Nick Lundgren
Chief Legal Officer
Underdog Sports Holdings, Inc.
nick.lundgren@underdogsports.com

October 5, 2026

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission ("CFTC" or "Commission")
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

re: Conflicts and Affiliations, RIN 3038-AF76

Dear Mr. Kirkpatrick:

Underdog Sports Holdings, Inc. ("Underdog") respectfully submits this comment letter in response to the Commission's proposed Conflicts and Affiliations rules ("Proposed Rule").[1] Founded in 2020 as a sports entertainment platform, Underdog also offers U.S. consumers access to products in prediction markets through its affiliated futures commission merchant ("FCM"),[2] designated contract market ("DCM"),[3] and derivatives clearing organization ("DCO").[4] Throughout the company's history, consumer protection and responsible play have been pillars of our corporate culture. We therefore have a keen interest in and appreciate the opportunity to contribute to the Commission's laudable efforts to establish rules of the road to protect customers, ensure the integrity of our markets, maintain a level playing field for competition, and leave space for responsible innovation.

Chairman Selig's commitment to the "minimum effective dose of regulation" is the right approach,[5] and we commend the Commission's decision to address these proposed rules through notice-and-comment rulemaking. However, we encourage the Commission to reconsider its proposal to mandate that affiliated market makers' ("AMMs") orders must be filled last at every price level (the "Subordination Rule").

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[1] *Conflicts and Affiliations*, 91 Fed. Reg. 50926 (Aug. 6, 2026) ("NPRM").

[2] UDM, LLC (d/b/a Underdog Predict).

[3] Underdog Exchange DCM, Inc. (d/b/a UDX).

[4] Underdog Clearinghouse, Inc.

[5] CFTC Rel. 9287-26, *CFTC Seeks Public Comments on Proposed Elimination of SEF Order Book Requirement for Permitted Transactions* (Aug. 20, 2026), https://www.cftc.gov/PressRoom/PressReleases/9287-26.

We support the Commission's goals in proposing the Subordination Rule: "preserving an affiliate market maker's ability to supply liquidity while ensuring that it does so on terms no more favorable than those available to unaffiliated members, thereby protecting the integrity of the market and the competitive position of unaffiliated participants."[6] Fair competition and parity in opportunity to trade are foundational to well-regulated markets, including Underdog's. A market that is not fair is not healthy, and all markets should have guardrails to ensure that they exhibit exactly the conditions the Commission seeks to promote.

However, we are concerned that the Subordination Rule is ill suited to that purpose. Ensuring fair and equal treatment in order execution is one thing; mandating subordination, on the other hand, adds little or nothing to the Commission's goals of protecting competition and market integrity, while imposing substantial burdens that may ultimately land on the customers the Commission seeks to protect. The Subordination Rule also likely does not fall within the Commission's authority under the Commodity Exchange Act ("CEA"). Finally, as explained below, the NPRM's analysis does not sufficiently justify it and rests on an incomplete consideration of costs and benefits.

In the final rule, the Commission should clarify that DCMs will not be permitted to offer markets that fail to protect unaffiliated members or that otherwise lack integrity. That can be accomplished under market-standard price-time priority rules with sensible controls that the Commission recognizes as effective. That is the minimum effective dose of regulation, consistent with the principles-based approach that has been the agency's hallmark and that has allowed responsible market innovation to flourish in the United States.

I. The Commission Lacks the Statutory Authority to Prohibit a DCM from Utilizing Ordinary Price-Time Priority.

Unlike other aspects of the proposal, the Commission's authority to impose the Subordination Rule rests on shaky ground, which should give it pause before finalizing the proposal. The NPRM cites Core Principles 2 ("CP 2"), 9 ("CP 9"), and 16 ("CP 16") as the bases for the Subordination Rule and, as the Commission recognizes, its rulemaking authority is limited to regulations that are "reasonably necessary to effectuate" the CEA's provisions or purposes.[7] The core principles it cites, however, variously do not apply and/or cut against the proposal.[8]

a. Core Principle 2 Does Not Apply and Does Not Square with the Subordination Rule.

CP 2 relates to access requirements, not trade execution. As relevant here, it requires a DCM to "establish, monitor, and enforce … access requirements."[9] Order priority and market access are

[6] 91 Fed. Reg. at 50953.

[7] *Id.* at 50928.

[8] *Id*. at 50951.

[9] 7 U.S.C. § 7(d)(2)(A)(i).

different concepts, and where Congress intended to address trade execution, it said so explicitly in CP 9.[10]

Historically, the Commission has correctly understood "access requirements" to mean the conditions on which a person becomes and remains a participant on an exchange. Its existing CP 2 regulations codified in Rule 38.151 illustrate the point: They address criteria for trading privileges; denial, suspension or revocation of those privileges; fee structures; and a requirement that any member or market participant consent to the exchange's jurisdiction before being allowed to trade.[11] These are gatekeeping functions, consistent with the text of the statute.[12] Execution priority comes into play only once the DCM has already *granted* access and a market participant attempts to trade.

That mismatch aside, the Commission has long maintained that a DCM's access requirements must be "impartial,"[13] and the NPRM's discussion of the Subordination Rule cites Rule 38.151's impartial-access requirement as support.[14] But the Subordination Rule would not ensure trade execution that is impartial—it would in fact disallow impartiality, explicitly discriminating against certain market participants on the basis of corporate affiliation while advantaging others. The Commission explained in adopting the impartial access requirement that "access to a DCM should be based on the financial and operational soundness of a participant, not on factors that could bar access and result in discriminatory access or act as a barrier to entry."[15] To justify Rule 38.151, it cited the benefits of "improv[ing] competition within the market by ensuring access criteria do not inappropriately deter market participants from participating," and "potentially increasing liquidity."[16] The proposed Subordination Rule would undercut both of these goals by diminishing an AMM's incentives to participate, while doing nothing to ensure that access is based on a participant's financial and operational soundness.

b. The Subordination Rule Is Incompatible with Core Principle 9.

CP 9 requires a DCM to "provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process."[17] The NPRM misses the mark here too. The Commission has explained in related contexts, including when considering implementing rules for CP 9, that in a competitive, open, and efficient market, the participants

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[10] *Id.* § 7(d)(9).

[11] 17 C.F.R. § 38.151.

[12] *Id.*

[13] *See, e.g.,* 91 Fed. Reg. at 50928-29; *see also* 17 C.F.R. § 38.151(b).

[14] 91 Fed. Reg. at 50951.

[15] *Core Principles and Other Requirements for Designated Contract Markets*, 77 Fed. Reg. 36612, 36625 (Jun. 19, 2012).

[16] *Id.* at 36673.

[17] 7 U.S.C. § 7(d)(9)(A).

must be "treated equally in terms of service and costs,"[18] and that an acceptable trade matching algorithm is one that "matches trades fairly and timely."[19] Commission staff has likewise cited "equal opportunity for obtaining order execution" as an important factor in evaluating an execution methodology.[20] Those statements align with the Commission's goal here of ensuring that AMMs trade on terms no more favorable than those available to unaffiliated members.

The Subordination Rule, however, would invert those principles. Rather than requiring a neutral execution methodology under which similarly situated orders compete according to the objective characteristics of those orders, the rule would require DCMs to assign inferior priority based on the participant's identity. That is not equal treatment or equal opportunity for execution, nor is it matching trades fairly.

It is also inconsistent with how the Commission has applied CP 9 in the past. In the Commission's 2012 rulemaking to implement the core principles for DCMs, commenters called for "throttling" (*i.e.*, placing limits on how many messages a market participant can send to an exchange's trading system in a set period of time) to ensure, among other things, that "all participants are able to … access the matching engine at the same speed."[21] The Commission rejected that suggestion as "not … reasonable."[22] If it is unreasonable to require access to a matching engine at the same speed, it is all the more so to require a DCM to subordinate a market participant's earlier order to another that comes along later.

The Subordination Rule is accordingly at odds with CP 9's requirement that the execution mechanism itself be competitive, open, and efficient. At a minimum, it is not reasonably necessary to effectuate its purpose.

c. Core Principle 16 Does Not Apply.

CP 16 is also unrelated to the identified potential conflicts of interest. It reaches only conflicts of interest in the DCM's "decision-making process."[23] The Commission's existing CP 16 framework is predicated on that textual limitation.[24] Appendix B to the Part 38 rules addresses issues of governance, independence, and process safeguards through a list of acceptable practices on board

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[18] 77 Fed. Reg. at 36649.

[19] 17 C.F.R. § 48.7(b)(2).

[20] Div. of Trading & Mkts., Commodity Futures Trading Comm'n, Memorandum to the Commission on the Application of Cantor Financial Futures Exchange, Inc. for Designation as a Contract Market (Sept. 4, 1998), (approving special trading privileges that departed from strict price-time priority, but those privileges were earned by conduct and each trader retained "an equal opportunity for obtaining order execution"), *available at* https://www.cftc.gov/sites/default/files/opa/press98/opacffefinal.htm.

[21] 77 Fed. Reg. at 36649.

[22] *Id.*

[23] 7 U.S.C. § 7(d)(16).

[24] *See* 17 C.F.R. appendix B ("Core Principle 16 of section 5(d) of the Act").

composition, public directors, regulatory oversight committees, disciplinary panels, and control of material non-public information in the possession of decision-makers.

The issues covered under the Commission's CP 16 framework all concern a DCM's "decision-making process," in the ordinary sense, in the presence of conflicts. The Subordination Rule would be a fish out of water. It would not address conflicted decision-making—it prescribes the substantive outcome of the DCM's microstructure-level market operations. CP 16 does not authorize that.

II. The NPRM Does Not Adequately Justify the Subordination Rule.

As the NPRM describes, the Subordination Rule would institute differential treatment of affiliated intermediaries and AMMs: "a principles-based conflicts-of-interest framework applicable to any affiliate market participant, and, for an affiliate principal trading firm, a more prescriptive set of requirements."[25] Generally speaking, the Proposed Rule would require typical prophylactic measures with respect to an affiliated intermediary, but impose prescriptive trade-execution requirements only with respect to AMMs. If the Commission is to finalize the Subordination Rule, it will need to rationally explain the basis for the divergent approaches,[26] which the proposal does not adequately do.

The foundation of the NPRM's reasoning for differential treatment is the Commission's preliminary conclusion that these situations "present conflicts that differ in kind."[27] But rather than detailing different *kinds* of conflicts, the NPRM details potential differences in *motivation*—specifically, that the potential financial gain for a DCM advantaging an AMM in the execution process at the expense of unaffiliated market participants may be greater than it would be for abusing its relationship with an affiliated intermediary. But the *kinds* of conflicts the NPRM identifies for intermediaries and for AMMs are closely similar:

Conflict	Affiliated intermediary	Affiliate principal trading firm
Discretion over terms bearing on competitive position	Discretion across surveillance, investigations, rule enforcement, product listing, with structural incentive to favor affiliate.[28]	Control over access, latency, market data, order priority, with direct financial incentive to advantage affiliate.[29]

[25] 91 Fed. Reg. at 50944.

[26] *Republic Airline, Inc. v. U.S. Dep't of Transp.*, 669 F.3d 296, 300 (D.C. Cir. 2012) ("It is axiomatic that an agency must treat similar cases in a similar manner unless it can provide a legitimate reason." (internal citations omitted)).

[27] 91 Fed. Reg. at 50944.

[28] *Id.* at 50945.

[29] *Id.* at 50949.

Conflict	Affiliated intermediary	Affiliate principal trading firm
Access to participants' non-public information	Order flow, positions, and financial and risk information obtained through surveillance and examination, which may be shared with or used to benefit affiliate.[30]	Order flow and resting order-book information, which affiliate may convert into proprietary profit.[31]
Self-regulation against commercial interest	Commercial interest in affiliate may affect rigor and timeliness of supervision and enforcement; regulatory staff report to management with commercial responsibility for affiliated enterprise.[32]	Exchange's self-regulatory functions run against commercial interest in affiliate's trading; it is asked to investigate and discipline source of own revenue.[33]
Clearing-side discretion	DCO affiliated with clearing member has discretion over margin, distress and default determinations, default management.[34]	Conflict compounded where exchange is affiliated with the clearinghouse, adding discretion over margin, auto-liquidation, default management.[35]
Perceived preference	Participants may conclude they are systematically disadvantaged and direct activity elsewhere unless they lack alternatives.[36]	Same.[37]

Despite these close similarities, the NPRM takes the view that while measures like disclosure, documentation, information barriers, and separate office space will be sufficiently effective to prevent conflicts resulting from relationships between DCMs and affiliated intermediaries, they are insufficient as between DCMs and AMMs.[38] However, there is no reason to believe that is true.

A DCM motivated to treat unaffiliated market participants unfairly could attempt to do so whatever the order-priority rule, and a failure of controls could occur in either context. Adherence to a neutral system can be audited as readily as adherence to the Subordination Rule. To detect any issues would require simply comparing the audit trail, which must be "sufficient to track customer orders from the time of receipt through fill, allocation, or other disposition,"[39] to the rule the exchange has published. At the same time, affiliates' compliance with disclosure, documentation, information barriers, and separate office space requirements and the like would be scrutinized in

[30] *Id.* at 50935, 50945-46.

[31] *Id.* at 50949.

[32] *Id.* at 50935-36, 50941-42.

[33] *Id.* at 50949.

[34] *Id.* at 50959-60.

[35] *Id.* at 50949.

[36] *Id.* at 50935.

[37] *Id.* at 50946.

[38] *Id.* at 50949.

[39] 77 Fed. Reg. at 36643.

an ordinary examination. Although a structural remedy might be justifiable for issues that are difficult to detect, failure to enforce price-time priority is not.

Order priority is worthy of the Commission's attention. An exchange that controls the sequence in which competing orders are filled holds a lever it can use to favor an affiliate. But the Subordination Rule is misaligned with the Commission's goal of ensuring fair treatment.

III. The Subordination Rule Would Harm Consumers and Impede Price Discovery.

In addition to being a poor fit with the Commission's objectives, the Subordination Rule would be unlikely to work. Instead, it would create incentives that would distort markets and harm consumers.

Under a price-time priority system, a market maker can trade either by improving its quote or by joining at the same price and waiting its turn in the queue. Waiting, however, has costs—that is part of what motivates a market participant to improve its offer. The Subordination Rule would eliminate for unaffiliated market makers the cost of waiting *vis-à-vis* an AMM, because those unaffiliated market makers could obtain execution priority by just matching the AMM's quote rather than beating it. The AMM, by contrast, must pay a tick of improvement to obtain what time priority would otherwise have given it. If the AMM declines to pay, spreads would remain wider than they would be under neutral price-time priority, and any market participants willing to cross those spreads (who may be disproportionately retail) would transact at worse prices. On the other hand, if the AMM does decide to pay, it would earn less on every fill; the resulting tightening would last only as long as the AMM remains willing to quote; and customers may foot the bill in the form of other charges to make up for lost revenue.

That disincentive would be paired with another in the form of elevated inventory risk. An AMM that quotes continuously in a thin market bears the risks of maintaining two-sided liquidity. A market maker typically sheds that risk by improving its price to attract the other side, but an improved quote would still be filled last at that price, so the AMM's ability to manage risk in the ordinary course would be impaired. Imagine an event contract that predicts whether it will snow on Christmas Day: One rational response by an AMM would be to refrain from posting tight, two-sided liquidity in significant volume early in the year when the market is new and thin, and to enter fully only once customer volume has developed closer to December 25th. That would be directly at odds with the Commission's stated justification for allowing *bona fide* AMMs in the first place, to attract market makers to thin markets.[40]

Collectively, the economic consequences may be borne by customers. If the affiliated market maker's trading revenue forms part of the economics supporting the exchange, reducing that revenue may cause the affiliated enterprise to seek recovery elsewhere in the form of increased fees or reduced incentives. The Subordination Rule also may reduce the desirability for exchanges to offer new and innovative products whose markets may start off thin.

[40] 91 Fed. Reg. at 50949-50.

These negative effects may likewise harm price discovery. The Commission relies on CP 9 as a primary statutory basis for the rule, the text of which states that CP 9's purpose is to ensure a "mechanism for executing transactions that protects the price discovery process."[41] As the NPRM correctly explains, price discovery is improved "by increasing the total amount of information embedded in prices through better participation in trading."[42] Competition among liquidity providers is a critical component of that, and less aggressive quoting may make prices less informative. That consequence again cuts against the Commission's recognition that affiliated liquidity may be useful in establishing viable markets and facilitating early price formation.

These concerns underscore the broader mismatch between the conflict the Commission has identified and the remedy it has proposed. If the concern is that a DCM may favor an affiliated market maker, that can be addressed by requiring neutral matching rules along with the set of safeguards the Commission has proposed for affiliated intermediaries. The proposed Subordination Rule goes too far by prescriptively replacing that potential conflict of interest with distorted incentives that may harm customers and the markets themselves.

IV. The Commission's Consideration of Costs and Benefits Is Flawed.

The NPRM's consideration of costs and benefits uses flawed methodology that substantially underestimates the true impact of the Subordination Rule. Specifically, the Commission recognizes the "adverse selection" cost of the rule, *i.e.*, that AMMs would trade disproportionately against informed participants. Based on one example of a single market, the NPRM estimates the cost of the Subordination Rule to be a daily average of $750.[43] That estimate is incomplete and orders of magnitude too low for DCMs with many markets.

First, the NPRM's quantification omits the loss of spread revenue that an AMM would otherwise earn but never does because unaffiliated market makers absorb most or all of the flow. This cost results from the same mechanism as the adverse-selection cost. Subordination removes the AMM from the fills that unaffiliated market makers absorb, leaving it with only the residual. Assume, again in the weather context, that an AMM continuously maintains *bona fide* two-sided quotations in a late-year weather market during the relatively less volatile early-year period. If large, unaffiliated quotations are resting at the same prices, the incoming flow may be diminished or entirely exhausted before the AMM can execute at all throughout the period, so it earns none of the expected market-making return.

Second, the NPRM's consideration of costs does not account for the fact that major DCMs may list thousands of markets at any given time. Multiplied across many markets, the opportunity and adverse-selection costs could amount to many millions of dollars. In the case of a large exchange, the estimate of $750 per day captures just a small sliver of the aggregate, while the true costs (which, again, may ultimately fall on consumers) dramatically outweigh any benefit of the

[41] 7 U.S.C. § 7(d)(9).

[42] 91 Fed. Reg. at 50983.

[43] *Id.* at 50980.

Subordination Rule. At a minimum, before adopting any such requirement, the Commission should evaluate the full economic effects.

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Thank you again for the opportunity to participate in the Commission's rulemaking process. On the whole, the proposal is a step in the right direction of creating an environment where fair and healthy markets can flourish. We encourage this single change to ensure the "minimum effective dose of regulation."

Sincerely,



Nick Lundgren
Chief Legal Officer
Underdog Sports Holdings, Inc.