

October 5, 2026

VIA ELECTRONIC SUBMISSION

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

Re: Conflicts and Affiliations (RIN 3038–AF76)

Dear Mr. Kirkpatrick:

Cboe Global Markets, Inc. (“Cboe”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“CFTC” or the “Commission”) notice of proposed rulemaking (the “Proposal”)¹ relating to conflicts and affiliations involving futures commission merchants (“FCMs”), swap execution facilities (“SEFs”), designated contract markets (“DCMs”), and derivatives clearing organizations (“DCOs”). Cboe operates three of these types of registered entities: Cboe Futures Exchange, LLC (“CFE”), a DCM; Cboe Clear U.S., LLC (“CCUS”), a DCO; and Cboe SEF, LLC, a SEF. Operating these entities gives Cboe a unique perspective on how the Proposal would work in practice and how it would impact the industry more broadly.

In general, Cboe supports the Commission’s effort to formalize conflicts of interest safeguards for affiliated registered entities. Vertical integration is an understandably attractive business model, but its benefits cannot come at the expense of the investor protection and impartiality that market participants expect of registered entities. Overall, Cboe supports most of the Proposal as drafted but asks the Commission to make changes in three areas: i) correct the DCM definition of “affiliate market participant” by restoring its control prong and clarify that the term does not include independent software vendors (“ISVs”); ii) add additional conditions to the affiliate market maker exception; and iii) strengthen the Part 39 provisions governing DCOs with affiliate clearing members.

SRO Oversight of Affiliate FCMs

Cboe supports the Proposal’s treatment of self-regulatory organization (“SRO”) oversight of affiliate FCMs, including the prohibition on an SRO serving as the designated self-regulatory

¹ 91 Fed. Reg. 50926 (Aug. 6, 2026).

organization (“DSRO”) for its own affiliate FCM. When an FCM is a member of more than one SRO, the Joint Audit Committee designates one of those SROs as the FCM’s DSRO, responsible for examining its financial condition. An SRO that examines the financial condition of its own affiliate FCM has an inherent conflict of interest, given its commercial stake in that FCM’s success. The Proposal adequately addresses this conflict by prohibiting a DSRO from performing that function for its affiliate FCM. Cboe supported this prohibition in its 2023 comment letter² and continues to support its codification today.

Cboe also supports the related safeguards the Proposal would adopt for an SRO with an affiliate FCM, including: i) requiring the SRO’s examination staff to report directly to the board of directors, or to a committee or officer responsible for regulatory compliance, rather than to commercial management; and ii) prohibiting the SRO from accessing its affiliate FCM’s non-public information, or sharing other member FCMs’ non-public information with that affiliate, except as necessary to meet its regulatory obligations. In response to Question 22, Cboe supports replacing “continuously” with “throughout the day,” which would more accurately describe the frequency of intra-day financial surveillance and remove any lingering ambiguity in the text.

Exchange-Related Conflicts of Interest

The “Affiliate Market Participant” Definition Should Be Corrected and Should Exclude ISVs

Cboe supports the principles-based approach the Proposal takes toward conflicts of interest involving an “affiliate market participant” but has two concerns.

First, there appears to be an issue with the DCM definition of “affiliate market participant.” Proposed Commission Regulation 38.852(a) defines the term as any person that “directly or indirectly executes, introduces, or otherwise facilitates trades on or subject to the rules of the designated contract market,” and leaves the second prong, where the control test should appear, as “[Reserved].” Without a control prong, the DCM definition would make every member and customer an affiliate market participant. Cboe assumes this was unintentional, since both the Proposal’s own description of the DCM definition and the parallel SEF definition in proposed Commission Regulation 37.1201(a)(1) include a control prong. Replacing “[Reserved]” with a control prong would resolve this issue and align the DCM and SEF definitions.

Second, the Commission should clarify that the definition of affiliate market participant does not encompass independent software vendors (“ISVs”). Cboe believes that the phrase “or otherwise facilitates trades” in the definition quoted above, which also appears in the SEF definition of

² Letter from Patrick Sexton, EVP, General Counsel & Corporate Secretary, Cboe Global Markets, Inc., to Christopher J. Kirkpatrick, Secretary, Commodity Futures Trading Commission (Sept. 28, 2023), available at https://cdn.cboe.com/resources/government_relations/FINAL-Cboe-Response-to-CFTC-RFC-Affiliated-Entities.pdf.

affiliate market participant, could be read to include affiliated ISVs because market participants often use ISV software to execute trades. Cboe does not believe this is what the Commission intended. In particular, the Proposal does not discuss applying the term to affiliated ISVs, and the proposed acceptable practices under DCM Core Principle 16 in Section (b)(1) refer to “any affiliate market participant (i.e., an affiliate futures commission merchant or an affiliate principal trading firm),” indicating that the term is intended to apply specifically to these two types of entities. Nevertheless, to avoid any ambiguity, Cboe requests that the Commission clarify this point explicitly.

Existing Commission rules already address the main risk posed by an affiliated ISV: preferential treatment by the exchange regarding connectivity, functionality, or fee terms. Commission Regulations 38.151 and 37.202 already directly address this concern by requiring DCMs and SEFs to provide ISVs with impartial access and comparable fee structures for ISVs receiving equal or comparable access. The Proposal’s safeguards, by contrast, target conflicts specific to affiliate FCMs, principal trading firms, and clearing members: an affiliate FCM is subject to the exchange’s financial surveillance, an affiliate principal trading firm competes for queue position in the exchange’s matching engine, and an affiliate clearing member’s default is managed by the DCO. An ISV presents none of these concerns: it is not an entity regulated or examined by a DCM, SEF, or DCO, holds no customer funds, takes no positions, and has no role in a default. Reading “or otherwise facilitates trades” to encompass ISVs would layer a second, more burdensome regime on a relationship the Commission has already directly addressed.

Affiliate Principal Trading Firms and the Affiliate Market Maker Exception

Cboe largely agrees with the Commission’s approach toward affiliate principal trading firms: affiliate trading on a DCM should be subject to substantial safeguards that protect market integrity and investors. When a DCM’s affiliate principal trading firm competes for order priority in the DCM’s own matching engine, the DCM has an incentive to favor that affiliate over unaffiliated participants. In its 2023 comment letter³, Cboe questioned whether it is even necessary to allow a DCM or SEF to have an affiliate liquidity provider trade on its market on an ongoing basis, given the ability to attract unaffiliated liquidity through incentive programs filed with the Commission. Cboe believes that where affiliate principal trading firms are permitted, that permission should be narrow and conditional.

Accordingly, Cboe supports each of the conditions the Commission would attach to the affiliate market maker exception in proposed Commission Regulation 38.852(c). Order-priority subordination, the enumerated quoting obligations, independent third-party surveillance with annual certification, and the per-session customer notice each address a distinct aspect of the related conflicts of interest. Cboe also supports proposed Commission Regulation 38.852(b)(2), which would prevent a DCM from offering its affiliate principal trading firm better incentive program

³ *Id.*

terms than it offers unaffiliated members. In response to Question 43, Cboe does not see a reason why the affiliate trading prohibition and affiliate market maker exception should not apply to SEFs in the same manner.

Cboe recommends five additions to the conditional exception. First, in response to Questions 52 and 54, alongside the per-session notice⁴ required by proposed Commission Regulation 38.852(c)(3), Cboe believes a DCM should publicly maintain an updated list of each product in which an affiliate market maker quotes, so that customers and unaffiliated market makers can see where the affiliate is active. Second, in response to Question 44, the market maker program should set a product-specific threshold on the net position an affiliate market maker may carry at the end of a trading period, with any violation documented and reported to the independent third-party regulatory service provider. Proposed Commission Regulation 38.852(c)(1)(ii)(D) prohibits directional positions other than in connection with an affiliate's quoting obligations, but without an objective threshold, the line between market making and directional trading is unclear. Setting the threshold by product also addresses the Commission's concern that a single limit may not suit all products. Third, in response to Question 48, Cboe supports a capital-independence condition applied at the level of the DCM: a DCM should not fund, lend to, or guarantee the trading of its affiliate market maker, and the regulatory service provider's annual certification should confirm compliance. Applying the condition at the DCM level avoids the verification problems the Commission identified where a common parent funds both entities. Fourth, in response to Questions 45 and 46, the Commission should limit an affiliate to a specified period of time, such as six months, as the only market maker in a product class (i.e., in contracts based on the same type of underlying event). Order-priority subordination serves its purpose only when unaffiliated market makers are quoting; when the affiliate is the only market maker, it receives every fill. Lastly, the Commission should set parameters for when an affiliate market maker should no longer be permitted to trade in a product class because that product class has a sufficient level of liquidity from one or more other liquidity providers and/or other market participants trading in that product class. Once liquidity in a product class reaches a sufficient level, an affiliate market maker is no longer needed and, given the inherent conflicts of interest, should not be permitted to trade in it. These additions would increase transparency and limit the affiliate's inherent advantages.

⁴ The per-session notice would require a DCM with an affiliate market maker to display a notice to each customer through the order-entry interface before the customer's first order in each trading session. The notice must disclose, in plain language, the affiliate relationship and the conditions imposed on the affiliate, including that the affiliate's orders are filled after those of unaffiliated members at the same price, and the customer must affirmatively acknowledge it before trading. The DCM would also have to require by rule that its intermediaries and other interface operators deliver the notice. See 91 Fed. Reg. at 50992.

DCOs with Affiliate Clearing Members

Cboe supports the Commission's proposed amendments to Part 39. They are consistent with Cboe's 2023 comment letter⁵, which urged the Commission to extend existing DCO governance requirements, such as Commission Regulation 39.24, to DCO affiliations with FCMs and called for full transparency regarding how such relationships are managed. Given the growth in DCO-clearing member affiliations, Cboe agrees that each of the Proposal's targeted measures is warranted: the definition of "affiliate clearing member" in proposed Commission Regulation 39.2, the requirement in proposed Commission Regulation 39.25(d) that a DCO prevent its systems from sharing non-public information with, and keep its staff and office space separate from, an affiliate clearing member, and the requirement in proposed Commission Regulation 39.21(c)(9) that a DCO publicly disclose its affiliation.

However, the Proposal leaves the most consequential decisions to DCO discretion. Safeguards, such as information barriers and separate office space, address how a DCO is organized, but they do not address the two judgment calls where a DCO could actually favor its affiliate: how much margin to require and how to handle a default. The Proposal is also silent on a DCO's use and rehypothecation of participant collateral. Cboe raised similar concerns in its 2022 comment letter on FTX's request for an amended DCO registration order⁶, including questions about how conflicts with FTX's affiliated trading firm would be managed in liquidation and default. Cboe believes the Commission should address these questions, as described below, rather than leave them to each DCO's discretion.

On margin, a DCO makes a series of judgment calls: how much margin to require, whether to allow offsets or portfolio margining, when to issue intra-day margin calls, and whether to add charges for concentrated or illiquid positions. If a DCO makes any of these calls more favorably for its affiliate, it shifts risk onto the guaranty fund that unaffiliated clearing members help pay for. In response to Question 65, Cboe recommends that the guidance accompanying proposed Commission Regulation 39.25(d) provide that a DCO's margin methodology, and any discretion within it, be applied to an affiliate clearing member on the same terms as to similarly situated unaffiliated members, with any departure documented and reviewed by a board or risk management committee that is independent of the affiliate. Cboe also recommends that the guidance confirm that a DCO may not give an affiliate clearing member better collateral treatment than similarly situated unaffiliated members, including which collateral it accepts, the haircuts it applies, and any use or rehypothecation of that collateral.

⁵ See *supra* note 2.

⁶ Letter from Edward T. Tilly, Chairman, President & CEO, Cboe Global Markets, Inc., to Christopher J. Kirkpatrick, Secretary, Commodity Futures Trading Commission (May 9, 2022), available at https://cdn.cboe.com/resources/government_relations/comment_letters/CFTC_Margin_Final.pdf.

On default management, Cboe agrees with the Commission's preliminary view that requiring Commission pre-approval would slow a DCO's response to a default and that time-sensitive risk decisions should remain with the DCO. Documenting decisions as they are made and reviewing them promptly afterward would cause no such delay. In response to Question 64, Cboe therefore recommends requiring that any decision to declare, or refrain from declaring, an affiliate clearing member in default, any exemption from auto-liquidation rules, and any departure from the DCO's default management playbook for the affiliate be documented at the time it is made, reviewed promptly by a designated independent committee, and reported to the Commission.

Cboe also renews the recommendation from its 2023 comment letter that the Commission apply the DCO governance requirements of Commission Regulation 39.24 to a DCO's affiliate FCMs, and now extends it to all affiliate clearing members, not only FCMs, so that the arrangements for deciding matters affecting an affiliate are written, clear, and transparent, and prioritize the DCO's safety and efficiency. Finally, in response to Question 69, the disclosure required by proposed Commission Regulation 39.21(c)(9) should cover not only the existence of the affiliation but also the measures the DCO uses to manage the conflict, including which body decides matters affecting the affiliate, and any material financial or operational ties between the DCO and the affiliate.

FCM Public Disclosure of Affiliation

Cboe supports the proposed amendment to Commission Regulation 1.55(k)(5) requiring an FCM to disclose the risks created by any affiliate relationship with a SEF, DCM, or DCO. A customer is entitled to know whether its FCM is affiliated with the venue where its orders are executed or the clearing organization where its positions are held, and the disclosure fits within the existing obligation to disclose risks created by an FCM's affiliates.

Compliance Responsibility

In response to Question 75, Cboe agrees with the Commission's preliminary conclusion that no amendment to the chief compliance officer's ("CCO") obligations or to the CCO Annual Report is necessary. In the DCM context, the regulatory oversight committee's ("ROC") existing annual report already serves the same function. In response to Question 77, the Commission should continue to rely on the ROC and chief regulatory officer ("CRO") requirements that proposed Commission Regulation 38.853 would codify rather than subject DCMs to the CCO framework built for FCMs, SEFs, and DCOs. The ROC and CRO structure was designed for precisely this function and the Proposal already relies on it, including in the certification required under proposed Commission Regulation 38.852(c)(2)(iii). Layering a separate CCO regime on top would duplicate reporting and divide accountability for the same subject matter.

Conclusion

Cboe supports the majority of the Proposal and appreciates the Commission's attention to the conflicts that affiliations among registered entities create. In particular, Cboe supports the Proposal's safeguards for SROs with affiliate FCMs, its FCM affiliation disclosure requirement, and its reliance on the existing ROC and CRO framework for DCMs. Cboe asks the Commission to restore the control prong to the DCM "affiliate market participant" definition and to clarify that the term does not include affiliated ISVs, whose access the impartial access rules already govern. Cboe also asks the Commission to add five conditions to the affiliate market maker exception: product-level disclosure, a net-position threshold, a DCM-level capital-independence condition, a time limit on an affiliate market maker acting as the sole market maker in a product class, and a point at which the affiliate must exit a product class that has sufficient liquidity from other participants. Lastly, Cboe asks the Commission to strengthen the Part 39 provisions on margin, collateral, default management, governance, and disclosure with respect to an affiliate clearing member.

Cboe thanks the Commission for its engagement on the Proposal and welcomes the opportunity to discuss these comments further.

Sincerely,

s/Patrick Sexton

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