John Marchese
Senior Managing Director, General Counsel

October 5, 2026

VIA ELECTRONIC SUBMISSION

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

Re: Request for Comment on Notice of Proposed Rulemaking regarding "Conflicts and Affiliations" – RIN 3038-AF76

Dear Mr. Kirkpatrick:

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the Notice of Proposed Rulemaking addressing "Conflicts and Affiliations" released by the Commodity Futures Trading Commission ("Commission" or "CFTC") which includes proposed new rules, and amendments to its existing regulations, that affect futures commission merchants ("FCMs"), swap execution facilities ("SEFs"), designated contract markets ("DCMs"), and derivatives clearing organizations ("DCOs") (the "Proposal" or the "NPRM").[1] The Proposal, which follows on an earlier 2023 request for comment by the Commission on similar issues[2], addresses multiple topics including: the financial oversight of FCMs by self-regulatory organizations ("SROs") and designated self-regulatory organizations ("DSROs"); new requirements to address registered entities' relationships with certain types of affiliates; and new safeguards and associated guidance designed to protect the impartiality of registered entities in their role as SROs or performing SRO functions with respect to certain affiliates.

CME Group and CME Group Exchanges

CME Group, a corporate holding company, owns and operates multiple entities that are registered under the Commodity Exchange Act ("Act" or "CEA") in capacities that authorize them to offer organized public markets for derivatives. These include four futures exchanges operating as DCMs, one of which - Chicago Mercantile Exchange Inc. ("CME") - also performs the services of a DCO. Each is a "registered entity" under the Act with statutorily mandated self-regulatory responsibilities. Each has a long, proven track record of performing those responsibilities effectively and fairly to protect market integrity, the financial integrity of cleared transactions, and market participants.

As an operator of registered SROs, CME Group's futures exchanges and DCO have obligations to perform regulatory oversight of the DCO's clearing members to ensure the financial integrity of our DCMs and to provide a financial safeguard to our DCO and, importantly, to the DCO's clearing members. Over the decades, we have invested considerable resources in financial surveillance capabilities to ensure each clearing member maintains high levels of financial integrity. This is absolutely critical to our operations and our ongoing commercial success and viability. The experience we have gained

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

[2] *See* CFTC Staff of the Divisions of Market Oversight, Clearing and Risk, and Market Participants, "Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities" (Jun. 27, 2023).

reviewing the firms that operate in our markets, including FCM clearing members for which CME Group's futures exchanges are the DSRO and non-FCM clearing members, is deep and valuable. No other entities in the marketplace currently possess comparable direct experience and capabilities in these areas. We think this backdrop is important to understand as the Commission considers its next steps forward with the Proposal.

Executive Summary

CME Group appreciates that changing dynamics can pose unique conflict scenarios that warrant careful Commission attention. For example, it has now become commonplace for exchange groups to acquire entities that can operate as participants on their own markets. Such an affiliation can raise an important question - how can an exchange SRO operating within a group effectively enforce its rules on an affiliate that may participate in its market? However, Congress understood that the futures markets were dynamic and innovative, and new scenarios like this might come about. Any self-regulatory system will inherently include tensions of this kind. Thus, with this foresight, Congress adopted a flexible system, including specifically in the area of potential conflicts. The CEA, and its principles-based regulatory framework, is therefore already well-equipped to address this question, provided it is applied as intended. The CFTC's regulatory framework imposes proactive obligations on registered entities to identify and manage any such conflicts responsibly, subject to effective and uniform Commission oversight.

The Commission should always resist the urge to move forward with overly prescriptive rulemaking when possible and instead enforce the core principles it has, particularly where prescriptive rulemaking would miss its policy target or not materially improve the status quo. But we acknowledge the Commission's good faith attempt in the NPRM to address the new realities in today's marketplace, and how they may impact the role of self-regulation in the CFTC-regulated derivatives markets. The Commission is directed by law to provide oversight of SROs to ensure they fulfill their regulatory responsibilities, including by having effective programs for detecting potential rule violations and enforcing compliance with their rules in a rigorous, fair, and impartial manner. Focusing on conflicts of interest that may exist when a marketplace SRO is affiliated with a market participant is advisable. However, we are concerned that certain parts of the Proposal are unnecessary, misguided, and potentially harmful. We therefore urge the Commission not to move forward with those provisions, while at the same time we support many other aspects of the Proposal that in our view would help the Commission to establish a uniform baseline of compliance expectations that will be useful to the marketplace.

Certain proposed amendments to CFTC Regulation 1.52 are ones we do not support. While there have been developments that warrant consideration of new types of conflicts, the status quo in the area of DSRO oversight is not one of them. CME Group's futures exchanges have provided an effective DSRO function for its clearing members for years and continues to do so. In our view, the current effort to upend this status quo has originated more from specific disagreements with certain regulatory interpretations taken by CME Group's DSRO staff in the past, rather than by any new marketplace developments. We note that at the time other DCMs and FCMs became affiliated, the Commission did not see a need to amend its rules but, rather, allowed the SROs to manage their conflicts.[3] We respectfully submit that

[3] For example, the Bakkt Holding, Inc., owned by Intercontinental Exchange Group which operates a DCM (i.e., ICE Futures U.S., Inc.) and DCOs (i.e., ICE Direct Clear, Inc., ICE Clear Credit LLC, ICE Clear Europe Limited, ICE NGX Canada Inc., and ICE Clear US, Inc.), purchased the Rosenthal Collins Group, an FCM, in 2019. *See* Aziz Abdel-Qader, *ICE-Owned Bakkt Buys 'Certain Assets' of Registered-FCM RCG*, Finance Magnets (Jan. 14, 2019), *available at* https://www.financemagnates.com/cryptocurrency/news/ice-owned-bakkt-buys-chicago-fcm-rosenthal-collins-group. In October 2022, Miami International Holdings, owner of the MIAX Futures Exchange, LLC Exchange, a DCM and DCO, acquired Dorman Trading representing another combination of DCM, DCO and FCM registrations, without any prior CFTC conflicts of interest review. *See* Dorman Trading, Miami International Holdings Announces Acquisition of Dorman Trading, a Full-Service FCM (Oct. 21, 2022), *available at*

there are no new facts before the Commission that can justify dismantling the current DSRO system under CFTC Regulation 1.52 that continues to operate efficiently, and which has done so successfully for decades, to the benefit of all involved.

Another aspect of the Commission's Proposal that we suggest should be reconsidered relates to the unique issue of principal trading firms that are affiliated with an exchange group. Recent experiences have shown that principal trading by an exchange group affiliate presents a special type of conflict that is characterized by very acute challenges for the exchange - for the reasons explained below and that CME Group has previously articulated,[4] these trading activities should be prohibited rather than managed. One primary reason is that there can be significant pressure to favor internal exchange interests in the principal trading context, particularly in times of market stress where an enterprise's continued viability is top of mind. For less experienced or less disciplined business leaders, navigating these competing priorities could be challenging. Given these unique challenges, the Commission should not apply the usual principles-based framework used for other conflicts of interest, and instead safeguard the market by prohibiting principal trading firms from operating under an exchange group.

Regarding the remainder of the proposed changes in the NPRM, we believe the existing core principles could be used without amendment to address the Commission's policy objectives and therefore, the proposed changes are unnecessary. However, we also recognize that many of the specific proposed changes could help to set out a uniform baseline of expectations for compliance. As such, we support moving forward with them, with certain suggestions for clarification and amendment, as noted below.

General Comments on the Current Principles-Based Framework and the Commission's Role in the Self-Regulatory System

Section 3(b) of the CEA establishes a framework for regulating derivatives markets and market participants that relies upon "front line" regulation performed by registered entities and registered futures associations ("RFAs") as SROs. In this system, the SROs on the front lines are themselves subject to the Commission's oversight and enforcement authority, which is designed to ensure their effectiveness. The CEA assumes that SRO functions are performed by entities that are legally distinct from the market participants whose activities Congress has determined should be subject to an SRO's oversight. Such separation is an important foundational element of the CEA's long-established, effective regime for market regulation, and one that we continue to endorse.[5] For all these reasons, it is therefore important to maintain an appropriate degree of operational separation between a marketplace SRO and any affiliated CFTC-registrant participating in that marketplace.

Congress placed core principle obligations on DCMs and DCOs to help ensure these self-regulatory entities govern their operations appropriately. DCMs and DCOs have reasonable discretion to establish the manner in which they comply with those obligations, subject to rules the Commission may adopt. One

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https://www.dormantrading.com/miami-international-holdings-announces-acquisition-of-dorman-trading-a-full-service-fcm/ . In addition, Cantor Fitzgerald & Co., an FCM, is affiliated with FMX Futures Exchange, L.P., a DCM, which received approval from the Commission to offer intermediated trading in early 2024. *See* Alexander Osipovich, *Billionaire Howard Lutnik Is Taking On Exchange Giant CME*, The Wall Street Journal (Jan. 22, 2024), *available at* https://www.wsj.com/finance/commodities-futures/howard-lutnick-ceo-interest-rate-futures-market-3d191852.

[4] Request for Comment on FTX Request for Amended DCO Registration Order, Letter from Kathleen Cronin, Gen. Counsel, CME Group, to Christopher Kirkpatrick, Sec. of the CFTC (May 11, 2022), *available at* https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69466&SearchText=cme.

[5] To be clear, it is our view that the CEA does not allow the same entity to maintain a license authorizing both activities of a registered entity with oversight responsibilities, such as a DCO, and activities of a CFTC registrant, such as an FCM, which is subject to that registered entity's very oversight. Two separate entities with separate licenses and independent regulatory obligations under common ownership is different.

of these core principles obligations specifically requires DCMs and DCOs to adopt rules and procedures to self-identify conflicts of interest, and to minimize and resolve them if and when they occur. Further, applicable regulatory standards also assure diversity of representation in DCM and DCO governance, and require DCMs and DCOs to treat all market participants, including clearing members and clearing participants, fairly and impartially. For the CFTC's part, Congress has directed it to provide oversight authority to ensure that DCMs and DCOs meet their regulatory obligations, including with respect to managing conflicts of interest.

Although the potential for conflicts needs to be managed, the Commission must know that it can never remove the problem entirely as it cannot anticipate every potential conflict that might arise. Any prescriptive regulatory attempt to do so would be folly, hence why the core principles require the regulated entity to actively manage conflicts. Any potential combination of entities within a corporate group that includes an SRO or ownership of an SRO, and any form of oversight structure for that arrangement, will certainly involve at least some level and type of potential conflict (of course, some may be more pronounced than others). For example, in the past, marketplace SROs were collectively owned and operated by their market participants under entirely mutualized structures. This brought about one set of challenges, whereby influential market participant owners that traded on the markets could potentially bring their influence to bear on the SROs they owned and controlled. In contrast, today one can see SROs that may be owned and controlled by one or a small group of individuals or market participants, or the SRO may itself own or be under common ownership and control with an individual market participant. Those dynamics can obviously bring about a different set of potential challenges.

Clearly an affiliation between a marketplace SRO, and a separate firm that is a trading participant on that same marketplace SRO, does present a special and unique type of concern that the Commission is justified in considering carefully.[6] This particular type of affiliation raises the question of how a marketplace SRO within an enterprise group will enforce its rules on itself. This is a specific type of tension and, if not managed properly, could result in real problems, especially where the market participant is a significant source of the liquidity at the DCM. Nevertheless, CME Group remains convinced that the existing principles-based approach to address conflicts generally remains the best approach to addressing most of the issues at hand, without amendment.

Under current legal and regulatory requirements, SROs are required to identify and address potential conflicts that may arise, including any that might involve common ownership group structures with affiliated registered entities. Congress understood that the nature of potential conflict scenarios can vary widely, circumstances are ever changing, and each scenario depends on the specific facts at hand. This is why it chose to avoid applying an overly prescriptive regime that could possibly fail to anticipate new types of potential conflicts that might arise in the future. Therefore, the CEA wisely places on DCMs and DCOs the obligation to identify, address and resolve conflicts of interest as they might arise, with flexibility to determine how best to fulfill their statutory core principle obligations. An SRO that failed to do this, or failed to do it adequately in the eyes of the Commission, would be violating its legal and regulatory obligations.

CME Group owns and operates multiple entities that are registered under the CEA in capacities that authorize them to offer organized public markets for derivatives. We carefully consider the potential for conflicts within our corporate structure and we take our regulatory responsibilities seriously. The simple

[6] There is also a reason to distinguish between the types of market participants in this specific scenario: different types of market participants can present different types of conflict concerns. A DCM and an affiliated FCM that acts solely on an agency basis and is subject to the strict segregation and customer protection regime under CFTC, National Futures Association and marketplace SRO rules is one thing. In contrast, a trading firm that owns, is owned by or is under common ownership with a DCM, and trades on a proprietary basis on the DCM with leverage raises conflict of interest concerns of a very different type and magnitude—discussed more below.

fact is the CFTC regulatory standards that already apply require DCMs and DCOs to consider the types of issues that the Commission has highlighted in its NPRM. These existing responsibilities have already compelled us to manage these issues proactively. Thus, our organization has already devoted significant time and attention to managing potential conflicts that could be foreseen in connection with our application for approval to operate an FCM in response to the competitive pressures placed on us by the current market dynamics. For example, as the Commission now proposes as a requirement, we voluntarily implemented effective separation of our FCM entity from our DCMs and DCO in advance of any specific regulation mandating that treatment. This decision was based on our existing core principle obligations with respect to our DCMs and DCO. We think any responsible organization with the same responsibilities would do the same.

However, with that said, we understand that it can be useful at times for the Commission to lay out a single set of standards that will help the marketplace understand its expectations for compliance. In any event, and as it moves forward, the Commission will of course have to play its part in the system Congress constructed, by discharging its regulatory obligations through even-handed enforcement of any new standards adopted and the existing core principles. Market integrity also depends on the CFTC acting in accordance with its statutory obligations and taking appropriate steps, consistent with its oversight authority, when actions of registrants do not comport with the rules that apply to them.

Specific Comments on Proposed Rules Relating to SRO/DSRO Oversight of Affiliate FCMs

The first set of changes in the Commission's Proposal relates to the topic of SRO and DSRO oversight of affiliated FCMs and amendments to current CFTC Regulation 1.52. The proposed changes to Regulation 1.52 are significant and include, at a high level: (1) a requirement for SRO exam staff to report directly to the SRO's board of directors (or to a designated committee or appropriate regulatory compliance officer) if the SRO has an affiliate FCM; (2) a requirement for an SRO with an affiliate FCM to designate a third party SRO to conduct necessary supervisory surveillance of the FCM; (3) a prohibition against accessing and sharing certain confidential information that applies to a group with an SRO and an affiliate FCM; (4) a prohibition on a DSRO from acting as DSRO for an affiliate FCM; and, finally, (5) a proposal to create a mechanism allowing any FCM to elect an RFA as its DSRO.

In short, the parts of the Proposal that would effectively upend the current system established by Regulation 1.52 should be abandoned. Regulation 1.52 requires DCMs to examine each FCM member for compliance with rules, but it also provides for the designation of a single SRO to act as DSRO for each FCM that will conduct financial surveillance and examinations of that firm. The specific proposed rule changes we oppose would establish an option for market participants to "opt out" of a futures exchange's DSRO coverage on a voluntary basis. Such changes would unwind a system that has provided decades of effective regulation - without good reason to do so. Further, as explained below, certain aspects of the proposed rule changes are also simply unworkable. Finally, the separate approach that the Commission considered in this area, that is, electing the single current RFA as a uniform DSRO, would simply replace one set of potential conflicts with another, and present new issues to be dealt with given the governance structure of the current RFA.

The JAC Status Quo Should be Preserved and the Voluntary Selection Approach is Unworkable

The Joint Audit Committee ("JAC"), originally formed in 1978, has become a central feature of the U.S. futures regulatory architecture. It was established to streamline and reduce duplication in the regulatory oversight and examinations of FCMs that are members of multiple SROs and has accomplished this objective effectively since its inception. JAC operates under the framework of CFTC Regulation 1.52. CFTC Regulation 1.52 requires SROs, including DCMs and RFAs, to examine their FCM members for compliance with the CEA, particularly with respect to minimum financial requirements, customer funds segregation, and related financial protections. Critically, Regulation 1.52 also provides for the designation

of a single SRO as the DSRO for each FCM, which bears primary responsibility for conducting financial surveillance and examinations of that firm. This DSRO framework was designed to avoid redundant examinations of FCMs that belong to multiple DCMs. Under the JAC agreement, the other SROs of which the FCM is a member rely on the DSRO's work rather than conducting their own independent examinations, though they retain the right to do so if needed.

The proposed Regulation 1.52 amendments would fundamentally restructure the existing system. The Proposal would allow FCMs to choose their DSRO, in contrast to the status quo, where SROs choose the DSRO for their FCMs. This would raise significant operational and regulatory concerns. Under such a scheme, an FCM that is a CME clearing member would have a new option to decline any futures exchange as its DSRO, in favor of the National Futures Association ("NFA"). All CME clearing members have been examined for decades by what are now CME Group futures exchanges as their DSROs. This raises serious concerns about regulatory quality and unintended consequences. First, NFA would be asked to significantly expand its capabilities as DSRO. NFA currently oversees 28 FCMs, many of which are inactive or tied to small, single-product exchanges. This stands in stark contrast to the staff in the CME Group futures exchanges' Financial and Regulatory Surveillance ("FRS") department who have an average of over nine years of experience supervising the 45 largest clearing FCMs. The adjusted net capital and segregation requirements of the FCM clearing members that the CME Group futures exchanges' FRS department reviews are orders of magnitude larger than those of NFA-supervised firms. The deep institutional relationships and expertise that the FRS department has built with the FCMs it has examined over decades, averaging 26.6 years of experience among the management team, and continuity of review of operations and systems over the years, would be lost, to the detriment of the broader industry. As the Commission wisely noted in the discussion of its final rulemaking that created the DSRO structure in 1978, "[t]he most important theoretical basis for exchange self-regulation is that exchanges can move more promptly and more effectively in certain situations than can an agency of the Government."[7] CME Group believes that this basis for the DSRO model continues to be true. Similarly, the CME Group futures exchanges' FRS department, in its current DSRO capacity, is better positioned than an RFA to monitor the financial soundness of its FCM clearing members and to carry out the CME Group future exchanges' financial surveillance and risk management obligations.

But, even worse, this "opt out" decision could be revisited after every three years of examination cycles. Further, as the proposal does not mandate a lock-up period for any DSRO besides the NFA, each year a particular FCM could "opt out" at that time for the next three year cycle. The net effect of this is that CME clearing members could elect to switch back and forth between CME and NFA examinations at varying three year cycles indefinitely.

In addition, the potential for constant switching back and forth between examiners is an unprecedented regulatory approach with significant downsides. Besides the fact that it makes resource planning for the hiring and training of examiners a challenge, the option for FCMs to choose their examiners creates the unnecessary risk that FCMs may use such option as a potential negotiating tool during exams or financial surveillance--unsatisfactory results in any exchange or conversation could lead to a threat to exercise the option to switch examiners. It makes sense when a paying customer opts to switch between business providers based on services provided, but this logic does not extend to a firm being regulated for compliance with laws and regulations.

Further, the scheme will be very inefficient in that there will certainly be a duplication of work (of the type that defeats the very purpose of the JAC system) that is likely to be poorly received by FCMs. The CME Group futures exchanges, as registered DCMs with obligations under Part 38 Regulations, have responsibilities to ensure the financial integrity of each exchange. The CME Group futures exchanges

[7] *See* 43 Fed. Reg. 39956 (September 8, 1978).

currently fulfill this obligation through the FRS department which conducts examinations of its clearing members to ensure that each exchange can meet its obligations. Further, CME, as a DCO, which has separate obligations under Part 39 Regulations to ensure the financial integrity of the clearinghouse and its clearing members, conducts separate reviews directly for these same, related purposes.[8] Consistent with the JAC agreement, participating DCMs--including CME Group's DCMs--share exam results with their DCO, and both have a common interest regarding the financial integrity and regulatory compliance of their members. The thoroughness of FRS department's reviews provides CME, as a DCO, with comfort in complying with its independent risk management obligations to monitor its clearing members. Therefore, in any event, it should be expected that the CME Group futures exchanges' FRS department will continue to perform financial surveillance and risk examinations of all CME's FCM clearing members. This would be the case even for those that might choose to elect NFA as their DSRO under the Proposal. This would seem inevitably to lead to a substantial duplication of regulatory effort, all without resolving the CFTC's stated concern about access to non-public FCM information, particularly because the CME Group futures exchanges would still be required to obtain that information to fulfill its ongoing regulatory responsibilities as both a DCM and DCO.[9]

Moreover, it seems a simple fact to observe that the current DSRO model, in which the DCM most incentivized to surveil the market serves as DSRO, has been thoroughly tested over many years with excellent results. It has been repeatedly validated by periodic reviews by the Commission's own Market Participants Division ("MPD"), which has found no material deficiencies in CME's surveillance program over the past fifteen years. It is also worth noting that pursuant to CFTC Regulation 1.52(d)(2), the FRS department has, in coordination with the NFA and consultation with an examinations expert[10], developed examination standards ("FCM Examination Standards") consistent with auditing standards issued by the Public Company Accounting Oversight Board. The FCM Examination Standards were accepted by the CFTC on April 20, 2016, and are applicable in the context of all of a DSRO's examinations of its FCMs. They are required to address numerous requirements including ethics, integrity, objectivity and independence of an examiner. The FCM Examination Standards require, among other things, that the examiners must maintain objectivity and integrity, be free of conflicts of interest, be independent of the FCM under examination both in fact and in appearance, and that examinations must be conducted without bias with respect to the FCM. These standards are incorporated into the FRS department's examination programs and procedures and have been subject to evaluation by an examination expert with substantial expertise in audits of FCMs, as well as periodic reviews by MPD.

Additionally, the proposal in the NPRM asserting that the DSRO that owns an FCM inherently is more conflicted is not supported by the proposed solution. The FCMs that sit on the NFA's board of directors would be the firms that the new DSRO would be responsible for examining. While CME Group believes that NFA appropriately manages those conflicts today, just as CME Group does, in this sense the Commission's Proposal simply swaps one potential conflict of interest for another.

The Commission articulates it has acted in this area to address concerns about ensuring a "neutral" examiner for the FCMs, or to provide FCMs "who prefer examination by an SRO with no commercial stake in its business" with that option. The Commission does not provide clear evidence that the

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[8] *See e.g.*, 17 CFR 39.13(h)(5) and 17 CFR 39.12(a)(4).

[9] Additionally, and separately, under the JAC framework as set out by Regulation 1.52, each SRO that relies on a DSRO's work always maintains the right to conduct reviews as needed in its discretion for any reason. Any exchange that might exercise its option to drop out of the JAC for any reason would also be required to commence reviews of firms directly under Regulation 1.52.

[10] Pursuant to Regulation 1.52(a)(1), an examinations expert is defined as a nationally recognized accounting and auditing firm with substantial expertise in audits of futures commission merchants, risk assessment and internal control reviews, and is an accounting and auditing firm that is acceptable to the Commission.

amendments in the Proposal have been prompted by any identified concerns in that regard. CME Group stands ready to answer any questions about any legitimate concerns that can be identified. The system established by Congress relies heavily on self-regulation, where an SRO exchange is responsible for overseeing its members. The idea that an exchange's commercial interests would disqualify it from performing this regulatory role does not align with the CEA.

Specifically Barring an SRO with an FCM Affiliate from Acting as DSRO for its FCM is Appropriate

A separate aspect of the Commission's Proposal to amend Regulation 1.52 would specifically bar a DCM with an affiliated FCM from acting as DSRO for its FCM affiliate. CME Group agrees with this aspect of the Proposal. In fact, CME Group voluntarily declined DSRO responsibilities for its FCM affiliate based on our interpretation of existing Core Principles and the obvious potential for conflict management challenges in these circumstances. While we agree with the concept, we stress that the DCM still may require certain financial information from the affiliated FCM if it is a member of the exchange in accordance with the obligations of the DCM under Part 38 of the CFTC's Regulations and Core Principle 11 discussed elsewhere in this letter.

The Proposed Changes to Information Sharing Need to Square with Core Principle 11

Additional proposed changes to Regulation 1.52 include certain information access and sharing prohibitions that would apply within a corporate group that includes an SRO with an FCM affiliate. More specifically, SROs would be barred from accessing their affiliate FCM's non-public information, except as needed to perform their obligations as a DCM under Part 38 Regulations. SROs would also be barred from sharing non-affiliate FCM members' non-public information with an affiliate FCM, whether directly or indirectly.

CME Group currently prohibits the type of information sharing considered by the proposed amendments. Before CME Group began operating its FCM, it carefully considered the potential for conflicts within its corporate structure that might be implicated. The end result of that exercise was to implement effective separation from an information sharing perspective voluntarily. The approach CME Group took reflected its interpretation of its DCMs' existing core principle obligations and its determination of the appropriate way to structure its business from a commercial perspective. Once again, CME Group would expect that any other responsible exchange group would come to the same conclusion based on existing regulatory standards and expectations (and without the need for a specific new rule directing it to do so).

However, although we do not oppose this aspect of the Proposal or its general policy goals, the Commission should consider how it can square these proposed requirements with the statutory principles grounded in DCM Core Principle 11. The CEA's DCM Core Principle 11 places a legal obligation on DCMs to be able to obtain information from all FCM members. It currently applies to CME Group's futures exchanges, and all other DCMs, and will continue to apply if the changes in the Proposal are adopted. This legal and regulatory standard requires each DCM to establish and enforce rules to, among other things, ensure the financial integrity of any FCM and to ensure the protection of customer funds. Thus, a DCM is able to obtain (and have the capability to obtain) information necessary under DCM Core Principle 11 to satisfy the DCM as to the financial health of each FCM that is a member. Further, notwithstanding the proposed changes to Regulation 1.52 that the Commission puts forward now, all DCMs will continue to have the capacity to obtain necessary information under DCM Core Principle 11. The Commission should therefore reconsider how this aspect of the Proposal might work in practice, in light of the statutory reality of DCM Core Principle 11, and consider whether moving forward here will have the intended effect that the Commission seems to believe.

Allow Additional Supervisory and Consultative Reporting Lines to Conform with CCO Guidance

The Proposal would require an SRO with an affiliated FCM to have its examination staff report directly to the SRO's board of directors or through a designated committee or officer responsible for regulatory compliance. The stated purpose of this proposed amendment is to insulate examiners from commercial pressure, given the perceived commercial interests at play with respect to an affiliate FCM. The Commission noted that, in practice, it expected that most DCMs would implement this requirement by having examination staff report directly to a Regulatory Oversight Committee ("ROC") or to a Chief Regulatory Officer ("CRO") or similar officer who, in turn, reports to the ROC.[11] Based on our experience, requiring SRO examination staff to maintain reporting lines only into an SRO's board or board committee is not feasible or practical in modern corporate structures. CME Group has examination staff that currently maintain reporting lines through both non-business line managers for regulatory purposes (such as a board regulatory committee) along with internal corporate reporting lines for day to day management purposes. This structure is effective and appropriately insulated from the types of commercial pressures that the Commission has articulated and is attempting to address. The Commission should allow the same here. MPD has not raised any substantive concern regarding this structure during exams of the CME Group futures exchanges' DSRO.

CME Group reminds the Commission that it considered similar issues in a similar context before. Ten years ago, the Commission staff issued an advisory based on its experience administering registered Chief Compliance Officer ("CCO") reporting line requirements.[12] The Advisory interpreted CFTC Regulation 3.3, a rule that established minimum intermediary CCO reporting line standards. The guidance in that context was prompted by industry calls for practical ways to deal with the realities of implementing corporate reporting line issues in large financial groups with multiple business lines and registrations. Under the Advisory, CFTC staff clarified that registrants would be able to establish additional supervisory and consultative reporting relationships for a CCO beyond the required board of directors or senior officer reporting line, provided these arrangements supplement rather than supplant the Regulation 3.3 requirements. For such additional reporting relationships to be permissible, the CCO would have to retain unfettered access to the board or senior officer, and any additional supervisor had to be sufficiently senior to maintain independence from the profit-and-loss considerations of the swaps or FCM business. For example, an additional reporting line to a global chief compliance officer or a senior officer overseeing multiple business lines could be appropriate, whereas a reporting line to senior swap traders or a trading desk head would raise conflict of interest concerns and potentially undermine CCO independence. CME Group urges the Commission to clarify that the same guidance and same approach taken in the context of intermediary CCOs, and as implemented currently in the marketplace today, could also be applied in the present context. The Commission should consider it appropriate if the SRO staff reports on a day to day basis to a non-business line, the General Counsel, the Chief Regulatory Officer (or similar role) with a dotted line and unfettered access to the appropriate board of directors' committee or the board itself.

Specific Comments on Proposed Rules Related to DCM Financial Surveillance of Affiliated FCMs and DCM and DCO Conflicts of Interest

The Commission proposes new rules in two areas that would require DCMs with an affiliated FCM to implement new policies and procedures to, among other things, separate staff and physical office space. More specifically, the Commission has proposed to add a new paragraph to CFTC Regulation 38.606 that would allow a DCM with an affiliate FCM to satisfy its obligation to monitor clearing member compliance with minimum financial standards (found in Regulation 38.604) either by (1) engaging an independent third party regulatory service provider ("RSP") or (2) if it does not, by adopting conflict of interest policies and procedures addressing certain specified topics, including: system based prevention of

[11] *See* Proposal at 50936.

[12] *See* CFTC Staff Advisory No. 16-62 (July 25, 2016).

information sharing; no shared staff other than for administrative staff; separate office space; and along with certain corresponding documentation and disclosure obligations. Separately, the Proposal also includes additional proposed rules, in new Regulation 38.852 and new Regulation 39.25(d), that would impose a principles-based requirement requiring both DCMs and DCOs to maintain procedures to identify, address and manage conflicts with affiliate market participants and affiliate clearing members, respectively—with associated guidance that specifies acceptable practices addressing systems separation, staff separation, physical office separation, related documentation and disclosure.

Before CME Group began operating its FCM, it carefully considered the potential for conflicts within its corporate structure because its DCMs and DCO have regulatory core principle obligations to do so. The end result of that exercise was to implement effective separation of our FCM entity voluntarily, including segregated duties among staff and limited sharing of personnel, and, further, effective physical office separation for FCM personnel and DCM- and DCO-focused personnel. Thus, CME Group understands the Commission's objective with this aspect of the Proposal and believes it already largely meets the Commission's expectations and policy objectives in this area today.

CME Group believes our model is a good model for the Commission to consider as it moves forward to establish a uniform baseline for requirements for effective DCM/DCO and FCM separation, but we offer the following suggestions for changes in any final rules. The Commission should allow and expect that large multi-business financial services organizations will seek to achieve staffing efficiencies through use of "dual hatted" employees where appropriate. Although we agree that certain personnel should be strictly separated based on their duties, we think this level of separation should only extend to SRO and FCM staff. The bar on use of dual hatted employees for efficiency should not be extended to other types of personnel that provide support in large, global organizations and could easily be allowed to focus on dual tasks for efficiency purposes without any significant risk. For example, the Commission's Proposal suggests that legal personnel should not be shared but in our experience that goes too far. Global banks that own, among other regulated entities, broker/dealers, FCMs, swap dealers, proprietary trading groups and often times interests in DCMs and DCOs, effectively manage shared services amongst a number of administrative areas, including legal, compliance, finance, accounting, internal audit, IT and human resources. CME Group similarly shares such services across its various entities. We believe this is a rational structure for any large organization and do not see why this should be altered other than, as noted, as between personnel acting on behalf of the SRO and the FCM.

Specific Comments on Proposed Rules Relating to Affiliate Principal Trading Firms

As we have noted, we agree that an affiliation between a marketplace SRO, and a separate firm that is a participant in that same marketplace SRO, presents issues that need to be addressed from a regulatory standpoint. However, there are reasons to distinguish between the types of market participants in these scenarios - certain types of market participants present different types of conflict concerns. As the Commission has noted, a trading firm that owns, is owned by or is under common ownership with a DCM, and trades on a proprietary basis on the DCM with leverage, raises the "most acute" type of conflict of interest concerns. The potential for conflicts that involve an affiliate principal trading firm, and the risks involved with principal trading mismanagement, are of such a magnitude that they should be placed in a category of its own and justify an exception to the general rule of permitting principles-based flexibility to manage conflicts of interest. In fact, these particular arrangements should simply be prohibited outright. A DCM and an affiliated FCM that acts solely on an agency basis for its customers and is subject to the strict segregation and customer protection regime under CFTC, NFA and marketplace SRO rules presents limited and manageable conflicts of interest. But an affiliated firm trading as principal on an affiliated DCM is an entirely separate matter.

These concerns are not based on conjecture or idle speculation; they are grounded in the experiences of the industry in the very recent past. In a separate CME Group comment letter (just four years ago)

addressing the FTX request for an amended DCO order, we specifically pointed out the significant conflicting interests between FTX and its "liquidity providing" affiliate, Alameda Research.[13] Our view was that unscrupulous managers can easily succumb to the strong business pressure to favor affiliated entities, particularly in times of market stress and particularly where an affiliated trading firm's viability is called into question. Subsequent events bore these fears out in devastating fashion.

But yet, the Proposal would allow a DCM to be affiliated with a principal trading firm. In our view, the Commission has not gone far enough. We believe the Commission should reconsider its current approach and simply prohibit the practice of a DCM being able to be affiliated with a principal trading firm regardless of that firm's role in the market.

If, however, the Commission is determined to proceed, we believe it would be appropriate to propose regulations to address these unique risks. For instance, strict limitations should be placed on the affiliated trading firm. Specifically, the affiliated trading firm must be subject to the same automated liquidation procedures as other market participants and should be prohibited from acting as the counterparty on the other side of the market during auto-liquidations. Allowing an affiliated trading firm to take the opposite side of automated customer liquidations creates a severe conflict of interest and a perverse incentive for the trading firm to trigger or benefit from auto-liquidations, especially during periods of extreme price volatility.

Exchanges with affiliated principal trading firms should be required to demonstrate to the Commission the sources of liquidity in their markets. The CFTC could impose explicit obligations on the DCM or trading firm, including disclosing the volume or percentage of market activity handled by the affiliate, establishing plans for the affiliate's withdrawal and ensuring that the affiliate receives no preferential latency or trading execution access. These obligations would give the Commission visibility into liquidity concentration and operational fairness without dictating market structure or prescribing how liquidity must be sourced. The CFTC could also require that DCMs are only allowed to have an affiliated principal trading firm if those accounts are intermediated by an independent FCM, thus ensuring an added layer of risk management by a non-conflicted party.

Specific Comments on DCM Board Composition

The Commission's Proposal would codify existing guidance regarding DCM board composition, public directors, ROCs, and disciplinary panels directly into binding regulatory text as amended CFTC Regulation 38.853, rather than leaving them as voluntary or advisory acceptable practices in Appendix B. Thus, DCMs would be subject to new mandatory requirements for specific thresholds for public director representation on boards and committees, that is, at least 35% of a DCM board and any executive committee consist of public directors, that nominating committees be at least 51% public directors, and that ROCs be composed entirely of public directors. While CME Group already meets or exceeds these thresholds and supports governance best practices to minimize conflicts of interest, it questions whether the Commission has the authority to impose such prescriptive requirements, particularly given that corporate governance has traditionally fallen under state law, such as Delaware corporate law, which already addresses directors' duties of care, loyalty, and good faith.[14]

CME Group further argues that the Commission lacks statutory authority to mandate board-level governance requirements, noting that federal agencies may only adopt regulations to carry out the will of

[13] See May 11, 2022 Comment Letter from Kathleen Cronin, General Counsel CME Group Inc. in response to CFTC Request for Comment on LedgerX, LLC d.b.a. FTX US Derivatives Request for Amended DCO Registration Order.

[14] See, e.g., ABA v. FTC, 430 F.3d 457, 471-72 (D.C.Cir. 2005) (regulators may not enact rules or regulations that reach into an area of State sovereignty unless the plain language of the federal law compels the intrusion).

Congress as expressed in statute.[15] The CEA assigns DCMs, not the Commission, the authority and responsibility to establish fitness standards, minimize conflicts of interest, and design appropriate governance arrangements under the relevant core principles. Rather than imposing binding structural requirements, CME Group urges the Commission to retain these provisions as guidance, serving as a safe harbor through which DCMs and SEFs can demonstrate compliance with Core Principle 16 while allowing flexibility for different governance structures.

Specific Comments on FCM Public Disclosure

CME Group agrees with the Commission that FCM affiliation public disclosure is necessary. CME Group's FCM already voluntarily discloses such affiliations via its firm required disclosure document pursuant to Regulation 1.55, by use of the FIA's FCM Risk Disclosure Booklet and within the contents of its customer agreement.

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Conclusion

CME Group appreciates the opportunity to provide our comments on the important issues raised by the NPRM. The existing principles-based approach for addressing potential conflicts, when complied with and enforced, has worked well. We believe that recent developments present concerns that warrant the Commission's focused attention and possible action. However, the Commission is well equipped with its current core principle framework to enforce compliance with these existing standards where DCMs do not adequately consider or address the obvious potential for conflicts that need to be responsibly managed. The Commission should consider whether it can achieve its policy objectives without the need for rulemaking here and, in any event, should leave its DSRO supervision framework undisturbed and should flatly prohibit principal trading by a firm affiliated with an exchange group.

Should you have any questions or require any additional information, please contact me at (312) 466-4385 or via email at john.marchese@cmegroup.com.

Sincerely,



John Marchese
Senior Managing Director and General Counsel
CME Group Inc.

[15] Ernst & Ernst v. Hochfelder, 425 U.S. 185, 213-14 (1976) ("The rulemaking power granted to an administrative agency charged with the administration of a federal statute is not the power to make law. Rather, it is 'the power to adopt regulations to carry into effect the will of Congress as expressed by the statute.'").