

October 5, 2026

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

**Re: Notice of Proposed Rulemaking on Conflicts and Affiliations (RIN 3038-AF76)**

Dear Mr. Kirkpatrick:

The Futures Industry Association (“FIA” or “we”)<sup>1</sup> appreciates the opportunity to respond to the notice of proposed rulemaking published by the Commodity Futures Trading Commission (the “Commission” or “CFTC”) concerning conflicts and affiliations (the “NPRM”). FIA commends the Commission for its thoughtful attention to this important issue. FIA has long highlighted the need for clear rules to address conflicts of interest arising from affiliations between CFTC-registered entities.<sup>2</sup> Mitigating these conflicts is critical to preserving confidence in the integrity of the self-regulatory framework for commodity derivatives markets.<sup>3</sup> We support the NPRM’s objectives and most of its proposals and offer the comments herein to strengthen the final rules.

Our comments address the following topics: (I) the proposed amendments to Rule 1.52 governing self-regulatory organization oversight of FCMs; (II) the designated self-regulatory organization (“DSRO”) election mechanism for FCMs, including FIA’s recommendation to mandate a registered futures association (“RFA”); (III) DCM financial surveillance requirements; (IV) exchange-related conflicts mitigation; (V) the prohibition on affiliated principal trading and the market-maker exception; (VI) derivatives clearing organization-affiliate clearing member conflict

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<sup>1</sup> FIA is the leading global trade organization for the futures, options, and centrally cleared derivatives markets, with offices in Brussels, London, Singapore, and Washington, D.C. FIA’s membership includes clearing firms, exchanges, clearinghouses, trading firms, and commodities specialists from about 50 countries as well as technology vendors, law firms, and other professional service providers. 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.

<sup>2</sup> See, e.g., FIA, Response to Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities (Sept. 28, 2023), available here (“2023 RFC Letter”); FIA, Response to CFTC Request for Comment on Direct Clearing of Derivatives by Retail Participants (Feb. 24, 2026), available here (“Retail DCO Letter”); Allison Lurton, General Counsel, FIA, Remarks at CFTC Division of Clearing and Risk Public Roundtable on New and Emerging Issues in Clearing (Oct. 16, 2024) (transcript available here).

<sup>3</sup> We understand that there are fifteen registered futures commission merchants (“FCMs”)—and six FCMs pending registration—that have designated contract market (“DCM”) affiliates.

mitigation; (VII) FCM disclosure of affiliate relationships; and (VIII) DCM board composition, regulatory oversight committee (“ROC”), and disciplinary panel requirements.

One particular area where we believe the NPRM can be made more effective is the proposed DSRO election mechanism. For the reasons set out in this letter, FIA members urge the CFTC to transition all DSRO exams to the National Futures Association (NFA”). Only by having a neutral self-regulatory entity serve as DSRO for all FCMs will the Commission fully address potential conflicts and perceived conflicts in the DSRO examination process. Everyone in the derivatives ecosystem benefits from robust and fair exams, not least FCMs whose assets are at risk in the event of a fellow clearing member default. We respectfully submit that there will not be complete trust and confidence in the process where a for-profit, commercial entity has authority to conduct the exams, especially where it has an affiliate FCM. We appreciate the CFTC taking steps in the NPRM to address conflicts concerns in DSRO exams. We ask that the CFTC take the further step of requiring DSRO exams be conducted by a single independent self-regulatory body, in the form of NFA, to fully accomplish the rule’s objectives.

### **I. Rule 1.52 Amendments: Self-Regulatory Organization (“SRO”) Oversight**

The NPRM proposes five amendments to Rule 1.52 to address conflicts arising when an SRO is affiliated with an FCM: a control-based definition of “affiliate FCM”; board-level or equivalent reporting lines for examination staff; independent third-party financial surveillance of an affiliate FCM; two-way information barriers protecting non-public information (“NPI”), subject to limited Part 38 and SRO-duty exceptions; and parallel safeguards for DSROs and the Joint Audit Committee (“JAC”), including a prohibition on an SRO serving as the DSRO for an affiliate FCM. These measures are intended to protect the impartiality of SRO oversight and to prevent supervisory information from becoming a conduit for commercial advantage.<sup>4</sup>

FIA generally supports the control-based definition of “affiliate FCM” as appropriately capturing the relationships that give rise to conflicts of interest. However, FIA notes that a number of institutional investors, including investors affiliated with banks, hold minority stakes in exchanges and FCMs or market makers as investments that do not give them control over the entities. FIA believes that such affiliation through common investment does not implicate the kinds of conflicts of interest raised by majority common ownership with active management, decision-making, and support of multiple CFTC-registered operating subsidiaries, or facilitation of inter-affiliate commercial integration, by the parent company.

To avoid inadvertently causing such investments to restrict operationally independent FCMs’ and market makers’ exchange-trading and clearing activities, FIA recommends a rebuttable presumption that holdings below 10 percent of an entity’s outstanding voting securities do not constitute control absent other indicia of ability to direct the entity’s management and policies.

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<sup>4</sup> NPRM, 91 Fed. Reg. at 50934-40.

This approach is consistent with banking-law analogues and the Commission's requirements for DCM equity-interest transfers and aggregation of positions for position-limits purposes.<sup>5</sup>

FIA supports requiring examination staff of SROs with affiliate FCMs to report directly to the board of directors, a ROC, or an officer responsible for compliance reporting to the ROC (e.g., the chief regulatory officer ("CRO")), to insulate such staff from commercial management. We have long sought formal separation between exchange compliance and surveillance staff, on the one hand, and business staff, on the other, to mitigate the risk of commercial pressures undermining a robust, impartial self-regulatory function.<sup>6</sup> In addition to this structural protection, to the extent any examination findings reach the CRO, the ROC, or the board (as applicable), we believe they should be conveyed without substantive modification by personnel with commercial responsibilities.

FIA supports mandatory independent third-party financial surveillance to fulfill an SRO's obligations under Rule 1.52(c) with respect to an affiliate FCM. Information barriers alone cannot fully mitigate this risk of favoritism, or the appearance of favoritism, when an SRO surveils its own affiliate.

FIA also supports the proposed information barriers between an SRO and an affiliate FCM. The lack of such information barriers undermines confidence in the impartial administration of the self-regulatory function, raising concerns that financial and other commercially sensitive information that FCMs are required to share with the exchange in its role as an SRO could make its way to an affiliate FCM that competes with them in the market, or that the exchange could take or fail to take surveillance, disciplinary, or other actions if the exchange is aware that such an action or omission may benefit the affiliate FCM, to the detriment of competitors or market integrity. FIA believes the proposed exception for information-sharing necessary for compliance with Part 38 and SRO duties should be eliminated; we struggle to imagine a scenario in which such information-sharing would be necessary. If the Commission retains this exception, it should require the SRO to notify the Director of the Division of Market Oversight or his or her designee in writing each time it relies on this exception and to provide a written justification for such reliance, and the Commission should use such notifications to monitor for abuse of the exception. At the very least, the Commission should provide examples of the limited circumstances in which, in its view, Part 38 or SRO obligations may require such information-sharing.

FIA strongly supports the prohibition on an SRO serving as the DSRO of an affiliate FCM. FIA has repeatedly advocated this prohibition as necessary to avoid favoritism—and even the appearance of favoritism—in DSRO surveillance and examinations. DSRO surveillance and examinations are a primary mechanism for ensuring FCM financial soundness and segregation of customer assets. A DSRO reviewing an affiliate FCM's capital may be incentivized to approve the FCM's capital levels, even if inadequate, making it more likely that the affiliate would default on its clearing obligations and trigger use of other clearing FCMs' guaranty fund contributions and, ultimately, other financial resources in the default waterfall, leaving customers at greater risk of

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<sup>5</sup> See, e.g., 12 C.F.R. § 225.33 (rebuttable presumption of non-control in the context of bank holding companies); 17 C.F.R. § 38.5(c)(1) (requiring notification of DCM equity-interest transfers only if the transfer is of 10 percent or more of the equity interest in the DCM); 17 C.F.R. § 150.4 (10 percent ownership threshold for aggregating positions).

<sup>6</sup> See, e.g., 2023 RFC Letter at 3.

loss. By the same token, a DSRO may be incentivized to surveil and examine close competitors of its affiliate FCM much more stringently than it would examine its own affiliate, placing such competitors at a competitive disadvantage vis-à-vis the affiliate. Even suspicion of such partiality may undermine confidence in the integrity of the self-regulatory process.

Indeed, this is among the reasons why, as detailed in the next section, FIA urges the CFTC to mandate that an independent self-regulatory entity serve as the DSRO for all FCMs.

## II. DSRO Election by FCMs

We commend the Commission for recognizing the complex conflicts presented by a DCM serving as a DSRO where it has an affiliate FCM. As noted in the NPRM, concerns about impartiality of supervision of the affiliate and competitors of the affiliate require changes to the DSRO process as currently administered by the JAC. Notably, though, firms' concerns go beyond conflicts that arise strictly from affiliations. Conflicts and the appearance of conflicts also arise by having a for-profit commercial entity serve as DSRO. FIA strongly believes that the only way to fully address the conflicts and perceived conflicts is for the CFTC to require that NFA, as a not-for-profit independent RFA, serve as the DSRO for all FCMs.<sup>7</sup> This is the most effective and readily administrable means of eliminating the concerns associated with an exchange DSRO, particularly one with an FCM affiliate.

The NPRM's proposal to allow firms to elect the NFA as its DSRO is certainly an improvement on the current system. That said, we do not believe it will achieve its intended purpose. The election of a DSRO will not fully resolve potential conflicts of interest and may create new risks for FCMs and market participants.

- **Conflicts Concerns.** FCM members report that even with the ability to elect NFA as a DSRO under CFTC rules, they may decline to exercise the option (or feel pressure to decline to elect the option) because of concerns about retaliation or duplicative examinations and surveillance by the incumbent DSRO. As the NPRM's question 14 notes, under an election option rather than a mandate, the incumbent DSRO could revise its DCM and DCO rulebooks to apply an examination and surveillance regime for transitioning FCMs that is similar to or more stringent than that which applied to them before they exercised the election option. Members are also concerned that the incumbent DSRO could be incentivized to conduct its ongoing and periodic financial surveillance, risk management, audit trail and recordkeeping reviews, and other oversight responsibilities that DCMs and DCOs conduct today as self-regulatory organizations in a different manner for firms that elect NFA as their DSRO. These outcomes—even if just perceived—would undermine the conflict-mitigating purpose of providing DSRO choice, as well as the very rationale for the DSRO regime in Rule 1.52: avoiding the time, expense, and logistical burdens of

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<sup>7</sup> The simplest approach may be to consolidate all DSRO audits with the NFA regardless of whether an SRO has an affiliate. In practice today, there is only one other entity serving as a DSRO, CME. The most durable approach would be to simply designate the NFA as the party to carry out the DSRO function for any FCM clearing member of any DCO.

duplicative financial reporting, surveillance, and examinations.<sup>8</sup> A mandatory transition to an independent DSRO ensures that all affected FCMs benefit from a neutral examiner and a uniform examination process and mitigates any concerns of disparate treatment of FCMs that elect to transition to an RFA.<sup>9</sup> The SEC has taken a similar approach for broker-dealers: a registered broker-dealer must have as its designated examining authority a securities association registered under Section 15A of the Securities Exchange Act of 1934, the only one of which is the Financial Industry Regulatory Authority (“FINRA”), subject to very limited exceptions.<sup>10</sup> This demonstrates that the approach of a single neutral SRO examiner is workable, and adopting this approach would further the CFTC’s efforts to harmonize its regulatory regime with the SEC’s.<sup>11</sup>

- **Examination Consistency.** Election of DSROs creates the risk of inconsistent exams and enforcement. Under the election option, two DSROs would examine similarly situated FCMs under the same JAC examination standards, but may apply those standards differently in practice. Each DSRO would need to examine for compliance with the other SRO’s rules as well as CFTC rules and its own rules. The risk of divergent interpretation in identical or similar scenarios would undermine the uniformity that the JAC examination standards are designed to promote. Mandating NFA as the single DSRO would consolidate administration of the exams and any related disciplinary process under a single entity, free from commercial interests. There would be no concern that NFA would be incentivized to give special attention to any particular exchange’s rules during the exams, as opposed to applying each relevant exchange’s rules, its own rules, and the CFTC’s rules in a neutral manner.
- **Resource Adequacy.** The DSRO performing an examination needs adequate staffing and the requisite expertise. We believe the election mechanism will make it difficult for multiple DSROs to hire and maintain the requisite skilled staff or lead to prohibitive costs. Though the NPRM’s proposed three-year lock-in for exams may provide some short-term certainty for each DSRO, capacity issues may arise depending on how firms make their elections. There will also invariably be duplication of required expertise. The election mechanism risks one or both of the DSROs being under-resourced. At a minimum, it places a burden on the DSROs to project their operational needs amid persistent, and even unpredictable, change. All of these resource adequacy concerns would be resolved in a structure where NFA serves as the sole DSRO for all FCMs. We have confidence that, in

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<sup>8</sup> See, e.g., CFTC, Proposed Rulemaking: Minimum Financial Requirements, 42 Fed. Reg. 39036, 39037 (Aug. 1, 1977) (noting that delegating multiple exchanges’ financial oversight responsibilities to a DSRO could save “considerable time and money”).

<sup>9</sup> Here we note that the mandate should make clear that a DSRO may not circumvent the mandate through revisions to its rulebook seeking to exercise authority intentionally transferred away from it.

<sup>10</sup> See 17 C.F.R. §§ 240.17d-1, 17d-2 (establishing the framework for designating examining authorities for broker-dealers that are members of multiple self-regulatory organizations). Rule 15b9-1 under the Exchange Act permits a broker-dealer to have a national securities exchange as its designated examining authority, rather than FINRA, if it is a member of that exchange, does not carry customer accounts, and effects transactions in securities solely on the national securities exchange of which it is a member, subject to narrow, specified exceptions. See 17 C.F.R. § 240.15b9-1.

<sup>11</sup> See, e.g., Memorandum of Understanding Between the SEC and CFTC Regarding Harmonization in Areas of Common Regulatory Interest (Mar. 11, 2026), available [here](#).

this scenario, the NFA will be able to obtain (and maintain) adequate resourcing, as it deems necessary and appropriate, with the benefit of knowing in advance the number of FCMs it will be examining on a permanent basis.

- **Cost Allocation.** Any DSRO fees should be transparent, reasonable, non-discriminatory, and directly related to the costs of surveillance and examinations required under Rule 1.52. Though we anticipate that the finer details of DSRO costs would be addressed in implementation of a final rule, FIA notes that NFA's existing assessment fee that is paid by market users provides a mechanism through which the costs of DSRO responsibilities are allocated across market participants broadly. Mandating NFA as the DSRO for all FCMs thus not only would ensure that the benefits of robust, conflict-free DSRO exams accrue to the entire marketplace, but also would ensure broad-based cost allocation of these benefits. To the extent the Commission retains the election framework in the final rule, the costs of DSRO responsibilities should be borne by the DSRO or JAC participants, not individual FCMs that elect to transition.
- **JAC Participation.** Having the NFA serve as a single neutral DSRO would enhance the role of the JAC as a coordinating body for promoting uniform, streamlined oversight of FCMs. All JAC exchange members would have an equal voice in audit plans, examination standards, and committee interpretations. The JAC would continue to function as a forum through which SROs can agree on examination priorities; inform regulators, FCMs, and the public about such priorities and key common examination findings; and update examination standards as necessary in response to frequent deficiencies or areas of confusion, market developments, and regulatory changes. A DSRO's role is largely that of a financial and operations auditor, a role that NFA fulfills today. To the extent NFA as DSRO required input from market and clearinghouse operators for particular aspects of clearing member examinations, this expertise and feedback could be provided by other JAC members, consistent with the intended purpose of the JAC as a collective audit function implemented by a delegate with input from and reporting to the Committee. A mandatory transition of DSRO responsibilities to NFA would simply ensure that the entity performing the examination of FCMs, as informed by the JAC program, lacks commercial conflicts and would promote uniform implementation of JAC examination standards.

We note that the Commission considered and "preliminarily declined" to require that "NFA (or another independent third-party SRO) serve as DSRO for *all* member FCMs of an SRO that has an affiliate FCM itself."<sup>12</sup> First, the CFTC said it "understands that FCM examinations provide valuable information to DSROs that also operate an exchange, and that such information may bear on risk management decisions made by the exchange." Therefore, the agency reasoned, "removing FCM examination authority from such DSROs may result in blind spots that increase systemic risk." Second, the CFTC found that the proposed DSRO election mechanism "is sufficient to address the relevant competitive concerns while enabling market forces to show revealed preferences."<sup>13</sup> We urge the CFTC to revisit these preliminary conclusions and analysis.

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<sup>12</sup> NPRM at 50,939.

<sup>14</sup> Under JAC Agreement Section 4, the DSRO must immediately notify all relevant exchanges of any 'Material Event' (e.g., net capital deficiencies, customer segregation shortfalls, or severe internal control failures), while Section 5

Pursuant to the terms of the Joint Audit Agreement, DSRO exam findings are shared with all JAC members. There are no “blind spots.” Indeed, the exchange members of the JAC all currently rely on these reports and notifications by the DSRO of material issues with a clearing member FCM, as well as their own exams under Parts 38 and 39, to manage risk on their platforms.<sup>14</sup> We strain to see how a single exchange DSRO not having the raw audit files collected during a DSRO exam may increase systemic risk. And, if it did, we believe this actually augurs for entrusting that information to an independent regulatory entity with no competing commercial interests. Indeed, permitting an exchange DSRO to retain an informational advantage over other JAC member exchanges raises its own competitive-fairness concerns and is inconsistent with the Commission's objective of mitigating conflicts of interest.

Furthermore, while we acknowledge the conceptual appeal of an election mechanism, our members relay that such a proposal does not account for commercial realities. FCM members point out that the “choice” could in fact be illusory: they can either transition away from the exchange-led DSRO to the NFA and risk extra scrutiny in areas where the exchange and its DCO retain absolute authority (such as trade surveillance and margin demands) or remain under exchange oversight and potentially expose proprietary data to a direct competitor. We respectfully submit that the only solution that preserves systemic safety, protects proprietary competitor data, and eliminates the risk of commercially driven responsive action is to adopt a uniform mandate designating the NFA as the DSRO for all FCMs.

For all these reasons, we urge the Commission to mandate NFA as the sole DSRO. If the Commission nevertheless opts to move forward with the proposed election mechanism, it should take steps to mitigate the concerns noted above and consider the following improvements. To reiterate, we do not believe the conflicts concerns can be fully resolved short of having a single neutral entity serve as DSRO for all firms.

- **Lock-In and Release Valve.** If the Commission retains an election or other transition mechanism, FIA supports the proposed three-cycle (approximately 4.5-year) lock-in period to prevent forum shopping and allow DSROs to plan for staffing and other resource needs. The rule should nevertheless include a narrow release valve permitting early revocation upon certain exigent or otherwise unforeseen circumstances which could present with multiple DSROs, such as an apparent lack of capacity at the elected DSRO or new commercial activities by the incumbent DSRO that present further conflicts concerns. In addition, any election mechanism should not be conditioned on the incumbent DSRO's ongoing affiliation with an FCM; conditioning the election right on ongoing affiliation would create persistent uncertainty about DSRO allocation, impeding advance examination planning by RFAs and FCMs.

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governs the distribution of the financial and operational examination report upon the completion and finalization of the routine periodic audit.

<sup>14</sup> Under JAC Agreement Section 4, the DSRO must immediately notify all relevant exchanges of any 'Material Event' (e.g., net capital deficiencies, customer segregation shortfalls, or severe internal control failures), while Section 5 governs the distribution of the financial and operational examination report upon the completion and finalization of the routine periodic audit.

- **Timing.** If the Commission retains a DSRO election option, FIA supports the six-month notice period and the 12-month cap on phase-in of elections as balancing FCM flexibility with DSRO staffing needs. The RFA-only DSRO regime supported by FIA would also require a phased transition, though as noted above, we believe this one-time transition would be easier to administer for the DSROs and FCMs.

Mandating a neutral RFA as the sole DSRO for all FCMs is the single most impactful reform the Commission can adopt to eliminate conflicts concerns in the self-regulatory framework. In the remainder of the letter, we offer additional recommendations for the CFTC to strengthen the proposed measures to mitigate conflicts in affiliated market structures.

### **III. DCM Financial Surveillance (Sections 38.604, 38.606)**

FIA supports the NPRM's proposal to replace the phrase "continuously monitor" with "throughout the day" in the financial surveillance requirements for DCMs, clarifying that the obligation is risk-based and intraday rather than a requirement for literal real-time monitoring. FIA also supports the proposal to retain the requirements to receive and promptly review financial and related information from members and to monitor member and customer positions, as well as the proposal to amend the related conflicts framework to require a DCM with an affiliate FCM either to designate an independent regulatory service provider ("RSP") to conduct the requisite financial surveillance of the affiliate or to maintain written procedures addressing, at a minimum, information barriers, personnel, office space, documentation of conflicts, and disclosure of the affiliation. The proposed framework would be supplemented by acceptable-practices guidance.<sup>15</sup>

### **IV. Exchange-Related Conflicts (Parts 38 and 37)**

The NPRM would require DCMs and SEFs with covered affiliates to maintain written procedures for identifying, addressing, and managing conflicts involving affiliate market participants. The procedures would address, at a minimum, applications and systems, personnel, office space, documentation of conflicts, and disclosures, with related operational guidance in Appendix B to Part 38. The framework would apply to affiliate FCMs, principal trading firms, and other affiliate market participants and would preserve a principles-based approach that gives each venue flexibility to design procedures suited to its structure.<sup>16</sup> Given the increasing pace of consolidation in regulated markets, these affiliations are increasingly likely to arise through acquisitions and ownership changes across a common parent entity, warranting enhanced attention to this framework. FIA supports this approach to exchange-related conflicts and recommends that compliance and surveillance staff not be shared between a venue and any of its affiliates. Affiliation disclosures should be prominently displayed and include minimum standard required text, with additional disclosures tailored to the particular affiliation and attendant conflicts.

In addition to these guardrails, the Commission should consider revising the acceptable practices in Appendix B to Part 38 with respect to Core Principle 16, Appendix C to Part 38, or Part 40 to

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<sup>15</sup> NPRM, 91 Fed. Reg. at 50,940-44.

<sup>17</sup> *Id.* at 50,948-52.

require DCMs with an affiliate market participant to consult more meaningfully with their members regarding changes to the DCM's rules and the introduction of new product types before the entity's self-certification filing. Similar amendments to Part 37 or Part 40 should be made for SEFs. This consultation obligation should include express consideration of conflicts of interest arising from the affiliation, steps taken by the registered entity to mitigate those conflicts effectively, and member feedback regarding the adequacy of those steps. A registered entity should address such consultation and its results in the relevant Part 40 filing.

The Commission should also assess the framework by which changes in ownership interests across registrants are overseen. In their current form, the existing rules governing equity-transfer notifications for SEFs, DCMs, and DCOs are largely notification-based rather than requiring explicit approval, so where the Commission may identify concerns, any actions would be reactive rather than preventive. Shifting this framework toward a more formal review of ownership changes, compared to the existing post-notification scrutiny, would support a more robust oversight regime.

Here, the Commission should seek to align the equity-transfer rules for DCMs and SEFs with those for DCOs which are generally more comprehensive. First, the scope of trigger events covered under each rule should be harmonized to include equity transfers, creation or elimination of subsidiaries, substantial asset transfers, and changes in controlling interests; DCM and SEF rules are currently narrowly focused on changes in direct equity ownership, triggered by a transaction-based threshold, whereas DCO rules cover creation or elimination of subsidiaries, substantial asset transfers, and explicit reference to changes in controlling interest. Second, timing requirements should be appropriately aligned to allow for sufficient review of anticipated changes; DCM and SEF rules allow for submission of up to 10 days after the conclusion of a trigger event, whereas DCO rules require submission no later than three months prior to an anticipated change. Third, content required in submissions should be standardized, as DCM and SEF rules are generally less instructive in terms of what supporting documentation is required compared to DCO rules, which explicitly define documentation package requirements.

## **V. Prohibition on Affiliated Principal Trading and the Market Maker Exception**

Proposed Section 38.852(c) would generally prohibit a DCM from permitting an affiliate principal trading firm to trade on the DCM unless the firm qualifies as an affiliate market maker and satisfies four conditions: order-priority subordination; a written market-making or liquidity-providing agreement; independent RSP oversight and annual certification; and per-session disclosure before a customer enters an order. The NPRM would also require incentive parity for market-maker programs. The prohibition and conditioned exception would apply to DCMs, but not to SEFs.<sup>17</sup>

As the CFTC recognized in its recent MoU with the SEC, many financial services firms carry multiple licenses across both the SEC and CFTC in order to serve their clients holistically and efficiently.<sup>18</sup> While FIA has long been an advocate for stronger conflicts of interest rules, we also believe that for those rules to be effective it is important that the CFTC focus on affiliations that have the potential to create material conflicts of interest, rather than the existence of affiliations

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<sup>17</sup> *Id.* at 50,948-52.

<sup>18</sup> *See* MOU, *supra* note 11.

among registrations or market functions alone. FIA believes that the features that give the greatest rise to conflicts of interest are:

- whether a registrant has regulatory oversight and enforcement authority over its competitors or the competitors of an affiliate;
- whether the vertical market structure includes a DCO that creates commercial incentives or opportunities to modify core risk management functions of the clearinghouse to the benefit of its affiliate (e.g., margin terms or default processes);
- whether an execution venue has the ability to give an affiliated liquidity provider competitive advantages; and
- whether market participants are bound by regulatory mandates with regard to the use of the vertical market structure (e.g., mandatory futures execution on a DCM).

While FIA does not object to the proposed prohibition or the market-maker exception conditions, the Commission should ensure that the “control” definition does not inadvertently capture institutional investors, including those affiliated with banks, with minority stakes in both an exchange and a market maker, consistent with FIA’s recommended rebuttable presumption of a lack of control for entities with holdings below a 10 percent ownership interest, as discussed in Section I above. In addition, FIA does not believe such prohibitions are necessary for SEFs, particularly where there is not a DCO under common ownership and where the SEF functions primarily as an RFQ and not a central limit order book.<sup>19</sup>

## **VI. DCO-Affiliate Clearing Members (Sections 39.2, 39.21, 39.25)**

The NPRM would use a control-based definition of “affiliate clearing member” and would require a DCO with an affiliate clearing member to maintain written procedures for identifying, addressing, and managing conflicts of interest. Those procedures would address, at a minimum, NPI, personnel, office space, and documentation of conflicts, and the NPRM would require rulebook disclosure of the existence and nature of the affiliate relationship. The proposal would not prohibit the relationship or require additional capital, liquidity, volume caps, or pre-approval of discretionary decisions, reflecting the Commission’s view that DCOs require flexibility to manage risk and defaults in real time.<sup>20</sup>

FIA supports the proposed requirements, but believes additional guardrails are needed for DCO-affiliate clearing-member relationships. The 2023 RFC Letter identified specific risks inherent in

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<sup>19</sup> FIA supports the Commission’s decision not to extend the affiliate principal-trading prohibition and market-maker exception to SEFs. The proposed exception conditions—including order-priority subordination and per-session disclosure—were designed principally for centralized order-book trading and do not translate readily to RFQ protocols and other SEF execution methods. Extending those requirements to SEFs without tailoring them to their particular execution models would impose burdens disproportionate to the conflicts presented. This is especially true where the SEF is not affiliated with a DCO, because the affiliated market maker would lack the ability to influence margin or other clearing-risk decisions for competitive or commercial purposes, thereby reducing a significant source of vertical integration risk.

<sup>20</sup> NPRM, 91 Fed. Reg. at 50,957-63.

this relationship that warrant heightened concern: delayed action in calling or responding to a default by the affiliate when the DCO has a financial interest in the affiliate's survival, biased margin or risk-management decisions, contagion or run-risk if the affiliate's distress affects the DCO or vice versa, and potential DCO sharing of competitively sensitive financial and position information it collects regarding clearing members with its affiliate clearing member.

Accordingly, FIA urges the Commission to include the following additional protections within the NPRM's framework:

- **Independent Review of Discretionary Decisions.** Discretionary decisions affecting an affiliate clearing member, including whether to declare a default, margin add-ons, auto-liquidation exemptions if applicable, playbook departures, and loss-waterfall calibration, should require review and approval by a committee of independent directors and contemporaneous documentation, to be submitted to the Director of the Division of Clearing and Risk or his or her designee or made available upon request. If prior review and approval is not possible given exigent circumstances, *post hoc* review and ratification should be required. If the independent committee is unable to ratify a decision or action with respect to an affiliate after the fact, the DCO should be required to consider amending its policies to ensure that no such action may again be taken in similar circumstances in the future.
- **Enhanced Governance.** The 2023 RFC Letter proposed enhanced governance requirements such as chief compliance officer ("CCO") reporting to an independent board committee, noting that existing regulations do not sufficiently address the potential for conflicts of interest where a DCO has discretion in its risk management and other oversight authorities with respect to an affiliated clearing member and its competitors. FIA continues to believe such robust governance is important to guard against commercial pressures in the DCO's exercise of its critical risk-management functions.
- **Enhanced Disclosure.** Disclosure should go beyond identification of the affiliate in the rulebook to cover upstream ownership, conflict-management procedures, and financial or operational interconnections between the DCO and its affiliate. This information should be publicly available on the DCO's website and updated upon any material change.
- **Financial Safeguards at the Affiliated FCM.** Any DCO-affiliated FCM clearing member should be subject to enhanced capital and liquidity standards, calibrated to the concentration risk presented as well as the general risks of preferential treatment that delays or prevents appropriate DCO risk management with respect to the affiliate clearing member. This should include a stress add-on charge to the affiliate FCM if it is responsible for an increase in the overall size of the default fund, particularly if such a charge does not otherwise exist in the DCO's rules and/or margin methodology. These measures are particularly appropriate for a "captive" affiliate clearing FCM that serves all or a majority of the DCO's end customers.
- **Skin-in-the-Game and DCO Financial Safeguards.** The Commission should require DCOs with affiliate clearing members to maintain enhanced DCO financial resources, ring-

fencing measures, and stress tests that model the affiliate's default to ensure that the DCO can manage the affiliate's failure without compromising the DCO's viability as a going concern or the mutualized resources contributed by non-affiliated clearing members, if any. These safeguards are particularly important where there is a concentration of customers with the affiliate clearing member—e.g., a “captive” FCM clearing member as described above—as such concentration may heighten the impact of a default by the affiliate clearing member in terms of loss and disruption to customers (and to other clearing members, if any). This is also of special concern where the affiliate clearing member's customers are concentrated in a single category rather than diversified—for example, where the affiliate has a high concentration of retail customers, as in certain structures we see today. Though clearing member concentration is a risk for any DCO, the risk is increased where affiliation with the clearing member could undermine the DCO's incentives for robust oversight and management of such concentration risk. In addition, FIA supports requiring a DCO with an affiliate clearing member to maintain “skin-in-the-game” resources (i.e., contributions of the DCO's own capital) ahead of mutualized resources in the default waterfall, consistent with the NPRM's Question 66.<sup>21</sup> The affiliate relationship creates incentive misalignments that heighten the risk of delayed default action and biased risk-management decisions. Requiring the DCO to place additional capital ahead of non-affiliated clearing members' guaranty-fund contributions and other waterfall resources would help offset these risks and align the DCO's incentives with those of other market participants, bolstering confidence in the DCO's ability to address financial or operational weakness or default at its affiliate. Any such requirement should be calibrated to the affiliate clearing member's share of the DCO's volume, open interest, or risk exposure, ensuring proportionality to the risk the affiliate relationship introduces.

- **Systemically Important DCO Treatment.** Given systemically important derivatives clearing organizations' (“SIDCOs”) critical importance to the derivatives markets and the financial system and economy more broadly, heightened requirements should apply to any SIDCO with an affiliated clearing member, including more frequent stress testing and Commission pre-notification of material discretionary decisions affecting the affiliate absent exigent circumstances.

## VII. FCM Disclosure of Affiliate Relationships (Section 1.55(k)(5))

The NPRM would amend Rule 1.55(k)(5) to require an FCM to disclose to customers any affiliate relationship it has with a SEF, DCM, or DCO, together with any risks created by that relationship. The Commission would retain a non-prescriptive approach, allowing FCMs to tailor disclosures

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<sup>21</sup> *Id.* at 50,963.

to their circumstances without requiring a standard template, update cycle, or venue-specific content.<sup>22</sup>

The Commission should provide guidance on disclosure content, including the precise nature of the relationship, order-routing practices, incentives or revenue-sharing arrangements, and conflict-management policies and procedures, and should require updates upon material changes.

The Commission may wish to consider prescribing standardized disclosures regarding the risks associated with conflicts of interest between an FCM and a registered entity, in addition to the further tailored disclosures that an affiliate FCM would draft based on the guidance requested above. This approach would ensure that disclosures meet at least a minimum informational standard, consistent with the rationale for the existing standardized text in Rule 1.55(b).

### **VIII. Board Composition, ROC, and Disciplinary Panels (Proposed Section 38.853)**

The NPRM would codify the Part 38 Appendix B acceptable practices concerning a DCM's board composition, ROC, and disciplinary panels as binding regulatory requirements. It would require at least 35 percent public directors on DCM boards and executive committees, a ROC composed solely of public directors to oversee the CRO, and at least one public director on each disciplinary panel, with any board-level appellate body similarly required to include at least one public director. The proposal is intended to provide regulatory certainty and prevent slippage from practices that the Commission understands are already common.<sup>23</sup>

FIA supports codifying the 35 percent public-director requirement, consistent with the 2023 RFC Letter, which advocated an independent board committee for SRO and DSRO functions, separation of compliance and surveillance staff from business staff, and knowledgeable independent disciplinary panel members. Codification provides regulatory certainty and creates an appropriate regulatory floor for management and mitigation of conflicts of interest.

The Commission should consider requiring the same minimum percentage of independent directors for DCOs and requiring the DCO's CCO, chief risk officer, and enterprise risk officer to report to a committee composed of such independent directors, similar to the structure for a DCM's CRO and ROC. Such robust DCO governance arrangements are particularly important where a DCO has an affiliated clearing member, as noted above and discussed in the 2023 RFC Letter.

### **Conclusion**

FIA believes that mandating a not-for-profit RFA as the sole DSRO for all FCMs is the single most impactful reform the Commission can adopt to eliminate the conflicts of interest that undermine confidence in the self-regulatory framework. Together with the additional measures recommended in this letter regarding DCM financial surveillance, exchange-related conflicts, DCO-affiliate clearing member safeguards, enhanced disclosure, and governance reforms, the

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<sup>22</sup> *Id.* at 50,965.

<sup>23</sup> *Id.* at 50,955-56.

Mr. Christopher J. Kirkpatrick

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proposal as modified would significantly strengthen the integrity and effectiveness of the cleared derivatives markets' self-regulatory framework.

FIA welcomes the opportunity to discuss these comments and stands ready to provide additional information or analysis that the Commission may find useful. Should you have any questions about any of the foregoing, please do not hesitate to contact me at [alurton@fia.org](mailto:alurton@fia.org).

Sincerely,

Allison Lurton

A handwritten signature in cursive script, appearing to read "Allison Lurton".

Futures Industry Association  
General Counsel and Chief Legal Officer

cc: Honorable Michael S. Selig, Chairman  
Tyler Badgley, General Counsel  
Aaron Levine, Office of the General Counsel