

September 28, 2023

*Via electronic submission to CFTC comments portal*

Mr. Clark Hutchinson, Director, Division of Clearing and Risk  
Mr. Vincent McGonagle, Director, Division of Market Oversight  
Ms. Amanda Olear, Director, Market Participants Division  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

Re: Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities

The FMX Futures Exchange, L.P. (“FMX”) appreciates the opportunity to comment on the U.S. Commodity Futures Trading Commission (“CFTC” or the “Commission”) staff request for comment on the impact of affiliations on certain CFTC-regulated entities (the “Request for Comment”).<sup>1</sup>

FMX has been designated as a contract market (“DCM”) since 2010. FMX currently operates the CX Division of FMX, which provides fully collateralized weather-based event contracts. CX Division contracts are cleared by CX Clearinghouse, LP, an affiliated, CFTC-registered derivatives clearing organization (“DCO”). FMX has petitioned the Commission to amend FMX’s designation order as a contract market to permit intermediated futures trading in interest rate futures. FMX is partnering with LCH Limited, an unaffiliated DCO, which holds the largest pool of cleared interest rate swaps in the world.

FMX provides these comments based on its experience operating a DCM and affiliated DCO as well as decades of operating affiliated intermediaries owned and operated by its affiliates

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<sup>1</sup> Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities (June 27, 2023), <https://www.cftc.gov/media/8826/rfcimpactaffiliations062823/download>.

Cantor Fitzgerald LP and BGC Financial LP (“BGC”). In particular, our comments focus on Section IV, with respect to a DCM/swap execution facility and affiliated intermediary.

As a general matter, FMX believes the CFTC staff should not pursue implementing a solution while in search of problem. The CFTC and its registrants have decades of experience, across markets, operating in a manner where affiliates and non-affiliates have commercial relationships.

The Commodity Exchange Act core principle framework, implemented through CFTC regulations, is a successful model for empowering DCMs and affiliates to conduct business in a manner that best balances regulatory prescription without a one-size-fits-all methodology. As Commission Chairman Rostin Behnam recently observed, “the CFTC’s focused, principles-based approach to customer protection, market integrity, price discovery, transparency, competition and enforcement has proven both steady and exceptionally calibrated throughout the evolution of our markets, even in times of market stress and record volatility.” He further observed that, “[d]uring the past three years, CFTC rules and regulations have ensured that the derivatives markets performed well for businesses who were able to hedge price risk under extreme pressures brought on by the pandemic, geo-political tension, and extreme weather.”

The Request for Comment sets forth each of the CFTC core principles that address DCM, DCO, SEF obligations with respect to, among other things, conflicts of interest, risk management, governance, and financial resources.<sup>2</sup> Given the depth and breadth of those requirements, which were set forth by Congress and are expanded on by the CFTC’s regulations, FMX does not believe there is any “gap” that needs to be filled by new rules. Given the regulatory certainty provided by rules, FMX strongly urges the CFTC to pursue any changes in this area pursuant to a public notice-and-comment period in accordance with the Administrative Procedure Act.

FMX’s own rules are designed to identify, mitigate, and address any conflicts of interest, whether between affiliates or unaffiliated entities. FMX Rule II-9 covers the work of disciplinary committees, oversight panels to ensure neutrality, as well as recusals of individuals with a financial interest in an FMX action. FMX rules also require consideration of conflicts of interest in the event of an emergency.

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<sup>2</sup> Given the comprehensive summary provided in the RFC, FMX is not detailing the relevant core principles and regulations.

As a DCM, FMX relies on its Regulatory Oversight Committee (“ROC”), comprised of public directors, to

oversee the Exchange’s regulatory program on behalf of the Board of Directors. It shall make such recommendations to the Board of Directors as will, in its judgment, best promote the interests of the Exchange, provided that, for the avoidance of doubt, any dissenting opinions from one or more members of the Regulatory Oversight Committee shall be reported to the Board of Directors along with any such recommendation. The Regulatory Oversight Committee shall also have such other powers and perform such other duties as the Board of Directors may delegate to it from time to time.<sup>3</sup>

FMX has taken many measures, both public and private, to protect the integrity of our markets and our customers’ information. FMX has adopted a Confidential Information and Intra-Company Conflicts of Interest Policy and Procedures (the “Policy”), which incorporates the BCC Group Inc. Code of Business Conduct and Ethics. FMX will receive certain shared services support from BGC affiliates pursuant to an administrative services agreement, which will place certain requirements on affiliates including requiring them to administer the Policy, and FMX affiliates must assure that any individual that they permission to have access to FMX confidential information will attest to their compliance with the Policy.

The CFTC’s current regulatory framework is effective for addressing conflicts of interest among affiliate entities. While we understand the Commission’s concerns surrounding interactions between affiliated entities, it is essential that CFTC regulations remain flexible to keep up with current market practices. For the reasons discussed below, we urge the Commission to recognize how the current conflicts of interest regulations have proven successful in fairly regulating the industry and market participants.

FMX supports the Commission’s overarching goals of mitigating conflicts of interest. However, we believe that it is equally important to maintain a flexible but competitive marketplace. Layering additional rules onto what currently exists has the potential to impact not only the operations of registered entities but also how market participants may choose to interact with exchanges and the industry as a whole.

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<sup>3</sup> FMX Rule II-3, available at <https://cxmarkets.com/wp-content/uploads/2023/02/FMXExchangeRules-20230227.pdf>.

We thank the CFTC staff for their willingness to consider our opinions and welcome the opportunity to discuss these issues further.

Sincerely,



John Steel  
Chief Operating Officer

cc: The Honorable Rostin Behnam, Chairman  
The Honorable Kristin N. Johnson, Commissioner  
The Honorable Christy Goldsmith Romero, Commissioner  
The Honorable Summer K. Mersinger, Commissioner  
The Honorable Caroline D. Pham, Commissioner