



U.S. COMMODITY FUTURES TRADING COMMISSION

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Staff Advisory on Affiliations Among CFTC-Regulated Entities

In June 2023, staff of the Divisions of Clearing and Risk, Market Oversight, and Market Participants (“Divisions”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”) issued a request for public comment, seeking to better inform their understanding of potential issues that may arise if a designated contract market (“DCM”), derivatives clearing organization (“DCO”), or swap execution facility (“SEF”) is affiliated with an intermediary, such as a futures commission merchant (“FCM”), or other market participant, such as a trading entity.¹ The request for comment notes that DCMs, DCOs, and SEFs have responsibilities for supervising the conduct of their members and participants, and an affiliation between an intermediary or other market participant and a DCM, DCO, or SEF raises questions as to how those supervisory responsibilities will be carried out with respect to the affiliated intermediary or market participant. The request for comment further notes that such an affiliation may raise other potential concerns, including possible anti-competitive effects, treatment of non-public information, and the adequacy of applicable financial resources.

The comment period for the request for comment closed on September 28, 2023. Approximately 165 comments were received. The Divisions greatly appreciate the time and effort commenters put forth to offer their insights on these important issues.

It will take some time to review and consider all of the comments received. Once that review is finished, the Divisions expect they may recommend further action to the Commission, including that the Commission adopt rules, as appropriate. However, any such action also will take time, and there are a number of registered entities and applicants for registration or designation that already have these affiliations.

In the interim, where a DCO, DCM, or SEF has an affiliated intermediary or trading entity, all parties are reminded of their obligations to ensure compliance with existing statutory and regulatory requirements with this affiliate relationship in mind.

The Divisions also wish to advise market participants that staff closely scrutinizes how these types of affiliate relationships are addressed when reviewing applications for registration or designation, conducting examinations and rule reviews, and through other supervisory means.

¹ CFTC Staff, Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities (June 27, 2023).

Any market participant with concerns should contact the relevant Division to discuss those concerns.

This advisory (“Advisory”) is intended to remind the affected parties of their obligations under the CEA and Commission regulations. It is not intended to create any enforceable rights, any new binding rules or regulations, or to amend existing rules or regulations. This Advisory represents only the views of the Divisions and does not necessarily represent the views of the Commission or of any other division or office of the Commission.