October 5, 2026

Submitted via Regulations.gov

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

Re: Conflicts and Affiliations (RIN 3038–AF76)

Dear Mr. Kirkpatrick:

The Wholesale Markets Brokers' Association, Americas ("WMBAA")[1] appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or "Commission") notice of proposed rulemaking concerning conflicts and affiliations (the "Proposal").[2] The Proposal would add new Commission Regulation 37.1201 and related Acceptable Practices addressing a swap execution facility's ("SEF") relationship with an affiliated market participant, including an affiliated introducing broker ("IB").

WMBAA members operate SEFs and have affiliated IBs that introduce and facilitate customer transactions on those SEFs. WMBAA appreciates that the Commission has considered WMBAA's September 28, 2023 comment letter on the Commission staff request for comment concerning affiliations (the "2023 WMBAA Letter"), including WMBAA's comment that conflicts of interest issues "are addressed by current CFTC regulations and current market practices" and that "overly prescriptive implementation of the Core Principles" could "dissuade future entrants into the swaps market and reduce competition."[3] We continue to believe that general assessment is correct today.

The Proposal cites the 2023 WMBAA Letter's central points: (i) current Commission requirements and market practices already address the relevant concerns; (ii) overly prescriptive implementation of the Core Principles could deter entry and reduce competition; and (iii) WMBAA members use rulebooks, transparent governance and operational policies, third-party regulatory service providers ("RSPs"), and data-separation barriers while benefiting from properly segmented shared resources. We reiterate some of those points in this letter and provide specific comments on certain parts of the Proposal below.

I. Overview

[1] The WMBAA is an independent industry body representing the largest inter-dealer brokers operating in the North American wholesale markets across a broad range of financial products.

[2] Conflicts and Affiliations, 91 Fed. Reg. 50926 (Aug. 6, 2026).

[3] *Id.* at 50944.

WMBAA supports the Proposal's recognition that an affiliated intermediary acting for customers presents a materially different conflict profile from an affiliated trading firm or market maker acting as principal. WMBAA also supports permitting SEF-IB affiliations and using a principles-based framework to manage actual conflicts, as it has under existing laws and regulations for over a decade.

WMBAA opposes the proposed Acceptable Practices to the extent they would establish a presumption against sharing personnel, systems, or office space. Those restrictions are unnecessary, would undermine the operating model Congress and the Commission accommodated for SEFs, and could impose substantial costs without addressing an identified regulatory gap or articulating a clear benefit for the markets or market participants.

II. The Commission must preserve its principles-based regulation, including for conflicts of interest.

WMBAA supports the proposed requirement that a SEF maintain procedures reasonably designed to identify, address, and manage conflicts involving an affiliated market participant. That approach is consistent with SEF Core Principle 12 (CFTC Rule 37.1200), which requires a SEF to minimize conflicts in its decision-making process and establish a process for resolving them, while otherwise preserving the SEF's reasonable discretion in determining how to comply with the Core Principles. Other CFTC rules already address conflicts of interest for SEFs, as the Proposal notes, such as the role of the chief compliance officer (CFTC Rules 37.1500, 37.1501).

As WMBAA explained in the 2023 WMBAA Letter, its members already manage affiliated-intermediary conflicts through SEF rulebooks, distinct and transparent governance structures and operational policies, RSP arrangements, and data-separation barriers. Existing requirements concerning impartial access, rule enforcement, surveillance, conflicts, systems safeguards, and protection of confidential information provide additional safeguards. The Commission can assess the effectiveness of those measures through registration reviews, rule enforcement reviews, examinations, and ongoing oversight.

WMBAA likewise supports the Commission's decision not to categorically prohibit SEF-IB affiliations. These relationships produce meaningful benefits, including liquidity sourcing, broader access to counterparties, investment in execution technology, operational resilience, and efficient use of specialized personnel. If a SEF were to provide an affiliated IB with preferential treatment, unaffiliated IBs (and their customers) would stop doing business with the SEF. In addition, the SEF could be seen as violating its Core Principle 2 obligations to provide impartial access to the market.

As the 2023 WMBAA Letter emphasized, properly segmented shared resources allow a SEF to provide sophisticated platforms and services without separately recreating every function within the corporate group. Prohibiting or materially impairing those arrangements would increase barriers to entry and could reduce competition among SEFs.

Finally, any final rule that comes out of the Proposal should make clear that the Acceptable Practices are illustrative and non-exclusive. A SEF should remain free to use alternative controls that are reasonably designed to address the particular conflict and protect non-public information in a manner consistent with the CFTC's principles-based framework. Departure from an identified practice should not create a presumption of noncompliance or require a SEF to demonstrate that structural duplication was impossible.

III. The Commission must recognize the important distinctions between an affiliated intermediary and an affiliated market participant that trades for its own account.

The Proposal correctly recognizes the distinction between an affiliated intermediary, such as an IB, that acts on behalf of customers and an affiliated principal trading firm, such as a hedge fund or market maker, that trades for its own account. As the Commission explains, an affiliated intermediary acts as agent, whereas each transaction by an affiliated principal trading firm directly implicates the economic interests of the shared corporate group. The conflicts therefore differ in kind and magnitude and should not be regulated as though they are equivalent.

That distinction is particularly important in the SEF context. Affiliated IBs do not trade against SEF participants for their own account. They solicit and accept orders, source liquidity, communicate market information, and arrange transactions that are executed pursuant to the SEF's rules. Their role supports price discovery, liquidity formation, and customer access in swaps markets. The Commission appropriately recognizes this "central role of introducing brokers in the SEF market structure"[4] by expressly identifying affiliated IBs in proposed Regulation 37.1201(a).

The final rule should preserve that distinction throughout the regulatory framework. Measures developed for an affiliated principal trading firm should not be imported into the affiliated-IB context through Acceptable Practices, examinations, or application reviews. Nor should affiliation itself be treated as evidence of preferential treatment. The relevant inquiry should be whether the SEF has effective controls to protect impartial access, regulatory decision-making, and non-public information, which can be evaluated through a review of policies and procedures, and a look-back evaluation of the SEF's practices.

IV. The Commission should amend the Proposal to remove unnecessary restrictions on shared resources.

The proposed Acceptable Practices state that a SEF should keep certain systems logically separate, generally should not share personnel with an affiliated market participant except for limited administrative and systems-safeguards functions, and should maintain separate physical office space. Although placed in guidance, these provisions are likely to become de facto requirements in registration reviews and examinations. That result would conflict with the Commission's stated decision to use a principles-based approach and would introduce logistical and operational costs for SEFs without a particular market or policy benefit.

[4] *Id.* at 50946.

The WMBAA member firms appreciate the need for protecting regulatory independence and maintaining confidentiality of information. However, in our experience, personnel may support both a SEF and an affiliated IB without participating in conflicted decisions or accessing information that is unnecessary for their role. Systems may share infrastructure while using role-based permissions, logical segregation, audit logs, and monitoring. Personnel may work in the same building, or even shared space, while sensitive files, applications, and regulatory functions remain restricted. Conversely, simply requiring registrants to maintain separate staff, systems, and offices, on its own, does not necessarily prevent improper information use.

Requiring separate teams, duplicative systems, and physical barriers would increase cost, fragment workflows, impair timely customer service, and create additional operational handoffs. The Commission has not identified evidence that these costs are justified where a SEF already maintains effective information barriers, independent regulatory oversight, documented escalation procedures, and RSP support to maintain a relationship with an affiliated IB.

The final Acceptable Practices should instead identify outcomes and a non-exclusive set of controls. A SEF should be expected to: (1) protect surveillance, investigation, disciplinary, and unaffiliated-participant information; (2) restrict access on a need-to-know basis; (3) preserve independent authority for regulatory decisions; (4) document and escalate material conflicts; monitor access to sensitive systems; (5) disclose the affiliate relationship; and (6) periodically test its controls. Depending on the SEF's structure, those outcomes may be achieved through dedicated resources, shared resources with functional restrictions, an RSP, or a combination of those measures.

V. The Commission should amend the Proposal to remove unnecessary restrictions on shared personnel between a SEF and an affiliated IB.

WMBAA is particularly concerned with the suggestion that legal and compliance personnel do not qualify as administrative personnel and therefore generally should not be shared.[5] Legal and compliance functions are not inherently conflicted. Their role is to identify obligations, advise the relevant entity, develop controls, and support compliance. Shared personnel can enhance, rather than weaken, compliance by bringing an integrated understanding of the SEF's rules, the affiliated IB's activities, and the systems through which customer business is executed. A blanket prohibition would require duplicative staffing even where the relevant work is episodic, reduce access to personnel with necessary market and product expertise, and increase costs without demonstrating improved outcomes.

SEFs should have discretion to consider whether personnel can act independently for the SEF on the matter at issue and whether access to protected information is appropriately limited. A SEF can address that question through written allocation of responsibilities, direct access to the SEF board or regulatory oversight body, confidentiality requirements, access controls, recusal and escalation procedures, independent review, and outside counsel where a specific conflict cannot otherwise be managed.

[5] *Id.* at 50947.

At a minimum, the Commission should revise the guidance to state that legal and compliance personnel may be shared when the SEF reasonably determines that its controls preserve independent regulatory judgment and protect non-public information. The same functional standard should apply to other important support areas, such as technology, operations, finance, risk, internal audit, and other shared services.

VI. Conclusion

WMBAA supports the Commission's distinction between affiliated intermediaries and affiliated principal trading firms, its decision to continue permitting SEF-IB relationships, and its use of a principles-based conflicts-management requirement.

The Commission should not, however, convert that framework into structural separation through Acceptable Practices that discourage shared personnel, systems, and office space. The final guidance should preserve flexibility for properly controlled shared resources and expressly permit shared legal and compliance personnel where appropriate safeguards are in place.

WMBAA appreciates the Commission's consideration of these comments and would be pleased to discuss them further.