October 5, 2026

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

Re: Conflicts and Affiliations, RIN 3038-AF76

Gus III LLC d/b/a DraftKings Predictions ("DraftKings Predictions") respectfully submits this comment letter in response to the Commodity Futures Trading Commission's (the "Commission") Notice of Proposed Rulemaking on Conflicts and Affiliations.[1]

DraftKings Predictions is a futures commission merchant ("FCM") registered with the Commission and a member of the National Futures Association ("NFA"). It provides retail customers with access to trade event contracts, including those listed by Railbird Exchange, LLC d/b/a DKeX ("DKeX"), a designated contract market ("DCM"), which is under common ownership with DraftKings Predictions through DraftKings Inc. Gus Cap LLC ("DraftKings Market Making") is also a DraftKings Inc. subsidiary.

DraftKings Predictions writes separately from its affiliates to address the Proposed Rule provisions that bear directly on an affiliated FCM's operations, compliance obligations, and customer-facing responsibilities. It supports the Commission's goal of stronger conflict safeguards for vertically integrated structures, but asks the Commission to calibrate the FCM provisions to the actual risks presented by the affiliation and to adopt practical implementation requirements.

This letter makes five main points:

- **First,** the Commission should preserve the Proposed Rule's principles-based, risk-proportionate oversight requirements for affiliated FCMs.
- **Second,** the Commission should prohibit an exchange from serving as the designated self-regulatory organization ("DSRO") for its affiliated FCM and preserve the role of an independent self-regulatory organization ("SRO").
- **Third,** the Commission should calibrate the regulatory service provider ("RSP") approach for FCM surveillance to its costs, operational requirements, scope, frequency, and independence standards.
- **Fourth,** the Commission should enhance customer disclosure through layered disclosure integrated into onboarding and account-opening processes.
- **Fifth,** the Commission should account for the downstream effects on retail customers of conditions imposed on affiliated market makers.

[1] Conflicts and Affiliations, 91 Fed. Reg. 50926 (Aug. 6, 2026) (the "Proposed Rule" or "NPRM").

I. DraftKings Predictions Supports Principles-Based Affiliated FCM Oversight

DraftKings Predictions supports the Proposed Rule's amendments requiring exchanges with affiliated FCMs to maintain separate personnel (except with respect to administrative functions), independent financial surveillance, and written conflicts-of-interest procedures. These requirements are consistent with existing expectations for affiliated intermediaries in vertically integrated structures. Clear rules governing the exchange-FCM relationship can enhance the promotion of market integrity, customer confidence, and fair competition.

DraftKings Predictions supports a framework under which affiliated entities would implement documented information barriers between themselves. Appropriate, proportional compliance policies and procedures could be designed to prevent inappropriate access to and misuse of material nonpublic information, ensure that customer order flow is handled without regard to affiliate interests, and document interactions that may create conflicts. Codifying these expectations would provide greater certainty and a common standard for affiliated FCMs, while allowing implementation to reflect the risks and activities of the particular structure.

The affiliated FCM requirements should reflect the actual risk presented by the relationship. An FCM that provides retail access to one affiliated exchange, does not carry proprietary positions or make markets, and does not exercise discretion over customer accounts presents a different risk profile from an FCM integrated into an exchange's trading, clearing, and market-making operations. The final rule should permit proportional implementation, with compliance measures scaled to the FCM's activities and the nature of the affiliation.

DraftKings Predictions also reiterates a broader market-structure point that DraftKings has made in prior comments: retail-facing event contract trading should occur through an intermediated model, with customer-facing obligations allocated to a registered intermediary rather than collapsed onto the exchange itself. If the Commission continues to permit disintermediated access models, those models should be subject to comparable conflicts, affiliation, customer protection, disclosure, and supervisory requirements so that comparable retail-facing activity does not operate under materially different regulatory obligations. This approach preserves customer choice and market innovation while avoiding regulatory gaps based solely on the access model.

II. The Exchange Should Not Serve as DSRO for Its Own Affiliate FCM

DraftKings Predictions supports the Proposed Rule's principle that a DCM should not serve as the DSRO for its affiliated FCM.[2] The DSRO conducts financial surveillance, compliance examinations, and disciplinary proceedings for member FCMs. Common ownership may compromise, or may appear to compromise, the independence and credibility of that oversight.

An independent SRO, such as the NFA, should conduct financial surveillance and compliance examinations of the affiliated FCM. The NFA has the expertise, infrastructure, and independence to perform those functions effectively. DraftKings Predictions is an NFA member and supports the NFA's continuing role.

[2] *See* Commodity Exchange Act § 5(d)(16), 7 U.S.C. § 7(d)(16) (Core Principle 16: Conflicts of Interest).

III. RSP for FCM Surveillance: Costs and Operational Concerns

DraftKings Predictions supports a targeted RSP approach for FCM surveillance under proposed Section 38.606.[3] An exchange that retains responsibility for aspects of FCM oversight while using an independent third party for surveillance can preserve independence without requiring a separate surveillance infrastructure. That approach may be especially useful for newer or smaller exchanges.

The scope and frequency of RSP review should match the affiliated FCM's activities. An FCM that serves as a retail access point, without proprietary trading or discretionary accounts, should not receive the same level of review as an FCM with a broader risk profile. The Commission should provide guidance for affiliated FCMs that engage in different types of activities so that compliance costs remain proportionate to the regulatory benefit.

The Commission should also clarify the standard for RSP independence. The Proposed Rule does not identify the criteria an RSP must satisfy to be independent from the exchange and affiliated FCM. DraftKings Predictions recommends an objective standard, including no ownership, revenue-sharing, or employment relationship with either entity, and periodic review of the RSP's engagement by the Commission, the NFA, or qualified third party. The implementation period should give exchanges and affiliated FCMs time to identify, engage, and onboard qualified providers, particularly while the market for prediction market regulatory services is developing.

IV. Enhanced Customer Disclosure Under Regulation 1.55

DraftKings Predictions supports enhanced disclosure of affiliate relationships under the proposed amendments to Regulation 1.55.[4] Customers should receive clear information about the affiliated entities, the nature of the relationship, and potential conflicts. That information will help customers evaluate the services offered by the FCM and make informed choices about where and how they trade.[5]

The enhanced disclosure requirements should be integrated into existing onboarding and account-opening processes rather than imposed as a separate, standalone disclosure obligation. Incorporating affiliate-relationship information into the disclosure document required by Regulation 1.55 would provide the information at the most relevant point in the customer relationship without creating another standalone notice.

DraftKings Predictions supports layered disclosure. Customers would receive detailed affiliate relationship information at account opening, a summary would remain available on the trading platform, and additional detail would appear in the FCM's public disclosure document or on its website. This approach keeps the information available without repetitive notices or per-session or per-trade interruptions, which are more likely to create disclosure fatigue than improve understanding.

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[3] See proposed § 38.606 (requiring RSP arrangements for financial surveillance of affiliate FCMs).

[4] See proposed amendments to 17 C.F.R. § 1.55 (enhanced FCM disclosure).

[5] See proposed amendments to 17 C.F.R. § 1.55(k) (requiring disclosure of affiliate relationships, potential conflicts, and the identity of affiliated entities).

V. Customer Access and Liquidity

As a customer-facing intermediary, DraftKings Predictions has a direct interest in the quality of the markets its customers access. Customers trade on DKeX through DraftKings Predictions, and their experience depends on liquidity, spreads, execution speed, and product availability. A regulatory condition that materially degrades market quality on DKeX would therefore affect DraftKings Predictions' customers directly.

DraftKings Predictions is concerned that conditions proposed for affiliated market makers, particularly order-priority subordination under proposed Section 38.852(c)(1)(i), could make affiliated market making uneconomic on DKeX. If DraftKings Market Making receives last priority at every price level, the economics of providing liquidity may become untenable, especially for the small, short-duration contracts common in prediction markets.[6] The likely effects are wider spreads, lower fill rates, and fewer available contracts for DraftKings Predictions' customers. Those effects would be felt directly by the retail customers served through the FCM.

Prediction market contracts are sometimes short-lived and thinly traded. Unaffiliated market makers may not find it economic to quote consistently across hundreds or thousands of contracts. DraftKings Market Making's affiliated liquidity has helped retail customers trade at reasonable prices and with greater certainty of execution, particularly during the launch of new contract categories. The Commission should consider the effect on retail customers and preserve the ability of affiliated liquidity providers to support the markets on which those customers depend.

VI. Per-Session Customer Notice: Operational and Customer-Experience Concerns

Proposed Section 38.852(c)(3) would require delivery of a customer notice before each trading session where an exchange permits an affiliated market maker to trade on the exchange.[7] DraftKings Predictions is concerned about the operational burden and customer experience impact. Implementing a per-session notice would require integration with the FCM's consumer-facing mobile and web applications, along with technology development, testing, and maintenance. It would also add an interstitial step to a retail trading experience designed for accessibility and ease of use.

Repetitive per-session notices could create customer disclosure fatigue or confusion and may deter participation in regulated markets. The notice could also suggest that affiliated liquidity is inherently problematic, even when the market maker is performing a legitimate function under regulatory oversight. Further, an FCM might not be able to clear up a customer's confusion around when the affiliated market maker is actually a counterparty, due in part to the fact that an FCM will never know when a customer is trading against an affiliate market maker. For example, an FCM will not know whether an affiliate market maker is trading in the same markets as particular FCM customers, potentially creating scenarios where the disclosures are misleading.

Layered disclosure is a more effective and less disruptive alternative to per-session notices. Detailed affiliate information at onboarding, a summary on the trading platform, and additional

[6] See Proposed Rule preamble (discussing affiliated market makers' role in providing initial liquidity).

[7] See proposed § 38.852(c)(3) (per-session customer notice).

detail in public disclosure documents would address the Commission's informational objectives without the operational burden of repeated interruptions. The Commission should adopt this approach in the final rule.

VII. Compliance Timeline

The Commission should provide an adequate implementation period for the FCM-specific requirements of the final rule.[8] Separate reporting lines, independent financial surveillance, information barriers, RSP engagement, and enhanced disclosure systems will require time to design, build, test, and implement. The changes affect organizational structure, technology systems, vendor relationships, and customer-facing materials across affiliated entities.

A phased implementation approach would be appropriate. Reporting-line separation and information barriers could be addressed in an initial period, while RSP onboarding, surveillance integration, and disclosure-system changes can be addressed in a subsequent period. The Commission should provide a compliance-date framework with milestones instead of a single deadline.

The Commission should coordinate implementation timelines across the affiliated-entity provisions. The Proposed Rule addresses affiliated FCMs, market makers, clearing members, and exchange governance in separate but related provisions. Misaligned deadlines could create conflicting obligations or require entities to implement partial measures and revise them later. Aligned compliance dates and clear sequencing would reduce cost and confusion.

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DraftKings Predictions supports clear rules for affiliated FCM oversight. The Proposed Rule's approach to separate reporting lines, the DSRO prohibition, and enhanced disclosure is generally sound.

The Commission should provide adequate implementation time, adopt layered disclosure in place of per-session notices, clarify the RSP independence standard and review scope, and account for the effect of affiliated market maker conditions on retail customers. Implementation timelines should be coordinated across the affiliated-entity provisions to avoid conflicting deadlines.

DraftKings Predictions appreciates the opportunity to comment on the Proposed Rule and welcomes further dialogue with the Commission and its staff.

Respectfully submitted,

DraftKings Predictions

[8] See generally Proposed Rule, Section IV (implementation timeline discussion and request for comment on appropriate transition periods for affiliated-entity provisions).