nodal
1921 Gallows Road, 3rd Floor
Tysons Corner, Virginia 22182
p: 703-962-9800
f: 703-962-9850
www.nodalexchange.com

part of eex group

October 5, 2026

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

Via Regulations.gov

Re: Conflicts and Affiliations (RIN 3038-AF76)

Dear Mr. Kirkpatrick:

Nodal Exchange, LLC ("Nodal Exchange") and Nodal Clear, LLC ("Nodal Clear") (collectively, "Nodal") appreciate the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or "Commission") Notice of Proposed Rulemaking on Conflicts and Affiliations ("Proposal" or "NPRM").[1]

Nodal Exchange is a designated contract market ("DCM") leading innovation in the electric power, natural gas, and environmental futures contract markets. Its growth and success since becoming a DCM relies on the flexibility and discretion afforded under the CFTC's principles-based regulatory regime. Nodal Clear, a wholly owned subsidiary of Nodal Exchange, is a registered derivatives clearing organization ("DCO") serving as the clearinghouse for Nodal Clear and Coinbase Derivatives, LLC. Nodal Exchange and Nodal Clear are part of the EEX Group of companies owned by the European Energy Exchange AG, which is majority owned by the Deutsche Börse Group.

I. General Comments

Nodal commends the Commission's focus on evolving market structures. In particular, the NPRM recognizes a shift in newer markets from "the traditional market structure of a separately-owned and independently operated exchange, market participant, and clearinghouse to an 'affiliated' market structure in which these distinct entities share common ownership"[2] (referred to in short as "full stack" or "affiliated market" structures). As the Commission notes, while "[s]ome forms of affiliate relationships have a long history, such as those between DCMs and DCOs," other "full stack" arrangements—specifically "between a DCM and an affiliate market maker"—are "comparatively new" and "particularly prominent in prediction markets."[3]

---

[1] *Conflicts and Affiliations*, 91 Fed. Reg. 50,926 (proposed Aug. 6, 2026) (to be codified at 17 C.F.R. pts. 1, 37, 38, 39).

[2] *Id.* at 50,927.

[3] *Id.* at 50,927 and 50,932.

However, Nodal is concerned that the proposed framework intended for full-stack models will inadvertently disadvantage traditional models. If adopted as proposed, the NPRM's framework risks imposing cost-prohibitive mandates on smaller entities that rely on the Core Principle-based approach to innovate. For example, codifying Core Principle Guidance and Acceptable Practices into mandatory regulations; adopting prescriptive rules for the structure of regulatory compliance roles, reporting lines, and Regulatory Oversight Committees ("ROCs"); and mandating strict physical, logical, and operational separations conflicts with the statutory principles-based framework. That statutory framework grants entities "reasonable discretion in establishing the manner in which" they comply with core principles.[4]

Traditional entities have a long track record of successfully implementing Core Principles alongside Guidance and Acceptable Practices. Preserving this flexible approach aligns far better with the Commodity Exchange Act ("CEA") than imposing prescriptive, costly rules.

Nodal requests that any adopted final rules avoid disrupting traditional arrangements, such as longstanding common ownership between DCMs and DCOs. Unlike novel full-stack structures, the traditional DCM/DCO model (without affiliated FCMs, market makers, or prop firms) has a proven compliance record. This model does not raise the novel conflicts presented by vertically integrated structures. Any potential conflicts are already effectively managed under existing regulations and Core Principles.

Replacing principles-based guidance with prescriptive regulations deprives registered entities of the discretion needed to maintain compliance programs tailored to their specific market models and scale. Furthermore, it forces DCMs and DCOs to expend substantial resources amending rules and procedures without conferring any comparable benefit.

The Commission should maintain the status quo for traditional models. Specifically, it should exercise caution to avoid inadvertently disrupting well-established market structures, such as affiliated DCMs and DCOs, as it addresses distinct risks presented by emerging "full stack" models.

To that end, Nodal urges the Commission to refine its proposal as follows:

- Preserve the DCM and DCO core principles framework by keeping Guidance and Acceptable Practices as flexible guidance rather than codifying them into prescriptive regulations;

- Protect traditional affiliated DCM and DCO structures that have a proven track record of regulatory compliance and present no novel conflict risks;

- Avoid imposing blanket operational isolation and governance mandates that could penalize well-functioning exchange and clearinghouse relationships; and

[4] 7 U.S.C. § 7(d)(1)(B) (DCM core principles discretion); 7 U.S.C. § 7a-1(c)(2)(A)(ii) (DCO core principles discretion).

Nodal Exchange | 1921 Gallows Road, 3rd Floor | Tysons Corner, Virginia 22182 | Phone: 703-962-9800 | Fax: 703-962-9850 | www.nodalexchange.com

- Limit new prescriptive affiliate mandates strictly to novel "full stack" platforms, such as direct-access retail prediction markets, while refraining from prescriptively stepping into registered entity governance and business operations.

II. Specific Comments on Proposed Regulatory Regulations

In addition to the general comments above, Nodal offers the following feedback on certain specific regulatory changes proposed in the NPRM.

A. Affiliate Trading Participants and Market Makers (Proposed CFTC Regulation 38.852(c))

Although the NPRM addresses issues across registered entities and their specified affiliates (e.g., between a DCO and affiliated FCMs), it highlights conflicts from affiliated trading participants—particularly market makers, liquidity providers, or similar entities—as "the most acute of the affiliation conflicts."[5] The NPRM notes that this affiliated market maker/liquidity provider model "is particularly prominent in prediction markets and that the operators of such markets believe that an affiliated market maker can be especially important in the creation and maintenance of new markets."[6]

Nodal is concerned that prescriptive requirements tailored for affiliated market makers and liquidity providers in prediction markets could serve as a precursor to broader prescriptive regulatory expansion into traditional commodity derivatives markets. DCMs already implement product-specific obligations for market maker and liquidity provider programs which may include quoting standards, performance benchmarks, and bid-ask spread limits. These programs are tailored to the depth and participant base of the particular commodity contract concerned. While mandating that all affiliated market maker bids and asks be subordinated to non-affiliates; that the DCM specify quoting, bid-ask spread, and time-in-market requirements; that the affiliate take no directional positions other than those strictly necessary to meet quoting obligations; and requiring independent monitoring may be appropriate in prediction markets, these prescriptive requirements are not suited for traditional markets without affiliated market makers.[7] In mature traditional markets, participants and liquidity providers operate under well-established trading and risk management frameworks.

Expanding prescriptive regulation (such as forced order-priority subordination and mandatory per-session pop-up disclosures) beyond prediction market venues would create severe administrative difficulties and disproportionately harm traditional market structures that present no demonstrated conflict-of-interest concerns. Rather than prescriptively stepping into the shoes

---

[5] NPRM at 50,949.

[6] *Id.* at 50,932. The NPRM asserts that prediction markets will have a continuing need for affiliated market makers in order to support their business model. For example, according to the NPRM prediction market products are so numerous and thinly traded that they will not attract "independent" market makers. These "independent" traders would "rationally" choose to focus on the few deepest contracts on the prediction market, rather than the myriad short-term "idiosyncratic" contracts that populate prediction markets. *Id.* at 50,949.

[7] *See* proposed 17 C.F.R. §§ 38.852(c)(1)(i) (subordination), 38.852(c)(1)(ii) (market maker or incentive programs), *discussed in* NPRM at 50,951.

Nodal Exchange | 1921 Gallows Road, 3rd Floor | Tysons Corner, Virginia 22182 | Phone: 703-962-9800 | Fax: 703-962-9850 | www.nodalexchange.com

of the registered entity, the Commission should clarify that it will only adopt regulations that preserve traditional DCMs' reasonable discretion under the CEA and Core Principles (e.g., DCM Core Principles 12 and 16) to promote fair trading and address conflicts of interest in day-to-day management.

B. DCM Board Composition, Structure of Regulatory Compliance Roles, and Reporting Lines (Proposed CFTC Regulation 38.853)

Nodal Exchange is concerned that proposed CFTC Regulation 38.853—which would codify existing guidance regarding DCM board composition, regulatory oversight committees (ROCs), and disciplinary panels into binding rules—is inconsistent with a principles-based regulatory regime.[8]

The Commission should refrain from codifying such prescriptive structural governance mandates, including formalizing a requirement that a single officer be responsible for regulatory compliance and dictating the reporting line to the ROC, for the following reasons:

- As Nodal noted in a prior comment submission, Core Principle 16 Guidance and Acceptable Practices do not require DCMs to maintain a distinct CRO role or specify detailed duties for such a position.[9] The Commission should clarify that it is not requiring any new specific title, specific structure for, or new limitation on, staff who hold compliance roles (e.g., that there must be a single officer responsible only for regulatory compliance without sharing other similar responsibilities). A DCM may make a valid choice to have an officer share compliance and other responsibilities, or have multiple officers be responsible for different areas of regulatory compliance. Formalizing guidance into specific regulatory requirements creates prescriptive structures that would inevitably increase compliance costs and decrease flexibility for smaller innovative DCMs, without delivering a corresponding regulatory benefit.

- Mandating through regulation a specific internal reporting line for the CRO or other officer(s) responsible for regulatory compliance unnecessarily interferes with the governance architecture of registered entities. Lean and growing DCMs require operational flexibility to structure reporting relationships and compliance responsibilities across legal, compliance, and executive functions in a manner tailored to their specific risk profiles, businesses, resources, and organizational scale.

---

[8] Under proposed 17 C.F.R. § 38.853(c)(1), the Commission proposes to codify a requirement that a DCM board "shall establish a Regulatory Oversight Committee as a standing committee, consisting of only public directors, to assist it in minimizing actual and potential conflicts of interest." NPRM at 50956, 50993. Furthermore, proposed 17 C.F.R. § 38.853(c)(2)(iv) would formally codify that the ROC must "supervise the designated contract market's chief regulatory officer (or other officer responsible for regulatory compliance), who will report directly to the ROC." *Id.* The NPRM also proposes to codify a requirement under proposed 17 C.F.R. § 38.853(a) that at least 35% of a DCM's board of directors and any executive committees be comprised of public directors. *Id.* at 50956, 50992.

[9] Nodal Comment Letter dated May 13, 2024 re: *Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest*, RIN 3038–AF29.

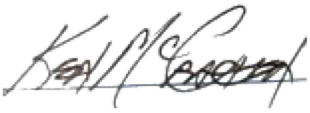
Existing Core Principle 16 Guidance already provides robust acceptable benchmarks to ensure regulatory functions remain insulated from commercial pressures. Replacing the guidance with mandatory regulations forces DCMs to expend significant time and resources and creates an administrative burden that disproportionately harms smaller platforms. To uphold the statutory intent of the Commodity Exchange Act, Core Principle 16 (Conflicts of Interest) and Core Principle 17 (Composition of Governing Boards) must continue to afford exchanges reasonable discretion to manage conflicts effectively.

III. Conclusion

Nodal appreciates the Commission's attention to the emerging conflict of interest risks inherent to certain affiliate relationships. However, the Commission should retain its principles-based framework by keeping regulations high level and placing specific compliance mechanics within Guidance and Acceptable Practices. Any heightened requirements regarding affiliate market makers must be narrowly tailored to only address prediction markets rather than applied broadly across traditional commodity derivatives venues.

While the NPRM suggests that it may be "wholly impracticable" to quantify some actual industry costs for implementing proposed requirements,[10] Nodal strongly urges the Commission to consider the implications of these changes on traditional and smaller DCMs. The Commission could consider conducting a thorough cost-benefit analysis in close consultation with registered DCMs and DCOs to evaluate industry-tested, flexible risk-mitigation methodologies that mitigate actual risks without imposing unworkable operational burdens, restricting practical shared staffing, or stepping into the management shoes of registered entities.

Respectfully submitted,



Ken McCracken
General Counsel
Nodal Exchange, LLC
Nodal Clear, LLC

[10] NPRM at 50,970.

Nodal Exchange | 1921 Gallows Road, 3rd Floor | Tysons Corner, Virginia 22182 | Phone: 703-962-9800 | Fax: 703-962-9850 | www.nodalexchange.com