

The Association for Derivatives Professionals
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May 11, 2022

Mr. Christopher Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: NIBA Comment Letter on FTX Request for Amended DCO Registration Order

Mr. Kirkpatrick:

NIBA appreciates the opportunity to comment on LedgerX, LLC d/b/a FTX US Derivatives' (FTX) request to the Commodity Futures Trading Commission (CFTC or Commission) that its derivatives clearing organization (DCO) registration order be amended to allow FTX to clear non-intermediated margined derivatives products for both retail and institutional participants.

NIBA, founded in 1991, is a non-profit, membership association for registered derivatives professionals. Our members include Introducing Brokers (IBs), Commodity Trading Advisors (CTAs) and Commodity Pool Operators (CPOs), and their Associated Persons (APs). NIBA also enjoys the support of Futures Commission Merchants (FCMs), Exchanges and Service Providers who offer products and services unique to our members.

NIBA's mission is to provide the education needed to operate a business in the futures and options industry, and to provide a forum by which our members can participate in the regulation of the industry. We accomplish our mission by holding in-person and virtual membership meetings, with a twice-monthly newsletter and by communicating regularly and purposefully with our regulators including the National Futures Association (NFA) and the CFTC.

Our comments are based upon public information posted on the CFTC's website, and include items that are discussed in FTX's proposal. We will comment primarily on issues which, as regulated professionals, stand out to us as incomplete or insufficiently explained in the proposal, or are contrary to the current regulatory framework and customer protection afforded by "intermediaries" such as IBs.

Customer Protection:

NIBA is an enthusiastic supporter of innovation in our business. Many members of the NIBA have participated for over 20 years in various roles in the regulated and associated markets – I've been in the business for 45 years. We look forward to and encourage the introduction of new products and services, new ways to trade and new participants. We've embraced electronic order entry, global markets and products, and other researched, needed and welcomed changes.

NIBA members work with hedgers, speculators (retail customers) and commercial/institutional customers. Customers open accounts with our members because we offer:

- Education and assistance for new investors - often retail customers - who may not fully understand the risks of the marketplace.
- Experience which will help to evaluate market moves and recognize opportunities for trading, and when to exit a trade.
- Understanding of the regulatory framework and updates/changes which may have an effect on a customer's trading plan/strategy.
- Research which the public or retail customer may have no other access to.
- Expertise to help develop the strategy which meets the customer's needs, including using options, forex, swaps and managed transactions where necessary and advisable.
- Obligation, as a registered professional, to uphold standards and practices of the industry and responsibility to the regulators and customers.

The above are examples of classic customer protections available through intermediaries such as IBs and FCMs. All customers are afforded customer protection tailored to their experience – “sophistication” – in the markets, which includes an analysis of suitability.

For each innovation that comes along, we ask – is it needed? Does the product/service serve a purpose or solve a problem for market participants? Are the contract specifications and permitted leverage clear and completely understandable to the user?

We also want to know how transparent market prices and methods will be, and how they will be moderated. Will this market innovation make the marketplace more efficient and more valuable to the user? And, does the customer fully understand what happens when margin cannot be met and the positions or account must be liquidated. These are just some of the basics that all customers should expect and receive.

It is our understanding that FTX as a currently registered Derivatives Clearing Organization (DCO), is complying with certain principles and regulations of the CFTC and the NFA. We further understand that FTX is a registered Derivatives Clearing Market (DCM) with Self-regulatory responsibilities, but now seeks to act outside of those definitions.

FTX's proposal does not detail contract specifications or explain permitted leverage. It does not discuss transparency regarding risk associated with trading. Furthermore, due to the absence of intermediaries, it is our understanding that participants' collateral is not required to be segregated. Would that be true with the new FTX registration? What is the market purpose or need for this new registration?

FTX's liquidation policy, as understood, is automatic and could result in complete liquidation at any time on a “24-7” basis without the account holder's participation, or opportunity to post additional funds. Positions will be transferred to “backstop liquidity providers.” Who are these entities? What are their financial qualifications and on-going requirements? What about possible conflicts of interest? None of this is adequately explained in FTX's proposal.

FTX's Proposal Does Not Fit with the Existing Commodity Futures Trading Commission – Congressionally Established Regulatory Structure

While NIBA is not an expert on constructing regulatory frameworks, our members and their customers do understand the importance of regulatory safeguards. The futures markets in the U.S. – the most robust in the world – are built on credibility. That credibility flows from a regulatory framework that is useful, has been time-tested and is trusted. From our perspective, FTX's proposal does not comport with either the current industry market structure or the current Congressionally-established regulatory framework for the derivatives industry. FTX's offering of highly leveraged products direct to retail customers would upend a market structure that has withstood major economic shocks and U.S. and world-wide market disruptions, as well as global developments and changes. We believe that, given the nature, significance and impact of FTX's proposal on the marketplace and its participants, Congress must take action first before the CFTC can deliberate.

Summary

Thank you again for the opportunity to provide our opinions and suggestions on this proposal which would significantly alter current customer protections and market structure. NIBA is happy to discuss this issue – and any other industry issues with the Commission. Please do not hesitate to contact me at 312-498-3518 (phone or text) or by email at melinda@futuresrep.com.

As a futures participant of 45 years myself and on behalf of the NIBA, we suggest that there are many considerations, including Congressional action, that the Commission needs to carefully examine when considering FTX's proposal. We respectfully urge the Commission to act as it always has - in a deliberate, transparent and fully informed manner. The futures markets are counting on you.

Respectfully submitted,

Melinda Schramm, Founder & Chairman
NIBA