October 5, 2026

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

VIA ONLINE SUBMISSION

Re: Conflicts and Affiliations (CFTC RIN 3038–AF76)

Dear Mr. Kirkpatrick:

Miami International Holdings, Inc. ("MIH"), the parent company of MIAX Futures Exchange, LLC ("MIAX Futures") and Dorman Trading, LLC ("Dorman Trading"), appreciates the opportunity to submit this comment letter regarding the Commodity Futures Trading Commission's ("CFTC" or "Commission") notice of proposed rulemaking titled *Conflicts and Affiliations* ("Proposal").[1] MIH generally supports the Proposal's efforts to address how exchanges and their affiliates can identify and mitigate potential conflicts of interest. As explained further below, we believe there are a few aspects of the Proposal that could be clarified or revised to lessen regulatory burdens while still achieving the Commission's objectives.

I. Introduction

MIAX Futures and Dorman Trading are wholly-owned subsidiaries of MIH, a technology-driven leader in building and operating regulated financial markets across multiple asset classes and geographies. MIAX Futures is registered as a designated contract market ("DCM'") and derivatives clearing organization ("DCO") with the CFTC. Dorman Trading is registered as a futures commission merchant ("FCM") with the CFTC and is a notice-registered broker-dealer with the National Futures Association for purposes of facilitating transactions of security futures products. Dorman Trading is also a clearing member of MIAX Futures, making it an affiliate market participant pursuant to Proposed Regulation 38.352(a) and an affiliate clearing member pursuant to Proposed Regulation 39.2.[2]

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

[2] Proposed Rule 38.352 defines "affiliate market participant" as "any person (including any affiliate FCM or affiliate principal trading firm) that: (i) Directly or indirectly executes, introduces, or otherwise facilitates trades on or subject to the rules of the [DCM]."

II. Amendments to an SRO's Supervisory and Examination Program Obligations – § 1.52

Pursuant to CFTC Regulation 1.52(c), all self-regulatory organizations ("SROs") must establish and operate a supervisory program for assessing their member FCMs for compliance with applicable SRO rules and CFTC Regulations governing minimum net capital and related financial requirements, the obligation to segregate customer funds, risk management requirements, financial reporting requirements, recordkeeping requirements, and sales practice and other compliance requirements.[3] In order to avoid duplicative examination and oversight given that most FCMs are members of multiple exchanges, the Commission has allowed FCMs to be assigned a single designated SRO ("DSRO") that has "primary responsibility for monitoring and examining the financial condition" of the FCM.[4]

The Proposal would amend CFTC Regulation 1.52 to address potential conflicts of interest that could arise when a DCM is serving as SRO or DSRO for an affiliate FCM. Among other proposed amendments, the Proposal would (i) prohibit an SRO from serving as DSRO for an affiliate FCM;[5] (ii) require the examination staff of an SRO with an affiliate FCM to report directly to the Board, other designated committee, or officer responsible for the regulatory compliance of the SRO;[6] and (iii) restrict access to and sharing of non-public information between the SRO and affiliate FCM.[7]

MIH generally supports these amendments to CFTC Regulation 1.52. However, MIH respectfully requests that the Commission consider the following clarifications and modifications, which we believe will improve the regulation's efficacy while minimizing unnecessary confusion and cost.

A. Clarify the Meaning of Examination Staff and the Independent Reporting Line Requirement – § 1.52(c)(1)(i)(B)

Proposed Regulation 1.52(c)(1)(i)(B) would require that the examination staff of an SRO with an affiliate FCM must report directly to the Board, other designated committee, or officer responsible for the regulatory compliance of the SRO. MIH supports this requirement, but respectfully requests that the Commission clarify that "examination staff" includes staff performing market regulation and compliance functions, in addition to staff conducting actual examinations of FCMs.

Proposed Rule 39.2 defines an "affiliate clearing member" as a person that "(1) is a clearing member of a [DCO]; and (2) directly or indirectly controls, is controlled by, or is under common control with, the [DCO]. As used in the preceding sentence, *control* (including the terms 'controlled by' and 'under common control with') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a [DCO] or clearing member, whether through the ownership of voting securities, by contract, or otherwise."

3 17 C.F.R. § 1.52(c)(1).

4 Proposal at 50931.

5 Proposed Regulation § 1.52(c)(1)(i)(C) and § 1.52(d)(2)(ii)(C)(1)(ii).

6 Proposed Regulation § 1.52(c)(1)(i)(B).

7 Proposed Regulation § 1.52(c)(1)(i)(D).

MIAX Futures (along with all other exchanges that are not DSROs) does not perform on-site examinations over its clearing members, as that function as been delegated to the DSROs. As such, the staff of MIAX Futures primarily responsible for performing its SRO functions—the Market Regulation Department—do not generally consider themselves to be "examination staff." MIH believes the proposed amendment is intended to apply to the staff of an SRO that are performing its market regulation and compliance oversight functions under Regulation 1.52, in addition to the staff of a DSRO responsible for conducting periodic examinations. Alternatively, if that is not the Commission's intent, MIH respectfully requests that the Commission clarify that Market Regulation staff would not be subject to the proposed new requirement.

In addition, MIH supports the requirement that an SRO's examination and market regulation staff report to the Chief Regulatory Officer ("CRO") or Board (or committee of the Board), rather than commercial management. A reporting line to the CRO or Board helps ensure that personnel responsible for market regulation and compliance oversight are able to exercise their independent judgment without facing commercial pressures. As proposed, the regulation would require market regulation staff to report *directly* to the CRO. Currently, the staff of the MIAX Futures' Market Regulation Department all ultimately report to the CRO, who reports directly to the Regulatory Oversight Committee. However, certain Market Regulation staff directly report to a Manager within the Market Regulation Department, who provides day-to-day supervision over their activities. The Manager, in turn, directly reports to the CRO. All Market Regulation Department staff reporting directly to the Manager ultimately report to the CRO. MIH believes the Proposal should be revised to permit market regulation staff to report *directly* to an intermediate manager so long as they *ultimately* report to the CRO. We do not believe that intermediate reporting lines undermine the independence of the market regulation function and allowing for this additional flexibility increases the efficiency of the day-to-day management of the department.

B. Clarify that DCMs have SRO Responsibilities over All Members, including Affiliate FCMs – § 1.52(c)(1)(i)(C)

Proposed CFTC Regulation 1.52(c)(1)(i)(C) would require an SRO with an affiliate FCM to designate an independent third-party SRO to perform its required surveillance under CFTC Regulation 1.52.[8] As drafted, the Proposal could be read as requiring a DCM to outsource <u>all</u> oversight responsibility over an affiliate FCM to a third-party SRO, which we do not believe is the

[8] MIH understands that this independent third-party SRO would also be the affiliate FCM's DSRO. If this is not the case, and the Commission intends for the DCM to engage two separate SROs to perform oversight over the affiliate FCM, MIH believes this would unnecessarily increase costs to the DCM and would also create significant inefficiencies.

The Commission also requests comment about whether the delegating SRO should be strictly liable for the failure of a third-party SRO acting on its behalf. MIH believes the delegating SRO should only be liable if it was grossly negligent in its selection of the third-party SRO or had actual knowledge that the third-party SRO was failing to adequately perform its duties. A strict liability standard would not be appropriate, given that the delegating SRO will likely not be well-positioned to identify gaps in the third-party SRO's performance without becoming overly involved in the oversight function.

intent of the amendment.[9] For example, although CME currently acts as the DSRO for Dorman Trading, MIAX Futures nonetheless continues to have SRO oversight responsibilities with respect to all of its members, including Dorman Trading. Consistent with their obligations under both CFTC Regulation 1.52 and Part 38, DCMs generally monitor all of their clearing members for compliance with exchange rules and CFTC Regulations, including audit trail requirements, financial resource requirements, and trade practice violations. As the Commission itself notes in its discussion of financial surveillance, the DCM, by virtue of its real-time surveillance of trading activity, is uniquely positioned to identify potential non-compliance of a clearing member (including an affiliate clearing member) in a way that a DSRO performing periodic examinations is not. While the DSRO has primary responsibility for monitoring and examining the financial condition of the affiliate FCM, MIH believes it is appropriate for the DCM to continue to exercise plenary oversight over the affiliate in its capacity as an SRO. Accordingly, MIH believes the Proposal could be clarified to provide that although a DCM cannot serve as DSRO for an affiliate FCM, the DCM is permitted to – and in fact is expected to – perform oversight over the affiliate.

C. SRO Restrictions on Accessing and Sharing of Information – § 1.52(c)(1)(i)(D)(1)

Proposed Regulation 1.52(c)(1)(i)(D)(1) would prohibit an SRO from accessing the non-public information of its affiliate FCM, except as necessary to comply with the SRO's responsibilities and obligations as a DCM under Part 38 of the Commission's Regulations. Proposed Regulation 1.52(c)(1)(i)(D)(2) would prohibit an SRO from sharing, directly or indirectly, non-public information obtained from its supervisory program of its non-affiliate member FCMs with its affiliate FCM for any purpose, except as necessary to comply with its responsibilities and obligations as an SRO under Commission Regulation 1.52 or as a DCM under Part 38 of the Commission's regulations. MIH generally supports these prohibitions, but respectfully respects that Proposed Regulation 1.52(c)(1)(i)(D)(1) include an exception for complying with the SRO's responsibilities under CFTC Regulation 1.52. Including this exception clarifies that a DCM, in the ordinary course of performing its SRO functions for its clearing members under Commission Regulation 1.52, may need to request non-public information from an affiliate FCM. It also aligns the text with Proposed Regulation 1.52(c)(1)(i)(D)(2), which explicitly includes regulatory obligations under both CFTC Regulation 1.52 and Part 38 as exceptions to the prohibition against sharing information.

III. Financial Surveillance of Affiliate FCMs – §§ 38.604, 38.606, Appendix B of Part 38

MIH generally supports the proposed amendments to CFTC Regulation 38.604 and CFTC Regulation 38.606 with respect to a DCM's financial surveillance of its clearing members. As discussed further below, we respectfully request several clarifications and modifications to

[9] For example, Proposed Rule 1.52(d)(2)(ii)(C)(1)(ii) contemplates that although a DSRO may not perform the DSRO function for an affiliate FCM, the DSRO would still "remain[] responsible for performing the other application self-regulatory organization functions required hereunder." MIH interprets this language to mean that although the DSRO is not acting as a DSRO with respect to its affiliate, it continues to have its general SRO obligations to oversee that affiliate, along with its other members.

Proposed Regulation 38.606 and the related proposed amendments to Appendix B of Part 38 with respect to the new requirement that a DCM adopt conflicts of interest procedures if it performs financial surveillance over an FCM affiliate.[10]

A. Financial Surveillance Requirement – § 38.604

CFTC Regulation 38.604 currently requires a DCM to "*continuously* monitor the positions of members and customers" and "*continually* survey the obligations of each [FCM] created by the positions of its customers."[11] The Proposal would require a DCM to "monitor the positions of members and customers," removing the continuously modifier. The Proposal would also require a DCM to "monitor the obligations of each [FCM] created by the positions of its customers *throughout the day*" instead of requiring continual surveillance.[12] MIH supports these amendments to existing CFTC Regulation 38.604 to clarify that a DCM's financial surveillance obligation over its FCM members requires intra-day, risk-based monitoring, rather than continuous monitoring in real-time. We believe these amendments align with existing market practices, as well as our understanding of the Commission's expectations of DCMs.

B. New Conflicts of Interest Procedures required for DCMs to Perform Financial Surveillance of Affiliate FCMs – § 38.606(b)

The proposed amendments to CFTC Regulation 38.606 would allow a DCM with an affiliate FCM to comply with CFTC Regulation 38.604 by (i) engaging a third-party regulatory service provider to perform this supervision, or (ii) performing the supervision itself, provided it adopts conflicts of interest procedures to manage any potential conflicts of interest. As a threshold matter, MIH supports allowing a DCM to perform its financial surveillance of an FCM directly, provided there are appropriate conflicts of interest procedures in place. We believe it would be unnecessarily restrictive to require a DCM to engage a third-party regulatory service provider to perform this function. Moreover, as the Commission notes, the financial surveillance under Regulation 38.604 requires the DCM to monitor intraday positions and financial obligations of the FCM. As such, compliance with CFTC Regulation 38.604 "may require intraday judgment calls about the financial integrity of FCMs and the protection of customer funds" that the DCM itself is uniquely qualified to make.[13] Accordingly, we believe the proposed amendments to Regulation 38.606 strike an appropriate balance by allowing DCMs to continue to perform this financial surveillance over an affiliate, provided they adopt conflicts of interest procedures.

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[10] Proposed Regulation 39.25(d) and related amendments to Appendix D of Part 39 mirror Proposed Regulation 38.606 and related amendments to Appendix B of Part 38. MIH respectfully requests that its comments regarding Proposed Regulation 38.606(b) and Appendix B also be considered with respect to the proposed Part 39 amendments.

[11] 17 C.F.R. § 38.604(a)-(c) (emphasis added).

[12] Proposed Regulation 38.604(a)(1) (emphasis added).

[13] Proposal at 50941.

Proposed Regulation 38.606(b) enumerates a number of requirements that must be addressed in the new conflicts of interest procedures. In conjunction with these amendments, the Commission proposes amendments to Appendix B to Part 38 "concerning acceptable practices for conflict-of-interest procedures."[14] Although MIH generally supports requiring the adoption of these new procedures, we believe the regulatory text and associated guidance can be revised to further clarify the scope and requirements of the procedures, as discussed further below.

i. Proposed Requirement for DCMs and Affiliate FCMs to Maintain Separate Systems – § 38.606(b)(1) and Paragraph (1) of the Proposed Appendix B Guidance

As proposed, the conflicts of interest procedures must address "applications and systems, such that a [DCM's] applications, information and systems are maintained and operated in a manner that prevents the sharing of non-public information with any affiliate futures commission merchant."[15] In conjunction with this amendment to CFTC Regulation 38.606, the Commission also proposes to revise Appendix B to Part 38 to provide the following new guidance about this requirement:

> (1) *Appropriate separations between the DCM and an affiliate market participant.* A designated contract market's applications and systems should be maintained and operated in a manner that prevents the sharing of non-public information (*i.e.*, information which has not been disseminated in a manner which makes it generally available to the trading public) with any affiliate market participant (*i.e.*, an affiliate futures commission merchant or an affiliate principal trading firm); provided, however that a designated contract market may share non-public information with an affiliate market participant if: the information is shared with all of the designated contract market's market participants; or the information relates only to the affiliate market participant or the affiliate market participant's customers.[16]

Although MIH agrees with the spirit of the proposed regulatory text and Appendix B guidance, we believe it is unnecessarily restrictive as proposed. For the reasons explained below, MIH respectfully proposes the following revisions, which we believe achieve the underlying objectives of the Proposal:

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[14] *Id*. at 50942.

[15] Proposed Regulation 38.606(b)(1).

[16] Proposed Appendix B to Part 38, Proposal at 50993.

- **Narrow the scope of non-public information subject to the prohibition to "material information" as defined in CFTC Regulations 1.59(a)(5).**[17] MIH believes that narrowing the prohibition to "material" non-public information as defined under CFTC Regulation 1.59(a)(5) focuses the requirement on the types of confidential information most likely to create potential conflicts of interest. As revised, the prohibition would prevent a DCM from providing an unfair advantage to an affiliate participant with respect to its trading activities on the DCM due to its advance knowledge of non-public information. If the Commission believes this definition of materiality is too narrow, MIH respectfully requests the Commission consider limiting the prohibition to non-public information that, if shared, would commercially favor an affiliate.

- **Permit the sharing of non-public information with an affiliate so long as such information is also shared with "other similarly-situated market participants."** Under the Proposal**,** in order to share non-public information with an affiliate, the DCM would need to disclose that information to all of the exchange's participants, including the customers of its clearing members. MIH believes that requiring the disclosure of the non-public information to all market participants of the DCM would unnecessarily restrict the DCM's ability to communicate with its clearing members and solicit their views. For example, a DCM evaluating the demand for a new product may wish to confidentially discuss the potential product with its current clearing members, which may include an affiliate FCM. In order to have that conversation, the Proposal would require the potential product to be disclosed to all the customers of the clearing members as well. Further, in some instances, the DCM may wish to limit potential product disclosures to clearing members that trade the particular type of product under discussion. MIH believes that permitting the disclosure to an affiliate so long as the non-public information is also shared with "other similarly-situated market participants" is consistent with the Commission's objective of prohibiting a DCM from favoring an affiliate FCM. We also believe our proposed revision is consistent with Appendix C to Part 38, which requires DCMs to "consult with market users to obtain their views and opinions during the contract design process."

- **Explicitly reference Appendix B to Part 38 in Proposed Regulation 38.606(b).** Given that the proposed guidance directly pertains to the Commission's interpretation of Proposed Regulation 38.606(b), MIH respectfully requests that the last sentence of the introductory paragraph of Proposed Regulation 38.606(b) be revised to include the phrase "Consistent with the guidance of Appendix B of this Part, such procedures shall address . . . ." The inclusion of this language makes clear that the prohibitions and restrictions in

[17] CFTC Regulation 1.59(a)(5) defines material information as "information which, if such information were publicly known, would be considered important by a reasonable person in deciding whether to trade a particular commodity interest on a contract market or a swap execution facility, or to clear a swap contract through a derivatives clearing organization. As used in this section, "material information" includes, but is not limited to, information relating to present or anticipated cash positions, commodity interests, trading strategies, the financial condition of members of self-regulatory organizations or members of linked exchanges or their customers, or the regulatory actions or proposed regulatory actions of a self-regulatory organization or a linked exchange."

the regulatory text should be interpreted consistent with the further guidance and explanation provided in Appendix B.

ii. Proposed Requirement for DCMs and Affiliate FCMs to Maintain Separate Staff – § 38.606(b)(2) and Paragraph (iv) of the Proposed Appendix B Guidance

Proposed Regulation 38.606(b)(2) provides that the conflicts of interest procedures must address "personnel, such that a designated contract market does not share staff with any affiliate futures commission merchant, except with respect to administrative functions."[18] The Commission proposes to revise Appendix B to Part 38 to provide the following new guidance about this requirement:

> (iv) A designated contract market should not share staff with any affiliate market participant; provided, however, that staff responsible for administrative functions such as accounting, human resources and payroll matters, as well as technology staff responsible for carrying out Core Principle 20 (Systems Safeguards) functions, may be shared.[19]

Although MIH agrees with the spirit of the proposed regulatory text and Appendix B guidance, MIH believes the Commission should clarify the scope of the term "staff." In situations where one or more subsidiaries are wholly-owned by the same ultimate parent, it is common for employees to "principally serve" or be "dedicated" to an individual subsidiary. MIH agrees that "dedicated" staff of a DCM should not be shared with an affiliate FCM and that "dedicated" staff of an affiliate FCM should not be shared with the DCM. However, it is common for employees principally serving or dedicated to the parent ("Parent Staff") to perform services or tasks for multiple subsidiaries.[20]

MIH does not believe the Proposal's prohibition on sharing staff between the DCM and an affiliate FCM is intended to capture Parent Staff. In order to clarify this point, MIH respectfully suggests that the Commission add the word "dedicated" before (i) the word staff in Proposed Regulation 38.606(b)(2), and (ii) staff in paragraph (iv) of Appendix B's Core Principle 16 guidance. MIH believes that by limiting the scope of the prohibition to staff principally serving or dedicated to either the DCM or the affiliate FCM, the Commission appropriately scopes the requirement to those employees working for the DCM and affiliate FCM on a day-to-day basis.

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[18] Proposed Regulation 38.606(b)(2).

[19] Proposed Appendix B to Part 38, Proposal at 50993.

[20] For example, an attorney dedicated to the parent may assist multiple affiliates in third-party vendor management or in the negotiation of large contracts that are material to a subsidiary's business. In situations where Parent Staff are assisting multiple affiliates, MIH believes that the Parent Staff should be subject to company-wide information barrier policies that govern the use and sharing of the non-public information of a subsidiary.

In addition, MIH believes it would be appropriate to include internal audit staff among the staff excluded from the sharing prohibition. It is common for internal audit staff to conduct audits across multiple affiliate and subsidiaries. This is an important corporate control function to ensure that standards and controls are designed and implemented consistently throughout the entire company. Additionally, if internal audit staff are not allowed to audit both the DCM and an affiliate FCM, this will significantly increase costs to the parent company, which then must either hire additional internal audit staff that must be walled off from the rest of the internal audit group or hire a different third-party auditor to perform this function. There are also benefits to having the same staff audit affiliates involved in the same regulatory space. For example, shared staff may be more likely to identify weaknesses in controls that are implemented similarly across affiliates. Siloed internal audit staff decreases the likelihood that these weaknesses are detected, resulting in increased risk to the entire corporate enterprise. Accordingly, we respectfully request that internal audit staff be excluded from the sharing prohibition.

IV. Proposed Definition of "Affiliate Principal Trading Firm" – § 38.852

Proposed Regulation 38.852 would impose new restrictions and conflicts of interest requirements on "affiliate principal trading firms." Proposed Regulation 38.852(a) defines an affiliate principal trading firm as an affiliate of the DCM that "trades on a principal basis, as a market maker, liquidity provider, or otherwise, for its own account" on the DCM.[21] MIH does not believe this definition is intended to capture an affiliate FCM that may enter into a trade in its house account in connection with resolving an error it has made in connection with serving a customer. If an FCM makes an error in connection with a customer's order, the FCM may temporarily hold a position in its own account while determining how to address and resolve the error. In that instance, they are not acting as a market maker or liquidity provider, and the trade is executed in connection with their provision of clearing services to a customer. Accordingly, MIH respectfully requests that the Commission clarify that the definition of affiliate principal trading firm is not intended to capture such activity.

V. Conclusion

MIH appreciates the opportunity to comment on the Proposal. Should the Commission or Staff have any questions, please feel free to contact me at (609) 751-6532 or mbailey@miaxglobal.com.

Sincerely,



Margo Bailey
Vice President, Senior Counsel, Miami International Holdings, Inc.

[21] Proposed Regulation 38.852(a).

cc: The Honorable Michael S. Selig, Chairman, Commodity Futures Trading Commission
DJ Hennes, Director, Market Participants Division and Acting Director, Division of Market Oversight
Richard Haynes, Acting Director, Division of Clearing and Risk
Aaron Levine, Deputy General Counsel for Regulation, Office of the General Counsel