October 8, 2026

Via Electronic Submission

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

Re: Commodity Futures Trading Commission's Proposal on Conflicts and Affiliations (RIN 3038–AF65)

Dear Mr. Kirkpatrick:

Intercontinental Exchange Inc., on behalf of itself and its subsidiaries ("ICE"), appreciates the opportunity to comment on the Commodity Futures Trading Commission ("CFTC" or "Commission") notice of proposed rulemaking on Conflicts and Affiliations (the **"**Proposal**"** or "NOPR").[1] ICE operates regulated marketplaces for the listing, trading and clearing of a broad array of derivative contracts and financial instruments, such as commodities, interest rates, foreign exchange, equities, and options, as well as corporate and exchange-traded funds. ICE operates trading venues that include 13 regulated exchanges and six clearing houses, which are strategically positioned in major market centers around the world, including the U.S., United Kingdom, European Union, Canada, Asia Pacific, and the Middle East.

As an operator of regulated marketplaces, ICE is keenly interested in the questions raised by the Proposal. ICE previously addressed many of these issues in its comment letter submitted in response to the Commission's 2023 Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities.[2] ICE continues to support the views expressed in its prior comment letter and the comments below build on that analysis.

Background

Consistent with the Commodity Exchange Act ("CEA"), the CFTC has to date followed a principles-based approach to addressing conflicts of interest which may arise where a corporate group owns multiple CFTC-registered entities. This approach has proven effective throughout the

[1] Conflicts and Affiliations, 91 Fed. Reg. 50926 (Aug. 6, 2026).
[2] CFTC Divisions of Market Oversight, Clearing and Risk, and Market Participants, Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities (June 27, 2023), https://www.cftc.gov/media/8826/rfcimpactaffiliations062823/download. Please refer to the ICE comment letter, https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=35107.

long history of affiliations among Designated Contract Markets ("DCMs"), Derivative Clearing Organizations ("DCOs") and Swap Execution Facilities ("SEFs") within the same corporate group. For these entities, which are all subject to the CFTC's ongoing supervisory oversight, the current regulatory framework requires them to identify, mitigate, and manage conflicts of interest. This principles-based approach allows for regulated entities, under the oversight of CFTC staff examinations, to manage and mitigate conflicts within their particular organizational structure, which supports innovation and allows for regulated entities to effectively and efficiently offer their services to meet customer demands. ICE believes that group affiliations have promoted, and continue to promote, greater access to products, cost-efficiencies and increased innovation and competition within the derivatives markets.

As described in more detail below, key aspects of the Proposal depart from the Commission's longstanding principles-based regulatory framework and instead impose prescriptive governance and operational mandates without demonstrating that existing controls are inadequate. The Commission has not identified a specific regulatory problem that these requirements are intended to solve, nor has it explained why less burdensome alternatives, including enhanced policies, procedures, and internal controls, would not achieve the same objectives. The Commission has also failed to demonstrate that the anticipated regulatory benefits justify the significant implementation costs and ongoing operational burdens and compliance expenses that would result from the Proposal. ICE therefore welcomes the opportunity to comment on the Proposal.

Acceptable Practices to Require Procedures for Prevention of Sharing of Non-public Information; Rules Requiring Procedures for Identifying, Addressing and Managing Conflicts of Interest Involving a DCM, SEF, or DCO and, Respectively, its Affiliated Member, Market Participant or Clearing Member

For DCMs, SEFs, and DCOs, the Commission has proposed two independent sets of prescriptive requirements that would require DCMs, SEFs, and DCOs to have procedures to address conflicts of interest between affiliated FCMs, affiliated market participants, and affiliated clearing members, respectively. First, the Commission proposes to add specific text to its Guidance on, and Acceptable Practices in, Compliance with Core Principles ("Acceptable Practices") for each of these regulated entities to require specific, enumerated operational limitations in procedures to achieve the objective of preventing the sharing of non-public information with affiliated participants or clearing members.[3] Second, the Commission proposes new rules that also require DCMs', SEFs', and DCOs' procedures to identify, address and manage conflicts of interest that include specific, enumerated operational limitations ("Affiliate Conflict of Interest Rules"). [4]

[3] See Proposed changes to Appendix B to Part 37, Guidance on, Acceptable Practices in, Compliance with Core Principles (at 50991), Appendix B to Part 38, Guidance on, Acceptable Practices in, Compliance with Core Principles (at 50993), and Appendix D to Part 39, Guidance on, Acceptable Practices in, Compliance with Core Principles (at 50994).

[4] See sections 38.852(b), 37.1201(b), and 39.25(d). The prescriptive requirements in the proposed additions to the Acceptable Practices and the proposed new Affiliate Conflict of Interest Rules vary, without explanation.

It is unclear why the Commission has proposed these new requirements in two separate sections of its rules or why the prescriptions are slightly different in each set. Moreover, ICE does not believe that the Commission has established that the current requirement in the core principles for DCMs, SEFs, and DCOs to manage conflicts of interest[5] is insufficient or that the benefits associated with the specific, prescriptive requirements not to share certain staff with affiliates and to have separate office space from affiliates outweighs the significant costs and operational challenges.

Below, we discuss the two sets of proposed requirements and explain our concerns regarding certain prescriptive aspects of each proposal.

Proposed Changes to Acceptable Practices

The Commission proposes additions to the Acceptable Practices. Specifically, the Proposal would add guidance on acceptable practices for procedures for conflicts of interest involving an affiliated market participant of a DCM or SEF and involving an affiliated clearing member of a DCO.[6] The proposed text would establish specific requirements that the conflicts of interest procedures must include.

With regard to the specific requirements proposed for conflicts of interest procedures in the Acceptable Practices, ICE agrees that a DCM, SEF or DCO should maintain and operate applications and systems in a manner that prevents the sharing of non-public information, and that its trading or clearing system and its surveillance and recordkeeping should be logically separate from, an affiliated market participant or clearing member. Likewise, ICE agrees with the Commission's proposal that such procedures should apply access controls across all other applications and systems to prevent improper sharing of non-public information with an affiliated market participant or clearing member and monitor for instances where such affiliate has gained access.

However, ICE strongly disagrees with the Commission's proposals that the procedures of a DCM, SEF and DCO must prohibit sharing of certain staff and office space with an affiliated market participant or clearing member. These requirements are prescriptive and would not allow the regulated entity to implement less operationally burdensome and less costly alternatives to address a conflict of interest. ICE believes that absent a statutory requirement of these types of separations, the CFTC needs to measure the costs of such requirements and show that the

[5] See Core Principle 16 for DCMs, Core Principle P for DCOs and Core Principle 12 for SEFs.

[6] See supra note 3.

benefits exceed those costs. ICE's concerns with the prohibitions in sharing staff and office space are discussed in more detail below.

Proposed Affiliate Conflict of Interest Rules

Separately and in addition to the proposed Acceptable Practice changes, the Commission proposes in Sections 38.852(b), 37.1201(b), and 39.25(d) that DCMs, SEFs, and DCOs, respectively, maintain procedures for identifying, addressing, and managing conflicts of interest involving a DCM's affiliated FCM, a SEF's affiliated market participant, and a DCO's affiliated clearing member. These proposed Affiliate Conflict of Interest Rules would require that procedures, at a minimum (1) maintain and operate the regulated entities' applications and systems to prevent the sharing of non-public information with an affiliated market participant or clearing member; (2) not share staff, except with respect to administrative functions; (3) maintain office space separate from the office space of an affiliated market participant or clearing member; and (4) document all conflicts of interest that arise with respect to an affiliated market participant or clearing member, and how such conflicts are resolved.[7]

The existing core principle framework already requires regulated entities to address the conflicts the Commission has identified and ICE is not aware of evidence that shows that procedures adopted that meet the standards in these core principles fail to address the Commission's conflicts of interest concerns.[8] ICE believes that appropriate controls concerning the improper use of non-public and other information between affiliates can be addressed without the prescriptive and costly operational arrangements proposed. Moreover, the Commission has not shown that the costs associated with the proposed prohibitions on sharing staff and office space outweighs the benefits.

Overly Broad Prohibitions on Sharing of Staff

The Acceptable Practices would prohibit a DCM, SEF or DCO from sharing certain staff, other than staff responsible for administrative functions such as accounting, human resources and payroll matters, as well as technology staff responsible for carrying out systems safeguard functions. The same staff sharing prohibition also appears in the Affiliate Conflict of Interest Rules, but oddly includes a narrower exception from the prohibition to allow only the sharing of administrative staff.[9] These restrictions are not only unclear because of the differences between

[7] Proposed Sections 38.852(b)(iv,) also requires DCMs to disclose an affiliation in the DCM's rulebook and on its website.
[8] See Core Principle 16 for DCMs, Core Principle P for DCOs and Core Principle 12 for SEFs.
[9] The proposed rules do not define administrative staff but note that the proposed amendments to related Guidance on, and Acceptable Practices in, Compliance with Core Principles refer to "administrative functions" as including accounting, human resources and payroll matters. See Appendix B to Part 38, Core Principle 16 of section 15(d) of the Act, paragraph (b); Appendix B to Part 37, Core Principle 12 of Section 5h of the Act, paragraph (b); and Appendix D to Part 39, Core Principle P of Section 5b of the Act.

the two sets of proposed requirements, but would prohibit the sharing of numerous corporate support, development and technology staff, and operational functions that do not present meaningful conflicts of interest or increase the risk of improper information sharing. The Commission does not explain why requiring dedicated personnel for all other functions, including technology, software development, and legal, is necessary to address the identified conflict of interest nor does it demonstrate that existing policies, procedures, information barriers, and supervisory controls are insufficient to mitigate any such risks. Moreover, the Commission has not quantified the costs associated with requiring separate staff for these functions. The proposed requirement would impose significant operational and compliance costs by requiring regulated entities to duplicate personnel and resources without a corresponding regulatory benefit.

Accordingly, ICE recommends that the Commission provide regulated entities with discretion to determine which functions may appropriately be shared across affiliated entities, subject to robust policies, procedures, and information-sharing controls. In its oversight capacity, the Commission can assess whether those controls are reasonably designed and operating effectively, including through examinations and audits. A more tailored approach would focus on functions that present genuine conflicts of interest or create heightened risks with respect to confidential information. For example, personnel responsible for compliance oversight, including the Chief Compliance Officer ("CCO"), as well as personnel with access to customer positions, trading activity, or other sensitive non-public information, generally should not support affiliated entities. By contrast, personnel that do not have access to such information should not be categorically prohibited from supporting multiple affiliated entities, as the conflict of interest the Proposal seeks to address is not present in those circumstances.

Unnecessary Restriction on Sharing of Office Space

The proposed Acceptable Practices and Affiliate Conflict of Interest Rules would require a DCM, SEF, or DCO with an affiliated FCM, affiliated market participant, or affiliated clearing member, respectively, to maintain separate office space from such affiliates. This proposed requirement lacks any limitation as to which personnel of a DCM, SEF, or DCO must be physically separated from affiliated personnel. As a practical matter, where administrative, technology, legal, or other shared services are provided across affiliated entities, complete office-space separation would be impossible to achieve, absent duplication of staff. The Commission has not demonstrated that a mandatory office-separation requirement is necessary to address the identified conflicts of interest or that existing controls, including information barriers, access restrictions, security measures, and governance procedures, are insufficient. Most potential conflicts associated with shared office space can be effectively managed through these controls. ICE therefore believes regulated entities should have be permitted to determine appropriate office-space arrangements, provided they maintain safeguards reasonably designed to protect non-public information and address material conflicts of interest.

Finally, the risks associated with shared office space are not novel. Financial institutions have long managed conflicts of interest between proprietary trading activities and customer-facing businesses through established information barriers, access controls, compliance oversight, and other governance measures. The Commission has not demonstrated why these longstanding controls are insufficient to prevent the improper sharing of non-public information or why a prescriptive office-separation requirement is necessary.

Documenting Conflicts of Interest

Finally, the proposed Affiliate Conflict of Interest Rules would require DCMs, SEFs and DCOs to document "all conflicts of interest that arise with respect to an affiliated" FCM, market participant, or clearing member, respectively, and how such conflict is resolved. This requirement would benefit from a materiality standard, as its proposed "all" standard would require a DCM, SEF, or DCO to identify and address every actual or perceived affiliate conflict, regardless of significance. ICE therefore recommends incorporating a materiality standard to focus the requirement on conflicts that present material regulatory, governance, or operational risks.

Proposed Amendments to Section 38.606

DCM Core Principles and Regulation 38.604 require a DCM to monitor its member FCMs for compliance with the DCM's minimum financial standards, which includes the requirement to continuously monitor the positions of members and their customers and to continually survey the obligations of each FCM created by the positions of its customers (hereafter referred to as "Intra-Day Financial Surveillance"). Proposed amendments to Regulation 38.606 would permit but not required DCMs to outsource their Intra-Day Financial Surveillance obligations to a regulatory service provider ("RSP").

The Commission notes its preliminary belief that a DCM's financial surveillance of an affiliate FCM presents potential conflicts of interest that may not be addressed by the current Regulations and, accordingly, the Commission proposes that a DCM can comply with Regulation 38.604's Intra-Day Financial Surveillance obligations by either outsourcing them to an RSP, or by adopting and implementing procedures to identify, address and manage conflicts involving its affiliate FCM.

The option proposed in 38.604, however, seems illusory because, as discussed above, all DCMs with an affiliated FCM are required to satisfy the requirements in Section 38.852(b) and the Acceptable Practices. As a result, it does not appear that outsourcing the Intraday Financial Surveillance Obligations to an independent RSP is a meaningful alternative and that the Proposal does not appear to provide a viable path for a DCM with an affiliated FCM to avoid these prescriptive requirements.

Finally, it should be noted that no DCM currently outsources its Intra-Day Financial Surveillance to an RSP, and it is therefore unproven whether outsourcing these responsibilities to an RSP is

practical or feasible. DCMs rely on information from the DCO clearing their transactions to perform these functions, and an RSP may be unable to access such information due to regulatory, confidentiality, or operational constraints. Further, during periods of market stress, DCMs and DCOs possess the most current and comprehensive information regarding positions and exposures and are therefore best positioned to identify and mitigate market risks in real time. Requiring reliance on an RSP could impair the effectiveness of Intra-Day Financial Surveillance and risk management.

Definition of Affiliated Market Participant

In the Proposal, the Commission defines an "affiliate market participant" as any person, including an affiliated FCM or affiliated principal trading firm, that (i) directly or indirectly executes, introduces, or otherwise facilitates trades on or subject to the rules of the exchange and (ii) controls, is controlled by, or is under common control with the exchange.[10] ICE believes that the Commission should exclude affiliated FCMs that do not engage in proprietary trading from the definition of "affiliate market participant." An affiliated FCM acting solely in an agency capacity does not present the same conflicts of interest as an affiliated principal trading firm, and the Commission has not demonstrated that such entities pose the risks the Proposal is intended to address and that the significant costs of complying with the proposed conflict-management requirements are justified by a corresponding regulatory benefit.

More broadly, the Commission should be mindful to not discourage investment in new market structures and innovation through overly burdensome regulatory requirements. The costs associated with implementing and maintaining the proposed conflict-management procedures, personnel restrictions, and office-separation requirements could be substantial. Imposing such requirements on affiliates that do not present meaningful conflicts of interest may create unnecessary barriers to entry and expansion, ultimately reducing investment in regulated markets. In this respect, the Proposal risks undermining the very market structure and competition that the Commission seeks to promote and protect.

DCM Regulatory Oversight Committee and Chief Regulatory Officer Compliance Responsibility (Request for Comment No. 77)

The Proposal seeks comment on whether the Commission should codify DCM, ROC and Chief Regulatory Officer (“CRO”) requirements or impose obligations similar to those applicable to FCM and DCO CCOs, including annual certifications and reporting on material noncompliance issues. ICE does not believe such changes are warranted. The existing ROC and CRO framework has functioned effectively under the Appendix B guidance to DCM Core Principles 2 and 16, and the Commission's Rule Enforcement Review program already provides a robust compliance-

[10] 91 Fed. Reg. 50926 (Aug. 6, 2026) (to be codified at 17 C.F.R. pts. 1, 37, 38, 39). Please refer to proposed 38.852(a) (DCMs) and 37.1201(a) (SEFs).

assessment mechanism. The Proposal does not identify any deficiency in the current framework that would justify additional prescriptive requirements. Accordingly, ICE recommends retaining the existing approach rather than extending Commission Regulation 3.3, or an analogous certification regime, to DCMs, ROCs or CROs.

Affiliate Relationships with Foreign Equivalent Entities

The Proposal addresses affiliate relationships between DCMs or DCOs and domestic registrants, including affiliated FCMs and affiliated market makers, but does not consider comparable relationships involving foreign affiliated entities, such as unregistered foreign markets. ICE has observed arrangements in which an affiliated FCM provides dedicated order-entry screens through which U.S. market participants may access an affiliated foreign trading venue that has not obtained registration or relief under Part 48. To the extent the Commission is concerned that affiliate relationships may create opportunities for preferential treatment, information-sharing, or other conflicts, those concerns may be equally relevant in this context. Moreover, such arrangements may place fully regulated DCMs and registered FBOTs at a competitive disadvantage by permitting affiliated foreign venues to access U.S. market participants through the same FCM distribution channels without being subject to the regulatory requirements applicable to registered DCMs or FBOTs operating pursuant to Part 48 relief.

SRO Surveillance of Financial Requirements for Affiliate FCMs

ICE supports the Commission's proposed amendments to Regulation 1.52, which are designed to mitigate the risks and conflicts of interest with a Designated Self-Regulatory Organization ("DSRO") being tasked with oversight and examination of an affiliated FCM. ICE supports the proposed framework, including independent third-party oversight, restrictions on affiliated DSRO assignments, examination staff reporting-line requirements, and limits on information sharing, to mitigate these concerns. In addition, ICE supports the proposed amendments permitting an FCM to elect the National Futures Association ("NFA") as its DSRO. This approach would provide FCMs with access to examinations conducted by a DSRO with no commercial interest in their activities, further promoting the independence and objectivity of the supervisory process.

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ICE appreciates the opportunity to comment on the Proposal. ICE supports the Commission's goals to examine the impact of affiliations between CFTC-regulated entities and potential issues that may arise. ICE believes the Commission's principles-based approach to mitigating conflicts of interests has proven to be efficient and effective, and that the industry's SROs and DSROs can work with the industry and the CFTC to ensure the ongoing effectiveness of the self-regulatory framework.

Sincerely,



Kara Dutta
VP, Head of Legal, US Futures Exchanges & Clearing
Intercontinental Exchange Inc.

cc: Honorable Chairman Michael S. Selig