

September 28, 2023

VIA ELECTRONIC SUBMISSION ([Link](#))
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
USA

Re: Commodity Futures Trading Commission’s Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities

The Global Association of Central Counterparties (“CCP Global”)¹ is the international association for central counterparties (“CCPs”), representing 42 members who operate over 60 individual CCPs across the Americas, EMEA, and the Asia-Pacific region.

CCP Global appreciates the opportunity to respond to the Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities² (“the Request”) issued by the Commodity Futures Trading Commission (“CFTC” or “Commission”). We appreciate the CFTC’s outreach to the industry to better inform its understanding of the impact of affiliations between designated contract markets (“DCMs”), derivatives clearing organizations (“DCOs”), and/or swap execution facilities (“SEFs”) and intermediaries, such as a futures commission merchant (“FCM”) or other market participants.

Consistent with the Commodity Exchange Act (“CEA”), the CFTC has embraced a principle-based approach to addressing conflicts of interest that may arise where a group owns multiple CFTC-registered entities. This approach has proven particularly successful in ensuring DCM and DCO registrants within the same group identify, mitigate, and manage conflicts of interest. These registrants are also subject to the CFTC’s robust supervisory oversight. Fundamentally, conflicts of interest are not new to any business organizations and are an area that current CFTC registrants are accustomed to managing.

While the CFTC’s principle-based approach has historically proven successful, recent developments in the industry may require additional CFTC attention. The CFTC has not to date prevented groups that own DCMs and/or DCOs from owning FCMs. Ownership of an FCM by a DCM/DCO/SEF, however, differs from traditional organizational structures where a group only owns a DCM, DCO, and/or SEF,

¹ Previously known as CCP12.

² CFTC, Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities (June 2023), available at [Link](#).

therefore, a group's ownership of a DCM/DCO/SEF *and* an FCM should be closely evaluated to ensure that the CFTC's long-standing policy of ensuring conflicts of interest are effectively managed is upheld. FCMs differ from DCMs/DCOs/SEFs in that the latter are mostly self-regulatory organizations and consequently are held to a higher standard of risk management than are FCMs. While CCP Global does not believe that the CFTC should deviate from its principles-based approach, it does advocate requiring an appropriate separation of an FCM from a DCM/DCO/SEF in the same group. This approach would still permit ownership of the FCM by the group owning the DCM/DCO/SEF but would require putting in place appropriate information barriers and restrictions on shared personnel among and between the relevant affiliated regulated entities.

CCP Global recognizes that affiliations between regulated entities can be beneficial and finds that the CEA and related CFTC regulations have worked well to date to address any potential concerns with entity affiliations. At the same time, we note that the recent experiences observed in cryptocurrency and digital asset markets indicate that adopting a heightened approach to management of conflicts of interest for these new and unique ownership models (i.e., where a group owns an FCM and a DCM/DCO/SEF) is crucial. Along these lines, we believe that well-defined and robust policies, procedures, rules, and disclosures should be implemented at these affiliated regulated entities to reduce the risk of conflicts of interest and prevent misuse of material non-public information. In some instances, this may mean that groups and entities with FCM and DCM/DCO/SEF affiliates would need to draft additional rules, policies, and/or procedures to comply with their obligations set forth in the CEA and related CFTC regulations. Given this as well as the lack of experience of DCM/DCO/SEF groups with owning FCMs, CCP Global believes it could be beneficial for the CFTC to consider proposing additional rules establishing expectations for the rules, policies, and/or procedures that the entities of such groups would be expected to maintain to comply with current applicable CFTC conflicts of interest regulations. This may include, for example, an illustrative list of conflicts to be mitigated, managed, and/or disclosed and a list of tools that entities may use to mitigate these conflicts such as establishing appropriate incentives, internal controls, information barriers, and separate legal entities.

Below we would like to provide our comments to a few selected areas highlighted in the Request:

CCP Global comments regarding impartial access, competitive effects, and designated self-regulatory organization's ("DSRO") relationship with an affiliated FCM that it supervises

The CFTC, in adopting its principles-based regulatory framework, has long recognized that there are multiple ways in which organizations may be structured and services offered and that this can be done in a manner that identifies and effectively addresses conflicts of interest, including for affiliated regulated entities. Such a principles-based framework avoids the shortcomings of overly prescriptive approaches that can fail to adequately address the multiple forms of conflicts of interest that can arise. Moreover, a group owning both an FCM and a DCM/DCO/SEF would not raise anti-competitive concerns where the affiliated regulated entities adopt appropriate rules, procedures, and policies for managing conflicts pursuant to applicable CFTC regulations.

The CFTC's principles-based regulatory framework also functions in a manner that is designed to avoid unnecessary prescriptive requirements, which can hinder innovation and access to the risk management benefits of clearing. In this regard, the CFTC's regulatory framework, by recognizing that

there are multiple ways in which regulated entities may provide their services (including, through a group owning an FCM and a DCM/DCO/SEF), promotes effective and efficient access to derivatives products. This includes, for example, where an FCM chooses not to offer and clear for its customers a product listed on a DCM. Offering multiple options for accessing derivatives leads to increased competition within the markets, while removing potential anti-competitive burdens. Ultimately, this can lead to the expansion of market participants' access to the risk management benefits offered by clearing. For this reason, we believe that the CFTC's principles-based regulatory framework promotes the development of innovative and alternative products that could be used as additional risk management tools by market participants in ever-evolving markets.

CCP Global also believes it is of the utmost importance that FCMs affiliated with a DCM/DCO/SEF neither be afforded preferential treatment, nor be disadvantaged or subject to more restrictive treatment. FCMs affiliated with a DCM/DCO/SEF should be treated the same as all other FCMs. This can be ensured by a combination of explicit rules, policies, and procedures stating that these affiliated FCMs are subject to and obligated to follow the same access criteria and rules as non-affiliated FCM clearing members in areas including, but not limited to, fees, surveillance, and disciplinary processes. In this context, CCP Global also supports the current regulatory structure under CFTC Rule §1.52, including that DSRO's staff must maintain independence in relation to its supervisory responsibilities.

CCP Global comments regarding information and resource sharing

To mitigate some of the potential concerns surrounding the sharing of information and resources between and among the FCM and the affiliated DCM/DCO/SEF, CCP Global believes that policies and procedures, which include robust information barriers, should be implemented to prevent the affiliated FCM from accessing or utilizing material non-public information of its DCM/DCO/SEF affiliate and vice versa. These policies and procedures should include oversight at the entity, group, and regulator levels to ensure that such controls are enforced at the affiliated regulated entities. We also believe it is important that the separation of resources, including key personnel, offices, and information systems between an FCM and the affiliated DCM/DCO/SEF be maintained. This could be achieved by the implementation of policies and procedures that include a robust information barrier policy at the affiliated regulated entities.

CCP Global comments regarding financial resources

CCP Global agrees that all affiliated regulated entities should be required to maintain capital, financial resources, and liquidity at the individual entity level to meet the distinct financial resource requirements for an FCM and a DCM/DCO/SEF under current CFTC regulations. However, we would find it unnecessary for a DCO to maintain, in addition, supplementary financial and liquidity resources to cover the potential default of an affiliated FCM. We think the current cover-1 or cover-2 standards, as applicable under current CFTC regulations, are sufficient.

About CCP Global

CCP Global is the international association for CCPs, representing 42 members who operate over 60 individual central counterparties (CCPs) across the Americas, EMEA, and the Asia-Pacific region.

CCP Global promotes effective, practical, and appropriate risk management and operational standards for CCPs to ensure the safety and efficiency of the financial markets it represents. CCP Global leads and assesses global regulatory and industry initiatives that concern CCPs to form consensus views, while also actively engaging with regulatory agencies and industry constituents through consultation responses, forum discussions, and position papers.

For more information, please contact the office by e-mail at office@ccp-global.org or through our website by visiting www.ccp-global.org.

CCP Global MEMBERS

