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October 5, 2026

- via Regulations.gov for the CFTC (https://www.regulations.gov/commenton/CFTC-2026-1686-0001 and https://www.regulations.gov/commenton/CFTC-2026-1849-0001)

Mr. Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission (CFTC)
Three Lafayette Centre, 1155 21st Street NW,
Washington, DC 20581

Re: Conflicts and Affiliations (RIN 3038-AF76) [1]
+ Commodity Pool Operators (CPOs) and Commodity Trading Advisors (CTAs): Reduction of Duplicative Regulation Through Intermediary Registration Exemptions; Expansion of the Exemption for Small Commodity Pools – NPRM (RIN 3038-AF78) [2]

Dear Mr. Kirkpatrick,

On behalf of Data Boiler Technologies, I am pleased to provide the Commission with our response to the two captioned Requests for Comment (RFC) addressing **Conflicts and Affiliations** (C&A) for CFTC-regulated entities – the AF76 proposal, as well as the expansion of exemptions for **Commodity Pool Operators** (CPOs) and **Commodity Trading Advisors** (CTAs) – the AF78 proposal. Data Boiler is a Pioneer in FinTech with patented inventions in signal processing, trade analytics, machine learning, time-lock cryptography, etc. We frequently comment on regulatory policy both domestically and abroad with over 13 years in business. First, we strongly encourage the CFTC to review the following comment letters we submitted earlier, which are directly relevant to the two RFCs and should be read in conjunction with our response here:

- Joint RFCs on Further Definition of "*Swap*" and "*Security-Based Swap*" (SBS) and on Alternative Compliance – (CFTC: RIN 3038-AF71) + Swap and SBS Data Reporting – (CFTC: RIN 3038-AF70),[3] dated August 24, 2026
- Data Reporting Requirements for Certain Event Contracts (RIN 3038-AF73),[4] dated July 31, 2026
- Prediction Markets: Public Interest Determinations (RIN 3038-AF65),[5] dated July 27, 2026

The Commission deserves high praise for attempting to facilitate market structure innovation and competition, while responsibly crafting essential safeguards that advances the Commission's mission in promoting the integrity, resilience, and vibrancy of the U.S. derivatives markets. In particular, the prohibition on affiliate principal trading firms and market makers under the C&A Proposal addresses one of our key concerns – automated market makers (AMMs) and designated market makers (DMMs) "*leaning with the wind*" in widening spreads to avoid "*pick-off*" rather than complying with exchange rules and DCM Core Principle 9 to continuously providing tight two-sided quotes in both good and bad times – that is substantiated by the empirical Whelan Paper.[6] The C&A proposal, however, does not require *vertically integrated* platforms to *spin-off* its client-facing brokerage unit. There is room for improvement in both the AF76 and AF78 proposals, including consideration if event contracts can be packaged inside our suggested alternative of a 100% pre-funded Series LLC structured managed by a CPO, and exempting such a fiduciary CPO-Matchmaker – that acts as a passive, parametric insurance pool – from mutualized banking default funds while addressing prudential regulators' concerns.

[1] https://www.regulations.gov/document/CFTC-2026-1686-0001
[2] https://www.regulations.gov/document/CFTC-2026-1354-0001 ; https://www.sec.gov/files/rules/other/2026/34-105734.pdf
[3] https://www.databoiler.com/index_htm_files/DataBoiler%20CFTC%20SEC%2020260824.pdf
[4] https://www.databoiler.com/index_htm_files/DataBoiler%20CFTC%20ReportEC%2020260731.pdf
[5] https://www.databoiler.com/index_htm_files/DataBoiler%20CFTC%20PMPublic%2020260727.pdf
[6] https://www.karlwhelan.com/Papers/Kalshi.pdf

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Please see the BOX below for an **Executive Summary** of our comments:

I. Mitigating Vertical Integration and Structural Conflicts (Regulation 1.52, 38.852, & 37.1201)

1. Defining Control and Affiliation Beyond Equity Thresholds

We agree with the Commission's proposed definition of an "affiliate Futures Commission Merchant (FCM)" and its focus on operational control rather than a mere balance-sheet metric. In modern automated markets, systemic conflict and predatory leverage are driven by **information velocity, shared code bases, and execution latency advantages**, not capital allocation percentages. A commercial entity holding as little as a 3% passive stake can weaponize shared technological infrastructure to gain unfair latency advantages over non-affiliated retail market participants.

Consequently, the Commission must maintain a flexible, power-to-direct formulation that assesses physical office sharing, information flows, and matching engine telemetry. Traditional prudential frameworks like the Volcker Rule are structurally unsuited for these algorithmic dynamics.

2. Exposing the "Liquidity Bootstrapping" Defense

We strongly urge the CFTC to reject those narratives that vertically integrated structures and exchange-owned market makers are necessary to "bootstrap" liquidity in nascent or niche digital asset and prediction markets. Allowing an exchange-owned affiliate to trade as a principal on its own matching venue creates a significant conflict of interest.

This dynamic transforms a neutral utility into a predatory counterparty (risk transformer) possessing systemic advantages in order book visibility and latency. When a trading platform relies on its own proprietary arm to fabricate trading volume against retail users, it engineers a dangerous **closed-loop liquidity trap**. The illusion of deep liquidity vanishes instantly during a market shock or operational glitch, leaving retail participants holding unbacked, illiquid ledgers.

3. The Retail "Disintermediation Premium" under Direct Retail Clearing Models (DRCM)

The shift toward a European-style Multilateral Trading Facility (MTF) framework – leveraging a **Direct Retail Clearing Model (DRCM)** – represent a significant threat to U.S. financial stability. By eliminating the independent FCM broker layer to grant direct retail access, platforms create a hazardous structural deficit in legal rights:

- **Loss of Public Customer Status:** Retail users are stripped of their protected status and treated as institutional peers, assuming they fully absorb high-velocity algorithmic risks.
- **Dismantling of the SRO Safety Net:** Retail traders lose direct access to the NFA's low-cost Arbitration Program and suitability protections, leaving them exposed to a Derivatives Clearing Organization (DCO) that can unilaterally freeze accounts or seize collateral.
- **Erasure of the Intermediary Shock Absorber:** In a standard intermediated architecture, the independent FCM serves as a vital firebreak, shielding retail assets from clearinghouse insolvency. Under DRCM, a cash shortfall caused by an internal prop-trading affiliate's glitch or smart-contract hack hits retail members instantly.

Connecting individual balances directly into a central counterparty's liquidation estate via a DRCM forces retail traders to surrender their priority bankruptcy status, transforming them into unsecured creditors during a platform failure. This localized operational failure can trigger a commercial settlement bank contagion loop that stalls settlement cycles across traditional clearinghouses, prompting us to recommend that the Financial Stability Oversight Council monitor the ecosystem across five structural layers using specific macro-metrics.

II. Critiques of Proposed Regulatory Adjustments

A. Rejection of Static "Non-Public Information" Categories

We caution the Commission that relying on enumerated textual categories of information (e.g., customer position logs or formal risk-management policy documents) is an outdated, document-reliant methodology. Predatory internal affiliate

trading bots exploit the market by harvesting **real-time transaction telemetry, order book queues, and microsecond-level margin vulnerability data** directly from shared IT infrastructure.

When a platform allows its proprietary trading arm or AMM access to this raw data-in-motion, it creates a structural layer of **Hidden Leverage** and fabricates a **Valuation Mirage** that completely evades legacy definitions of materiality.

B. Rejection of Intermittent Surveillance Cadences (Regulation 38.604)

We oppose removing the word "*continuously*" and substituting it with "*throughout the day*" in Regulation 38.604. Relaxing surveillance to an intermittent, risk-based cadence creates critical systemic blind spots. Liquidity is a hyper-dynamic target that static or episodic frameworks cannot capture. Real-time risk control must be driven by superfast, automated surveillance powered by agentic AI, rather than retrospective oversight loops that look through a rearview mirror.

C. Support for "Peer-Review" (Independent Third-Party Oversight)

We strongly support the proposal to require exchanges with an affiliated FCM to designate an independent, third-party DSRO or delegate surveillance to a registered futures association like the NFA. Stripping a vertically integrated platform of its ability to audit its own corporate brokerage unit effectively breaks hazardous internal surveillance loops and eliminates data-sharing loopholes. To avoid "*inter-affiliate capture*" (where two vertically integrated platforms elect each other as SROs), this selection must be subject to a **mandatory, time-bound rotation schedule** to ensure a true, revolving "*peer-review*" system.

The Solution: The 100% Pre-Funded Fiduciary CPO-Matchmaker Model

To resolve these fluid boundary frictions without causing administrative cost bloat or creating data-privacy honeypots, the CFTC should establish an alternative compliance safe harbor for a **100% Pre-Funded Fiduciary CPO-Matchmaker Model** under §4(c) of the CEA. By structuring the execution vehicle as a specialized Delaware Series LLC or Series Trust managed by a Commodity Pool Operator (CPO), the platform shifts its legal taxonomy from exposed market infrastructure to a buy-side asset aggregator.

III. Intermediary Exemptions and Regulatory Alignment (Regulation 4.13(a)(4))

We welcome the Commission's proposal to provide a CPO registration exemption for RIAs advising commodity pools for sophisticated investors, provided it is narrowly tailored. Because RIAs are already registered with the SEC and bound by fiduciary duties, parallel CPO registration introduces redundant operational costs without materially improving investor protection. However, to prevent regulatory arbitrage and bridge the investor protection gap, the exemption must be conditioned upon clear boundaries:

- **Activity Limits:** Pools utilizing significant leverage, engaging in predatory proprietary trading, or featuring affiliated automated market makers must be explicitly excluded.
- **SEC Alignment:** The CFTC should align its definitions of Eligible Participants with the SEC's broadening "accredited investor" categories (encompassing family offices and certified professionals) to prevent cross-filing mismatches, while remaining mindful of concentration risks highlighted by historical failures like Archegos.
- **Superseding Letter 25-50:** The Proposed QEP Exemption should partially supersede Letter 25-50 to replace conflicting components, while preserving a transitional bridge and providing conditional safe harbors for pre-funded Series LLC architectures.

We are not sure the Commissions' view on a 100% pre-funded CPO + Series Trust/ LLC architecture as mentioned earlier. We seek clarification to ensure our recommended fiduciary CPO-Matchmaker model would within a safe harbor for permissible "*marketing*" and "*general solicitation*" requirements in the relevant CFTC and SEC rules, and NOT limiting this particular model to Eligible Participants but also permitting retail to join the pool.

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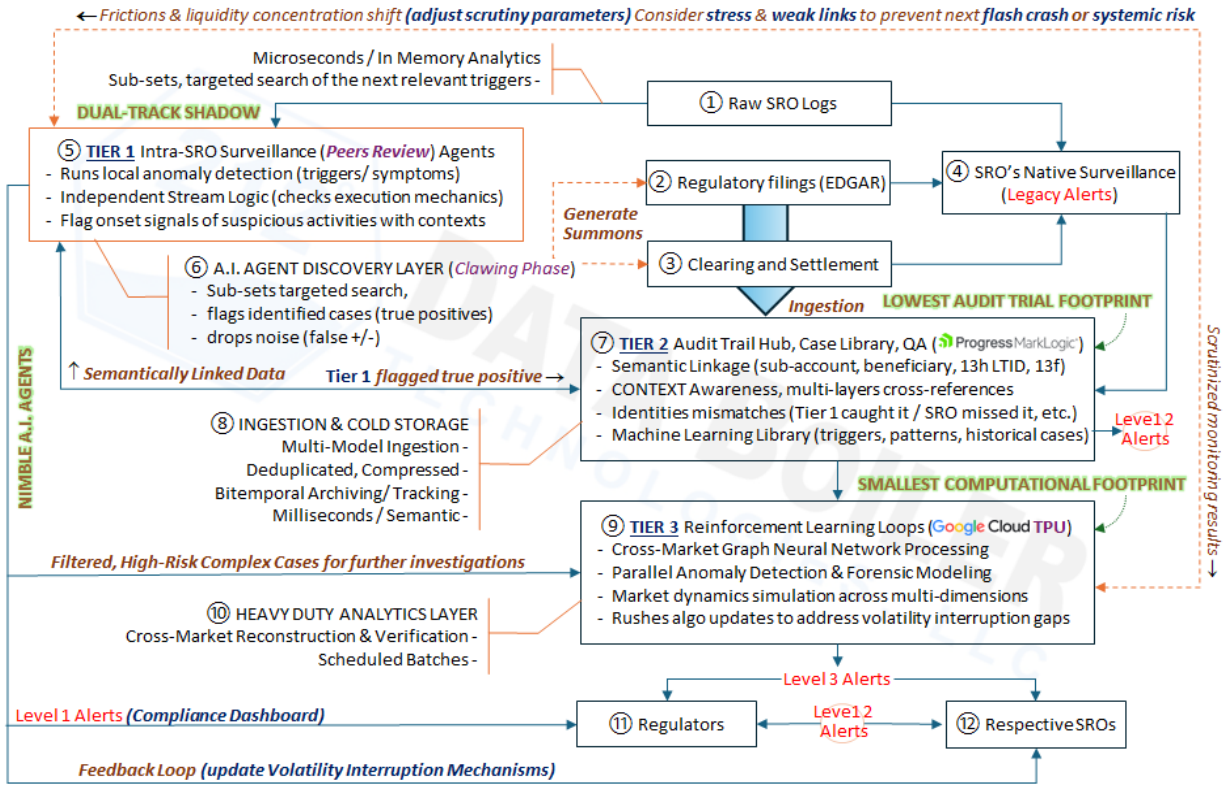
Crackdown on Affiliate Principal Trading

The Commission's C&A proposal under RIN 3038-AF76 correctly highlights the deep structural vulnerabilities native to vertically integrated platforms. In modern digital asset derivatives and prediction markets, ecosystems where the exchange owner also owns the broker (FCM) or the principal market maker create an inherent conflict of interest. The CFTC is correct to pursue strict frameworks for Designated Contract Markets (DCMs), Derivatives Clearing Organizations (DCOs), Swap Execution Facilities (SEFs), and Futures Commission Merchants (FCMs).

Left unregulated, a proprietary trading arm affiliated with the exchange holds an unfair structural advantage. This includes lower latency, non-public data advantages, and favorable margin terms. The CFTC's proposed default ban on affiliate principal trading represents a vital, commendable step toward ensuring that exchanges remain neutral matching environments rather than direct competitors against their own participants.

Regulation 1.52 and Independent SRO Governance

Data Boiler supports the provision that prohibits a primary exchange from serving as the Designated Self-Regulatory Organization (DSRO) for an affiliated FCM in the proposed amendments to Regulation 1.52. Stripping the Self-Regulatory Organization (SRO) of its ability to audit its own corporate affiliate is an excellent, forward-thinking policy mechanism. Mandating that vertically integrated platforms instead appoint an independent third-party SRO or delegate financial and market surveillance to a registered futures association like the National Futures Association (NFA) breaks up hazardous internal surveillance loops and cleanly protects public customers from corporate counterparty abuse. This "*peer review*" model algins with our TIER 1 Intra-SRO Surveillance design ⑤ that we pioneer and first published in Annex 2 of our June 22 comment letter on the Consolidated Audit Trail (CAT).[7] It eliminates blatant structural conflicts and data-sharing loopholes across the vertical stack to achieve the Commission's policy goals.



[7] https://www.databoiler.com/index_htm_files/DataBoiler%20SEC%20CAT%2020260622.pdf

However, we have reservations with the CFTC prescriptive approach about governance relationships between internal compliance, surveillance, and examination teams with the C-Suite and Board, see Q34. While the Commission's goal of preventing shortsighted executives from suppressing findings or terminating staff to protect short-term corporate profits is highly commendable, such organization structure disrupts the vital balance across the *Three Lines of Defense* (3LOD).[8] Allowing the second line of defense to completely bypass the C-Suite would create an adversarial environment that drives high staff turnover, generates duplicative internal conflicts, and funnels only large dollar exposures to the Board while neglecting real-time operational alerts. In high-velocity digital native and algorithmic markets, a control breach takes a fraction of a second; a rigid vertical reporting bypass introduces significant operational friction and delays immediate risk treatments precisely when a platform needs them most to prevent a systemic market freeze. A dotted line rather than a solid reporting line to the Board deems sufficient and more practical.

We agree the C&A proposed definition of **"affiliate futures commission merchant"** – and its related **"control" formulation** – captures the appropriate scope of relationships. In particular, defining control as *"the direct or indirect power to direct or cause the direction of the management and policies of a person, whether by voting securities, contract, or otherwise"* – this definition properly focuses on functional reality and **correctly recognizes that vertical conflict is an operational issue** rather than a balance-sheet metric. To defend against the systematic inventory imbalances and passive manipulation vulnerabilities highlighted in the empirical Whelan Paper,[6] the CFTC's proposed approach assesses the actual information flows, shared physical office spaces, and matching engine behaviors across the vertical stack.

The CFTC should maintain its flexible, power-to-direct formulation and reject any expansion of the definition to encompass partial ownership interests that do not rise to the level of legal or operational control. To cleanly separate legitimate capital investment from predatory operational control while optimizing market efficiency, the Commission should establish a clear, alternative compliance safe harbor for the **100% Pre-Funded Fiduciary CPO-Matchmaker Model**. This vehicle replaces the manual governance loops of Regulation 1.52 with code-governed capital physics and absolute asset isolation. Please see later section and our response to Annex 1 Q1.

Mitigating Expiration Spikes via Passive Quoting Mandates

The Commission's proposed Conditional Market Maker Exception represents a sophisticated effort to balance liquidity provision with conflict mitigation. By forcing the exchange's affiliate to operate strictly via a conditional market maker mandate – requiring continuous, passive two-sided quoting rather than directional trading – the CFTC's rule successfully prevents an affiliate from aggressively throwing market-on-close orders to intentionally trigger expiration spikes and addresses the subtle market distortions detailed in the empirical Whelan Paper.[6] The mandatory information firewalls also correctly stop an affiliate from exploiting its vertical position to view retail stop-loss levels and front-run participants.

The Core Limitation of the Exchange-Centric Exception

While the Commission's design is highly commendable, an exchange-centric model faces natural math limitations when applied to smaller digital assets and prediction markets. As the Whelan Paper proves, market distortions happen naturally through delta-hedging adjustments even without illicit intent or "cheating".

Because prediction market derivatives settle in smaller ecosystems, an affiliated market maker's quotes dictate nearly the entire price discovery loop. Merely forcing the firm to behave as a passive market maker does not alter the fact that they control the price discovery mechanism, leaving the underlying contracts highly vulnerable to systemic inventory imbalances.

[8] https://www.databoiler.com/index_htm_files/Revitalize%203LOD.pdf

Direct Retail Clearing Model bypassing the Intermediary Buffer Zone

A major structural gap remains in the vertically integrated exchange framework: the adoption of the Direct Retail Clearing Model (DRCM). While this model eliminates broker layers to maximize speed, retail participants suffer a severe structural deficit in legal rights compared to traditional intermediated markets. If a digital asset or prediction market DCO bypasses FCMs entirely, retail traders legally become the Clearing Members of the DCO.

By directly clearing with a DCO, retail traders completely lose the intermediary buffer zone that a traditional human FCM provides during a margin call. Under Part 39, they are legally reclassified as institutional members, meaning the DCO's automated 24/7 liquidation engine treats their personal assets with zero leniency.

Counterparty Treatment and the Default Fund Paradox

Under a vertically integrated Direct Retail Clearing Model, the customer is ultimately treated as an institutional counterparty to the clearing house ledger. This design forces retail balances to function as institutional shock absorbers. Even with strict information firewalls, if independent clients trade on a vertically integrated DCO, their margin deposits remain tied to the DCO's mutualized default pool.

If the direct retail arm experiences catastrophic, unmitigated liquidations during a flash crash, the capital deposited by healthy, traditional clients can be drawn down to cover the platform's broader systemic failure. This creates an un-mitigated contagion loop that runs entirely counter to traditional banking-grade risk mitigation.

The Natural Person Gap and Artificial Net-Worth Barriers

The Commission's CPOs and CTAs exemptions proposal under RIN 3038-AF78 demonstrates an admirable intent to eliminate administrative red tape for SEC-registered investment advisers. However, because the current draft assumes a traditional, buy-side speculative asset management framework, it inadvertently creates severe operational bottlenecks for innovative sectors. The most intense controversy centers on the recalibrated investor eligibility standards for natural persons under Rule 4.13(a)(4). By demanding that natural persons meet strict, elite Qualified Eligible Person (QEP) criteria, the proposal effectively locks out retail hedgers and small businesses from participating in macro, commodity, and crypto-adjacent hedging strategies. This creates an artificial, net-worth-based barrier rather than evaluating the actual risk parameters of the underlying vehicle.

The Arbitrary Small Pool Ceiling and Transition Mismatch

While the doubling of the capital exemption threshold to $800,000 correctly accounts for inflation, leaving the static 15-participant limit untouched limits the rule's utility. For tokenized asset aggregators and FinTech platforms that operate zero-leverage, pre-funded models, credit risk is programmatically zero.

Capping these safe architectures under the same blanket rules applied to highly leveraged, margin-based speculative pools stifles low-cost retail hedging avenues. Furthermore, replacing Staff Letter 25-50 triggers an immediate requirement to offer unconditional redemption rights, threatening to cause fund runs and forced asset dumping in closed-end structures.

The Way Forward – the Enhanced Fiduciary CPO-Matchmaker Model

As outlined in our August 24 comment letter, there is a significantly better structural approach that solves the CFTC's conflict concerns while preserving market safety. By utilizing general exemptive and joint rulemaking authority under Section 4(c) of the CEA, policymakers should establish a safe harbor for the **100% Pre-Funded Fiduciary CPO-Matchmaker Model**. This structure elegantly shifts the legal taxonomy of a prediction or digital asset platform from market infrastructure to a buy-side asset aggregator. Under this alternative compliance pathway, the platform operates purely as a fiduciary-backed parametric insurance conduit designed to manage real-world uncertainty. Because the CPO vehicle

completely bans internal affiliate trading bots and speculative day-trading, it relies entirely on organic external liquidity and anchors prices to objective, third-party data.

Absolute Asset Isolation via Delaware Series LLC

The defining advantage of the CPO-Matchmaker model over the Direct Retail Clearing Model lies in its legal structure. By structuring the vehicle as a specialized Delaware Series LLC or Series Trust, every individual user account functions as an isolated, self-contained "*series cell*" under CFTC Rule 4.20.

Customer funds are locked in an independent escrow trust account backed by a distributed banking network from day one. This structure ensures that client capital can never be co-mingled with the operator's corporate capital, weaponized to rescue a failing competitor, or dragged into a central clearing house default fund panic.

Synthesizing Adoption – Recommendations to bridge AF76 and AF78

The Commission can achieve a historic regulatory win by combining the behavioral protections of RIN 3038-AF76 with the streamlined exemptions of RIN 3038-AF78 through three specific text modifications based on our August 24 submission:

1. Implement a "Zero-Leverage Physics" Exemption to Rule 4.13(a)(2)

The CFTC should append a new section – Rule 4.13(a)(2)(ii) – creating a "*Technology-Governed Zero-Credit-Risk Exemption*". If a CPO programmatically operates a 100% upfront pre-funded model where maximum potential loss is locked in escrow, systemic credit risk is zero. For these zero-leverage pools, the arbitrary $800,000 capital ceiling should be completely eliminated.

2. Codify the "Retail Event Pool" Safe Harbor under Rule 4.13(a)(4)

To bridge the Natural Person Gap, the Commission should replace the rigid, binary QEP filter with an execution-based barrier for fiduciary vehicles. The rule should permit general public participation provided that the venue enforces strict individual exposure caps (e.g., $2,500 per event contract) and completely bans internal affiliate algorithmic trading bots to preserve pure price discovery.

3. Exempt pre-funded CPOs from Part 39 Clearing House Mandates

By utilizing its authority under Section 5b(h) of the CEA, the CFTC should explicitly declare that a registered CPO operating a 100% fully collateralized, non-leveraged parametric pool is exempt from core Part 39 compliance. This substituted compliance allows the platform to operate under lean CFTC operational rules while the SEC retains simple anti-fraud oversight, safely resolving cross-agency friction.

Enhancing the Framework Through Collaborative FinTech Architecture

While the Commission's intentions are stellar, Data Boiler believes that both the AF76 and AF78 proposals can be significantly improved by adopting the alternative compliance pathways detailed in our August 24, 2026 submission. Rather than relying on prescriptive check-the-box compliance requirements, the CFTC can achieve its core oversight goals more effectively by embracing a structural vehicle built on capital physics and fiduciary math. Please see Annex 1 and Annex 2 for our response to specific questions in the two RFCs. Feel free to contact us with any questions and please keep us posted where our expertise might be helpful.

Sincerely,

Kelvin To

Founder and President

Data Boiler Technologies, LLC

This letter is also available at: https://www.DataBoiler.com/index_htm_files/DataBoiler%20CFTC%20ConflictCPO%2020261005.pdf

CC: **Commodity Futures Trading Commission (CFTC)**
The Honorable Michael S. Selig, Chairman
Mr. Duncan Henes, Director, Market Participants Division / Acting Director, Division of Market Oversight
Mr. Richard Haynes, Acting Director of the Division of Clearing and Risk
Mr. Frank Fisanich, Deputy Director of Market Oversight
Mr. Stephen Andrews, Deputy General Counsel for Regulation
Mr. Aaron Levine, Senior Advisor, Office of the General Counsel
Mr. Jacob Chachkin, Associate Director, Market Participants Division
Mr. Michael Ehrstein, Special Counsel, Market Participants Division
Ms. Elizabeth Groover, Special Counsel, Market Participants Division
Ms. Catherine Brescia, Attorney-Advisor, Market Participants Division

Securities and Exchange Commission (SEC)
The Honorable Paul S. Atkins, Chairman of the SEC
The Honorable Mark T. Uyeda, Commissioner of the SEC
Mr. Jamie Selway, Director of the Division of Trading and Markets
Mr. Brian T. Daly, Director, Division of Investment Management

Federal Reserve Board of Governors (FED)
Mr. Andreas Lehnert, Director of the Division of Financial Stability

Office of Comptroller of the Currency (OCC)
Mr. Jay Gallagher, Chief National Bank Examiner

Federal Deposit Insurance Corporation (FDIC)
Ms. Dana T. Wade, Deputy to the Chairman and Chief of Staff

ANNEX 1 – Data Boiler's response to specific questions about Conflicts and Affiliations

II. DCM Obligations – Proposed Amendments to Commission Regulations 1.52, 38.604, and 38.606

A. Proposed Amendments to Commission Regulation 1.52 – SRO Surveillance of Financial Requirements for Affiliate FCMs

(1) Whether the proposed definition of "affiliate futures commission merchant"—and the related "control" formulation—captures the appropriate scope of relationships. Should the definition encompass partial ownership interests that do not rise to the level of "control"? If so, at what threshold or under what criteria?

We agree the proposed definition of **"affiliate futures commission merchant"** – and its related **"control" formulation** – captures the appropriate scope of relationships. In particular, defining control as *"the direct or indirect power to direct or cause the direction of the management and policies of a person, whether by voting securities, contract, or otherwise"* – this definition properly focuses on functional reality and **correctly recognizes that vertical conflict is an operational issue** rather than a balance-sheet metric. To defend against the systematic inventory imbalances and passive manipulation vulnerabilities highlighted in the empirical Whelan Paper,[6] the CFTC's proposed approach assesses the actual information flows, shared physical office spaces, and matching engine behaviors across the vertical stack.

Exposing the "Liquidity Bootstrapping" Excuse of Vertically Integrated Platforms

The Commission must remain vigilant against the industry narrative that vertically integrated structures and affiliated market makers are *"essential"* to bootstrap niche, nascent, or innovative digital asset and prediction markets. We disagree with vertical integrated platforms' arguments about *"a novel event contract lacks organic depth and independent liquidity providers are unwilling to take on early-stage risk, the exchange must be permitted to deploy its own corporate affiliates to fill the gap."* Their arguments are merely excuses to dodge essential regulatory oversight and mask structural regression.

Allowing an exchange-owned affiliate to trade as principal on its own matching venue creates an insurmountable conflict of interest. It transforms the exchange from a neutral market utility into a predatory counterparty with structural advantages in latency, execution, and order book visibility. Forcing a firm to label itself a "*market maker*" does not alter the fact that they control the price discovery mechanism.

When a platform relies on an internal proprietary trading affiliate to buy and sell contracts against its own retail users to fabricate volume, the ecosystem becomes a closed-loop liquidity trap. The illusion of deep liquidity vanishes instantly during an operational hack or market shock, leaving direct retail participants holding nothing but an unbacked, illiquid ledger. The CFTC must not fall for this "*bootstrapping*" defense; vertical trading loops exist to extract value from systemic retail liquidations, not to foster fair competition.

Vertically Integrated Platforms are NOT Novel Innovations, but a Europeanization Move

As pointed out in our July 27, July 31, and August 24 comment letters, these vertically integrated platforms are not pioneering a new frontier; rather, they are accustomed to and attempting to copy the European Multilateral Trading Facility (MTF) framework under MiFID II to bypass standard U.S. customer-protection architectures. Under the European MTF and European Market Infrastructure Regulation (EMIR) frameworks, platforms are legally permitted to integrate execution and clearing functions into a single system, granting Direct Electronic Access (DEA) to retail participants. Their lobbyists attempt to legitimize Direct Retail Clearing Model (DRCM) via a hybrid reporting compromise does not innovate; it conflates legal boundaries between clients and counterparties, and introduces systemic vulnerabilities.

The U.S. derivatives framework is built on a fundamentally different legal philosophy anchored to the **statutory separation** mandated by the **Commodity Exchange Act** (CEA) – i.e., a DCM (neutral intermediary), a DCO (market risk absorber), and an FCM (customer exposure). It views the unbundling of these roles as a non-negotiable firewall. The U.S. framework

operates on the foundational principle that if a trading venue fails or suffers a massive cyberattack, that failure must be segregated so it does not down the clearinghouse or the client's funds. The broker must be kept separate from the exchange to act as a firebreak. This together with the **default waterfall model**[9] serve as a critical financial stability mechanism to achieve resiliency, value-chain efficiency, low transaction costs, and U.S. structural advantage over other jurisdictions. Therefore, **the U.S. cannot and should not adopt the EU/UK MTF model**.

The Retail "Disintermediation Premium" and the Loss of Public Rights

When a vertically integrated platform adopts a DRCM to mimic an EU MTF, it triggers a "*Disintermediation Premium*" – a structural deficit in legal rights paid unknowingly by retail participants. By eliminating the independent FCM broker layer to grant direct access, a unique and hazardous legal relationship is created under CFTC Part 39:

- **No Suitability Rights:** The retail user is stripped of their protected status as a "*Public Customer*" and treated as an institutional peer. The platform simply assumes they fully understand all high-velocity algorithmic risks.
- **Dismantling the SRO Safety Net:** Retail traders lose all suitability protections and direct access to the NFA's practical, low-cost Arbitration Program to resolve disputes. They are left entirely alone to face a DCO that possesses the unilateral right to audit their trading patterns, freeze accounts, or seize collateral.
- **The Intermediary Shock Absorber Erased:** In a traditional U.S. crisis, if a major market-making firm faces insolvency, the intermediate FCM structure shields retail client assets. Removing the FCM layer removes this vital shock absorber. If a direct-clearing DCO experiences an operational glitch, smart-contract hack, or algorithmic trading error caused by its own prop-trading affiliate, the cash shortfall hits the retail members instantly with no broker buffer to protect or advocate for them.

Macro-Prudential Gridlock and the Unprotected Institutional Class Paradox

Vertically integrated DRCM bypasses traditional customer-protection frameworks and hooks individual balances straight into a central counterparty's liquidation estate. In a traditional clearinghouse insolvency, the liquidation estate can demand extra cash from institutional members through "*assessment powers*". While a fully collateralized retail contract caps a participant's liability at their initial margin, the direct retail trader legally surrenders their priority bankruptcy status under Part 190.

If the DCO fails due to a systemic exploit or parent-firm insolvency, the bankruptcy trustee aggregates all assets into a massive "*Member Property*" estate. The maximum loss for a direct retail participant extends well beyond 100% of their active wagers, encompassing 100% of the uninvested cash sitting idle in their platform account balance, transforming the retail user into an unsecured creditor waiting for cents on the dollar.

Furthermore, if the platform utilizes post-trade portfolio compression right before an insolvency to tear up redundant trades, it permanently erases individual retail trade identities. The bankruptcy court views the compressed block as a single consolidated institutional claim, leaving individual retail participants unable to claim specific asset ownership and freezing their funds inside prolonged forensic litigation.

This localized operational glitch rapidly expands into a macro-prudential crisis. Because direct-clearing DCOs must interface directly with commercial depository banks to process real-time retail cash movements, a platform failure can trigger a Commercial Settlement Bank Contagion Loop. If a retail DCO and a massive traditional exchange share the same top-tier settlement bank (e.g., JPMorgan Chase or BNY Mellon), an operational freeze at the retail platform can lock up the

[9] https://globalriskinstitute.org/publication/incentives-behind-clearinghouse-default-waterfalls/

bank's clearing accounts, triggering localized liquidity strain that delays end-of-day settlement cycles across completely unrelated clearinghouses.

The Unfit of Ownership Thresholds in Algorithmic Architectures

While the Commission must crack down on vertical integration abuses, copying the quantitative equity metrics of the Dodd-Frank Act's Volcker Rule (12 CFR Part 248) and Sections 23A and 23B of the Federal Reserve Act does not work. These prudential regulatory frameworks rely on quantitative equity metrics (such as a baseline 5%, 10% ownership stake) to draw bright lines around corporate affiliation or (25%) controlling interest. While a corporate equity limit offers simple administration for legacy commercial banking asset classes, it is fundamentally unsuited for the unique microstructural dynamics of modern algorithmic platforms.

In automated ecosystems, systemic conflict and structural leverage are not driven by capital allocation percentages on a cap table; they are driven by information velocity, shared code base architecture, execution speed, and internal data advantages. An entity holding a minor, 3% passive partial ownership stake can – via a shared technology infrastructure or custom-designed algorithmic matching modules – gain massive, predatory latency advantages over non-affiliated retail participants. Conversely, an institutional investor holding a 15% passive equity stake solely for capital appreciation, without any seat on the board or access to order book telemetry, poses little to no threat to market integrity. However, beware of vertically integrated platforms seeking regulatory workarounds to bypass the FCM layer and force retail users into the highly problematic DRCM, where retail traders clear directly against a DCO ledger, losing their protected "*Public Customer*" status.

Resolving the Loophole via a 100% pre-funded Fiduciary Model

The CFTC should maintain its flexible, power-to-direct formulation and reject any expansion of the definition to encompass partial ownership interests that do not rise to the level of legal or operational control. To cleanly separate legitimate capital investment from predatory operational control while optimizing market efficiency, the Commission should establish a clear, alternative compliance safe harbor for the 100% Pre-Funded Fiduciary CPO-Matchmaker Model. This vehicle replaces the manual governance loops of Regulation 1.52 with code-governed capital physics and absolute asset isolation.

By structuring the execution vehicle as a specialized Delaware Series LLC or Series Trust managed by a CPO, the platform shifts its legal taxonomy from exposed market infrastructure to a buy-side asset aggregator. Under this model, every user account functions as a legally distinct trust cell, and all contracts are programmatically 100% pre-funded upfront, rendering traditional mutualized default funds, margin calls, and credit default loops mathematically obsolete.

Most importantly, the CPO wrapper enforces a strict federal fiduciary duty under Part 4 of the CEA, explicitly banning internal affiliate algorithmic trading bots and proprietary trading loops from day one. Customer capital is securely isolated from corporate creditors and distributed across a network of Federal Reserve Member Banks via an automated Tri-Party Custody and Escrow Agreement, completely defusing the capital-concentration alarms raised by the OCC and the Fed. By formalizing this alternative compliance pathway within both the AF76 and AF78 rulebooks, the CFTC can superiorly eliminate the vertical conflicts of interest weaponized by aggressive platforms while providing regulators with absolute, un-manipulable transaction transparency. Our recommended 100% Pre-Funded Fiduciary CPO-Matchmaker Model optimally balances Market Integrity and FinTech Innovation to advance U.S. Competitiveness.

(2) Whether the proposed definition of "non-public information" is appropriately scoped. Should this concept be expressed in terms of materiality, enumerated categories of information (e.g., customer positions, financial condition, risk-management policies), as proposed, or based on some other criteria?

We cautious the Commission that relying on enumerated categories of information is an outdated, document-reliant methodology that creates dangerous regulatory blind spots while failing to capture the reality of high-velocity algorithmic and tokenized markets. The proposed approach of utilizing static enumerated categories – such as customer positions, financial condition, or risk-management policies – is blind to modern data architecture and contract mechanics. In an automated, vertically integrated ecosystem, predatory internal affiliate trading bots do not need to read an exchange's formal "*risk-management policy document*" to exploit the market. Instead, they harvest real-time transaction telemetry, order book queues, and microsecond-level margin vulnerability data directly from the shared technology infrastructure.

When a platform allows its proprietary trading arm or Automated Market Maker (AMM) to access this raw, unedited, and non-public data-in-motion, it creates a structural layer of Hidden Leverage. The affiliate can dynamically widen spreads during high-volatility spikes, selectively time the market, and run its brokerage arm as a loss-leader to front-run retail order flow. This algorithmic manipulation fabricates an illusion of real market depth – a "*Valuation Mirage*" – that completely evades legacy definitions of "*non-public information*" because the exploited telemetry data does not neatly fit into traditional institutional accounting buckets.

Furthermore, trying to anchor the scope to abstract definitions of "*materiality*" is subjective. In high-velocity derivatives markets, what constitutes a "*material*" exposure that shifts in fractions of a second, and control breaches occur in less than a split-second. Losses can mount to billions at lightning speed before senior management or the board can ever review a manual report, proving that text-based materiality standards are ineffective for real-time conflict mitigation.

To safely resolve this fluid boundary friction and protect market neutrality, the CFTC must abandon static, document-focused definitions of non-public information. Instead, **the Commission should maintain its flexible, power-to-direct formulation and reject any expansion of the definition to encompass partial ownership interests that do not rise to the level of legal or operational control.** To cleanly separate legitimate capital investment from predatory operational control while optimizing market efficiency, the Commission should establish a clear, alternative compliance safe harbor for the **100% Pre-Funded Fiduciary CPO-Matchmaker Model.** This vehicle completely replaces the impractical manual governance loops of Regulation 1.52 with code-governed capital physics and absolute asset isolation.

By updating both the **AF76 and AF78 proposals** to recognize this pre-funded fiduciary model, the CFTC can achieve a historic regulatory win. The Commission can move past obsolete, category-based taxonomies, protect consumer funds via automated **Tri-Party Custody and Escrow Agreements** across Federal Reserve Member Banks, and enforce absolute market integrity without imposing duplicative compliance taxes on fintech innovators. See our response to Q1.

(3) Whether the Commission should adopt the alternative under which an SRO with an affiliate FCM would be required to designate an independent third-party DSRO for examination of all of its member FCMs, rather than only for the affiliate FCM.

We support the Commission's core proposal under RIN 3038-AF76 to require an exchange with an affiliated FCM to designate an independent, third-party DSRO or delegate financial and market surveillance to a registered futures association like the NFA. Stripping a vertically integrated platform of its ability to audit its own corporate brokerage unit is an excellent, necessary policy mechanism. By breaking up hazardous internal surveillance loops, this requirement cleanly protects public customers from corporate counterparty abuse and eliminates data-sharing loopholes across the vertical stack. It does not modify, tax, or interfere with the operational architecture of non-affiliated, arm's-length market participants. Instead, it isolates the specific entity where a structural conflict exists: the exchange's own corporate broker.

This independent "*peer review*" model aligns perfectly with the TIER 1 Intra-SRO Surveillance design that we pioneered and first published in Annex 2 of our June 22, 2026 comment letter to the SEC regarding the Consolidated Audit Trail (CAT).[7] Our design establishes that independent, dual-track shadow processing – utilizing localized AI agents to cross-verify exchange matching logs in parallel – is the only viable way to achieve immediate peer review and early anomaly detection without creating anti-competitive biases or centralized data liabilities. The CFTC's affiliate-specific third-party mandate correctly adopts this philosophy, successfully neutralizing blatant structural conflicts while keeping ultimate legal liability focused exactly where the risk resides: on the primary exchange.

Targeted Affiliate Spin-Offs and Fiduciary Capital Physics

To cleanly protect public customers without triggering whole-market operational gridlock, the most desirable remedy to protect market integrity is not universal SRO outsourcing, but to require vertically integrated platforms to **spin off their client facing brokerage business units into separate corporate entities to preserve true, arm's-length execution standards.** Rather than chasing complex, balance-sheet-insulation metrics or universal third-party DSRO mandates, the Commission can achieve bulletproof financial stability by establishing an alternative compliance safe harbor for the **100% Pre-Funded Fiduciary CPO-Matchmaker Model.**

By structuring the venue as a specialized **Delaware Series LLC managed by a CPO**, every individual user account functions as a legally distinct trust cell, and all wagers are programmatically **100% pre-funded upfront**, rendering traditional mutualized default funds, margin calls, and credit default loops mathematically obsolete. Because every single contract is programmatically pre-funded upfront, there is zero credit risk, zero leverage footprint, and no possibility of an internal margin deficit in cross-contaminating other members. This approach eliminates the structural conflict weaponized by vertically integrated DRCM, achieving the Commission's honorable policy goals without disrupting market utility.

Customer capital is securely isolated from corporate creditors within legally distinct trust cells and distributed across a network of Federal Reserve Member Banks via an automated **Tri-Party Custody and Escrow Agreement**, completely satisfying the macro-prudential and financial stability concerns of the Prudential Bank Regulators without imposing duplicative compliance taxes on the rest of the industry. The CPO wrapper enforces a strict federal fiduciary duty under Part 4 of the CEA, explicitly banning internal affiliate algorithmic trading bots and proprietary trading loops.

(4) Whether, in circumstances where the Proposal would mandate delegation of SRO or DSRO functions under Commission Regulations 1.52(c) or (d), it is reasonable for the delegating SRO to be responsible and liable for the third-party's performance on its behalf. Should the delegating SRO be subject to a strict liability standard such that any examination failure on the part of the third-party SRO is the responsibility of the delegating SRO, or, alternatively, should the delegating SRO be liable only if it is negligent in its selection of the third-party SRO?

We have reservations with a strict liability standard on the primary exchange under Regulation 1.52. Amid the primary exchange "*remains responsible for compliance with the CEA*", however, forcing a platform to carry unhedgeable legal risks for operational systems they are statutorily barred from directly managing may create unintended consequences, such as driving platforms toward DRCM and bypassing the FCM broker layer entirely. Retail participants lose their protected "*public customer*" status under DRCM. This shifts the entire burden of settlement finality onto retail balances, turning them into institutional shock absorbers tied to the DCO's mutualized default fund paradox.

Alternatively, a negligence standard – where the delegating SRO is only liable if it fails to perform adequate initial due diligence in selecting the third party – is equally flawed. A negligence standard creates a superficial, "*check-the-box*" compliance culture. It allows platforms to hide behind formal, text-based legal endorsements from costly law firms while remaining blind to the microstructural realities of modern algorithmic trading loops. If a vertically integrated platform uses its internal AMM to selectively time the market, widen spreads, and engineer a predatory "*Valuation Mirage*" to front-run

retail order flow, a retrospective negligence standard will fail to catch the breach until long after the damage is done. This leaves retail funds exposed to the "*I'll Be Gone / You'll Be Gone*" (IBG/YBG) shortsighted strategy, where executives extract short-term corporate profits and exit before the structural failure is uncovered. The ultimate verdict is that the Commission should reject both the strict liability and negligence standards under the current framework, and instead establish a clear, alternative compliance safe harbor for the 100% Pre-Funded Fiduciary CPO-Matchmaker Model.

(5) Whether the part 38 carve-out, which would allow an SRO or DSRO to access or share certain non-public information to comply with part 38 obligations, is appropriately scoped, including whether additional specificity is warranted regarding the categories of non-public information access and sharing permitted under the carve-out.

The Commission should NOT adopt the Part 38 carve-out as an open-ended provision. Leaving the carve-out expressed in broad, loose administrative terms (e.g., "*for the purpose of complying with Part 38 obligations*") creates a data-sharing loophole that aggressive, vertically integrated platforms can exploit to weaponize a predatory "*Valuation Mirage*" against public participants.

The core defect in the proposed Part 38 carve-out is its reliance on abstract textual categories rather than strict, mechanics-based boundaries. In a vertically integrated digital asset or prediction market stack, an exchange-owned proprietary trading arm or AMM does not require a formal "*disclosure document*" to gain an un-fair advantage. Instead, they harvest microsecond-level order book data, real-time transaction telemetry, and net retail open interest levels directly from the platform's shared technology infrastructure.

If the Part 38 carve-out allows a parent organization or commercial affiliate to access or share these granular, non-public data streams under the broad guise of "*regulatory compliance*" or "*system testing*," the affiliated desk can dynamically widen spreads during asymmetric information shocks, selectively time the market, and use its exchange-side position to front-run arriving retail orders. This evades legacy definitions of non-public information, rendering an open-ended carve-out wholly inadequate to protect market integrity.

A loosely scoped carve-out also encourages a "*dragnet*" approach to data collection that transforms execution venues into highly vulnerable cybersecurity honeypots. Forcing exchanges and intermediaries to continuously format, wrap, and move petabytes of unedited, retrospective "*data-in-motion*" logs to centralized repositories does nothing to prevent a flash-loan manipulation or code exploit in real time. Instead, it creates an expensive data-processing tax that burns private capital just to achieve bare-minimum compliance.

To ensure the carve-out serves its true regulatory purpose without being weaponized as a political or commercial tool, the CFTC should restrict permitted data access and sharing to three highly defined, functional categories of information:

- **Anonymized, Aggregated Large Trader Positions:** Sharing must be restricted to post-trade, aggregated data necessary for macro-systemic risk tracking. It must completely exclude raw, microsecond-level order book queues and real-time client-identifying data fields.
- **Structural Risk-Management Boundaries:** Permitted information sharing must be limited to high-level corporate risk parameters (e.g., clearing house margin tiers or baseline capital cushions). It must never include real-time, live data feeds tracking the individual margin deficiencies or stop-loss triggers of non-affiliated clearing members.
- **Documented Financial Conditions:** Access should be granted strictly to formal, point-in-time financial statements and audited compliance records. This data must be handled through a secure, "*need-to-know*" framework rather than a continuous, automated pipeline into a shared corporate server.

Proper guardrails to ensure reasonable suspicion is established before summoning private data is essential. Please refer to the Annex 2 of our CAT comment letter[7] regarding TIER 1 and TIER 2 security and privacy protections.

(6) Whether the reporting-line requirements, which would require examination staff to be insulated from commercial pressures, is appropriately calibrated, including whether the Commission should specify the level of the board or committee to which examination staff must report.

We have reservations with the CFTC prescriptive approach about governance relationships between internal compliance, surveillance, and examination teams with the C-Suite and Board. While the Commission's goal of preventing shortsighted executives from suppressing findings or terminating staff to protect short-term corporate profits is highly commendable, such organization structure disrupts the vital balance across the *Three Lines of Defense* (3LOD).[8] Allowing the second line of defense to completely bypass the C-Suite would create an adversarial environment that drives high staff turnover, generates duplicative internal conflicts, and funnels only large dollar exposures to the Board while neglecting real-time operational alerts. In high-velocity digital native and algorithmic markets, a control breach takes a fraction of a second; a rigid vertical reporting bypass introduces significant operational friction and delays immediate risk treatments precisely when a platform needs them most to prevent a systemic market freeze. A dotted line rather than a solid reporting line to the Board deems sufficient and more practical.

(7) Whether the proposed Commission Regulation 1.52 amendments should apply to SRO oversight of affiliated entities other than FCMs (e.g., IBs or market makers).

The proposed amendments to Regulation 1.52 must look beyond the narrow definition of an affiliated FCM and explicitly encompass all corporate affiliates acting as market makers, proprietary trading desks, introducing brokers (IBs) on the platform, or **Direct Retail Clearing Model** (DRCM) that eliminates broker layer. An exchange-owned market maker or IB holds an unfair operational advantage, possessing full visibility into net retail open interest levels and stop-loss triggers. DRCMs are vulnerable to secret internal affiliate algorithmic trading bots that fabricate activity and widen spreads. Retail traders under DRCM lose their protected status as "*Public Customers*" and are legally classified as institutional "*Direct Clearing Members*" under Part 39. They sacrifice suitability rights and access to the NFA's low-cost Arbitration Program.

If a vertically integrated platform or DCO experiences an operational failure, a smart-contract hack, or an internal bot-trading glitch, a retail user faces the liquidation estate directly without a broker cushion. Another concern is the Compression Loop. Under Part 190 bankruptcy mechanics, uninvested cash balances sitting idle on the platform are swept alongside active wagers into a single pool of "*Member Property*" that is subject to strict pro-rata haircuts. If a platform runs portfolio compression cycles right before insolvency, individual retail trade identities are permanently erased and consolidated into institutional blocks, effectively trapping retail funds inside prolonged forensic litigation. We identified a **disintermediation trap** and **hidden systemic risk that bypass the FSOC** (Financial Stability Oversight Council) when *event contracts* using a "*Direct Retail Clearing Model*",[10]

Beware of a **Neutral Intermediary** turning into a **Risk Transformer**. Allowing a vertically integrated platform or its affiliated Derivatives Clearing Organization (DCO) or Automated Market Maker (AMM) to flick between acting as an agent for a client versus acting as a proprietary counterparty is dangerous. This parallels the securities market, where routing orders for *proprietary gain* over a client's best interests is a *conflict of interest*.[11] Our recommended fully-collateralized CPO Matchmaker model mandates a ban on affiliate algorithmic bots to eliminate artificial volume noise and anchor price discovery to objective third-party oracles. It is a safer and superior structure than DRCM and without the adverse effects of Europe style MTF. CPO acts as a passive, parametric insurance pool. Under Part 4 fiduciary rules, speculative day-trading is banned, and there are no synthetic price-discovery curves.

[10] https://www.fia.org/sites/default/files/2026-02/FIA%20Response%20to%20CFTC%20on%20Direct%20Clearing%20of%20Derivatives%20by%20Retail%20Investors.pdf
[11] https://www.sec.gov/newsroom/press-releases/2018-108 ; https://www.sec.gov/newsroom/press-releases/2018-159

(8) Whether the Commission should afford FCMs an election of a registered futures association as DSRO at all, and whether the information-access, reporting-line, and prohibition safeguards proposed above—together with the conflicts-of-interest framework proposed elsewhere in this Proposal—would adequately address the concerns regarding a DSRO's oversight of non-affiliate FCMs that compete with its affiliate, without an election option.

While the Commission should afford affiliate FCMs the election of an independent third-party DSRO or the NFA, but this choice must be strictly subjected to a mandatory, time-bound rotation schedule. Allowing a static, permanent election option creates a dangerous secondary risk of inter-affiliate capture, where two aggressive, vertically integrated platforms could simply elect each other as their respective third-party SROs to shield their internal liquidity bots and protect a mutual "*Valuation Mirage*" from genuine oversight. Implementing a compulsory, revolving "*peer-review*" schedule drives vital cross-learning among different peers, harmonizes risk taxonomies, and ensures that a diverse array of unaffiliated, Commission-approved SROs break up entrenched data silos to expose the hidden leverage and delta-hedging manipulations that traditional, stagnant audits miss.

(9) Whether the election provision should be limited to a registered futures association, as proposed, or should instead permit an FCM to elect any SRO of which it is a member; and if an open election was permitted, what conditions should apply, including how the membership predicate and examination-standard consistency would be preserved.

See our response to Q8.

(10) Whether the proposed six-month minimum notice period provides an appropriate balance between an electing FCM's interest in a timely transition and a receiving DSRO's need to recruit, train, and deploy qualified examination staff; and whether a shorter or longer period would be preferable.

Yes, we agree with the proposed six-month minimum notice period should be adequate.

(11) Whether the authority of the JAC to phase in clustered elections, subject to the proposed twelve-month outer limit, is appropriately calibrated to protect examination quality and DSRO staffing; whether the outer limit should be shorter or longer; and what criteria the JAC should apply in determining that a phase-in schedule is warranted.

The Joint Audit Committee's (JAC) authority to phase in clustered elections under Commission Regulation 1.52 is an essential operational buffer, but the proposed twelve-month outer limit must be kept short and strictly subjected to the mandatory, time-bound peer rotation schedule to prevent structural stagnation, see our response to Q8. Allowing an extended, un-calibrated phase-in window invites aggressive, vertically integrated platforms to exploit grandfathered compliance gaps, enabling their internal proprietary trading desks to manipulate the price discovery mechanism and engineer a predatory "*Valuation Mirage*" to front-run retail order flow.

To protect examination quality and prevent DSRO staffing bottlenecks without triggering market distortions, the JAC should apply strict, objective criteria in determining if a phase-in schedule is warranted: (a) the immediate, verifiable availability of an un-affiliated, CFTC-approved SRO with a fully functional compliance division; (b) a quantitative evaluation of cross-market risk concentrations using the global Unique Product Identifier (UPI) standard; and (c) a mandatory cross-learning audit trail showing that the transition drives continuous data taxonomy harmonization across different peers.

(12) Whether the proposed three-cycle minimum-duration requirement appropriately balances continuity of examination and DSRO staffing stability against an FCM's interest in revisiting its election; and whether a shorter or longer minimum duration would be preferable.

The proposed three-cycle minimum-duration requirement appropriately balances examination continuity and DSRO staffing stability, provided that each cycle transition is tethered to a mandatory, rotational peer-review framework that drives continuous cross-learning among different peers. Allowing an affiliate FCM to constantly flip its election would cause severe operational friction and fragment the Commission's surveillance data pools into disconnected pipelines,

creating a mechanical blind spot that obscures a large participant's true consolidated positions. However, a permanent or un-rotated duration would breed regulatory stagnation and allow vertically integrated platforms to establish collusive auditing loops to shield internal liquidity bots and hide a predatory "*Valuation Mirage*" from genuine scrutiny.

(13) Whether an FCM that has elected a registered futures association should be permitted to revoke its election before the minimum duration elapses in defined circumstances, for example, upon a change in the FCM's clearing membership or upon a material change in the circumstances that prompted the election, and, if so, what circumstances should qualify.
An affiliate FCM should be permitted to revoke its election before the minimum duration elapses, but only under highly restricted, objective circumstances – such as a verified change in clearing membership or an explicit structural dissolution of its vertical relationship – and it must remain strictly bound to an immediate, mandatory peer-rotation schedule. Allowing broad or loosely defined "*material changes*" would create an administrative loophole, permitting aggressive platforms to arbitrarily hop between DSROs to evade active investigations. Any early revocation must be conditioned upon the Commission's explicit approval in written of the platform's filed notice that detailing the reasons.

(14) Whether the proposed election option could result in unintended consequences to a DSRO that also operates an exchange including, for example, with respect to risk management activities. For example, could the election option result in a DSRO that loses the ability to examine an FCM as a result of an election revising its DCM or DCO rulebook to require similar examinations to ensure that it receives risk management information regarding its member FCMs, ultimately resulting in duplicative examinations and surveillance?
The vertical integrated platforms' concern that the proposed election option will trigger duplicative examinations and defensive, redundant rule-writing by a displaced DSRO is an **excuse designed to evade active oversight** and preserve opaque internal tracking. A properly structured, mandatory rotational peer-review framework does not cause administrative cost bloat; instead, every single "*peer review*" will conclude with vital lessons learned, identifying exactly what constitutes a false positive versus a false negative across automated matching systems to benefit all SROs and market participants. These accumulated lessons will stack up within a shared, federated knowledge base, allowing SROs to fine-tune their risk appetites, update control programs, and spot sophisticated algorithmic abuses that a single, entrenched auditor naturally misses.

(15) Whether the proposed election option would have effects on the resources, staffing, or funding of NFA or of any other DSRO that the Commission should consider, including, whether a substantial volume of elections could affect the cost or quality of examinations; and the Commission specifically requests that NFA, CME, and any other SRO, DSRO, FCM, or market participant with relevant information describe the anticipated operational and cost effects of the proposed election option.
Vertically integrated platforms claim that a substantial volume of elections, or a mandatory independent third-party Regulatory Service Provider (RSP) alternative under Regulation 38.604, will cause a talent shortage or degrade examination quality are merely excuses designed to **evade rigorous oversight and protect anti-competitive data monopolies**. The opposite is true, where "*peer review*" supports a growing population of qualified talents. The related operational resources, staffing, and funding of the NFA and other DSROs can be justified. By implementing a mandatory rotational "*peer review*" framework that converts raw audit data into shared, structured lessons learned, it advances market integrity by reducing the number of unknown unknowns (risk of systemic flash crashes), mitigating the rising cost of possible failures, and allowing development of better market-wide volatility interruption mechanisms. In turn, public trust and the U.S. competitiveness will improve, growing the overall pie for a healthy sustainable ecosystem.

(16) The Commission understands that DCOs conduct examinations of their clearing members apart from the obligations imposed by Commission Regulation 1.52. Will the election mechanism result in clearing members becoming subject to duplicative examinations—one by the DCO and one by a registered futures association?

The Commission must recognize that a DCO's independent risk-assessment audits under Part 39 serve a completely different operational utility (market risk assessment and guarantee of margins) than an independent self-regulatory examination under Regulation 1.52, which is specifically designed to expose vertical data leaks, internal affiliate front-running, and gauge how the risk in customer exposure is absorbed. Those who argue against the proposal by claiming the process *"will trigger duplicative and redundant examinations"* are merely making excuses to evade active oversight. Their stance reflects an unsophisticated conflation of the respective roles of FCMs, execution venues, and clearing utilities – a conceptual failure that itself operates as a primary red flag exposing weak corporate governance and control structural vulnerabilities.

The Commission specifically requests that SROs and DSROs with an affiliate FCM – and any other SRO, DSRO, FCM, or market participant with relevant information – describe:

(17) The arrangements currently in place for the financial surveillance and DSRO oversight of any affiliate FCM, including the identity of the third-party SRO performing those functions and the terms (including cost) of the arrangement.

No comment for Q17.

(18) The reporting lines through which examination staff implementing the Commission Regulation 1.52(c) supervisory program currently report, including the highest organizational level at which that reporting line terminates and the independence of that level from commercial management of the SRO and the affiliate FCM. Whether the reporting-line requirements are consistent with existing reporting structures at SROs and DSROs.

No comment for Q18.

(19) The existing policies, procedures, information barriers, or technological controls governing an SRO's access to non-public information of an affiliate FCM and the SRO's sharing of non-public information obtained from the Commission Regulation 1.52(c) supervisory program with the affiliate FCM, including any exceptions for compliance with part 38 obligations.

No comment for Q19.

(20) The nature and estimated incremental cost of any change to existing arrangements that would be required to comply with the proposed Commission Regulation 1.52 amendments.

In the AF76 proposal's economic analysis, the Commission states that the amendments to Regulation 1.52 are clarifying and conforming changes and would not require market participants to alter existing contractual arrangements or operational practices beyond current compliance. The AF76 proposal is assumingly implying little to no additional/ incremental compliance costs attributable to the Regulation 1.52 amendments. To be fair, amid "*peer review*" is leveraging the same surveillance check on oneself and applying to peer SRO, but there would still be some reasonable cost to implement a mandatory rotational "*peer review*" framework that converts raw audit data into shared, structured lessons learned. Whereas the cost of compliance with the policies and procedures requirement does involve paying others for endorsement on these documents. To cover the related operational resources, staffing, and funding of the NFA and other DSROs, we estimate approximate $300K to $500K per firm per annum in total compliance costs attributed to Regulation 1.52 amendments. The benefits from the accumulated learnings from "*peer review*" would definitely outweigh and justify this cost, please see our response to Q15.

(21) Whether the proposed definitions of "affiliate futures commission merchant," "control," and "non-public information" would capture relationships or categories of information that differ in any material respect from those addressed by existing arrangements.

See our response to Q1 and Q2.

B. Proposed Amendments to Commission Regulations 38.604 and 38.606—DCM Financial Surveillance of Members and Third-Party Regulatory Service Providers

(22) Whether the clarifying amendments to Commission Regulation 38.604—including the removal of the word "continuously" and the substitution of "throughout the day"—appropriately capture the Commission's intent regarding the frequency and risk-based nature of the intra-day financial surveillance requirement.

We strongly oppose the proposed clarifying amendments to Commission Regulation 38.604. The removal of the word "*continuously*" and the substitution of "*throughout the day*" is a dangerous regulatory regression that weakens alertness to risk, compromises prudential safeguards, and threatens financial stability. Relaxing the DCM surveillance requirement to a so-called "*risk-based*", intermittent cadence is a detriment to market integrity, especially when most of today's legacy surveillance approaches are already far too passive and after-the-fact. Shifting the standard creates critical systemic blind spots during rapidly unfolding stress situations.

Every risk and quantitative model faces a harsh trade-off between tractability and reality; liquidity is a hyper-dynamic, moving target that no static or episodic framework can possibly capture. To identify stress and weak links where the next flash crash or systemic risks may emerge, traditional surveillance or forensic tools would NOT help. Especially, those using "*Z-score*" anomalies to flag spikes.[12] Small, legitimate trades can look like aggressive manipulation (price bias) under traditional rules, leading to a flood of false positives. With the rapid advancement of real-time agentic AI and process automation, risk control must go forward by mandating superfast, automated surveillance rather than stepping backward into manual, delayed oversight loops.

Vertically integrated platforms' arguments are excuses to evade active oversight and mask structural control weaknesses. Their defensive stance reflects an unsophisticated conflation of the respective roles of client facing brokerage, execution venues, and clearing utilities, which operate as a primary red flag exposing weak corporate governance. A DCO's risk-assessment audits under Part 39 serve a completely different operational utility (market risk assessment and guarantee of margins) than an independent self-regulatory examination under Regulation 1.52 and 38.604, which must be specifically designed to expose vertical data leaks and internal affiliate front-running in real time. A retrospective, "*throughout the day*" inspection framework leaves regulators looking through a rearview mirror while predatory capital creates a fleeting "*Valuation Mirage*" to front-run retail order flow.

(23) Whether the principles-based approach in proposed Commission Regulation 38.606 is appropriately calibrated, including whether the proposed regulation should specify additional procedural elements that a DCM electing to conduct in-house Commission Regulation 38.604 surveillance of an affiliate FCM must include in its conflicts of interest procedures.

The foundational elements included in the proposal are not wrong:

- An exchange is only permitted to maintain a vertically integrated structure if it continuously ensures that its independent, third-party SRO or DSRO implements a comprehensive, robust supervisory program that specifically satisfies the heightened compliance metrics of Regulation 38.606.

[12] https://arxiv.org/pdf/2308.08683

- The rule is calibrated to police behavioral and operational isolation across the integrated stack. It demands that the supervisory program actively audit, detect, and document any structural failures in the platform's independent reporting lines, informational firewalls, or physical resource-sharing limitations.
- If an independent third-party audit discovers a structural failure in the oversight process, or if the exchange fails to maintain the rigid informational boundaries mandated under this section, the exchange immediately loses its regulatory safe harbor. The platform is then forced to unwind the affiliate relationship or entirely halt trading operations for the entity in question.

However, the principles-based approach in proposed Regulation 38.606 is mis-calibrated, as its loose architectural ambiguity allows vertically integrated platforms to exploit loopholes and run their brokerage units as loss-leaders to front-run retail order flow. Relying on manual, text-based **check-the-box** conflicts procedures allows platforms to **hide behind formal legal endorsements** or flawed risk-based modeling while their internal proprietary trading desks use AMMs to engineer a predatory "*Valuation Mirage*" to front-run retail order flow.

To properly protect market integrity, the CFTC must update Regulation 38.606 to mandate continuous, real-time automated monitoring coupled with a compulsory, time-bound rotational "*peer-review*" framework among covered platforms. A mandatory rotation schedule eliminates corporate box-checking because every single peer review will conclude with vital lessons learned, identifying exactly what constitutes a false positive versus a false negative across automated matching systems to benefit all SROs and market participants simultaneously. These accumulated insights will stack up within a shared, federated knowledge base, allowing SROs to fine-tune their risk appetites, deploy edge-based A.I. compliance agents, and spot sophisticated algorithmic abuses in real-time.

The ONLY effective way to identify suspicious activities and deter bad actors and foreign adversaries is **continuously** capturing "*triggers*" – a subset of an irregular "*pattern*", captured **throughout the day** via Agentic A.I. and use targeted search of the next onset signal + reinforcement learning loops for TPU verification (including reverse engineering of portfolio compression to gauge where risks may shift). See pages 52-59 in Annex 2 of our June 22 comment letter on CAT.[7]

(24) Whether the Commission should adopt the alternative under which a DCM with an affiliate FCM would be required to designate an independent third-party RSP for Commission Regulation 38.604 surveillance of the affiliate FCM.
Instead of using another SRO (like a competing exchange or the NFA), the DCM would contract out the day-to-day market and financial surveillance work to a third-party commercial utility or tech vendor acting as an independent Regulatory Service Provider (RSP) under Regulation 38.604. This alternative aims to create a complete separation of duties – ensuring that the team watching the affiliate FCM's trading activity and data flows has no corporate ties, shared incentive pools, or commercial reporting lines to the exchange management. This RSP alternative is not mutually exclusive to the *peer-review* approach, but both approach can co-exist to establish a layered, multi-tier compliance framework.

In general, we agree the Commission should support an affiliate-specific third-party mandate to eliminate predatory execution advantages. Deploying an independent commercial RSP as a data buffer cuts off these closed-loop information leaks and stops the platform from grading its own homework. To ensure **neutrality** of exchange and prevent a "*pay-to-play*" paradigm, this independent RSP structure must co-exist with a compulsory, time-bound peer-review rotation schedule, where every rotational exam concludes with shared, structured lessons learned regarding false positives and false negatives to reduce unknown unknowns and advance market integrity across the entire derivatives ecosystem.

(25) Whether the Commission should adopt the alternative under which additional separation requirements would be codified in the rule text.
See our response to Q1 and Q24.

The Commission also specifically requests that DCMs with an affiliate FCM—and any other DCM, FCM, or market participant with relevant information—describe:

(26) Whether the DCM currently engages an RSP for Commission Regulation 38.604 purposes (including for surveillance of an affiliate FCM); and if so, the identity of the RSP and the terms (including cost) of the arrangement;
No comment for Q26.

(27) Where the DCM conducts Commission Regulation 38.604 surveillance in-house, the policies, procedures, organization separations, and other measures currently in place to address potential conflicts of interest arising from financial surveillance of an affiliate FCM;
No comment for Q27.

(28) The nature and estimated incremental cost of any change to existing arrangements that would be required to comply with Commission Regulation 38.606 as proposed; and
Per the Cost-Benefit Analysis in the C&A proposal, the CFTC preliminarily believes the incremental costs associated with the proposed changes to Commission Regulation 38.606 will be negligible for most of the affected registered entities.

(29) The nature and estimated incremental cost of complying with the mandatory independent third-party RSP alternative described above, including any market-capacity considerations that would arise if additional DCMs were required to engage NFA or another RSP for Commission Regulation 38.604 surveillance of affiliate FCMs.
See our response to Q15,

III. Exchange-Related Conflicts Mitigation

A. Proposed New Commission Regulations 38.852 and 37.1201—Conflicts of Interest Involving an Affiliate Market Participant

(30) This Proposal generally applies to FCM and IB intermediaries, as well as market participants such as principal trading firms, market makers, and liquidity providers. Should the scope be expanded to specifically refer to any other types of entities? If so, please identify and explain.
To properly eliminate the systemic structural vulnerabilities exposed in the vertical integration debate, the scope of proposed Regulations 38.852 and 37.1201 must look beyond the narrow definition of an affiliated FCM and IB intermediaries, as well as market participants such as principal trading firms, market makers, and liquidity providers. **Direct Retail Clearing Model** (DRCM) is problematic.[10] While it eliminates broker layer, retail participants suffer a severe structural deficit in legal rights compared to traditional intermediated markets. Retail traders lose their protected status as "*Public Customers*" and are legally classified as institutional "*Direct Clearing Members*" under Part 39. They sacrifice suitability rights and access to the NFA's low-cost Arbitration Program.

If a vertically integrated platform or DCO experiences an operational failure, a smart-contract hack, or an internal bot-trading glitch, a retail user faces the liquidation estate directly without a broker cushion. Another concern is the **Compression Loop**. Under Part 190 bankruptcy mechanics, uninvested cash balances sitting idle on the platform are swept alongside active wagers into a single pool of "*Member Property*" that is subject to strict **pro-rata haircuts**. If a platform runs portfolio compression cycles right before insolvency, individual retail trade identities are permanently erased and consolidated into institutional blocks, effectively trapping retail funds inside prolonged forensic litigation.

Beware of a **Neutral Intermediary** turning into a **Risk Transformer**. Allowing a vertically integrated platform or its affiliated DCO or Automated Market Maker (AMM) to flick between acting as an agent for a client versus acting as a proprietary counterparty is dangerous. This parallels the securities market, where routing orders for *proprietary gain* over a client's

best interests is a *conflict of interest*.[11] Therefore, the scope of proposed Regulation 38.852 and 37.1201 should not just focus on a static entity checklist, but also scrutinize: product bundling, rebate incentives, and other exploitative behaviors, such as optimally restricting access to price information,[13] and other distortions that impairs the **neutrality** of an exchange or anticompetitive behaviors that reduces choice / shrinking the diversity of market participants.

(31) Whether the proposed definition of "affiliate market participant"—and the related "control" formulation—captures the appropriate scope of relationships. Should the definition reach partial ownership interests that do not rise to "control"? Should the SEF definition's express inclusion of an affiliate introducing broker be mirrored in the DCM definition?
As mentioned in our response in Q1, while the Commission must crack down on vertical integration abuses, copying the quantitative equity metrics of the Dodd-Frank Act's Volcker Rule (12 CFR Part 248) and Sections 23A and 23B of the Federal Reserve Act does not work. These prudential regulatory frameworks rely on quantitative equity metrics (such as a baseline 5%, 10% ownership stake) to draw bright lines around corporate affiliation or (25%) controlling interest. While a corporate equity limit offers simple administration for legacy commercial banking asset classes, it is fundamentally unsuited for the unique microstructural dynamics of modern algorithmic platforms.

In automated ecosystems, systemic conflict and structural leverage are not driven by capital allocation percentages on a cap table; they are driven by information velocity, shared code base architecture, execution speed, and internal data advantages. An entity holding a minor, 3% passive partial ownership stake can – via a shared technology infrastructure or custom-designed algorithmic matching modules – gain massive, predatory latency advantages over non-affiliated retail participants. Conversely, an institutional investor holding a 15% passive equity stake solely for capital appreciation, without any seat on the board or access to order book telemetry, poses little to no threat to market integrity. However, beware of vertically integrated platforms seeking regulatory workarounds to bypass the FCM layer and force retail users into the highly problematic DRCM, where retail traders clear directly against a DCO ledger, losing their protected "*Public Customer*" status.

To neutralize loop vulnerabilities without causing administrative cost bloat or creating data-privacy honeypots, the Commission should maintain its flexible, power-to-direct formulation, looks beyond a static entity checklist to also scrutinize: product bundling, rebate incentives, and other exploitative behaviors and other distortions that impairs the **neutrality** of an exchange or anticompetitive behaviors that reduces choice / shrinking the diversity of market participants.

(32) Whether the principles-based formulation in proposed Commission Regulations 38.852(b)(1) and 37.1201(b) is appropriately calibrated, or whether the rule text should instead enumerate additional specific procedures an exchange must adopt. If applicable, please specify which Acceptable Practices should be moved to regulation text.
Proposed Commission Regulation 38.852(b)(1) would require that a DCM have **procedures** for identifying, addressing, and managing conflicts of interest involving an affiliate market participant. The proposed regulation would further require that such **procedures** address, at a minimum, applications and systems, personnel, office space, **documentation** of conflicts, and **disclosures**. Proposed Commission Regulation 37.1201(b) would impose the identical requirement on a SEF. This formulation parallels the requirement the Commission proposes below for DCOs in proposed Commission Regulation 39.25(d) and the existing procedures-based formulation in Commission Regulation 39.25(c).

We despise the emphasis on policies and procedures. It allows vertically integrated platforms to use legal abstractions to shield real-time algorithmic abuses. Heed the lesson from Société Générale (SocGen) $7.2 billion loss, where policies and

[13] https://www.bayes.citystgeorges.ac.uk/__data/assets/pdf_file/0011/366599/sale-price-information-cass-knowledge.pdf

procedures were bragged about to avoid enforcement while evading substantive controls.[14] Instead, the C&A framework should mandate the continuous testing of control effectiveness to eliminate conflicts at the infrastructure source. The Commission should move the Acceptable Practices directly into the regulation text and redefine them as automated, metrics-driven control perimeters. Specifically, the text should include requirements of continuous, real-time automated monitoring coupled with a compulsory, time-bound rotational "*peer-review*" framework among the covered platforms.

(33) Whether the proposed Acceptable Practices are complete and appropriately scoped.
See our response to Q32.

(34) Whether DCMs and SEFs should be able to share legal and compliance staff with an affiliate market participant.
The practice of allowing DCMs and SEFs to share core legal and compliance staff with an affiliate market participant represents an untenable structural vulnerability, but the Commission must carefully distinguish between high-level corporate legal representation and daily gatekeeper functions. While a "*Fractional C-Suite*" model is common and acceptable for broad corporate roles like General Counsels – who manage overall legal liabilities and corporate structure - there must be an operational limit when it comes to Chief Compliance Officers (CCOs) and real-time market-surveillance staff. To effectively curb these structural conflicts, the CFTC should establish an operational limit that explicitly prohibits the sharing of CCOs and live surveillance personnel, while permitting shared General Counsels – provided they are legally barred from overriding the independent reporting lines of the compliance department. Forcing a total firewall on General Counsels is a bridge too far.

(35) Whether any additional disclosures should be required. If so, please specify the nature of such additional proposed disclosure.
Disclosure requirements and "*choice*" are two distinct concepts in securities and market regulation. Disclosure rules set mandatory information obligations; they do not create or limit the range of products, services, or strategies available to market participants. Because disclosure rules are mandatory, they do not "*create*" choice. Instead, they ensure that any choice a participant makes is informed. Whereas the range of choices available to market participants is determined by market forces, product innovation, and contractual arrangements, not by disclosure rules. Heed the lesson from SocGen $7.2 billion loss, where policies and procedures were bragged about to avoid enforcement while evading substantive controls.[14] Such requirements or additional disclosures benefit ONLY the lawyers and big consulting firms, while exacerbating the gap between the Haves and Have-Nots. See our response to Q32. Again, the C&A framework should emphasis on the continuous testing of control effectiveness to eliminate conflicts at the infrastructure source. DCM and SEF deserve distinct treatment, see our response to Q36.

(36) Whether the proposed approach should differ as between a DCM and a SEF, and whether the SEF context in particular warrants any distinct treatment given the nature of the market participants typically active on a SEF versus those on a DCM. Conversely, given that retail participation is prevalent on some DCMs, does the nature of such participants warrant any distinct treatment?
SEFs typically host dealer-to-dealer and dealer-to-institution trading where participants are sophisticated and often have bilateral credit and information arrangements. That reduces some retail-style consumer-protection concerns but raises information asymmetry and front-running risks tied to Request for Quotation (RFQ) and voice workflows. Mitigation should therefore emphasize real-time access controls, audit trails, and RFQ transparency rather than retail disclosure forms. Conflicts can arise through selective RFQ routing, preferential access to liquidity providers, or privileged pre-trade

[14] http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/5241263/Societe-Generale-chairman-Daniel-Bouton-to-step-down.html

information. Rules should require procedural constraints on RFQ routing, objective criteria for liquidity provider selection, and logging of pre-trade communications.

Many SEFs are affiliated with swap dealers or broker-dealers. The risk that an affiliated dealer receives preferential order flow or internalized swaps is higher; mitigation should include firewalls, limits on internalization, and enhanced surveillance of affiliate fills. Also, SEF trades often feed into portfolio compression and back-office processes where affiliate relationships could influence allocation. The rule should require transparent allocation policies and independent oversight of post-trade routing. Therefore, operational controls (routing rules, RFQ governance, audit trails), affiliate trade monitoring, and disclosure for SEFs should be customized to institutional counterparties rather than retail clients.

For DCMs, where retail participation is meaningful, conflicts can have disproportionate consumer impact (e.g., order priority, price improvement, access to liquidity). Conflicts here can affect contract design, margining, or position limits in ways that advantage affiliates. DCMs therefore warrant stricter governance around rule adoption, independent committees, and explicit recusal rules for affiliated interests. Conflicts tied to **initial bias**,[15] or rebates and fee structures can harm or benefit retail traders. In addition to requirement of clear, plain-language disclosures for DCMs, the Commission should scrutinize and test against vertically integrated platforms' exploitative behaviors.

Reference to our July 27 and August 24 comment letters on Public Interest determination[5] and Swap,[3] we set out a long list of suggested tests, particularly relevant to DCMs – Prediction Markets:

- using the powers of two logic (binary search)[16] to serve as a practical litmus test if the CFTC wants to further strengthen the §5c(c) and Core Principle 1 about the "self-certify" of new rules or contracts, for better certainty and objectivity to differentiate a game of chance/ entertainment from a market with economic purpose.
- Exposure to Cause versus Effect (E2CvE) framework to recognize that a raw operational variable represents a primary "*cause*" that ripples across global economic networks, making it an excluded commodity under exclusive CFTC swap jurisdiction rather than an SEC-regulated "*effect*."

[15] Without TLE to make market data available securely in synchronized time, it causes "***initial bias***" that exacerbates the gap between subscribers of proprietary feeds and the public consolidated tape. NYSE's rooftop antenna service is a controversy, it is used by high frequency trading (HFT) firms such as Virtu, as well as McKay Brothers and its sister company Quincy Data that advocate for *"level the playing field."* NASDAQ's equalization project in removing its GPS antenna may ease conflicts among subscribers of collocation service. Yet, a directive like China banning HFTs from using client-dedicated servers co-located within exchange data center, it merely pushes the latency arms race to the nearest neighborhood. We criticize the SEC for not going far enough with the latency requirement (same manner and using the same methods) in Market Data Infrastructure Rules. Not until a mandate of market data is available securely in synchronized time and the questions of who owns the data being addressed, inequitable situations will remain.

[16] https://www.khanacademy.org/computing/computer-science/algorithms/intro-to-algorithms/a/a-guessing-game ; E.g., In a number guessing game from 1 to 300, you should take no more than 9 guesses because of a mathematical strategy called *binary search*. Using this method, each guess eliminates exactly half of the remaining possibilities. Mathematically, the number of guesses is the binary logarithm of the range, rounded up to the nearest whole number: Roundup[log2(300)] ≈ 8.23 = 9.

Market Information is NOT Static. The number guessing game has a fixed target. Binary event prices fluctuate constantly based on new information. Because the target moves, a trader might "*place order*" multiple times as the market's perceived probability of the event changes. High Spreads Indicate Low Liquidity. in illiquid markets, one CANNOT always "*halve the range*" effectively because there may be no buyers or sellers at the midpoint.

In a number game, feedback is free. In trading, the bid-ask spread is a direct cost. Every "*trade*" requires participant to pay the ask and sell at the bid. If one trade frequently to narrow down the "*true*" price, one may lose more in spread costs than one gain from finding the correct value. Given information asymmetry in markets, a more informed market maker might move price against you, forcing more trades to reach a fill. Traders often take smaller positions to manage risk, rather than one large binary search bet.

- Revise the 2012 Product Definitions Adopting Release and replace narrative-driven tests with three objective structural filters:
  - the Operational Sorter (Settlement Mechanism Test): Evaluates settlement data sources. Contracts settling against raw, non-valuational facts are CFTC commodity swaps, while those settling against market appraisals are SEC SBS;
  - the Legal Filter (Insulated Valuation Test): Requires the contract payout to be mathematically dependent on capital-market appraisals (e.g., stock tickers) to trigger SEC oversight; and
  - the Structural Gate (Operational Intent Test): (i) Trading venues with high-velocity bots generate a volatile "*Valuation Mirage*," requiring SEC oversight; (ii) pre-funded architectures function as passive parametric insurance pools under lean CFTC rules → i.e., Routes products by operational vehicle.

With retail-facing DCMs, the rule should require stronger market-making/order routing priority safeguards. Direct Retail Clearing models (DRCM) are vulnerable to secret internal affiliate algorithmic trading bots that fabricate activity and widen spreads. When it comes to application of 38.852(b) and (c), a uniform approach for both DCMs and SEFs would be preferable, see our response to Q41.

Since the US cannot simply adopt the EU/UK's MTF model because of the CEA mandate to preserve the default waterfall model, policymakers should consider establishing a Safe Harbor to exempt 100% pre-funded CPO-Matchmaker model from traditional mutualized banking default funds – replacing manual paperwork with rigorous mathematical code audits of underlying smart contracts, liquidation scripts, and oracle price feeds to defend against flash-loan vulnerabilities.

(37) The Commission preliminarily understands that the proposed requirements are consistent with existing practice at exchanges that have an affiliate market participant. The Commission requests comment on whether this understanding is correct, and requests that such exchanges describe the policies, procedures, governance separations, information barriers, and disclosures currently in place, and the nature and estimated incremental cost of any change required to comply with the Proposal as drafted.

Many exchanges already have written conflict-of-interest policies, recusal rules for governance, firewalls between market-facing and commercial units, surveillance programs that monitor affiliate activity, and participant disclosures. The Commission's preliminary understanding is broadly in-line with existing practices. We agree with the C&A proposed mandate to prohibit affiliate principal trading firms and market makers that addresses one of our key concerns –AMMs and DMMs "*leaning with the wind*" in widening spreads to avoid "*pick-off*" rather than complying with exchange rules and DCM Core Principle 9 to continuously providing tight two-sided quotes in both good and bad times – that is substantiated by the empirical Whelan Paper.[6]

The C&A proposal, however, does not require *vertically integrated* platforms to *spin-off* its client-facing brokerage unit. Allowing a vertically integrated platform or its affiliated Derivatives Clearing Organization (DCO) or Automated Market Maker (AMM) to flick between acting as an agent for a client versus acting as a proprietary counterparty. This parallels the securities market, where routing orders for *proprietary gain* over a client's best interests is a *conflict of interest*.[11]

Fully-Collateralized (i.e., 100% pre-funded and no leverage) event contracts in Prediction Markets have no credit-default risk exposure. Exempting such client facing entity from subscribing to insurance of mutualized default funds would facilitate innovation and competition to financial products and services for FinTech firms. Yet, the **controversy stems from whether retail traders are to be treated as clients or counterparties**. The Commission should heed the lessons from

several headline cases,[17] where ***public trust*** is already eroding. It is NOT in how a participant or platform claims the trades were executed with a customer or counterparty. Rather, as the trade data would reveal, with consistency, whether the firm was in effect acting in the ***best interest*** of the customer rather than treating the party as a counterparty (i.e., *without fiduciary responsibility*). By blurring these legal boundaries, this **conflation** or strategic danger of the **Current Stalemate** directly drives several critical **market distortions**:

- **Amplifies Capital At-Risk**: It exposes **100% of a user's uninvested cash** to the exact same pro-rata bankruptcy haircuts as active wagers during a clearinghouse liquidation.
- **Triggers Systemic Contamination**: It allows the catastrophic margin defaults of highly leveraged, non-retail institutional segments to bleed into and wipe out the pre-funded pools of retail event traders.
- **Masks Internal Conflicts**: It creates a regulatory blind spot where platforms can deploy internal affiliate bots to engineer a **Valuation Mirage**, driving artificial volume while shielding corporate cash via **Hidden Leverage**.
- **Dismantles the SRO Safety Net**: It completely bypasses the protective buffer of FCMs, stripping away mandatory NFA arbitration and leaving retail participants to face settlement finality liabilities entirely alone.

Therefore, an automated system is needed to conduct the "*regular and rigorous review*" for "***best execution***" compliance if regulators want to discourage the "*flipping-a-switch*" between clients versus non-clients' behavior. Also, the automated checking would need to access if a market maker's or AMM's risk profile may suddenly change and under what market conditions this would happen. Ultimately, any "*out-of-proportion*" or "*unreasonable*" trade activities should be curbed because the result of many small incremental exploitations or hedges and/or commitments can accumulate into out-sized bets or bubbles to become the biggest threats to financial markets.

Separation of duties prevents a DCO from using one customer's funds to cover another's or the house's obligations. Integration can lead to an entity using its FCM as a loss-leader, reducing customer choices. Conflating respective functions of DCM, DCO, and FCM in a vertically integrated model poses significant threats to financial stability. E.g., the failure of an affiliated FCM could trigger a run on the DCO, potentially leading to a catastrophic collapse of the entire clearing system. There are rooms for improvement in both the AF76 and AF78 proposals, including consideration if event contracts can be packaged inside our suggested alternative of a 100% pre-funded Series LLC structured managed by a CPO, and exempting such fiduciary CPO-Matchmaker – that acts as a passive, parametric insurance pool – from mutualized banking default funds while addressing prudential regulators' concerns.

(38) Are there benefits of affiliations between exchanges and market participants, such as enhanced liquidity, broader market options for customers, resource efficiencies, and increased competition and innovation that the Commission has not described in this Proposal? If so, please describe.

Do NOT fall into the traps of vertically integrated platforms' excuses to dodge regulatory oversights. Empty rhetoric pointing to BIG Goals – such as *"enhanced liquidity, broader market options for customers, resource efficiencies, and increased competition and innovation"* are delusional if it cannot be tested objectively. Slogan-based diplomacy does not serve the public any good. The CFTC must diligently consider appropriate market structure reforms to evolve alongside market development and closely examine respective platform's market design to effectively and efficiently address systemic risks, ensure the orderly function of markets, and preserve market integrity.

[17] https://www.investmentnews.com/ria-news/bank-of-america-merrill-lynch-fined-3m-over-deficient-supervision-systems/256868 ; https://www.thetradenews.com/baml-slapped-second-time-42-million-fine-masking-orders/ ; https://constantinecannon.com/whistleblower/virtu-agrees-to-pay-2-5m-to-settle-sec-lawsuit-concerning-customer-data/

Introducing objective bright-line tests, such as the proposed New Commission Regulations 38.852(b) and (c) are highly commendable, see our response to Q39. To fulfill the mandates of Executive Order 14405 effectively, all market reforms and financial regulatory policies must be designed to fulfill the following objectives:

(1) Foster efficiency and effectiveness in organizing **industry value-chains** to:
   (a) Achieve the lowest possible total costs to transact in US markets and drive non-zero-sum growth for the economy;
   (b) Delineate private rights and obligations clearly, while minimizing and compensating for any social costs imposed on non-participants;[18] and
   (c) Implement the simplest, most objective, and least burdensome rules possible for those who do things fairly and squarely, while proportionally intensifying scrutiny on entities/ individuals posing systemic risks.

(2) Incentivize competitive behaviors that drive advancement in risk control and market integrity, maintaining orderly function of markets through market forces without requiring frequent regulatory interventions/ mediations, by:
   (a) Avoiding "bare minimum compliance" norms, focusing instead on cultivating robust risk controls rather than formal endorsements of costly law or consulting firms that only large institutions can afford;
   (b) Utilizing enduring, principle-based rules, where possible, to minimize the need for frequent calibration, which inevitably introduces bias favoring select participant groups; and
   (c) Preventing the stagnation or staleness of markets and the reinforcement of power among dominant players who exploit their economies of scale or scope to limit the benefit of technological progress for the greater societal good, specifically halting behaviors that:
      - Divert scarce resources – such as skilled labor, capital, and time – away from innovation and production toward lobbying, litigation, and regulatory capture; and
      - Stifle competition by creating switching frictions (accommodation), market entry barriers (avoidance), or forcing involuntary market collaborations that exacerbate gaps between the Haves and Have-Nots.

(3) Preserve US's prominent market position
   (a) Against authoritarian regimes and internal bureaucracy that erodes trust and institutional decline;
   (b) With no suppression nor reluctance to take in constructive criticisms that improves the US financial system; and
   (c) By making strategic asymmetries and structural advantages available, if needed to curb and deter bad actors and foreign adversaries.

Where these three objectives inherently compete, policymakers must balance them dynamically to optimize systemic stability without compromising market dynamism.

B. Proposed New Commission Regulations 38.852(b) and (c)—Prohibition on Affiliate Principal Trading Firms and Conditional Affiliate Market Maker Exception

(39) Whether the principles-based framework of Section III.A, without the conditions proposed here, would adequately minimize conflicts, and if not, what additional procedural elements should be required.

The principles-based framework in Section III.A is not sufficient on its own to minimize conflicts in vertically integrated structures. The Commission is correct to propose additional procedural elements in 38.852(b) and (c), because the core risks – preferential treatment, misuse of non-public information, and compromised self-regulatory impartiality – are not

[18] https://iea.org.uk/wp-content/uploads/2016/07/THE%20MYTH%20OF%20SOCIAL%20COST.pdf

reliably mitigated by principles-based policies alone. The proposed rules introduce bright-line, enforceable obligations that directly target the conflict vectors the Commission has identified.

- **Prohibition on affiliate principal trading (38.852(b)):** an affiliate trading as principal on its own venue. The Commission notes that this is where incentives to advantage the affiliate are strongest.
- **Order-priority subordination (38.852(c)):** unaffiliated orders must be filled first at the same price, regardless of time priority. This eliminates the most direct form of preferential treatment.
- **Conditional affiliate market-maker exception (38.852(c)):** Part 40-filed market-maker obligations require continuous two-sided quoting, minimum hours, spread limits, performance standards, and prohibitions on directional proprietary positions to ensure the affiliate provides public-interest liquidity, not opportunistic proprietary trading.

These are not achievable through principles alone; they require hard-coded matching logic, objective quoting standards, and auditable compliance. We agree and commend the Commission for these safeguards in addition to principles-based framework in Section III.A. We suggest adding the text "*in both good and bad times*" after "*continuous two-sided quoting*" to the 38.852(c) to make clear and recognize that the requirement covers both normal and market stress conditions.

38.852(b) and (c) are more effective and efficient than a principles-based "*add-on*", such as independent committees for rulemaking and incentives programs, public reporting of affiliate trading metrics, etc. The principles-based framework relies on policies, discretion, and interpretation. Such "*add-on*" requirements or additional disclosures benefit ONLY the lawyers and big consulting firms, while exacerbating the gap between the Haves and Have-Nots. Whereas the bright-line prohibition + narrow conditional exception relies on objective rules baked into the matching engine and governance structure. It avoids endless compliance drafting and subjective monitoring. It eliminates the need for regulators to interpret whether a venue's "*principles*" were applied correctly. Surveillance teams should continue to strive to detect irregularities to advance market designs and volatility interruption mechanisms. Again, we applaud and strongly support the Commission in adopting 38.852(b) and (c).

(40) Whether the Commission should instead prohibit affiliate principal trading altogether with no market-maker exception.

Be mindful of a "*No fish can swim when the water is too clear*" situation. A better alternative that the Commission should consider is a safe harbor for a 100% Pre-Funded Fiduciary CPO-Matchmaker Model. This vehicle replaces the manual governance loops of Regulation 1.52 with code-governed capital physics and absolute asset isolation.

By structuring the execution vehicle as a specialized Delaware Series LLC or Series Trust managed by a CPO, the platform shifts its legal taxonomy from exposed market infrastructure to a buy-side asset aggregator. Under this model, every user account functions as a legally distinct trust cell, and all contracts are programmatically 100% pre-funded upfront, rendering traditional mutualized default funds, margin calls, and credit default loops mathematically obsolete. Most importantly, the CPO wrapper enforces a strict federal fiduciary duty under Part 4 of the CEA, explicitly banning internal affiliate algorithmic trading bots and proprietary trading loops from day one.

(41) Whether the requirements should apply uniformly to all affiliate principal trading activity or be limited—for example, by market access (for example, to markets accessible to customers who are not ECPs), by a measure of the affiliate's significance in a product, or by other criteria—and how any such threshold should be defined and monitored.

We recognize the distinction between DCMs and SEFs, see our response in Q36. Yet, a uniform application of 38.852(b) and (c) would be preferable. It is clearer, more enforceable, and better at preventing regulatory arbitrage and the most serious conflict vectors. The incentive for an affiliated entity to receive preferential treatment exists in every venue structure – retail, institutional, RFQ, order book – so the strongest conflict-mitigation tool should apply uniformly. Even

though SEFs are institutional and DCMs can be retail-facing, the conflict vector is identical. An affiliate has both information advantages and commercial incentives that can distort execution quality, routing, or market integrity. That incentive does not disappear just because the participants are sophisticated.

If the Commission starts carving out exceptions based on venue type, customer type, or execution model, it creates regulatory arbitrage pathways. Affiliates can restructure activity, shift products, or segment order flow to fall outside the rule. Uniform application closes those loopholes. 38.852(b) and (c) are a good practice of Realpolitik, it:

- **Simplifies supervision:** One standard reduces complexity for the examiners and for exchanges' compliance programs.
- **Preserves public trust:** Uniform protection avoids the kind of "*some are more equal than others*" dynamic that undermines confidence in market integrity.
- **Targets the highest-risk activity directly:** The prohibition on affiliate principal trading removes the clearest source of incentive to favor affiliates; the conditional exception channels any permitted affiliate market-making into auditable, public-interest obligations.

We commend the Commission for responsibly crafting these essential safeguards and bright-line test.

(42) Whether the Commission's proposed definitions of "control" and "affiliate" are appropriately scoped.
See our response to Q1 and Q31.

(43) Whether and how the prohibition and exception should extend to affiliate principal trading on SEFs, including whether order-priority subordination is compatible with SEF execution methods and whether the per-trading-session notice is appropriate for markets limited to ECPs.
See our response to Q41.

(44) Whether quantitative parameters—for example, a minimum percentage of trading hours quoted, a maximum spread, a minimum size, and an end-of-day net-position limit—should be fixed in Commission rule text rather than established in the market maker or incentive agreement subject to Commission review, as proposed, and what values or standards are appropriate across prediction-market products with differing characteristics.
The Commission should avoid being over prescriptive and cause administrative cost bloat. Quantitative parameters, such as *"a minimum percentage of trading hours quoted, a maximum spread, a minimum size, and an end-of-day net-position limit"*, depends on different contexts, market stress conditions and other factors. The key is to leverage a properly structured, mandatory rotational "*peer-review*" framework discussed in earlier section, where every single peer review will conclude with vital lessons learned, identifying exactly what constitutes a false positive versus a false negative across automated matching systems to benefit all SROs and market participants. These accumulated lessons will stack up within a shared, federated knowledge base, allowing SROs to fine-tune their risk appetites, update control programs, and spot sophisticated algorithmic abuses that a single, entrenched auditor naturally misses.

(45) Whether order-priority subordination is technically and operationally feasible across the matching systems in use, and whether it should be required, replaced by a volume- or value-based cap, or supplemented by such a cap, including a phased or sunset cap. Could an exchange or market maker circumvent the spirit of the requirement by switching to pro rata caps?
Order-priority subordination is technically and operationally feasible. Modern matching systems support multiple execution algorithms (price/time priority, pro rata, size-based, hybrid). Implementing an additional rule that subordinates priority for orders from affiliated entities is technically feasible. Operational burdens (identify affiliation at order entry, maintain audit trails, test and certify) are nontrivial. Pushbacks are merely excuses because they are unprofitable

compared to the lucrative profits vertically integrated platforms are making currently. See below table for a comparison of the pros and cons with the Volume- or Value-based cap / Pro-rata cap or pro-rata allocation approaches:

	Primary Effect	PROS	CONS
Order-priority subordination	Affiliated orders lose priority behind unaffiliated orders at same price	Directly targets the execution priority advantage; preserves price/time fairness	Needs robust affiliation tagging, Complexity depends on the venue's architecture
Volume- or value-based cap	Limits share of executed volume/value that an affiliate can take	Easiness to measure and implement but limited effect on economic concentration	Caps can be set too high/low; may require phased/sunset calibration; could push activity off-exchange
Pro-rata cap or pro-rata allocation	Allocates fills proportionally among participants at a price level	Limit single-player dominance at a price level but high circumvention risk	Can be structured to favor affiliates if they supply more size; ineffective to address priority advantage

An exchange or market maker can circumvent using a pro-rata cap. If regulators require subordination but allow exchanges to choose allocation methods, an exchange could argue that pro rata allocation already mitigates priority advantage — while in practice it may simply reallocate advantage to those who can post more size (often affiliates or internalizers). Quoting strategies, displayed size, use of hidden orders, and routing choices will change overtime to maximize fills under the new allocation regime.

Order-priority subordination should be the baseline rule because it directly neutralizes the core mechanism by which affiliated liquidity gains an unfair execution advantage—ensuring that affiliated orders queue behind unaffiliated orders at the same price preserves price/time fairness, reduces incentives to game displayed size or route flow off-book, and is inherently more robust to sophisticated AI-driven strategies than blunt volume or value caps; by making the allocation rule itself neutral and transparent, regulators can protect market integrity while relying on targeted surveillance and limited, well-calibrated backstops only where necessary, rather than tolerating structural allocation designs that permit affiliates to retain de facto priority through size, internalization, or algorithmic workarounds.

To prevent affiliates from preserving their advantage by routing liquidity to alternative venues, internalizing flow, or executing OTC, the Commission should make subordination a market-wide obligation supported by mandatory affiliation tagging, consolidated reporting, and cross-venue surveillance so that every execution – on-exchange, internalized, or OTC – is counted toward an affiliate's priority and economic share; exchanges should be required to treat internalized fills and off-book matches as part of the affiliate's executed volume for compliance purposes, and regulators must mandate real-time feeds of affiliate flow metrics into a consolidated surveillance system with AI-driven anomaly detection to spot routing arbitrage and order-splitting schemes; additionally, require pre-trade disclosure of affiliation status, prohibit simple re-labelling of orders or proliferation of affiliate IDs, empower CFTC to impose remedial measures and penalties for circumvention so that subordination cannot be nullified by shifting execution venue or exploiting algorithmic routing.

(46) Where an affiliate is the sole source of liquidity in a product and the affiliate's orders face no competing orders against which to be subordinated, whether the remaining conditions adequately protect customers or whether additional protections should apply.

An affiliate is the sole source of liquidity is a RED Flag. While a vertically integrated, direct-clearing DCO model is not a literal Ponzi scheme – because it is not built on a fraudulent ledger using new investor money to pay fake returns to old investors – it can exhibit Ponzi-like structural dynamics when trading volume is artificially circulated. If an integrated platform relies on an internal proprietary trading affiliate or AMM to buy and sell contracts against itself to fake volume,

the system becomes a closed-loop liquidity trap. The **CFTC,** the **Interagency Risk Committee (IRC)** in particular, should NOT ignore these structural **blind spots**.

Hypothetically, the platform uses its internal bots to drive up trading activity and price actions, creating a **Valuation Mirage**. Retail users see high volume, assume a contract has real fundamental depth, and deposit cash. Yet, even if every single contract is technically **100% pre-funded** under regulatory mandates, the underlying internal affiliate may be backing hundreds of highly correlated positions across the exchange using a single, centralized pool of corporate cash – introducing a structural layer of **Hidden Leverage**. If the platform deploys a flawed **portfolio compression** cycle to prematurely terminate or ***"flip"*** those offsetting internal bot trades, it artificially shrinks its reported *gross risk* metrics. When an operational hack occurs, this illusion of deep liquidity vanishes instantly. The platform cannot fulfill customer payouts because the actual settlement capital was trapped in a circular loop of internal affiliate trades, ultimately leaving direct retail participants holding nothing but an unbacked, illiquid ledger.

Because vertically integrated platforms operate via closed-loop stacks, a failure creates a fog of war regarding where the losses reside.[19] If a direct-clearing DCO fails due to a flawed automated portfolio compression cycle or an internal bot-trading glitch, the broader market will not instantly know if the problem was unique to that platform or systemic to automated risk engines. Fearing a similar hidden structural vulnerability, institutional participants will proactively execute pre-emptive asset withdrawals and pull liquidity from other platforms that utilize similar integrated clearing models or automated netting logic. This asymmetric information panic turns a localized operational glitch into a system-wide liquidity drain.

Vertically integrated platforms must demonstrate through algorithmic simulation that its data and routing architecture naturally prevents house-style spread widening, oracle manipulation, and mempool exploitation (automated bots that monitor public transaction queues) in Maximal Extractable Value (MEV) by preferred market makers during high-volatility spikes. If the simulation reveals that the platform's vertical loop allows it to run its brokerage arm as a loss-leader to front-run retail order flow, certification should be denied. This replaces formal endorsements from costly law firms with actual, code-governed risk controls.

(47) What other conditions the Commission could set to mitigate the potential conflicts present with an affiliate market maker trading on exchange while preserving the ability for exchanges to use affiliate market makers for bootstrapping purposes.

See our response to Q45 and Q46. In addition, we strongly encourage the Commission to utilize the empirical Whelan Paper approach[6] annually to calculate trading frictions of Prediction Markets and clear out the favorite-longshot biases that systematically exploit retail traders.

(48) Whether a capital-independence condition should be applied and, if so, how it can be implemented and verified where a common parent funds both the exchange and the affiliate. Is it possible for the DCM to determine whether the trading affiliate is independently funded? How would it do so? Is it possible for any trading affiliate to actually be financially independent from an affiliated exchange?

We have reservation with a "*capital-independence*" condition. No affiliate of a commonly-owned exchange is truly financially independent unless the parent erects legally binding, enforceable structural separations akin to those used in bank holding companies – and even then, independence is limited.

As mentioned in our response in Q1, while the Commission must crack down on vertical integration abuses, copying the quantitative equity metrics of the Dodd-Frank Act's Volcker Rule (12 CFR Part 248) and Sections 23A and 23B of the

[19] https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement121823c

Federal Reserve Act does not work. These prudential regulatory frameworks rely on quantitative equity metrics (such as a baseline 5%, 10% ownership stake) to draw bright lines around corporate affiliation or (25%) controlling interest. While a corporate equity limit offers simple administration for legacy commercial banking asset classes, it is fundamentally unsuited for the unique microstructural dynamics of modern algorithmic platforms.

In automated ecosystems, systemic conflict and structural leverage are not driven by capital allocation percentages on a cap table; they are driven by information velocity, shared code base architecture, execution speed, and internal data advantages. An entity holding a minor, 3% passive partial ownership stake can – via a shared technology infrastructure or custom-designed algorithmic matching modules – gain massive, predatory latency advantages over non-affiliated retail participants. Conversely, an institutional investor holding a 15% passive equity stake solely for capital appreciation, without any seat on the board or access to order book telemetry, poses little to no threat to market integrity. However, beware of vertically integrated platforms seeking regulatory workarounds to bypass the FCM layer and force retail users into the highly problematic DRCM, where retail traders clear directly against a DCO ledger, losing their protected "*Public Customer*" status.

To neutralize loop vulnerabilities without causing administrative cost bloat or creating data-privacy honeypots, the Commission should maintain its flexible, power-to-direct formulation, looks beyond a static entity checklist to also scrutinize: product bundling, rebate incentives, and other exploitative behaviors and other distortions that impairs the **neutrality** of an exchange or anticompetitive behaviors that reduces choice / shrinking the diversity of market participants.

(49) Whether Commission Regulation 38.604 is the appropriate vehicle for financial surveillance of an affiliate market maker, which carries no customer funds, or whether a tailored financial-resources standard would be preferable.
We doubt the effectiveness of the proposed 38.604. It does little to mitigate affiliate-related conflicts. The core problem with the CFTC's proposed cross-reference to Regulation 38.604 is that it tries to graft a customer-fund-protection framework onto entities that do not hold customer funds. By carving out all customer-fund obligations, the rule leaves only a thin shell of "*financial-surveillance-style*" check – periodic financial reporting and position monitoring – which DCMs already perform under existing market-surveillance rules. This transforms the affiliate-oversight requirement into a procedural exercise rather than a substantive safeguard. The Commission's intent is to mitigate conflicts arising from affiliated market makers, but the mechanism it chose is misaligned with the actual risk profile of proprietary affiliates and does not meaningfully enhance customer protection.

A more effective approach is structural rather than supervisory. Customer-fund risk originates at the FCM level, not with affiliates, and surveillance cannot compensate for weaknesses in how customer assets are held. Placing customer funds in an independently controlled escrow trust – supported by a distributed network of banking institutions – would create true bankruptcy remoteness, eliminate commingling and residual-interest timing risk, and reduce operational and liquidity vulnerabilities. This model mirrors global best practices in client-money regimes and directly addresses the vulnerabilities 38.604 was designed to mitigate. In contrast, the proposed rule's reliance on a hollowed-out cross-reference produces compliance activity without delivering meaningful protection.

The Commission should establish a clear, alternative compliance safe harbor for the **100% Pre-Funded Fiduciary CPO-Matchmaker Model**. This vehicle replaces the manual governance loops of Regulation 1.52 with code-governed capital physics and absolute asset isolation. Please see earlier section and our response to Q1.

(50) Whether the standard, scope, and frequency of the certification required by proposed Commission Regulation 38.852(c)(2)(iii) is appropriate, and whether the rule should state expressly that an affiliate market maker for which the certification is not provided ceases to qualify as an affiliate eligible to trade on the DCM.

The annual certification in proposed § 38.852(c)(2)(iii) turns substantive oversight into a predictable, paperwork-driven ritual. Requiring an RSP to certify annually – with supporting documentation – that an affiliate market maker "*satisfies the conditions*" and that the DCM is following its conflicts procedures creates a recurring compliance burden that is easy to satisfy with routine reports and legal sign-offs but does little or nothing to reduce real conflicts or protect customers. In practice it privileges firms that can pay for expensive outside counsel and consultants to prepare polished certifications, while producing little new transparency or enforcement leverage; the result is a box-checking exercise that risks becoming a pay-to-play compliance market rather than a meaningful public-interest safeguard.

A better regime would shift from ritual certification to outcome-focused incentives and structural protections. Reward RSPs and DCMs that surface and remediate affiliate misconduct (through safe-harbor incentives, whistleblower channels, or performance-linked oversight credits), adopt materiality thresholds and targeted, risk-based audits, and require structural segregation of customer assets (e.g., independent escrow trust accounts across a distributed banking network). That combination – real incentives for detection, focused supervisory tools, and bankruptcy-remote custody – would reduce perverse incentives created by vertical integration far more effectively than an annual certification that mainly benefits big law and consulting shops.

(51) How "independent" should be defined for the third-party RSP, and whether the framework in Commission Regulation 38.606 affords sufficient capacity for this function.

The CFTC may draw concepts from the SEC's definition of "*independent*" set out in Rule 2-01 of Regulation S-X, together with related provisions in Schedule 14A, Item 9, and the Securities Exchange Act of 1934. We have reservations with bureaucratic procurement procedures; RSPs and DCMs should instead be rewarded if they can surface and remediate affiliate misconduct, see our response to Q50.

(52) Whether the interruptive, affirmatively acknowledged per-trading-session notice in proposed Commission Regulation 38.852(c)(3) is warranted, or whether a lighter regime—public disclosure together with a one-time disclosure at account opening or before a customer first trade—would adequately protect customers at lower cost, and whether the two approaches should be combined.

A per session notice is preferrable here to better protect retail participants. There is little to no cost difference between per session notice and a one-time approach if e-delivery / online disclosure is allowed.

(53) Whether the notice should be delivered by members under exchange rule or split so that the exchange delivers directly for direct-access orders while the FCM or other interface operator delivers for intermediated orders.

The disclosure compliance burden should be borne by the client facing brokerage business unit whether it is spin-off from vertically integrated platform or not.

(54) Whether the notice should attach the first time a customer trades a product in which an affiliate market maker is active or on another basis—rather than on a per-session basis—and the operational burden of each alternative approach.

See our response to Q52.

(55) The Commission requests that DCMs on which an affiliate market maker trades, and any other market participant with relevant information describe:

i. The number and identity of DCMs on which an affiliate currently trades for its own account, the products involved, and the affiliate's share of liquidity or volume in those products.
No comment for this part i at this time.

ii. The terms on which any such affiliate currently trades, including any market maker or liquidity provider agreement, quoting obligations, position limits, and the source of the affiliate's capital.
No comment for this part ii at this time.

iii. The nature and estimated cost of modifying trade-matching systems to implement order-priority subordination.
Implement order-priority subordination is technically and operationally feasible. Complexity would depend on the venue's architecture. For single venue to implement Order-Priority Subordination, the rough estimate cost is approximate $350,000 to $750,000 upfront CapEx + $120,000 to $250,000 annual OpEx per venue. We do not currently have an estimate for Market-Wide Subordination Network if the Commission may choose to adopt. See our response to Q45.

iv. The nature and estimated cost of engaging an independent third-party RSP to perform the surveillance, monitoring, and certification required by proposed Commission Regulation 38.852(c)(2), including any market-capacity considerations. Please identify who are the most likely entities to perform this independent third-party RSP role. Would it most likely be NFA? Would other entities enter the market in this capacity?
The Commission's Cost-Benefit Analysis models this requirement as an incremental technology and governance outlay that mirrors the core resource and staffing dynamics of the Regulation 1.52 amendments, with a specific focus on the five vertically integrated platforms currently expected to be affected. To comply with the surveillance and independent certification mandates under 38.852(c)(2), a venue must establish continuous, real-time data-formatting and API pipelines to securely clean, wrap, and stream petabytes of real-time "*data-in-motion*" logs to an outside commercial vendor, which acts as an operational data buffer to cut off closed-loop corporate leaks. Because a commercial tech vendor relies on the vertically integrated exchange for its contract revenue, a flat, non-rotated arrangement introduces commercial leverage risks that can degrade audit quality. To counteract this "*pay-to-play*" vulnerability and fully justify the related operational resources, staffing, and funding of the NFA or other DSROs, any effective implementation requires a compulsory, time-bound peer-rotation schedule, which adds incremental procurement, legal vetting, and technology migration expenses every time a new RSP is onboarded. While a substantial volume of elections could place heavy capacity demands on an RSP, implementing a mandatory rotational "*peer-review*" framework ensures that every single exam concludes with shared, structured lessons learned regarding false positives and false negatives. These are our thoughts at this time. A comprehensive cost estimate requires further detailing of the technical specifications.

v. The nature and estimated cost of implementing the per-trading-session disclosure across members and non-member order-entry interfaces, and of any lighter disclosure alternatives.
The rough estimate cost is approximate $150,000 to $300,000 upfront CapEx + $50,000 to $120,000 annual OpEx for implementation of a per-trading-session conflict disclosure across both member and non-member order-entry interfaces turn on the engineering scope of the mandate. Assuming alternation of most if not all front-end interface, API, and GUI to handle dynamic, session-level notifications.

vi. The Commission requests comment on the time DCMs, SEFs and applicable affiliates would need to comply, and on whether the rule should provide a transition period for affiliate trading arrangements in existence on the effective date.
No comment for this part vi at this time.

C. Proposed New Commission Regulation 38.853—Board Composition, Regulatory Oversight Committee, and Disciplinary Panels

(56) Whether the Commission's understanding that most, if not all, DCMs already comply with the acceptable practices is correct.

No comment for Q56.

(57) Whether the Commission's estimation that costs of compliance are likely to be minimal is correct. Will costs be different for new registrants as compared to currently registered DCMs?

No comment for Q57.

(58) Whether any of the requirements that the Commission proposes to codify should be modified.

We believe testing is more effective and efficient to surface and remediate affiliate misconduct than interfering with Board composition. Allowing the second line of defense to completely bypass the C-Suite would create an adversarial environment that drives high staff turnover, generates duplicative internal conflicts, and funnels only large dollar exposures to the Board while neglecting real-time operational alerts. In high-velocity digital native and algorithmic markets, a control breach takes a fraction of a second; a rigid vertical reporting bypass introduces significant operational friction and delays immediate risk treatments precisely when a platform needs them most to prevent a systemic market freeze. See our response to Q34.

(59) Whether any additional requirements should apply with respect to a DCM's board of directors or ROC.

No comment for Q59.

IV. DCO-Affiliate Clearing Member—Proposed Amendments to Commission Regulations 39.2, 39.21, and 39.25

(60) Is the proposed definition of "affiliate clearing member" appropriately calibrated? Should it be broadened or narrowed? Should "control" be defined differently—for example, by reference to a specific ownership threshold or by reference to specific contractual or governance-based indicia of control? Should the Commission include a presumption of control based on ownership of voting securities at a specified percentage?

The proposed definition of "*affiliate clearing member*" and its related "*control*" formulation are mis-calibrated and must be broadened. Aggressive platforms routinely use their intermediate entities or brokerage arms as loss-leaders, offering deep clearing discounts and special rebate treatments to lock in their own preferred trading desks and internal proprietary bots. When an exchange or AMM can flick between acting as an agent and a proprietary counterparty, the neutral intermediary turns into a Risk Transformer, mimicking the severe conflict-of-interest violations seen in securities market order-routing failures. Leaving the perimeter bound to a narrow, traditional corporate definition completely ignores how product bundling and cross-subsidization operate as an existential macro-prudential blind spot across modern financial architectures. The Commission should look beyond a fixed ownership percentage presumption and instead define control by reference to specific, operational, contractual, and governance-based indicia.

(61) Is the principles-based formulation in proposed Commission Regulation 39.25(d) appropriately calibrated? Should the rule text instead enumerate additional specific procedures the DCO must adopt? If so, which procedures, and why?

See our response to Q60.

(62) What elements should the Commission address in guidance accompanying Commission Regulation 39.25(d)? Is the guidance contemplated for DCMs and SEFs and described above sufficient? Should other elements be addressed? Should the guidance address the role of independent directors or independent risk management committees in decisions affecting an affiliate clearing member?

Not sufficient, see our response to Q60.

(63) Should the Commission prohibit a DCO from having an affiliate clearing member? If so, should any such prohibition be subject to grandfathering for existing affiliate clearing members?

Coinbase Clearing LLC, Kalshi Klear LLC, Bitnomial Clearinghouse, LLC, and Rothera Exchange, LLC (Formerly LedgerX / FTX US) are DCOs that currently have an operational or registered affiliated clearing member. We are concerned that DCO maintaining an affiliated clearing member is the regulatory equivalent of the left hand dealing directly with the right hand. In a sound financial market, a clearinghouse must operate as a strictly neutral, arm's-length guarantor of trades, serving as the counterparty to every seller and the seller to every buyer. Blurring this boundary destroys the clearing perimeter.

While a vertically integrated, direct-clearing DCO model is not a literal Ponzi scheme – because it is not built on a fraudulent ledger using new investor money to pay fake returns to old investors – it can exhibit Ponzi-like structural dynamics when trading volume is artificially circulated. If an integrated platform relies on an internal proprietary trading affiliate or AMM to buy and sell contracts against itself to fake volume, the system becomes a closed-loop liquidity trap.

Hypothetically, the platform uses its internal bots to drive up trading activity and price actions, creating a "***Valuation Mirage***.**"** Retail users see high volume, assume a contract has real fundamental depth, and deposit cash. Yet, even if every single contract is technically 100% pre-funded under regulatory mandates, **the underlying internal affiliate may be backing hundreds of highly correlated positions across the exchange using a single, centralized pool of corporate cash – introducing a structural layer of Hidden Leverage**.

If the platform deploys a flawed portfolio compression cycle to prematurely terminate or "*flip*" those offsetting internal bot trades, it **artificially shrinks its reported gross risk metrics.** When an operational hack occurs, this illusion of deep liquidity vanishes instantly. The platform cannot fulfill customer payouts because the actual settlement capital was trapped in a circular loop of internal affiliate trades, ultimately **leaving direct retail participants holding nothing but an unbacked, illiquid ledger**.

Because vertically integrated platforms operate via closed-loop stacks, a failure creates an immediate **fog of war regarding where the losses reside**. If a direct-clearing DCO fails due to a flawed automated portfolio compression cycle or an internal bot-trading glitch, the broader market will not instantly know if the problem was unique to that platform or systemic to automated risk engines. Fearing a similar hidden structural vulnerability, institutional participants will proactively execute pre-emptive asset withdrawals and pull liquidity from other platforms that utilize similar integrated clearing models or automated netting logic. **This asymmetric information panic turns a localized operational glitch into a system-wide liquidity drain**. The Commission should prohibit a DCO from having an affiliate clearing member and mandate the above mentioned DCOs to spin-off their clearing member business.

(64) The Commission has not proposed prescriptive requirements addressing the exercise of DCO discretion in management of situations where an affiliate clearing member is in financial distress or default. Should the rule or guidance address discretion with respect to these situations specifically—for example, by requiring that decisions to declare an affiliate clearing member in default, to grant any exemption from auto-liquidation rules, or to depart from the DCO's default-management playbook with respect to an affiliate clearing member be documented, reviewed by a designated independent committee, and reported to the Commission?

Thanks for pointing out the risk of financial distress or default. Heed the lesson from the collapse of FTX. Again, the Commission should prohibit a DCO from having an affiliate clearing member.

(65) Should the rule or guidance specifically address margin-setting and risk-management discretion with respect to an affiliate clearing member?

Instead of prescriptive rules or guidance on margin-setting and risk-management discretion, the Commission should prohibit a DCO from having an affiliate clearing member.

(66) Should the Commission require a DCO with an affiliate clearing member to maintain additional financial or liquidity, or have "skin-in-the-game" resources beyond those required of DCOs without an affiliate clearing member, as some commenters have suggested? Should any such requirement be calibrated to the affiliate clearing member's share of the DCO's volume, open interest, or risk exposure? What costs, benefits, and competitive consequences would such a requirement entail?

We caution the Commission that additional liquidity resources and "*skin-in-the-game*" capital – or even regulatory fines and enforcement settlements – may be viewed by vertically integrated platforms as nothing more than standard costs of doing business. Bearing these "*compliance burden*" or paying penalties allows them to sustain the unfair advantages that fuels exploitative behaviors, ultimately compromising market integrity and weaken the global dominance of U.S. capital markets. Again, the Commission should prohibit a DCO from having an affiliate clearing member.

(67) Should the Commission require that any additional financial resources sourced from the DCO or the affiliate clearing member be allocated to losses arising from a default of the affiliate clearing member before non-affiliate clearing members' guaranty-fund contributions are drawn upon? Should the affiliate clearing member's guaranty-fund contribution be subordinated in the default waterfall?

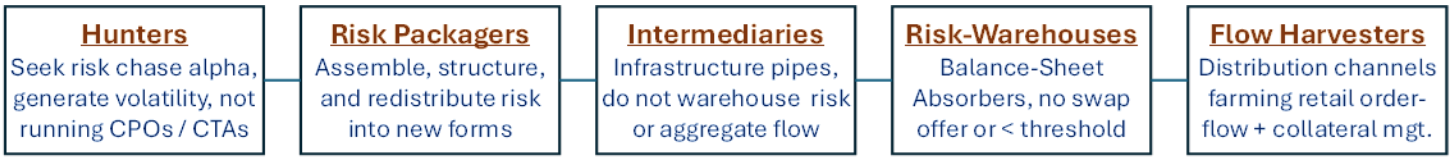
The U.S. derivatives framework is built on a fundamentally different legal philosophy anchored to the **statutory separation** mandated by the **Commodity Exchange Act** (CEA) – i.e., a DCM (neutral intermediary), a DCO (market risk absorber), and an FCM (customer exposure). It views the unbundling of these roles as a non-negotiable firewall. The U.S. framework operates on the foundational principle that if a trading venue fails or suffers a massive cyberattack, that failure must be segregated so it does not down the clearinghouse or the client's funds. The broker must be kept separate from the exchange to act as a firebreak. This together with the **default waterfall model**[9] serve as a critical financial stability mechanism to achieve resiliency, value-chain efficiency, low transaction costs, and U.S. structural advantage over other jurisdictions. Further to our response to Q60, Q63, and Q66, we reiterate our concerns raised in our July 27 comment letter[4] about structural conflict and systemic risk:

- The Common Clearing Member Network (The Capital Drain);
- Concentration of Settlement Bank and Custodian Exposure);
- Cross-Margining and Correlated Portfolio Fracturing;
- Psychological Panics and "*Asymmetric Information*" Runs;
- Mismatch Mimics Ponzi Dynamics (The Liquidity Circulation Trap).

We want to emphasis:

a) Under normal Dodd-Frank and CFTC rules, an intermediary must maintain an arm's-length separation to ensure **fair execution**. In a vertically integrated loop, the affiliated FCM ★ is highly incentivized to push customer order flow directly to its own exchange matching engine or its preferred market-making partners.

b) In a distorted derivatives ecosystem, the "false-beard" platforms[20] are winning by exploiting a structural imbalance in how regulations are applied across the five-layers.



Bad actors / foreign adversaries play across markets and payment systems simultaneously. All five Dodd-Frank regulatory agencies must break down silos and work in unison to safeguard US financial stability.

With all due respect to the CFTC, other agencies in the **Financial Stability Oversight Council (FSOC)** also have authority to audit and evaluate DCMs and DCOs using specific systemic risk metrics under Title VIII of the Dodd-Frank Act to catch the hidden circulation risks before they trigger multi-exchange contagion.[21]

When analyzing DCOs designated as **Systemically Important Financial Market Utilities (SIFMUs)**,[22] the FSOC focuses on three macro-metrics:

The Common Clearing Member Overlap Index (CCMOI)

The FSOC does not evaluate clearinghouses in isolation; it maps the concentration of shared institutional networks.

The Metric: The CCMOI measures the exact percentage of clearing members that hold simultaneous memberships across multiple DCOs (e.g., matching a firm's exposure at the OCC, CME, and a retail platform).

The Vulnerability Target: If the index reveals that a small cluster of 5 to 10 market-making firms provide more than **70% of the daily liquidity** across multiple clearinghouses, the FSOC flags the network as highly fragile. A localized failure at one small direct platform will trigger an automatic margin-drain or credit freeze that forces those specific firms to pull liquidity from the larger SIFMUs.

The Settlement Bank Interconnectedness Ratio (SBIR)

This metric evaluates the concentration of the physical cash pipes handling end-of-day money movements.

The Metric: The SBIR calculates the volume of daily margin, performance bonds, and settlement cash flowing through specific **Settlement Banks** relative to those banks' total tier-1 liquid capital.

The Vulnerability Target: If a retail direct DCO and a massive traditional commodities exchange route their cash through the exact same commercial depository bank, the FSOC calculates the **"Co-Insolvency Probability."** If an operational cyber-breach locks up the ledger files of the smaller retail exchange, the FSOC uses the SBIR to model whether the operational gridlock will bleed into the shared bank's clearing account, freezing the settlement cycles of the broader financial system.

Net-to-Gross Exposure Ratios and Compression Tracking

To ensure that platforms are not using post-trade netting to mask massive system-wide vulnerabilities, the FSOC audits the structural density of **compressed portfolios**.

The Metric: The FSOC tracks the delta between **Gross Notional Exposure** (the absolute total value of all open contracts) and **Net Notional Exposure** (the value remaining after positions are compressed and canceled out).

The Vulnerability Target: If a platform reports a near-zero net exposure but maintains a massive gross exposure fueled by rapid internal bot trades, the FSOC flags it for **"Risk Transformation Arbitrage."** The council applies algorithmic stress tests

[20] https://digitalcommons.chapman.edu/cgi/viewcontent.cgi?article=1031&context=philosophy_articles ; https://www.econ.uzh.ch/dam/jcr:ffffffff-9758-127f-ffff-fffffcd18b65/Fehr_Fiba_in_Analyse_Kritik_73-84.pdf
[21] https://oig.treasury.gov/system/files/OIG_Sorter/CIGFO_AUDIT_71713.pdf
[22] https://www.jonesday.com/en/insights/2023/05/fsoc-proposal-could-bring-back-nonbank-designation

to model what happens if a bankruptcy court voids those compression cycles right before a platform's collapse, forcing the sudden resurrection of billions in gross liabilities that can break the clearing house's default resources.

The Federal Reserve's Ultimate Jurisdiction Over Title VIII (SIFMUs)

Under **Title VIII of the Dodd-Frank Act**, the FSOC has the authority to designate critical clearinghouses as **SIFMUs**.[23] Once a clearinghouse achieves or threatens to impact macro-stability, the **Federal Reserve Board of Governors gains backstop supervisory authority** alongside the CFTC. If the CFTC unilaterally allows direct retail clearing platforms to scale up without consulting the Fed, it compromises the Fed's ability to monitor systemic liquidity pipelines. The Fed's primary mandate is to protect the banking system from sudden credit or depository strains, meaning any CFTC rule that shifts un-intermediated retail asset pools into shared settlement commercial banks requires joint prudential authorization.

Historical precedents demonstrate that the Federal Reserve leverages **statutory boundaries, macroprudential banking powers, and Interagency safe harbors** to legally force the renegotiation, delay, or structural containment of CFTC initiatives that threaten systemic liquidity.[24]

The Commercial Settlement Bank Contagion Loop

As direct-clearing DCOs eliminate the FCM broker buffer, they must interface directly with commercial banks to process real-time retail cash movements. These depository banks are strictly supervised by the **Office of the Comptroller of the Currency (OCC)** and the **Federal Reserve**; **Prudential Bank Risk** are outside scope of the CFTC.[25] If a retail DCO suffers a sudden operational collapse, an algorithmic trading glitch, or a massive cyber exploit, the resulting frantic attempt to freeze or claw back assets occurs inside the commercial banking ledger. This **hidden risk transfer** instantly transforms a specialized "CFTC derivatives issue" into a **prudential bank liquidity event** that the OCC and Fed must manage to prevent a localized banking run.

The FDIC's Clearing Member Resolution Paradox

The **Federal Deposit Insurance Corporation (FDIC)** is tasked with executing the **Orderly Liquidation Authority (OLA) under Title II of Dodd-Frank** to wind down failing systemically important financial institutions.[26] In a traditional crisis, if a major market-making firm faces insolvency, the FDIC and the Fed work together to wind down the firm while its intermediate FCM structures shield retail client assets.[27] If a direct-clearing DCO collapses, the thousands of retail users are legally categorized as direct **Clearing Members**. The FDIC's systemic resolution tools are designed to handle complex institutional counterparty netting, not thousands of individual retail human accounts tangled inside a central counterparty's liquidation estate. The CFTC acting in a silo fails to provide the FDIC with the operational playbook needed to resolve a direct-to-consumer infrastructure collapse.

The Loss of Cross-Market Systemic Telemetry

Prudential regulators monitor the macro-economy by tracking bank capital adequacy and large broker-dealer exposures. By permitting vertically integrated platforms to bypass traditional brokers, the CFTC restricts vital transaction telemetry from entering the broader prudential surveillance data pool. Because banking regulators cannot easily monitor where the

[23] https://www.brookings.edu/articles/what-if-a-clearinghouse-fails/
[24] The Interagency Blocking of Over-the-Counter (OTC) Derivatives Regulation (1998) ; Title VIII SIFMU Mandates and Banking Rails Containment (Post-2010) ; The Fed-Treasury Veto Over Joint Cleared Swap Rules
[25] https://www.sullcrom.com/insights/memo/2026/June/OCC-FDIC-Propose-Bank-Secrecy-Act-Sanctions-Compliance-Standards-Permitted-Payment-Stablecoin-Issuers
[26] https://www.rsfjournal.org/content/3/1/20 ; https://www.brookings.edu/articles/a-primer-on-dodd-franks-orderly-liquidation-authority/
[27] https://www.isda.org/a/YjsgE/ISDA-Responds-to-CFTC-on-Clearing-Member-Funds-Protection.pdf

compressed, un-intermediated risk is shifting, they cannot calculate true system-wide leverage, creating a dangerous information gap that undermines the core structural goals of the Dodd-Frank Act.

The Need for an Interagency Framework

This macro-prudential reality proves that the direct-clearing debate has outgrown the CFTC's solitary jurisdiction. To protect market stability, the CFTC must abandon case-by-case staff no-action letters and work directly through the **FSOC and the Interagency Risk Committee** to build a unified framework. This joint approach must reconcile the platform efficiencies of the CFTC with the strict, systemic safety standards of the nation's banking regulators.

Solving the Conflict Concerns with an Enhanced Fiduciary CPO-Matchmaker Model

As outlined in our August 24 comment letter,[3] if the CFTC can create a safe harbor where event contracts can be packaged inside our suggested alternative of a 100% pre-funded Series LLC structured managed by a CPO, and exempting such fiduciary CPO-Matchmaker – that acts as a passive, parametric insurance pool – from mutualized banking default funds, we think it would address prudential regulators' concerns.

By utilizing general exemptive and joint rulemaking authority under Section 4(c) of the CEA, policymakers should establish a safe harbor for the **100% Pre-Funded Fiduciary CPO-Matchmaker Model**. We urge the Commissions to utilize their general exemptive and joint rulemaking authority under §4(c) of the CEA and §§13(n), 15F, and 36 of the SEA of 1934 to codify this alternative compliance pathway:

- **Absolute Asset Isolation:** Every account functions as an independent, legally segregated "*series cell*" under CFTC Rule 4.20, meaning assets and wagers cannot touch or cross-collateralize.
- **Double-Layered Fiduciary Protection:** Operators owe a federal fiduciary duty under Part 4 of the CEA alongside state-level corporate duties, strictly protecting participants from the conflicts native to exchange architectures.
- **Tax Simplification:** Bypasses K-1 routing to automate earnings reporting via standard Form 1099-B templates.

The CPO model registers a net-zero risk signature across the four core-metrics of prudential oversight:

- **Eliminating Systemic Credit Risk:** Leverage is programmatically impossible because contracts require 100% upfront pre-funding, rendering mutualized banking default funds obsolete.
- **Eradicating the "Valuation Mirage" via Anti-Bot Policies:** Direct Retail Clearing models are vulnerable to secret internal affiliate algorithmic trading bots that fabricate activity and widen spreads. The enhanced CPO model mandates a ban on affiliate algorithmic bots to eliminate artificial volume noise and anchor price discovery to objective third-party oracles.
- **Orderly Wind-Down & Asset Isolation:** Client assets sit in a distinct trust separate from the operator's capital, isolating cash from corporate creditors if the startup goes bankrupt.

(68) Should the Commission impose a cap on the share of a DCO's clearing volume attributable to an affiliate clearing member? If so, how should the cap be calibrated, and how would compliance be administered?

Imposing a flat percentage cap on the share of a DCO's clearing volume attributable to an affiliated clearing member is ineffective because it relies on an obsolete, quantitative volume metric that completely fails to mitigate the real-time operational advantages, information velocity, and data proximity native to automated market microstructure. A rigid threshold operates as a blunt instrument that can easily be bypassed by sophisticated algorithmic trading loops. The affiliate can dynamically adjust its quoting algorithms throughout the day to engineer a "*Valuation Mirage*" – a false illusion of deep fundamental market depth to lure users into depositing cash, while the underlying affiliate backs hundreds of highly correlated positions across the venue using a single, centralized pool of corporate cash, introducing massive layers of Hidden Leverage that a volume cap completely fails to flag.

(69) Is the proposed disclosure requirement in Commission Regulation 39.21(c)(9) appropriately calibrated? Should the Commission also require disclosure of (i) the upstream ownership chain of the affiliate clearing member, (ii) the specific conflicts-management measures the DCO has adopted, or (iii) the financial and operational interconnections between the DCO and the affiliate clearing member? Should the Commission expand disclosure to reach partial (non-controlling) ownership relationships?

We doubt the effectiveness of disclose requirements in 39.21(c)(9). These information about upstream ownership chain of the affiliate clearing member, (ii) the specific conflicts-management measures the DCO has adopted, or (iii) the financial and operational interconnections between the DCO and the affiliate clearing member should be summons for immediate scrutiny now before it is too late.

(70) Do any of the concerns that animate this Proposal change to the extent a DCO is a systemically important derivatives clearing organization ("SIDCO")? For example, are conflict of interest concerns greater with respect to a SIDCO with an affiliate clearing member as compared to a DCO with an affiliate clearing member? If so, should the Commission impose additional safeguards or limitations with respect to SIDCO-affiliate clearing member relationships? Should the Commission consider a prohibition on a SIDCO having an affiliate clearing member?

Regardless of systemically important derivatives clearing organization (SIDCO) or regular DCO, clearinghouses implicitly leverage or orchestrate the entire US financial system to provide capital to members while banks provide liquidity, the FED serves as backstop and provide settlement infrastructure. Clearinghouses do not rely solely on their own balance sheets but uses a default waterfall model to add layers of protection from multiple sources. Clearing members post guaranty fund capital, provide liquidity lines, absorb losses through assessments, provide intraday credit, backstop settlement failures. Thus, the clearinghouse is effectively leveraging the balance sheets of the largest U.S. financial institutions to guarantee trades, enforce margin calls, settle billions daily, and withstand member defaults.

Clearinghouses do not have access to the FED, but through intraday credit from clearing banks, this creates an implicit guarantee chain (Federal Reserve → Clearing Banks → Clearing Members → Clearinghouse → Market Participants) with the Fedwire being the ultimate backstop settlement layer. Margining is systemically guaranteed, and this is why U.S. futures markets rarely experience settlement failures and survived multiple crises (e.g., nickel event that traumatized LME). The degradations can collectively challenge the waterfall model. Therefore, all five Dodd-Frank regulatory agencies (SEC, CFTC, OCC, FRB, FDIC) must break down silos and work in unison to safeguard US financial stability.

(71) The Commission requests that DCOs with an affiliate clearing member – and any other DCO, clearing member, FCM, or market participant with relevant information – describe:

(a) The policies, procedures, rulebook provisions, organizational separations, and other measures currently in place to address the conflicts of interest arising from the DCO's affiliation with a clearing member;

(b) The current public disclosures the DCO makes regarding affiliate relationships, the location and prominence of such disclosures, and any additional disclosures the DCO would expect to make to comply with proposed Commission Regulation 39.21(c)(9).

(c) The nature and estimated incremental cost of any change to existing arrangements that would be required to comply with the proposed amendments as currently drafted; and

(d) The nature and estimated incremental cost of complying with each of the alternatives described above.

Challenging the CFTC's broad authority in courts regarding whether the Commission acted ultra vires by permitting DCOs to bypass brokers and accept retail funds presents a formidable hurdle. Yet, other agencies in the Financial Stability Oversight Council (FSOC) also have authority to audit and evaluate DCMs and DCOs using specific systemic risk metrics under Title VIII of the Dodd-Frank Act to catch the hidden circulation risks discussed in Q67 to ensure they would not

trigger multi-exchange contagion. We are afraid the CFTC cannot act in silos to permit DCO and clearing members affiliation without agreement by the other agencies in the FSOC. Spin-off is the appropriate choice here. Information about upstream ownership chain of the affiliate clearing member, (ii) the specific conflicts-management measures the DCO has adopted, or (iii) the financial and operational interconnections between the DCO and the affiliate clearing member should be summons for immediate scrutiny now before it is too late.

V. Public Disclosures by FCMs—Proposed Amendment to Commission Regulation 1.55

(72) Is the proposed revision to Commission Regulation 1.55(k) appropriate? Will the proposed revision result in sufficient FCM disclosures regarding affiliate relationships?

The proposed revision to Reg. 1.55(k) is unlikely to produce consistently sufficient, comparable, and decision-useful disclosures for customers about FCM affiliate relationships. It relies on general disclosure obligations and principles rather than prescriptive content or format requirements. That invites variation in what FCMs disclose and how customers interpret it. Customers need comparable fields and plain-language summaries to evaluate conflicts. The revision does not require line-item disclosure of fees, revenue sharing, or how affiliate relationships affect execution, clearing, or custody. Customers need numeric or categorical indicators.

(73) Should the Commission instead draft and require FCMs to provide their customers with specific affiliate relationship disclosure materials? If so, what should that disclosure say? Should it differ depending on whether the affiliate is a SEF, DCM or DCO?

For the efficiency and effectiveness to comprehend these intertwined relationships of vertically integrated platforms and their affiliates, the disclosure template should be machine-readable (e.g., a short XML/JSON summary) plus a plain-language PDF/HTML for customers. The details should cover the following topics:

A. Identification and basic facts

- **Affiliate name and legal entity identifier (LEI).**
- **Affiliate type:** SEF, DCM, DCO, other (specify).
- **Nature of affiliation:** parent, subsidiary, common ownership, joint venture, contractual control.
- **Date affiliation began.**

B. Activities and services provided to customers

- **Services provided to the customer or to the FCM in connection with customer business:** execution, order routing, matching, clearing, custody, market data, risk management, margining, warehousing, or other.
- **Whether the affiliate acts as a counterparty to customer trades.**

C. Economic relationships and compensation

- **Fees charged by affiliate to the FCM or customer** (presented as ranges or specific schedules).
- **Revenue sharing or referral arrangements** (yes/no; if yes, describe and quantify material flows).
- **Payment for order flow, routing incentives, or rebates** (yes/no; if yes, quantify or describe formula).
- **Any cross-subsidization or cost allocation arrangements** that could affect customer pricing.

D. Execution, routing, and clearing practices

- **Whether the FCM routes customer orders to the affiliate** (yes/no).
- **If yes:** describe routing priority, whether affiliate receives preferential treatment, and whether routing is discretionary or customer-directed.

- **Whether the affiliate provides clearing services** and whether the FCM uses affiliate clearing by default or only with customer consent.
- **Whether the affiliate operates a trading venue (SEF/DCM) and whether the FCM's customers are required or incentivized to use that venue.**

E. Conflicts of interest and mitigation

- **Material conflicts of interest** created by the affiliation (plain language).
- **The FCM's policies and procedures** in place to mitigate conflicts + restricted personnel lists.
- **Whether the FCM has an independent best-execution policy** that applies when routing to affiliates and how it is enforced.

F. Customer consent and options

- **Whether customer consent is required to transact with or through the affiliate.**
- **If consent is required:** how to provide or withdraw consent.
- **If not required:** whether customers can opt out of affiliate routing/clearing and how.

G. Material risks and historical data

- **Plain-language summary of material risks** to customers from the affiliation (e.g., counterparty credit risk, concentration risk, potential for worse execution).
- **Historical metrics** where relevant and available (e.g., percentage of customer orders routed to affiliate over last 12 months; average execution price differential vs. best available venue, if measured).

H. Contact and escalation

- **Designated contact** for questions and complaints about affiliate relationships (name/role/email/phone).
- **Where to find additional documents** (links to agreements, fee schedules, and public filings).

I. Certification and update log

- **Officer certification** that the disclosure is accurate and complete as of a date.
- **Change log** listing material updates and dates.

Core disclosure fields should be identical so customers can compare across affiliate types and across FCMs. However, **emphasis and additional required items** should vary:

- **SEF:** Emphasize **order routing, matching rules, and execution priority**; disclose whether the affiliate SEF offers price improvement or internalization and how that compares to other venues. Require disclosure of **maker/taker fee schedules**, rebates, and any preferential access for the FCM's customers. Disclose whether the SEF's rulebook or access terms differ for affiliate-sourced orders.
- **DCM:** Emphasize **market access, order types, and clearing linkages**; disclose whether the DCM's rules or fee structures create incentives to route to the DCM. Require disclosure of **any exclusive products** or contract terms that could affect customer choice.
- **DCO:** Emphasize **clearing counterparty risk, margining practices, and portability**; disclose whether the affiliate DCO's margin models differ materially from other DCOs and whether the FCM's customers are exposed to affiliate credit risk beyond normal clearinghouse protections. Require disclosure of **default management procedures** and whether the affiliate DCO has any special arrangements with the FCM.

These differences are about **content emphasis and additional required fields**, not separate disclosure regimes. The same template can include conditional fields that appear when the affiliate type is SEF, DCM, or DCO.

(74) Are there any other disclosures that an FCM should be required to make to customers regarding its affiliate relationships?

The Commission may consider the following additional disclosures:

- **Economic Analysis.** We strongly encourage the Commission to utilize the empirical Whelan Paper approach[6] annually to calculate trading frictions of Prediction Markets and clear out the favorite-longshot biases that systematically exploit retail traders; plus, an annual disclosure of aggregate revenue flows between the FCM and affiliate arising from customer activity.
- **Quantitative routing and execution metrics.** Periodic (e.g., quarterly) reporting to customers showing the percentage of orders routed to affiliates, average execution quality metrics versus benchmarks, and price improvement statistics.
- **Material change notice.** Prompt notice to customers and the Commission when a new affiliate relationship is formed or when material terms change.
- **Conflict escalation and remediation reporting.** A summary of material conflicts identified and how they were resolved, with anonymized examples where appropriate.
- **Independent oversight statement.** Whether an independent committee or board reviews affiliate arrangements and conflicts, and a summary of its findings or attestations.

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ANNEX 2 – Data Boiler's response to specific questions about CPOs and CTAs

A. Proposed Regulation 4.13(a)(4)

A1. Is it appropriate for the Commission to endeavor to provide a CPO registration exemption for RIAs operating and advising commodity pools that participate in the commodity interest markets on behalf of sophisticated investors? Why or why not?

The industry welcoming the Commission to provide a CPO registration exemption for registered investment advisers (RIAs) that operate and advise commodity pools for sophisticated investors, provided the exemption is carefully tailored to preserve investor protections, market integrity, and regulatory parity while avoiding duplicative regulation, and we agree with the policy goal.

RIAs already register with the SEC and are subject to fiduciary duties, periodic examinations, compliance program requirements, and disclosure obligations. Requiring parallel CPO registration and overlapping reporting can impose redundant costs and compliance burdens without materially improving investor protection for pools run by regulated RIAs. Proposed Regulation 4.13(a)(4) if adopt would eliminate unnecessary registration can reduce legal, compliance, and operational costs that otherwise flow through to investors, improving efficiency and potentially broadening access to professionally managed commodity strategies. Many RIAs manage multi-asset strategies. An exemption avoids inconsistent regulatory treatment that could distort product design or push managers to structure vehicles in less transparent ways to avoid dual regulation. The key concerns are:

Investor protection gap. The CFTC's rules (e.g., reporting, segregation, position limits, anti-fraud provisions) differ from the SEC's rules. An exemption could leave gaps in disclosure, recordkeeping, or market-conduct oversight if not bridged by appropriate conditions.

Regulatory arbitrage. Managers might re-label or re-structure pools to qualify for the exemption even when the underlying activity or investor base warrants CFTC oversight.

Market risk and systemic concerns. Commodity markets can be volatile and leveraged. Exempting pools without adequate safeguards could increase concentrated positions or leverage that affect market functioning.

Enforcement and information access. The CFTC needs timely access to data and books/records to detect manipulation, wash trading, or other misconduct; an exemption must not impede that access.

To balance benefits and risks, any RIA-CPO exemption should tie to **clear, enforceable conditions**, such as:

- **Limits on activities that can be exempted**
  - Exclude pools that use leverage, engage in significant proprietary trading, or trade in ways that could trigger position limits or market-impact concerns.
  - Exclude pools with affiliated or automated market maker.
  - Exclude pools that solicit retail investors or use broad public solicitation.
- **Investor sophistication and eligibility**
- **Fiduciary and regulatory status**
- **Disclosure and reporting parity**
- **Recordkeeping and access + Anti-fraud and compliance certifications**

An exemption for SEC-registered RIAs advising commodity pools for sophisticated investors **can be appropriate** if it is narrowly tailored, conditioned on demonstrable investor sophistication and adviser oversight, and accompanied by robust

disclosure, reporting, recordkeeping, and CFTC access requirements. Done correctly, the exemption reduces unnecessary regulatory duplication and cost while preserving the CFTC's ability to protect markets and investors. Done poorly, it risks creating protection gaps and opportunities for regulatory arbitrage. We recommend the Commission to adopt clear guardrails, monitoring, and revocation authority.

A2. Are the conditions of Proposed Regulation 4.13(a)(4)—SEC registration, exempted offering of pool interests, marketing limitations, participant limits based upon the Original QEP Exemption, and, where applicable, Form PF reporting – appropriate? Why or why not? For instance, please consider the following specific issues:

The conditions in Proposed Regulation 4.13(a)(4) are broadly appropriate as a policy framework to align intermediary registration exemptions with modern securities practice, but they need targeted refinements to address marketing/ solicitation clarity (including Rule 506(c) interaction), ensure systemic-risk visibility where Form PF filing may lapse, and to update Eligible Participant definitions and participant limits to reflect market practice and investor protection concerns. Below I explain why, identify specific risks, and give concrete, prioritized recommendations the Commission can adopt in the final rule.

On a separate note, and with reference to our response to the Commission's proposal on Conflicts and Affiliations (RIN 3038-AF76), if the CFTC can create a safe harbor where event contracts can be packaged inside our suggested alternative of a 100% pre-funded Series LLC structured managed by a CPO, and exempting such 100% pre-funded fiduciary CPO-Matchmaker – that acts as a passive, parametric insurance pool – from mutualized banking default funds, we think it would address prudential regulators' concerns.

As outlined in our August 24 comment letter,[3] when a platform operates as a CPO Matchmaker rather than a traditional exchange, it shifts its legal taxonomy from market infrastructure to an **asset aggregator**. We envisage the platform utilizes a Delaware Series LLC to isolate individual pre-funded client accounts into distinct corporate cells.[28] The track is hard-

[28] By law, a CPO is an asset aggregator. Its participants are legally designated as partners or beneficial owners of a fund. Therefore, at the end of every fiscal year, the CPO must issue an incredibly complex Schedule K-1 tax form to every single investor, tracking their proportional share of the pool's capital gains and losses. For an exchange model with thousands of retail traders making $1 wagers, generating individual K-1 partnership forms is a complete operational impossibility. Traditional prediction markets issue simple 1099-B forms for capital gains, which is only legally permissible for exchange-traded contracts. Forcing a retail platform into the CPO tax reporting bucket would trigger IRS compliance friction.

Instead of organizing the CPO pool as a standard single partnership, structure the vehicle as a specialized Delaware Series LLC or a Series Trust. Under IRS regulations, individual cells within a Series LLC can be legally classified as disregarded entities or separate tax units. By explicitly drafting the platform's User Agreement to state that each retail user's account functions as an isolated, self-contained "*series cell*" that never shares profits, losses, or capital appreciation with any other user in the pool, this breaks the legal definition of a partnership. This structure allows the platform to legally avoid K-1 distributions entirely. Instead, the platform can cleanly report earnings under the standard, automated Form 1099-B (Barter and Exchange Transactions), or Form 1099-MISC framework, treating payouts as individual parametric contract completions rather than fund partnership distributions.

The fiduciary duty remains fully intact and is strengthened under this model. Because the platform still falls under the definition of a CPO, it is bound by CFTC Part 4 statutory fiduciary duties. The platform is legally barred from co-mingling pool assets, front-running client positions, or operating conflicting internal trading bots. Also, under Delaware law, the managers of a Series LLC owe a traditional fiduciary duty of loyalty and care to the members of each individual cell. If platform operators deploy a flawed portfolio compression cycle that favors corporate insiders over the retail cells, they can be sued directly for breach of corporate fiduciary duty, entirely bypassing the standard corporate liability shield.

Through a programmatic pre-fund (Cell-to-Escrow), the full maximum potential payout is placed into an isolated Escrow Trust Account backed by the IntraFi distributed bank network. Because the Series LLC structure dictates that the debts and liabilities of one cell cannot touch another, the backing this trade can never be seized or cross-collateralized to cover an operational issue or a massive hack affecting other cells on the platform.

capped at a 100% pre-funded, zero-leverage model. Because the maximum potential loss is locked in escrow from day one, default risk is zero, exempting the structure from Part 39 DCO mutualized default fund mandates. Under CEA Part 4 rules, the operator owes a non-waivable federal fiduciary duty to pool participants. Automated liquidity bots and adversarial proprietary trading loops are legally banned.

Because a CPO pool does not allow speculative day-trading or synthetic price-discovery curves, there is no "*market sentiment*" or valuational effect being generated. By freeing from noises (toxicity and adverse selection) and bias (*latency, rebates, bundling discrimination, volume vs integrity paradox*) commonly associated with Commodity and Securities Exchanges, a CPO Matchmaker operates **purely** as a parametric insurance conduit in protecting the purity of the oracle "f*orecast*" and its clients. This model maximizes economic values of a prediction market. It fits cleanly into the commercial insurance **safe harbor**. A fully collateralized CPO Matchmaker may grant **Title VII** exclusion to relief the platform from cumbersome Swap compliance requirements. It will be subjected to CFTC and NFA oversight. Regulators can be at ease given the fiduciary alignment of interests between a CPO and its clients. It is safer than the "*Direct Retail Clearing Model*" for the overall health of the U.S. financial system. For that, we see tremendous opportunity to expand the scope of this AF78 proposal to encompass this CPO + Series Trust/ LLC in support of FinTech innovations.

A2i. Does the exception of Rule 506(c) offerings from the marketing prohibition in Proposed Regulation 4.13(a)(4)(i) effectively incorporate developments in securities law and private funds practice since the JOBS Act was passed and the SEC adopted related regulatory amendments?

The JOBS Act and subsequent SEC rulemaking recognized that accredited investor verification and general solicitation under Rule 506(c) are permissible if verification standards are met. Incorporating Rule 506(c) aligns the CFTC exemption with modern private-fund capital-raising practice and reduces friction for managers who rely on general solicitation while still limiting access to accredited investors. However, **practical ambiguities remain.** The CFTC rule should clarify:

- **Verification standard:** Whether the CFTC will accept the SEC's Rule 506(c) verification methods (e.g., third-party written confirmation, review of documentation, reasonable steps) as sufficient for the RIA-QEP exemption, or whether the CFTC expects a different or additional verification showing.
- **Cross-border and platform solicitation:** How online platforms, social media, and cross-border solicitations are treated – especially where an offering may reach non-U.S. persons or persons who are not Eligible Participants.
- **Timing and recordkeeping:** What records a CPO/CTA must keep demonstrating compliance with Rule 506(c) verification for the exemption.

We are not sure the Commissions' view on a 100% pre-funded CPO + Series Trust/ LLC architecture as mentioned earlier. We seek clarification to ensure our recommended fiduciary CPO-Matchmaker model would within a safe harbor for permissible "*marketing*" and "*general solicitation*" requirements in the relevant CFTC and SEC rules, and NOT limiting this particular model to Eligible Participants but also permitting retail to join the pool.

When the real-world event occurs, the platform's independent, hard-coded **Third-Party Oracles** ingest the data. The oracle validates the outcome and signs the settlement contract within our recommended "Cooling-Off Windows" (a 2-to-24-hour buffer window for contested inputs before distributing payouts to keep settlements anchored to verified facts). The signed oracle trigger automatically releases the payout fund from the escrow trust directly into the winning user's cell wallet. The cell then pushes an automated clearing house (ACH) or Fedwire instruction to move the cash back to the user's personal bank account. This payout is legally treated as an individual, binary contract completion rather than a fund partnership distribution. The platform's software automatically logs the transaction and aggregates it at year-end into a standard Form 1099-B.

A2ii. Is the proposed Form PF reporting condition sufficient to provide the Commission and FSOC with the information needed to monitor Eligible Pools for market and systemic risk? Given the proposed increases in Form PF filing thresholds discussed above, what, if any, regulatory risk is presented by certain RIAs and private funds potentially no longer being required to file Form PF, and also being exempt from reporting on Form CPO-PQR? Should the Commission consider additional or alternative reporting conditions for Eligible Pools? How should the Commission address these concerns, if at all, in Proposed Regulation 4.13(a)(4)?

Instead of requiring eligible pools to file a condensed CPO-PQR Lite or a short Form PF-style summary if the manager would otherwise not file Form PF, we envisage a 100% pre-funded fiduciary CPO Matchmaker model would utilize a Delaware Series LLC to isolate individual pre-funded client accounts into distinct corporate cells. As outlined in footnote 28, this is a more streamlined approach than CPO-PQR Lite or a short Form PF-style summary. We think applying a backstop threshold to cap a manager's commodity-pool assets under management or a pool's notional derivatives exposure under a bright-line threshold (e.g., $X billion AUM or $Y notional) before they are required to convert to a full registered DCM/ SEF would supports FinTech innovations.

A2iii. Are there other categories of "accredited investor" that the Commission should consider adding to the list of Eligible Participants in Proposed Regulation 4.13(a)(4)?

The SEC is broadening accredited investor categories and proposing amendments to expand responsible "*retailization*" of private markets,[29] the CFTC should align with the SEC where appropriate to avoid mismatches that complicate cross-filing and manager compliance. Potential additions to consider include: family offices, knowledgeable employees, person meeting certain professional certifications, and qualified purchasers under the Investment Company Act for certain higher-risk pools involving leverage and complex derivatives but heed the lesson from the Archegos collapse.

A2iv. Please describe in detail any suggested adjustments to the conditions of the Proposed RIA-QEP Exemption, or any different or additional conditions the Commission should consider, as well as the specific rationale justifying such adjustments or conditions.

Again, we are not sure the Commissions' view on a 100% pre-funded CPO + Series Trust/ LLC architecture as mentioned earlier. We seek clarification to ensure our recommended fiduciary CPO-Matchmaker model would within a safe harbor for permissible "*marketing*" and "*general solicitation*" requirements in the relevant CFTC and SEC rules, and NOT limiting this particular model to Eligible Participants but also permitting retail to join the pool.

A3. By its terms, Letter 25-50 is intended to remain in effect until the Commission completes a rulemaking addressing the reinstatement of the Original QEP Exemption (or determines not to complete such a rulemaking). The Commission requests comment on whether the Proposal, if adopted as a final rule, should supersede Letter 25-50 in its entirety or only in part. Why or why not? In addition, the Commission requests comment on whether it should take any action similar to that in Letter 26-06 with respect to the treatment of CPO delegation arrangements under Letter 14-126 if it ultimately adopts the Proposed QEP Exemption. Why or why not?

The Commission should partially supersede Letter 25-50, replacing the portions that conflict with the Proposed QEP Exemption while preserving any remaining guidance that continues to serve as a useful transitional or interpretive bridge until the Commission completes a separate rulemaking on the Original QEP Exemption. The Commission should also adopt an approach similar to Letter 26-06 for CPO delegation arrangements under Letter 14-126 – providing a limited, conditional safe harbor (including a 100% pre-funded CPO + Series Trust/ LLC architecture) or interpretive guidance that aligns delegation treatment with the new exemption while protecting investor safeguards and regulatory visibility.

[29] https://www.sec.gov/newsroom/press-releases/2026-96-sec-proposes-amendments-expand-responsible-retailization-private-markets

B. Inflation-Based Increase of the Small Pool Exemption's Gross Capital Contributions Threshold

Is the proposed increase of the gross capital contributions threshold in 17 CFR 4.13(a)(2)(ii) from $400,000 to $800,000 an appropriate adjustment that effectively considers inflation since its last adjustment in 2003? Should the Commission consider a different amount? Why or why not? Please provide appropriate or relevant data on commodity pool size justifying alternative thresholds, whether higher or lower than that currently proposed.

Raising the gross capital contributions threshold from $400,000 to $800,000 is reasonable as a rough inflation adjustment from 2003 to the mid-2020s, but it should be accompanied by a periodic inflation-indexing mechanism (or scheduled review), and sensitivity to the distribution of commodity-pool sizes so the change does not unintentionally exempt pools that pose investor-protection or systemic-risk concerns.

C. Proposed Amendments Reinstating Cross-References to Regulation 4.13(a)(4) and Related CTA Exemption

C1. Are the proposed conforming amendments to 17 CFR 4.13(b)(1)(ii), 4.13(e)(2), and 4.14(a)(8)(i)(D) clear and sufficient to reinstate the full functionality and coordination of the CPO and CTA exemption framework as it existed prior to the 2012 rescission of the Original QEP Exemption? Why or why not?

The amendments explicitly tie the reinstated sophisticated-investor exemption under 17 CFR 4.13(a)(4) exclusively to RIAs rather than all market participants. The updates to 4.13(b)(1)(ii), 4.13(e)(2), and 4.14(a)(8)(i)(D) cleanly align annual affirmation, notice filings, and CTA co-exemptions with the new RIA-centric framework. Yet, the proposed exempt CPOs must fulfill Form PF reporting obligations via dual-agency coordination, adding a layer of SEC-channel oversight absent in the original rules. We see opportunity to expand scope of this proposal. In particular, if the CFTC can create a safe harbor where event contracts can be packaged inside our suggested alternative of a 100% pre-funded Series LLC structured managed by a CPO, and exempting such 100% pre-funded fiduciary CPO-Matchmaker – that acts as a passive, parametric insurance pool – from mutualized banking default funds, we think it would address prudential regulators' concerns.

C2. Should the Commission not make any particular proposed conforming amendment? Please identify the particular proposed amendment and provide a detailed explanation as to why it should or should not be included in amendments adopting a finalized RIA-QEP Exemption.

Under the proposal, the conforming amendment pulls the new RIA-QEP Exemption into the standard Regulation 4.13(b) notice framework, requiring electronic filings and annual affirmations through the NFA. Since eligibility is strictly restricted to SEC-registered investment advisers (RIAs), the CFTC and SEC already share access to Form ADV filings where pool management activities are declared. This is a logistical redundancy. Also, the amendment subjects exempt RIAs to standard CPO statutory disqualification checks via the NFA. However, RIAs are already thoroughly vetted under the Investment Advisers Act of 1940 "*bad actor*" and disclosure disqualification provisions. Under the original pre-2012 framework, a broad group of operators could claim the exemption. Because the new proposal only permits RIAs to utilize the CPO exemption, the text of 4.14(a)(8)(i)(D) becomes too narrow if it remains strictly dependent on the underlying pool operator's specific entity status. If an RIA acts as a CPO and hires a specialized, boutique non-RIA commodity trading advisor to sub-advice the pool, that sub-adviser cannot rely on this specific conforming amendment if the rule text is too rigidly mapped only to dual-registered entities.

C3. If the Proposal is ultimately finalized by the Commission through the publication of a related final rule, the amendments would generally become effective on the date that such a final rule is published. Should the Commission consider utilizing a later effective date solely with respect to the conforming amendment to 17 CFR 4.13(e)(2), especially with respect to qualifying pools and QEP No-Action CPOs that claimed Letter 25-50? Why or why not?

The firms already covered by Letter 25-50 may be grandfathered in; others should utilize a later effective date to allow resolution to C1 and C2 issues and offer all existing pool participants a right of redemption before making the change.