October 5, 2026

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

Re: Conflicts and Affiliations, RIN 3038–AF76, RIN 3038–AF76, Fed. Reg. 50926 (August 6, 2026)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or "Commission") proposal related to conflicts of interest among and between vertically integrated affiliated entities (the "Proposal").[2] Designated Contract Markets ("DCMs"), Swap Execution Facilities ("SEFs"), Designated Clearing Organizations ("DCOs"), and Futures Commission Merchants ("FCMs") are critical for promoting price discovery, risk management and customer protection in derivatives markets. Appropriate oversight of those functions is necessary to ensure orderly markets and financial stability. That is true in the usual course. But the stakes are even higher now that the CFTC's regulatory forbearance has encouraged increasing retail participation in derivatives markets, both in crypto markets and in the market for event contracts.[3]

As the Proposal itself documents, affiliations between market participants continue to expand, particularly for market intermediaries in novel asset classes.[4] This demands updated rules as well as heightened vigilance on the part of market participants and the Commission. Indeed, "transparency and rigorous review are particularly important for novel proposals that aim to disrupt

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 91 Fed. Reg. 50,926 (Aug. 6, 2026).

3 Better Markets previously commented on the scope of event contract "swaps" that should be listed for trading or made available for clearing within CFTC-registered entities. For the purposes of this comment letter, we do not discuss these concerns, which are well-covered in our previous work. *See* Better Markets, "Comment Letter on Prediction Markets, RIN 3038-AF65, 91 Fed. Reg. 35,806," Jun. 12, 2026. Available at: https://bettermarkets.org/wp-content/uploads/2026/07/CFTC-Event-Contracts-Comment-Letter.pdf

4 Proposal, 50932.

well-established frameworks, as in the current market structure, each entity provides distinct roles, responsibilities and protections to customers and the industry."[5]

While Better Markets appreciates the goals of many of the provisions in the Proposal, we express a threshold skepticism that new policies and procedures can successfully and comprehensively mitigate the conflicts of interest inherent in vertically-integrated business structures.[6] In particular, we believe it will be difficult to maintain the fidelity of the boundary between the affiliate proprietary trading prohibition and the affiliate market-making exception.

For decades, derivatives markets have depended on a system where trading, settlement, and clearing were divided among independent entities. The growth in business combinations is a recent phenomenon, driven by FTX just four years ago seeking to license and launch a "vertically integrated, singular technology stack that supports a matching engine for orders, an application programming interface or API, a custody service and wallet for users, and a settlement, clearing and risk-engine system."[7] While that proposal was being considered by the CFTC, FTX imploded in one of the most catastrophic frauds in financial history, leaving $8 billion in customer funds missing.[8] While not every company operating or seeking to operate with a vertically-integrated business structure is a fraud like FTX, its failure and bankruptcy should serve as a cautionary tale for the CFTC as it looks to export the crypto and prediction markets' business models to the overall derivatives market.

I. Introduction

Better Markets has threshold concerns about the proliferation of vertically integrated business combinations present in CFTC-regulated markets and would urge the Commission to use this rulemaking to reverse this trend. As the Proposal acknowledges, some of these structures have a long history (such as affiliations between DCMs and DCOs)[9], but other, more troubling integrated structures are new and predominantly a feature of the recent explosion in crypto and

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5 Cboe Global Markets, Inc., "Comment Letter Re: Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities Issued on June 27, 2023," Sept. 28, 2023, at 3. Available at https://cdn.cboe.com/resources/government_relations/FINAL-Cboe-Response-to-CFTC-RFC-Affiliated-Entities.pdf.

6 *See generally* Cantrell Dumas, Comment Letter re: Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities, Better Markets (Sept. 28, 2023).

7 House Committee on Agriculture. "Changing Market Roles: The FTX Proposal and New Trends in Clearinghouse Models." *Testimony of Sam Bankman-Fried*, May 12, 2022. Available at: https://www.govinfo.gov/content/pkg/CHRG-117hhrg48754/html/CHRG-117hhrg48754.htm

8 Yaffe-Bellany, David. "How Sam Bankman-Fried's Crypto Empire Collapsed." *New York Times*, Nov. 14, 2022. Available at: https://www.nytimes.com/2022/11/14/technology/ftx-sam-bankman-fried-crypto-bankruptcy.html

9 Proposal, 50927.

event contract markets.[10] We recommend that the Commission require structurally separate business functions to the maximum extent possible, particularly as it relates to trading venues (DCMs and SEFs) with regard to affiliated trading firms and DCOs with regard to affiliated clearing members. In these examples, the potential for conflicts of interest to metastasize into unfair or anti-competitive treatment of market participants is simply too grave to allow integration in the first instance. The fact is that "by merging key functions that are traditionally separate, there is a risk that the natural checks and balances that exist within the current market structure become disrupted, concentrating market power" and endangering market stability.[11]

Recent history demonstrates this point. FTX's affiliated trading arm Alameda Research built substantial margin positions on the FTX crypto exchange, and then dipped into clients' custodied funds to make up trading shortfalls.[12] With claims eerily similar to the justifications included in the Proposal, before FTX's failure, its founder Sam Bankman-Fried defended Alameda's trading on the affiliated exchange on the basis of liquidity provision and the need to serve client market-making, particularly in thinly traded or nascent markets.[13] In another prominent example, the SEC alleged that Sigma Chain, Binance's affiliated trading arm, engaged in manipulative trading on the Binance U.S. platform in order to artificially pump up trading volume.[14] The SEC also alleged that Binance was comingling user funds with its own funds, and sending those funds on to Merit Peak Limited, a proprietary trading firm owned by the Binance founder.[15]

While not every firm in novel asset classes will engage in criminal conduct, recent history should give the Commission pause when it comes to blessing vertically integrated market structures. Even with procedural safeguards in place, during times of financial stress, the temptation to skirt firewalls may be too great. If the health of the trading venue or trading affiliate is in jeopardy, boundaries may be breached, with hopes of making up shortfalls or rectifying the breaches later.

Our concerns are heightened by the recent "retailization" of the traditionally institutional CFTC-regulated markets. Futures, swaps and commodity derivatives have historically been dominated by institutional market participants. But increasingly, retail traders are gaining access to products within the Commission's remit, most notably crypto assets and event contracts. The

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10 Proposal, 50932.

11 *Diversity is strength in US derivatives markets*. Optiver. Oct. 17, 2024. Available at https://www.optiver.com/insights/markets/diversity-is-strength-in-us-derivatives-markets/.

12 Yaffe-Bellany, supra note 8.

13 *Id.*

14 "SEC Files 13 Charges Against Binance Entities and Founder Changpeng Zhao." *Press Release*, Jun. 5, 2023. Available at: https://www.sec.gov/newsroom/press-releases/2023-101-sec-files-13-charges-against-binance-entities-founder-changpeng-zhao

15 *Id.*

CFTC is encouraging these changes by entering into, and supporting, litigation to brush back against state and tribal government[16] attempts to assert their jurisdiction over gambling, as well as redefining rules related to prediction markets and crypto assets.[17] Increasing retail participation in markets demands stronger safeguards related to conflicts of interest. Whereas commercial hedgers and sophisticated financial institutions have the wherewithal to understand the competitive dynamics and risks associated with integration, retail users do not. This fact should sway the Commission to create structural firewalls, adopt more prescriptive approaches, and reject relying on disclosure as a cure for conflicts.

Additionally, the Commission should contemplate the Proposal within the context of the increasingly complex nature of the markets it oversees. The CFTC has permitted perpetual futures to be made available for trading and clearing without addressing public comments expressing the need for an Administrative Procedure Act rulemaking defining the product and imposing risk mitigating measures on its use.[18] It has also expanded access to markets open 24 hours a day, seven days a week while a comment file on the risks of this move was pending.[19] The Proposal does not grapple with these new realities. As Better Markets has pointed out in past comment letters, perpetual futures raise issues around the use of continuous leverage and the absence of maturity discipline; heightened risk for price manipulation; clearinghouse and market stability risks; and a host of issues related to customer protection and U.S. bankruptcy law.[20] Likewise, continuously open markets raise issues around market integrity and surveillance weaknesses; operational resiliency and maintenance risk; liquidity management when the banking system is closed; and questions around how auto-liquidation features are deployed.[21] Each of these challenges raises downstream questions about the interaction with vertical integration that the Proposal does not, but should, grapple with.

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16 See a long history of Better Markets engagement at "Prediction Markets Gambling, the CFTC & Regulation: Facts, Fiction & The Law." Aug. 26, 2026. Available at: https://bettermarkets.org/analysis/prediction-markets-gambling-the-cftc-regulation-facts-fiction-the-law/

17 Schiffrin, Ben. "Prediction Markets, RIN 3038-AF65, 91 Fed. Reg. 35,806 (Jun. 12, 2026)." *Better Markets Comment Letter*, July 27, 2026. Available at: https://bettermarkets.org/wp-content/uploads/2026/07/Better-Markets-Comment-Letter-CFTC-Prediction-Markets.pdf

18 Dumas, Cantrell. "The Most Dangerous Product in Crypto Is Coming Onshore." *Better Markets*, Jun. 27, 2025. Available at: https://bettermarkets.org/newsroom/the-most-dangerous-product-in-crypto-is-coming-onshore/

19 *See* Better Markets. "CFTC Undermines Public Comment Process, Lets Coinbase Launch 24/7 Trading Without Review." *Press Release*, May 12, 2025. Available at: https://bettermarkets.org/newsroom/cftc-undermines-public-comment-process-lets-coinbase-launch-24-7-trading-without-review/

20 *See* Better Markets, "Comment Letter Request for Comment on Trading and Clearing of "Perpetual" Style Derivatives." May 21, 2026. Available at: https://bettermarkets.org/wp-content/uploads/2025/05/Better-Markets-Comment-Letter-Perpetual-Derivatives.pdf

21 *See* Better Markets, "Comment Letter Request for Comment on Trading and Clearing Derivatives on a 24/7 Basis." Available at: https://bettermarkets.org/wp-content/uploads/2025/05/Better-Markets-Comment-Letter-CFTC-24.7-Trading.pdf

II. Affiliations Between Trading Venues (DCMs/SEFs) and Market Participants That Trade On Their Own Markets

DCM Affiliations with FCMs

As a threshold matter, Better Markets recommends that DCM and FCM affiliations be prohibited. While the Proposal is vague on the number of such affiliations and how long such affiliations have been in place, it seems as if this combination is a recent phenomenon and not an artifact of CFTC-regulated markets going back decades.[22] The inherent tensions between acting as a self-regulatory organization ("SRO") and as a market participant are too great to be solved by layering rules, whether principles-based or prescriptive, onto the problem. SROs have a responsibility to conduct market and financial surveillance and impose disciplinary measures on their members. This is fundamentally in conflict with having a profit interest in one of those members.

Measures short of structural separation mitigate but do not solve the problem. Even if DCMs are prohibited from serving as the SRO for an affiliated FCM, they'd still be tasked with surveilling and auditing their competitors. While the proposal suggests several options for mitigating these risks, whatever is adopted will not address the structural conflicts inherent in these business combinations. That is the reason why these business combinations have not occurred until recently. It is simply not possible to "address the inherent incentives for a DCM/DCO to advantage its own FCM over others, harming market confidence and ultimately the end-users who need commodity derivatives markets for price discovery and risk management."[23]

If the Commission rejects this approach, Better Markets recommends a strict prohibition on DCMs acting as SRO for an affiliated FCM. While the Proposal discusses this being standard practice currently due to voluntary compliance, it should be codified by rule. The independence of a DCM's regulatory judgment and its discretion would need to be safeguarded from the incentives presented by an integrated model to advantage the DCM's affiliated FCM.[24]

We also support the option for a non-affiliate FCM to elect for an examination by an SRO with no commercial stake in a competitor business. However, if DCMs are no longer surveilling all their members, the CFTC must pick up the slack in monitoring for risks across FCMs that may now be subject to a patchwork SRO regime. The Proposal did not address what steps the Commission would take to enhance this function.

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22 *See* "Miami International Holdings Announces Acquisition of Dorman Trading, a Full-Service FCM." *Press Release*, Oct. 21, 2022. Available at: https://www.miaxglobal.com/news/miami-international-holdings-announces-acquisition-dorman-trading-full; and "CME Group Receives Approval to Establish Futures Commission Merchant." *Press Release*, Oct. 29, 2024. Available at: https://www.cmegroup.com/media-room/press-releases/2024/10/29/cme_group_receivesapprovaltoestablishfuturescommissionmerchant.html

23 Optiver, supra note 11.

24 *Id.*

Better Markets is tentatively supportive of the option for DCMs to designate regulatory service providers ("RSPs") to conduct financial surveillance for FCM members, monitor the DCM's conflicts-of-interest compliance, and annually certify to the CFTC that the affiliate market maker satisfies the exception's conditions. However, RSPs must be financially and legally independent from the DCM in order to satisfy this proposed amendment to the applicable regulations. The rule text should further stipulate how RSPs can demonstrate independence from the trading venue.

Finally, Better Markets is supportive of prescriptive structural separation requirements, rather than principles-based rules, including physical office separation, technical specifications for information barriers, and dual-hatting prohibitions for senior officers. This should be done by rule and not via the guidance suggested in Appendix B, which, like all guidance, does not carry the force of law and is unenforceable. Again, with the increasing complexity and "retailization" of CFTC-regulated markets, as well as recent market scandals that could engender loss of confidence in U.S. markets,[25] a stricter approach is warranted.

Proprietary Trading Prohibition and Market Making Exception

While Better Markets supports the prohibition on proprietary trading firms trading on affiliated DCMs, the Proposal carves out a broad exemption for "market making." As the implementation of the Volcker Rule demonstrates, defining the line between trading for a firm's own account and market making is extremely difficult. It took federal financial regulatory agencies around 50 pages to write rule text implementing the proprietary trading prohibition for banking entities. As Jamie Dimon noted, as agencies sought to restrict proprietary trading within banking organizations, distinguishing between the two would require a firm "to have a lawyer and a psychiatrist sitting next to you determining what was your intent every time you did something."[26] The CFTC is not going to successfully distinguish between proprietary trading and market making with the modest amendments in this Proposal. In reality, it is likely that parent companies will find it easy to front-run order flow using affiliated market makers, particularly order flow from retail customers on their own exchanges.

Further, if trading volume is so thin in a market that an affiliated market maker is necessary for liquidity provision (and an incentive program for non-affiliated market makers is insufficient), it begs the question of why the DCM is able to self-certify that the contract is not readily susceptible to manipulation according to Core Principle 3 in the first instance. The Commission acknowledges that this is centrally an issue in nascent prediction market contracts.[27] We find it unpersuasive to allow affiliate trading on platforms simply because volume is thin on esoteric

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25 *See* supra notes 7 and 11.

26 Protess, Ben. "Jamie Dimon Shows Some Love for the Volcker Rule." New York Times, May 21, 2012. Available at: https://archive.nytimes.com/dealbook.nytimes.com/2012/05/21/jamie-dimon-shows-some-love-for-volcker-rule/

27 Proposal, 50949.

prediction market contracts. In other words, if the market for betting on Cardi B and Steffon Diggs' potential engagement has such little open interest as to require Kalshi market making in the contract on their own platform, perhaps the Cardi B/Diggs' nuptial contract should not be a listed at all.

To the extent that the Commission proceeds to allow this market making exception, we recommend that conflict-of-interest requirements be codified in rule text rather than via guidance in Appendix B. We also recommend that the Commission require DCMs to periodically report on whether facially equal market access policies result in economically equal results for affiliated and unaffiliated trading firms. The CFTC, in turn, should periodically publish reports to the public on its findings. We also recommend that the Commission caution prediction market platforms to cease advertising campaigns that seek to distinguish themselves from sportsbooks by claiming that they "are not the house."[28] If prediction market platforms require affiliate firm liquidity to odds-make on their platform, the supposed distinction between them and sportsbooks is questionable.

Additionally, we recommend that trading venues first prove that liquidity provision is not achievable with incentive programs for non-affiliates before permitting affiliates to trade. In other words, the market making exception should only be permitted in markets with demonstrated liquidity needs. Better Markets also recommends full capital independence between the trading venue and the affiliated trading firm. DCMs are SROs with market-wide oversight responsibilities. The Commission should caution against the possibility that a DCM could be pressured to bail out a faltering trading arm. We are not alone in questioning "whether it is necessary to allow a DCM or SEF to have an affiliate liquidity provider that trades on the DCM or SEF market given the ability to create liquidity provider incentive programs through rule submission filings to the Commission to incentivize unaffiliated liquidity providers to trade on their markets."[29]

Again, Better Markets is tentatively supportive of the option for trading venues to designate an independent third-party RSP to conduct surveillance on the affiliated market-making exception. The above-referenced concern about financial and operational independence of RSPs persists.

III. Affiliations Between DCOs and Clearing Members

Like in the case of DCMs, DCO responsibilities as SROs are fundamentally incompatible with also being an FCM member of that SRO. But the stakes with regard to DCOs are potentially

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[28] *See* Purdum, David and Shwetha Surendran. "How Kalshi and prediction markets are disrupting sports betting." *ESPN*, Un. 2, 2025. Available at: https://www.espn.com/espn/betting/story/_/id/45377686/kalshi-prediction-markets-disrupt-sports-betting. "As far as the product is concerned, we are not the house," Sara Slane, head of corporate development at Kalshi, told ESPN. "We are simply an exchange. So we sit between people that are buying contracts on a yes and a no side. We don't win by people losing. And we don't lose by people winning. We simply sit in between that transaction."

[29] *See* Cboe Global Markets, Inc., "Comment Letter Re: Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities Issued on Jun. 27, 2023," Sept. 28, 2023, at 3. Available at https://cdn.cboe.com/resources/government_relations/FINAL-Cboe-Response-to-CFTC-RFC-Affiliated-Entities.pdf.

even greater than in the case of DCMs, as these entities are central to risk management across the derivatives ecosystem. A failure to rigorously calibrate and enforce margin requirements or to maintain adequate financial resources could lead to financial stability events.

If a DCO has an affiliated clearing member, "conflicts of interest will arise in instances where the DCO has discretion in the application of its rulebook, such as setting margin requirements, tailoring margin to special portfolios, calibrating margin add-ons, especially for large positions . . ., managing a default event, liquidating a portfolio and rule enforcement."[30] So, for example, by not collecting enough margin from an affiliate FCM, or failing to engage disciplinary procedures with that affiliate FCM, the DCO could impose cascading losses that are absorbed by competitor FCMs in the ecosystem. Particularly as the Commission introduces trading 24 hours a day and 7 days a week, as well as trading in perpetual futures, DCO resiliency is crucial.

Again, Better Markets recommends a structural separation approach, and we are not alone in believing that existing regulations "do not sufficiently address the potential for conflicts of interest where a DCO has SRO supervisory authority over an affiliated intermediary."[31] If the Commission declines to adopt such an approach, we recommend prescriptive rules rather than principles-based rules and rules rather than guidance. The regulatory alternatives suggested that aim to bolster FCM capital or DCO resiliency in affiliated structures, or seek to cap volume exposure or impose more independence in governance, are well considered and could also mitigate the potential for conflicts of interest to metastasize into financial stability events.

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30 *See* International Swaps and Derivatives Association, Inc., "Comment Letter Re: Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities," Sept. 28, 2023, at 3. Available at https://www.isda.org/a/W57gE/ISDA-Response-to-CFTC-on-Conflicts-of-Interest-Between-DCOs-and-Affiliated-Clearing-Members.pdf.

31 *Id.* at 2; *see also FIA responds to CFTC retail DCO request with suggestion for simplified regulatory approach,* Futures Industry Association, Feb. 27, 2026 ("FIA's letter also explains how existing CFTC regulations do not sufficiently address the potential for conflicts of interest where a DCO has supervisory authority over an affiliated intermediary. Addressing this omission may require a fundamental reconsideration of the controls a DCO in a vertically integrated structure is required to implement. Where a DCO is permitted to have an affiliated FCM clearing member, the CFTC should require any such DCO to insulate its commercial interests from its supervisory and oversight functions. This includes prohibiting the DCO from carrying out audits under CFTC Regulation 1.52 of either its affiliated FCM clearing member or any non-affiliated clearing members."). Available at https://www.fia.org/fia/articles/fia-responds-cftc-retail-dco-request-suggestion-simplified-regulatory-approach.

IV. Conclusion

We hope that you find these comments useful as you deliberate the responses to the Proposal. We would welcome the opportunity to discuss these issues with you further.

Sincerely,

Amanda L. Fischer
Policy Director & Chief Operating Officer
afischer@bettermarkets.org

Benjamin L. Schiffrin
Director of Securities Policy
bschiffrin@bettermarkets.org

Better Markets, Inc.
2000 Pennsylvania Avenue, NW
Suite 4008
Washington, DC 20006
(202) 618-6464
http://www.bettermarkets.org