Davis Polk

Vertical integrity: CFTC proposes market participant affiliation rules

August 6, 2026 | Client Update | 10-minute read

The CFTC's proposal acknowledges the ways in which novel products may require novel market structures with affiliations between registrants, while establishing minimum standards for mitigating potential conflicts.

On July 30, 2026, the CFTC issued a notice of proposed rulemaking (the NPR) proposing new rules and guidance to address potential conflicts of interest posed by corporate arrangements in which derivatives exchanges, clearinghouses, brokers and principal trading entities are affiliates under common ownership. The NPR is motivated by the recent growth in markets with these types of affiliate relationships, particularly for prediction markets and digital asset derivatives markets, but would apply generally to all futures commission merchants (FCMs), swap execution facilities (SEFs), designated contract markets (DCMs), and derivatives clearing organizations (DCOs). The proposed rules would allow most affiliate relationships, subject to satisfying proposed requirements for mitigating potential conflicts of interest. Importantly, principal trading by affiliates of DCMs (but not SEFs) would be limited to bona fide market making that satisfies specific conditions.

The NPR poses 77 numbered questions across its various sections, asking about a wide range of possibilities for the final rule – including outright prohibitions, lighter alternatives, and varied calibration of the proposed requirements – signaling meaningful openness to a variety of outcomes in the final rulemaking. Comments are due on October 5, 2026.

Background and motivation for the proposal

U.S. derivatives markets generally consist of three categories of intermediaries: (1) exchanges (i.e., DCMs and SEFs), (2) clearinghouses (i.e., DCOs) and (3) market participants (e.g., FCMs, introducing brokers, clearing members, market makers and proprietary trading firms). Affiliate relationships have long existed between exchanges and clearinghouses, but historically did not extend to affiliations between exchanges or clearinghouses and their participants. In recent years, however, an increasing number of DCMs and SEFs have allowed affiliated market makers, liquidity providers, FCMs and introducing brokers to execute, introduce and intermediate trades, and some DCOs have allowed affiliated clearing members. Most notably, newer entrants into the derivatives market – particularly prediction markets and digital asset derivatives platforms – have sought to operate with a "full stack" of CFTC licenses by having affiliates registered as DCMs, SEFs, DCOs, FCMs and introducing brokers.

Affiliated structures can achieve operational efficiencies, streamline user onboarding, and facilitate innovative product offerings that require close coordination between trading, clearing and customer-interfacing functions. However, affiliate relationships raise potential policy concerns, such as the risk of potential preferential access and order handling, access to material non-public information, anti-competitive practices, unequal enforcement of exchange rules, and other unfair competitive advantages.

Under existing CFTC rules, affiliate relationships are generally permitted, subject to registrants complying with applicable rules related to conflicts of interest and fair and impartial access and treatment. These existing rules, however, generally consist of high-level principles and guidance and do not specifically address the potential conflicts of interest presented by affiliations among exchanges, clearinghouses and their participants. Some exchanges and clearinghouses with affiliated market participants voluntarily take steps to mitigate potential conflicts, but as the CFTC notes, these measures have not been adopted uniformly and could be modified or discontinued at any time because they are not mandated by CFTC rules.

Key provisions

The NPR covers three key categories of affiliate relationships: (1) exchanges (i.e., DCMs and SEFs) and affiliated participants, (2) clearinghouses and affiliated members, and (3) self-regulatory supervision of affiliated FCMs. Throughout, the CFTC indicates that it intends to balance the CEA's core principles-based approach – under which registrants have reasonable discretion in establishing the manner of their compliance – with prescriptive requirements where it deems them necessary, particularly in the context of affiliate proprietary trading. The NPR encourages, but does not defer to, voluntary market practice, and imposes targeted conditions where procedural safeguards alone may not adequately address underlying conflicts.

For each of these categories, registrants would be considered "affiliates" if one directly or indirectly controls, is controlled by, or is under common control with the other. This standard of control is intended to be consistent with the well-established standard under U.S. federal securities laws.

Exchanges and affiliated participants

The NPR identifies two kinds of affiliations between exchanges and participants that present different potential conflicts of interest: (1) affiliations between exchanges and intermediaries acting on behalf of customers, such as an FCM, and (2) affiliations between exchanges and firms trading in a principal capacity for their own account, as a market maker, liquidity provider or otherwise (such firms, Affiliated Trading Firms).

Under the proposed rules, DCMs and SEFs would be required to maintain procedures to identify, address, and manage conflicts of interest involving affiliate market participants, such as FCMs. Such procedures must address, at a minimum:

– **Systems**. DCM and SEF applications and systems would be required to be maintained and operated in a manner that prevents the sharing of non-public information with any affiliate market participant. The proposed guidance on acceptable practices indicates that non-public information can be shared with the affiliate market participant if the exchange shares such non-public information with all market participants or if the information relates only to the affiliate market participant or the affiliate market participant's customers.

– **Personnel**. DCMs and SEFs would not be permitted to share staff with an affiliate market participant, with the exception of administrative staff. The proposed guidance indicates that such administrative staff could include accounting, human resources, and payroll staff and technology staff responsible for system safeguard functions.

– **Office space**. A DCM or SEF would be required to establish physical office space for itself that is separate from the office space of any affiliate market participant.

– **Documentation**. A DCM or SEF would be required to document all conflicts of interest that arise with respect to an affiliate market participant and how any such conflict of interest is resolved.

– **Disclosures**. A DCM or SEF would be required to disclose the existence of the affiliated market participant in its rulebook and in a clear, prominent and readily available manner on its website or electronic platform.

The NPR would include guidance on acceptable practices for satisfying these requirements. In addition, the NPR would codify existing guidance on DCM governance practices by requiring a DCM to have a board of directors that is at least 35% independent, a regulatory oversight committee composed entirely of independent directors, and independent disciplinary panels. This existing governance guidance does not apply to SEFs, and the CFTC has not proposed to apply the guidance or requirements to SEFs.

In addition to the general requirements, a DCM would be *prohibited* from having any Affiliated Trading Firm trade on the DCM, with a narrow exception for Affiliated Trading Firms acting as bona fide market makers that satisfy the following requirements (the Market Maker Exception):

– **Order-priority subordination**. The DCM's trade matching system must not favor the Affiliated Trading Firm, and the Affiliated Trading Firm's orders must be filled last at every price level, regardless of time priority.

– **Market-making agreement**. The Affiliated Trading Firm must be subject to obligations under a market making program that require continuous two-sided quotations, specify minimum trading hours, set bid-ask spread limitations, and prohibit directional proprietary trading. Such terms must be no less favorable to the DCM than those offered to unaffiliated market makers participating in the same or similar program.

- **Independent surveillance**. A third-party service provider must conduct financial surveillance of the Affiliated Trading Firm as if the Affiliated Trading Firm were an FCM (except to the extent requirements apply with respect to customers), review and monitor the DCM's compliance with its conflicts of interest procedures, and annually certify to the CFTC and the DCM's board or other designated committee or responsible officer that the applicable conditions of the Market Maker Exception are satisfied.
- **Per-session disclosure**. Customers must receive notice of the Affiliated Trading Firm's existence and relationship with the DCM before entering orders each session.

SEFs would not be subject to the prohibition on having Affiliated Trading Firms, but the CFTC asks whether such prohibition should be extended to SEFs and if so, whether the requirements of the Market Maker Exception would be compatible with SEF execution methods.

Finally, if the DCM offers an incentive or similar program to Affiliated Trading Firms, the DCM would be required to ensure that the program is offered to unaffiliated members on terms no less favorable than those offered to Affiliated Trading Firms.

Clearinghouses and affiliate members

Similar to DCMs and SEFs with affiliated participants, DCOs would be required to have procedures for identifying, addressing, and managing conflicts of interest involving an affiliate clearing member. Such procedures would be required to address, at a minimum, similar topics as those for DCMs and SEFs, including matters related to systems, personnel, office space and documentation of conflicts. The DCO would also be required to publicly disclose the existence of affiliate clearing member relationships.

While the affiliate conflicts rules and guidance for DCOs would be substantially similar to those for DCMs and SEFs, the CFTC acknowledges that DCOs serve a different purpose than exchanges, and the way potential conflicts could manifest would be different. Such conflicts could involve, for example, margin determinations, default-related decisions and other risk management matters. The CFTC asks whether it would be beneficial to provide guidance on conflicts expectations that is more specifically tailored to DCOs.

Oversight of affiliate FCMs

Current CFTC Rule 1.52 establishes minimum standards that CFTC self-regulatory organizations (SROs), which are DCMs and the National Futures Association (NFA), must satisfy in implementing their financial supervisory programs for FCMs. As permitted by Rule 1.52, all current DCMs and NFA are part of a Joint Audit Program, pursuant to which SRO obligations under Rule 1.52 are delegated to certain designated SROs (DSROs), one of which is NFA. Although Rule 1.52 does not currently prohibit an SRO from acting as DSRO for its own affiliate FCM, no DCM with an affiliate FCM has to date attempted to serve in that capacity – instead, each has voluntarily arranged for NFA to perform the DSRO function. The NPR would codify this practice and signal a clear institutional bias against SROs acting as DSROs for their affiliates, treating that arrangement as presenting unmitigable conflicts of interest.

To address potential conflicts of interest in the supervisory process that could arise if a DCM acts as an SRO for an affiliated FCM, the NPR would make the following amendments to CFTC Rule 1.52:

- **Reporting lines**. If a DCM has an affiliated FCM, examination staff implementing the DCM's supervisory program would be required to report directly to the board of directors or other designated committee or responsible officer of the DCM. If such reporting is to an officer, such officer in turn must report directly to the board of directors or other designated committee.
- **Mandatory independent SRO**. If a DCM has an affiliated FCM, the DCM would be prohibited from acting as the FCM's SRO, and an independent third-party SRO, such as NFA, must act as the DSRO for the FCM. The DCM would be required to ensure that such DSRO implements a supervisory program that satisfies applicable CFTC requirements.
- **Information restrictions**. A DCM would be prohibited from accessing non-public information of an affiliate FCM, except as necessary to comply with the DCM's obligations under CFTC rules. In addition, a DCM would be prohibited from sharing, directly or indirectly, non-public information obtained from its supervision of unaffiliated FCMs with its affiliated FCM, except as necessary to comply with CFTC rules.

– **NFA election**. An FCM would be permitted to elect to have NFA serve as its DSRO, subject to a notice period of least six months and retaining NFA as the FCM's DSRO for at least three examination cycles. This option is intended to give FCMs, including those that are not affiliated with a DCM, access to examination by a DSRO with no commercial interest in its activities.

Separate from CFTC Rule 1.52 supervisory program requirements, a DCM is also required to perform intra-day financial surveillance of its FCM members, as required by CFTC Rule 38.604. The NPR would amend CFTC Rule 38.606 to provide that, with respect to an affiliated FCM, a DCM may either (1) designate an independent third party to conduct such surveillance required by CFTC Rule 38.604 or (2) implement procedures for identifying, addressing, and managing conflicts of interests involving its affiliate FCM that may arise in connection with the DCM's obligations under CFTC Rule 38.604.

In addition to these supervisory requirements, FCMs would be required to publicly disclose to their customers any affiliate relationships with a DCM, SEF or DCO, as well as any risks created by such relationships.

Operational requirements and concerns

The NPR raises significant practical operational issues, particularly in connection with the more prescriptive requirements proposed for proprietary trading on affiliated DCMs, including order-priority subordination across matching systems, per-session customer disclosures at scale, and independent third-party certification of compliance. Many of these operational considerations are quantified in the information collection section of the release, which estimates the costs and burden hours associated with each proposed requirement. That section, frequently overlooked by market participants commenting on proposed rules, warrants careful review, as it provides a concrete window into the CFTC's assumptions about how registrants would implement the proposed requirements and the practical burdens the CFTC anticipates.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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