigant, it is hard to see how such caps would be enforced if the affiliated intermediary and DCO did not adhere to them. Further, it is not clear what remedy would be available to the other FCMs if the caps were breached.

CFTC Rule 1.64(c)'s diversity requirements for disciplinary panels could mitigate some concerns regarding the unfair application of a DCO's rule enforcement authority against a competitor of the DCO's affiliated intermediary. But if a DCO exercises its discretion *not* to bring charges against its affiliate out of self-interest, there would be no hearing panel formed to review that decision, and thus no protections afforded by Rule 1.64(c).

If DCOs are permitted to have an affiliated intermediary, it would be incumbent on the Commission to create a robust forum for the consideration of the views of a registered entity's non-affiliated members subject to effective and meaningful Commission oversight. We believe Part 40 would need to be revised to ensure that DCOs and other registered entities more meaningfully consult with their members regarding changes to the registered entity's rules and the introduction of new products prior to the entity's self-certification filing. In particular, the revised process would need to expressly include consideration of conflicts of interest between registered entities and affiliated firms and steps taken by the registered entity to effectively mitigate such conflicts.

In sum, existing Commission regulations do not sufficiently address the potential for conflicts of interest where a DCO has SRO supervisory authority over an affiliated intermediary and the mitigants proposed in the RFC may not adequately address the conflicts of interest inherent in a DCO's relationship with an affiliated intermediary.

DSRO's Affiliation with an FCM

The RFC's Questions 20 and 21 address conflicts that could arise where a DSRO is assigned supervisory responsibility for an affiliated FCM.

The current JAC was organized on May 1, 1984, and was designed to replace four prior joint audit plans previously approved by the CFTC. Under the previous plans, some FCMs had more than one commodity DSRO. Under the JAC as organized in 1984, each FCM was to have only one DSRO.[21] Thus, the current JAC "was formed to enhance uniformity among participants as well as lessen the regulatory burden for FCMs that are members of multiple exchanges."[22] The JAC also acted as a forum through which the then several independent, member-owned exchanges could give input on rule interpretation and application. The JAC's first edition of its *Margins Handbook* was issued on

[21] *Joint Audit Plan*, 49 Fed. Reg. 28,906 (July 17, 1984).
[22] Joint Audit Committee Webpage (CME Website), available at: https://www.cmegroup.com/clearing/financial-and-regulatory-surveillance/joint-audit-committee.html.

October 1, 1994.[23] The *Margins Handbook* was designed to standardize margin procedures where possible across multiple exchanges.[24] The second edition of the JAC's *Margins Handbook* was issued on July 31, 1999.[25] The *Margins Handbook* has not been updated since that time.

At the time the second edition of the *Margins Handbook* was issued in 1999, the members of the JAC were the National Futures Association ("NFA") and nine independent exchanges. Since then, five of those exchanges have been consolidated into the CME Group, and two, the AMEX Commodities Corporation and the Philadelphia Board of Trade have ceased to operate. Furthermore, since 1999, the DCM community has been thoroughly transformed through the demutualization of their ownership structures and the nearly complete electronification of exchange trading. As for-profit companies, DCMs now compete with FCMs for clients, data and other services, and the DCM community has become highly concentrated. Although today there are, as the RFC notes, 13 DCMs that are members of the JAC,[26] four of them are part of CME Group. Trading volume is concentrated on the CME Group, ICE Futures U.S. and Cboe Futures Exchange DCMs. As the RFC notes, now only two SROs act as DSROs under the JAC Program. The CME Group SROs act as the DSRO for FCMs that are CME clearing members, and NFA acts as the DSRO for all other FCMs. The effect of this consolidation and design is that there is only one SRO making and enforcing the rules for clearing FCMs.

It has been FIA members' experience that with the decrease in the number of SROs participating in the JAC program, DSROs' uniformity of rule application has decreased. Fewer active DSROs may be leading to less discussion and understanding of current issues arising in DSRO examinations among the SROs party to the JAC agreement. This could be causing less transparency regarding rule enforcement among the SROs and with the Commission. The full effect of this evolution is even more concerning given the near total lack of a meaningful avenue for appeal in the JAC audit process.

FIA urges the Commission to reconsider the governance model of the JAC and to find ways to increase transparency and dialogue with the FCM community regarding the functioning of the JAC. In this regard, the Commission should consider establishing:

- A transparent oversight process for the JAC;
- An appeals process permitting the appeal of JAC decisions, coupled with the establishment of a neutral decision-making body with the authority to timely hear and rule on such appeals;

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[23] JAC, *Margins Handbook* 2 (2d ed. 1999) available at: http://www.jacfutures.com/jac/handbook/JAC%20Margins%20Handbook%20-%202nd%20Edition%201999.pdf.
[24] *Id.*
[25] *Id.*
[26] *See* JAC Members Webpage, available at: http://www.jacfutures.com/jac/default.aspx.

- A more formal, periodic, public articulation of the JAC's evolving examination priorities similar to the practice of the SEC Division of Examinations;[27] and
- A mechanism for the communication of common DSRO audit findings to the broader FCM community.

Given the length of time since the JAC rules and the *Margins Handbook* have been reviewed for effectiveness and purpose, we think the Commission's attention to these important issues could improve regulatory outcomes in the near term and under affiliated entity scenarios that may present in the future. We strongly believe that a revived DSRO process, that is more inclusive of regulators as overseers and partners and more transparent to the market, can provide baseline mitigants for some of the issues presented by the affiliated entities questions.

With regard to the scenario proposed by Questions 20 and 21, FIA feels strongly that an SRO should not be allowed to serve as the DSRO of an affiliated FCM under any circumstances where there is more than de minimis common ownership between the DSRO and the affiliated FCM.[28] As a first-order principle, the DSRO should have the appearance of impartiality vis-à-vis the entities it oversees.

Of course, the DSRO must in fact be impartial too. We see the risks of favoritism as too great to permit an SRO to serve as a DSRO for an affiliate. As noted in Question 20, DSRO examinations are a primary mechanism for carrying out financial surveillance over FCMs as critical market participants. A DSRO reviewing an affiliated FCM's capital may be incentivized to approve the FCM's capital levels, even if inadequate. A DSRO permitting its affiliate to continue to operate while being thinly capitalized could make it more likely that the affiliate would default on its clearing obligations. Such a default could trigger losses on other clearing FCMs' clearing fund contributions, and ultimately leave customers at greater risk of loss.

The requirement that the CRO report to the ROC as specified in the Core Principle 16 Acceptable Practices does offer some mitigation of the concern that DSRO's business interests would influence its exercise of its DSRO authority, but it is not clear that it would be sufficient in scenarios where there are more than de minimis levels of common ownership between the DSRO and affiliated FCM. As discussed with respect to DCOs with affiliated FCMs above, Rule 1.64's diversity requirements could help if a DSRO were to bring a disciplinary action against a FCM competitor of its affiliate out of favoritism. However, the rule is not helpful in dealing with situations where the DSRO *declines* to bring a disciplinary action against its affiliate.

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[27] *See, e.g., 2023 Examination Priorities* (SEC Div. of Exam's Feb. 7, 2023), available at: https://www.sec.gov/files/2023-exam-priorities.pdf.

[28] *See* A. Ferrell, *A Global View: Examining Cross-Border Exchange Mergers* (July 12, 2007) (Written Testimony Senate Subcommittee of Securities, Insurance and Investment), available at: https://www.banking.senate.gov/imo/media/doc/ferrell.pdf (noting that "[m]any exchanges around the world have ownership limits, often capping ownership by a single entity at 5%. For instance, the Singapore and Philippine Stock Exchange cap ownership by a single entity, absent a regulatory waiver, at 5%.").

In sum, FIA believes that the JAC program needs to be updated in light of significant changes in market structure since the last time the JAC *Margins Handbook* was updated. With regard to the specific issues raised in Questions 20 and 21 of the RFC, a DCM should not be allowed to serve as the DSRO for an affiliated FCM where there is more than a de minimis level of common ownership between the two.

DCM and SEF Affiliation with an Intermediary

Questions 22 through 34 deal with potential conflicts of interest that could arise where a DCM or a SEF, on the one hand, has an affiliate acting as an FCM, IB, CTA, or CTA, on the other hand. Although as noted above a DCM's CRO is insulated from the commercial interests of the exchange by reporting to the ROC, it is not clear that this would serve as an adequate protection in the case of common ownership between the DCM and an affiliated FCM. The Core Principle 16 Acceptable Practices only require thirty-five percent of a DCM's board to be composed of public directors, meaning a majority of the board would be empowered to act solely on the commercial interests of the exchange to favor the DCM's affiliated FCM.

Current regulations provide even less insulation between the commercial interests of a SEF and the SEF's CCO in execution of the SEF's SRO functions. Like a DCO's CCO, current CFTC regulations do not require that a SEF's CCO report to a committee of public directors in the way that the DCM Core Principle 16 Acceptable Practices require a DCM's CRO to so report.[29] The lack of insulation between the commercial interests of a SEF and its CCO in managing the SEF's SRO function may undermine the SEF's compliance with its impartial access and market integrity responsibilities. As in the case where a DCO is affiliated with an FCM, market participants may choose to use a DCM's or SEF's intermediary affiliate based on an assumption that the affiliate would benefit from more favorable treatment, harming the competitive position of non-affiliated intermediaries.

Where registered entities have affiliated entities, CFTC rules should ensure the CRO/CCOs of such registered entities have independent reporting structures that adequately insulate them from commercial pressures which may conflict with their supervisory responsibilities. The current reporting structure for DCM CROs comes closest to achieving this result. However, for all the reasons stated above, that structure alone is not sufficient to mitigate conflicts between registered entities and affiliated intermediaries.

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[29] CFTC Rule 37.1501(c) (a SEF's CCO "shall be appointed by [the] board of directors or senior officer").

We appreciate the opportunity to provide the foregoing comments on the impact of affiliations on certain CFTC-regulated entities. FIA is committed to preserving the integrity of the supervisory responsibilities of DCMs, DCOs, and SEFs as well as the ability of firms to participate and innovate in the U.S.'s first-in-class derivative markets. We look forward to further engagement with the Commission on these topics and stand ready to provide our input on more specific recommendations to update the CFTC's regulations as appropriate.

Please do not hesitate to contact me at alurton@fia.org or 202-772-3057 if you have any questions about this letter.

Sincerely,

Allison Lurton
General Counsel & Chief Legal Officer

cc: Rostin Behnam, Chairman
Kristin N. Johnson, Commissioner
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Summer K. Mersinger, Commissioner
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