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May 10, 2022

Mr. Christopher Kirkpatrick,
Secretary Commodity Futures Trading Commission
Three Lafayette Center 1155 21 Street NW
Washington, DC 20581

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

Ladies and Gentlemen:

Thank you for the opportunity to comment on the FTX request. I believe that the FTX proposal represents a serious threat to the customer protections that the Commission has developed and potentially a serious threat to the financial integrity of the futures and derivatives industry as a whole.

I am an attorney and a member at the CBOT for 40 years. I have been COO and CCO of a clearing FCM and I am the author of numerous compliance training programs used throughout the industry as well as a consultant on futures and derivatives compliance matters.

The regulations that the CFTC promulgates are often an attempt to place limits on or curtail existing industry practices. In the past, various entities were able to skirt the rules and regulations regarding registration as they originally existed. As an example, there were twice as many FCMs 15 years ago as there are today. Forex dealers were able to be registered as FCMs and as long as they did no futures business there was absolutely no regulation of their conduct by anyone including the CFTC. The law evolved, Forex FCMs became CFTC regulated, and ultimately most of those Forex FCMs were forced offshore or out of business.

I feel as though this request by FTX to operate as an FCM while registered as a DCO is a similar attempt to skirt the regulations. The regulations, contained in 17 CFR Part 1 apply to FCMs and contain provision after provision for the protection of customers. This is particularly the case since Dodd Frank and the MF Global bankruptcy. To allow a DCO to deal with the general public without those protections will likely lead to financial losses for many uninformed and unsuspecting investors who will not be cognizant of the risks they are taking. The investing public will not have the benefits of segregation, risk disclosures, FCM financial disclosures, FCM risk management or FCM financial requirements among others. These protections may not be meaningful in a fully collateralized situation, but they are exceedingly important when dealing in leveraged futures. The investing public needs these protections whether they are aware of them or not.

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In several cases, including *CFTC v. BFXNA, Inc.*, CFTC Docket 16-19, *CFTC v. HDR Global Trading, Ltd.*, Case 1:20-CV-08132 U.S. Dist. Ct. SDNY, *CFTC v. iFinex, Inc.*, CFTC Docket 22-05 and *CFTC v. XBT Corp.*, CFTC Docket 20-04, the Commission has asserted that entities similar to FTX were acting as unregistered FCMs. Although these entities were dealers or Exchanges they dealt directly with the public without intermediation. These entities were not registered in any capacity and it is not clear that the Commission would have registered any of these entities as FCMs, DCMs or DCOs had they applied. In this case, rather than applying for registration, FTX has purchased an existing DCM/DCO and now wants to use those entities to act in a manner that was not originally intended.

The regulations make it clear that registration in any one capacity does not include registration in any other capacity. There are currently no DCOs registered as FCMs, but perhaps that should change. If DCOs are going to deal directly with the public in leveraged futures (or even fully collateralized contracts) they should be required to provide the public with the same protections required of FCMs.

The risks of default in the business model proposed by FTX represent a serious threat to the futures and derivatives industry. MF Global, Peregrine and Sentinel have all left a cloud over the industry. The regulations contained in 17 CFR Parts 38 and 39 which govern DCMs and DCOs, are principles based regulations and are written with the understanding that DCMs and DCOs (or the NFA) are regulators of the DCO's intermediary members that deal directly with the public. Essentially by dealing directly with the public without intermediaries, FTX is asking to become its own self regulator and that is a recipe for disaster.

The typical DCO model authorizes a DCO to mutualize losses in its default waterfall. The intermediary members of a DCO typically range from multimillion dollar financial institutions to multibillion dollar institutions. In the event that one or more intermediaries defaults, there has always been more than sufficient guaranty funds to absorb any potential loss without resorting to additional mutualized calls. The multibillion dollar balance sheets are available, however, in the event they are needed. That is not the case in the FTX proposal and that represents a serious threat to their customers.

They say that black swan events are rare and unforeseeable and yet they seem to happen regularly. We have recently experienced the LME nickel debacle, negative oil price settlement, and "volmegadon". Each of these had the potential for multibillion dollar losses. The guaranty funds that FTX has proposed and the backstop liquidity they offer seem puny in light of the possible losses in the volatile crypto space.

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You certainly could approve the FTX request, but I don't think you should approve their request. Your request for comments includes numerous questions, but the answers to those questions are like putting band aids on a situation that requires major surgery. The FTX request, if granted, will change the structure of the futures and derivatives industry forever, an industry that has developed over 175 years. You should not permit this to happen with just the vague assurance that FTX has everything under control.

Sincerely,

A handwritten signature in black ink, appearing to read 'M Nagel', written in a cursive style.

Marc Nagel