

VERTICAL INTEGRATION UNDER SCRUTINY: CFTC'S PROPOSED CONFLICTS AND AFFILIATIONS RULE

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Three years after issuing a request for comment on affiliations between exchanges, clearinghouses, intermediaries, and other market participants,¹ the Commodity Futures Trading Commission (the CFTC or the Commission) has proposed regulations addressing certain of these relationships (the Proposal). The Proposal would prohibit an affiliate principal trading firm from trading on an affiliated designated contract market (DCM), subject to a conditional exception for affiliate market makers. It also would introduce new requirements for self-regulatory organizations (SROs) and designated SROs (DSROs), and it would adopt enhanced guidance for DCMs and swap execution facilities (SEFs) with affiliated intermediaries, such as futures commission merchants (FCMs) or introducing brokers, or affiliated market makers that trade on their affiliated exchanges. The Proposal also would impose new requirements on derivatives clearing organizations (DCOs) with affiliated clearing members. Although some of the Proposal's amendments are less controversial, such as codifying existing board composition guidance in Part 38 of the CFTC's regulations, the Proposal reflects a more significant shift toward prescriptive safeguards for affiliated market structures.

Although affiliations between DCMs and DCOs have long existed, the Proposal addresses conflicts that may arise in vertically integrated market structures in which an exchange or clearinghouse shares common ownership with an FCM, market maker, or other market participant. Throughout the Proposal, the Commission identifies a consistent set of concerns arising from this structure. At their core, these concerns center on three primary risks, as follows:

Preferential Treatment

Risk that an affiliated exchange, clearinghouse, or SRO will exercise its discretionary authority to favor the affiliate and disadvantage competitors.

Misuse of Nonpublic Information (NPI)

Risk that sensitive information obtained through the exchange's or SRO's regulatory functions will be shared with or used to benefit the affiliate.

Perception and Market Integrity

Risk that even where arm's-length treatment occurs, the perception of conflicts can undermine confidence in the neutrality of clearinghouses and registered entities' self-regulatory functions.

According to the CFTC, these risks are most acute where the affiliate is a principal trading firm or market maker, because the exchange may share in trading profits, creating economic incentives to advantage the affiliate operationally, while simultaneously compromising core self-regulatory functions.

AFFILIATED INTERMEDIARIES AND TRADING FIRMS

The Proposal would establish a new conflicts of interest (COI) framework for affiliated market structures. It would require DCMs, SEFs, and DCOs to address conflicts arising from specified affiliate relationships and would impose related disclosure obligations on FCMs. For DCMs, the Proposal also would generally prohibit affiliate principal trading firms from trading on an affiliated DCM, except where the firm qualifies as an affiliate market maker and satisfies specified conditions.²

DCMs/SEFs/DCOs With Affiliate Market Participants or Affiliate Clearing Members

The proposed regulation would introduce a broad COI framework, with more specific guidance included in Appendix B to each of Parts 37 and 38 and Appendix D of Part 39 (the Acceptable Practices). Specifically, the proposed regulations would do the following:

- Require DCMs and SEFs with affiliate market participants to have procedures to address COI involving such affiliate (for DCMs, the proposed rule's specified minimum procedures refer to an affiliate FCM; for SEFs, those procedures apply to an affiliate market participant).³
- Require DCOs to maintain procedures addressing COI involving an affiliate clearing member.⁴
- Amend the FCM disclosure obligations in CFTC Regulation 1.55 by requiring an FCM to disclose to customers the existence of affiliate relationships with an SEF, DCM, or DCO and the material risks associated with those relationships.

The COI procedures would need to address the following, at a minimum:

Applications and Systems

Maintaining and operating applications, information, and systems to prevent the sharing of NPI with the relevant affiliate.

Staff Separation

Ensuring that staff are not shared with the relevant affiliate, except for administrative functions.

Office Separation

Maintaining office space that is separate from that of the relevant affiliate.

COI Documentation

Documenting all COIs that arise with respect to the relevant affiliate and the way each is resolved.

Affiliate Disclosure

Disclosing the existence of the relevant affiliate in its rulebook; a clear, prominent, and readily available manner on its website; and any application portal through which it (directly or indirectly) electronically connects with its market participants. For DCOs, affiliate clearing member disclosure is a separate requirement.

The Acceptable Practices are similar across the proposed DCM, SEF, and DCO frameworks. They provide that an exchange's trading platform and a DCO's clearing systems, together with their surveillance and recordkeeping systems, should be logically separate from the systems of the relevant affiliate. The Acceptable Practices also describe information barriers and monitoring practices the CFTC would consider appropriate. In addition, the Acceptable Practices describe personnel performing "administrative functions," which would include staff responsible for accounting, human resources, and payroll matters, as well as technology staff responsible for systems safeguards functions.

DCMs With Affiliate Principal Trading Firms

The Proposal would require a DCM that permits an affiliate market maker to trade on the DCM to comply with the following conditions:⁵

Order-Priority Subordination

A DCM's matching system would not be allowed to favor an affiliate principal trading firm; its orders would need to be filled last at every price level.

Market-Making Incentive Agreement

Any market maker or incentive program applicable to the affiliate market maker filed under Part 40 would be required to:

- Set out the affiliate's market-making obligations, performance standards, and consequences for nonperformance, on terms no less favorable to the DCM than those offered to unaffiliated members participating in the same or a comparable program;
- Require continuous two-sided quotations in each product in which the affiliate is required to make a market;
- Specify minimum trading hours and permissible bid-ask spread limits; and
- Ensure the affiliate's trading is reasonably calculated to maintain a fair and orderly market, including by not taking directional proprietary positions, except in connection with its two-sided quoting obligation.

Independent Verification

A DCM would be required to designate an independent third-party regulatory service provider (RSP), which must:

- Comply with Rule 38.604 (titled "Financial Surveillance") with respect to the affiliate market maker as if it were an FCM (except requirements applicable to customers);
- Review and monitor the DCM's compliance with its COI procedures; and
- Annually certify to the Commission and the DCM's board of directors or other designated committee or officer responsible for regulatory compliance that the affiliate market maker satisfies each condition and the DCM complies with its COI procedures, including supporting written documentation and analysis.

Notwithstanding the designation, a DCM would remain responsible for its own compliance and the independent third-party RSP's performance.

Per-Session Affiliate Disclosure

Before a customer's first order each session, a DCM would be required to disclose its affiliate market-maker relationship through the electronic order-entry interface, conspicuously and clearly in plain language and in full (not by hyperlink alone), with affirmative acknowledgment required before dismissal. By DCM rule, intermediaries and others operating electronic interfaces would be required to deliver the disclosure in accordance with the same requirements.

SRO/DSRO SUPERVISORY PROGRAM AND FINANCIAL SURVEILLANCE

Under the Proposal, the CFTC would make changes to its existing SRO/DSRO framework. Where an SRO or DSRO has an affiliate FCM, the Commission is proposing targeted conflict mitigation requirements concerning SRO supervisory programs and financial surveillance, as well as DSRO responsibilities under the Joint Audit Program.

The Proposal would impose the below requirements on the supervisory program, with parallel requirements under the Joint Audit Program, as follows:

Staff Resources

An SRO would be required to maintain staff of adequate size, training, and experience to effectively implement its supervisory program.

Staff Independence

Staff, including officers, directors, and supervising committee members, (i) would need to maintain independent judgment, and (ii) actions could not impair independence or appear to impair independence in matters related to the supervisory program.

Staff Ethics Training

An SRO would need to provide annual ethics training to all staff with supervisory program responsibilities.

Third-Party SRO Designation/Prohibition

Where an affiliate FCM exists, an SRO would be required to:

- Designate an independent third-party SRO to conduct surveillance of the affiliate FCM;
- Ensure that the independent third-party SRO implements a supervisory program that satisfies the supervisory requirements and the requirements of Regulation 38.606 (titled "Financial regulatory services provided by a third party") applicable to an RSP; and
- Remain responsible for compliance with the Commodity Exchange Act and the CFTC's regulations, as well as for the independent third-party SRO's performance.

NPI Access/Sharing Ban—An SRO:

- Would not be allowed to access NPI of its affiliate FCM, except as necessary to comply with its responsibilities and obligations under Part 38; and

- Would be prohibited from sharing (directly or indirectly) NPI obtained from surveillance of nonaffiliate member FCMs with its affiliate FCM, except as necessary to comply with its responsibilities and obligations as an SRO or under Part 38.

The CFTC is proposing to allow an FCM to elect the National Futures Association, currently the only registered futures association, to serve as its DSRO. The election would provide FCMs with a “neutral” examiner. It also may indicate whether FCMs have confidence in their DSRO or whether there is a race to the bottom in the performance of DSRO obligations. The proposed election would be subject to the below conditions and timing requirements, as follows:

- An election would take effect on the later of the first day of the next examination cycle or six months after the Joint Audit Committee's (JAC) receipt of the election; the JAC may phase in clustered elections but not beyond 12 months.
- Following an election, an FCM would be required to retain the elected DSRO for at least three complete examination cycles before switching again or revoking the election.
- Absent an election, the JAC would designate the FCM's DSRO under the existing process. The election would not alter examination standards or relieve any SRO of its residual responsibilities.

Separately, the Proposal addresses a DCM's financial surveillance of an affiliate FCM. A DCM may use an RSP to satisfy its obligations under Rule 38.604 (titled “Financial Surveillance”) and Rule 38.605 (titled “Requirements for Financial Surveillance Program”), subject to a written agreement. A DCM with an affiliate FCM may designate an independent third-party RSP for Rule 38.604 financial surveillance. The DCM remains responsible for compliance and for the RSP's performance. If it does not designate an independent third-party RSP, it must maintain procedures to address conflicts arising from its financial surveillance of the affiliate FCM.

OTHER REQUIREMENTS UNDER THE PROPOSAL

The Proposal would introduce new disclosure obligations on FCMs that are affiliated with DCMs, SEFs, or DCOs. The Proposal would also codify the existing board composition, public director, Regulatory Oversight Committee, and disciplinary panel guidance currently set out in Appendix B to Part 38 with no material changes directly into the regulatory text as new CFTC Regulation 38.853.

COMPLIANCE CONSIDERATIONS

If adopted, the Proposal would require meaningful compliance work across all affected entity types. Key obligations by entity type would be as follows:

- SEFs, DCMs, and DCOs would need to review and update their COI policies and procedures to address staff separation, office separation, NPI firewalls, COI documentation and tracking, and public disclosure of affiliate relationships.
- DCMs acting as SROs or DSROs would additionally need to review examination staff reporting lines and supervisory structures to satisfy the proposed organizational independence requirements, as well as evaluate whether to designate a third-party RSP.

- DCMs that permit affiliate market makers to trade would face the most complex compliance obligations. These include per-session customer disclosure through the electronic trading interface, matching engine changes to subordinate affiliate orders, satisfaction of the applicable market-maker conditions, designation of an independent third-party RSP, and a written RSP agreement documenting the services to be performed and the RSP's capacity and resources.
- FCMs with affiliate SEFs, DCMs, or DCOs would need to review and update their Rule 1.55 customer disclosures to address material risks arising from those affiliate relationships.
- The JAC would have new obligations under the Proposal that are primarily administrative, including processing elections, updating the Joint Audit Program, and managing the phasing of clustered elections.

These structures are particularly relevant to digital asset and prediction markets, which may be affected if the Proposal is finalized as proposed. More broadly, the Proposal signals that the CFTC may impose more specific governance, information-sharing, surveillance, disclosure, and operational separation requirements on affiliated market structures than on comparable unaffiliated arrangements. Affected entities should assess their ownership relationships and shared systems, personnel, office space, governance, surveillance arrangements, and customer-facing disclosures. They also should consider whether the proposed requirements, including the conditions for affiliate market makers, are workable in practice and warrant comment.

Comments on the Proposal must be received by 5 October 2026.

Please reach out to your firm contact with any questions.

FOOTNOTES

¹ Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities (June 27, 2023), <https://www.cftc.gov/media/8826/rfciimpactaffiliations062823/download>. See also Conflicts and Affiliations, 91 Fed. Reg. 50,926 (Aug. 6, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-08-06/pdf/2026-15948.pdf>.

² The Commission has proposed the term “affiliate principal trading firm” to mean a member of a DCM that (i) is in a control relationship with that DCM—as parent, subsidiary, or fellow affiliate; and (ii) trades on a principal basis, including as a market maker or liquidity provider for its own account on that DCM.

³ The Commission has proposed the term “affiliate market participant” to mean any person (including any affiliate introducing broker) that: (i) is in a control relationship with a DCM or SEF—as a parent, subsidiary, or fellow affiliate; and (ii) directly or indirectly executes, introduces, or otherwise facilitates SEF trades. “Control” means the “power (direct or indirect) to direct or cause the direction of the management and policies of a person, whether by voting securities, contract, or otherwise.”

⁴ The Commission has proposed the term “affiliate clearing member” means a person that (i) is a clearing member of a DCO, and (ii) is in a control relationship with that DCO—as a parent, subsidiary, or fellow affiliate.

⁵ “Affiliate market maker” means a member of a DCM that (i) is in a control relationship with that DCM—as parent, subsidiary, or fellow affiliate; and (ii) trades on a principal basis, as a market maker, liquidity provider, or otherwise, for its own account on that DCM, as well as satisfies all of the applicable conditions.

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