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: Request for Comment on LedgerX, LLC d/b/a FTX US Derivatives' Request that the CFTC Amend its DCO Registration Order to Allow FTX to Clear Non-Intermediated Margined Derivatives Products for Both Retail and Institutional Participants

Dear Mr. Kirkpatrick:

National Futures Association (NFA) appreciates the opportunity to comment on LedgerX, LLC d/b/a FTX US Derivatives' (FTX) request that the Commodity Futures Trading Commission (CFTC or Commission) amend its derivatives clearing organization (DCO) registration order to allow FTX to clear non-intermediated margined derivatives products for both retail and institutional participants.[1] The Commission's request for comment raises important issues about how non-intermediated markets may operate within the current Congressionally established regulatory structure for the derivatives industry. We commend the Commission for deliberately and fully considering these issues and for seeking the views of market participants and the trading public on FTX's request.

NFA is a not-for-profit, registered futures association (RFA) pursuant to Section 17 of the Commodity Exchange Act (CEA). NFA's membership includes swap dealers, futures commission merchants (FCM), commodity pool operators, commodity trading advisors, introducing brokers (IB), retail foreign exchange dealers (RFED) and the registered associated persons of these entities. NFA's membership currently numbers approximately 3,100 Member firms and 43,000 associated persons. NFA's responsibilities include registering all firms and industry professionals on behalf of the CFTC, passing rules to ensure fair dealing with customers, examining and investigating Members for compliance with those rules, taking enforcement actions against Members that violate NFA's Rules, administering proficiency examinations for individuals engaged in derivatives activities, providing a low cost arbitration forum for the investing public to resolve their disputes with NFA Members, and educating Members about their regulatory obligations and customers about the risks involved in derivatives trading.

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[1] NFA recognizes that while FTX may want to initially offer margined digital asset commodities, FTX under the proposed DCO model, if approved, could expand into any other asset class with various participants—speculators, commercial hedgers, farmers, producers, pension and hedge funds.

For the last 40 years, NFA has worked closely with the Commission to carry out NFA's mission to safeguard the integrity of the derivatives markets and protect investors. Our collective efforts working with the industry's other self-regulatory organizations (SRO) and industry participants have yielded significant results—customer complaints and single-event customer arbitrations filed at NFA, as well as CFTC reparation cases, remain near all-time lows. NFA believes that meaningful and pragmatic investor protections are essential to the derivatives markets' continued growth. There is no doubt that the Congressionally established regulatory framework, amended over time in response to changes in the derivatives industry has contributed immensely to ensuring that appropriate customer protections are in place.

The Commission's release poses important questions relating to several key areas: designated clearing organization (DCO) rules; FCM rules; FTX proposals; and market impact. Given NFA's role as the industry SRO for the derivatives markets—we do not operate a market—our comments will focus primarily on the customer protection issues raised by the Commission's request for comment. In formulating our comments, we have relied upon the public information posted on the CFTC's website relating to FTX's non-intermediated clearing model. In our view, this information lacks important details, which makes developing meaningful and substantive comments difficult. For example, among other items, none of the information presented appears to include any details about FTX's contract specifications and their permitted leverage. Moreover, it does not include any significant details about the exchange's operations in critical areas—the identity of its market makers and backstop liquidity providers (BLPs), including if any are affiliated with FTX's DCO and designated contract market (DCM) or are within FTX's parent's organizational structure. With this backdrop, we respectfully request that the Commission consider the following comments.

<u>FTX's Model is Inconsistent with the Current Congressionally Established Regulatory Structure</u>

Change and innovation have always been vital to the derivatives industry's continued success. Over the past 40 years, NFA has fully supported change and innovation precipitated by technological enhancements and new products, which sometimes require modifications to the industry's regulatory framework. Today's web and app-based retail trading applications and digital asset products are a continuation of this innovation. As in the past, when innovation serves the public interests underpinning the CEA, we believe Congress has the responsibility to ensure that the regulatory framework for the derivatives industry keeps pace with these industry advancements.

Currently, FTX's and others' business plans for DCOs and DCMs to offer margined derivatives products to retail customers within a non-intermediated market structure do not align with the Congressionally established regulatory framework. Rather, Congress created a regulatory ecosystem in which DCOs, DCMs, and intermediary firms (*e.g.,* FCMs and IBs) perform key and separate functions to protect

customers and mitigate risk, especially when retail customers trade margined derivative products.

Given that FTX's proposal, if approved, would disrupt Congress' well-planned regulatory framework, NFA does not believe the proposal can be implemented unless Congress specifically amends the CEA to define how DCOs (and DCMs) would permit retail customers to trade margined derivatives products on a non-intermediated basis and also establish the necessary and critical protections for customers engaging in these transactions. The CFTC could then propose and adopt rules to implement the CEA's amended market structure framework. NFA does not believe that the CFTC should make these market structure changes by amending a DCO registration order to permit activities that appear to fall outside the CEA's currently defined roles of DCOs and DCMs.

This is not the first-time that Congress needed to reshape the industry's regulatory framework by amending the CEA to address new products, innovation and, in part, market structure. The retail forex market is a recent example. Prior to the CFTC Reauthorization Act of 2008 (2008 Act),[2] although the CEA permitted (and continues to permit) firms registered as FCMs to act as counterparties to forex transactions with retail customers, several federal courts created legal uncertainty as to the CFTC's jurisdiction over these transactions by holding that these transactions were spot transactions.[3] Importantly, after these court decisions the CFTC did not have anti-fraud authority over these retail transactions (and never had regulatory authority), which left NFA to adopt customer protection and financial rules (approved by the CFTC) to regulate our FCM Members' retail forex activities.

The CFTC and NFA recognized that the CFTC should have anti-fraud and regulatory jurisdiction over retail forex contracts—even if they were spot leveraged transactions—and other non-forex leveraged retail commodity transactions. We also recognized that these firms' activities—offering trading platforms in which the firms act as counterparties to retail trades; soliciting customers via websites and solicitors; accepting customer funds and security deposits to margin trades; and auto-liquidating trades falling below the required security deposit maintenance level—did not fit within an FCM's agency-based customer activities, and therefore the CEA's FCM definition was not appropriate for firms engaging primarily in retail forex activities.

The CFTC and NFA worked with Congress and the industry to pass the 2008 Act to expressly give the CFTC anti-fraud and regulatory jurisdiction and create a new separate registration category for a firm engaged in this activity—RFED.[4] Afterwards, the CFTC, in order to implement Congress' regulatory framework, adopted

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[2] *See* Title XIII of the Food, Conservation, and Energy Act of 2008.

[3] *See,* for example, CFTC v. Zelener, 373 F.3d 861 (June 30, 2004).

[4] Similar to on-exchange futures transactions, persons involved in the solicitation or acceptance of orders are required to register as associated persons.

Part 5 to the CFTC's Regulations to govern off-exchange foreign currency transactions. Importantly, the CFTC's Part 5 rules drew from the CFTC's FCM regulatory requirements but made material modifications to them in the customer protection area (*e.g.,* risk and other disclosures, security deposits and trading and operational standards) tailored to the nature of these firms' activities. The CFTC also required these firms, which offered trading platforms and solicited and accepted customer funds, to be members of a registered futures association (*i.e.,* NFA).[5]

As noted above, NFA fully supports innovation and advancement. However, before the CFTC approves significant changes to the industry's market structure to allow FTX to clear non-intermediated margined derivatives products for retail customers, we must ensure that the model is consistent with the Congressionally established regulatory framework's customer protection regime. For the reasons further explained below, FTX's proposed non-intermediated model does not fit within this framework.

<u>*DCOs Should Not Serve as a Substitute for FCMs*</u>

The Commission's request for comment acknowledges that under the current regulatory framework, FCMs ensure that derivatives markets' customers receive certain protections and seeks specific comment on whether participants in a non-intermediated model should be afforded the same or similar protections. NFA believes that this series of questions highlights the most significant issue with FTX's proposal—registered FCMs play a vital customer protection and financial risk mitigating role in the current Congressionally mandated regulatory framework, and the CEA does not appear to allow either DCOs or DCMs to serve as a substitute for FCMs. In essence, the CFTC's current regulations neither contemplate nor provide adequate protections for a non-intermediated market structure.[6] Rather, the CFTC's regulations that effectuate the CEA are built on the concept that separate entities (e.g., DCMs, DCOs and FCMs) each play a critical role in the derivatives industry's regulatory ecosystem to support the CEA's public interests.

FTX states that its model should be permitted because the definition of DCO does not require it to mutualize risk among intermediaries. FTX's observation regarding the DCO definition may be correct but its resulting conclusion that this omission allows a DCO to engage in FCM activities is not supported by the current

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[5] *See,* CFTC Regulation 5.22.

[6] The CFTC's request notes that four DCOs currently clearing fully-collateralized products operate a non-intermediated model and ICE NGX Canada Inc. (ICE NGX) operates a non-intermediated model for margined products. NFA believes that there are heightened customer protection concerns with margined products compared to fully collateralized products in the context of a non-intermediated market. Additionally, we note that ICE NGX's model differs from FTX's non-intermediated model since ICE NGX's contracting parties are institutional and not retail participants.

regulatory framework.[7] Congress specifically requires persons engaging in certain activities to register as FCMs. The omission of these activities in other CFTC registration definitions does not mean that persons are permitted to substitute one Congressionally defined CFTC registration category (e.g., DCO or DCM) for another (e.g., FCM). To the contrary, when Congress speaks affirmatively in one area of the CEA and omits similar language in other CEA provisions, legislative intent is clear, and the omission is purposeful.[8]

In this case, based on the information available, FTX (through its DCM and DCO registrations) plans to offer retail customers[9] an app or web-based platform, will presumably use advertising to solicit accounts, will accept funds for margin and will accept orders for trades. These activities fall squarely within the CEA's FCM definition under Section 1a(28) of the CEA. The CEA requires a person engaged in those activities to be registered as an FCM under CEA Section 4d, which is supported by the Commission's enforcement decisions in other contexts that determined that non-DCM registered digital asset markets engaging in similar activities involving leveraged retail commodities under CEA Section 2(c)(2)(D) were acting as unregistered DCMs and FCMs.[10] The fact that these enforcement cases addressed DCM and FCM registration

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[7] In its CFTC submission, FTX characterizes FCM obligations as being related to trading on an exchange that are unrelated to clearing positions. However, LedgerX's DCO is not just clearing positions but interfacing directly with customers and should have significant regulatory obligations in doing so. Removing an FCM from the process does not eliminate the need for investor protections relating to trading. These investor protections are critical even in FTX's model. Further, while FTX as a DCM has SRO responsibilities, the Commission's regulations do not currently impose CFTC Part 1's investor protection obligations on a DCM.

[8] Importantly, NFA believes Congressional intent is clear as to how hybrid non-intermediated markets should be treated within the CEA's regulatory framework. Specifically, Congress addressed hybrid non-intermediated markets within the CEA's construct in 2000. The *Commodity Futures Modernization Act of 2000*, in part, allowed for a hybrid non-intermediated market structure for registered derivatives transaction execution facilities (DTEF), which offered excluded commodities. Congress adopted Section 5a(b)(3) that specifically defined a DTEF's eligible traders to be either eligible contract participants or a person trading through an FCM. NFA does not believe any persons ever registered as a DTEF. *The Dodd-Frank Wall Street Reform and Consumer Protection Act* repealed Section 5a and created another derivatives trading facility —swap execution facilities, which are also prohibited from having retail participants.

[9] FTX interchangeably uses the term "participant" and "customer" but the distinction between the two is critical under the CFTC's rules. The CEA and the CFTC's Part 39 relating to DCOs make no mention of the term "customer" and refer to a DCO's participants. The CFTC defines "customer", however, under CFTC Regulation 1.3, which states, in part, that "customer" means any person who uses an FCM as an agent in connection with trading in any commodity interest..." The CFTC's Part 1 is specifically designed to provide critical protections to customers. NFA strongly believes the fact that DCO-related terminology refers to a "participant" rather than a "customer" does not alter the fact that retail customers trading on a non-intermediated DCM are entitled to all the protections afforded under the CEA and the Commission's Regulations, including Part 1. The Commission imposes by rule none of these customer protection obligations on a DCO and DCM.

[10] *See* In the Matter of Payward Ventures, Inc. (d/b/a/Kraken) CFTC Docket No. 21-20 (September 28, 2021) in which the Commission determined that Kraken operated as an unregistered FCM by accepting orders for and entering into retail commodity transactions with customers on its online digital asset

and FTX seeks to engage in these activities as a DCO is irrelevant to the analysis in these cases. Specifically, the DCO definition under CEA's Section 1a(15) omits the key functions that require a person to register as an FCM—soliciting accounts, accepting orders for trades and accepting money, securities or property to margin, guarantee or secure trades or contracts.

The current Congressional regulatory framework clearly does not permit a registered DCO or DCM to act as an FCM and deal directly with retail customers.[11] Pursuant to the CFTC's rules, the Commission imposes important requirements upon FCMs to protect their customers within the current regulatory ecosystem, and FCMs—not DCOs and DCMs—have a clear obligation under the rules to supervise their activities for compliance with these requirements.

Lack of Independent SRO Oversight

Congress' and the CFTC's regulatory framework does not solely rely on an FCM to supervise its activities to protect customers and mitigate risk. Congress and the CFTC also created an additional layer of oversight—independent SROs to perform front-line oversight of FCMs.[12] As the CFTC is aware, NFA and CME Group act as independent SROs over their FCM members' activities and have robust oversight programs in place to ensure that FCMs meet their customer protection and financial requirement obligations established by CFTC Rules (*e.g.,* Part 1) and NFA Requirements.

If FTX is permitted to act as an FCM through its DCO registration, then the additional layer of regulatory protection afforded by independent SRO oversight is

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exchange and by accepting money or property (or extending credit in lieu thereof) to margin the transactions. *See also* In the Matter of iFinex Inc., BFXNA Inc., and BFXWW Inc., CFTC Docket No. 22-05 (October 15, 2021) in which the Commission determined that Bitfinex operated as an unregistered FCM by accepting orders for and acting as a counterparty to retail commodity transactions with customers, and accepting money or property, including bitcoin and other cryptocurrencies, to margin these transactions and In the Matter of HDR Global Trading Limited et.al., Case No. 1:20-cv-08132, U.S. District Court (S.D. NY) (August 10, 2021) in which the Commission determined that the defendants (collectively, BitMex) operated as an unregistered FCM by accepting orders for and acting as a counterparty to retail commodity transactions with customers, and accepting money or property, including bitcoin, to margin these transactions.

[11] NFA does not believe it is appropriate for the Commission to exclude FTX by rule or regulation from the definition of FCM under 1a(28) of the CEA and allow it to operate as an unregistered FCM within the same entity registered as a DCO and DCM. To do so, the CFTC must determine that this action will effectuate the purposes of the CEA, which includes to serve the public interest. Given the concerns raised in our letter, we do not believe that such a determination should be made. Congress' regulatory framework often results in a person being required to register in multiple categories depending on their defined activities.

[12] The CFTC also provides another layer of oversight through its rule enforcement reviews of NFA and CME's regulatory programs.

eliminated.[13] Although under the current DCO registration order, the CFTC has stated that FTX is an SRO with oversight responsibility for ensuring that participants on its market comply with FTX's requirements, those SRO responsibilities should not extend to ensuring that FTX carries out its customer protection obligations. If the CFTC eliminates the layer of independent SRO oversight, then only the CFTC has direct regulatory oversight over the DCO and its dealings with retail customers. The CFTC presumably would examine FTX's FCM activities for compliance with the CFTC's conditions/rules and would need to subject FTX to the same robust oversight that SROs currently perform for FCMs.[14]

Given the CEA's language and regulatory framework, NFA has significant concerns that FTX's proposal, which adopts material market structure changes, is inconsistent with the CEA's current provisions and Congress' established regulatory structure. We believe changes of the nature and significance proposed should align with the CEA's statutory regulatory structure and occur only after Congress, with full consideration of all the significant customer protection issues, has acted to fit non-intermediated markets within that structure.

In this case, Congress should determine whether DCOs and DCMs may deal directly with customers. If Congress concludes that DCOs and DCMs may deal directly with customers, then Congress should potentially create a new registration category for these non-intermediated markets and establish a framework for the CFTC to enact rules governing their applicable customer protection obligations and oversight.[15] Until Congress acts, FTX's DCO and DCM may offer margined commodity transactions to retail customers but must do so in a manner consistent with the CEA's current regulatory structure that, by necessity, involves a registered FCM interfacing with customers in the trade process.[16]

FCM Rules and Customer Protection

If the Commission decides that FTX's proposal is consistent with Congress' current regulatory framework and moves forward with FTX's proposal, then NFA requests that the Commission consider the following comments.

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[13] Congress has recognized that effective self-regulation of trading facilities, clearing systems, market participants and market professionals under CFTC oversight serves the CEA's public interests. See Section 3(b) of the Commodity Exchange Act.

[14] If Congress determines to permit non-intermediated markets, then NFA encourages the Commission to work with Congress to determine if there is an independent SRO structure that should apply for non-intermediated markets—both leveraged and fully-collateralized. For example, if Congress permits a non-intermediated market structure—then it could require those entities to be members of an independent SRO to oversee their applicable customer-related activities.

[15] Congress took this action in the context of retail Forex in creating the RFED registration.

[16] For example, several recently designated or pending digital asset derivatives DCMs are seeking to register affiliated entities as FCMs, which will have a direct relationship with retail customers trading on the DCMs.

First, with respect to the Commission's question as to whether DCOs in a non-intermediated market structure should provide participants with the same protections afforded by FCMs to customers pursuant to CFTC requirements, NFA answers unequivocally "yes". Without affording these protections, the CFTC risks losing years of significant progress in customer protection. The specific customer protections identified in the Commission's request under *FCM Rules* are key to ensuring, among other things, that investors have full transparency regarding: the risks associated with their trading; the financial background of the entity holding their funds; and the investors' current holdings and the results of their trading. Additionally, the FCM rules provide key protections relating to how customer funds are held, segregated and invested, which are designed to ensure the safety of those funds. NFA does not believe the model proposed by FTX in any way diminishes the need or value of these protections, or other crucial protections imposed by NFA rules.

NFA also believes that FTX's proposal discounts the importance of having a holistic view of your customer. In discussing its proposed risk management functions, FTX's application states that "FTX will rely only on collateral deposited with FTX when evaluating its risk exposure, as opposed to holistic credit checks that rely on information, such as a person's worth, occupation, credit score, and other information that may be stale at any particular point in time." NFA believes that both a customer's funds on deposit and the other critical information relied upon for years by the industry's registered FCMs are crucial to manage risks, protect customers and to ensure the integrity of the markets.

For example, NFA requires FCMs to comply with NFA Compliance Rule 2-30 and its correlating Interpretive Notices, colloquially known as the industry's "Know Your Customer" requirement. Under this rule, FCMs must obtain critical background, financial and investment experience information from any customer who is not an eligible contract participant as defined in the CEA. An FCM may use this information to manage the risks associated with onboarding a customer. More importantly, however, an FCM must use the information collected (which is required to be verified annually) to ensure that it provides the specific customer with appropriate risk disclosures regarding trading derivatives products that meet the needs of that customer. In some cases, an FCM may have to give additional risk disclosures beyond the specifically required disclosures, including in some instances informing the customer that derivatives trading may be too risky for them. NFA does not believe that FTX's proposal appreciates the import of NFA Compliance Rule 2-30 and the key role that an FCM plays to protect the subset of retail customers who given their background should be informed by the FCM that trading margined contracts on FTX may be too risky for them.[17]

NFA also believes that since Congress and the Commission's current regulatory framework is premised on an intermediated market structure, the CFTC

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[17] Under NFA Compliance Rule 2-30, once the FCM makes the required disclosures, the decision on whether to participate in the market is left to the customer.

should fully evaluate via rulemaking if FTX's proposal requires different, additional or modified investor protections to specifically address a non-intermediated market structure.[18] If the Commission determines to permit a non-intermediated market structure, it is imperative that the Commission impose by rule appropriate investor protection obligations on the DCO and/or DCM. [19] We do not believe that the CFTC should impose these investor protection obligations by approving or amending a DCO and/or DCM registration order. The Commission's rulemaking process is transparent and allows the CFTC to propose and fully vet any necessary modifications to the current rules to fit a non-intermediated market structure.[20] The CFTC's rulemaking relating to retail forex discussed above is instructive and illustrates that the current rules likely do not fit a non-intermediated market structure.

Other Concerns with FTX's Non-Intermediated Market Model

As noted above, given our role in the industry, NFA has purposefully focused our comments on investor protection. We understand, however, that FTX's proposal raises other issues and questions, and we encourage the Commission to carefully consider the views of market participants and other commenters when considering this innovative proposal. For example, we are not experts in clearing operations, DCO liquidation procedures and how the priority and classification protections afforded to participants/customers differ between DCO and FCM bankruptcies. These are all areas that must be examined, and NFA will rely upon other commenters and the Commission's expert staff to analyze the important issues relating to these areas.

However, based on NFA's review of FTX's current rulebook publicly available on the CFTC's website, we certainly have concerns about the use of customer

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[18] For example, CFTC Regulation 1.55's disclosures provide customers with key information on engaging in futures trading but several on their face appear inapplicable to the FTX model and may need to be modified to cover the risks posed by FTX's model. At a minimum, NFA believes that customers should also be receiving disclosures regarding the risks associated with the auto-liquidation process. Moreover, there may be additional disclosures that are necessary with respect to the BLPs. For example, while NFA does not believe that there is sufficient information in FTX's submission regarding these BLPs, we believe potential conflicts of interest disclosures should be required depending upon their relationships with FTX.

[19] The Commission's review should include its Part 190 Rules. Given the importance of these rules to ensure the safety of customer funds in the event of a bankruptcy, NFA believes that a full review must be done to determine if and how these rules apply in the event of a FTX's bankruptcy, determine if any changes need to be made to the Rules to protect customers and ensure that "participants" receive full disclosure on what occurs in the event of a bankruptcy. In the case of a DCO/DCM utilizing auto-liquidations for margined derivatives products, customers primary protection against forced close-outs of their positions is to significantly overfund their accounts. Clarity on what bankruptcy protections apply to their funds is therefore critical.

[20] NFA staff engaged in a discussion with the FTX team and found the discussion helpful in further understanding its proposed model. Based on this discussion, it appears that FTX's proposed structure continues to evolve. The proposal's continued evolution highlights the importance of the CFTC utilizing the formal rulemaking process if it were to move forward with FTX's proposal. This process would afford commenters the opportunity to clearly understand how this evolving model will work and how the CFTC proposes that its current regulations should apply or be modified to fit this model.

margin funds and the auto-liquidation procedures. Specifically, FTX's Rule 7.1 G.5 governing Asset Management: Withdrawal Limitations appears to permit FTX to use participants' initial margin and variation margin to meet its own temporary liquidity needs. Although NFA is unclear on the limitations relating to this this feature, we recognize that an FCM would never be permitted under the law to use customer funds for this purpose. We therefore encourage the Commission to fully review the potential issues associated with a DCO being permitted to use margin funds in this manner, and if it permits FTX to use customer funds for this purpose ensure that proper controls are in place.

The Commission poses several questions regarding FTX's auto-liquidation process, which we understand to work as follows. When a participant's collateral on deposit falls below the maintenance margin level, FTX's automated system will immediately liquidate the participant's portfolio to the extent necessary to come into compliance with the DCO's margin requirements. FTX's proposal also provides that it will set a "full liquidation" threshold based on the notional value of positions, and it will liquidate the remainder of a participant's portfolio if margin on deposit falls below that threshold. During full liquidation, the participant's remaining positions will be transferred to a BLP at a transaction price that will set the participant's account value at zero. While we understand that customers may receive real-time "informational alerts" when their accounts fall close to the required margin level, we are concerned that this will not afford customers the opportunity and sufficient time to post additional funds to avoid auto-liquidation.

NFA is also concerned that FTX's proposal does not provide the full information necessary to adequately evaluate the auto-liquidation process. Given the volatile nature of the digital asset markets, FTX's utilization of an auto-liquidation process in a one directional market may have significant implications for FTX's customers and other exchanges offering digital assets if a cascading effect occurs in any of FTX's markets (digital assets and other offered commodity-related products). Before approving such a process, NFA believes the Commission must receive further information from FTX to understand the impact of this tool in various market scenarios.[21]

From a customer protection standpoint, NFA is particularly concerned about the impact this process may have on a retail participant's ability to successfully trade these markets. For example, FTX's proposal does not specify the initial margin requirements that will be imposed. The higher the leverage permitted, the potential for auto-liquidations to the detriment of customers, even with a minor market move, grows significantly. Therefore, similar to other contexts, the Commission for customer

[21] For example, the CFTC could require FTX to provide an analysis of the impact of this process under previous market conditions based on FTX's average account size, initial funding amount, type of initial funding, permitted leverage, contract size, and variety of contracts traded. Additionally, if FTX utilizes an auto-liquidation process on its platforms for non-US customers, FTX should be able to provide the CFTC with detailed information about how often it uses this process to liquidate customer positions, the overall profitability of its non-US customers' accounts and, if applicable, the percentage of times one of its affiliates is on the other side of its customers' auto-liquidations.

protection purposes may have to establish by rule leverage limitations for FTX's retail customers in order to lessen the likelihood that their positions will be auto-liquidated through modest market movements or a market pricing anomaly on the trading platform that is quickly rectified.

FTX's proposal also does not provide much information about the BLPs. From a customer protection standpoint, customers should be aware if these entities have any affiliation with FTX and, if so, FTX should be required to disclose and fully explain any potential conflicts of interest with this arrangement.[22] Additionally, to fully evaluate FTX's model, it would be helpful to know if financial or other requirements are imposed on these entities to ensure that they are able to perform during times of market stress. Therefore, NFA encourages the Commission to seek full information about these entities, their financial resources and their market obligations to fully evaluate FTX's risk management framework and to ensure that proper disclosures are made to customers regarding these entities' activities.

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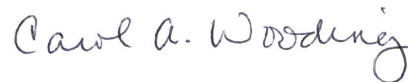
In closing, we reiterate our appreciation for the opportunity to provide our views of this significant change to the derivatives industry's market structure and the important customer protection issues raised by a non-intermediated market structure. We are available to further discuss any of these issues with Commission staff. If you have any questions on this letter or otherwise, please do not hesitate to contact me at cwooding@nfa.futures.org.

Respectfully Submitted,



Carol A. Wooding
Senior Vice President
and General Counsel

/caw/comment letters: FTX Request for Amended DCO Registration (FINAL)

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[22] If an FTX affiliate(s) may act as a liquidity provider, an additional concern arises about what, if any, information the affiliate(s) may have access to, including customer position information and non-public order book information and how the affiliate's trading activity is monitored within the FTX corporate structure.