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

Railbird Exchange, LLC d/b/a DKeX ("DKeX") 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] DKeX is a designated contract market ("DCM") registered with the Commission and owned by DraftKings Inc. DKeX operates prediction markets that allow market participants to trade event contracts across a diverse array of categories. In addition to DKeX, Gus Cap LLC ("DraftKings Market Making"), which serves as an affiliated market maker on DKeX, and Gus III LLC ("DraftKings Predictions"), which is a CFTC-registered futures commission merchant and member of the National Futures Association ("NFA"), are wholly owned subsidiaries of DraftKings Inc.

DKeX appreciates the opportunity to comment on this important rulemaking. The Proposed Rule will shape the competitive landscape for designated contract markets and their affiliates for years to come. DKeX commends the Commission for conducting a thorough notice-and-comment process and for recognizing that vertical integration can produce meaningful benefits for market participants and the public.

DKeX supports the Proposed Rule's core architecture, including the Commission's decision not to ban vertical integration outright. DKeX urges targeted revisions to ensure that the final rule is calibrated, workable, and consistent with the Commission's statutory authority. Several provisions, while well-intentioned, would impose costs and constraints disproportionate to the risks they address; less restrictive alternatives would more effectively achieve the Commission's regulatory objectives.

This letter addresses, among other things, the following key themes:

- **Affiliation rules.** Establish clearer criteria for affiliate status and a process for obtaining prospective staff guidance on close cases.
- **Order priority.** Replace mandatory subordination with a neutrality standard that prevents preferential treatment without imposing a status-based execution penalty.
- **Directional trading.** Clarify that bona fide market making includes inventory management, hedging, and portfolio-level exposure management.
- **Customer disclosure.** Replace per-session notices with layered disclosure that informs customers without unnecessary steps or disclosure fatigue.
- **Independent review.** Tailor review and regulatory service provider ("RSP") certification requirements to the DCM context rather than importing financial-surveillance concepts designed for intermediaries that carry customer funds.

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

I. DKeX Supports the Commission's Decision Not to Ban Vertical Integration

DKeX supports the Commission's threshold decision not to prohibit vertical integration between DCMs and their affiliates. A framework based on conflicts procedures, information barriers, documentation, and disclosure can address conflict-of-interest concerns while preserving the benefits that integrated structures provide to market participants and the derivatives markets.

Vertical integration can generate efficiencies that benefit customers and market quality. When an exchange and an affiliated market maker operate within the same corporate family, they can support faster product development, more efficient allocation of capital, and more responsive liquidity planning. These benefits are especially important in prediction markets, where many contracts are novel, short-lived, or unlikely to attract sufficient unaffiliated liquidity at launch. An affiliated market maker aligned with the exchange's long-term development may be willing to quote nascent products that a third-party market maker would not independently support.

DKeX agrees that appropriate guardrails are necessary. Those guardrails should target specific risks, such as information sharing, preferential treatment, conflicted surveillance, and inadequate disclosure, rather than assume common ownership is inherently suspect. Conflicts procedures, information barriers, documentation, disclosure, and independent or auditable review can provide a proportionate framework. DKeX urges the Commission to preserve that principles-based orientation and avoid more punitive conditions that would effectively penalize vertical integration without a demonstrated connection to specific market harms.

II. Clearer Affiliation Rules Are Needed

The Proposed Rule's control-based approach would make it difficult for a DCM to determine which market participants are affiliates subject to the rule's conditions. If a DCM treats an entity as unaffiliated and the Commission later reaches a different conclusion, the DCM could face enforcement risk for failing to apply the required conditions. DCMs therefore need a reliable way to identify affiliate relationships before permitting a participant to operate under a particular ownership, governance, or commercial structure.

The uncertainty comes from the Proposed Rule's definition of "control," which uses a broad federal securities formulation based on the power to direct management and policies through voting securities, contract, or otherwise. That standard is inherently fact-specific and does not include brightline thresholds or safe harbors. Securities law precedent and market practice may provide useful guideposts, but they would not bind the Commission. As a result, DCMs may not be able to predict with confidence whether minority ownership, governance rights, financing arrangements, commercial agreements, or other relationships would create affiliate status.

That uncertainty creates real compliance and commercial burdens. A DCM must know which participants are subject to affiliate conditions in order to build its compliance program, apply market rules consistently, design disclosure and independent review processes, and advise prospective liquidity providers and investors. Without clearer criteria, the rule may chill investment in liquidity providers and discourage commercial relationships that support new products and market liquidity. It also makes it harder for the DCM to apply requirements consistently across similarly situated market participants.

The Commission should provide objective criteria, examples, or safe harbors for common ownership and commercial arrangements, including minority investments, nonvoting interests, board or observer rights, protective consent rights, financing arrangements, services agreements, and other ordinary commercial relationships. The Commission should also

establish an expedited process for DCMs and market participants to obtain staff guidance on how a proposed ownership, governance, investment, or commercial relationship would impact affiliate status. That process should be available before binding commitments are made and should operate on a predictable timeline so that DCMs can plan compliance, participant onboarding, business development, and capital commitments with greater certainty.

III. The Final Rule Should Replace Mandatory Order Priority Subordination with a Neutrality Standard

The Proposed Rule's order priority subordination provision is the most consequential and problematic element of the rulemaking.[2] DKeX urges the Commission to replace this provision with a neutrality standard that achieves the Commission's legitimate objectives without imposing the significant costs and legal risks associated with subordination. That execution disadvantage could make affiliated market making commercially unviable, with the practical consequence that customers would face wider spreads, reduced depth, and diminished execution quality–the very harms the Commission's customer-protection objectives seek to avoid.

DKeX has prepared three alternative regulatory text options, attached as Appendix A, that demonstrate workable approaches to achieving the Commission's goals.[3]

A. Subordination Is a Status-Based Execution Penalty Inconsistent with Impartial Access

Proposed § 38.852(c)(1)(i) would require that a DCM's trade matching system ensure that an affiliate market maker is "filled last at every price level," effectively mandating inferior execution relative to all other market participants at the same price.[4] The requirement would impose a status-based execution penalty, singling out affiliated market makers for mandatory disfavorable treatment based solely on ownership structure, without regard to conduct, risk profile, or contribution to market quality.

The Commission's own regulations require that DCMs provide market participants with "impartial access" to markets and market services.[5] Impartial access means nondiscriminatory access, not favoritism or mandatory disfavor. Requiring a DCM to place its affiliated market maker last in the execution queue at every price level would make access systematically partial and would disfavor a specific participant. Partiality against the affiliate remains discriminatory and is no more consistent with the statutory mandate of impartial access than preferential treatment would be.

Core Principle 9 of the Commodity Exchange Act requires DCMs to provide for "competitive, open, and efficient" execution of transactions.[6] Mandatory subordination undermines each element of this standard: it artificially disadvantages one category of market participant, imposes differential treatment based on ownership status rather than objective, conduct-based criteria, and reduces the effective depth of displayed liquidity by ensuring that affiliated limit orders,

---

[2]See proposed § 38.852(c)(1)(i).

[3]See Appendix A, infra, for proposed alternative regulatory text.

[4]See proposed § 38.852(c)(1)(i).

[5]17 C.F.R. § 38.151 (impartial access to markets and market services).

[6]CEA § 5(d)(9) (Core Principle 9: Execution of Transactions).

which may represent a substantial fraction of total displayed liquidity, are always executed last, thereby reducing the incentive to post competitive quotes.

DKeX recognizes that the Commission has a legitimate interest in preventing a DCM from using its matching engine to provide its affiliate with an unfair execution advantage. A neutrality standard that prohibits both preferential and disfavorable treatment and requires the exchange to apply the same generally applicable rules to affiliated and unaffiliated members alike would address this concern directly and appropriately, without creating the legal, economic, and practical problems associated with mandatory subordination.

B. Core Principle 16 Addresses Governance Conflicts, Not Execution Penalties

The Proposed Rule invokes Core Principle 16 as a basis for the subordination provision. Core Principle 16 addresses conflicts of interest in the context of an exchange's decision-making process, including its governance, regulatory oversight, and disciplinary functions.[7] The natural remedies for governance conflicts include independent directors, governance committees, recusal policies, appropriate information barriers that restrict the flow of material non-public information, and disciplinary panels that are insulated from affiliate influence.[8]

Execution priority penalties imposed on market participants in the ordinary course of trading go beyond the scope of Core Principle 16. There is an important distinction between, on the one hand, ensuring that an exchange's governance decisions are not improperly influenced by affiliate interests and, on the other hand, mandating that a market participant receive inferior execution in the matching engine solely because of its ownership. The former is a governance safeguard; the latter is a trading restriction that penalizes a market participant's status rather than its conduct.

The Commission should avoid extending the reach of Core Principle 16 beyond its natural domain. If the Commission concludes that execution-level protections are warranted, such protections should be grounded in the impartial-access and execution-quality provisions of Core Principles 2 and 9 and should take the form of a neutrality requirement rather than a subordination mandate.

C. The Rule May Exceed the Commission's Rulemaking Authority

Rules promulgated under CEA § 8a(5) must be reasonably related to the purposes of the Commodity Exchange Act and must not be arbitrary or capricious. The Supreme Court has recently reaffirmed that the Administrative Procedure Act's ("APA") "well-worn arbitrary-and-capricious standard ensures that an administrative agency 'examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'"[9]

Mandatory subordination is a particularly aggressive regulatory intervention for which less restrictive alternatives exist. A neutrality standard, combined with documentation, disclosure,

---

[7] CEA § 5(d)(16) (Core Principle 16: Conflicts of Interest).

[8] See, e.g., proposed § 38.853 (governance requirements).

[9] *FDA v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542 (2025) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)); *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020) (applying the same requirement to final rules).

and surveillance requirements, would address the Commission's stated concerns about preferential treatment without imposing the costs and distortions associated with mandatory disfavorable treatment. Under the APA, a court reviewing the final rule would evaluate whether the Commission considered less restrictive alternatives and whether the chosen approach is supported by the record.[10]

DKeX respectfully submits that mandatory subordination may be vulnerable to challenge under the APA because it is inconsistent with the Commission's own impartial access requirement and is not supported by adequate data (as discussed in Section III.D below). The Commission can avoid this legal risk by adopting a neutrality standard that achieves the same legitimate regulatory objectives.

D. The Cost-Benefit Analysis Has Acknowledged Data Gaps

The Commission's own cost-benefit analysis acknowledges significant data gaps regarding the costs, liquidity impact, and adverse-selection effects of subordination. The Commission states that it lacks comprehensive data on the extent to which affiliated market makers contribute to displayed liquidity on DCMs, the degree to which subordination would affect the willingness of affiliated market makers to quote, and the potential for adverse selection that might result from last-priority execution.[11]

DKeX submits that a neutrality standard with appropriate controls is sufficient to achieve the Commission's objectives. However, to the extent that consideration of more restrictive measures is warranted, the Commission should undertake further study of the execution priority question, informed by data from DCMs and affiliated market makers. Such study is warranted before finalizing provisions that could fundamentally alter the execution dynamics of markets with affiliated market makers.

E. Affiliated Liquidity Is Critical for Prediction Markets

Prediction markets typically include many small, short-duration contracts with uneven liquidity. Unlike established futures and options markets, many event contracts have limited trading history, uncertain demand, and narrow trading windows. That structure makes early liquidity especially important and makes it less likely that unaffiliated market makers will support every listed contract at launch.

The Commission's preamble recognizes that affiliated market makers can play an important role in providing initial liquidity for new products. On DKeX, affiliated market-making activity helps support customer access across new and thinly traded markets, not only the most active or highest-volume products. Mandatory subordination would weaken that function. If an affiliated market maker's displayed quotes are always filled last at every price level, the affiliate has less incentive to quote aggressively or commit meaningful size. The likely result is wider spreads, reduced depth, and less reliable liquidity for customers.

DKeX's experience is that unaffiliated liquidity can take time to develop as prediction market products mature. In certain established categories, non-retail participation has become a meaningful share of trading activity as third-party firms, sophisticated individual traders, and other market participants enter in response to demonstrated demand. Affiliated market making

[10] 5 U.S.C. § 706(2)(A).

[11] See Proposed Rule, Cost-Benefit Considerations (acknowledging data limitations regarding liquidity effects).

can serve as the bridge during the earlier period when external liquidity providers are still evaluating the opportunity. Mandatory subordination would threaten that lifecycle and could prevent promising markets from reaching the liquidity needed to attract broader participation.

F. Proposed Alternatives for Section 38.852(c)(1)(i)

To assist the Commission in developing final rule text that achieves its regulatory objectives without the problems associated with mandatory subordination, DKeX has prepared three alternative text options, which are set forth in Appendix A to this letter.[12]

- **Option 1** is a targeted redline of proposed § 38.852(c)(1)(i) that makes the minimum changes necessary to convert the subordination mandate into a neutrality requirement while preserving the overall structure of the proposed text. This option demonstrates that the transition from subordination to neutrality can be accomplished with minimal disruption to the Commission's proposed regulatory architecture.[13]

- **Option 2** is a full replacement of proposed § 38.852(c)(1)(i) with a comprehensive neutrality principle that incorporates an affirmative prohibition on preferential treatment and a savings clause that expressly prohibits mandatory disfavorable treatment. DKeX recommends Option 2 as the primary alternative because it most clearly and directly articulates the neutrality principle and would provide the strongest foundation for consistent, predictable compliance.

- **Option 3** combines a neutrality standard with a requirement for written policies and procedures and express Commission-reviewable documentation. Option 3 expressly provides the Commission additional procedural safeguards beyond the neutrality principle itself.

G. If Subordination Is Retained, It Should Be Narrowed and Tailored

If the Commission determines to retain some form of order-priority subordination in the final rule, DKeX urges the Commission to narrow and tailor the provision to account for the diversity of market structures, products, and competitive conditions across DCMs.[14]

Specifically, the Commission should consider tailoring subordination requirements by reference to any one or more of the following independent criteria, each of which could independently warrant an exemption from or modification to the subordination requirement: market maturity (e.g., exempting contracts during an initial launch period); affiliate liquidity share (e.g., applying subordination only when the affiliate's share of displayed liquidity in a given contract exceeds a specified threshold); product depth (e.g., exempting contracts with fewer than a specified number of active unaffiliated liquidity providers); or the presence of unaffiliated liquidity (e.g., triggering subordination only after a demonstrated level of unaffiliated market-making participation has been sustained over a meaningful period).

Any subordination requirement should be phased in over a transition period and procedures necessary for compliance. In addition, the final rule should not apply immediately to ensure that the subordination requirement does not impede product launches and early-stage liquidity formation. A phased approach would allow the Commission to collect data on the effects of

[12]See Appendix A, infra, for proposed alternative regulatory text.

[13]See proposed § 38.852(c)(1)(i).

[14]See Proposed Rule preamble (discussing phase-in considerations for nascent markets).

subordination in more mature markets before extending the requirement to newer, less liquid markets where the potential for harm to market quality is greatest.

IV. The Directional Trading Restriction Should Be Clarified

Proposed § 38.852(c)(1)(ii) would restrict an affiliated market maker from accumulating directional positions except "in connection with" two-sided quotations. DKeX asks the Commission to clarify the scope of the "in connection with" standard to encompass the full range of activities that are reasonably related to maintaining two-sided quotations.

Bona fide market making inherently involves accumulating directional exposure as a byproduct of filling customer orders on both sides of the market. Over the course of a trading day, particularly in event markets where retail flow may create systematic directional pressure around news events, a market maker may accumulate meaningful net long or net short positions in individual contracts or correlated sets of contracts. Managing this inventory risk is a core function of market making.

The activities that are reasonably "in connection with" two-sided quotations include, but are not limited to: inventory management (adjusting quotes or executing trades to manage accumulated directional exposure); hedging (taking offsetting positions in correlated contracts or related markets); correlation management (managing exposure across related event contracts that share common risk factors); cross-market hedges (using positions in other markets or instruments to offset event contract exposure); portfolio-level exposure management (managing aggregate risk across the market maker's full book of positions); and position unwinds (reducing or closing positions accumulated through normal market-making activity).

The final rule should clarify that the directional-trading restriction permits an affiliated market maker to engage in these activities, which are integral to the provision of continuous, competitive two-sided markets. A market maker unable to manage its inventory and risk exposure cannot sustainably provide the liquidity that customers depend upon. The Commission should adopt a standard covering all activity reasonably related to maintaining two-sided quotations and should provide guidance clarifying that routine inventory management and hedging activities satisfy this standard.

V. Per-Session Customer Notice Should Be Replaced with Layered Disclosure

Proposed § 38.852(c)(3) would require a DCM to provide notice of affiliated market-making activity on a per-trading-session basis. DKeX supports the Commission's objective of ensuring that customers understand affiliate relationships and related conflicts, but per-session pop-up notices are not the most effective way to achieve that objective. A layered disclosure framework would better inform customers while avoiding disclosure fatigue.

Per-session disclosures add an extra step to the trading process and may discourage participation. Just as important, a repeated pop-up notice may unintentionally stigmatize affiliated liquidity by presenting the presence of an affiliated market maker as a warning, even though affiliated liquidity can benefit customers through tighter spreads and greater depth.

DKeX recommends a layered disclosure framework that would include: (1) onboarding disclosure explaining affiliated relationships and required conflicts-management procedures; (2) market-page summary disclosure indicating that an affiliated market maker may provide liquidity in the relevant markets; (3) public rulebook and website disclosure describing affiliated-entity relationships and required conflicts-management procedures.

Where customers access the exchange through an intermediary, the final rule should allow relevant disclosures to be delivered through, or in coordination with, that intermediary. Onboarding disclosures, for example, may be most effectively provided by the FCM as part of existing customer-facing communications. The final rule should permit DCMs to satisfy disclosure obligations through reasonable direct or intermediated channels, provided the customer receives substantively equivalent information.

Layered disclosure would give customers accessible, durable, and non-duplicative information about affiliated market-making activity without the fatigue of per-session notices. DKeX believes this approach would better serve the Commission's customer-protection objectives.

VI. Incentive Parity

DKeX supports in principle the Proposed Rule's amendments to 17 C.F.R. § 38.151 relating to incentive parity for affiliated and unaffiliated market participants.[15] The proposal is consistent with the impartial-access requirement and helps ensure a level competitive playing field.

DKeX urges the Commission to preserve flexibility for objective, product-specific market maker programs that are designed to promote liquidity and market quality. Many DCMs operate designated market maker or liquidity provider programs that offer fee reductions or other incentives in exchange for quoting obligations, minimum size requirements, and other commitments that benefit customers. These programs should be permitted so long as they are available on no-less-favorable terms to similarly situated participants, meaning that any affiliated market maker participating in such a program must meet the same objective criteria and bear the same obligations as unaffiliated participants in the same program.

The final rule should make clear that "similarly situated" is determined by reference to objective criteria such as trading volume, quoting obligations, and the products in which the participant makes markets, rather than by reference to ownership or affiliation status. A small, single-product market maker and a large, multi-product market maker are not similarly situated, regardless of their respective affiliation statuses, and the Commission should not require that they receive identical economic treatment.

VII. Independent Review and RSP Certification Should Be Tailored

The Proposed Rule would require DCMs with affiliated market makers to obtain independent review and certification of certain conflicts-management procedures and controls. DKeX supports targeted independent review focused on whether a DCM's framework is reasonably designed to prevent preferential treatment of an affiliated market maker. Properly scoped, independent review can provide the Commission and market participants with additional assurance that the framework is operating as intended.

DKeX opposes importing FCM financial-surveillance concepts from 17 C.F.R. § 38.604 into the context of a principal trading firm that carries no customer funds. An affiliated market maker trades for its own account and does not hold customer assets or intermediate customer transactions. The relevant risks are whether the market maker has adequate financial resources to satisfy its obligations, whether it complies with applicable exchange rules, and whether the DCM's conflicts framework is operating as designed. A tailored financial resources and conflicts

[15] See proposed § 38.151 (incentive parity).

review standard would address those risks more directly than applying an FCM-oriented framework by analogy.

The cost and operational burden of independent review may be substantial. The Commission's own preamble recognizes that certification of order priority subordination and market maker agreement compliance likely would require high-frequency message and transaction data, along with implementation, software, and cloud costs. These burdens should be calibrated to the actual risks presented by affiliated market making, particularly for newer or smaller DCMs.

The final rule should also account for practical limits on available reviewers. NFA surveillance may not substitute for a DCM's own real-time, intraday surveillance infrastructure, and the universe of qualified independent reviewers is limited. Although the Proposed Rule contemplates that a registered entity could serve as an independent reviewer, many registered entities may be direct competitors of the DCM, creating separate conflict concerns. The Commission should define independence in a way that accounts for those constraints.

Finally, the Commission should provide a phased implementation timeline. DCMs will need time to build required data infrastructure, negotiate review arrangements, and implement any certification process. A reasonable transition period would allow the final rule to improve oversight without disrupting existing market-making arrangements.

VIII. Affiliated FCM and Derivatives Clearing Organization ("DCO") Provisions

A. Affiliated FCM Provisions

DKeX supports the Proposed Rule's principles-based approach to conflicts between DCMs and affiliated FCMs under the proposed amendments to 17 C.F.R. § 1.52 and proposed § 38.606. The requirement that a DCM not serve as designated self-regulatory organization for its own affiliated FCM is a targeted structural safeguard addressing a clear potential conflict.

The remaining affiliated-FCM provisions should remain proportional. Conflicts procedures, information barriers, and disclosure are appropriate tools for managing risks without penalizing the affiliated-FCM relationship itself. The final rule should preserve that approach and avoid converting affiliated intermediation into a disfavored market structure.

B. DCO Provisions

DKeX also supports the Proposed Rule's principles-based approach to DCO-affiliate clearing member relationships under proposed amendments to 17 C.F.R. §§ 39.2, 39.21, and 39.25. The Commission appropriately proposes conflicts procedures and disclosure rather than a categorical prohibition.

DKeX would oppose any prescriptive capital, margin, default-waterfall, or volume-cap requirement imposed solely because of affiliation. The relevant concern is whether DCO risk management and default management decisions are made independently and consistently. That concern is best addressed through documented procedures, independent reporting lines, and governance safeguards, not affiliation-based financial penalties.

IX. Corporate Restructuring Costs

DKeX urges the Commission to give careful consideration to the corporate restructuring costs that the Proposed Rule may impose on vertically integrated firms. The combined effect of subordination, prescriptive independent review requirements, and other compliance obligations

applicable to DCMs with affiliated market makers may incentivize firms to consider spinning off affiliated entities or restructuring their operations to fall outside the scope of the affiliate conditions in order to avoid the regulatory burden associated with the affiliate framework.

Such restructuring would be costly and would eliminate the efficiencies and benefits of vertical integration that the Commission identifies in the Proposed Rule's preamble. If the regulatory cost of maintaining an affiliated market maker exceeds the economic benefits of the relationship, firms will rationally choose to divest, and the market will lose the innovation, liquidity, and competitive benefits that vertical integration provides. The Commission should account for these restructuring costs in its cost-benefit analysis and should ensure that the final rule does not create incentives for value-destroying corporate restructuring.

The compliance costs associated with the Proposed Rule are substantial, and the mandatory-subordination provision in particular imposes costs that are difficult to mitigate through internal compliance measures. A DKeX-affiliated market maker required to accept last-priority execution at every price level may find that the economics of market making on DKeX are no longer viable, forcing a restructuring of the liquidity provision model that would ultimately harm customer execution quality and market competitiveness.

X. Implementation Timeline

Finally, if the Commission adopts the Proposed Rule in its current or substantially similar form, DKeX respectfully requests an implementation period of no less than twelve months following the effective date. From the DCM's perspective, that period is necessary to inventory relevant relationships, evaluate affiliate status under the final rules, develop and document any net-new procedures and information barriers, implement disclosure and monitoring systems, arrange any required independent review, and train personnel responsible for compliance and oversight.

* * *

DKeX supports clear, durable, and fit-for-purpose rules governing conflicts and affiliations. The Commission's decision not to ban vertical integration is correct, and the principles-based architecture of the Proposed Rule provides a sound foundation for the final rule.

The Commission should replace mandatory subordination with a neutrality standard, clarify the scope of directional-trading limits to encompass the full range of bona fide market-making activity, adopt a layered disclosure framework in lieu of per-session pop-up notices, and tailor independent-review requirements to the specific risks presented by affiliated market making.

DKeX appreciates the opportunity to comment on this important rulemaking and welcomes further engagement with the Commission and its staff on any of the issues raised in this letter.

Respectfully submitted,

Railbird Exchange, LLC d/b/a DKeX

APPENDIX A

Alternative Regulatory Text for Proposed § 38.852(c)(1)(i)

Option 1: Targeted Redline

"(i) ensure that its trade matching system, including any price/time priority matching algorithm, does not favor the affiliate market maker. Specifically, the designated contract market's trade matching system shall apply the same generally applicable trading and access rules to the affiliate market maker that it applies to similarly situated unaffiliated members, and shall not provide the affiliate market maker with preferential treatment relative to similarly situated unaffiliated members with respect to the terms and conditions of access to, and trading on, the designated contract market; and"

Option 2: Full Replacement

"(i) ensure that the affiliate market maker participates on impartial, transparent, and non-discriminatory terms. A designated contract market shall not, directly or indirectly, provide the affiliate market maker with preferential treatment relative to similarly situated unaffiliated members with respect to the terms and conditions of access to, and trading on, the designated contract market. Nothing in this paragraph shall require a designated contract market to disadvantage the affiliate market maker relative to similarly situated unaffiliated members solely because of the affiliate relationship; and"

Option 3: Neutrality Standard Plus Express Commission-Reviewable Controls

"(i) ensure that its trade matching system, including any price/time priority matching algorithm, does not favor the affiliate market maker. Specifically, the designated contract market's trade matching system shall be designed and operated so that the affiliate market maker receives no preferential treatment relative to similarly situated unaffiliated members with respect to access, execution, and related market services. The designated contract market shall maintain written policies and procedures reasonably designed to prevent preferential treatment of the affiliate market maker, shall document the operation of those policies and procedures, and shall make such documentation available to the Commission upon request. A designated contract market may apply neutral, generally applicable rules to the affiliate market maker on the same basis as similarly situated unaffiliated members; and"