ROTHERA

October 5, 2026

SUBMITTED VIA WEBSITE

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

Re: Notice of Proposed Rulemaking – Conflicts and Affiliations (RIN 3038-AF76; Docket No. CFTC-2026-1686; 91 Fed. Reg. 50,926 (Aug. 6, 2026))

Dear Secretary Kirkpatrick,

Rothera Exchange and Clearing LLC ("**Rothera**") appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "**Commission**" or "**CFTC**") Notice of Proposed Rulemaking on Conflicts and Affiliations (the "**Proposal**").[1] Rothera is a futures exchange and clearinghouse operator focused on intermediaries and institutions. Rothera's parent was formed in 2025 as a joint venture of Robinhood and Susquehanna and in early 2026 acquired MIAXdx (formerly known as LedgerX), a CFTC-registered Designated Contract Market ("**DCM**") and Derivatives Clearing Organization ("**DCO**"), which launched as Rothera in June 2026. Rothera's products include event contracts referencing sports, economic indicators, and election outcomes, and in the future will include commodities and digital asset event contracts, among others.

Rothera's executives have deep expertise in DCM/DCO operations and regulatory compliance and include former CFTC and National Futures Association professionals. Our leadership has established relationships with major institutional trading firms, futures commission merchants ("**FCMs**"), and introducing brokers. As a DCM/DCO, Rothera fully adheres to the Core Principles under the Commodity Exchange Act ("**CEA**"). Given this background, we are in a unique position to provide thoughtful input on the extensive changes contemplated by the Proposal.

I. Background on the Proposal

Rothera supports the Commission's goal of establishing transparent, baseline protections applicable to all DCMs and DCOs.[2] The Commission's regulatory focus on conflicts of interest has

[1] Conflicts and Affiliations, 91 Fed. Reg. 50,926 (Aug. 6, 2026), https://www.govinfo.gov/content/pkg/FR-2026-08-06/pdf/2026-15948.pdf (the "**Proposal**").

[2] The Proposal at 50,932.

shifted markedly over a short period, from crypto markets three years ago to prediction markets today.[3] The Proposal appears narrowly calibrated to address today's more recently emerged market structures without acknowledging more well-established market structures or adequately contemplating a more durable, evenhanded approach capable of adapting as markets continue to evolve. CFTC Staff first sought public comment on affiliations between DCMs and intermediaries or other market participants in 2023 with the objective of better informing CFTC Staff's understanding of issues that may arise in this context.[4] In this context, the request primarily focused on vertical integration, which has long been a feature of the futures industry, where the largest DCMs have for decades owned and operated their own DCOs, without presenting significant issues. When the 2023 request for comment was issued, then-Commissioner Caroline Pham explained that existing regulations already addressed the issues in the request while acknowledging that an understanding of these relationship dynamics would be essential to the maintenance of fair and efficient markets.[5]

While some of the Proposal is consistent with the Commission's principles-based regulatory approach, much of it is not. Instead of trying to understand the dynamics between DCMs, DCOs, and affiliated market makers, for example, the Commission proposes onerous conditions that, in practice, could entirely ban market makers from trading on affiliated DCMs. Throughout this letter, Rothera has identified where the Commission diverges from its principles-based regulatory approach and how the Commission's final rulemaking could be improved by reverting to this approach.

Rothera complies with the Core Principles as drafted and does not provide preferential access, information, or terms to any participant, affiliated or otherwise. Our general view and experience are that every market participant looks for an advantage, which is the nature of competitive markets. A DCM is the backstop that ensures no participant gains one through preferential access, information, or terms or any other such treatment, and Rothera performs that critical role across its entire market, for affiliated and unaffiliated participants alike. Throughout this letter, Rothera uses the term "affiliate" as the Proposal does. However, "affiliation" is not control, nor does it imply preferential access, shared information, or any other advantage. Whether any firm receives different treatment from others is a question of Rothera's conduct, which is already addressed by the Core Principles and the Commission's existing oversight.

II. Executive Summary

The Commission articulates various concerns about DCMs with affiliated market participants, including the potential for a DCM to make non-public information available to its affiliates for their benefit and to exercise discretion (such as discretion on market and trade practice surveillance, investigations, rule enforcement, fee and incentive arrangements, and product listing decisions) in a way that favors its affiliates. The Proposal addresses some of these concerns consistent with the Commission's principles-based framework, but other parts of the Proposal are not fit for purpose. Rothera encourages

[3] *See id.* at 50,932, 50,948-49, 50,953.

[4] Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities (June 27, 2023), https://www.cftc.gov/media/8826/rfcimpactaffiliations062823/download.

[5] Commissioner Caroline Pham, *Statement of Commissioner Caroline D. Pham Regarding Request for Comment on the Impact of Affiliations Between Certain CFTC-Regulated Entities* (June 28, 2023), https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement062823.

the Commission to reconsider those parts of the Proposal. Rothera believes that the existing conflicts of interest framework and other Core Principles make it unlikely that market participants will face harm arising solely by virtue of affiliation. Rothera urges the Commission to reconsider certain aspects of the Proposal to avoid the unintended consequences likely to follow and, instead, to foster innovation in new markets consistent with its mandate.

- **The Commission's existing safeguards are sufficient to protect against the perceived risks articulated in the Proposal from arising in the future.** Rothera supports the codification of the conflicts of interest framework, with information barriers, separation of duties, and related safeguards. Once this framework is codified, much of the Proposal will not be warranted because the Commission's rule enforcement review program can most effectively monitor a DCM for compliance and address specific concerns about the DCM's conflicts of interest program at that time.

- **The prohibition and conditional exception on affiliate market makers are an extreme reaction to market infrastructure that is nascent and innovative.** The Proposal would prescribe market maker program terms applicable to affiliated market makers while subjecting the same market makers to order subordination, thus making it challenging, if not impossible, to meet those program terms. In addition, the Proposal would impose costly requirements that effectively prevent a DCM from allowing affiliates to trade on it or risk a trading ban for any issue of non-compliance found to exist by a third-party auditor. Again, the Commission's concerns are better addressed by the Commission itself in rule enforcement reviews and enforcement actions. Order subordination and per-session trading screen disclosure would depart from objective, nondiscriminatory matching rules and impartial access without improving customer protection. If the Commission moves forward with the Proposal, an annual attestation by the DCM's senior management, tested in the Commission's rule enforcement reviews, would address the Commission's concerns more effectively than a third-party monitor.

- **The definition of "control" is too broad and too subjective to uniformly apply across DCMs.** If the Commission moves forward with the Proposal, it should adopt a tailored, meaningful definition of "control" to avoid subjecting DCMs to onerous requirements simply by virtue of third-party capital investments or arms-length governance structures. If the Commission moves forward with the Proposal, it is of critical importance that the Commission adopt an objective definition that is appropriately tailored to the Commission's goals, particularly because much of the Proposal becomes applicable once control is found to exist.

III. The Proposed Mitigation of Conflicts of Interest Involving DCMs and Affiliate Principal Trading Firms is a Solution Looking for a Problem

The Proposal describes concerns related to conflicts that could arise when a DCM has an affiliate principal trading firm ("**PTF**"), i.e., a member of the DCM that controls, is controlled by, or is under common control with the DCM and trades on the DCM as a market maker, liquidity provider, or otherwise, for its own account (an "**Affiliate PTF**"). The Commission explains its belief that where an Affiliate PTF serves as a source of liquidity on an affiliated DCM, unaffiliated liquidity providers may not trade on the DCM if they "perceive" that the affiliated firm receives terms more advantageous than those

applicable to the unaffiliated liquidity providers.[6] Market realities refute this hypothetical: unaffiliated liquidity providers actively trade on DCMs that have affiliated liquidity providers, as Rothera's own experience shows. Based on its concerns, the Commission has proposed several novel regulatory obligations that would impose significant costs on market infrastructure, market participants and, ultimately, customers.

A. The Proposal is Not Warranted Given Existing Safeguards

Despite no evidence that the Commission's concerns have materialized on CFTC-registered DCMs or DCOs, and indeed evidence to the contrary, the Commission believes "that an exchange cannot credibly perform these self-regulatory functions in the context of an affiliate upon which it may be dependent for profits, and that the mitigants cited by commenters—equal-treatment and impartial-access requirements, ROC review, and Commission examination—ultimately depend on the exchange's policing its own conduct in the face of a significant conflict of interest."[7] The Commission articulates three specific concerns, including: (1) affiliation may give a DCM a financial incentive to establish terms (such as latency and market data access, order priority, and incentives and other fees) that are more favorable to an Affiliate PTF; (2) a DCM may share or exploit non-public information about its participants for the benefit of an Affiliate PTF; and (3) a DCM's self-regulatory obligations "run directly against its commercial interest in the affiliate's trading."[8] The Proposal also does not account for the reasons a DCM would refrain from favoring an Affiliate PTF. Preferential treatment would already violate the impartial-access requirement of Regulation 38.151(b) and the conflicts of interest obligations of Core Principle 16, exposing the DCM to enforcement action, and it would cause reputational harm with every other participant the DCM depends on. A DCM with a strong culture of compliance has every incentive not to take that risk.

Nor is this absence of evidence mere silence, because DCMs whose owners or affiliated members also trade on them have operated under the Commission's oversight for decades, and newer DCMs operate today with unaffiliated liquidity providers who, by their continued participation, demonstrate that they do not perceive the disadvantage the Proposal assumes. Through its examination and enforcement tools, the Commission can monitor actual experience instead of presuming harm before it occurs.

Rothera's own markets illustrate the point: eight market makers currently provide liquidity on Rothera, one of which is affiliated with one of Rothera's owners, and that relationship has not prevented others from willingly making markets on Rothera. All eight market makers access Rothera on the same terms, and competition among them, not the identity of their owners, keeps quoting tight and fair. Affiliation has not deterred unaffiliated firms from committing capital, it does not make the affiliated firm a controlling party of the DCM, and it does not necessitate restraint of the affiliated firm's trading activities. To the extent that the Commission's concern is about a venue that depends on a single liquidity provider, that concern is really a question of concentration, which competition among market makers, not a penalty on affiliation, addresses.

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[6] The Proposal at 50,948.

[7] *Id.* at 50,949.

[8] *Id.*

According to the Commission, these concerns are more significant in the market maker context than in the intermediary context because a DCM, through common ownership, may share in an Affiliate PTF's trading profits, an interest that, as discussed above, is shared by any DCM whose owners or members trade on it and that existing impartial-access and conflicts of interest requirements already address. Given that many new prediction markets (i.e., CFTC-registered DCMs) use Affiliate PTFs as market makers, the CFTC's Proposal is focused solely on DCMs in this regard.

The Proposal is also difficult to reconcile with the structure of the CEA. Congress gave DCMs reasonable discretion in establishing the manner in which they comply with the Core Principles, unless the Commission determines otherwise by rule or regulation.[9] Where the Commission proposes to displace that discretion with prescriptive, affiliate-specific mechanics, the record should show why the Core Principles and the codified conflicts of interest framework are inadequate, and it does not. In addition, CEA section 15(b) directs the Commission to endeavor to take the least anticompetitive means of achieving the CEA's objectives.[10] A regime that effectively excludes a category of liquidity provider from newer DCMs is not the least anticompetitive means of addressing a conflict that the codified framework already addresses. Rothera has previously urged the Commission to give section 15(b) meaningful weight and again urges the Commission to give it meaningful consideration here.[11]

The Proposal would require a DCM with an Affiliate PTF that trades on the DCM to adhere to the following requirements:

- subordinate an Affiliate PTF's orders such that these orders are filled last at every price level without regard to the time priority of its orders;

- condition an Affiliate PTF's participation in a market maker program on prescribed terms, including continuous two-sided quotations, minimum trading hours, limits on bid-ask spreads, and restrictions on directional positions;

- designate an independent third-party regulatory service provider ("**RSP**") to verify that the Affiliate PTF complies with Regulation 38.604 as if it were an FCM, review and monitor the DCM's own compliance with its conflicts of interest procedures, and annually certify to the CFTC and the DCM's board of directors (or other designated committee or officer responsible for regulatory compliance) that the affiliate principal trading firm satisfies the regulatory conditions and that the DCM is in compliance with its conflicts of interest procedures; and

- disclose on the trading screen, on a per-session basis, the existence of the Affiliate PTF and their relationship with each other that customers affirmatively acknowledge and that intermediaries must deliver to customers.

[9] CEA § 5(d)(1)(B), 7 U.S.C. § 7(d)(1)(B).

[10] CEA § 15(b), 7 U.S.C. § 19(b).

[11] Rothera Exchange and Clearing LLC, Comment Letter on Advance Notice of Proposed Rulemaking on Prediction Markets, 91 Fed. Reg. 12,516 (Mar. 16, 2026), submitted Apr. 30, 2026, at 31-32 [hereinafter Rothera ANPRM Letter].

As discussed below, these requirements are unduly burdensome, incongruous with decades of precedent and practice, would embed insurmountable structural disadvantages for a category of market participants in response to advantages they could hypothetically otherwise receive, and are impractical. Before imposing such severe obligations on a DCM (obligations that, if not satisfied, could effect a *de facto* ban on an Affiliate PTF from trading on the DCM), the Commission must reconsider its divergence from the CEA's principles-based framework. The Commission should not move forward with its proposed Regulation 38.852(c). Instead, the Commission should use its existing tools, including rule enforcement reviews and enforcement actions, to ensure compliance with the conflicts of interest framework in the Appendix to Part 38, which would be codified under the Proposal. Compliance with information barrier and separation of duty obligations should ensure that a DCM does not provide any Affiliate PTF with preferential treatment and, if the Commission finds that this activity has occurred, it can take the appropriate action at that time. Ensuring that all participants are provided non-preferential access as required by the regulations is superior to instituting discrimination-by-design as an answer to concerns about hypothetical preferential access. Before moving forward with the Proposal, the Commission must consider its negative effects, especially in cases where an Affiliate PTF is prohibited from trading on a DCM and the knock-on effects on the market participants who trade and benefit from a variety of market makers providing liquidity.

B. The Proposed Annual Certification Can Be Better Accomplished Through Rule Enforcement Reviews or Attestations

The Commission should not adopt the requirement that a DCM with an Affiliate PTF undergo an annual certification of compliance by an independent third-party RSP. Under the Proposal, the Commission would require a DCM to retain an independent third-party RSP to perform financial surveillance on the Affiliate PTF as if it were an FCM, monitor the DCM's compliance with proposed Regulation 38.852(b) (i.e., the conflicts of interest framework), and annually certify to the Commission and the DCM's board of directors (or other committee or officer responsible for regulatory compliance) that the Affiliate PTF satisfies each of the conditions in the regulation and that the DCM is in compliance with the conflicts of interest framework. Generally, this type of compliance oversight of a DCM would be conducted in a Commission rule enforcement review.

The service provider requirement is more akin to a litigation monitor imposed after the Commission takes enforcement action against a market participant. The Commission's Division of Enforcement (the "**Division**") itself has noted that monitors would be imposed in cases where *the pervasiveness or severity of the misconduct* caused the Division to doubt whether the subject of the enforcement action could remediate its noncompliance or misconduct without a third party's assistance and oversight.[12] These types of monitors are used in situations of egregious behavior, and only after the Commission has determined that a violation of the CEA and CFTC regulations has occurred. Here, the Commission proposes to require a third party that essentially serves a monitor role *ex ante*. The RSP has the power to determine whether the DCM may continue allowing its Affiliate PTF the ability to trade on the DCM. This is because, under the Proposal, the RSP can require the immediate cessation of the

[12] CFTC, Division of Enforcement, Advisory Regarding Penalties, Monitors and Consultants, and Admissions in CFTC Enforcement Actions (Oct. 17, 2023), https://www.cftc.gov/media/9466/EnfAdv_Resolutions/download.

Affiliate PTF's eligibility to trade on the DCM if it determines that the trading firm or DCM is not in compliance with the new requirements.

Instead of adopting this requirement, the Commission should use its existing authorities to monitor for DCM compliance with the conflicts of interest framework. The CFTC is best situated to perform compliance reviews of DCMs because its Staff is most familiar with the regulatory requirements, the rationale for the requirements, best practices and industry standards as to how other DCMs implement the requirements, and how to identify significant deficiencies. Staff has a view across all DCMs whereas an RSP may only have a view as to one particular DCM. The Proposal is troubling because there is no indication of who this service provider would be and whether it would be reviewed by the Commission, or whether there would be any limit on the amount of fees it could charge. Moreover, Staff can recommend enforcement actions to the Commission when there has been a violation of the CEA or CFTC regulations. The Commission's rule enforcement review program and enforcement power should be sufficient to address scenarios where conflicts posed by Affiliate PTFs create regulatory issues or rule violations.

Every DCM manages difficult conflicts, and the Core Principles are built on the premise that DCMs can and must do so. Adding a third party creates a second conflict rather than removing the first. An RSP retained and paid by the DCM it certifies has its own commercial incentives, whether to preserve the engagement or to justify its fees. Unlike a DCM, an RSP is not accountable to the Commission in any respect.

The requirement also overlooks how a self-regulatory program works, including the FCM financial surveillance program that the Proposal would extend to Affiliate PTFs. The CEA establishes a framework for regulating derivatives markets and market participants that relies upon "front line" regulation performed by registered entities and the National Futures Association ("**NFA**") as self-regulatory organizations ("**SROs**"), who are subject to the Commission's oversight and enforcement authority.[13] This framework is codified in CFTC Regulation 1.52, which requires SROs to: (1) adopt rules prescribing minimum financial and reporting requirements for member FCMs that are at least the same as the CFTC requirements; and (2) establish and operate a supervisory program, examining member FCMs to assess whether the FCMs are in compliance with SRO rules and certain CFTC regulations.[14] Two or more SROs may establish a "joint audit plan" for the purpose of assigning one of the SROs (the "**DSRO**") of this plan the responsibility of examining member FCMs for compliance with minimum capital and financial reporting requirements.[15]

Within that framework, a DCM's surveillance, investigation, and examination functions operate as a single, integrated program. Market and trade practice surveillance informs investigations, and investigations inform examinations. Outside the DSRO structure, each DCM is required to examine its members for matters specific to its own rules, and it coordinates with each member's DSRO to identify the issues to be covered before that examination begins. A part of this integrated program cannot be

[13] 7 U.S.C. § 5(b).

[14] *See* 17 C.F.R. §§ 1.52(b)(1), (c)(1).

[15] *See* 17 C.F.R. § 1.52(d)(1).

assigned to a third party as contemplated in the Proposal without weakening the whole: the DCM would remain responsible for a program it no longer fully runs and the RSP would be responsible for a piece it cannot see in context. If a DCM's program is sound, it should cover every participant. If it is not, the Commission's oversight of the DCM and the whole program more appropriately addresses the DCM's conduct, not a third party placed inside a part of the program where the third party has its own conflicts and sees only one element of the DCM's business.

Rothera strongly urges the Commission not to adopt the independent third-party regulatory services provider requirements under proposed Regulation 38.852(c)(2). If the Commission decides to adopt rules related to Affiliate PTFs, the Commission should consider alternatives to these requirements. For example, a more effective and less costly alternative is available within the existing framework should the Commission move forward with the Proposal. Rather than imposing an outside monitor on DCMs with Affiliate PTFs, the Commission could require a DCM's chief executive officer and chief regulatory officer to attest annually to the Commission that the DCM (1) does not provide any participant, including any affiliate, with preferential access, information, or terms; and (2) has complied with its conflicts of interest policies and procedures. The attestation could accompany the annual report that the DCM's Regulatory Oversight Committee prepares under the Acceptable Practices to be codified by the Proposal, providing Commission staff a defined basis for testing compliance in rule enforcement reviews. Because a materially false statement to the Commission is already unlawful under CEA section 6(c)(2),[16] the attestation would carry real consequences without a new regulatory structure. Rothera first recommended an annual no-preferential-access attestation of this kind in its ANPRM Letter and continues to believe that an attestation is appropriate under certain circumstances.[17]

C. Order Subordination is Inappropriate

Rothera urges the Commission not to adopt the order subordination requirement in proposed Regulation 38.852(c). Objective matching rules are an essential underpinning of exchange-traded derivatives markets and put all market participants on an even playing field: everyone knows the rules, and everyone's orders are filled pursuant to objective, fair rules. That is true of price-time priority and of other matching models, such as pro rata allocation or priority for a lead market maker, which reward a participant that accepts and meets heightened obligations, are open to any participant that qualifies, and can be lost to a participant that performs better. Order subordination instead penalizes a category of participants in advance on the suspicion that a problem may exist, and the Proposal undermines decades of DCM operations, to the detriment of market liquidity and transparency, for the sake of "a self-adjusting limit on the affiliate's role" on a DCM.[18]

The Proposal's requirement is contrary to Core Principles that require impartial access, which the Commission has described as enhancing liquidity and market transparency.[19] Impartial, fair, open access

[16] 7 U.S.C. § 9(2).

[17] Rothera ANPRM Letter, *supra* note 11, at 3.

[18] The Proposal at 50,951.

[19] Core Principles and Other Requirements for Designated Contract Markets, 77 Fed. Reg. 36,612, 36,625 (June 19, 2012).

are central tenets of the Core Principles and CFTC regulations applicable to DCMs and DCOs. Yet the Proposal prejudges Affiliate PTFs and treats their orders differently, an approach that is inconsistent with these central tenets.

Order subordination also rests on the premise that an Affiliate PTF's orders are inherently suspect. At any given moment, an Affiliate PTF's quote may set the best price available in the market, and subordinating it penalizes the participant (the Affiliate PTF) that improved the market if others can step ahead just by joining the quote. Over time this may discourage the tight quoting that benefits every customer. There is no principled reason an order should lose priority solely because of who entered it, rather than because of its price, its time of entry, or obligations its owner has accepted and met under the DCM's rules, and every order on a DCM should compete under the same matching rules.

The Commission's suggestion that subordination might not apply where an Affiliate PTF faces no competing orders underscores the point. If an Affiliate PTF's liquidity is acceptable when it is the only liquidity available, the Proposal offers no reason why the same order becomes harmful when a competing order arrives at the same price. The conflicts of interest framework the Proposal would codify, together with the practices described above, already protects customers without subordination.

Further, the order subordination proposal would introduce technical and operational risks that may unintentionally result in market disruptions. This is because, from an implementation perspective, the technology and testing needed to comply with an order subordination requirement would add complexity and significant risk to the development of the order book technology and ongoing testing and enhancements to the technology. The speed at which orders are entered is not, by itself, the obstacle. In principle, any deterministic matching logic can be coded. The difficulty is that order subordination would require a DCM to run a second, participant-specific priority logic in parallel with the matching logic that governs every other order on the book. Maintaining two sets of priority rules within a single matching process introduces the risk of race conditions and sequencing errors, can delay otherwise legitimate orders, and requires changes beyond the matching engine itself, including to market data, trade reporting, surveillance, and audit trail systems. These changes can be built, but only at substantial expense, including the initial engineering effort, the opportunity cost of deferring other system improvements, and a permanently expanded testing burden for every future release. If the technology falters, issues from order subordination problems to system outages could occur. The resulting disruption could interrupt trading, decrease liquidity, cause pricing spikes, lead to participants receiving inferior fills, and raise questions about the DCM's market integrity, contrary to the goals of the Proposal. The Commission needs to consider the consequences of the order book subordination requirement and the risks this requirement could present and weigh these consequences and risks against any purported benefits of this significant change to market structure.

The alternatives the Commission considered, including a cap on an affiliate's share of volume or value, an end-of-day net position limit, and a phased cap that tightens as unaffiliated liquidity develops, share the same flaw. Each presupposes that liquidity from an Affiliate PTF is harmful and must be limited, even where that liquidity benefits every participant that trades against it, the Affiliate PTF complies with the DCM's rules, and the DCM complies with its conflicts-of-interest obligations. Moreover, each alternative would require a threshold that is impossible to establish on a principled basis. For these reasons, Rothera opposes the Commission's alternatives to the proposed order subordination

concept. The Commission should not adopt an order subordination requirement, nor should it adopt the alternatives discussed in the Proposal.

D. The Proposed Trading Screen Disclosure Does Not Meaningfully Enhance Customer Protections

Pursuant to the Proposal, a DCM would need to provide a trading screen notification of the existence of an Affiliate PTF and the regulatory conditions and limitations to which it is subject. The notification must be "interruptive" and customers must affirmatively acknowledge it. Where a DCM's participants provide electronic interfaces through which customers may enter orders, those participants must deliver the notice to customers. The notice is required each trading session and must be presented before a customer enters an order, creating a click-through obligation for customers each time they trade and rendering the requirement meaningless.

Contrary to the Proposal's assumption that every customer reaches a DCM through a graphical trading screen, Rothera, like many DCMs, provides access to its markets solely through an application programming interface ("**API**"), and many participants trade solely through automated systems with no user-facing screen on which an interruptive notice could be displayed. Applying a per-session notification and acknowledgment requirement in that setting would require participants to change how they connect to the DCM, at significant cost and without improving any customer's understanding of the affiliate relationship. Where a screen does exist, the burden falls on the FCMs and independent software vendors that operate it, each of which would need to build and maintain a separate interruptive notice for every DCM with an Affiliate PTF to which its screen connects.

The Commission considered, but did not propose, another alternative to the trading screen notification and acknowledgment requirement that would require a DCM to disclose its affiliation with a PTF that trades on the DCM, as well as disclosure of the regulatory conditions and limitations applicable to the affiliate, on its website and in its rulebook. Under this alternative, the notice would need to be provided to customers either before they open an account or before they trade on the DCM (not at the start of each trading session as currently proposed). This approach provides customers with the opportunity to ask questions and gather information that might be material to their decision whether to trade on a DCM. Customers may be less likely to ignore this disclosure, unlike the trading screen pop-up approach, which could cause "friction" when trading.[20] Rothera supports this website and rulebook disclosure approach and encourages the Commission to adopt it instead of the trading screen notification and acknowledgment requirement.

Disclosure is also not the only safeguard, because Rothera's structure adheres strictly to the FCM-intermediated model, meaning that every customer (as distinct from a participant trading for its own account) reaches Rothera through an FCM. FCMs that connect their customers to a DCM already conduct diligence on the venues they use and are well positioned to understand how a DCM's market maker arrangements, including any affiliated market maker, may affect their customers. That diligence, together

[20] The Commission states that the alternative disclosure approach "could reduce friction at the point of trading." The Proposal at 50,954. Rothera agrees that a website and rulebook disclosure obligation would eliminate the friction that the trading screen notification would certainly give rise to.

with the existing framework for DCM rulebook and website disclosure, protects customers more meaningfully than a notice clicked through every session. If the Commission believes more is needed, the general information a DCM must already make public under Core Principle 7 and Regulation 38.401 could be expanded to include the existence of an affiliated market maker and the terms on which it participates. Placing the disclosure within an existing framework, alongside the DCM's rules and contract terms, would be more meaningful than establishing a new per-session display obligation.

E. The Proposal's Costs Outweigh Its Purported Benefits

A market maker (whether affiliated with the relevant DCM or not) provides immediate liquidity to products (new and existing), enabling other market participants to trade in robust markets. Market makers competing to provide tight spreads and meaningful depth benefit every participant that takes liquidity. Market makers do not all share the same view of an instrument's fair value at the same moment, and that diversity is what drives competitive liquidity provision. Excluding or handicapping one category of market maker narrows that diversity, to the detriment of every other participant. The Commission itself recognizes that a new DCM faces a coordination problem in attracting initial liquidity.[21] However, the Commission does not recognize this problem in addressing the costs of the Proposal.

Rothera believes a DCM does not need an affiliated or in-house market maker to solve that problem. DCMs can, and do, address low liquidity through market maker and incentive programs that are self-certified with the Commission, available to any participant that meets their objective criteria, and applied on a nondiscriminatory basis. The relevant question is therefore not whether a firm is affiliated with the DCM, but whether it meets the same obligations and receives the same terms as every other participant in the same program, and whether terms offered to an Affiliate PTF are also offered to other market makers. The Proposal answers a different question, and in doing so penalizes a firm for its investment in a DCM rather than for its conduct on the DCM. In this regard, the Proposal would fall most heavily on newer DCMs, which are the venues most likely to launch new products and to compete with established incumbents. By making it harder for a new DCM to draw liquidity from its investors while leaving the same liquidity available to trade on every other venue, the Commission introduces the barriers to entry that CEA section 15(b) counsels against, without protecting customers.

As described above, the Proposal would allow an RSP to determine whether an Affiliate PTF should be allowed to trade on an affiliated DCM. The exercise of this power, i.e., to cease an affiliate's trading (which Rothera believes should only be exercised by the DCM or the Commission, not an RSP) could materially impact the DCM, adversely affect the quality of the market, and cause liquidity issues for other market participants that trade on the DCM. Yet, the Commission has not considered these implications in the Proposal. Instead, the Commission estimated the cost of order subordination to equate to $750 per day (with a reference to lost trading profits and hedging protections) for an Affiliate PTF. The cost to DCMs, on the other hand, would be incurred in several ways.

[21] The Commission states: "A new exchange faces a coordination problem—unaffiliated market makers are reluctant to commit capital and bear the fixed costs of participation until a market demonstrates sufficient volume to make participation worthwhile, yet volume is difficult to attract without quoted liquidity—and an affiliate principal trading firm aligned with the venue's success may supply that initial liquidity when independent firms will not." The Proposal at 50,949.

First, the Commission anticipates that the annual audit and RSP requirement would cost at least $2.2 million ($1 million for software, $500,000 for implementation, and $700,000 for cloud costs), much of which are recurring annual costs.[22] These estimates rest on assumptions the Proposal does not substantiate, and Rothera believes they materially understate the actual costs. The subordination cost estimate addresses only the Affiliate PTF's lost trading profits and does not account for the cost to the DCM of building and maintaining parallel matching logic, the cost of reduced liquidity to every other participant, or the effect on the quality of customers' fills. The RSP estimate does not account for fees an RSP could charge without limit, the internal resources a DCM would devote to supporting the RSP, or the consequences of a cessation determination.

Second, the Commission acknowledges that the Proposal could cause DCMs to lose liquidity or be unable to launch or maintain certain markets, but it does not quantify those costs. CEA section 15(a) requires the Commission to consider the costs and benefits of its action, and a cost the Commission identifies but declines to estimate cannot be meaningfully weighed for the requisite cost-benefit analysis. The Proposal's significant costs should be carefully considered and weighed against the benefits that Affiliate PTFs provide, and should be further weighed against the codification of the conflicts of interest framework that will mitigate many of the Commission's concerns.

F. Market Maker Program Terms Should Remain a Matter for Each DCM

The Proposal would condition an Affiliate PTF's participation in a market maker program on continuous two-sided quotations, minimum trading hours, limits on bid-ask spreads, and restrictions on directional positions. Obligations of this kind are standard features of market maker programs and apply to any market maker in a program, affiliated or not. The appropriate terms vary by product and market, which is why DCMs set them program-by-program and self-certify them with the Commission. Prescribing uniform terms by regulation, and only for Affiliate PTFs, would displace that judgment without a corresponding benefit.

The combined effect of the conditions is a further concern. An Affiliate PTF that must quote continuously within prescribed spreads, while being filled last at every price level, may be unable to meet the very obligations the Proposal imposes, and a failure to satisfy any one condition could end its eligibility to trade. Taken together, the conditions set a standard that cannot reasonably be met. Accordingly, the Commission should not adopt these prescriptive market maker program terms set forth in proposed Regulation 38.852(c)(1)(ii).

IV. The Proposed Definition of "Control" is Subjective and Too Broad

The Commission should not adopt the Proposal without revising the definition of "control" to be objective and meaningful. The definition of control is the crux of the Proposal because once control is found to exist, new regulatory obligations would begin to apply to DCMs, DCOs, FCMs, and other market participants.[23] Under the Proposal, these obligations would include: (1) changes to the

[22] The Proposal at 50,981.

[23] Proposed Regulations 1.52(a)(3), 37.1201(a)(2), and 38.852(a) define control nearly identically (i.e., "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 person, whether through the

examinations personnel's reporting line; (2) requiring an independent third-party SRO to conduct surveillance of an affiliate FCM; (3) imposing information access and sharing restrictions, as well as personnel sharing restrictions; (4) DCM rulebook and website disclosure; (5) prohibition on a DSRO from serving as such for its affiliate FCM; (6) FCM disclosure; (7) enhanced conflicts of interest procedures; (8) potential changes to incentive program terms; and (9) changes to DCM rules when an Affiliate PTF trades on the DCM, including new trading screen notification and acknowledgment obligations, order book subordination, conditions for market maker programs, and annual certification of compliance by an independent third-party RSP.

The proposed regulatory obligations that would be required upon a showing of "control" are onerous and costly, and, in some instances, would require a DCM to retain the services of a third party. Accordingly, it is of critical importance that the Commission appropriately calibrate this definition in a way that is commensurate with the new regulatory obligations. The term should be clearly defined and applied narrowly to make it workable in practice and to avoid a chilling effect among investors in the financial services industry.

As proposed, control would be found when a person possesses, directly or indirectly, "the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."[24] The Commission's definition leaves too many ambiguities to make this approach workable. For example, it is unclear how one should determine whether a person indirectly possesses the power to direct the management of a DCM or DCO. The Proposal also is overly expansive in that a person may possess the power to direct the management of a DCM, DCO, or market participant but not actually exercise this power. A regulated entity typically has its own board of directors that is legally required to direct the management of such entity, even where the regulated entity may be owned by a market participant. In this scenario, ownership may appear to be equivalent to the power to direct the management of the regulated entity but the entity's board of directors has and exercises this power. Even where ownership permits an owner to set a budget, whether tied to business plan priorities or otherwise, for a DCM, such influence over financing decisions should not be presumed to reach the DCM's day-to-day management or its operations. The Commission's definition of "control" should mean actual control, not a mere perception of control, and the definition should reflect this concept. Moreover, the proposed definition can only be appropriately validated in hindsight by the Commission's own facts-and-circumstances judgment.

Before adopting the Proposal, the Commission should consider the implications that such a broad definition could have in the financial services industry. In some instances, a single market participant makes an investment in a DCM whereas in other instances, a group of similarly situated market participants form a consortium to build, buy, or otherwise invest in a DCM. Because the proposed

ownership of voting securities, by contract, or otherwise."). Proposed Regulation 39.2 defines "affiliate clearing member" to mean a person that "(1) Is a clearing member of a derivatives clearing organization; and (2) Directly or indirectly controls, is controlled by, or is under common control with, the derivatives clearing organization. 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 derivatives clearing organization or clearing member, whether through the ownership of voting securities, by contract, or otherwise."

[24] *See id.*

approach has the potential to cause market participants that make investments in DCMs to be deemed to be under common control with those DCMs and captured by the Commission's new framework (including the prohibition and conditional exception for "affiliate market makers"), investors may be less inclined to invest in new DCMs or other innovations in financial services that may evolve into a DCM in the future.

The breadth of the definition is illustrated by one of the most established governance structures in the futures industry. At CME Group, each class of Class B common stock is associated with a trading membership at CME, and Class B shareholders elect six of the company's directors.[25] A 2026 proposal to eliminate those election rights did not receive the required shareholder approval.[26] Rothera believes this long-standing arrangement illustrates the opposite of the Proposal's premise: DCMs have long had owners and directors who also trade on them, and the Core Principles, rather than affiliation-based trading restrictions, have governed those relationships. The Proposal does not explain whether CME's Class B shareholders would be treated as controlling the DCM, or why a different answer should apply to newer DCMs.

Rothera's own structure illustrates the point: Rothera is owned through a holding company formed as a joint venture by two market participants that are separate legal entities from each other and from Rothera. Rothera, the registered DCM and DCO, has its own board of directors, including independent directors not appointed by either joint venture participant, its own management, and its own regulatory function, headed by a Chief Regulatory Officer and overseen by a Regulatory Oversight Committee. Neither joint venture participant operates Rothera or directs its day-to-day management or self-regulatory decisions. Investor approval rights over matters such as budgets, business plans, and significant corporate transactions are common to where any substantial investment exists, and they do not equate to the operation of a DCM.

The concept of control should be applied as it has traditionally been understood in the futures industry. When another entity controls a DCM's operations (i.e., directs its day-to-day management or self-regulatory decisions), it is, in substance, operating the DCM rather than merely owning or overseeing it from a distance. Because that entity is functionally performing the DCM's regulated activities, it should itself be registered and comply with the Core Principles. A DCM cannot satisfy the Core Principles' governance requirements by delegating actual control over its operations to an unregistered entity because doing so would mean the entity truly responsible for operating the DCM escapes regulatory oversight entirely. If the Commission moves forward with the Proposal, the definition of "control" should reflect this understanding, and the Commission should ensure that the definition prevents control from arising when a person possesses the power to control another person but does not exercise this power. That forbearance does not depend on that person's goodwill, because the DCM's board, including its independent directors, its Regulatory Oversight Committee, and its Chief Regulatory Officer retain authority over the DCM's operations and self-regulatory functions, and a person that exercised the power

[25] *See* CME Group Inc., Annual Report (Form 10-K) (fiscal year ended Dec. 31, 2025).

[26] *See* CME Group Inc., Current Report (Form 8-K) (June 10, 2026) (reporting the results of the June 9, 2026 reconvened annual meeting of shareholders).

to direct those operations would, as described above, be operating the DCM and subject to registration and the Core Principles.

For the same reason, the Commission should distinguish between a DCM that permits a so-called "affiliated" market maker to trade on the same terms as every other market maker and a DCM that operates an in-house market maker. This distinction is important because an affiliated market maker is a separate legal entity, subject to the same rules, access terms, and surveillance as all other market participants trading on the relevant DCM whereas an in-house market-making function run by the DCM itself could raise different questions. Where in-house market making exists, it should be limited to specific, disclosed purposes. The Proposal and its definition of "control" treats these two arrangements as if they were the same, but they are not. Rothera operates no in-house market maker and, as a DCM, takes no side in the markets it lists and holds no directional position in these markets.

In light of the significance of the definition of "control" to most aspects of the Proposal, Rothera implores the Commission to take a more nuanced approach to identify the scenarios that it believes cannot be addressed by the codification of the conflicts of interest framework and to consider whether those scenarios can be mitigated by existing tools, such as rule enforcement reviews, rather than the aspects of the Proposal that punish Affiliate PTFs and their DCMs. If the Commission continues to believe that such aspects of the Proposal are needed, then it should reconsider the proposed definition of control to avoid the pitfalls discussed herein.

V. Rothera Supports Principles-Based Aspects of the Proposal

Rothera supports the CFTC's proposal to codify the Acceptable Practices on conflicts of interest in the appendices to Parts 37, 38, and 39, as well as rulebook and website disclosure requirements. The Acceptable Practices provide guidance on board composition and procedures for resolving and minimizing conflicts of interest in a regulated entity's decision-making process. Rothera already adheres to the board composition requirements in the Acceptable Practices and has implemented conflicts of interest policies and procedures consistent with the Acceptable Practices. Codification of these Acceptable Practices will establish a consistent baseline that applies to every DCM and DCO, which is precisely why affiliate-specific requirements layered on top of it are unnecessary.

VI. Conclusion

Rothera supports the Commission's efforts to adopt guidelines for managing and mitigating conflicts of interest, but in a way that adheres to the Commission's principles-based regulatory approach without hindering innovation. The proposed rules applicable to DCMs that allow an Affiliate PTF to trade on their DCMs significantly deviate from that approach and should not be adopted. The Commission should consider how the costs of those requirements could prevent future investments in DCMs and stall product innovation where liquidity is needed to launch a new product. If the Commission proceeds with the Proposal, Rothera urges it to do so with a fit-for-purpose definition of "control" to avoid the unintended consequences of establishing too broad a definition. The Commission should use the Proposal as an opportunity to gather information to recalibrate its rulemaking approach in a way that is flexible and durable as DCMs continue to innovate.

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Rothera would be pleased to discuss the topics addressed in its comment letter with Commission staff in more detail.

Respectfully submitted,

/s/ Thomas Chippas

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