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October 5, 2026

Mr. 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 No. 3038-AF76)

Dear Mr. Kirkpatrick:

Nasdaq, Inc. ("Nasdaq")[1] welcomes the opportunity to comment on the notice of proposed rulemaking (the "Proposal"),[2] issued by the Commodity Futures Trading Commission (the "Commission" or "CFTC") to address conflicts of interest arising from affiliations among futures commission merchants ("FCMs"), swap execution facilities ("SEFs"), designated contract markets ("DCMs"), derivatives clearing organizations ("DCOs"), and principal trading firms. Nasdaq operates multiple regulated markets and brings a global market structure and investor protection perspective, informed by decades of experience across the exchange, clearing, and intermediary landscape, to the questions the Proposal raises regarding conflicts arising from affiliation. Nasdaq appreciates the Commission's proactive approach to identifying and addressing conflicts of interest in a market structure that continues to evolve rapidly.

In concept, new forms of affiliation between exchanges, clearinghouses, intermediaries, and principal trading firms are capable of generating benefits for market participants, including deeper liquidity, lower costs, and faster innovation in emerging product categories such as prediction markets and digital assets. However, the Commission should also approach these affiliations with caution to ensure that these benefits are tangible and not outweighed by any countervailing risks that affiliations and vertical integration can present. In many instances, the

[1] Nasdaq is a Fortune 500 global technology company serving the capital markets and other industries. Our diverse offering of data, analytics, software, and services enables clients to optimize and execute their business vision with confidence. Nasdaq owns and operates The Nasdaq Stock Market LLC, Nasdaq PHLX LLC, Nasdaq TEXAS, LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq MRX, LLC markets, each of which is registered as a national securities exchange. To learn more about the company, technology solutions, and career opportunities, visit us on LinkedIn, on X @Nasdaq, or at www.nasdaq.com.

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

Commission is capable of mitigating or adequately controlling these risks by imposing prudent guardrails. In some instances, however, and even with guardrails, the risks may prove too serious or systemic to justify the benefits that affiliation and vertical integration provide.

The Commission's approach to these risks should be informed by history. Unchecked conflicts between affiliates can create, and have created, incentives that lead to market harm.[3] The collapse of FTX and its affiliated trading arm demonstrates how an affiliated principal trading firm's tacit exemption from an exchange's own risk controls, including its auto-liquidation rules, can permit undisclosed, unchecked risk-taking to accumulate until it destabilizes the platform itself and inflicts severe harm on customers who had no visibility into the arrangement. Similarly, the London Metal Exchange's 2022 suspension and cancellation of trades in its nickel market has been cited as an example of a market operator's affiliated clearinghouse relationship shaping a decision to halt trading and unwind transactions in a manner that a fully independent market operator might not have made, undermining confidence in the integrity of the price-discovery process. The lesson of these episodes is not that affiliation itself should be disqualifying, per se, but instead that inadequate attention to the risks of affiliation can be dangerous. Indeed, the presence of durable, examinable safeguards, such as effective information barriers, independent oversight of self-regulatory functions, and transparency to the market, might have helped to prevent these occurrences. They could have limited the extent to which commercial interests compromised the impartial administration of trading platforms and risk controls.

On that basis, Nasdaq would welcome action by the Commission to impose safeguards on affiliated and vertically integrated entities, and to codify these safeguards in enforceable rules rather than rely upon market participants to implement them voluntarily. At the same time, Nasdaq urges the Commission to calibrate these safeguards so that they are specific enough to be meaningful and enforceable, but not so prescriptive as to be unduly burdensome and stifling to innovation. Nasdaq therefore agrees with the Commission's preliminary assessment that, if calibrated correctly and properly controlled, affiliated market structures may be capable of advancing the Commission's mission of promoting the integrity, resilience, and vibrancy of the U.S. derivatives markets while minimizing undue risks to derivative market participants and to the markets as a whole.

While the unique nature of emerging markets in the derivatives space might benefit from some level of well-regulated vertical integration, Nasdaq's views on this Proposal are also informed by positions Nasdaq has taken elsewhere regarding the role of independent market intermediaries in the securities markets.[4] In Nasdaq's comment letters to the Securities and

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[3] *See* CFTC Staff of the Divisions of Market Oversight, Clearing and Risk, and Market Participants, *Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities* (June 27, 2023), *available at*: https://www.cftc.gov/media/8826/rfcimpactaffiliations062823/download.

[4] Indeed, particularly in emerging segments of the derivatives sector, vertical integration can concentrate the capital commitment, technological investment, and risk-management expertise needed to establish reliable liquidity and tighter pricing before a market has attracted a broad base of independent participants, producing tangible benefits for customers in the form of lower transaction costs, deeper and more consistent liquidity, and faster product innovation. This dynamic distinguishes nascent derivatives markets from the more mature securities markets, where a deep bench of well-established, independent intermediaries already supplies the liquidity and competitive pricing that vertical integration may jumpstart elsewhere.

Exchange Commission's ("SEC") Crypto Task Force,[5] Nasdaq also recognized the potential benefits of vertical integration for the securities markets, but it cautioned the SEC to be mindful of how historical distributions of functions in the securities markets among intermediaries promote public trust, ensure fairness, enhance stability, and protect investors, and to consider whether vertically integrated firms are capable of doing the same on their own. Nasdaq observed that the mainstream securities markets' distributed structure – in which brokers, underwriters, clearing firms, and custodians each perform distinct, independently overseen functions – is not a relic of outdated technology, but the combined product of free market forces, deliberate decision-making, and hard-won lessons from nearly a century of market experience. Nasdaq noted that skilled intermediaries research and analyze market conditions, advise investors, facilitate access to liquidity, and ensure that a regulated, accountable entity stands behind every link in the transaction chain.[6] As Nasdaq stated to the SEC, vertically integrated market structures should not eschew the role of third-party intermediaries; rather, such structures should exist where they provide an additive benefit to customers, while still preserving the ability of unaffiliated market participants to fairly compete.

In light of this backdrop, Nasdaq respectfully submits the following comments and recommendations for the Commission's consideration:

- A codified, principles-based conflicts framework, calibrated to preserve reasonable discretion for registered entities, best serves investor protection without impeding innovation and competition among diverse business models.
- The proposed market maker exception appropriately balances the acute conflict presented by an affiliate principal trading firm with the liquidity benefits such a market maker can provide, particularly for newly listed and thinly traded contracts.
- The order-priority subordination, independent third-party regulatory service provider, and per-session disclosure conditions attached to the market maker exception should be calibrated for operational workability, including for prediction markets and digital asset derivatives.
- The prohibition on a self-regulatory organization ("SRO") serving as the designated SRO ("DSRO") for its own affiliate FCM is well-supported and should be codified as proposed; the separate requirement that an independent third-party SRO conduct the Regulation 1.52(c) supervisory program of an affiliate FCM – together with the insulated reporting-line requirement for examination staff – should likewise be adopted.
- The principles-based procedures and public disclosure requirements proposed to address affiliate member clearing conflicts are well-calibrated and should be adopted. The Commission should also make clear that a DCO's conflict mitigation procedures must

[5] *See* Nasdaq Comment Letter to the SEC Crypto Task Force, *What's in a Name? A Stock by Any Other Name … Nasdaq Inc.'s Response to "There Must Be Some Way Out of Here,"* (Apr. 25, 2025), *available at*: https://www.sec.gov/files/ctf-written-input-nasdaq-042525.pdf ("Nasdaq April 2025 SEC Crypto Task Force Comment Letter"); *see also* Nasdaq Comment Letter to the SEC Crypto Task Force, *Nasdaq's Crypto ETP Response to the February 21, 2025 Statement by Commissioner Hester Peirce Entitled "There Must Be Some Way Out of Here,"* (May 2, 2025), *available at*: https://www.sec.gov/files/ctf-written-input-nasdaq-050225.pdf.

[6] Nasdaq April 2025 SEC Crypto Task Force Comment Letter at 19.

reach the settlement, reference-price, liquidation-priority, and collateral-haircut channels through which favoritism can arise in thinly traded, emerging markets.

- The proposed definition of "control" supports growth and innovation.

I. A Flexible, Principles-Based Approach Supports Pragmatic Innovation

A flexible, principles-based approach to regulation allows a variety of complementary business models to compete and drive innovation across the derivatives markets. Different products and technologies serve a variety of customer bases, which is essential to a thriving and robust market. A static, prescriptive rule that imposes a single structural solution inevitably fits some of those business models better than others, systematically favoring the incumbents whose existing operations happen to match the prescribed template. A principles-based standard, by contrast, allows each registrant to achieve the same customer-protection and market-integrity outcomes through means suited to its own structure, which is precisely what allows new entrants, new products, and new methods of execution to emerge and compete on the merits rather than on conformity with a legacy design. This is not merely a policy preference; it reflects how the Commission has regulated derivatives markets for decades, affording registered entities reasonable discretion in the manner of compliance while retaining its own oversight and authority to intervene by rule where a specific gap so warrants. Nasdaq therefore supports the Commission's proposal to continue that approach here. Where more prescriptive requirements are necessary, such as with restrictions on affiliate market makers, Nasdaq applauds the Commission's targeted approach, which mitigates risks associated with specific practices without needlessly restricting or prohibiting harmless practices.

The Proposal would implement this principles-based approach concretely through proposed Commission Regulations 38.852(b)(1) and 37.1201(b), which would require a DCM and a SEF, respectively, to maintain procedures addressing conflicts of interest involving an affiliate market participant, covering at minimum applications and systems, personnel, office space, documentation of conflicts, and disclosures. Nasdaq agrees this is a prudent approach and notes that it is consistent information-barrier practices that exchange operators with affiliated alternative trading systems describe in their public disclosures to the SEC.[7] Whether an exchange has an affiliate market participant, and whether it maintains procedures addressing each enumerated category, are objective inquiries the Commission can examine; accordingly, the framework is fully enforceable notwithstanding its principles-based design. At the same time, leaving the specific means of compliance to the registrant's discretion – rather than dictating uniform systems, staffing, or office-space arrangements in rule text – gives each registrant the flexibility to design separations suited to its own structure and risk profile, while still delivering the substantive protection the Commission is targeting. These protections include: reducing the risk that affiliates or their personnel inappropriately access or share an unaffiliated market participant's non-public information and giving unaffiliated market participants confidence that the exchange can manage the conflict. This calibration is what allows the rule to achieve real

[7] *See* Form ATS-N/UA (Updating Amendment), BIDS Trading L.P. (BIDS ATS), Part II, Item 7 (Protection of Confidential Trading Information) (describing information barriers that prohibit personnel supporting affiliated Cboe national securities exchanges from accessing nonpublic ATS trading information), SEC File No. 013-00031, CIK 0001368727, *available at*: https://www.sec.gov/Archives/edgar/data/1368727/000095012321008982/xslATS-N_X01/primary_doc.xml.

customer protection without imposing a single structural template that would, in practice, fit some business models far better than others.

II. The Proposed Restrictions for Affiliate Principal Trading Firms Strike the Proper Balance of Market Innovation and Customer Protection

The Proposal's treatment of affiliate principal trading firms most squarely tests the balance between innovation and customer protection that the Proposal seeks to strike. On the one hand, an affiliate that trades as principal on its own affiliated exchange presents a fundamentally different, and more acute, conflict than an affiliated intermediary acting on an agency basis. Although certain conflicts may be managed through procedures and disclosures, the inherent financial entanglement of a DCM and an affiliated principal trading firm calls for heightened scrutiny, particularly because in prediction markets and similar products the risk models of the exchange, or its affiliated clearinghouse, for margin, clearing, and liquidation are tied to the liquidity the affiliate provides, creating the potential for favoritism to be built into the margin methodology, liquidation timing and priority, and collateral haircuts applied to the affiliate's own positions. On the other hand, a bona fide market maker may supply liquidity that unaffiliated firms may not, particularly across the broad and unique offerings that are characteristic of prediction markets and other emerging markets. New exchanges may face initial challenges in attracting liquidity, and an affiliated market maker aligned with a venue's success may be able to supply liquidity that independent firms are unwilling to commit until volume develops. This may be especially true for prediction markets, where contracts are often short-dated and unique. Further, where an affiliate market maker already provides most or all of the liquidity in a product, an outright prohibition on its participation in the market could cause a major liquidity crunch and trigger auto-liquidation measures, resulting in customer losses.

In weighing these considerations, Nasdaq concludes that the liquidity bootstrapping rationale justifies a narrow, conditioned exception rather than unrestricted affiliate proprietary trading. Given the key role that liquidity plays in shaping risk models, and the potential for an unrestricted affiliate trading privilege to influence prices that affect settlement values, margin, liquidation triggers, and oracle or reference-price inputs (a risk that becomes more acute in thin liquidity conditions), it is essential to appropriately calibrate conflicts of interest provisions that may impact liquidity. In sum, the restrictions on affiliate market makers should be calibrated to ensure their role on affiliated DCMs is limited to serving as liquidity providers of last resort. Accordingly, Nasdaq broadly supports the proposed prohibition on affiliate principal trading firms and conditional affiliate market maker exception, with certain caveats highlighted below.

Order-Priority Subordination

Nasdaq supports the proposed order-priority subordination for affiliate market makers, which will help to ensure that a DCM’s trade matching system does not favor an affiliate. By requiring that unaffiliated bids and offers be filled first at every price level, regardless of timing, the subordination requirement safeguards against an affiliate’s use of any technological, information, or structural advantage that its affiliation with the exchange might otherwise afford it to win executions ahead of unaffiliated participants. Nasdaq acknowledges that subordination constitutes a deliberate exception to the traditional rule of price-time priority. Yet that exception

is the mechanism through which the requirement operates. If an affiliated participant retained its ordinary priority, the competitive and informational advantages arising from the affiliation could persist. By requiring the affiliate participant to yield priority, the rule directly addresses and neutralizes those inherent advantages, thereby promoting confidence in the fairness and integrity of the market. As such, an affiliate market maker's role on an exchange will be limited to providing truly necessary liquidity, rather than competing on a primarily financial basis. Nasdaq understands that, as proposed, order-priority subordination would apply only to affiliates trading on a principal basis for their own account, and requests that the Commission confirm that similar restrictions would not be appropriate for affiliate FCMs acting on an agency basis on behalf of their customers.

This proposed requirement protects the growth of competing market makers, which in turn protects customers' access to deep and liquid markets. While order-priority subordination is a helpful tool to protect investors, it works only when competing liquidity is available; where an affiliate market maker is the sole source of liquidity, there are no unaffiliated orders to which its orders can be subordinated. In the absence of competing liquidity, multiple single-provider platforms could emerge, which would not be in the best interest of investors. Nasdaq therefore supports the Commission's consideration of whether the exception should be time-limited, and suggests that the Commission impose a time limit on how long a market can operate solely with an affiliate market maker providing liquidity. Nasdaq further acknowledges that order-priority subordination could be complex to implement in certain types of trade matching platforms, including request-for-quote ("RFQ") models and facilitation mechanisms, precisely because the purpose of subordination's override of price-time priority does not map clearly onto matching protocols that are not organized around continuous price-time queues in the first instance. For RFQs, Nasdaq suggests that the Commission could echo the purpose of the order-priority subordination proposal by mandating that a DCM using an RFQ may only route requests to an affiliate market maker if no unaffiliated liquidity provider responds within a set window of time or can fully satisfy a requested order size. Such a restriction would help ensure that affiliate market makers are only providing liquidity where it is otherwise unavailable.

Market Making and Incentive Agreement Requirements

Nasdaq also supports the Commission's proposed market maker incentive-parity requirement, which would further level the playing field for unaffiliated liquidity providers. The proposed requirement that an affiliate market maker's participation in any incentive program be offered to unaffiliated members on equally favorable terms is grounded in common sense, and prevents a DCM from using its economic relationship with its affiliate to grant an affiliate a subsidized cost of liquidity provision that unaffiliated market makers cannot access. The proposed requirements for such programs to mandate continuous two-sided quotes, specified minimum trading hours, limitations on permissible bid-ask spreads, and restrictions on taking directional proprietary positions help to ensure that affiliate market makers are contributing to a fair and orderly market by providing needed liquidity.

Taken together, the order-priority subordination and incentive-parity requirements reinforce one another so that an affiliate market maker's continued presence on the exchange is justified only by the liquidity it genuinely supplies, and not by any preferential execution

priority, technological advantage, or economic terms flowing from its affiliation with the exchange. Nasdaq accordingly agrees that both conditions are appropriately calibrated to keep affiliate market makers in their intended role as bona fide liquidity providers. Nasdaq further recommends that the Commission make explicit, as a baseline condition of the proposed requirement, that an affiliate market maker must be given no preferential access to market data, connectivity, co-location, latency, or order types relative to unaffiliated participants.

Mandatory Independent Third-Party RSP Requirement

Nasdaq agrees that the Commission's proposed mandatory independent third-party regulatory service provider ("RSP") requirement is necessary to address certain heightened conflicts that exist between an exchange and an affiliate market maker. Narrower than a wholesale transfer of an exchange's self-regulatory function to a third party, it would require a DCM that permits trading by an affiliate market maker to designate an independent third-party RSP to perform three discrete functions: (i) conduct financial surveillance of the affiliate market maker, modeled on the DCM's existing Commission Regulation 38.604 surveillance of its member FCMs; (ii) review and monitor the exchange's compliance with its own conflicts-of-interest procedures for the affiliate market maker; and (iii) certify annually to the Commission and the DCM's board or designated committee that the affiliate market maker continues to satisfy the applicable conditions, including order-priority subordination, market-making obligations, and conflicts of interest procedures. While Commission oversight and other independent review mechanisms (including regulatory oversight committees) generally enable exchanges to reliably carry out their SRO responsibilities, Nasdaq agrees that mandatory third-party oversight in these specific areas would help to ensure that unaffiliated market participants have confidence in an exchange's management of conflicts, thereby further supporting liquidity on exchanges. There are, however, concerns regarding capacity. A mandatory requirement imposed on a limited pool of qualified providers risks becoming a bottleneck that impedes the growth of new markets. Accordingly, in response to the Commission's request for comment on transition periods and RSP capacity, Nasdaq asks the Commission to consider a reasonable phase-in period for this requirement and to clarify, in any final rule, that the Commission will monitor and address capacity constraints among independent RSPs before this requirement takes effect. Nasdaq also requests that any additional entities that serve as independent RSPs under this requirement, including any newly registered futures association, be held to standards of independence, expertise, and resources comparable to those of the National Futures Association.

Per-Trading-Session, Point-of-Entry Disclosure

Nasdaq supports transparency for affiliate relationships as a matter of principle, and agrees with the Commission's proposal to require the disclosure of an affiliate market maker relationship and its associated conditions. Nasdaq is concerned, however, about the operational burden of a true per-session, point-of-entry disclosure, particularly with respect to non-member order-entry interfaces that a DCM cannot directly bind by rule. Accordingly, Nasdaq encourages the Commission to adopt the split-delivery alternative it has identified – direct delivery by the DCM for direct-access orders, with delivery for intermediated orders coordinated through the FCM or other intermediaries consistent with the customer disclosure obligations addressed elsewhere in the Proposal. Consistent with the Commission's request for comment on whether

the notice obligation should attach per product, per session, or otherwise, Nasdaq requests that the Commission clarify what a "per session" trading disclosure would mean in a 24/7 trading environment. This delivery mechanism could be bolstered by the public disclosure the Commission identified as an alternative, requiring a DCM to prominently disclose the existence of an affiliate market maker in its rulebook and on its website. Such a disclosure would be valuable, as it would provide notice to market participants before deciding whether to trade on a particular exchange.

III. The Proposed Restrictions for SROs of FCMs are Sound

Nasdaq supports the Proposal's amendments addressing conflicts of interest arising from an SRO's relationship with an affiliate FCM. First, Nasdaq supports the proposed requirement barring an SRO with an affiliate FCM from performing the DSRO function for that affiliate FCM, which would codify the practice already followed under the Joint Audit Plan, whereby an independent SRO (currently NFA) performs the DSRO function for an FCM affiliated with a DCM. Nasdaq agrees with the broad consensus among market participants and the self-regulatory community that a DCM should not serve as DSRO for its own affiliate FCM. Nasdaq sees real value in moving that consensus from a voluntary practice into an enforceable rule, as codification ensures the practice continues, makes the requirement transparent to FCMs and their customers, and gives the Commission an enforceable regulatory baseline against which to monitor compliance, rather than leaving continued adherence to each SRO's own discretion.

Second, Nasdaq supports the proposed requirement that an SRO with an affiliate FCM designate an independent third-party SRO specifically to conduct the Regulation 1.52(c) supervisory program of that affiliate FCM. An SRO's financial surveillance program is what tests an FCM's compliance with minimum net capital, segregation of customer funds, and related financial-integrity requirements – the core protections on which the safety of customer funds directly depends – and it is precisely that function where an SRO's commercial interest in its own affiliate's success is most likely to affect, or appear to affect, the rigor, timeliness, and intensity of the SRO's oversight. The same logic extends to who supervises the examiners themselves. Because commercial management of an SRO has an obvious stake in how its affiliate FCM is examined, the Proposal would require examination staff at an SRO with an affiliate FCM to report to the board or a designated committee or officer responsible for regulatory compliance rather than to commercial management, insulating the examiners' reporting line from the very commercial interest the rule is designed to police. Together with the accompanying restrictions on access to and sharing of non-public information, these amendments ensure that the wall between an SRO's regulatory function and its commercial interest in an affiliate FCM's success is robust, particularly with respect to financial surveillance.

This is an area where the customer-protection rationale for Commission action is, in Nasdaq's view, unambiguous: an SRO examining its own commercial affiliate for compliance with minimum financial and segregation requirements presents a conflict that cannot be adequately managed through disclosure or after-the-fact review alone, and the Commission is right to close that gap by rule.

IV. The Proposed Provisions for DCOs are Appropriate and Should Be Expanded to Address Unique Conflicts Presented by Thinly Traded Markets

Nasdaq generally supports the Proposal's treatment of conflicts of interest arising from a DCO's relationship with an affiliate clearing member. The Commission correctly observes that inherent incentives exist for a DCO to exercise its substantial discretion in carrying out core risk-management functions in an affiliate's favor. Even the mere perception of preferential treatment can have anti-competitive effects, as market participants may direct clearing activity to the affiliate on the assumption that the DCO will favor it, or unaffiliated clearing members may conclude that they are systematically disadvantaged in margin, default, or rule-enforcement decisions. Moreover, market participants currently have no uniform means of determining whether DCOs have affiliated clearing members or of evaluating how the resulting conflicts are managed, since the existing public-disclosure framework does not specify affiliate relationships among the categories of information a DCO must disclose.

The proposed principles-based requirement for DCOs to establish procedures to identify, address, and manage conflicts of interest involving an affiliate clearing member affords DCOs sufficient latitude to respond to situations of financial distress or default in a flexible and fair manner. Further, the public-disclosure requirement in proposed Commission Regulation 39.21(c)(9) regarding the existence of, and the DCO's relationship with, any affiliate clearing member allows unaffiliated clearing members, customers, and other market participants to evaluate the DCO's conflicts-management framework, make informed decisions about where to direct clearing activity, and monitor whether the DCO is treating affiliate and non-affiliate clearing members on comparable terms. Pairing an enforceable procedural baseline with public disclosure directly answers the concerns the Commission identified: the procedures requirement addresses the underlying incentive problem, and the disclosure requirement addresses both the perception-driven competitive concern and the information gap, giving market participants the means to evaluate for themselves whether an affiliate relationship is being managed appropriately.

Nasdaq would also urge the Commission to look beyond the general risk-management discretion it has identified and consider how these conflicts can manifest with particular force in prediction markets and other products whose settlement mechanics are themselves particularly liquidity-dependent. For a traditional futures product, a DCO's settlement-price methodology typically draws on prices observed in an established underlying market, subject to the DCO's own governed methodology and Commission oversight. For digital-asset-linked futures and similar novel contracts, however, the underlying reference asset may trade across numerous venues with no single authoritative price, and a DCO clearing such a product may accordingly rely on a third-party price feed, index, or oracle-style mechanism as an input to its settlement methodology. Where that is the case, the reference-price input can simultaneously drive settlement values, margin calculations, and liquidation triggers. Where a DCO has an affiliate clearing member active in such a market, the opportunity for favoritism is accordingly broader than the Proposal's discussion of margin-setting and default timing alone suggests: it can also arise through the selection or weighting of the reference-price or oracle inputs used to determine settlement value, through the calibration of liquidation thresholds and the sequencing of liquidation events across affiliated and unaffiliated positions, and through the haircuts applied to

posted collateral. These channels are related but distinct, and a DCO's conflicts procedures should be expected to address each of them, not only the margin-methodology and default-timing questions on which the Proposal's discussion is centered.

This risk is more acute, in Nasdaq's view, precisely in the thin-liquidity conditions that new and developing futures and prediction markets are likely to experience. In such markets, a DCO's confidence in its settlement, margin, and liquidation determinations is necessarily constrained by the limited depth of the underlying market. As liquidity declines, any differential treatment of affiliated positions, whether through valuation, margining, or liquidation decisions, becomes more consequential to market outcomes. Moreover, because thin markets offer fewer objective and continuously observable benchmarks, unaffiliated participants and the Commission face greater difficulty in detecting and assessing whether the DCO has exercised its discretion consistently and impartially. Nasdaq accordingly recommends that any conflicts procedures a DCO adopts under proposed Commission Regulation 39.25(d), and guidance proposed under Appendix D to part 39, specifically address, where applicable, the DCO's methodology for selecting and validating settlement and reference-price inputs (including any third-party or oracle-style data feeds used for digital-asset-linked products), its approach to liquidation timing and priority as between affiliated and unaffiliated positions, and its collateral haircut methodology, with heightened documentation expectations where the underlying product trades in comparatively thin or developing markets.

V. The Commission’s Proposed Definition of “Control” Supports Growth and Innovation

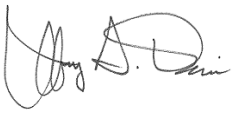
The Proposal would define "control" – including "controlled by" and "under common control with" – to mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise, and would use that formulation consistently across the definitions of affiliate futures commission merchant, affiliate market participant, and affiliate clearing member. Nasdaq agrees that a control-based standard, rather than a fixed ownership-percentage threshold, is the appropriate approach, because the relevant risks, including information flow and reporting-line pressure, turn on the practical ability to direct management and policy rather than on any fixed equity stake. This approach will also preserve the ability of market participants to continue to establish and invest in new ventures, including in the form of joint ventures.

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Nasdaq again commends the Commission for a well-reasoned Proposal that thoughtfully considers both the benefits of affiliated market structures and the customer protection and market integrity concerns that history has shown those structures can create when left unaddressed. Nasdaq supports the Commission's overall approach of codifying enforceable minimum safeguards while preserving a principles-based framework wherever discretion can be exercised without compromising customer protection, and asks the Commission to consider the calibrations identified above so that the final rule protects customers and market integrity without unnecessarily constraining innovation and competitive diversity across the derivatives markets.

Thank you for your consideration of our comments. Please feel free to contact me with any questions.

Sincerely yours,



Jeffrey S. Davis
Senior Vice President
Senior Deputy Counsel