Via Electronic Submission

October 5, 2026

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

Re: Conflicts and Affiliations, RIN 3038-AF76

Dear Mr. Kirkpatrick:

Payward, Inc.[1] ("Payward"), on behalf of itself and its affiliated Commission registrants — including Bitnomial, LLC[2] and NinjaTrader Clearing, LLC[3] — respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking on "Conflicts and Affiliations" (the "Proposal").[4]

Payward was founded in 2011 and has steadily grown into one of the world's oldest and largest digital asset infrastructure businesses. Through our Payward family of businesses, we power traditional and crypto market investment allocation for customers across the world.

Payward and its affiliated registrants operate a vertically integrated derivatives market structure of the kind the Proposal is principally designed to address: a single corporate family that owns a DCM, a DCO, more than one affiliated FCM, and an affiliated trading participant that provides liquidity on the DCM's markets. Payward believes its experience operating this structure — including in ~~nascent~~ digital asset derivatives markets where affiliate-supported liquidity plays a particularly important role — is directly relevant to several of the specific questions on which the Commission has requested comment.

Payward supports the Commission's underlying objectives of mitigating conflicts of interest and preserving market integrity in affiliated market structures, and agrees that a consistent regulatory baseline offers real benefits over an uneven patchwork of voluntary practices. Payward is concerned, however, that several provisions of the Proposal, as drafted, would impose substantial and disproportionate compliance costs on integrated registrant groups — particularly those, like Payward, that are still developing new markets — without a commensurate increase in investor or market protection, and in some respects would be more costly than necessary to achieve the Commission's stated goals. Payward respectfully requests that the Commission adopt several of the more flexible alternatives it has itself identified and on which it has solicited comment, as detailed below.

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[1] Payward official website, available at https://www.payward.com.
[2] NinjaTrader official website, available at https://ninjatrader.com. NinjaTrader is a CFTC-registered Futures Commission Merchant ("FCM").
[3] Bitnomial official website, available at https://bitnomial.com. Bitnomial is a derivatives exchange company that owns and operates a CFTC-registered Derivatives Contract Market ("DCM"), derivatives clearing organization ("DCO"), and FCM.
[4] Commodity Futures Trading Commission, Conflicts and Affiliations, 91 Fed. Reg. 50926 (August 6, 2026).

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Executive Summary:

Payward respectfully requests that the Commission:

1. **Office space separation requirements should be principles-based.** Adopt a principles-based, rather than prescriptive, standard for the office space separation requirements of proposed §§38.852(b)(1)(iii) and 39.25(d)(3), expressly permitting compliance through documented information barriers (access controls, credential segregation, network separation) as an alternative to physical relocation;

2. **Market maker regimes should encourage legitimate liquidity provision.** Calibrate the affiliate market maker regime of proposed §38.852(c) to avoid discouraging legitimate affiliate liquidity provision in new and developing markets, including through a volume- or value-based de minimis threshold and a phase-in or sunset period tied to a product's trading maturity — both alternatives the Commission has already identified in the Proposal;

3. **Consider compounding costs of the Proposal on registrants with multiple FCMs.** Supplement the Commission's cost-benefit analysis to separately account for the cumulative, compounding cost of the Proposal on registrant groups with more than one affiliate FCM;

4. **Ensure sufficient transition periods.** Provide a compliance and transition period of not less than twelve months from any final rule's effective date; and

5. **Provide optionality for satisfying proposed disclosures.** Confirm that a DCM's existing voluntary delegation of DSRO functions to NFA for its affiliate FCM(s) satisfies proposed §1.52(c)(1)(i)(C) without requiring new documentation, contractual arrangements, or transition costs.

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I. The Office Space Separation Requirements Should Be Principles-Based, Not a Bright-Line Physical-Relocation Mandate

Proposed §38.852(b)(1)(iii)[5] would require a DCM to "maintain[] office space for itself that is separate from the office space of any affiliate futures commission merchant," and proposed §39.25(d)(3)[6] imposes the parallel requirement on a DCO with respect to any affiliate clearing member. As drafted, both provisions are unconditional: neither includes an exception for a DCM or DCO that instead relies on documented, auditable information barriers to achieve the same conflict-mitigation outcome.

[5] Ibid., at 50946.
[6] Ibid.

Payward respectfully submits that the risk the Commission is seeking to address — improper flow of non-public information and preferential treatment between a registrant and its affiliate — is a function of the effectiveness of a registrant's information controls, not of whether the registrant and its affiliate happen to occupy the same building. A registrant that maintains rigorous access controls, credential segregation, and network-level separation between its own personnel and an affiliate's personnel can achieve the same protective outcome as one that leases space in a different building, at materially lower cost and without the delay inherent in relocating operations. The Commission's own consideration of the costs and benefits of this requirement recognizes as much, noting that compliance "may only require personnel to be located on separate floors or . . . a lock being installed between offices" — in other words, that the meaningful requirement is genuine separation of access and information flow, not a particular real-estate arrangement.

For registrant groups still building out integrated market infrastructure — including Payward and other similarly situated entities that have brought together an exchange, a clearinghouse, and one or more affiliated FCMs to support a new derivatives market — an unconditional physical-relocation mandate imposes a cost that is disproportionate to its incremental protective value.

Payward, accordingly, requests that the Commission revise proposed §§38.852(b)(1)(iii) and 39.25(d)(3) to permit compliance through documented information-barrier procedures — including access-control logs, credential and network segregation, and periodic independent audit — as an alternative to physical relocation, consistent with the flexibility the Commission's own cost-benefit discussion already contemplates. This approach would preserve the Commission's stated objective while avoiding a bright-line requirement that, in practice, would function as a disproportionate tax on integrated registrant groups relative to registrants that have never shared space with an affiliate to begin with.

II. The Affiliate Market Maker Regime Should Be Calibrated to Avoid Discouraging Legitimate Liquidity Provision in New and Developing Markets

Proposed §38.852(c)[7] would permit an affiliate principal trading firm to trade on its affiliated DCM only as a conditioned "affiliate market maker" — subject to, among other things, order-priority subordination such that the affiliate's resting orders are filled last at every price level, without regard to time priority or the affiliate's actual quoting performance.

The Commission's own background discussion recognizes that an affiliated market maker can be "especially important in the creation and maintenance of new markets," and identifies this dynamic as particularly prominent in prediction markets. Payward respectfully submits that the same is true, with at least equal force, in digital-asset derivatives markets, which are similarly nascent and in which unaffiliated market makers often have limited incentive to commit capital to an unproven contract during its early trading life. An affiliate that is prepared to provide continuous, disclosed, two-sided liquidity during that period performs a market-building function that benefits all participants through tighter spreads and deeper books — a function that an unconditional, always-last subordination rule

[7] Ibid., at 50951.

would substantially discourage, regardless of how faithfully the affiliate satisfies its quoting obligations.

Payward is not asking the Commission to abandon the safeguards proposed §38.852(c) is designed to provide. Payward agrees that an affiliate trading on a proprietary, directional basis on its own exchange presents the conflict of interest the Proposal is rightly concerned with, and supports robust, disclosed conditions on any affiliate that trades as principal. Payward's concern is narrower: that a flat subordination rule does not distinguish between that conduct and genuine, continuous, disclosed market-making that satisfies objective quoting obligations — and that, by treating both identically, the Proposal would discourage the latter along with the former.

The Commission has itself identified more calibrated alternatives on which it has requested comment, including (i) "a volume- or value-based cap on affiliate market maker activity, including a phased or sunset cap," and (ii) relying on disclosure in place of certain of the more prescriptive conditions.[8] Payward respectfully urges the Commission to adopt an approach along these lines — for example, a rebuttable presumption of compliance for an affiliate that satisfies objective, publicly disclosed quoting obligations (minimum two-sided presence, maximum spread, minimum trading hours), subject to full order-priority subordination only upon a finding that those obligations were not met, and a sunset period (e.g., the first 12 to 24 months following a contract's listing) after which standard affiliate-market-maker conditions would apply in full.

III. The Cost-Benefit Analysis Should Account for the Cumulative Burden on Registrant Groups With More Than One Affiliate FCM

Payward's corporate family includes a DCM, a DCO, and two affiliated FCMs. Each of these registrants would separately trigger office-space-separation, conflicts-of-interest-procedure, and independent-surveillance obligations under the Proposal, and the associated costs do not appear to scale linearly: a registrant group with two affiliate FCMs must, in effect, satisfy the Proposal's requirements twice over, once with respect to each affiliate FCM, while realizing no corresponding increase in benefit beyond what a single-affiliate-FCM structure would already achieve.

The Commission's cost-benefit discussion in Section VII.C[9] of the Proposal does not appear to separately model this cumulative effect. Payward requests that the Commission supplement its cost-benefit analysis to account for this cumulative burden before finalizing the rule, and that any final rule's compliance costs be assessed, and any transition period calibrated, with multi-affiliate-FCM registrant groups specifically in mind.

[8] Ibid., at 50954.
[9] Ibid., at 50590.

IV. Any Final Rule Should Include a Compliance and Transition Period of Not Less Than Twelve Months

The Proposal would require registrants to restructure reporting lines, renegotiate or terminate office leases, implement new information-barrier procedures, and, in some cases, engage independent third-party service providers for the first time. These are not changes that can be implemented on short notice, particularly for registrant groups that, like Payward, would need to undertake several of them simultaneously across more than one affiliated registrant.

Payward respectfully requests that any final rule include a compliance and transition period of not less than twelve months from the rule's effective date, and that the Commission confirm that registrants may continue to rely on existing voluntary practices (including existing shared-office arrangements and existing NFA DSRO delegations, addressed below) during that period without being deemed out of compliance.

V. The Commission Should Confirm That Existing Voluntary NFA Delegation Satisfies Proposed §1.52(c)(1)(i)(C)

Proposed §1.52(c)(1)(i)(C)[10] would require an SRO with an affiliate FCM to designate an independent third-party SRO to perform the surveillance the SRO would otherwise perform itself. Payward's DCM already voluntarily delegates DSRO functions for its affiliate FCM(s) to NFA, consistent with the practice the Commission's own background discussion identifies as the current industry norm for every DCM with an affiliate FCM. Payward supports codifying this outcome as a requirement rather than a voluntary practice, for the reasons the Commission identifies in the Proposal.

Payward requests, however, that the Commission confirm expressly — whether in the adopting release or in the rule text itself — that an existing, voluntary NFA delegation arrangement of the kind Payward's DCM already maintains satisfies proposed §1.52(c)(1)(i)(C) without requiring new documentation, a new or amended agreement, or any other transition step, provided the existing arrangement otherwise meets the substantive standards the proposed rule would impose. Absent this confirmation, registrants that have already voluntarily adopted the exact practice the Proposal seeks to make mandatory could face needless transition costs to formally re-paper an arrangement that already achieves the Proposal's objective.

Conclusion

Payward appreciates the opportunity to comment on the Proposal and the Commission's effort to establish a consistent regulatory baseline for affiliated market structures. Payward respectfully requests that the Commission adopt the modifications described above — each of which draws on an alternative or an item on which the Commission has already requested comment — in order to preserve the Proposal's conflict-of-interest and market-integrity objectives while avoiding disproportionate

[10] Ibid., at 50936.

costs to integrated registrant groups that are actively developing new derivatives markets, including in the digital-asset space.

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Kraken appreciates the CFTC's consideration of our comments. If you have any questions or would like to discuss our comments further, please do not hesitate to reach out.

Respectfully submitted,

/s/ Jonathan Jachym

Jonathan Jachym
Chief Policy Officer
Payward, Inc.