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October 5, 2026

VIA ELECTRONIC SUBMISSION (https:// www.regulations.gov)

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 (91 Fed. Reg. 50926 (Aug. 6, 2026))

Dear Secretary Kirkpatrick:

Derive Labs Corporation ("***Derive***") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("***CFTC***" or the "***Commission***") Notice of Proposed Rulemaking entitled *Conflicts and Affiliations* (the "***NPRM***").[1]

Derive operates an on-chain derivatives platform that currently provides non-U.S. market participants access to options and perpetual contracts referencing certain digital assets.[2] Derive is working toward bringing a regulated version of its platform to U.S. participants through a contemplated vertically integrated structure that would include affiliated designated contract market ("***DCM***"), derivatives clearing organization ("***DCO***"), and futures commission merchant ("***FCM***") entities under common ownership.[3] Derive anticipates that its affiliated FCM will facilitate trades on its DCM and that unaffiliated, third-party FCMs will participate in its markets over time.

Derive supports the Commission's effort to establish a consistent, clear, and transparent regulatory baseline for conflicts arising from affiliations among CFTC-regulated entities.[4] Derive's contemplated market structure is intended to include participation by unaffiliated FCMs and other intermediaries, whose participation can expand customer access, deepen liquidity, and promote competition. Derive therefore has a direct interest in conflicts safeguards that give those participants confidence that its markets and clearing will operate impartially.

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[1] Conflicts and Affiliations, 91 Fed. Reg. 50926 (Aug. 6, 2026), *available at* https://www.govinfo.gov/content/pkg/FR-2026-08-06/pdf/2026-15948.pdf [hereinafter NPRM].

[2] Derive, *About Derive*, https://www.derive.xyz/about (last visited October 5, 2026).

[3] *See* Nicholas Forster, Director, Derive Labs Corporation, Comment Letter on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (Aug. 24, 2026), https://www.regulations.gov/comment/CFTC-2026-1355-0053.

[4] NPRM at 50932.

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Derive's recommendations are intended to ensure that the final rules address the conflicts presented by affiliation without imposing unnecessary structural costs, particularly on newly designated or registered entities. Derive's specific recommendations are set out below.

I. The Final Rules Should Address Affiliate Conflicts Without Creating Unnecessary Barriers to Entry

As the Commission acknowledges, affiliated and vertically integrated structures can benefit derivatives markets and market participants by promoting operational efficiencies and competition.[5] Those efficiencies can be particularly important for new and smaller entrants. Requirements that impose substantial fixed costs at the formation or early operating stage—including duplicative personnel and facilities or additional capital and financial-resource requirements—can fall disproportionately on firms that have not yet achieved scale. For technology-driven firms seeking to introduce new market structures, such requirements can become a meaningful barrier to entry even where the underlying conflicts could be addressed through less prescriptive safeguards.

The Commission has recognized that "facilitating market structure innovation and competition, subject to appropriate safeguards, advances the Commission's mission of promoting the integrity, resilience, and vibrancy of the U.S. derivatives markets."[6] Chairman Selig has similarly described the NPRM as establishing "principles-based regulations for vertically integrated market structures" designed to protect market integrity "without stifling novel market structures or imposing excessive compliance costs on registrants."[7]

Consistent with those objectives, Derive respectfully recommends that the Commission focus the final framework on the conflicts actually presented by affiliation and permit registrants to address those conflicts through controls suited to their structures rather than mandating particular organizational arrangements.

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[5] *See* NPRM at 50970.

[6] NPRM at 50927.

[7] Press Release No. 9274-26, CFTC, *CFTC Seeks Public Comment on Notice of Proposed Rulemaking Concerning Affiliations Among Certain CFTC-Regulated Entities* (July 30, 2026), https://www.cftc.gov/PressRoom/PressReleases/9274-26.

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II. Derive Recommends Targeted Revisions to Preserve Appropriate Safeguards and Operational Flexibility

a. Narrow the Scope of Information-Sharing Restrictions

The NPRM would restrict the sharing of "non-public information" with affiliated market participants and defines that term broadly by reference to whether the information has been disseminated in a manner that makes it generally available to the trading public.[8] This definition operates across the NPRM's information-sharing provisions, including the restrictions on access to and sharing of non-public information that proposed Regulation § 1.52(c)(1)(i)(D) would impose on a self-regulatory organization with an affiliate FCM.[9] The Commission requests comment on whether this concept is appropriately scoped, including whether it should be expressed in terms of materiality.[10]

As proposed, the definition could sweep in routine operational, administrative, and enterprise information that does not present the informational or conflicts risks the NPRM is intended to address. Derive respectfully recommends that the Commission adopt a more targeted definition focused on competitively sensitive non-public information—meaning information whose disclosure could reasonably be expected to confer an unfair informational, trading, or competitive advantage on an affiliate or compromise the registered entity's impartial exercise of its regulatory responsibilities. The final framework should also make clear that ordinary-course sharing of information necessary to support legitimate shared corporate functions remains permissible where the information does not present those risks, subject to appropriate controls protecting competitively sensitive trading, customer, surveillance, financial supervisory, and regulatory information.

Derive supports the protections in proposed Regulation § 1.52(c)(1)(i)(D), including protections for unaffiliated FCM information and the independence of SRO supervisory functions. Derive's recommendation is directed at the scope of the NPRM's broader "non-public information" concept and is not intended to permit sharing of supervisory information otherwise prohibited by that provision.

[8] NPRM at 50935-36.

[9] NPRM at 50936.

[10] NPRM at 50939.

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b. Preserve Flexibility for Registrants to Use Controlled Shared Services

The NPRM would impose personnel and physical office-separation requirements across several affiliate relationships involving DCMs and DCOs.[11] These requirements can impose significant fixed costs, particularly on early-stage entities, by requiring duplicative personnel, facilities, and other resources before their markets have achieved scale.

Derive supports appropriate independence for personnel responsible for surveillance, investigations, enforcement, risk management, default management, or other decisions directly affecting the treatment of an affiliate. At the same time, the final rules should not require wholesale duplication of personnel and facilities where other controls adequately address the relevant conflicts. Derive respectfully recommends that the Commission apply a principles-based standard requiring procedures reasonably designed to prevent misuse of non-public information, preferential treatment, and conflicted decision-making with respect to affiliates. Consistent with that approach:

(1) personnel and physical office separation should be required where necessary to preserve independent regulatory or risk-management decision-making, but otherwise should not be mandatory where other controls adequately address the conflict; and

(2) registrants should be permitted to share enterprise functions that do not exercise regulatory or risk-management decision-making authority with respect to the affiliate, including, as appropriate, legal and compliance advisory, cybersecurity, information security, internal audit, finance, and other administrative functions, subject to appropriate information barriers, access controls, monitoring, and independent oversight.

The NPRM already recognizes this functional distinction in certain contexts by permitting specified administrative and Systems Safeguards technology personnel to be shared and expressly requests comment on whether legal and compliance staff should also be shareable.[12] Derive recommends applying the principles-based approach outlined above consistently under proposed Regulations §§ 38.606, 38.852, and 39.25(d), without making particular personnel or office-separation measures mandatory where the registrant can demonstrate that other controls adequately address the conflict.

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[11] *See* NPRM at 50942-43 (DCM with affiliate FCM); *id.* at 50946-47 (DCM/SEF with affiliate market participant); *id.* at 50959-60 (DCO with affiliate clearing member).

[12] NPRM at 50947-48.

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Consistent with Derive's recommendation in Section IV below, if the Commission nevertheless retains mandatory personnel or physical office-separation requirements, it should consider appropriate transitional flexibility for newly designated or registered entities during the early stages of their operations, when the fixed costs of duplicative personnel and facilities may be particularly burdensome.

III. The DCO–Affiliate Clearing Member Framework Should Remain Principles-Based and Should Not Impose Prescriptive Financial or Loss-Allocation Requirements

Derive supports a principles-based approach to proposed Regulation § 39.25(d), which would require a DCO to maintain conflicts procedures with respect to an affiliate clearing member while preserving the DCO's discretion to manage risk and defaults.[13] Derive agrees with the Commission that preserving DCO discretion is important to effective, real-time risk and default management and that overly prescriptive structural requirements could impede that function.[14] Consistent with the principles-based approach described in Section II.B above, Derive respectfully recommends that the Commission permit DCOs to address affiliate conflicts through procedures and controls tailored to the risks presented by their particular structures, rather than prescribing specific structural or organizational measures.

Derive urges the Commission not to adopt the more prescriptive alternatives discussed in the NPRM, including a segmented skin-in-the-game tranche; restrictions on mutualizing an affiliate clearing member's losses; heightened net capital, residual interest, or guaranty-fund-priority requirements for an affiliate FCM; supplemental financial resources at the DCO; or volume caps.[15] These measures would prescribe specific financial and risk-allocation requirements based solely on affiliation, rather than allowing the DCO to tailor safeguards to its risk profile, default-management framework, and other relevant circumstances. They could impose substantial capital, liquidity, and operational burdens without a demonstrated connection to the conflicts presented by affiliation, creating significant barriers to entry for newly registered DCOs and their affiliated clearing members.

IV. The Commission Should Provide Transitional Flexibility for Newly Registered Entities

If the Commission retains mandatory structural requirements in the final rules, Derive recommends that it provide appropriate transitional flexibility for newly designated or

[13] NPRM at 50959-60.

[14] NPRM at 50960.

[15] NPRM at 50961-62.

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registered entities. The significance of affiliation-related conflicts may vary depending on an entity's structure, scale, trading activity, participant base, and the extent of activity attributable to affiliates. Allowing new registrants to phase in structural requirements as those risks develop would avoid imposing substantial fixed costs before they are warranted, while preserving the Commission's core conflicts protections.

Such an approach would also further the Commission's statutory obligation under Section 15 of the CEA to consider the efficiency, competitiveness, and financial integrity of the futures markets and to endeavor to use the least anticompetitive means of achieving the objectives of the CEA.[16] Transitional flexibility would permit newly designated or registered entities to implement additional structural safeguards as their activities and affiliated relationships develop, rather than requiring the full cost of those measures at the outset regardless of the conflicts actually presented.

By reducing unnecessary barriers to entry while maintaining appropriate conflicts safeguards, this approach would promote competition among trading venues and clearing organizations and could support greater product innovation, lower transaction costs, and reduced concentration of trading and clearing activity.

V. Conclusion

Derive is prepared to make the significant investment necessary to bring its technology and products into the U.S. regulatory perimeter. In finalizing the NPRM, Derive respectfully asks the Commission to (1) focus the information-sharing restrictions on competitively sensitive non-public information, (2) permit controlled sharing of personnel where regulatory and risk-management independence is preserved, (3) retain a principles-based framework for DCO conflicts involving affiliate clearing members, and (4) provide appropriate transitional flexibility for newly designated or registered entities.

Derive appreciates the Commission's consideration of these comments. If you have any questions or would find it useful to discuss any of the foregoing, please do not hesitate to contact the undersigned at nick@derivelabs.xyz.

Respectfully submitted,

/s/ Nicholas Forster
Nicholas Forster
Director, Derive Labs Corporation

[16] 7 U.S.C. § 19(a)(2)(B), (b).