October 5, 2026

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

Re: Conflicts and Affiliations (RIN 3038–AF76)

Dear Mr. Kirkpatrick:

The International Swaps and Derivatives Association, Inc. (**"ISDA"**)[1] and Securities Industry and Financial Markets Association ("**SIFMA**")[2] (together, the "**Associations**") appreciate the opportunity to comment on the Commodity Futures Trading Commission's (**"Commission"** or **"CFTC"**) notice of proposed rulemaking on Conflicts and Affiliations (the **"Proposal"**)[3]. The Proposal would establish new requirements for futures commission merchants (**"FCMs"**), swap execution facilities (**"SEFs"**), designated contract markets (**"DCMs"**), and derivatives clearing organizations (**"DCOs"**) that aim to address the conflicts of interest that arise where affiliations exist among registered entities.

As the Commission recognized in its recent Memorandum of Understanding with the Securities and Exchange Commission (**"SEC"**)[4], many financial services firms hold multiple registrations

[1] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 79 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org.

[2] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[3] Conflicts and Affiliations, 91 Fed. Reg. 50926 (Aug. 6, 2026) (hereinafter "Proposal").

[4] U.S. Sec. & Exch. Comm'n & U.S. Commodity Futures Trading Comm'n, *Memorandum of Understanding Regarding Harmonization in Areas of Common Regulatory Interest* (Mar. 11, 2026), https://www.sec.gov/files/mou-sec-cftc-2026.pdf.

with both the SEC and the CFTC in order to serve their clients holistically and efficiently. For the conflicts of interest rules to be effective, it is important that the Commission focuses on affiliations that have the potential to create material conflicts of interest, rather than on the existence of affiliations among registrations or market functions alone. We believe the Proposal is generally consistent with this principle. In particular, in our view, the features that give the greatest rise to conflicts of interest are: (i) whether a registrant has regulatory oversight and enforcement authority over its competitors or the competitors of an affiliate; (ii) whether the vertically integrated structure includes a DCO that creates commercial incentives or opportunities to modify core risk-management functions of the clearinghouse, such as margin terms or default processes, to the benefit of its affiliate; (iii) whether an execution venue has the ability to give an affiliated liquidity provider competitive advantages; and (iv) whether market participants are bound by regulatory mandates with regard to the use of the vertically integrated structure (e.g., the mandatory execution of futures on a DCM).

The Associations and their members agree with the Commission that the affiliations addressed in the Proposal present conflicts that existing rules do not squarely address, and we support the Commission's decision to proceed through a principles-based rule, together with detailed acceptable practices, rather than prescriptive structural mandates. This approach strikes the appropriate balance by ensuring that conflicts are addressed and their adverse effects are mitigated, while preserving the flexibility for registered entities to mitigate the conflicts based on specific facts and circumstances.

We also underscore the importance of finalizing these rules promptly. Our markets are being restructured at speed: affiliations of the kind the Proposal addresses are proliferating, there are a significant number of new entrants seeking Commission registration, and vertically integrated models are becoming more common. The conflicts the Proposal identifies are therefore present in the market today, and the framework will be most effective if it is in place as these structures continue to develop and as potential mergers and affiliations are under consideration.

While the Associations are broadly supportive of the Proposal's trajectory,[5] below we offer additional recommendations directed at enhancing the Proposal to ensure that the Commission's objective of establishing safeguards against conflicts of interest is achieved in practice.

I. Conflicts Management in the Context of Acquisitions

The Commission should clarify how the final rule operates when an affiliation arises through an acquisition, rather than through organic growth. Given the pace of consolidation across today's

[5] We share the Commission's view that a "consistent regulatory baseline" drawing on the sound practices registered entities have already developed would deliver the "consistency, clarity, and transparency that voluntary measures alone have not achieved," would "help ensure that comparable conflicts are subject to comparable safeguards regardless of the venue on which they arise," and would advance "the conflict-of-interest, customer-protection, and market-integrity objectives reflected in the Core Principles applicable to SEFs, DCMs, and DCOs." Proposal at 50932.

markets, we expect that many affiliations will be created through acquisitions, for example, an exchange group acquiring a clearing member or a proprietary trading business or a trading firm acquiring a venue. The final rule should confirm that conflicts management is a necessary part of the diligence, structuring, and approval considerations for any such transaction, and that the applicable requirements (including conflicts procedures, information restrictions, and any mandatory third-party Self-Regulatory Organization (**"SRO"**) or regulatory service provider (**"RSP"**) designations) attach immediately upon the closing of the acquisition.

Relatedly, we encourage the Commission to review its existing ownership-change and equity-transfer rules to confirm that they remain fit for this purpose. In particular, the current DCM and SEF rules focus on equity transfers above specified thresholds, while the DCO rules address controlling interests and indirect arrangements more broadly.[6] Further, the DCM/SEF rules require notification of ownership interest transfers after the fact, while the DCO rules require three months' notice. The result is that a transaction creating precisely the affiliations the Proposal addresses may receive materially different scrutiny depending on which registrant is being acquired.

To be clear, and consistent with Section II below, our concern is with ensuring that the Commission has adequate visibility into these transactions and not with impeding investment in exchanges. We believe the Commission already has the tools available to assess affiliation-related issues arising from an acquisition, and we ask only that they be used at the right point in the transaction and consistently across registrant types.

II. Preserving the Ability of Market Participants to Establish and Invest in New Venues

As the Commission finalizes the conflicts framework, it should be mindful of the need to preserve the ability of market participants to come together to establish, or invest in, new venues. While we understand that the Proposal targets the scenario in which a venue, an FCM, a market maker, or a clearinghouse are commonly controlled by a single firm, we want to ensure that the final rules do not inadvertently capture consortium-type arrangements that do not give rise to the conflicts contemplated by the Proposal. If a group of unaffiliated market participants jointly capitalizes a new venue, it may be structured so that no single participant can direct any management and policies (for example, self-regulatory judgments) to its own advantage, and the diffusion of ownership among competitors is itself a meaningful check.

---

[6] *See* Commission Regulation 38.5(c), 17 C.F.R. § 38.5(c), (requiring a DCM to notify the Commission of each transaction involving the transfer of ten percent or more of the equity interest in the DCM, at the earliest possible time but no later than the open of business ten business days *following* the date upon which the DCM enters into a firm obligation to transfer the equity interest) (emphasis added); Commission Regulation 37.5(c), 17 C.F.R. § 37.5(c) , (imposing a parallel notification requirement on SEFs, but only for transfers of fifty percent or more of the equity interest); Commission Regulation 39.19(c)(4)(ix), 17 C.F.R. § 39.19(c)(4)(ix) (requiring a DCO to report any anticipated change in the ownership or corporate or organizational structure of the DCO or its parent(s) that would result in at least a ten percent change of ownership of the DCO or a change to the entity or person holding a controlling interest, whether through an increase in direct ownership or voting interest in the DCO or in a direct or indirect corporate parent entity of the DCO, *no later than three months prior to the anticipated change*) (emphasis added).

The ability of market participants to invest in competing venues facilitates new entry, challenges incumbent exchanges, and drives improvements in market structure, all of which would benefit the market as a whole. Because the Proposal's operative definitions turn on "control" (i.e., the power to direct the management and policies of an entity, rather than on a fixed ownership percentage), we expect most consortium structures to fall outside of the Proposal. Nevertheless, we encourage the Commission to explicitly confirm that the rules would not apply to consortium-type arrangements absent actual control within the operative definitions.

III. Affiliate Market Makers: Liquidity Concentration and the Boundaries of Bona Fide Market Making

As an initial matter, the Associations agree with the Commission's core observation that if an entity trades as principal on an affiliated DCM, the conflict becomes economic rather than merely procedural, and it persists no matter how carefully the exchange administers its conflicts procedures. We are therefore supportive of the Proposal's prohibition on affiliations between principal trading firms (**"PTFs"**) and DCMs although we have concerns with the proposed affiliated market maker exception.

In scenarios where the affiliated market maker becomes the sole, or the majority, provider of liquidity for a particular DCM, significant risk-management issues remain even after full implementation of conflicts procedures. As the Commission correctly points out, the conflict is "most acute where the affiliate is the exchange's dominant or sole source of liquidity, such that the exchange's continued viability depends on the affiliate's activity precisely when impartial enforcement matters most."[7]

If a single firm supplies all or most of the liquidity in a product, that firm is *de facto* the market. If it exits the market (e.g., it reaches an internal risk limit, suffers an operational failure, or comes under stress of its own), no one else may be quoting, and customers may not be able to trade out of their positions at a reliable price. This concern is exacerbated on venues that liquidate customer positions automatically and in real time. Automatic liquidations are triggered by sharp price moves, and a sharp price move is precisely when a market maker is most likely to widen its quotes or withdraw. The venue would, therefore, be forcing customer positions into the market at the moment its sole liquidity provider has stepped away. This could result in crystallized losses at fire-sale prices and amplify price dislocations.

Exchanges with affiliated market makers should be required to demonstrate to the Commission the sources of liquidity in their markets. This could include obligations to disclose the degree to which liquidity is concentrated in the affiliate, how that concentration has behaved under stress, and plans for the affiliate's withdrawal.[8] These obligations would give the Commission visibility

[7] Proposal at 50949.

[8] We do not, however, support requiring a minimum number of liquidity providers. Such a requirement would be too prescriptive: it would be difficult to calibrate across products of very different depth and maturity, and it could be satisfied formally by nominal participants that supply no meaningful liquidity.

into liquidity concentration without dictating market structure or prescribing how liquidity must be sourced. They would also ensure that the issue is at least considered before a period of stress when the venue's contingency arrangements are tested for the first time.

IV. Guidance on the Scope of Confidential and Non-Public Information

The Proposal defines "non-public information" as information "that has not been disseminated in a manner which makes it generally available to the trading public," and describes it as intended to capture financial, operational, customer-position, risk-management, and proprietary-trading information acquired through a supervisory program.[9] The Proposal then restricts the flow of that information in several distinct contexts. Under the Proposal, an SRO may not access the non-public information of its affiliate FCM,[10] and may not share, directly or indirectly, information obtained through its supervisory program of member FCMs with that affiliate; the same restrictions are mirrored for Designated Self-Regulatory Organizations (**"DSRO**"). For DCMs and SEFs, the proposed conflicts requirements similarly prevent the sharing of non-public information with an affiliate market participant. Comparable confidentiality procedures would also apply to a DCO with an affiliate clearing member.

While we generally support the proposed confidentiality provision, additional guidance on what constitutes confidential or non-public information is warranted. The broad definition of "non-public information" does not by itself inform an SRO, a DSRO, an exchange, or an examined FCM where the boundaries lie in the ordinary course of business. The practical difficulty is that the most concerning categories of information (i.e., position and exposure data, capital and liquidity metrics, risk-model inputs and outputs, customer identities and concentrations, and commercially sensitive information about an FCM's business strategy or technology) are precisely the kind of information a financial examination is designed to uncover.

The proposed election mechanism does not fully address the issue. Even if an unaffiliated FCM elects the National Futures Association (**"NFA**") as its DSRO, information developed in the examination process can continue to flow through the Joint Audit Committee (**"JAC"**) to other SROs, including an SRO affiliated with a competitor of the examined FCM. We therefore encourage the Commission to provide clearer standards in accompanying guidance on the categories of information that are subject to the information restrictions, and to address expressly how those restrictions operate with respect to information shared through the JAC and the Joint Audit Program. Greater clarity in this area would help ensure that the information restrictions neither block the supervisory information sharing that is genuinely needed for proper oversight, nor allow commercially sensitive information to reach a competitor's affiliate indirectly.

---

[9] Proposal at 50935

[10] Except as necessary to comply with its obligations as a DCM under Part 38 of the Commission's regulations, 17 C.F.R. pt. 38.

V. DCOs and Affiliate Clearing Members

The Associations appreciate that the Proposal adopts several of the mitigants we proposed in our prior comments, including conflicts procedures, information barriers between a DCO and an affiliate clearing member and disclosure obligations.[11] The Proposal did not, however, adopt our recommendation that certain DCO decisions affecting an affiliate clearing member be subject to Commission pre-approval. We encourage the Commission to revisit that recommendation by considering a more nuanced approach to pre-approvals.

The Proposal observes that DCO discretion is essential to effective risk and default management and a DCO must be able to respond to the particular default circumstances in real time.[12] We agree with this assessment, and that requiring Commission pre-approval of decisions could materially impede the DCO's ability to respond under such circumstances. Such rationale, however, does not extend to every discretionary decision a DCO makes with respect to an affiliate clearing member, many of which are not time sensitive. For example, whether to impose a concentration or liquidity margin add-on for a particular member, the calibration of member-specific risk limits, the granting or withholding of a capital-based or activity-based accommodation, and the treatment of a member's collateral eligibility or haircuts, are decisions taken on a less rigid timeline. These are also the decisions in which the economic conflict may be most visible, because, for example, a decision not to impose an add-on for an affiliate goes directly to the affiliate's competitive benefit and is difficult for unaffiliated members to observe or challenge.

We would therefore encourage the Commission to consider requiring pre-approval, or at a minimum a notice-and-review process (with a defined and short review period), for non-urgent discretionary decisions that materially or economically affect an affiliate clearing member relative to unaffiliated members. Conversely, there should be no pre-approval requirement for time-sensitive risk-management and default-management decisions, which would instead remain subject to the DCO's documentation obligations and to after-the-fact Commission review. This approach preserves the operational flexibility the Commission rightly regards as essential, while applying an independent check precisely where the conflict is most acute.

VI. Different Conflicts Inherent in Different Venues

We support the Commission's decision to calibrate its requirements to the nature of the registered entity rather than applying a single uniform framework across venues. Trading protocols, participant composition, and the actual conflicts differ materially between SEFs and DCMs and differ again if the venue is under common ownership with a clearinghouse. An affiliation between a market participant and a SEF, if no DCO is under common ownership, does not raise

[11] With respect to the proposed disclosure obligation, we do not believe that identification of affiliates in a DCO's rulebook is sufficiently prominent to put market participants on notice. Instead, we would recommend clear public disclosure of affiliations on the DCO's website.

[12] Proposal at 50960.

the same order of concern as a market maker affiliated with both a DCM and the DCO through which its trades clear.

In addition, several structural differences between SEFs and DCMs support this differentiated treatment. First, SEFs generally offer flexible execution methods, and swaps that are required to be executed on a SEF are predominantly traded through request-for-quote (**"RFQ"**) protocols that provide for counterparty selection rather than a central limit order book. The prevalence of RFQ trading has practical consequences for how certain of the Proposal's mitigants would operate. For example, order-priority subordination cannot operationally apply to RFQ workflows, because clients select their counterparties and retain absolute discretion over the liquidity providers with which they transact. Considerations that are not relevant to the cleared central limit order book format offered by DCMs drive that commercial decision, including counterparty creditworthiness, pre-existing trading relationships and documentation and specific risk appetite.

Second, for swaps not subject to the trade execution mandate, the use of a SEF is voluntary, and SEFs have flexibility in the execution methods they offer. This is in sharp contrast to futures, which are required to be traded on a DCM that then clears through its affiliated DCO.

Third, liquidity providers and market makers on DCMs are not required to register with the Commission, whereas liquidity providers in swaps on SEFs are generally required to register as swap dealers. As registered swap dealers, they are subject to internal business conduct standards, including requirements to mitigate conflicts of interest.

Finally, in contrast to DCMs, SEFs were established under the Dodd-Frank Wall Street Reform and Consumer Protection Act (**"Dodd-Frank Act"**) to promote open access and competition in swaps trading. SEFs were therefore intended to be flexible, open-access platforms that foster innovation in execution. Restrictions on the ability of financial services firms to invest in SEFs through affiliated institutional investors may unnecessarily deter SEFs as a mechanism for innovation in electronic trading platforms for swaps.

For these collective reasons, we encourage the Commission to preserve the Proposal's distinction between SEFs and DCMs in the final rules.

In addition, even within the same type of registered entities, not all affiliations present identical risks. For example, if an affiliated introducing broker acts solely as agent for its customers by facilitating post-trade risk reduction services, rather than engaging in proprietary, directional trading or market making, no self-interest conflict arises. The Commission should confirm that a SEF with such an affiliate may apply conflicts procedures proportionate to that model, rather than those appropriate for a SEF with an affiliate that trades directionally.

VII. Spread of Risks Among Affiliates

The conflicts the Proposal identifies are not the only risks resulting from affiliate relationships. If a DCO is under common ownership with an FCM or a DCM has an affiliated PTF on its platform, losses at the affiliate that have nothing to do with trading or clearing (e.g., litigation, regulatory, or other operating losses) may nonetheless affect the clearinghouse or exchange, whether through intra-group support arrangements, guarantees, or the market's treatment of the group as a single credit.

An unaffiliated FCM that incurs a material litigation or operating loss must absorb that loss against its own capital. In our view, this issue should be considered when an FCM is affiliated with a DCO for which it provides client clearing. In other words, affiliation should not place the DCO on the hook, directly or indirectly, for losses arising from an affiliate's non-clearing activities, and the DCO's financial resources should not be available to absorb them. This concept of mitigating contagion risk is well-established in the banking context, where group ownership structures are subject to scrutiny to mitigate against losses in one part of a group affecting an entity whose stability is of heightened interest.

We encourage the Commission to take the corporate structure of these affiliations, and the potential for losses at one entity to affect another, into account as it finalizes its conflicts framework. Relatedly, we encourage the Commission to consider whether the supervisory tools applied to affiliated DCOs adequately capture this exposure (e.g., whether DCO stress testing should specifically incorporate stress at an affiliated FCM, rather than treating the affiliate as it would any other member).

* * * *

The Associations appreciate the Commission's consideration of these views and would welcome the opportunity to discuss them further. Please do not hesitate to contact Ann Battle (abattle@isda.org), Nicolette Cone (ncone@isda.org), Chris Young (cyoung@isda.org) and Kyle Brandon (kbrandon@sifma.org) with any questions.

Sincerely,



Ann Battle
Senior Counsel, Market Transitions
ISDA



Kyle Brandon
Managing Director, Head of Derivatives Policy
SIFMA