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**September 28, 2023**

Via Electronic Submission

Mr. Christopher J. Kirkpatrick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**Re: Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities Issued on June 27, 2023**

Dear Mr. Kirkpatrick:

Cboe Global Markets, Inc. (“Cboe”) appreciates the opportunity to express our views on the request for comment issued by Commodity Futures Trading Commission (“CFTC” or “Commission”) staff on the impact of affiliations of CFTC-registered entities. The Commission staff is seeking feedback on potential issues that may arise if a CFTC-registered entity is affiliated with an intermediary, such as a futures commission merchant (“FCM”), or other market participant, such as a trading entity (e.g., an affiliated introducing broker, commodity trading advisor, or commodity pool operator).

As a leading global operator of market infrastructure, including several CFTC-registered entities, Cboe has for many years successfully managed affiliated entities to innovate and develop markets that benefit investors. Since our inception, we have consistently championed innovation coupled with ensuring investor safeguards. Today we are well positioned to share a perspective on this request for comment, as we operate two designated contract markets (“DCMs”) (Cboe Futures Exchange, LLC and Cboe Digital Exchange, LLC), a swap execution facility (“SEF”) (Cboe SEF, LLC), a derivatives clearing organization (“DCO”) (Cboe Clear Digital, LLC), as well as a number of non-CFTC-registered entities.

There is no question that investors and markets can benefit from the efficiencies, scale, and expanded capabilities brought to bear by multifaceted organizations with varied affiliate relationships. Affiliated entities can offer specialized products and services to enhance the experience of buyers and sellers on exchanges, and in turn, improve the efficiency and competitiveness of markets. At the same time, as an entity focused on upholding market integrity, Cboe recognizes the importance of carefully studying the potential impacts of affiliations with intermediaries, especially as it relates to affiliations that present a meaningful change to today’s tried and tested market structure. We believe and urge the Commission to recognize that issues that may arise with respect to new types of affiliations are distinct from issues that may arise with respect to vertical integration more broadly.

In our experience, existing CFTC regulations provide an appropriate, principles-based framework for evaluating and disclosing potential risks associated with affiliations and should be leveraged by the Commission as needed with respect to intermediary affiliates. Separate licensing and regulatory frameworks for the key entities of interest (e.g., DCMs, DCOs, SEFs and FCMs) help to significantly mitigate potential risks and already may contain answers to some of the questions raised in the request for comment. Internal policies and procedures also play a key role and can be adapted as needed. Cboe maintains a robust operational and governance framework to manage regulatory obligations and maintain impartiality and fair access while minimizing potential conflicts of interest.

To the extent the Commission believes further action is necessary with respect to new types of affiliations, Cboe respectfully encourages the Commission to continue embracing a principles-based approach that allows for necessary flexibility to address particular facts and circumstances rather than develop an entirely new framework. A principles-based approach that avoids prescriptive requirements will permit each individual entity to address specific risks proportionally and would be consistent with existing CFTC Core Principles which already take this approach.

For instance, Core Principles and existing regulations, as well as internal policies and procedures, already adequately address potential risks related to affiliations between DCMs and DCOs. It is also a well-known fact that in the U.S., exchanges operate both cash equities markets and equity derivatives markets. As a long-standing practice, the nuances in these types of arrangements are well understood and can be properly managed. Similarly, in addition to operating a DCM and DCO, Cboe Digital operates a separate spot market and, drawing on Cboe's extensive experience operating under Core Principles, Cboe Digital applies to its spot market the same types of principles that apply to its CFTC-regulated DCO and DCM to address and avoid issues that otherwise may arise when this approach is not taken.

While the request for comment does not focus on affiliations with independent software vendors ("ISVs"), the Commission should recognize that any guidance for intermediary affiliate relationships (e.g., with respect to staffing and processes) may nevertheless impact other types of affiliations, such as with ISVs. In this regard and as an entity with affiliated ISVs, Cboe believes that existing Commission Regulations 38.151 and 37.202 adequately address the provision of impartial access to ISVs.<sup>1</sup> Additionally, Cboe does not believe the Commission should consider any regulation that purports to limit the sharing of personnel, technology, office space, or any other corporate resources among affiliates such as ISVs that is done in a manner that is compliant with those regulations. If the Commission does decide to consider this issue, Cboe asks the Commission to do so in a careful manner so as to avoid rigid constraints and a prescriptive approach. Rather, a principles-based approach is best to address disparities in resources amongst entities and will permit each individual entity to address proportionately the risks and costs of sharing corporate resources.

Overall, Cboe applauds the Commission's inquiry into affiliations with intermediaries. We recognize concerns regarding the impact that affiliate relationships with intermediaries could have on the conduct surveillance and risk management responsibilities of DCMs, SEFs, and DCOs under the Commodity Exchange Act (the "Act") and the Commission's Core Principles and

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<sup>1</sup> See CFTC Regulations, available at, [https://www.cftc.gov/About/CFTCOrganization/dsio\\_regulationseCFR100218](https://www.cftc.gov/About/CFTCOrganization/dsio_regulationseCFR100218)

regulations. For example, Cboe questions whether it is necessary to allow a DCM or SEF to have an affiliate liquidity provider that trades on the DCM or SEF market given the ability to create liquidity provider incentive programs through rule submission filings to the Commission to incentivize unaffiliated liquidity providers to trade on their markets. Thus, Cboe does not believe there is an obvious need to permit a DCM or SEF to have an affiliate liquidity provider trade on its market on an ongoing basis. When referring to an affiliate liquidity provider in this context, Cboe is referencing a liquidity provider that directly or indirectly controls, is controlled by, or is under common control with, a DCM or SEF under the traditional regulatory definition of an affiliate. Cboe recognizes that DCMs have historically had participants that have a minority ownership in, or board representation on, a DCM and believes that existing frameworks can be utilized to manage those relationships.

Additionally, as Cboe has noted previously, the existing intermediated market structure model offers investors and markets many benefits.<sup>2</sup> Intermediaries such as FCMs play a critical risk-mediation role, as they are often in a strong position to manage the risks of their customers given their visibility into customer positions in multiple asset-classes at multiple DCOs.

Whether existing or new DCMs/DCOs/SEFs propose affiliations with FCMs, it is important that there be full transparency, as well as sufficient assessment and analysis to ensure that the market fully understands the extent of these relationships, how these relationships will be managed, and how all known and potential conflicts are to be mitigated. In fact, transparency and rigorous review are particularly important for novel proposals that aim to disrupt well-established frameworks, as in the current market structure, each entity provides distinct roles, responsibilities and protections to customers and the industry. We also encourage the Commission to extend existing DCO Core Principles to DCO affiliations with FCMs, such as Regulation 39.24 on Governance, to ensure that all governance arrangements are (i) written, (ii) clear and transparent, and (iii) place a high priority on safety and efficiency. Additionally, we believe it is sensible to prohibit a DCM from acting as the designated self-regulatory organization (“DSRO”) for an affiliated FCM.

Cboe is committed to serving as a model entity that responsibly manages its affiliations in the U.S. and globally. We welcome the opportunity for further discussion.

Sincerely,

*s/ Patrick Sexton*

Patrick Sexton  
EVP, General Counsel & Corporate Secretary

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<sup>2</sup> See Cboe Comment Letter (May 9, 2022) Re: CFTC Request for Comment on FTX Request for Amended Derivatives Clearing Organization (DCO) Registration Order, available at, [https://cdn.cboe.com/resources/government\\_relations/comment\\_letters/CFTC\\_Margin\\_Final.pdf](https://cdn.cboe.com/resources/government_relations/comment_letters/CFTC_Margin_Final.pdf)