

May 13, 2024

Via CFTC's Comments Online

Mr. Christopher J. Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1151 21 Street NW
Washington, DC 20581

Re: Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest; RIN 3038-AF29

Dear Mr. Kirkpatrick:

The North American Derivatives Exchange, Inc. d/b/a Crypto.com | Derivatives North America ("CDNA") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or the "Commission") notice of proposed rulemaking on "Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions" (the "Proposed Rule").¹

Crypto.com was founded in 2016 on a simple belief: it is a basic human right for everyone to control their money, data and identity. With over 100 million users on its platform today, Crypto.com provides a powerful alternative to traditional financial services, turning its vision of "cryptocurrency in every wallet" into reality, one customer at a time. As part of its mission related to the CFTC-regulated derivatives markets, CDNA is a CFTC-registered designated contract market ("DCM") and derivatives clearing organization ("DCO"), which has been registered with the CFTC since 2004. In addition, a separate legal entity in the CDNA corporate group filed an application with the CFTC to register as an FCM to provide customers with access to the exchange-traded futures markets regulated by the CFTC.

We understand from the CFTC's request for comment that the CFTC is particularly concerned with scenarios such as CDNA's, where there is a self-regulatory organization ("SRO") such as a DCM, and (there will be) an affiliated market participant that is subject to the rules of such SRO. As discussed below, we believe that properly implemented conflict of interest mitigation practices are sufficient to address the CFTC's concerns about multiple CFTC registrants within the same corporate enterprise. Further, there are a number of steps the Commission can take to enhance its oversight of these affiliated registrants, but we strongly support the continued use of a principles-based approach, rather than the implementation of overly prescriptive rules and regulations. We also support the Commission's one-year implementation timeline for compliance with any final regulations.

¹ Available at <https://www.cftc.gov/sites/default/files/2024/03/2024-04938a.pdf>.

We appreciate the Commission's thoughtful approach to fostering growth and innovation by appropriately tailoring its regulation in the derivatives markets, including providing meaningful opportunities for industry participants to engage with the CFTC.

1. The CFTC Should Adhere to a Principles-Based Approach, Rather Than Prescriptive Rulemaking

One key element of the Proposed Rule that is concerning to CDNA is the codification of existing CFTC guidance on acceptable best practices for compliance with certain DCM Core Principles. As noted by Commissioner Pham in her statement in support of the Proposed Rule, when the DCM Core Principles were adopted, the CFTC determined that guidance was more appropriate than prescriptive regulations. This approach allowed DCMs the flexibility to establish their own customized rules tailored to their specific markets and the related risks. We believe the CFTC should continue to follow this long standing approach of principle-based regulation, with added specific guidance on ways to satisfy the principles, where necessary.

The CFTC's principles-based regulatory regime is designed to address potential conflicts of interest in affiliate arrangements and is supported by a robust program of registrant audits, exams, rule enforcement reviews and other forms of supervision, by both the CFTC and NFA. These measures have enabled the CFTC to meet its regulatory mandate and continue fulfilling its oversight authority in the face of an evolving market structure, including where such structures start to diverge from historical practices. We believe the CFTC would have further success continuing this practice.

Recognizing that there is a potential for conflicts of interest in any truly diversified financial services and technology company, the CFTC should address any emerging regulatory concerns at least initially by adding to the existing principle-based regulation rather than promulgating new specific rules. Revising current principles to cover any gaps in the regulatory framework rather than implementing strict and complicated rules would best serve these dynamic marketplaces.

The principle-based rulemaking approach will allow for market participants to best create a tailored approach to their individual businesses and will best serve the diversity of organizations regulated by the CFTC.

2. Conflict of Interest Mitigation Practices Work for Corporate Enterprises with Multiple CFTC Registrants

As noted in the Proposed Rule, the CFTC is concerned about potential conflicts of interest in scenarios where a DCM or SEF is part of a corporate family with other CFTC registrants or market participants. We believe that these concerns should be taken seriously, but there are a number of mitigation practices that can be implemented by corporate groups to significantly decrease the potential for conflicts. Disclosures to market participants related to potential conflicts of interest and the mitigation of those potential conflicts by the DCM also provide an appropriate method to address the Commission's concerns. This is the correct approach: focusing on mitigating and managing conflicts, and not creating new and unnecessary prohibitions on affiliations between CFTC registrants.

Corporate enterprises with a DCM and an affiliated CFTC registrant (and other financial services entities) have strong regulatory and commercial interests in supporting the stability of the financial system. Affiliated entities can and do implement robust policies and procedures, transparent governance arrangements, independent oversight, disclosure requirements, and compliance frameworks to mitigate conflicts of interests both for CFTC-regulated and other businesses. Additionally, the reputational risk of a DCM (or DCO and its enterprise) treating an affiliate in a biased manner serves as an additional mitigant along with the existing regulations.

Any issues that would arise due to a DCM's affiliation with an FCM or other market participant that trades on the DCM would be properly addressed by existing regulations requiring DCMs to treat members and persons with trading privileges impartially (including CFTC Regulations 38.151(b) and (c)). The addition of further rules, and particularly those that would act as a roadblock to multiple CFTC registrants existing in the same corporate family, would only serve to hinder the competitive effects of having more clearing members in the marketplace.

Current DCM rules and guidance make clear that DCMs will be held accountable if they afford their affiliate FCMs and market participants special treatment. Creating additional requirements would only muddy the waters of a successful and sufficient regulatory regime.

3. The One-Year Compliance Timeline Allows for Sufficient Time to Comply with Final Regulations

As proposed, the CFTC would allow DCMs and SEFs one year from the effective date of any final regulations to comply with new regulatory requirements should the CFTC finalize new rules in this area. We believe this is an appropriate amount of time for impacted market participants to assess their existing governance and conflict of interest policies and procedures and make any necessary modifications. A shorter amount of time would be insufficient.

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CDNA is supportive of well-crafted and effective regulation of derivatives markets, and believes that the CFTC's goal of identifying, managing, and resolving conflicts of interest can be accomplished through a principles-based approach.

We welcome the opportunity to discuss our comments and the provisional approval approach in further detail.

Sincerely,

/s/

Travis McGhee

Chief Executive Officer

Crypto.com | Derivatives North America