April 8, 2022

Submitted electronically via CFTC.gov

Mr. Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Comments Responding to Commission Publication of FTX's Request for Amended DCO Registration Order

Dear Mr. Kirkpatrick:

Fortress Investment Group LLC ("**Fortress**") values the opportunity to comment on LedgerX, LLC d.b.a. FTX US Derivatives ("**FTX**")'s request to amend its order of registration as a derivatives clearing organization ("**DCO**") to allow FTX to clear margined products for retail participants through a model in which participants clear directly rather than through futures commission merchants ("**FCMs**") (the **"Proposal**").

Fortress is a leading, highly diversified global investment manager with approximately $54.2 billion of assets under management as of September 30, 2021. Founded in 1998, Fortress manages assets on behalf of approximately 1,800 institutional clients and private investors worldwide across a range of credit and real estate, private equity and permanent capital investment strategies.

Fortress strongly supports FTX's request to amend its order as proposed, for the following reasons.

1. The Proposal Will Promote Competitive Markets

The Proposal would create meaningful competitive benefits by (1) dispersing the market power of U.S. incumbent exchanges more widely, (2) creating an attractive alternative that can compete against the systemic advantages enjoyed by incumbent exchanges, (3) reducing over-reliance on gatekeepers to trading markets, and (4) giving investors choice and greater, more equitable access to markets.

*Concentration of Exchanges/Clearing Houses***.** The derivatives market infrastructure of the United States has never been more concentrated; some market observers estimate that more than 90% of all exchange-traded derivatives volumes are facilitated by only one exchange group.[1] Because of this concentration, existing U.S. derivatives clearinghouses wield expansive market and pricing power. This result runs counter to the policy aims of various past and current administrations who sought a wider distribution of market

[1] Better Markets and Open Markets, "Competitive Implications of Potential Merger or Acquisition between the CME Group and Cboe Global Markets, and Request for Study on Existing Concentration Problems at Derivatives Exchanges", Letter to Acting Assistant Attorney General Powers, Chair Khan, Acting Chair Benham, and Chair Gensler (November 8, 2021) *available at* https://bettermarkets.org/wp-content/uploads/2021/11/Better-Markets-Open-Markets-CME-Cboe-Joint-Letter-Final.pdf.

power in all sectors; a surprisingly broad range of commentators have raised concerns about concentration, including the Department of Justice,[2] market participants[3] and non-profit watchdogs.[4]

Addressing Incumbent Exchanges' Systemic Advantages. Most U.S. volume trades on exchanges, and this is particularly true with respect to Bitcoin (BTC) and Ethereum (ETH) futures.[5] Other platforms have tried to list BTC and ETH futures, but they have had limited success because of the overall market and network advantages enjoyed by incumbent exchanges.

FTX will face these same headwinds but offers consumers something new: a direct-to-investor model that enables investors to access the market through their mobile device. This feature, combined with others in FTX's overall product offering, positions FTX well to attract meaningful liquidity to its platform for certain derivative products. We note that FTX has previously succeeded in providing services directly to customers who did not have the infrastructure or relationships to support the involved clearing mechanisms required by competitors.

Reducing Over-Reliance on Gatekeepers. Mirroring the concentration at the exchange/clearinghouse level, the bulk of derivatives activity continues to be controlled by a handful of large dealers, itself creating competitive headwinds and concentrating systemic risks.[6] With this consolidation occurring in response to broader industry trends and increasing costs, both institutional and retail buy-side market participants are

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[2] "[T]he Department believes that the control exercised by futures exchanges over clearing services . . . has made it difficult for exchanges to enter and compete in the trading of financial futures contracts. . . Comments, U.S. Dep't of Justice Before the Dep't of the Treasury, Regulatory Structure Associated with Financial Institutions, at 1 (Jan. 31, 2008), *available at* http://www. justice.gov/atr/public/comments/229911.htm, as cited by Alexander P. Okuliar, "Financial Exchange Consolidation and Antitrust: Is There a Need for More Intervention?" Antitrust Magazine, Vol. 28, No. 2, Spring 2014.

[3] Tracey Alloway, "On clearing house concentration risk", FT Alphaville (June 25, 2010) available at https://www.ft.com/content/86fb438c-6b97-377b-bcfd-9d9545a4c707 and quoting Jon Gregory that "CCPs will naturally compete and regulation may favour a certain CCP, which may lead to suboptimal outcomes and market instability."

[4] "Farmers, consumers, businesses, and investors all rely on well-functioning commodity markets. Farmers rely on well-functioning derivatives markets with appropriate competition in order to bring their products to market and hedge their risks" but " Consolidation in these financial markets harms the public by concentrating risk, market making services, information, and control in ways that increase volatility and the likelihood of disruptions. Additional consolidation would also harm investors by reducing choice, potentially raising prices, and exacerbating the anti-competitive lock-in effect of the vertical integration of clearing. It could hamper mechanisms for price discovery by consolidating control of volatility products at a single entity, and it may lead to the manipulation of volatility index and related contracts. The added concentration could also make it easier for large corporations and speculators to attempt to manipulate and increase the prices for the services, goods, and commodities traded on these markets." Better Markets and Open Markets, " Competitive Implications of Potential Merger or Acquisition between the CME Group and Cboe Global Markets, and Request for Study on Existing Concentration Problems at Derivatives Exchanges", Letter to Acting Assistant Attorney General Powers, Chair Khan, Acting Chair Benham, and Chair Gensler (November 8, 2021) *available at* https://bettermarkets.org/wp-content/uploads/2021/11/Better-Markets-Open-Markets-CME-Cboe-Joint-Letter-Final.pdf.

[5] See e.g., Futures Industry Association, "Data spotlight – Growing number of regulated markets for crypto derivatives" (December 12, 2021) *available at* https://www.fia.org/marketvoice/articles/data-spotlight-growing-number-regulated-markets-crypto-derivatives.

[6] Better Markets, "Ten Years of Dodd-Frank and Financial Reform" (July 21, 2020) *available at* https://bettermarkets.org/sites/default/files/images/BetterMarkets_DoddFrankReport.pdf (noting "most of the handful of large dealers who have always dominated the derivatives markets continue to do so. In fact, more than 87 percent of the reported $201 trillion notional in derivatives within the U.S. banking system continues to be controlled by dealers within just four U.S. bank holding companies. Each of these four bank holding companies also facilitates trading in a significant percentage of the $640 trillion notional in global derivatives markets through multiple affiliated non-U.S. dealers. This anti-competitive market concentration of derivatives activities in such a small number of banks poses significant financial stability, contagion and other risks to the systemically important banks and nonbanks as well as the entire financial system").

concerned that FCMs may no longer serve smaller customers.[7] Some commentators posit that portions of the buy-side may be "disenfranchised and actually [be] driven out of the market because either they can't find anybody to service their requirements, or just the cost of doing business means that the risk weight equation is no longer there."[8] The Proposal provides an alternative to FCMs that may no longer be willing or able to serve smaller clients.

The Proposed Model Would Protect -- and Empower -- American Investors. The Proposal will permit retail investors to obtain access to products previously available only to the small subset of well-resourced and powerful investors able to connect to the complex, traditional market infrastructure.

At the same time, the Proposal also ensures that key investor protections are in place. Working with the Commission, FTX has developed a method to ensure the key investor protections legally required (but normally afforded by FCMs) continue to be provided. These include risk disclosures, AML/KYC compliance, and market integrity through rigorous surveillance. The fact that the Proposals provides these protections directly by the exchange platform (rather than an FCM) does not alter the value or the substance of the protections. The alternative (selected by many retail customers already) is to use unregulated, offshore exchanges. The public interest and American investors will be better served by providing a regulated alternative within the United States.

2. The Proposed Model Reduces Risks

While the incumbent exchange/FCM infrastructure has performed well during past market instability, we believe that trading in both globalized and non-stop markets raise new risks that are especially well-addressed by the Proposal. While FCMs are able to cope with global trading, the FCM margin model was never intended to address the never-ending trading days of digital assets: 24x7 assets need a 24x7x365 risk and margin model. In addition, global crises can and do erupt at any hour. We believe it is simply too risky to ask intermediaries to extend credit overnight and over weekends in this environment, in particular where the price action in the underlying spot markets occurs around the clock. In lieu of the delays inherent in margin calls, the Proposal instead creates a "full liquidation" threshold based on a set percentage of the notional value of the positions on a near-real-time basis. If the margin falls below the threshold, FTX will liquidate the remainder of the portfolio automatically.

The concentration of risk at clearinghouses and the dwindling number of FCMs exacerbates potential defaults caused by globalized markets: "managing the default of a clearing member may be more difficult for a CCP in an environment where outstanding cleared derivatives contracts are already concentrated among the surviving clearing members."[9] While the FCM margin model enjoys the benefits of mutualizing default risks among clearing members, this approach ultimately creates "fellow customer" risk, which may not represent the most efficient way to allocate risk.[10] Reducing intermediation will have other benefits: the

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[7] *See e.g.*, John McCrank, "Ranks of Commodities Brokers Dwindle as U.S. Futures Industry Evolves", Reuters (July 2, 2015).

[8] Lynn Stongin Dodds, "Mind the Clearing Gap -- What's Next for FCMs?" DerivSource (June 18, 2015) *available at https://derivsource.com/2015/06/18/mind-the-clearing-gap-whats-next-for-fcms/* .

[9] Nahiomy Alvarez, "Can Broader Access to Direct CCP Clearing Reduce the Concentration of Cleared Derivatives", Federal Reserve Bank of Chicago, Economic Perspectives, Vol. 43, No. 3 (December 2019) *available at* https://www.chicagofed.org/publications/economic-perspectives/2019/3.

[10] In particular, when presented with a blank slate for swaps regulation, the Dodd-Frank regulators rejected mutualization of fellow customer risk. Some commentators have remarked that the FCM model actually provides less protection than other alternatives. *See e.g.*, Christian Chamorro-Courtland, Collateral Damage: The Legal And Regulatory Protections for Customer Margin in the U.S. Derivatives Markets. 7 Wm. & Mary Bus. L. Rev. 609 (April 2016) (arguing that futures customers currently receive a lower level of protection under the Commodity Exchange Act than that received by cleared swaps customers under the Dodd-Frank Act.)

Proposal should help reduce the number of interconnection risks between financial institutions in the overall market ecosystem. On top of efficient, real-time liquidation of margin, the Proposal creates a "backstop liquidity provider program" that instead mutualizes risk among a select group of professional traders.

The Proposal also has the benefit of its simplicity: the direct-to-investor market structure reduces other operational risks because there are fewer moving pieces compared to other models. The Proposal reduces friction and delays associated with de-risking by directly interacting with customers. We believe the Proposal presents fewer risks to the platform as well as the end investor, and makes it easier for the platform to manage risk overall.

3. The Proposed Model Would Cement U.S. Leadership in the Digital Assets Marketplace

Finally, approval of FTX's application will pave the way for trading in digital assets to return to the United States. Currently, more than 90 percent of trading volumes for BTC and ETH derivatives are outside the United States.[11] Digital-asset platforms (such as FTX's) have led an evolution in market structure and provide new and different products for investors to both trade and use for other investment purposes (not to mention various other use cases). But these models have not enjoyed regulatory certainty in the United States. We appreciate the significant efforts of the Commission to simultaneously protect investors from unscrupulous actors in the digital asset space while crafting appropriate regulation where it can do so. The Proposal provides an immediate opportunity for the Commission to act in area where it has clear authority (*i.e.*, over BTC and ETH derivatives). Commission approval of the Proposal will allow U.S. and other investors to trade derivatives on BTC and ETH (and more assets in the future) on the type of platforms already popular outside of the United States, providing a choice for U.S. investors to trade these assets more securely via FTX, a registered Designated Contract Market and DCO. The Proposal helps address market concentration issues while at the same time providing a more regulated American alternative to offshore platforms.

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In conclusion, for the foregoing reasons, Fortress strongly supports the grant of the amendment sought by FTX.

Sincerely,

Peter L. Briger, Jr.

Chief Executive Officer, Fortress Investment Group LLC

cc: The Honorable Rostin Benham, Commissioner

The Honorable Dawn DeBerry Stump, Commissioner

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[11] A large majority of derivatives deals are done on offshore, unregulated platforms. Philip Stafford, "Crypto industry makes push into regulated derivatives markets", Financial Times (February 22, 2022) *available at* https://www.ft.com/content/364dee59-fb51-400b-acd2-808d4ec41ab3.

Clark Hutchison, Director, Division of Clearing & Risk

Robert Schwartz, General Counsel, Commodity Futures Trading Commission