

May 11, 2022

VIA ELECTRONIC SUBMISSION

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

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

Dear Mr. Kirkpatrick:

I. INTRODUCTION

On behalf of The Commercial Energy Working Group (the "**Working Group**"), Eversheds Sutherland (US) LLP submits this letter in response to the request for public comment from the Commodity Futures Trading Commission (the "**CFTC**" or "**Commission**") regarding the request from LedgerX, LLC d.b.a. FTX US Derivatives ("**FTX**") to amend its order of registration as a derivatives clearing organization ("**DCO**") (the "**FTX Proposal**").¹ The Working Group appreciates the opportunity to provide input on this matter as the Working Group has concerns about potential issues regarding aspects of the FTX Proposal.

The Working Group is a diverse group of commercial firms in the energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial, and residential consumers. Members of the Working Group are producers, processors, merchandisers, and owners of energy commodities. Among the members of the Working Group are some of the largest users of energy derivatives in the United States and globally. The Working Group advocates regarding regulatory, legislative, and market developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

¹ See Request for Comment on FTX Request for Amended DCO Registration Order (Mar. 10, 2022), <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7254>.

II. COMMENTS OF THE WORKING GROUP

Through this filing, the Working Group does not take a position on whether the use of a non-intermediated market structure for futures is appropriate as a matter of market design and public policy. The Working Group notes that many of its members actively transact on ICE NGX Canada Inc. ("**ICE NGX**"), a foreign board of trade, which utilizes a well-established, non-intermediated market for margined energy products.

Rather, the Working Group's comments herein are limited to specific aspects of the FTX Proposal that could potentially (i) adversely impact the safety and soundness of retail markets for futures products, and (ii) impact traditional agriculture, energy, and metals commodity derivatives markets. In this context, the Working Group supports the comment letter submitted in this docket by the Commodity Markets Council ("**CMC**") and incorporates the arguments set forth therein by reference.

The CMC comment letter identifies the following concerns raised by the FTX Proposal: (i) lack of basic consumer protections with respect to unsafeguarded participant funds; (ii) enhanced credit risks and lack of appropriate resources to manage clearing members' defaults; (iii) adverse impacts that automatic liquidations could have on market integrity; (iv) reduced market liquidity with respect to the price discovery and hedging activity due to the elimination of key risk management functions performed by a DCO; and (v) the unintended consequence of forcing market participants who seek to mitigate the risk of auto-liquidations to incur excessive margin costs.

Notwithstanding that its intended scope and applicability is limited to retail markets for certain digital asset products, if approved as submitted, the Working Group is concerned that the FTX Proposal could set precedent for the creation of a new non-intermediation "framework" that could be more broadly imposed by the Commission on traditional commodity derivatives markets. Without appropriate safeguards, the imposition of non-intermediation structure similar to that proposed by FTX could leave traditional commodity derivatives markets and, potentially, the financial system exposed to systemic risks.

Recognizing that the derivatives markets are in a period of transition and substantial innovation, the Working Group does not believe that it is appropriate – either procedurally or substantively – to address issues of such significance in the context of a proposed amendment to a DCO registration order. Rather, issues of this type and nature are more appropriately addressed in a formal rulemaking proceeding subject to public notice and comment consistent with the requirements of the Commission's regulations and the provisions of the Administrative Procedure Act.²

Based on the foregoing, the Working Group urges the Commission to extend this proceeding for purposes of more fully addressing the broader policy and market design issues raised by the FTX Proposal. In doing so, the Commission will be better able to develop a public record that recognizes, considers, and addresses concerns raised by CMC, the Working Group, and other industry participants regarding aspects of the FTX Proposal in a thoughtfully reasoned and transparent manner.

² 79 Pub. L. 404, 60 Stat. 237.

III. CONCLUSION

The Working Group appreciates this opportunity to comment in this proceeding and looks forward to working with the Commission as it considers the FTX Proposal. The Working Group hereby reserves the right to further supplement its comments filed herein.

If you have any questions, please contact the undersigned.

Respectfully submitted,
/s/ R. Michael Sweeney, Jr.
R. Michael Sweeney, Jr.

***Counsel to
The Commercial Energy Working Group***