WILLKIE

CLIENT ALERT

CFTC Proposes Comprehensive Conflicts of Interest Rules for Vertically Integrated Market Structures

Proposal would impose new requirements on DCMs, SEFs, DCOs, and FCMs with affiliated market participants, including a default prohibition on affiliate principal trading with a conditioned market-maker exception.

August 21, 2026

AUTHORS

Kari S. Larsen | A. Kristina Littman | Rita M. Molesworth | Chelsea Pizzola
Austin Stanton | Leiying Peng

The Commodity Futures Trading Commission has proposed comprehensive new rules addressing conflicts of interest in vertically integrated market structures.[1] The Proposal would establish requirements for exchanges, clearinghouses, and intermediaries that share common ownership with market participants, including market makers and clearing members. Specifically, the Proposal would establish requirements relating to market makers and futures commission merchants affiliated with designated contract markets, clearing members affiliated with

1 Conflicts and Affiliations, 91 Fed. Reg. 50926 (Aug. 6, 2026) (to be codified at 17 C.F.R. pts. 1, 37, 38, 39) (the "Proposal").

derivatives clearing organizations, and market participants (including introducing brokers) affiliated with swap execution facilities. Comments are due October 5, 2026.

The Proposal would affect futures commission merchants ("FCMs"), swap execution facilities ("SEFs"), designated contract markets ("DCMs"), and derivatives clearing organizations ("DCOs"). Although the Proposal takes a largely principles-based approach that codifies many existing voluntary practices, it imposes more prescriptive requirements on affiliate firms that trade on a principal basis. Two structural features are particularly important. First, nearly every obligation runs to the registered entity (the DCM, DCO, FCM, or SEF) rather than an unregistered affiliate. Second, the definitions of affiliate market participant and affiliate principal trading firm turn on trading activity rather than registration status, so an FCM that also trades on a principal basis on an affiliated DCM would be subject to both the intermediary requirements and the more stringent principal-trading conditions described below. (By contrast, the definition of affiliate clearing member turns on clearing membership combined with a control relationship rather than trading activity as such.)

Key Takeaways

- **Principles-Based Conflicts Framework for Exchanges.** DCMs and SEFs with an affiliate market participant—including an affiliated FCM, introducing broker, or principal trading firm—would be required to maintain procedures to identify, address, and manage conflicts of interest, including with respect to systems, personnel, office space, documentation, and disclosures.

- **Affiliate Principal Trading Firms Face a Default Prohibition with a Market-Maker Exception.** An affiliate principal trading firm would be prohibited from trading on an affiliated DCM unless it qualifies as a bona fide affiliate market maker—subject to order-priority subordination, continuous two-sided quoting obligations, incentive-parity requirements, independent third-party verification, and per-trading-session disclosure to customers.

- **SROs May Not Act as DSRO for Their Own Affiliate FCM.** The Proposal would prohibit an SRO from serving as the designated self-regulatory organization ("DSRO") for its affiliated FCM for purposes of the periodic financial surveillance program under Regulation 1.52. It would also require separate reporting lines for examination staff and restrict the sharing of nonpublic information between an SRO and its affiliate FCM.

- **DCOs Would Need Conflict Procedures for Affiliate Clearing Members.** A new principles-based requirement in Regulation 39.25(d) would require DCOs to maintain procedures for identifying, addressing, and managing conflicts involving an affiliate clearing member, together with a new public disclosure obligation.

- **Enhanced FCM Disclosure Requirements.** Amendments to Regulation 1.55(k)(5) would require FCMs to disclose to customers any affiliate relationship they have with a SEF, DCM, or DCO, along with the material risks associated with such affiliate relationship.

- **Board Composition, ROC, and Disciplinary Panel Requirements Would Be Codified.** The Proposal would elevate existing acceptable practices for DCM board composition (at least 35% public directors), Regulatory Oversight Committee requirements, and disciplinary panel composition from guidance into binding rules.

Mitigation of Exchange-Related Conflicts of Interest

The Proposal would add new Regulation 38.852 for DCMs and a parallel Regulation 37.1201 for SEFs, establishing a principles-based requirement that an exchange with an affiliate market participant maintain procedures to identify, address, and manage the related conflicts of interest.[2] "Affiliate market participant" would be defined as any person (including any affiliate FCM or affiliate principal trading firm) that directly or indirectly executes, introduces, or otherwise facilitates trades on or subject to the rules of the exchange, and that controls, is controlled by, or is under common control with the exchange. The required procedures must address, at a minimum, applications and systems, personnel, office space, documentation, and disclosures.

The Commission would also add conforming acceptable practices to Appendix B of both Parts 37 and 38, providing guidance on the separations the Commission would consider appropriate. These would address: (i) maintaining trading platforms, surveillance systems, and recordkeeping systems logically separate from the systems of an affiliate market participant; (ii) applying controls to prevent improper sharing of nonpublic information; (iii) monitoring for unauthorized access by an affiliate; (iv) prohibiting staff-sharing (with limited exceptions for administrative and systems-safeguards functions); and (v) establishing physically separate office space.[3] The approach is principles-based rather than prescriptive, permitting each exchange to design procedures suited to its particular structure and risk profile.

Affiliate Principal Trading Firms: Default Prohibition with a Conditioned Market-Maker Exception

The Proposal draws a sharp distinction between an affiliated intermediary (such as an FCM acting as agent for customers) and an affiliate principal trading firm (such as a market maker trading for its own account on the exchange).[4] For the latter, principles-based procedures are insufficient: because each transaction the affiliate executes against an unaffiliated participant implicates the economic interests of the exchange, proposed Regulation 38.852(c) would impose a default prohibition on affiliate principal trading unless the affiliate qualifies for a bona fide "affiliate market maker" exception.

The rationale for a standing market-maker exception, rather than a flat prohibition, is practical: new exchanges (particularly in prediction markets) face a coordination problem in which unaffiliated market makers are reluctant to commit capital until a venue demonstrates sufficient volume, yet volume is difficult to attract without quoted liquidity. An affiliate aligned with success of the venue may supply that initial liquidity, and particularly for prediction markets,

---

2 *See* Proposal, 91 Fed. Reg. at 50946-47 (proposed Commission Regulations 37.1201(a), (b); 38.852(a), (b)(1)).

3 *See* Proposal, 91 Fed. Reg. at 50947 (proposed Appendix B to Parts 37 and 38).

4 *See* Proposal, 91 Fed. Reg. at 50948-51 (Section III.B) (proposed Commission Regulation 38.852(b) and (c)).

the Commission views this as a recurring need rather than one confined to the launch of a venue.[5] The Commission has also requested comment on whether a flat prohibition with no market-maker exception would be preferable.

The conditions for the affiliate market-maker exception include:

- **Order-Priority Subordination.** The trade-matching system of the exchange must fill the bid or offer of any unaffiliated member before the bid or offer of the affiliate market maker at the same price, without regard to the time priority of the order of the affiliate.[6] This subordination operates as a self-adjusting limit: the affiliate supplies liquidity where no competing liquidity exists but recedes as unaffiliated market makers or liquidity providers arrive.

- **Market-Making Agreement Requirements.** Any market-maker or incentive program applicable to the affiliate must enumerate the quoting obligations of the affiliate, performance standards, and consequences of nonperformance, on terms no less favorable than those offered to unaffiliated members.[7] The program must require continuous two-sided quotations, specify minimum trading hours and permissible bid-ask spreads, and ensure that the affiliate does not take directional proprietary positions other than in connection with its obligation to maintain two-sided quotations.

- **Independent Verification and Certification.** A DCM permitting an affiliate market maker to trade must designate an independent third-party regulatory service provider to conduct financial surveillance of the affiliate, review and monitor compliance by the exchange with its conflicts-of-interest procedures, and annually certify to the Commission and the board of the DCM that the affiliate satisfies all required conditions.[8]

- **Per-Trading-Session Disclosure.** The DCM must disclose to any party trading on the exchange, on a per-session basis and before that party enters any orders, the existence of the affiliate market maker and the conditions imposed on it (including order-priority subordination), and require intermediary participants of the DCM to deliver the same notice.[9] The disclosure must be in plain language, presented in full (not by hyperlink alone), and require affirmative customer acknowledgment.

The Proposal would also require incentive parity: if a DCM offers an incentive or similar program applicable to affiliate principal trading firms, unaffiliated members must be able to participate on terms no less favorable.[10] These affiliate principal trading conditions apply only to DCMs. The Commission has requested comment on whether they should extend to SEFs as well.

---

5 *See* Proposal, 91 Fed. Reg. at 50950 (Section III.B.iii) (rationale for standing market-maker exception).
6 *See* Proposal, 91 Fed. Reg. at 50951 (proposed Commission Regulation 38.852(c)(1)(i)).
7 *See* Proposal, 91 Fed. Reg. at 50951-52 (proposed Commission Regulation 38.852(c)(1)(ii)).
8 *See* Proposal, 91 Fed. Reg. at 50952 (proposed Commission Regulation 38.852(c)(2)).
9 *See* Proposal, 91 Fed. Reg. at 50952-53 (proposed Commission Regulation 38.852(c)(3)).
10 *See* Proposal, 91 Fed. Reg. at 50951 (proposed Commission Regulation 38.852(b)(2)).

SRO and DSRO Oversight of Affiliate FCMs

Regulation 1.52 governs the minimum standards for SRO financial supervisory programs covering member FCMs. The Proposal would address the conflict of interest arising when an SRO is affiliated with an FCM it oversees through several targeted amendments.[11]

First, an SRO with an affiliate FCM would be required to designate an independent third-party SRO to conduct the surveillance of the affiliate FCM otherwise required under Regulation 1.52(c). Second, a DSRO with an affiliate FCM would be expressly prohibited from performing the DSRO function for that affiliate FCM, codifying the practice that DCMs with affiliate FCMs already follow voluntarily. Third, examination staff implementing the supervisory program would be required to report directly to the board of directors or a designated committee or officer responsible for regulatory compliance, insulating them from commercial management pressures. Fourth, an SRO would be prohibited from accessing nonpublic information of its affiliate FCM, except as necessary to comply with its Part 38 obligations, and from sharing nonpublic information obtained from its supervisory program of non-affiliate member FCMs with its affiliate FCM.[12]

The Proposal would also permit an FCM that is a member of a registered futures association to elect, in writing to the Joint Audit Committee ("JAC"), to have that association (currently only the National Futures Association) serve as its DSRO. This election would provide non-affiliate FCMs with an affirmative means of being examined by an SRO that has no commercial interest in their activities. In the absence of an election, the JAC would continue to designate a DSRO for the FCM under the existing process. The Commission also proposes to clarify the frequency of the financial surveillance obligation under Regulation 38.604, replacing the word "continuously" with "throughout the day" to confirm that the obligation requires intra-day, risk-based monitoring rather than literal real-time monitoring of every trade.[13]

For a DCM that has an affiliate FCM and does not engage an independent third-party regulatory service provider for Regulation 38.604 purposes, the Proposal would require the DCM to maintain procedures for identifying, addressing, and managing conflicts of interest involving the affiliate FCM. Those procedures must address, at a minimum: applications and systems (preventing the sharing of nonpublic information with any affiliate FCM); personnel (no sharing of staff except for administrative functions); office space (physical separation); documentation of conflicts and their resolution; and public disclosures of the affiliate relationship in the rulebook and on the website of, and other means of access to, the DCM.[14]

---

11 *See* Proposal, 91 Fed. Reg. at 50936 (proposed Commission Regulation 1.52(c)(1)(i)(C)) (mandatory independent third-party SRO designation).

12 *See* Proposal, 91 Fed. Reg. at 50935-37.

13 *See* Proposal, 91 Fed. Reg. at 50942 (proposed Commission Regulation 38.604).

14 *See* Proposal, 91 Fed. Reg. at 50940-44 (Section II.B) (proposed amendments to Commission Regulations 38.604 and 38.606).

DCO-Affiliate Clearing Member Requirements

The Proposal addresses conflicts of interest arising when a DCO is affiliated with one of its clearing members through three amendments.

- **Definition.** A new definition of "affiliate clearing member" in Regulation 39.2 would cover any person that is a clearing member of a DCO and directly or indirectly controls, is controlled by, or is under common control with the DCO, using the same control-based formulation as the parallel definitions for affiliate FCMs and affiliate market participants elsewhere in the Proposal.[15]

- **Conflicts Procedures.** A new Regulation 39.25(d) would require a DCO to maintain procedures for identifying, addressing, and managing conflicts of interest involving an affiliate clearing member. The Commission proposes to provide guidance, substantially identical to the proposed exchange guidance, regarding appropriate separations between the DCO and its affiliated clearing member. The Commission is also considering additional guidance addressing documentation of decisions affecting the affiliate clearing member (including margin determinations and default-related decisions), independent governance of such decisions, and treatment of the affiliate on terms no more favorable than those applicable to non-affiliate clearing members.[16]

- **Public Disclosure.** A new Regulation 39.21(c)(9) would require a DCO to disclose the existence of, and its relationship with, any affiliate clearing member.[17] The Commission views this disclosure as an important complement to the procedures requirement, permitting unaffiliated clearing members, customers, and other market participants to evaluate the DCO's conflicts-management framework and to make informed decisions about where to direct clearing activity.

The Proposal does not prohibit DCO affiliations with clearing members. The Commission also considered but did not propose prescriptive structural-separation requirements, additional financial-resource requirements or volume caps for affiliate clearing members, or a mandatory requirement that a DCO exhaust all of an affiliate clearing member's default-fund contributions before exposing other clearing members to losses.[18] Comments are requested on each of these alternatives.

Enhanced FCM Public Disclosures

The Commission proposes to amend Regulation 1.55(k)(5) to require FCMs to disclose to customers any affiliate relationship with a SEF, DCM, or DCO, along with the material risks associated with such relationship. Although existing Regulation 1.55 references affiliate relationships generally, it does not explicitly require disclosure of an affiliation with an exchange or clearing organization. The content of the disclosure is not prescribed; FCMs may

[15] *See* Proposal, 91 Fed. Reg. at 50959 (proposed Commission Regulation 39.2) (definition of "affiliate clearing member").

[16] *See* Proposal, 91 Fed. Reg. at 50960-61 (proposed Commission Regulation 39.25(d)).

[17] *See* Proposal, 91 Fed. Reg. at 50961 (proposed Commission Regulation 39.21(c)(9)).

[18] *See* Proposal, 91 Fed. Reg. at 50962-65 (Section IV.F) (alternatives considered for DCO amendments).

tailor it to their particular circumstances, consistent with the existing approach under Regulation 1.55(k) for other categories of material information.[19]

Board Composition, Regulatory Oversight Committee, and Disciplinary Panels

Proposed Regulation 38.853 would codify into rule the existing acceptable practices for DCM Core Principle 16 (Conflicts of Interest) relating to board composition, the Regulatory Oversight Committee, and disciplinary panels. Specifically, at least 35% of the board of directors of a DCM, and any executive committees or similarly empowered bodies, would be required to consist of public directors (i.e., individuals with no material relationship to the DCM). A DCM would be required to establish a ROC as a standing committee of public directors to oversee the regulatory program of the DCM. The responsibilities of the ROC would include monitoring the regulatory program for sufficiency and independence, supervising the chief regulatory officer, and preparing an annual report for the board and the Commission. All disciplinary panels would be required to include at least one public director, with limited exceptions for routine matters such as decorum or timely submission of records. Most DCMs already comply with these acceptable practices voluntarily; codification would make the requirements binding without imposing material new obligations on compliant exchanges.[20]

Conclusion

Comments must be in writing and received by October 5, 2026 and may be submitted through Regulations.gov, referencing “Conflicts & Affiliations” and RIN 3038-AF65. Market participants considering comments should focus on the features of the Proposal most likely to shape affiliated market structures: the principles-based conflicts-of-interest framework versus more prescriptive alternatives; the prohibition on affiliate principal trading with its conditioned market-maker exception and the specific conditions that exception requires; the scope and sufficiency of the proposed disclosure requirements; whether the Proposal’s requirements should extend to SEFs and to other types of affiliates; the alternatives on which the Commission specifically seeks comment (including prohibitions on affiliate principal trading altogether, volume- or value-based caps, mandatory third-party RSPs for affiliate FCM surveillance, and prescriptive separation requirements); and the estimated compliance costs for each element.

* * * *

19 *See* Proposal, 91 Fed. Reg. at 50966 (proposed amendment to Commission Regulation 1.55(k)(5)).

20 *See* Proposal, 91 Fed. Reg. at 50957-58 (proposed Commission Regulation 38.853).

If you have any questions regarding this client alert, if we can assist you in evaluating the Proposal's application to your corporate structure, or if you would like assistance in preparing or reviewing a comment letter, please contact one of the authors, any member of our CFTC team listed below, or the Willkie attorney with whom you regularly work.

Willkie has a dedicated team of attorneys with extensive knowledge and experience in all aspects of the Commodity Exchange Act and the CFTC regulatory regime. We would be pleased to assist with your matters

Gabriel Acri 212 728 8802 gacri@willkie.com	**Kari S. Larsen** 212 728 3297 klarsen@willkie.com	**A. Kristina Littman** 202 303 1209 aklittman@willkie.com
Steven C. Matos 212 728 8757 smatos@willkie.com	**Rita M. Molesworth** 212 728 8727 rmolesworth@willkie.com	**Chelsea Pizzola** 202 303 1092 cpizzola@willkie.com
Deborah A. Tuchman 212 728 8491 dtuchman@willkie.com	**Leanne Aban** 212 728 8168 laban@willkie.com	**Davi Marques** 212 728 3079 dmarques@willkie.com
Kelley Merwin 202 303 1178 kmerwin@willkie.com	**Austin Stanton** 713 972 6012 astanton@willkie.com	