September 20, 2023

VIA ELECTRONIC SUBMISSION

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington DC 20581

Re: Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities

Dear Mr. Kirkpatrick:

CME Group Inc. ("CME Group") appreciates the opportunity to respond to the request for comment ("RFC") issued by the staff of the Commodity Futures Trading Commission ("Commission" or "CFTC") on the impact of affiliations among certain CFTC-regulated entities. At its core, the RFC is about the role of self-regulation in the CFTC-regulated derivatives markets and assuring that marketplace self-regulatory organizations ("SROs") fulfill their responsibilities to have effective programs for detecting potential rule violations and enforcing compliance with their rules in a rigorous, fair, and impartial manner. In seeking to enhance their understanding of the issues arising from common ownership of CFTC registered entities, other CFTC registrants and market participants, CFTC staff appears to be focused on conflicts of interest that may exist when a marketplace SRO is affiliated with a market participant.

CME Group, a corporate holding company, owns and operates multiple entities that are registered under the Commodity Exchange Act ("Act" or "CEA") in capacities that authorize them to offer organized public markets for derivatives. These include four futures exchanges operating as designated contract markets ("DCMs"), one of which – Chicago Mercantile Exchange – also performs the services of a derivatives clearing organization ("DCO").[1] Each is a "registered entity" under the Act with statutorily mandated self-regulatory responsibilities. Each has a long, proven track record of performing those responsibilities effectively and fairly to protect market integrity, the financial integrity of cleared transactions, and market participants.

The CEA's principles-based approach to addressing DCM and DCO conflicts of interest has worked well, and we caution the Commission against adopting comprehensive and prescriptive rules that seek to address each scenario where conflicts could arise. We nevertheless appreciate the Commission's recognition that changing dynamics within the industry may pose new or unique conflicts that warrant

[1] CME Group also owns and operates a swap execution facility ("SEF"). Our comments focus on issues raised when a market participant is an affiliate of a DCM or DCO, although the issues are likely to be similar.

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possible Commission action. In addition to our general comments in this letter, we provide specific responses to the RFC questions in the attached appendix.

I. The CEA Regulatory Oversight Framework

As reflected in CEA section 3(b), the Act establishes a framework for regulating derivatives markets and market participants that relies upon "front line" regulation performed by registered entities and the National Futures Association ("NFA") as SROs, whose activities in turn are subject to the Commission's oversight and enforcement authority. The CEA presupposes that SRO functions are performed by entities that are legally distinct from the market participants whose activities Congress has determined should be subject to an SRO's oversight, whether as professional intermediaries such as FCMs registered with the CFTC and required to join NFA ("CFTC registrants"[2]) or as non-registered trading firms. We believe this separation between registered entities on the one hand and market participants on the other hand is an important foundational element of the CEA's long-established, effective regime for market regulation, and one that we endorse. Carrying this concept forward, and as reflected in our recommendations below, we believe it is important also to maintain an appropriate degree of operational separation between a marketplace SRO and any affiliated CFTC-registrant participating on that marketplace.

The CEA imposes core principle obligations on DCMs and DCOs and grants them reasonable discretion to establish the manner in which they comply with those obligations, subject to rules the Commission may adopt.[3] The CEA requires DCMs and DCOs to adopt rules and procedures to identify when conflicts of interest could arise in their decision making and operations and to minimize and resolve conflicts of interest when they occur.[4] Further, the CEA and Commission rules impose standards to assure diversity of representation in DCM and DCO governance, and to require DCMs and DCOs to treat all market participants and clearing members or clearing participants fairly and impartially.

For the CFTC's part, it is expected to exercise its oversight authority to ensure that DCMs and DCOs meet their regulatory obligations, including with respect to managing conflicts of interest.

II. The Emergence of Relationships Creating New Conflicts of Interest

Potential conflicts of interest between a marketplace SRO[5] and those subject to its oversight are inherent in the very nature of *self*-regulation.[6] The type or magnitude of the potential conflicts can change as

[2] We use the term "CFTC registrant" to refer to any firm that is registered (or required to register) with the CFTC and join NFA as an FCM, introducing broker, commodity trading advisor, commodity pool operator or in another professional capacity.

[3] CEA section 5(d)(1)(B) (for DCMs) and CEA section 5b(c)(2)(A)(ii) (for DCOs).

[4] CEA section 5(d)(16) (DCM Core Principle 16) and CEA section 5b(c)(2)(P) (DCO Core Principle P).

[5] We use the term "marketplace SRO" generally to refer to the registered entities that are SROs, *i.e.*, DCMs, DCOs and SEFs, to differentiate them from NFA as an SRO. Reflecting that distinction, DCMs, DCOs and SEFs are covered by the CEA's registered entity definition in section 1a(40), whereas NFA as an SRO is instead classified and regulated as a registered futures association.

[6] The RFC also poses some questions around whether affiliations between registered entities like DCMs and DCOs create conflicts of interest concerns. Such affiliate relationships have existed for many years and do not raise any new or novel conflicts considerations. At CME Group, our registered entities have a robust set of rules, policies, and procedures in place for identifying, addressing, and minimizing conflicts of interest in their decision making

relationships between SROs and market participants change. For example, many years ago marketplace SROs collectively owned by market participants under mutualized structures shifted to marketplace SROs owned by public holding companies, and now an SRO may be owned and controlled by one or a small group of market participants or may itself own or be under common ownership and control with an individual market participant.

We appreciate CFTC staff's interest in gaining an informed understanding of potential conflicts of interest that some newer corporate structures create. Recent corporate transactions such as Miami International Holdings' acquisitions of the Minneapolis Grain Exchange and Dorman Trading have brought potential conflicts into sharper focus – effectuating the combination of DCM, DCO and FCM registrations without any conflicts of interest review.[7] While we recognize that such assessments may be performed post acquisition, at that point it may be more difficult to balance the interests of registrants and market participants appropriately. It is nonetheless important to consider and address these questions now in this RFC. We note that the RFC also raises other potential concerns with these new corporate structures, including possible anti-competitive effects, the SRO's treatment of nonpublic information, and the adequacy of the SRO's financial resources to fulfill its regulatory obligations. These are all important topics for the Commission to consider.

As highlighted by staff's questions, an affiliation between a marketplace SRO and a separate firm that is a participant on that same marketplace SRO presents unique issues from a regulatory standpoint. This type of affiliation raises the question of how a marketplace SRO within the enterprise group will enforce its rules on itself. This is a specific type of tension and, if not managed properly, could potentially result in real problems.

There is also reason to distinguish between the types of market participants in these scenarios: certain types of market participants present different types of conflict concerns. A DCM and an affiliated FCM that acts solely on an agency basis and is subject to the strict segregation and customer protection regime under CFTC, NFA and marketplace SRO rules is one thing. In contrast, a trading firm that owns, is owned by or is under common ownership with a DCM and trades on a proprietary basis on the DCM with leverage raises conflict of interest concerns of a very different type and magnitude.

For example, in our comment letter addressing the FTX request for an amended DCO order, we specifically pointed out the acute conflicting interests between FTX and its "liquidity providing" affiliate, Alameda Research.[8] Unscrupulous managers can succumb to the strong business pressure to favor affiliated entities, particularly in times of market stress or where an affiliated trading firm's viability is called into question. Subsequent events demonstrated that this was not an idle concern.

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and operations. The RFC questions in this area, where the existing principles-based approach works well, are a distraction from the special conflicts of interest considerations that an affiliation between a marketplace SRO and an individual market participant present.

[7] See October 21, 2022 press release announcing Miami International Holdings Acquisition of Dorman Trading. https://www.dormantrading.com/miami-international-holdings-announces-acquisition-of-dorman-trading-a-full-service-fcm/.

[8] See May 11, 2022 Comment Letter from Kathleen Cronin, General Counsel CME Group Inc. in response to CFTC Request for Comment on LedgerX, LLC d.b.a. FTX US Derivatives Request for Amended DCO Registration Order. https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69466&SearchText=cronin.

We further note that recent proposals arguably blur important distinctions between the defining characteristics of registered entities, such as a DCO on the one hand, and CFTC registrants such as an FCM, on the other hand. CME Group Chairman and CEO Terry Duffy testified about the potential market integrity issues and customer protection risks presented by these types of proposals.[9] For example, as highlighted above, LedgerX LLC filed a petition last year (later withdrawn) seeking to amend its DCO order to incorporate regulated FCM activities (soliciting and interfacing directly with customers to clear leveraged transactions). Question 11 in the RFC illustrates this structural conflation from the converse perspective, where the contemplated organizational structure arguably shifts DCO functions into an FCM.[10]

In our view, the CEA does not allow for the **same** entity to maintain a license authorizing both activities of a registered entity with oversight responsibilities, such as a DCO, and activities of a CFTC registrant, such as an FCM, which is subject to that registered entity's very oversight. Two separate legal entities with separate licenses and independent regulatory obligations under common ownership, while not without complications, are a different matter. The CEA sets out very different approaches for regulating registered entities versus regulating customer facing CFTC registrants. Any proposals that blur these important distinctions with a single legal entity raise additional, serious, and fundamental questions.

III. How Should the CFTC Address the New and Potentially Problematic Combinations?

It is important to keep in mind that the existing principles-based approach to address conflicts has worked well. The CFTC should continue to rely upon marketplace SROs to identify and address potential conflicts that may arise (including under common group structures of affiliated registered entities), in lieu of adopting expansive and prescriptive rules that seek to identify and address each scenario where the SRO could face a conflict of interest in its decision making or operations. Any such attempt would be unworkable. The nature of potential conflict scenarios can vary widely and will depend on the particular facts at hand, and circumstances are ever changing, creating the risk that a prescriptive regime would fail to anticipate potential conflicts that may arise in the future. Wisely, the CEA gives DCMs and DCOs the obligation to identify, address and resolve conflicts of interest, with flexibility to determine how best to fulfill their statutory core principle obligations.

At the same time, we recognize that recent developments make it appropriate for the CFTC to re-focus on conflicts now and consider whether there is a need for targeted regulatory attention. The new affiliations described above raise significant questions, many of which are laid out in the RFC. *We support requiring a marketplace SRO that is affiliated with an FCM (or other CFTC registrant) to adopt and implement rules, policies, and/or procedures to assure that its operations and those of the CFTC registrant are sufficiently separated.*

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[9] See May 12, 2022 Testimony of Terrence A. Duffy, Chairman and CEO CME Group Inc., before the House Agriculture Committee. https://docs.house.gov/meetings/AG/AG00/20220512/114729/HHRG-117-AG00-Wstate-DuffyT-20220512-U1.pdf.

[10] Question 11 addresses the scenarios where a DCO has an affiliated FCM clearing member as its sole FCM clearing member or as its predominant FCM clearing member. These organizational structures raise very serious conflicts of interest, but the threshold question is whether a single FCM clearing member under these circumstances, as a single counterparty to all participants, is acting as a DCO and should be registered as such, rather than as an FCM.

Marketplace SRO affiliations with individual firms trading their own accounts raise yet additional concerns that warrant further consideration. We encourage the Commission to determine whether it should adopt restrictions and heightened supervisory obligations on a DCM permitting an affiliate to engage in trading for its own account on the DCM's markets given recent marketplace experiences and the more acute conflicts that such an affiliated relationship presents.

IV. Conclusion

CME Group thanks Commission staff for the opportunity to provide our comments on the important issues raised by the RFC. The existing principles-based approach for addressing potential conflicts, when applied to registered entities, has worked well. We believe recent developments, including the purchase by marketplace SROs of CFTC registrants present special concerns that warrant the Commission's focused attention and possible action. As explained in this letter, we support requiring a marketplace SRO that is affiliated with an FCM (or other CFTC registrant) to adopt and implement rules, policies, and/or procedures to assure that its operations and those of the CFTC registrant are sufficiently separated. And, finally, we encourage the Commission to consider whether more targeted restrictions are necessary for a DCM seeking to allow an affiliate to trade on a proprietary basis on the DCM's markets.

We would be happy to discuss any of our comments with Commission staff. If you have any comments or questions, please feel free to contact the undersigned at (312) 930-2324 or via email at Jonathan.Marcus@cmegroup.com.

Sincerely,

Jonathan Marcus
Senior Managing Director and General Counsel
CME Group, Inc.

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cc: Chairman Rostin Behnam
Commissioner Kristin Johnson
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Commissioner Christy Goldsmith Romero
Clark Hutchison, Director, Division of Clearing and Risk
Vincent McGonagle, Director, Division of Market Oversight
Amanda Olear, Director, Market Participants Division

APPENDIX – SPECIFIC RESPONSES TO RFI QUESTIONS

Question 1. §39.13(g), Margin. Margin requirements are generally based on parameters that are applied uniformly to all clearing members, without the exercise of discretion vis-à-vis individual clearing members. However, some margin-setting may be tailored to specific portfolios (and, thus, to specific clearing members) and there may be some discretion specific to individual clearing members. Are there ways in which such tailoring may be affected by a DCO's affiliation with an FCM? If so, how can this risk effectively be mitigated?

The existing regulatory framework effectively addresses the issues related to margin requirements highlighted in the question. A DCO that is fulfilling its regulatory obligations under the core principles and CFTC rules should not make margin decisions based on an affiliation with an FCM and, if it did, it would be violating its regulatory obligations. More specifically, DCOs are required to establish and apply margin requirements impartially and mitigate potential conflicts of interest in making margin decisions. DCOs are subject to multiple regulations, including CFTC Regulation 39.12, which requires objective, publicly disclosed and risk-based requirements, and Regulation 39.24, which requires DCO governance arrangements to support the stability of the broader financial system. The CFTC can take enforcement action against any DCO that is not fulfilling its regulatory obligations.

Furthermore, from a practical perspective, while margin requirements can be tailored based on exposure or portfolio composition, DCOs rarely, if ever, issue discretionary margin charges that impact a single clearing firm uniquely. For example, to the extent that a discretionary charge was applied to a clearing member with a large shortfall and/or a highly directional portfolio, the standard practice would be to apply that same charge to any other similarly situated clearing member. The core function of a DCO is to manage, rather than take, risk. Thus, a DCO lacks a strong financial incentive to treat similarly situated clearing members differently. But, as mentioned above, if a DCO were so inclined, regulatory obligations already exist that are designed to mitigate the potential risk that affiliation between a DCO and FCM could impact the behavior or risk management incentives of a DCO.

As discussed more below, we acknowledge the unique conflicts that can be involved with a marketplace SRO and an affiliated FCM and we do recommend the Commission consider how it can ensure adequate and effective separation between a DCO and an affiliated FCM. However, the Commission should also recognize that there are other fact patterns and ownership combinations that can trigger similar and potentially stronger conflicts. For example, one relatively common organizational structure features an exchange with a clearing member that may also be part of a group who is an influential owner of the same exchange. The risk that an exchange will favor a clearing member affiliated with an influential owner over an unaffiliated clearing member is obvious and stark. This example illustrates why the Commission is well advised to maintain a primarily principles-based regulatory approach for conflicts issues as a general matter. Conflicts can take many forms and vary based on the circumstances involved. A highly prescriptive regulatory approach that is too focused on a single set of facts will likely be ineffective and potentially become obsolete as new factors and trends emerge.

Question 2. §39.16, Default rules and procedures. A DCO has discretion to determine whether a clearing member is in default (and this discretion is particularly present for defaults other than payment defaults, e.g., undercapitalization). Moreover, in liquidating the positions of a defaulting

clearing member, the DCO has discretion to determine how to do so; different actions may relatively benefit the positions of certain clearing members (including, the affiliate) while disfavoring the positions of other clearing members. Is this a relevant concern if a DCO has an affiliated FCM? If so, how can this issue effectively be mitigated?

A DCO is expected to exercise discretion predicated on risk management expertise as a core part of its essential function; this discretion is already subject to comprehensive regulatory obligations and standards that are designed to address the concerns articulated in the question. A DCO with robust default and risk management rules and procedures should be well positioned to mitigate this potential conflict of issue effectively. The current Part 39 Rules, including §39.24 and §39.25 and recent amendments to rules regarding DCO governance, set out the applicable standards.

Thus, to the extent that a DCO's natural incentives to operate as a neutral risk manager regarding default management decision-making are potentially impacted by the existence of an affiliated FCM, the DCO's regulatory obligations already stipulate that no preferential treatment can be offered to an affiliated FCM. These obligations are heightened where this treatment could have a broader impact on other clearing members or the broader financial system.[11]

With that said, we also believe it is appropriate for the Commission to consider how to ensure effective separation, via appropriate information barriers and separate staff, between any marketplace SRO and any affiliated intermediary like an FCM clearing member which participates on such marketplace.

Question 3. §39.17, Rule enforcement. A DCO has discretion in determining whether a particular clearing member should be investigated, whether a particular course of conduct violates the DCO's rules, and, if so, what discipline is appropriate. If a DCO has an affiliated FCM, will this give rise to potential conflicts? If so, how can they effectively be mitigated?

Please see our response to Question 2 above, which addresses a very similar issue and is generally applicable to this question. Further, although we believe that the current CEA framework effectively addresses the potential conflict scenario in this question, it is reasonable for the Commission to explore how it can ensure effective separation, via appropriate information barriers and separate staff, between a marketplace SRO and any affiliated intermediary that participates on such marketplace.

Question 4. General risk management. How will a DCO perform the remaining responsibilities set out above with an affiliated FCM, given the potential conflict of interests? We note that Core Principle P of the Act and §39.25 requires the DCO to "establish and enforce rules to minimize conflicts of interest in the decision-making process" of the DCO.

The CEA wisely does not prohibit conflicts of interest. Instead, it recognizes that conflicts of interest can and will exist and that they generally can be managed. The CEA requires a DCO to be vigilant in identifying when conflicts of interest may exist and to establish and enforce rules to minimize conflicts of

[11] We also note that a DCO will not handle a default in a vacuum. All DCOs know that their actions managing a default – in particular, the default of a clearing member that is an affiliate – will be subject to a high degree of scrutiny by the CFTC (and the Federal Reserve Board if the DCO is a SIDCO), other clearing members and potential private litigants and, in the case of a bankruptcy, by the trustee and bankruptcy court. Further, where a default is accompanied by the bankruptcy of the clearing member, the required coordination with other DCOs, other clearing members, the trustee and the Commission will provide further transparency, serving as a strong deterrent against improper conduct.

interest in decision making. As contemplated in CEA section 5b(c)(2), a DCO should have reasonable discretion for determining how it complies with this (and other) DCO core principles.

It is impossible to identify all potential conflicts of interest that could theoretically arise, and it would be counterproductive to try to develop prescriptive rules that seek to do so when the types of conflicts that arise can change with changing circumstances. The Commission should recognize that DCOs can vary greatly in terms of their operations, resources, and levels of experience, and should tailor its oversight accordingly. An inexperienced or thinly capitalized DCO may face greater challenges complying with DCO core principles.

The Commission has authority to oversee DCOs, and DCOs have regulatory obligations to provide objective, risk-based treatment to their participants while supporting the broader financial system. To the extent that a DCO fails to do so, whether on account of conflicts or otherwise, it would be in violation of its regulatory obligations.

Question 5. Contagion risk to DCO. One risk to the DCO may be that clearing members and/or clients lose confidence in the DCO and consequently start a "run" (e.g., through rapidly closing positions and withdrawing margin) because of a failure or perception of an imminent failure of an affiliated FCM. How can a DCO with an affiliated clearing member provide assurance that it possesses the ability to manage contagion risk in this context? How should the Commission consider and address contagion risk in this context?

As an initial matter, a DCO and an FCM would, by regulation and practice, be required to maintain and meet separate capital requirements based on their separate roles and regulatory registrations. Further, if a DCO is well run, the risks outlined in the question are relatively remote. A well run DCO has its own self-interest to protect against such a loss of confidence. Although DCOs can vary greatly in terms of their operations, resources, and levels of experience, it is true that an inexperienced or thinly capitalized DCO may face greater challenges complying with DCO core principles. The Commission should tailor its oversight of each DCO accordingly.

Further, as noted above, we recommend that the Commission explore some targeted areas where existing CFTC oversight could be improved by requiring effective separation, via appropriate information barriers and separate staff, between a DCO and any affiliated FCM. Effective separation should mitigate potential contagion risk concerns.

Question 6. Contagion risk to FCM. An analogous risk to the affiliated FCM may be that customers or other counterparties lose confidence in the FCM and consequently start a "run" (e.g., through rapidly closing positions and withdrawing margin or through refusing to extend normal credit) because of a failure of an affiliated DCO. How can an FCM with an affiliated DCO provide assurance that it possesses the ability to manage contagion risk in this context? How should the Commission consider and address contagion risk in this context?

We do not see a pressing policy concern for the Commission in this example. First, history shows that a DCO is much less likely than an FCM to fail and create contagion risk. Second, the process of DCO recovery and winddown would, consistent with the DCO's regulatory obligations, affect all clearing members of a DCO equally. Third, it is not entirely clear, to the extent this risk exists, that it is materially different than a scenario which involves an unaffiliated FCM which exclusively or nearly exclusively uses

the defaulting DCO. Thus, we fail to see the basis for the staff's apparent concern that an FCM affiliated with a DCO might face special and unmanageable contagion risks upon the default of the DCO. Finally, FCMs will naturally conduct business to guard against such "runs" as a matter of self-protection.

Question 7. Financial/liquidity resources. The financial or liquidity resources of the DCO and affiliated FCM may need to be tapped effectively simultaneously in the case of FCM or DCO weakness/failure. Does this raise a significant concern? How could the relationship between a DCO and an affiliated FCM be structured to reduce this concern?

No, this does not raise a significant concern from our perspective. The DCO and FCM are separate legal entities. Each entity is subject to independent, stringent financial and liquidity resource requirements. Each should be held to compliance with its obligations, and subject to the consequences if it fails to meet its minimum capital requirements.

Further, there is nothing particularly unique about the potential DCO/FCM relationship in this regard, as many different financial institutions feature widely varying structures with multiple affiliated entities. It is common for practice and regulation to dictate that such entities address these same risks by maintaining separate resources consistent with the roles they perform.

One potential mitigant for this risk might be a requirement for a DCO with an affiliated FCM to have additional financial resources, for example, sufficient supplementary default and liquidity resources to cover (under stress conditions) the default of the affiliate in addition to the DCO's current Cover 1 or Cover 2 requirements pursuant to, as appropriate, §39.11(a)(1)/§39.33(a) and §39.11(e)(1)(ii) /§39.33(c).

a. To what extent would this approach effectively mitigate conflict issues?

b. Might there be conflicts in designing and conducting stress testing to determine the amount of resources required?

c. Should there be restrictions on how a DCO could source any additional default resources? For example, should any supplemental resources be sourced solely from the DCO and its affiliate, or should it be permissible for the supplemental resources to be sourced from non-affiliated clearing members?

In short, requiring a DCO to have supplemental resources when it has an affiliated FCM is unnecessary. Whether affiliated or not, an FCM clearing member is a clearing member and is separately subject to applicable CFTC and NFA capital requirements in addition to the DCO's rules.

Question 8. Information. If a DCO is affiliated with an FCM, what might be the impact on the DCO's ability, in its role as a risk manager, to obtain information from other clearing members? Might other members be less willing to provide information if they view the DCO as something other than as market neutral?

How can such impacts effectively be mitigated? Are the information sharing restrictions that DCOs typically have in their rulebooks sufficient to provide confidence to other members that they will not share information about those other clearing members with any affiliated FCMs?

DCOs are obligated to treat all clearing members fairly and impartially. Improper information sharing practices would violate these regulatory obligations.

Notably, information sharing restrictions already exist at DCOs today in relation to other entities and functions within their group structure. It is our understanding that similar restrictions are a common feature at a variety of financial institutions that have multiple service lines, including banks, to address these sorts of issues.

However, as noted in our letter, we also believe it is appropriate for the Commission to consider requiring a DCO and its affiliated FCM to develop and implement appropriate information barriers and separate staffing. These types of supplemental protections should address the concerns noted in the question.

Question 9. Resource sharing. What limits, if any, should there be on DCOs sharing resources (personnel, technology, etc.) with affiliated FCMs? Are there conceptual differences between the sharing of personnel between a DCO and DCM that has historically occurred, on the one hand, and the sharing of personnel between a DCO and an FCM, on the other? Might overlap of personnel exacerbate the concerns raised in Question 8 above with respect to clearing members providing information to a DCO with an affiliated FCM in its role as a risk manager? Might some required separation of duties mitigate these difficulties?

a. To the extent that DCO and FCM personnel are separate, are there "ethical walls" or other information barriers that might be appropriate? To make such information barriers effective, would there be a need for personnel to be located in separate physical space?

b. Are there certain areas, or instances, where the sharing of personnel, technology, etc. would provide benefits to the marketplace (e.g. cost efficiencies, reduced complexity), that would outweigh potential concerns?

c. Are there particular functional areas that present more or less potential for conflicts, e.g., sales, operations, IT development, risk management, treasury, credit management?

The shared services model is used throughout the financial industry and more broadly across corporations. For example, it is very common for a large bank holding company structure to feature shared services across the various regulated entities under common ownership (for example, a bank, broker-dealer, FCM, Swap Dealer, SEF, investments in other DCOs/DCMs, foreign exchanges, etc.) while also maintaining conflicts of interest separation. Certain personnel that do not have specific regulatory responsibilities or are second line (e.g., HR, Legal, Accounting, Payroll, Technology) can be managed through inter-affiliate service level agreements that adequately deal with the issues implicated by most shared services structures.

However, it is also common for regulations to identify standards that apply to specific regulatory roles where conflicts may arise, including resource and information sharing limitations that apply to the individuals occupying those roles.

Consistent with that approach, staff has highlighted that sharing personnel between a DCO and affiliated FCM can present conflict concerns that would be appropriate to address. We would support the Commission considering how it could, in a targeted way, require effective operational separation, including resource and information sharing limitations or barriers, between a DCO and an affiliated FCM. Separation may not be necessary for all activities, however, and the challenge lies in how and where to draw the lines, which would be an appropriate matter for Commission consideration.

Question 10. Competitive effects. Are there competitive implications of allowing a DCO to affiliate with an FCM? Are there specific effects of this affiliation which may be detrimental? Would any effects be helpful to competition? Are there effective mitigants?

To the extent that a DCO's natural incentives to operate as a neutral risk manager are potentially impacted by the existence of an affiliated FCM clearing member, the DCO's regulatory obligations already stipulate that no preferential treatment can be afforded to an affiliated FCM. Thus, in our view, current obligations imposed on DCOs, including those that mitigate the impact of conflicts of interest in decision making, adequately address the competition risks identified in this question.

We see the risks highlighted by this question more as a matter of whether a DCO complies with its current regulatory obligations. The Commission can appropriately address these concerns through its authority to oversee DCOs, including via enforcement. As we have stated many times before, we believe in the FCM model and the importance of FCMs for risk management and customer protection. Therefore, increasing the number of FCMs on a fair and impartial basis increases customer choice and lessens concentration risk.

Question 11. Organizational Structure – Single FCM. Are there concerns raised if a DCO operates with a single affiliated FCM clearing member (and has no other clearing members)? What concerns are raised if there is a single affiliated FCM and other non-affiliated, non-FCM clearing members? In either of those circumstances, are the concerns unique to the fact that the single FCM is an affiliate of the DCO? What concerns are raised if a DCO has an affiliated FCM, and one or more non-affiliated FCMs, and the affiliated FCM is responsible for the bulk of the volume at the DCO?

There are clear issues with a DCO operating with a single FCM. This organizational structure arguably shifts DCO functions into an FCM. First, from a legal perspective, we do not believe that a clearinghouse could reasonably meet the statutory definition of a DCO if all customers interact with a single clearing member. Where a single legal entity is both a DCO and an FCM, the clearing activities that are occurring within the meaning of the DCO definition would, of necessity, also occur within that single FCM in relation to its customers. A firm should not be allowed to operate as a DCO under the guise of an FCM registration. Second, another obvious and practical problem is visible from a market stability and continuity perspective - if the single FCM defaults, there would not be any other clearing member to accept clients seeking to port their accounts. Finally, it is not apparent how a DCO could exclude non-affiliated clearing members and meet its regulatory obligations to provide fair and open access to clearing members.

The practical reality is that a DCO which features a single FCM is essentially a single entity acting as both a DCO and an FCM. We do not believe the CEA allows the same legal entity to maintain two licenses which simultaneously allows it to engage in the activities of a registered entity with oversight responsibilities, such as a DCO, and also at the same time undertake the activities of a CFTC-registrant such as a FCM which is subject to that registered entity's very oversight. The CEA sets out very different approaches for regulating registered entities versus regulating customer facing CFTC-registrants. Proposals that blur the distinction raise serious, fundamental questions that may create more significant conflicts of interest.

Further, we do not believe that the other fact patterns noted in the question, positing the potential presence of any non-affiliated, non-FCM clearing members, would adequately address the fundamental concerns involved with a single FCM for customer business described above.

Question 12. Other cross-affiliate risks. Other than the risks mentioned above, are there other examples of cross-affiliate risk if a DCO has an affiliated FCM – areas where risks at the first would be uniquely correlated with the risks of the second? Are there additional risk management requirements that could effectively mitigate both the presence, and the severity, of these risks?

We are not aware of other types of cross-affiliate risk.

Question 13. Mitigants – disclosure. Are there additional disclosures that, if required in cases of an affiliate relationship between a DCO and FCM, would help mitigate the concerns discussed in the questions above?

Our recommendation is that the Commission consider ensuring effective separation, via appropriate information barriers and separate staff, between a DCO and an affiliated FCM. We are not opposed to disclosure standards (identifying the affiliation among other things) in addition to the above.

Question 14. Mitigants – conduct restrictions. Are there requirements or restrictions that, if instituted, would effectively ensure that affiliated FCMs interact on an "arms-length" basis with DCOs such that affiliated FCMs would be treated in a manner equivalent to non-affiliated FCMs (e.g., incentives available to affiliates are equivalently available to non-affiliates; information available to the affiliate is equivalently available to non-affiliates)? Are there documentation requirements that would contribute to achieving this goal?

A DCO has an obligation to treat all FCM clearing members fairly and impartially, which in practical terms means there must be an arms-length relationship between the two. Separately requiring the FCM to act on an arms-length basis with its affiliated DCO is therefore unnecessary. In addition, as discussed above, we recommend other targeted actions, which would result in effective operational separation, and which would also help ensure an arms-length relationship.

Question 15. Mitigants – volume caps. Would the concerns discussed above be mitigated by a cap on the volume (expressed as a percentage) of clearing at the DCO that can be made through an affiliated FCM? What practical issues would be raised by enforcing such caps?

It is unclear how volume caps would have any impact on the issues/questions raised above since volume is not representative of risk, and risk management standards already exist for both entities in CFTC regulations and are incorporated into DCO rulebooks. A DCO must treat an affiliated FCM clearing

member the same as any other clearing member and calibrate any credit limits or caps on the affiliated FCM's clearing volume based on the same factors it would apply to other clearing FCMs.

Question 16. Affiliated trader. If a DCO is affiliated with a market maker or other trader that settles through the DCO, does that raise concerns? If so, what mitigants would be effective?

A marketplace SRO affiliation with a trading firm trading its own account raises an additional and important set of concerns that warrant additional Commission attention and oversight. Given recent industry experiences, and the inherent conflicts and risks involved with this proprietary trading scenario, there is a very heavy burden for those who seek to make the case that the benefits of allowing such arrangements outweigh the costs and risks. In fact, we think these concerns could justify the Commission considering stringent restrictions and heightened supervisory obligations on a marketplace SRO permitting an affiliate to engage in trading for its own account on its markets.

Question 17. Affiliate spot market. If a DCO is affiliated with a spot market, does that raise concerns? If so, what mitigants would be effective?

We do not see any concerns with a DCO affiliation with a separate spot market that is operating in distinct markets with separate products. Further, we believe the current CFTC regulatory framework that applies to a DCO would be adequate to deal with the potential conflict concerns that could be involved in these circumstances, including in the instance where a DCO clears spot products of an affiliated market subject to the DCO's rules and applicable regulatory standards (for the same reasons that it is appropriate for a DCO to clear derivatives products listed on an affiliated DCM). The existing DCO regulatory scheme has robust, principles-based conflicts, default and risk management rules and procedures that effectively deal with potential conflict scenarios involved in this fact pattern. A DCO that is fulfilling its regulatory obligations under existing core principles and CFTC rules will be well positioned to mitigate such conflicts effectively and, if it did not, would be violating its regulatory obligations.

Question 18. Affiliated direct clearing members. How would the responses to the questions above differ, if at all, if the DCO is affiliated with a non-FCM direct clearing member instead of an FCM clearing member?

We think there are important conflict considerations wherever a marketplace SRO, which is responsible for enforcing rules, is affiliated with a firm that participates on that marketplace and is therefore responsible for complying with such rules. We think the most acute risks involve a marketplace SRO that operates as an exchange which is affiliated with a proprietary trading firm trading for profit in its own account on that exchange – we are not sure any benefits of allowing such arrangements outweigh the inherent risks involved, and those who would argue they do have a heavy burden to make that case.

Question 19. Affiliated DCO and DCM. How would the responses to the questions differ, if at all, if the FCM is affiliated with a DCM as well as a DCO?

We believe it is appropriate for the Commission to consider how to ensure effective separation, via appropriate information barriers and separate staff, between any marketplace SRO (be it a DCO, DCM or both) and any affiliated intermediary like an FCM which participates on such marketplace. An FCM affiliation with both a DCO and DCM as opposed to one or the other does not in our view raise any separate, distinct concerns.

Question 20. DSRO Examinations. There are currently 13 SROs, including the NFA, that are signatories to the JAC Program. Under the current JAC Program, the CME Group ("CME") is the DSRO for all FCMs that are clearing members of the CME, and NFA is the DSRO for all FCMs that are not clearing members of the CME. DSRO Examinations are a primary mechanism for carrying out financial surveillance over FCMs as critical market participants. An affiliated FCM of a DSRO with this responsibility can present several potential conflicts of interest.

a. What potential conflicts of interest may arise from an SRO performing the DSRO functions set forth in §1.52 for an affiliated FCM?

b. Could these potential conflicts of interest adversely impact other members, including other member FCMs, of the same DSRO? If so, how might those other members be impacted?

c. What DSRO and/or FCM risk management requirements, policies, and/or procedures could help to mitigate these potential conflicts of interest?

d. Are there existing SRO rules, policies, and/or procedures that ensure that all FCMs, including affiliated FCMs, are subject to the same standards of financial supervision and oversight, and that potential financial and financial reporting rule violations identified by the DSRO are subject to comparable review and assessment by SRO disciplinary bodies?

e. Should a DCM be prohibited from acting as the affiliated FCM's DSRO pursuant to the JAC Program?

f. Does the current regulatory structure of §1.52, which imposes an obligation on DCMs to perform financial surveillance over member FCMs, including on-site examinations, adequately address situations where the DCM and FCM are affiliated entities? Please identify what specific additions or changes should be considered and why such changes should be made.

SROs affiliated with an FCM should not be permitted to be the DRSO for that FCM. In the event a DCM is affiliated with an FCM, and that DCM would otherwise be the DSRO for the FCM, an alternate DSRO should be appointed instead.

Further, persons affiliated with the FCM or otherwise privy to the activities of the FCM should not be permitted to act in any capacity with the SRO (regardless of whether the SRO is a DSRO) or participate in or receive reports from the JAC, which could include sensitive information pertaining to other unaffiliated FCMs. DSROs with affiliated FCMs as a matter of best practice and applicable regulatory obligations should be expected to put in place internal controls to further mitigate conflicts of interest in their review process.

Question 21. Information. As a natural extension of their financial surveillance obligations, DSROs must have access to detailed information from FCMs, such as books and records, including confidential financial, trading, and other information. In addition, DSROs function as an enforcement mechanism and are expected to remain impartial and conduct their examinations pursuant to accepted auditing standards.[28]

a. Should DSROs be obligated to adopt appropriate firewalls and/or internal procedures to ensure that staff of an affiliated FCM are prevented from accessing or utilizing confidential information in possession of DSRO staff?

Yes.

b. Are there governance structures, or other steps, that could be implemented to effectively mitigate the potential conflicts of interest that may arise from an SRO being the DSRO of an affiliated FCM? For example, would requiring DSRO examination staff to report directly to the board of the DSRO or a Board-level committee ensure that their activities remain impartial and unbiased?

An SRO should not be the DSRO of an affiliated FCM. Further, a DSRO entity should be obligated to adopt appropriate firewalls and/or internal procedures to ensure that staff of any affiliated FCM are prevented from accessing or utilizing confidential information in possession of DSRO staff.

Further, as explained above, we also believe that the Commission should require that any marketplace SRO, even if not acting as DSRO, implement effective separation including information barriers and separate staff between any marketplace SRO that is responsible for enforcing rules and any affiliated intermediary that participates on that marketplace SRO. It is our understanding that similar restrictions are in place at a variety of financial institutions that have multiple service lines, including banks which own FCMs, Broker/Dealers or Swap Dealers to address similar types of issues.

Question 22. DCM Supervision of FCM Financial Requirements. Regulation 38.604 provides that a DCM must monitor a member's compliance with the DCM's minimum financial standards and, therefore, must routinely receive and promptly review financial and related information from its members, and continuously monitor the positions of members and their customers. Regulation 38.604 further provides that a DCM must continually survey the obligations of each FCM created by the positions of its customers; as appropriate, compare those obligations to the financial resources of the FCM; and take appropriate steps to use this information to protect customer funds.

a. Does the current regulatory structure of §38.604, which imposes an obligation on DCMs to monitor the financial condition of member FCMs and to monitor the positions of the customers of member FCMs, adequately address situations where the DCM and FCM are affiliated entities? If not, please identify what changes should be made to the regulatory structure of §38.604 and why such changes should be made.

b. What potential conflicts of interest may arise from a DCM monitoring an affiliated FCM and the customer positions of an affiliated FCM pursuant to §38.604? Could the potential conflicts of interest adversely impact other FCMs that execute customer or non-customer transactions on the DCM? If so, how?

c. What risk management requirements, policies, and/or procedures, if any, might mitigate conflicts of interest that may arise from the obligation of the DCM to monitor the financial condition and positions of an affiliated FCM and the positions of the customers of an affiliated FCM?

d. Should a DCM program for monitoring compliance with Commission Regulation 38.604's requirements set forth specific procedures beyond the existing requirements that the DCM would undertake to monitor and assess intra-day financial risk resulting from market moves on open positions of its affiliated FCM and the affiliate FCM's customers, and the financial risk resulting from an affiliated FCM establishing new positions for its own account or for the accounts of its customers?

e. Regulation 1.71 addresses conflicts of interest concerning an FCM's publication of research reports. Should §1.71 be revised to address conflicts between a DCM and an FCM affiliate? If so, what revisions to §1.71 would be appropriate and why?

Any marketplace SRO that is registered as a DCM should be required to maintain effective separation between the operating DCM and the operations of any affiliated FCM participating on the DCM. This separation should feature information barriers to prevent FCM personnel from accessing any DCM information relating to unaffiliated clearing members, whether or not the DCM is acting as DSRO for those unaffiliated clearing members.

Question 23. Other DCM/SEF SRO Supervisory Responsibilities.

a. In addition to financial supervision requirements, a DCM has responsibilities to surveil, investigate and discipline participants on its market (see, e.g., §§ 38.152– 153, 38.155–158, 38.250–258, 38.550–38.553, and 38.700–38.712). DCMs are further subject to DCM Core Principle 16 and corresponding § 38.850, which require them to "minimize conflicts of interest in the decision-making process of the contract market." How can a DCM minimize conflicts of interest while performing its surveillance, investigation and enforcement obligations with respect to an affiliated FCM that intermediates transactions, executes proprietary trades, or carries accounts for customers executing trades on the DCM?

b. SEFs have similar responsibilities to surveil, investigate and discipline participants on their markets (see, e.g., §§ 37.203, 37.205, and 37.206). They also are subject to SEF Core Principle 12, and corresponding § 37.1200, which requires a SEF to "minimize conflicts of interest in its decision-making process." How can a SEF minimize conflicts of interest while performing its surveillance, investigation and enforcement obligations with respect to an affiliated IB, CTA or CPO that facilitates the execution of trades on the SEF?

c. Should a SEF and an affiliated IB be permitted to share a chief compliance officer and/or staff performing SEF surveillance, investigation, or enforcement functions? If yes, what steps should the SEF take to minimize conflicts of interest?

Consistent with prior comments, we believe that sufficient separation between DCM or SEF personnel performing surveillance, investigation and enforcement duties and an affiliated intermediary should be implemented and conflicts of interest policies maintained. With those protections in place, investigative and disciplinary processes should function appropriately.

However, the Commission should not conclude that overly prescriptive rules are necessary here. A DCM must comply with its obligations under the DCM core principles and CFTC regulations, including to

enforce its rules, treat members impartially, and minimize conflicts of interest in decision making. Prescriptive rules are unnecessary and contrary to the overall approach reflected in CEA section 5(d)(1) that a DCM should have reasonable discretion to determine how it complies with the core principles. Of course, the Commission also has substantial authority to oversee DCMs. If a DCM does not fulfill its regulatory obligations, the Commission can take appropriate action. This logic and approach would apply equally to a SEF, which is subject to similar requirements and oversight.

Question 24. Impartial Access. Regulation 38.151(b) requires a DCM to provide impartial access to members, persons with trading privileges and independent software vendors. This means, pursuant to §38.151(b)(1), establishing and maintaining access criteria that are "impartial, transparent, and applied in a non-discriminatory manner." §37.202(a)(1) provides similar requirements for SEFs.

a. Are there potential impartial access concerns when a DCM has an affiliated FCM intermediating transactions, executing proprietary trades or carrying accounts for customers executing trades on the DCM? Are there potential impartial access concerns when a SEF has an affiliated IB, CTA or CPO facilitating the execution of trades on the exchange? What measures, if any, should be implemented to ensure that affiliated and non-affiliated intermediaries, and their respective customers, clients and participants, all receive impartial access?

b. Are impartial access considerations different when there is only one FCM intermediating transactions, executing proprietary trades or carrying accounts for customers executing trades on the DCM as opposed to multiple FCMs (or where there is only one IB/CTA/CPO, as opposed to multiple IBs/CTAs/CPOs)? Please explain.

There are clear problems with a DCM operating with a single FCM as explained above in our discussion regarding this issue in the context of a DCO. It is unclear how the exchange would handle the single FCM's default from a market stability and continuity perspective. Further, it is not apparent how a DCM could exclude non-affiliated FCM clearing members and meet its regulatory obligations to provide fair and open access.

Question 25. Market Integrity. DCM Core Principle 4 and corresponding regulations require a DCM to have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures. Similarly, SEF Core Principle 4 and corresponding regulations require a SEF to monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures.

a. Could structures where a DCM has an affiliated FCM have any negative impacts on market integrity, meaning, for example, price distortion or disruptive effects on the DCM's market? Are there FCM risk management practices that are particularly critical when an FCM is affiliated with the DCM, to help safeguard against these impacts?

b. Could the failure of an affiliated FCM adversely impact a DCM and cause price distortion or market disruption, to a greater or different extent than failure of a non- affiliated FCM? If so, should DCMs implement additional safeguards to help address such adverse impacts, such as limits or prohibitions on auto-liquidation? Conversely, could auto-liquidation practices have a

positive impact on market integrity in such circumstances? Could prohibitions or limits on auto-liquidation or other FCM risk management procedures that may result in the liquidation of certain customer positions have the potential to impose risks or costs on other customers of the FCM?

c. Similar to the above, could structures where a SEF has an affiliated IB, CTA or CPO have any negative impacts on market integrity, meaning, for example, price distortion or disruptive effects on the SEF's market?

All FCMs participating in a DCM's markets, and all their customers, must comply with the DCM's rules and face discipline if they do not. The DCM must enforce its rules impartially against all participants, and if it does not, the CFTC has authority over the DCM to make sure it fulfills its responsibilities. Further, all classes of participants in a market must be treated the same under existing DCM and SEF rules and DCO rules. Accordingly, and given the separate capital obligations of the DCO and FCM noted above, the failure of an affiliated FCM should not have any greater impact than the failure of a non-affiliated FCM.

Please see our comment letter filed in the matter of FTX Request for Amended DCO Registration Order (May 11, 2022) for our thoughts on auto-liquidation by a DCO that controls the intermediary aspect of clearing, the exchange and the affiliated market maker.

https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69466&SearchText=cme%20group

Question 26. Competitive Effects. Are there potential competitive implications if a DCM has an affiliated FCM, and/or if a SEF has an affiliated IB, CTA or CPO?

a. DCM Core Principle 19 provides that a DCM may not "[i]mpose any material anticompetitive burden on trading on the contract market." Do structures where a DCM has an affiliated FCM raise potential Core Principle 19 concerns? Please explain.

b. Generally, could such structures potentially have problematic competitive impacts, such as decreased competition or increased costs? Conversely, are there potentially positive competitive impacts resulting from such structures?

c. SEF Core Principle 11 provides that a SEF may not "[i]mpose any material anticompetitive burden on trading or clearing." Please explain whether there are potential competitive implications when a SEF has an affiliated IB, CTA or CPO. Are there potentially positive outcomes resulting from such structures?

We believe this potential conflict of interest is adequately addressed under existing CEA provisions and CFTC regulations which already prohibit anti-competitive behavior by DCMs and SEFs.

Question 27. Resource Sharing.

a. **What limits, if any, should there be on DCMs or SEFs sharing personnel with affiliated FCMs, IBs, CTAs or CPOs?**

b. **Are there conceptual differences between a sharing of personnel between a DCO and DCM, on the one hand, and a sharing of personnel between a DCM and an FCM, on the other (or a SEF sharing personnel with an IB, CTA or CPO)? Might overlap of personnel contribute to difficulties with respect to the DCM or SEF effectively performing its surveillance, investigatory or disciplinary obligations with respect to the affiliated intermediary? Might some required separation of duties mitigate these difficulties?**

c. **To the extent that DCM and FCM (or SEF and IB/CTA/CPO) personnel are separate, are there "ethical walls" or other information barriers that might be appropriate? To make such information barriers effective, would there be a need for personnel to be located in separate physical space?**

d. **Are there certain areas, or instances, where the sharing of personnel, technology, etc. would provide benefits to the marketplace (e.g. cost efficiencies, reduced complexity), that would outweigh potential concerns?**

e. **Are there particular functional areas that present more or less potential for conflicts, e.g., sales, operations, IT development, risk management, treasury, credit management?**

See responses to Q. 9.

Question 28. Information. As an extension of its role as a trade execution platform with surveillance, investigation and enforcement obligations, a DCM or SEF has access to detailed information that could be used to manipulate, or to engage in other behavior that could disrupt, the market. Should DCMs and SEFs be obligated to adopt firewalls and/or other internal procedures (in addition to existing requirements) to ensure that staff of an affiliated intermediary are prevented from accessing or utilizing confidential information in possession of DCM or SEF staff?

In our view, the current CEA framework does effectively address the potential conflict scenario highlighted in this question. For example, existing CFTC Rules 38.7 and 1.59(b)(ii) specifically address improper sharing of information. As explained above, however, we believe it would nonetheless be reasonable for the Commission to consider how it can effectively require separation, via appropriate information barriers and separate staff, in the specific scenario where a marketplace SRO like a DCM or SEF is affiliated with an intermediary firm that participates on that marketplace.

Question 29. Execution. The DCM and SEF regulatory frameworks currently impose requirements regarding trade execution. For example, DCM Core Principle 9 requires that "The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade."

Regulation 37.9 sets forth methods of execution requirements for SEFs. Regulation 37.201 requires that a SEF establish and impartially enforce compliance with the rules of the SEF, including the terms

and conditions of any swaps traded or processed on or through the SEF and rules regarding access to the SEF.

Do existing regulatory requirements effectively address the potential for a DCM to favor an affiliated FCM and/or its customers in trade execution? Similarly, with respect to a SEF, is it possible that the SEF might favor an affiliated IB, CTA or CPO, and/or its customers, clients or participants, in trade execution? Are there ways to mitigate any risk of favorable treatment?

In our view, the current CEA framework effectively addresses the potential conflict scenarios highlighted in this question. As highlighted in the question, DCMs have regulatory and statutory obligations to provide open and competitive markets, and, in addition, fair access to their markets. Likewise, SEFs have regulatory obligations to impartially enforce compliance with their rules. To the extent that a DCM or SEF favored an affiliate in trade execution, whether on account of conflicts or otherwise, it would be doing so in violation of its regulatory obligations. The Commission has authority to oversee DCMs and SEFs and could exercise that authority in those circumstances.

Question 30. Customer Impact. If a DCM has an affiliated FCM or a SEF has an affiliated IB, CTA, or CPO, might the FCM, IB, CTA, or CPO favor its affiliates' product listings in advising or otherwise serving customers, clients or participants? If so, are there ways to mitigate this possibility?

We believe this scenario is adequately addressed by existing FCM, CTA and CPO disclosure obligations. These obligations would ensure that clients are aware of any affiliations between a marketplace and the intermediary firm. In our view, adequate disclosure regarding any such affiliations, including any impacts on the intermediary's product offerings due to such affiliations, is the appropriate regulatory remedy for this issue.

Question 31. Contagion risk. Could problems at the intermediary (FCM/IB/CTA/CPO) spread to the affiliated DCM or SEF? Or vice versa (i.e. risk at the DCM/SEF spreading to the intermediary)? How should the Commission consider and address any contagion risk in this context?

A DCM or SEF, and any affiliated intermediary registrants, would be required by regulation to maintain and meet separate capital and similar requirements based on their separate roles, legal status and regulatory registrations. Further, if a DCM or SEF is well run, the risks outlined in the question are no different than the risk of any other participating firm having similar problems. In addition, it is in a DCM or SEF's own self-interest to protect against such a loss of confidence. We therefore do not believe a financially sound DCM or SEF acting in accordance with its regulatory obligations and proper risk management practices faces unique risks that need to be addressed. In addition, and as noted above, we believe it is appropriate for the Commission to require effective separation between any marketplace SRO and an affiliate which participates on that marketplace. This separation, via appropriate information barriers and separate staff, should also help mitigate potential contagion concerns from both directions.

Question 32. Mitigants – disclosure. Are there additional disclosures that should be required in cases of an affiliate relationship between a DCM/SEF and an FCM/IB/CTA/CPO?

We would not be opposed to a requirement that a DCM or SEF publicly disclose its relationships to affiliates. To the extent the DCM or SEF is part of a broader organization that is a public company, this information is already generally made available. Further, we note that FCM/IB/CTA/CPO entities already have a variety of conflicts of interest disclosure requirements where this type of disclosure would be covered. That said, the Commission could adopt a specific requirement to disclose affiliate relationships to avoid any gaps.

Question 33. Mitigants – conduct restrictions. What requirements, policies and/or procedures, if instituted, would effectively ensure that affiliated FCMs/IBs/CTAs/CPOs interact on an "arms- length" basis with DCMs/SEFs such that affiliated intermediaries would be treated in a manner equivalent to non-affiliated intermediaries (e.g., incentives available to affiliates are equivalently available to non-affiliates; information available to the affiliate is equivalently available to non- affiliates)? What documentation requirements, policies and/or procedures would contribute to achieving this goal?

A DCM has an obligation to treat all participants in its markets fairly and impartially, which in practical terms means there must be an arms-length relationship between the DCM and an affiliated intermediary. There is no need to separately require an FCM or other intermediary to act on an arms-length basis with the DCM. In addition, and as noted above, we believe it is appropriate for the Commission to require effective separation between any marketplace SRO and an affiliate which participates on that marketplace, another safeguard that would help ensure an arms-length relationship and help address the issues highlighted by the question.

Question 34. Affiliated trader. If a DCM or SEF is affiliated with a market maker or other trader that executes trades on the DCM/SEF, does that raise concerns? If so, what mitigants would be effective?

A DCM/DCO affiliation with a trading firm triggers an important set of concerns that warrant Commission attention. As outlined in our letter, we encourage the Commission to weigh whether it should adopt restrictions and heightened supervisory obligations on a DCM permitting an affiliate to engage in trading for its own account on the DCM's markets. Given recent industry experiences and the inherent and stark conflict arising from a firm trading its own account on its affiliated exchange, it seems hard to make the case that the benefits of allowing such arrangements outweigh the costs and risks.

Question 35. Affiliate spot market. If a DCM or SEF is affiliated with a spot market, does that raise concerns? If so, what mitigants would be effective?

We do not see any special concerns arising from a DCM affiliation with a spot market that is operating in distinct markets with separate products. The existing DCM regulatory scheme has robust, principles-based conflicts, default and risk management rules and procedures that effectively address potential conflict scenarios. For example, CFTC Rules 38.7 and 1.59(b)(ii) address improper information sharing. A DCM that is fulfilling its regulatory obligations under existing core principles and CFTC rules

will be well positioned to mitigate such conflicts effectively and, if it did not, would be violating its regulatory obligations.

Question 36. Affiliated DCO. How would the responses to the questions in this section IV. differ, if at all, if the FCM/IB/CTA/CPO is affiliated with a DCO as well as a DCM or SEF?

Please see response to question 19 above.

Question 37. Other Potential Risks. Other than the matters addressed above, are there other potential risks when a DCM is affiliated with an FCM, or a SEF is affiliated with an IB, CTA or CPO? Do existing DCM and SEF Core Principles and corresponding regulations adequately address such potential risks? What additional measures could effectively mitigate against such potential risks?

We are not aware of measures that are needed beyond those we have discussed in responding to the preceding question.