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February 24, 2026

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: RFC121725 – Request for Comment on the Direct Clearing of Derivatives by Retail Participants

Dear Mr. Kirkpatrick:

The Futures Industry Association [1] ("**FIA**") welcomes the opportunity to respond to the Commodity Futures Trading Commission's ("**CFTC**" or "**Commission**") Request for Comment on the Direct Clearing of Derivatives by Retail Participants (the "**RFC**")[2] and share the views of FIA members on issues presented by the significant recent growth of retail investor[3] participation in US futures markets and the consequent proliferation of Retail DCOs (as defined in the RFC[4]).

We particularly welcome the opportunity to respond to the RFC in the context of Chairman Selig's recent call to "revisit . . . design choices" associated with the "centralized intermediary model" of clearing in light of the "advent of on-chain financial markets."[5] We share the CFTC's interest in exploring new efficiencies and innovative changes that can benefit risk management and

[1] FIA is the leading global trade organization for the futures, options, and centrally cleared derivatives markets, with offices in London, Brussels, Singapore, and Washington, DC. FIA's mission is to support open, transparent, and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of professional conduct. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms, and commodities specialists from about 50 countries, as well as technology vendors, lawyers, and other professionals serving the industry. FIA's core constituency consists of firms that operate as clearing members in global derivatives markets.

[2] See Request for Comment on the Direct Clearing of Derivatives by Retail Investors, Dec. 18, 2025 (available here).

[3] For purposes of this comment, we understand a "retail investor" or "retail participant" to be a natural person who is not an eligible contract participant ("**ECP**") as defined in section 1a(18) of the Commodity Exchange Act ("**CEA**"). Compare the definition of "retail forex customer" in Commission Regulation 1.3.

[4] The RFC defines "**Retail DCO**" as a DCO that, either in part or in whole, provide[s] for the clearing of derivatives to retail traders on a direct (non-intermediated) basis." RFC at 1.

[5] Remarks of Chairman Michael S. Selig at CFTC-SEC Event on Harmonization, The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance, Jan. 29, 2026 (available here).

strengthen markets. To harness these potential benefits, we offer an approach that respects the CEA framework where central clearing is present and invites the CFTC to consider a modified regime where central clearing is not desired or offered.

The CEA created a regulatory framework for the clearing of derivatives that distributes responsibility for the clearing ecosystem across the various registrants. In simple terms, DCMs offer a central marketplace for price discovery, DCOs ensure settlement of trades, and FCMs (as highly-capitalized members of the DCOs) guarantee and provide market access and credit to end users.[6] Each registrant in the chain plays a critical, interdependent role in support of the execution and clearing of derivatives contracts. Accordingly, we urge the CFTC, venue operators, and market participants to consider carefully the potential consequences of any new market structures that would eliminate or combine their responsibilities.

As we have written previously in several comment letters,[7] FIA believes that the allocation of regulatory obligations among several registrants allows for safe and sound clearing. Customers are screened for credit, risk tolerance, and compliance with applicable anti-money laundering and customer identification ("**AML-CIP**") requirements; settlement cycles and margin calls disperse risk; and minimum capital requirements, residual interest and default rules reduce and mutualize risk within the clearing system. We respectfully submit that all of these are preconditions on which the CEA and CFTC rules allow customers to trade on a leveraged basis.

The Commission has stated that certain risk management requirements are unnecessary for DCOs that clear only fully collateralized positions, since "fully collateralized positions do not expose the DCO to any credit or default risk stemming from the inability of a clearing member to meet a margin call or a call for additional capital."[8] To be clear, we believe that even where the DCO may be "fully collateralized," the full set of registrant responsibilities is still required to ensure that

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[6] FCM clearing members "contribute substantially all the financial resources in the default funds that backstop [DCOs]." Testimony of Alicia Crighton, Chair of the Board, Futures Industry Association, Global Co-head of Futures, Head of OTC and Prime Clearing, Goldman Sachs & Co. LLC, Before the United States House of Representatives Agriculture Committee "CFTC Reauthorization: Stakeholder Perspectives," Dec. 11, 2025 ("**Crighton Testimony**"), at 2. Indeed, clearing members were contributing $35.7 billion to the five DCOs that operate in the U.S. as of June 2025 (equivalent to 98.5% of all the money in those default funds). See FIA's CCP Report for Q2 2025 (available here).

[7] See FIA's comments on: FTX Request for Amended DCO Registration Order, May 11, 2022 (available here); the Commission's Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities (the "**Affiliations RFC**"), Sept. 28, 2023 (available here); Proposed Rule on Protection of Clearing Member Funds Held by Derivatives Clearing Organizations, Mar. 18, 2024 (available here) (hereinafter, the "**Protection of Clearing Member Funds Proposal**"); the Commission's Request for Input on All Recommendations for the CFTC in the Report of the President's Working Group on Digital Asset Markets (Aug. 21, 2025) and Request for Input on Use of Tokenized Collateral Including Stablecoins in Derivatives Markets (Sept. 23, 2025) (available here) ("**FIA PWG/Tokenization Comment**").

[8] CFTC, Reporting and Information Requirements for Derivatives Clearing Organizations, 88 Fed. Reg. 53664 (Final Rule, Aug. 8, 2023). Under CFTC rules governing DCOs, a "fully collateralized position" is a contract for which the DCO is required to hold "at all times" funds sufficient to cover the maximum possible loss that a party to the contract could incur upon liquidation or expiration. Commission Regulation 39.2 (definition of "fully collateralized position").

the clearing system functions. Where a DCO is required to hold collateral sufficient to cover its exposure on a contract that is "fully collateralized," its clearing members may (where the DCO and related DCM's rules permit it) fund that collateral requirement on its customers' behalf while a collateral call to those customers is pending (thus permitting customers to execute orders before they have provided the collateral to the clearing member to collateralize those orders). However, in models that are both fully collateralized and pre-funded – meaning where the end user has funded the trades before the positions are established – we understand that the full range of registrants and requirements may not be necessary because there is no leverage or extension of credit in the trading and clearing of the trade. This lack of leverage – where pre-funding of a fully collateralized position is required – effectively renders the clearinghouse a settlement agent. By contrast, where trades allow for leverage, the customer protection and risk management functions of FCM intermediaries are indispensable to the system's safety and soundness, and should be retained.

We urge the CFTC to consider the regulatory differences between the two different approaches to trading and settlement – leveraged and intermediated (in which the DCO and its clearing members collectively manage credit and market risk) vs. fully collateralized/pre-funded and direct (in which the DCO serves, essentially, as a settlement agent, without having to manage credit and market risk). Where leverage is not present, market innovation around direct retail access to fully collateralized and pre-funded clearing should be encouraged and relieved of the full panoply of requirements of the intermediated clearing system. Where leveraged clearing is permitted, however, the intermediated structure that is at the heart of the CEA should be preserved.

In light of the rise of Retail DCOs, we invite the CFTC to consider a simpler approach in determining the application of regulatory requirements: where leveraged clearing is present, the CFTC should retain the registrant categories and separate, interlocking functions of the FCM clearing members, DCM, and DCO. By contrast, where a DCO is authorized solely to clear fully collateralized, pre-funded positions and to enroll retail participants directly (without intermediation by an FCM clearing member), the CFTC could create a regulatory scheme with streamlined risk disclosures, direct trade placement, and settlement requirements commensurate with the comparatively lower risk to individual market participants and the broader clearing ecosystem.

We explore further four themes canvassed in the RFC:

- The gap between customer property protection requirements binding on FCMs and member property requirements binding on DCOs, and how this gap should be addressed for Retail DCOs;

- What measures should be considered to mitigate potential conflicts of interest for DCOs (including Retail DCOs, and "traditional" DCOs[9]) that are "vertically integrated" with an affiliated DCM and FCM?

- What measures should be considered to address the gap between the risk management requirements applicable to an FCM clearing for retail customers on a traditional DCO and the risk management requirements applicable to a direct clearing structure in a Retail DCO?

- Should the Commission create a new registration category for Retail DCOs authorized exclusively to clear fully collateralized, pre-funded positions (therefore, which are functionally serving as settlement agents)? More generally, what additional regulations may be necessary to protect customers, mitigate conflicts of interest, and control risk relating to the operation of Retail DCOs that are authorized to clear leveraged or margined contracts?[10]

Our concerns are most salient where retail investors are provided direct clearing access on a leveraged basis.[11] We worry that the model is not fit for the ambitious purposes its advocates have articulated for it, and may introduce significant risk to the clearing system; as indicated above and further discussed below, a centralized intermediary model is paramount to enabling retail transactions on a leveraged basis. The RFC is a welcome signal that the Commission is prepared to do the critical work necessary to bring regulatory certainty to the market.

We turn now to a detailed consideration of the four themes outlined above.

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[9] A "traditional" DCO is accessible to retail participants only through an FCM clearing member. RFC at 2.

[10] The RFC does not (and this letter should not be read to) implicate the operations of DCOs that accept institutional clearing members with "sufficient financial resources and operational capacity" to clear directly for their proprietary accounts. See 7 U.S.C. § 7a-1(c)(2)(C)(i)(I) (criteria for DCO participant eligibility).

[11] See FIA response to the Protection of Clearing Member Funds Proposal, at 2. We understand that of the ten Retail DCOs authorized under their registration orders to clear fully collateralized contracts (futures, options on futures, or swaps) without intermediation, none is currently clearing contracts on a leveraged basis for direct retail participants. But some of those Retail DCOs could, arguably, commence doing so consistent with the terms of their registration orders. Notably, ICE NGX Canada Inc. ("NGX") is a unique sub-class of DCO that offers direct, leveraged access to participants that are legal entities (not individuals), each of which warrants that it enters into NGX transactions "in conjunction with a line of its business (including financial intermediation services) or the financing of a line of its business." NGX Contracting Party Agreement at 1.5(e) (available here). Thus, the concerns we raise in this letter with respect to leveraged direct clearing do not pertain to NGX. See FIA response to the Protection of Clearing Member Funds Proposal, at fn. 15.

Gaps Between FCM Customer Asset Protection and Retail DCO Member Asset Protection Regimes

The RFC highlights the gap between the customer asset protection regime applicable to FCM intermediaries and Retail DCOs and asks whether the Commission should act to ensure that "FCM duties" under that regime should be imposed on Retail DCOs?[12]

As the Commission has observed, the CEA, the U.S. Bankruptcy Code, and Commission regulations "establish a comprehensive regime to safeguard the funds belonging to customers" of an FCM. This customer protection regime "do[es] not apply to the funds of any person who clears trades directly through a DCO" as a clearing member, beyond a general mandate to "protect and ensure the safety of [clearing member] funds in a manner that will minimize the risk of loss or delay in access by the DCO to [those] funds."[13] This asymmetry originates with the statutory presumption, in both the CEA and Bankruptcy Code, that customers would access DCOs through intermediaries and that the regulatory focus for DCOs should be on managing systemic risk and maintaining financial viability.[14]

The significant recent growth in retail investor direct clearing volumes is a development that Congress never anticipated in framing and amending the CEA in the years since its enactment. As noted above, where leverage is not present in the direct retail clearing model, a more streamlined regulatory scheme could be applied. Here, the Commission should act to align (and tailor where appropriate) the minimal protections available to retail investors clearing directly on Retail DCOs with the regulatory protections afforded to those investors when they clear through FCM intermediaries. Specifically:

- ***NFA Membership.***[15] Retail DCOs and persons associated ("**APs**") with Retail DCOs in any capacity which involves marketing and promotional activity relating to the solicitation or acceptance of retail participant orders or funds (or the supervision of any person involved in such activity) should be required to become members of the NFA.[16] Critically, this would bring them in scope of proficiency

[12] RFC at 3.

[13] Protection of Clearing Member Funds Proposal, 89 Fed. Reg. 286, 287 (Jan. 3, 2024).

[14] See National Futures Association ("**NFA**"), Comment on the Protection of Clearing Member Funds Proposal (available here), at 7.

[15] We encourage the CFTC to engage with the NFA on any recommendations set forth in this letter involving NFA membership or rules and stand ready to work with both the CFTC and NFA to implement and/or appropriately calibrate these recommendations as applied to Retail DCOs. We further note that it may be appropriate for certain of the regulatory obligations discussed in this section to be placed on and/or performed by the DCM affiliated with a Retail DCO, rather that the Retail DCO exclusively. We refer to "Retail DCO" throughout since it is the focus of the RFC.

[16] Notably, the text of the CLARITY Act as passed by the House includes a provision that would require digital commodity exchanges registered with the Commission to be members of a registered futures association. See

and ethics training requirements for APs; NFA Compliance Rules 2-4, 2-29 and 2-30;[17] and NFA Interpretive Notice 9068.[18]

- ***Segregation.*** Retail DCOs should be required to provide daily reconciliation of funds held for retail participants against funds required to be held for retail participants to enable Commission oversight over segregation of customer funds. FCMs and their depositories are subject to daily reporting requirements that enable the Commission and designated self-regulatory organizations to reconcile an FCM's statement of segregation requirements and funds in segregation for each account origin with information received from the FCM's depositories for such funds. Retail DCOs are not currently subject to comparable reporting obligations.[19]

- ***AML-CIP.*** Retail DCOs should be subject to AML-CIP requirements. FCMs are covered financial institutions under the Bank Secrecy Act ("**BSA**") and Financial Crimes Enforcement Network ("**FinCEN**") regulations and thereby required to: implement AML/CIP programs that comply with those regulations; conduct ongoing transaction monitoring for suspicious activity and file suspicious activity reports; and undergo periodic AML/CIP examinations. Retail DCOs are not subject to any of the foregoing requirements. Even where they voluntarily adopt AML/CIP rules and procedures, they remain outside the formal ambit of the BSA and FinCEN's examination and enforcement authority. The Commission should work to resolve this regulatory asymmetry.[20]

- ***Account Onboarding and Disclosures.*** Retail DCOs should be made subject to the requirements applicable to FCMs under NFA Compliance Rules with respect to the

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CLARITY Act, H.R. 3633, 119th Cong. (as passed by House July 17, 2025) ("**CLARITY Act**") at Sec. 404 (amending the CEA by insertion of Sec. 5i(a)(2)(B)).

[17] NFA Compliance Rule 2-4 requires APs to "observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business and swaps business." NFA Compliance Rule 2-29 prohibits communications by APs that operate as a fraud or deceit, constitute a "high-pressure approach," or that represent commodity interest trading as "appropriate for all persons" and sets forth standards for the creation, review, and circulation of promotional material. NFA Compliance Rule 2-30 requires FCM members to obtain specified information from and provide risk disclosures to retail customers prior to onboarding.

[18] NFA Interpretive Notice 9068 prohibits FCMs from permitting customers to fund their margin obligations using credit cards.

[19] See Commission Regulation 39.19(c)(1) (daily reporting requirements for DCOs); see also Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations, 90 Fed. Reg. 7810, 7852 (Jan. 22, 2025) (explaining that the Read-only Access Provisions of FCM acknowledgment letters have been rescinded because CME and NFA have adopted rules requiring FCMs to instruct each depository holding Customer Funds to report balances on a daily basis to CME and NFA).

[20] See generally the Comment to the RFC by Aleko Stamoulis, Dec. 19, 2025 (available here). The text of the CLARITY Act passed by the House would amend the BSA by adding digital commodity exchanges which permit direct customer access and are registered with the Commission to the definition of "financial institutions" as defined under the BSA. See CLARITY Act, H.R. 3633 at Sec. 110(a)(2).

onboarding of retail participant accounts. Under NFA rules, FCMs are required to obtain pedigree and financial information from all individual customers and any other customers who are not ECPs, to provide such customers with disclosure of the risks of trading futures and cleared swaps, periodically to update the information, and to determine whether additional risk disclosure is required in light of any changes to the information.[21]

CFTC regulations also require FCMs to provide various disclosures. These disclosure requirements are "intended to provide customers with access to material information regarding an FCM to allow the customers to independently assess the risk of entrusting funds to the firm or to use the firm for the execution of orders"[22] and should be appropriately adapted for the onboarding of retail direct participants to Retail DCOs.[23]

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[21] NFA Compliance Rule 2-30 and NFA Interpretive Notice 9004.

[22] Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 Fed. Reg. 68506, 68562 (Nov. 14, 2013).

[23] Commission Regulations require that FCMs obtain the following consents, representations, authorizations, and acknowledgments of disclosures that should be considered in connection with onboarding of retail direct participants to Retail DCOs:

- CFTC 1.33(g) (consent to electronic transmission of confirms/statements)
- CFTC 1.41 (hedging designation)
- CFTC 1.44 (separate account disclosures and agreements)
- CFTC 1.55(b) and CFTC 30.6(a) (risk disclosure)
- CFTC 33.7 (commodity options risk disclosure)
- CFTC 155.3(b)(2) (consent to cross trade)
- CFTC 1.55(d)(1)(authorization to transfer funds)
- CFTC 41.41(b)(1) (security futures risk disclosure)
- CFTC 1.55(j) (firm-specific disclosures)
- CFTC 1.55(p) (bankruptcy disclosure for FCM customers)
- CFTC 1.65 (bulk transfer notice and customer disclosure)
- CFTC 1.71(e) (conflict of interest disclosure)
- CFTC 15.05 (disclosure to foreign brokers/foreign traders)
- CFTC 22.16 (cleared swaps customer default disclosures)
- CFTC 30.12 (direct order transmittal client disclosure statement)
- CFTC Part 160 (privacy notices required under GLB Act)
- CFTC Part 161 (opt-out notices required under FCRA)

- ***Supervision***. FCMs are required to diligently supervise the handling by its partners, officers, employees, and agents all commodity interest accounts that it carries or operates, and all activities relating to its business as an FCM.[24] This ensures that a DCO operating under the intermediated clearing model has two levels of supervision: the FCM's supervision of activity in accounts it carries (customer and affiliate alike) and the DCO's (including the DCM for which it provides clearing services) of activity in accounts it clears (for FCM clearing members and direct participants alike). This means two lines of defense against abusive trading practices, position limit breaches, and other compliance requirements, rather than one. At a minimum, Retail DCOs should be subject to similar supervisory requirements under CFTC rules.

Conflicts of Interest in Vertically Integrated DCOs

The RFC notes that vertically integrated trading and clearing structures have emerged as a potential solution to bridging the customer asset protection gap between the regulatory regime for FCMs and Retail DCOs by restoring FCM protections through a requirement that customers access the Retail DCO through an FCM (which may include an affiliated, "captive" FCM).[25] In 2023, Commission Staff requested comment on the potential issues that may arise from the operation of such vertically integrated structures (involving DCOs, DCMs and FCMs generally), to which we responded.[26]

Questions about conflicts of interest featured in 9 of the 37 questions posed in the Affiliations RFC, some of which are recapitulated in the RFC. In response to the RFC's questions on conflicts, we offer the following observations:

- Although a DCO is not a "self-regulatory organization" with respect to its clearing members in the same way that a DCM is with respect to its members, a DCO does have important supervisory rights and obligations over its clearing members,[27] including the following requirements:

  - CFTC 166.2 (authorization to trade from customers holding discretionary accounts)
  - CFTC 166.5(c)(7) (required provisions where account agreement includes an agreement to arbitrate)

[24] Commission Regulation 166.3 and NFA Compliance Rule 2-9. A similar supervisory obligation exists under DCM rules, extending to all persons subject to the jurisdiction of the DCM. See, e.g., CME Market Regulation Advisory Notice, Supervisory Responsibilities for Employees and Agents, July 1, 2024 (available here).

[25] RFC at 3-4. Since a vertically integrated structure is required under the CEA to "permit fair and open access" to potential participants and members, a "captive" FCM clearing member cannot be *mandated* under a DCO's rules to be the DCO's sole clearing member. See 7 U.S.C. § 7a-1(c)(2)(C)(iii)(III). By the same token, fee incentives offered to an affiliated FCM should be offered to all FCM clearing members on a non-discriminatory basis.

[26] See the Affiliations RFC, and FIA's response to the Affiliations RFC.

[27] See Commission Regulation 1.3 (definition of "self-regulatory organization," including DCMs, swap execution facilities, and registered futures associations (i.e., NFA), but not DCOs). Commission Rule 39.17 does make a DCO

- periodically to review its clearing members' risk management policies, procedures, and practices, and take appropriate action to address concerns identified in such reviews;[28]

- take appropriate action with respect to clearing members, based on "objective and prudent risk management standards" and without limitation, to impose enhanced capital and margin requirements and position limits, prohibit an increase in positions or require a reduction in positions, liquidate or transfer positions, and suspend or revoke clearing memberships;[29] and

- maintain arrangements and resources for monitoring and enforcement of compliance with the rules of the DCO.[30]

- In implementing its supervisory program in accordance with these standards, a DCO is required to establish and enforce rules to minimize conflicts of interest and have a process for resolving such conflicts.[31] As noted in the Affiliations RFC, however, all supervisory activities involve the exercise of discretion: whether to commence an investigation or a disciplinary action, assessments of appropriate penalties and sanctions, whether to impose enhanced requirements or limits on a member's activities, and finally (and most consequentially) whether to deem a member in default. In a vertically integrated structure these discretionary cruxes present risk – both of delayed action (as decision-makers consider the implications of taking action against an affiliate for the viability of the DCO) and over-hasty action (as decision-makers feel pressured to act decisively for fear of being perceived as favoring the affiliate member over non-affiliate members).

- The risk in critical scenarios (for instance, whether to default or suspend a member) is present in day-to-day decision-making as well. An affiliated member's margin requirement can be impacted by add-ons and spread adjustments that are not transparent to the market; this possibility may be sufficient to create an appearance of favoritism that leads market participants to conclude they should clear through the affiliate rather

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responsible for enforcing its members' compliance with the DCO's rules, which is a self-regulatory function. See also Philip McBride Johnson, Thomas Lee Hazen, Susan C. Ervin, Charles R. Mills, and Kathryn M. Trkla Derivatives Regulation 2d ed. at § 6.06[C](2] ("DCOs have prescribed self-regulatory responsibilities and like DCMs and SEFs (and SDRs) they are registered entities under the [CEA].").

[28] Commission Regulation 39.13(h)(5)(ii).

[29] Commission Regulation 39.13(h)(6).

[30] Commission Regulation 39.17(a).

[31] Commission Regulation 39.25.

than the non-affiliate member. DCO regulations do not contemplate the possibility of such conflicts, and thus the need to control them.[32]

In sum, as noted in our response to the Affiliations RFC, "existing Commission regulations do not sufficiently address the potential for conflicts of interest where a DCO has SRO supervisory authority over an affiliated intermediary."[33] Addressing this omission may require a fundamental reconsideration of the controls a DCO in a vertically integrated structure is required to implement (e.g., by requiring independent oversight of DCO self-regulatory functions and determinations with respect to any affiliate member). If a DCO is permitted to have an affiliated FCM clearing member, the Commission should require any such DCO to insulate its commercial interests from its supervisory and oversight functions.[34] At a minimum, we believe this means that a DCO/DCM with an affiliated FCM clearing member should not be able, acting in its self-regulatory capacity, to carry out audits under CFTC Regulation 1.52 either of its affiliated FCM clearing member or any non-affiliated clearing members; rather, that audit function should be outsourced to an independent entity.[35]

Risk Management of DCO Operations

The RFC asks whether a Retail DCO's default resources should be separated by product type.[36] FIA strongly supports such an approach with respect to leveraged retail transactions.

Leveraged retail transactions (which in today's rapidly evolving market may include futures, options on futures, swaps, or leveraged spot retail commodity transactions[37]) present both a unique risk profile (event and digital asset underliers) and user base (thinly capitalized non-ECPs) very

[32] See the FIA response to the Affiliations RFC at 6 (noting that, whereas DCM rules require a DCM's chief regulatory officer to report to a board committee composed solely of public board directors, "there is no comparable barrier 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").

[33] Id. at 7.

[34] See id. at 6.

[35] As noted in our response to the Affiliations RFC, 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. Id. at 9. We also feel strongly that an SRO – including both the DCM that serves in that capacity and its linked DCO – should not be allowed to serve as the DSRO for any clearing member of that DCO where there is more than a de minimis common ownership between the DCO and any other clearing member of the DCO. Information barriers and governance controls are not sufficient to mitigate potential conflicts or the appearance of conflicts in this instance. Where an SRO performs other due diligence functions on an affiliated FCM or unaffiliated FCMs, it should have controls in place at all times to ensure separation of its commercial and self-regulatory functions.

[36] RFC at 5.

[37] See the FIA PWG/Tokenization Comment, at 6-8 (discussing issues specific to leveraged spot retail commodity transactions).

different from the more established listed derivatives product complex (equities, rates, energy, metals, and agricultural commodities) and institutional and end-user customers who predominantly trade those products. Where a DCO clears transactions with such risk profiles, it should be required to establish a fully separate default fund for them. Fully separating default fund resources for leveraged retail transactions is critical to the mitigation of "systemic risk concerns and prevent[s] contagion from novel leveraged, retail-focused products that exhibit high volatility and operational, legal and regulatory complexity."[38]

To date, the Commission has not authorized any Retail DCO to offer leveraged direct clearing – that is, clearing "directly for market participants without the intermediation of FCMs, including, in most cases, market participants who are natural persons [and retail investors]"[39] on a margined or leveraged basis.[40] At the same time, it is not clear to us that a DCO would be prohibited from offering leveraged direct clearing to retail participants, consistent with its authority under a current registration order. We recommend that the Commission preserve the centralized intermediary model for leveraged retail transactions.

Registration under a Separate Sub-Category

The RFC asks whether a "separate DCO registration sub-category" should be established for Retail DCOs.[41] More important than a separate registration sub-category are the substantive revisions to the existing regulatory regime that we have recommended in this comment letter. To recap:

- Retail DCOs that offer direct clearing to retail participants on a fully collateralized and pre-funded basis should be required to: (i) become members of NFA, to register their APs, and to submit to the self-regulatory jurisdiction of the NFA over their activities involving retail participants; (ii) provide the Commission and the NFA with daily reporting analogous to the FCM's daily reporting of segregation requirements and funds in segregation for each account origin, and the depositories used by Retail DCOs should be required to provide daily reporting of balances held for retail customers of the Retail DCOs; (iii) perform diligence on new direct retail participants comparable to what FCMs are required to perform (including the diligence required under both NFA Compliance Rule 2-30 and the diligence required of FCMs under applicable AML/CIP regulations); and (iv) implement a supervision program over their activities involving retail participants.

[38] FIA PWG/Tokenization Comment at 6; see also Crighton Testimony, at 4.

[39] Protection of Clearing Member Funds Proposal, 89 Fed. Reg. at 287.

[40] We understand "leveraged direct clearing" to involve four elements: (i) a Retail DCO that solicits and offers clearing services; (ii) directly (rather than intermediated through an affiliated or unaffiliated FCM clearing member); (iii) to retail participants; (iv) for futures contracts, options on futures, swaps, or leveraged retail commodity transactions that are margined rather than fully collateralized.

[41] RFC at 5.

- DCOs that have an affiliated FCM clearing member should be required to implement policies and procedures designed to control conflicts of interest, including procedures for submitting decisions and determinations involving the exercise of discretion under the DCO's self-regulatory or supervisory jurisdiction for review by independent monitors. A DCO should be required to outsource CFTC Rule 1.52 audit functions over affiliated and non-affiliated FCM clearing members to an independent entity.

- The Commission should retain the intermediated model of clearing envisioned by the CEA for leveraged clearing activity by retail investors.

- The Commission should issue regulations requiring that a DCO's default management resources for handling member defaults involving leveraged retail transactions be fully segregated from other default resources in the DCO.

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Thank you for your consideration of these comments. If the Commission or any member of the staff have any questions regarding the matters discussed herein or need any additional information, please contact me at alurton@fia.org or 202.772.3057.

Respectfully submitted,

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