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Submitted Via Regulations.gov

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

RE: Comments of FMX Futures Exchange, L.P. on Notice of Proposed Rulemaking – Conflicts and Affiliations, 91 Fed. Reg. 50926 (Aug. 6, 2026)

Dear Mr. Kirkpatrick:

FMX Futures Exchange, L.P. ("FMX")[1] appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or "Commission") notice of proposed rulemaking concerning conflicts and affiliations (the "Proposal").[2] The Proposal would add new Part 38 Commission Regulations and related Acceptable Practices addressing a designated contract market's ("DCM") relationship with an affiliated market participant, including affiliated introducing brokers ("IBs"), futures commission merchants ("FCMs"), and entities that engage in proprietary or market-making trading on the DCM.

FMX operates a DCM and has affiliates that may introduce customer transactions, clear and carry customer accounts, or trade proprietarily on the FMX platform. FMX submits this letter to convey its perspective that, while robust conflicts controls are essential, the Commission should preserve a principles-based framework that permits DCM affiliated participants and recognizes the substantial benefits those affiliated participants can bring to a DCM's markets.

[1] FMX Futures Exchange, L.P. ("FMX") is a designated contract market registered with the Commodity Futures Trading Commission pursuant to Section 5 of the Commodity Exchange Act.

[2] *Conflicts and Affiliations, 91 Fed. Reg. 50926 (Aug. 6, 2026).*

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I. Overview

FMX supports the Proposal's recognition that affiliations between a DCM and market participants can be managed through appropriate conflicts procedures without a categorical prohibition. We offer the following observations:

FMX supports a principles-based framework that permits DCMs to have affiliated participants subject to procedures reasonably designed to identify, address, and manage conflicts of interest. FMX believes that principles-based procedures are sufficient to address potential conflicts posed by affiliated participants including those that may be engaged in proprietary trading. The Commission's existing regulatory architecture—Core Principle 16 (Conflicts of Interest),[3] Core Principle 2 (Compliance with Rules / Impartial Access),[4] Core Principle 4 (Monitoring of Trading),[5] and the Commission's examination and oversight authority—already provides ample tools to address abuses without mandating specific structural arrangements.

FMX supports the Commission's distinction between affiliated intermediaries (IBs and FCMs that introduce or carry customer business on a DCM) and affiliates who trade on a proprietary basis. Each relationship presents a different conflicts profile and warrants appropriately calibrated, robust and verifiable controls rather than proscriptive regulations or structural separation.

FMX respectfully disagrees with outright prohibitions of shared personnel, systems, or office space between a DCM and its affiliates. Such prohibitions would function as de facto structural-separation requirements, imposing duplicative costs that act as a barrier to new-entrant competition against incumbent exchanges.

II. The Commission Should Preserve Principles-Based Regulation of DCM Affiliations

Core Principle 16 and its implementing regulations require DCMs to establish and enforce rules to minimize conflicts of interest and to establish a process for resolving them.[6] Core Principle 2 requires DCMs to provide market participants with impartial access to markets and market services.[7] Core Principle 4 requires DCMs to have the capacity to detect, investigate, and prevent manipulation, price

[3] *7 U.S.C. § 7(d)(16); 17 C.F.R. §§ 38.850–38.851.*

[4] *7 U.S.C. § 7(d)(2); 17 C.F.R. § 38.151.*

[5] *7 U.S.C. § 7(d)(4); 17 C.F.R. § 38.250.*

[6] *See 17 C.F.R. §§ 38.850–38.851.*

[7] *See 17 C.F.R. § 38.151(b).*

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distortion, and disruptions of the delivery or cash-settlement process.[8] These principles, together with the Commission's examination authority and the requirement that DCMs designate a chief compliance officer ("CCO"), furnish a comprehensive, outcomes-based framework that permits the Commission to address the full spectrum of conflicts concerns. FMX does not believe that principles-based procedures are insufficient to address potential conflicts posed by affiliated participants.

Within this framework, DCMs deploy an array of controls to manage potential conflicts arising from affiliations: governance structures (including independent directors, oversight and conflicts committees); rulebook provisions prohibiting preferential treatment; regulatory services providers ("RSPs") or independent regulatory staff for market surveillance; logical and physical data-separation barriers; impartial-access monitoring; and confidentiality protections for nonpublic order and trade information. The Commission oversees the effectiveness of these controls through regular reviews, rule submissions, examinations, and enforcement actions. This regulatory architecture has proven effective and adaptable.

A. Affiliations Can Bring Substantial Competitive and Market-Quality Benefits

There are substantial benefits that affiliated entities can bring to a DCM when they contribute their own liquidity or their customers' liquidity to the platform:

New-entrant competition. The futures exchange marketplace is characterized by significant incumbent advantages. For a new DCM to attract participation, it must overcome the chicken-and-egg problem of liquidity formation. Affiliated IBs, FCMs, and proprietary trading desks can provide the initial critical mass of order flow—both customer flow introduced through the affiliated intermediary and proprietary-market-making liquidity—that gives unaffiliated participants the confidence to trade and manage risk in a nascent DCM's markets.

Tighter spreads and deeper order books. When an affiliate commits capital to market making on a DCM, it can have the effect of narrowing bid-ask spreads and deepening the order book. When an affiliated IB or FCM introduces customer order flow, it further adds to diversity of participation that sustains two-sided markets. Both forms of affiliated liquidity improve execution quality for all participants.

Faster liquidity formation in new contracts promotes innovation. Launching new futures contracts is inherently risky and challenging. Affiliated trading desks and intermediaries can seed liquidity in new contracts from day one, enabling the price-discovery process that attracts broader

[8] *See 17 C.F.R. § 38.250.*

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participation. Without affiliated liquidity providers, new contracts are far more likely to fail, and product innovation suffers.

Better price discovery. A larger, more diverse participant base—augmented by affiliated liquidity providers and the customers they introduce—produces more informative prices. This benefits not only market participants but also the broader marketplace that relies on futures-derived reference prices.

Investment in technology and operational resilience. Affiliations often enable a DCM to share technology infrastructure, operational expertise, and capital investment. These efficiencies strengthen the trading platform's reliability, reduce latency, and improve the overall market experience for all participants. Forcing the duplication of these resources would impose unnecessary costs that new entrants can least afford.

B. The Proposal Should Not Treat Affiliations as Inherently Suspect

Affiliations are ubiquitous in financial markets: exchange groups routinely own clearing houses, broker-dealers, data services, and technology firms. The Commission has long permitted these arrangements, subject to appropriate controls. A DCM affording preferential treatment to an affiliate—in fees, matching priority, data access, or any other respect—would not only violate its impartial-access obligations under Core Principle 2 would not likely drive away the unaffiliated participants whose presence is essential to the market's viability.[9] The competitive dynamics of the marketplace, therefore, provide a powerful self-correcting incentive that supplements regulatory oversight.

C. Acceptable Practices Should Be Illustrative and Non-Exclusive

FMX supports the concept of Acceptable Practices as a useful guidepost for DCMs. However, the Acceptable Practices should be expressly illustrative and non-exclusive. They should describe a safe harbor for compliance, not an exhaustive or prescriptive checklist from which any deviation gives rise to a presumption of noncompliance. DCMs differ in size, structure, and business model; a one-size-fits-all framework would disadvantage smaller or newer exchanges whose organizational structures do not mirror those of the largest incumbents. The Commission should make clear that a DCM may satisfy Core Principle 16 through alternative controls that are equally effective in managing conflicts, even if those controls differ from the Acceptable Practices.

[9] *See 17 C.F.R. § 38.151(b).*

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III. The Proposal Correctly Distinguishes Intermediary and Principal Affiliated Participants, but Should Not Presume That Proprietary Trading Affiliations Require Structural Separation

FMX acknowledges, as the Proposal observes, that proprietary trading by a DCM affiliate presents a different conflict risk profile.[10] When an affiliate trades on the DCM as a principal—whether in a market-making capacity or otherwise—concerns may arise about potential informational advantages (e.g., access to nonpublic order-flow data), favorable treatment in order matching or execution, preferential fee arrangements, or influence over contract design that benefits the affiliate's positions.

FMX understands these concerns. However, FMX submits that these risks can be effectively managed through robust, verifiable controls that preserve the benefits of affiliated liquidity while preventing abuse. These controls include:

Information barriers. Logical and, where appropriate, physical separation of the affiliate's trading operations from the DCM's regulatory, surveillance, and market-operations functions. Role-based access permissions and audit trails ensure that nonpublic order and trade information is not shared with the proprietary trading affiliate.

Impartial access. Under Core Principle 2, the DCM must provide fair and impartial access to all participants—affiliated and unaffiliated alike—in all respects, including fee schedules, connectivity, and access to market data. The framework should not single out affiliates for restrictions where the same impartial-access controls apply to all participants.

Equal treatment in matching and execution. The DCM's matching engine must apply the same rules to affiliate orders as to all other orders, without queue priority, favorable time stamps, or preferential execution logic.

Independent surveillance. Market surveillance must be conducted by independent regulatory staff or an RSP that is not subject to the influence of the proprietary trading affiliate. Surveillance staff must have the authority and resources to investigate and discipline affiliate trading activity on the same terms as any other market participant.

[10] *91 Fed. Reg. 50948*

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Disclosure. The DCM should disclose to participants the existence and nature of the affiliation, the controls in place, and the results of periodic compliance testing.

Periodic testing and review. The effectiveness of information barriers and other controls should be subject to periodic internal testing and, where applicable, independent third-party review.

These controls, taken together, address the specific risks identified in the Proposal without requiring structural separation that would deprive the market of the liquidity and competitive benefits described in Section II above. The Commission's examination authority provides a further check: the Commission can and does review the adequacy of a DCM's conflicts procedures in practice and can take enforcement action if those procedures prove inadequate.

FMX also believes that the Proposal's conditioned market maker exception—under which affiliated trading would be permitted only in a market-making capacity and subject to specified conditions—would be difficult to implement, identify and surveil. Contrived restrictions on affiliated trading will drive liquidity off the platform, to the detriment of the DCM, its participants, and price discovery. The effects would be particularly harmful for new-entrant exchanges, which rely on affiliated liquidity to overcome network effects and establish viable markets.

IV. The Proposal Should Not Impose Presumptive Requirements Against Shared Personnel, Systems, or Office Space

FMX is concerned that the Proposal's Acceptable Practices, if read as presumptive requirements, could impose de facto structural-separation mandates with respect to personnel, technology systems, and physical workspace.[11] Specifically, guidance suggesting that compliance requires logical separation of all systems, no shared personnel (other than administrative staff), and separate office space would function as prescriptive rules rather than principles-based guidance.

FMX opposes such prescriptive rules for several reasons:

Cost and competitive impact. Requiring a DCM to maintain entirely duplicative technology platforms, compliance systems, and office facilities imposes substantial fixed costs. For new-entrant DCMs seeking to compete against established incumbents, these costs can be a material barrier to entry. The result would be less competition and higher barriers to entry—outcomes which are directly contrary to the Commission's policy objectives.

[11] *Id. at 50946-50947.*

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Effective alternatives exist. The same objectives can be achieved through role-based access permissions, audit logging, logical data segregation, written policies governing information flow, and organizational reporting lines that insulate regulatory functions from commercial influence. These controls are verifiable, auditable, and consistent with an outcomes-based regulatory approach.

Outcomes over inputs. The Commission should evaluate a DCM's conflicts management by reference to outcomes—whether nonpublic information is actually protected, whether all participants receive impartial access, and whether surveillance is effective—rather than by whether specific structural inputs (e.g., separate buildings) are present.

FMX recommends that the Acceptable Practices instead include an illustrative, non-exclusive list of controls (such as role-based permissions, audit trails, documented policies, reporting-line insulation, and periodic testing) that a DCM may deploy to manage resource-sharing risks. The Commission should expressly state that the use of shared resources does not create a presumption of noncompliance where effective controls are in place.

V. Shared Legal and Compliance Personnel Should Be Permitted with Appropriate Safeguards

The Proposal suggests that only "administrative" personnel may be shared between a DCM and its affiliates and carves legal and compliance personal out of the definition of administrative personel.[12] In practice, legal and compliance professionals at a DCM and its affiliates often address overlapping regulatory requirements (e.g., common CFTC reporting obligations, shared technology policies, coordinated responses to regulatory inquiries). Prohibiting dual-hatted service would require maintaining entirely separate legal and compliance teams—an expense that is particularly burdensome for new or smaller DCMs and that yields little incremental benefit where adequate safeguards are in place.

FMX recommends that the Commission adopt a functional standard that permits shared legal and compliance personnel where the following safeguards exist:

Written allocation of responsibilities. A written protocol clearly delineating each professional's responsibilities to the DCM and to the affiliate, including procedures for identifying and escalating matters involving potential conflicts.

[12] *See 91 Fed. Reg. at 50947.*

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Board access and reporting. Shared compliance personnel should have direct access to the DCM's board of directors (or a designated compliance or conflicts committee thereof) and the authority to escalate matters without requiring approval from the affiliate's management.

Recusal procedures. Clear protocols requiring recusal when a matter involves a direct conflict between the interests of the DCM and the affiliate.

Access to outside counsel. The DCM should have the authority to engage independent outside counsel when a shared legal professional identifies a conflict that cannot be resolved through internal recusal.

FMX further submits that this functional standard should extend to other shared professional functions, including technology, operations, finance, risk management, and internal audit, where similar safeguards ensure that the DCM's regulatory obligations are not compromised by the affiliate's commercial interests.

VI. Conclusion

FMX appreciates the Commission's thoughtful approach to the complex issues surrounding DCM affiliations and conflicts of interest. FMX supports a principles-based framework that permits affiliations—including affiliations with IBs, FCMs, and proprietary trading entities—subject to robust and effective conflicts controls. The benefits of affiliated liquidity—competition against incumbent exchanges, tighter spreads, deeper order books, faster liquidity formation in new contracts, better price discovery, expanded customer access, and shared technology investment—are substantial and serve the Commission's statutory mandate to promote fair, open, and efficient markets.

FMX urges the Commission to:

(1) Preserve principles-based regulation that evaluates conflicts management by outcomes, not structural inputs, and confirm that existing DCM Core Principles and controls are adequate to address affiliated proprietary-trading conflicts;

(2) Refrain from any categorical prohibition on affiliations between a DCM and its market participants, and reject the Proposal's conditioned market maker exception;

(3) Recognize that proprietary trading by a DCM affiliate, while presenting a different conflict profile than intermediary affiliations, can be adequately managed through robust, verifiable controls that preserve the market-quality benefits of affiliated liquidity.

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(4) Ensure that the Acceptable Practices are expressly illustrative and non-exclusive, creating no presumption of noncompliance for DCMs that employ alternative, equally effective controls,;

(5) Remove any presumption against shared personnel, systems, or office space,;

(6) Permit shared legal, compliance, and other professional personnel subject to the functional safeguards described herein; and

FMX welcomes further dialogue with the Commission and its staff on these issues. We would be pleased to discuss any aspect of this letter at the Commission's convenience.

Respectfully submitted,

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