Via electronic submission

October 5, 2026

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

Re: Notice of Proposed Rulemaking on Conflicts and Affiliations (RIN 3038-AF76)

Dear Mr. Kirkpatrick:

Basis Market Holdings Inc. ("Basis Market") appreciates the opportunity to comment on the Commission's notice of proposed rulemaking on Conflicts and Affiliations (the "Proposal").[1]

Basis Market has applications pending before the Commission for designation as a contract market ("DCM") and registration as a derivatives clearing organization ("DCO"). We plan to offer perpetual futures on digital assets, serving retail and institutional participants through a commonly owned exchange and clearinghouse. Access to the market is intermediated by unaffiliated futures commission merchants ("FCMs"), and Basis Market does not operate, an affiliated market maker, futures commission merchant, or clearing member. We write from the perspective of a new entrant preparing to bring a new venue to market.

We support the Commission's objective: conflicts arising from affiliation between a registered entity and a market participant are real, and a clear framework is preferable to case-by-case resolution. However, we note that several of the Proposal's requirements would impose fixed costs that do not vary with the scale of the registrant, and the Commission's supporting analysis does not appear to account for their effect on early-stage registrants. Left uncalibrated, these requirements would have a unbalanced impact, making the affiliate structures the Proposal permits practically available to established registrants and disproportionately costly to new registrants.

1. The Regulatory Flexibility Act certification rests on determinations that no longer describe the population of registrants

The Commission has certified, pursuant to section 605(b) of the Regulatory Flexibility Act ("RFA"), that the Proposal will not have a significant economic impact on a substantial number of small entities. That certification rests on prior Commission determinations that DCMs, DCOs, and

[1] Conflicts and Affiliations, 91 Fed. Reg. 50926 (proposed Aug. 6, 2026) (to be codified at 17 C.F.R. pts. 1, 37, 38, 39) (the "Proposal").

futures commission merchants are categorically not small entities.[2] Under the RFA, an agency proposing a rule that may have a significant economic impact on a substantial number of small entities must ordinarily prepare an initial regulatory flexibility analysis and, at the final rule stage, a final regulatory flexibility analysis addressing the comments received, the rule's impact, and the significant alternatives considered.[3] Section 605(b) permits the agency to certify instead that the rule will not have that impact, and that certification relieves the agency of both analyses, provided the agency publishes a statement of the factual basis for it.[4]

Those determinations reflected a market in which exchanges and clearinghouses were large, established institutions. The Commission now receives, and has received for the past several years, numerous applications from newly formed entrants that have not yet commenced operations, who are newly capitalized and often appropriately but leanly staffed.[5] Basis Market is one such applicant. So long as the categorical exclusion remains in place, the Commission has no obligation under the RFA to analyze whether the Proposal's costs are proportionate to the size and resources of small registrants, or to evaluate less burdensome alternatives that would achieve the same conflict-mitigation objective.

We respectfully suggest that the categorical exclusion warrants revisiting. At a minimum, we ask the Commission to acknowledge in any final rule that the registrant population now includes entities that would meet any ordinary definition of a small business. We further ask the Commission to calibrate the rule accordingly, for example by adopting a phase-in period or a tiered compliance schedule for registrants below a defined revenue, volume, or other activity threshold. We would welcome the opportunity to provide non-public information regarding our own cost structure if that would assist the Commission's analysis.

2. Mandatory third-party oversight requirements should be scaled

The Proposal addresses these affiliations through two independent third-party oversight requirements. First, it would require a DCM with an affiliate principal trading firm to retain an independent third-party regulatory service provider ("RSP").[6] Second, it would require a self-regulatory organization with an affiliate futures commission merchant to designate an independent third-party designated self-regulatory organization ("DSRO") for the supervisory program required by Regulation 1.52(c).[7] These requirements would be implemented through proposed

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[2] *See* Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 Fed. Reg. 18,618, 18,619 (Apr. 30, 1982) (DCMs and futures commission merchants); A New Regulatory Framework for Clearing Organizations, 66 Fed. Reg. 45,604, 45,609 (Aug. 29, 2001) (DCOs).

[3] 5 U.S.C. §§ 603-604.

[4] 5 U.S.C. § 605(b).

[5] *See* CFTC, Trading Organizations - Designated Contract Markets (listing pending DCM applications), and CFTC, Clearing Organizations - Registered and Pending DCOs (listing pending DCO applications).

[6] Proposal, *supra* note 1, at 50952.

[7] Proposal, *supra* note 1, at 50936.

amendments to Regulation 38.606, which governs a DCM's use of a regulatory service provider, and to Regulation 1.52.

These are sound requirements in concept. The concern is their cost: retaining independent third-party oversight is largely invariant to the size of the entity being overseen. For an established registrant, the expense is marginal relative to existing compliance spend. For a new entrant, it is a fixed cost incurred in full before the first trade. The cost does not scale down because an RSP must maintain the staff, systems, and examination capacity necessary to deliver the service regardless of the registrant's trading volume, and the resulting fees reflect that fixed capacity rather than the volume of activity overseen.[8]

Without calibration, the affiliate structures the Proposal contemplates would remain available to well-capitalized incumbents while becoming unavailable to new entrants, not because new entrants present greater conflicts risk, but because they cannot absorb such a potentially high fixed cost. We do not believe that is the Commission's intent.

We suggest that the Commission consider a scale-sensitive approach: below a defined activity threshold, the registrant would perform these functions internally, subject to Regulatory Oversight Committee supervision and periodic independent validation, such as an annual independent audit of the effectiveness of the internal oversight function, with the third-party mandate attaching as the registrant, and the volume on its platform and thus its impact on the market, grows. The threshold could be set by objective measures, such as annual contract volume or the number of customer accounts carried, so that external oversight applies once a registrant's activity reaches a level that warrants the additional fixed cost.

3. The Appendix B acceptable practices should remain guidance

The Commission asks whether some or all of the proposed acceptable practices should be codified in rule text. We respectfully urge that they not be. Acceptable practices set out in Appendix B to Part 38 have historically functioned as safe harbors under the core-principles regime established by the Commodity Futures Modernization Act of 2000: a registrant that follows an acceptable practice is deemed to comply with the corresponding core principle, while a registrant that takes a different approach remains free to demonstrate compliance by other means.[9]

The Commission's own stated concern is well taken. A prescriptive mandate could impose costs by restricting firms from adopting reasonable approaches that differ from those set out in the acceptable practices, and could deter entry and competition.

There is a further reason to maintain flexibility. The acceptable practices in Appendix B were drafted against a particular market landscape. In 2007, when the Commission adopted its first

[8] *See* Proposal, *supra* note 1, at 50972 (discussing the costs associated with the proposed third-party oversight requirements).

[9] *See* Commodity Futures Modernization Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763; 7 U.S.C. § 7(d); 17 C.F.R. pt. 38, app. B.

acceptable practices for Core Principle 15, it framed its objective as adapting existing governance standards to "the market and business realities of a new era for the industry."[10] That era was defined by demutualization: the conversion of member-owned, not-for-profit exchanges into for-profit, publicly traded corporations. The acceptable practices addressed "the structural conflicts that are the subject of these proposed Acceptable Practices" in organizations of that kind: large, established institutions with departmentalized staffs and the headcount to support duplicate functions.[11]

The Commission now receives applications from registrants operating in market segments and under business models that did not exist when those practices were formulated. Prediction markets list large and continually refreshed universes of short-lived, idiosyncratic contracts. Crypto-native platforms are designed around smart-contract infrastructure from inception. Vertically integrated structures, in which an exchange, clearinghouse, and intermediary or market maker share common ownership, have become what Chairman Selig has called "one of the novelties the Commission is seeing in its markets today."[12] These registrants were not the paradigm the acceptable practices addressed, and there is no reason to assume that the organizational separations suited to a demutualized, departmentalized incumbent will be the optimal, or even a workable, compliance path for all registrants.

Several of the proposed separations illustrate the point. The acceptable practice calling for separate physical office space with physical barriers and a prohibition on shared staff outside administrative and systems-safeguards functions presupposes an organization with the headcount and physical footprint to support duplicate functions.[13] A registrant that designs its technology stack from inception can achieve equivalent or better information separation through technical controls, logical access segregation, and audited system boundaries. It could, for example, deploy role-based access controls that prevent market-surveillance personnel from viewing affiliate trading positions, audit logs that record every instance of cross-departmental information access, and automated alerts for attempted policy violations. These are not workarounds; they are the native compliance architecture for a registrant built on modern infrastructure.

Retaining these provisions as acceptable practices would preserve the Commission's ability to test outcomes rather than form, consistent with the core-principles regime.

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[10] Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations, 72 Fed. Reg. 6936, 6937 (Feb. 14, 2007).

[11] Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations, 71 Fed. Reg. 38740, 38741 (July 7, 2006) (proposed rule).

[12] Proposal, *supra* note 1, at 50948; Hearing Before the S. Comm. on Agriculture, Nutrition & Forestry, 118th Cong. (2024) (statement of Chairman Selig, CFTC).

[13] *See* Proposal, *supra* note 1, at 50943 (proposed Appendix B to Part 38, acceptable practices for separate office space with physical barriers and prohibition on shared staff outside administrative and systems-safeguards functions).

4. The Proposal's control-based definitions should be clarified as applied to venture-backed registrants

The Proposal defines affiliation by reference to control, meaning the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.[14] The Commission states that it has deliberately adopted a control-based formulation rather than a fixed ownership-percentage threshold, on the view that the relevant concerns turn on the ability to direct management and policies rather than on any particular equity stake. Further, the Commission asks whether that formulation is appropriately scoped.

We agree that a control standard is preferable to a bright-line percentage. We ask only that the Commission address an arrangement that falls well outside the conduct the Proposal targets.

Institutional investors in privately held registrants customarily hold board representation and negotiated approval rights over specified corporate actions. Read literally, "by contract, or otherwise" could be understood to reach these ordinary investor protections, with the result that any market participant sharing a common investor could be treated as an affiliate notwithstanding the absence of any operational relationship between them.

Separately, we suggest that the Commission adopt a bright-line safe harbor under which an ownership interest of ten percent or less in the voting securities of a registered entity or market participant would not, standing alone, constitute control. This would provide needed certainty for minority investors, strategic partners, and registrants raising capital from multiple sources. The Proposal's control-based formulation is sound as a substantive matter, but it leaves registrants without a clear answer when an investor holds a meaningful but plainly non-controlling stake. A ten-percent threshold would align with the Commission's own position limits aggregation rules, which use a ten-percent ownership threshold as the trigger for aggregation under Regulation 150.4, and with other financial regulatory regimes that treat minority stakes below that level as presumptively non-controlling.[15]

We ask the Commission to confirm in the adopting release, or in rule text, that customary investor protective provisions do not, standing alone, constitute control. Absent that clarification, a registrant would face material uncertainty about the scope of its own affiliate obligations arising from its capital structure rather than from its conduct.

5. The Commission should assess the cumulative burden on entities holding multiple registrations

The Proposal's cost analysis is organized by requirement category. It does not assess the aggregate burden on a single enterprise that holds more than one registration.

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[14] Proposal, *supra* note 1, at 50935 (proposed 17 C.F.R. § 38.852(a)).
[15] 17 C.F.R. § 150.4(a)(1).

An entity operating both a DCM and a DCO would be subject to the conflicts-procedures, disclosure, systems-separation, and oversight obligations of each, together with the separate compliance apparatus each requires. These obligations are additive. An enterprise entering with multiple registrations therefore faces a materially larger compliance burden than the per-requirement analysis reflects, and that burden falls most heavily at the point of entry, before any operating revenue exists to absorb it.

We ask the Commission to assess cumulative impact on an entity-wide basis and to consider whether phase-in or tiering is warranted where a single enterprise is subject to several sets of requirements simultaneously.

6. The DCO-affiliate clearing member provisions should preserve DCO discretion over time-sensitive risk decisions

Proposed Regulation 39.25(d) would require a DCO with an affiliate clearing member to maintain conflict-management procedures, and proposed Regulation 39.21(c)(9) would require public disclosure of the affiliation.[16] We support both. The Commission has not proposed prescriptive requirements for margin-setting or default-management discretion involving an affiliate clearing member, but Questions 64 and 65 ask whether rule text or guidance should address those topics.[17] We urge the Commission to preserve DCO discretion over margin-setting and default-management decisions. Margin calls and default declarations are time-sensitive. A DCO must be able to act quickly and exercise judgment in volatile conditions. Requiring an independent third party to approve margin-setting or default-management decisions in real time, or requiring the DCO to apply formulaic rules that remove judgment, could impede the speed and flexibility that effective risk management requires. Procedures and disclosure, as proposed, are appropriate; prescriptive constraints on operational decisions are not. This concern is particularly acute for a new clearinghouse that may have a small number of clearing members at launch: independent-oversight requirements designed for a multi-member environment may not be workable at that scale.

We appreciate the Commission's consideration of these comments and would welcome the opportunity to discuss any of the foregoing with staff. We look forward to engaging constructively with the Commission as it calibrates the final rule.

Respectfully submitted,
Jason Li
President
Basis Market Holdings Inc.

[16] Proposal, *supra* note 1, at 50959-60 (proposed 17 C.F.R. §§ 39.25(d), 39.21(c)(9)).
[17] Proposal, *supra* note 1, at 50962 (Questions 64 and 65).