



February 27, 2026

**VIA Email: [secretary@cftc.gov](mailto:secretary@cftc.gov)**

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: RFC121725: Request for Comment on the Direct Clearing of Derivatives by Retail Investors

Dear Mr. Kirkpatrick:

National Futures Association (NFA) appreciates the opportunity to comment on the Commodity Futures Trading Commission's (CFTC or Commission) request for comment regarding the *Direct Clearing of Derivatives by Retail Investors* (Request). The Request seeks to aid the Commission in better understanding the potential issues related to derivatives clearing organizations (DCOs) that, either in part or whole, provide for the clearing of derivatives to retail traders on a direct, non-intermediated basis (Retail DCOs). NFA applauds the Commission for issuing this Request and believes that given the non-traditional structures associated with digital commodity and event contract markets, the Commission should undertake a holistic review of the industry's various market structures to ensure that critical customer protections are in place, and they are properly overseen to safeguard market integrity and promote innovation within the U.S.

NFA is a registered futures association (RFA) pursuant to Section 17 of the Commodity Exchange Act (CEA). NFA's membership includes swap dealers, futures commission merchants (FCM), commodity pool operators, commodity trading advisors, introducing brokers (IB), retail foreign exchange dealers (RFED), and the registered associated persons of these entities. NFA's membership currently numbers approximately 2,800 Member firms and 37,000 associated persons. NFA's responsibilities include registering all firms and industry professionals on behalf of the CFTC, passing rules to ensure fair dealing with customers, examining and investigating Members for compliance with those rules, taking enforcement actions against Members that violate NFA's Rules, administering proficiency examinations for individuals engaged in derivatives activities, providing a low cost arbitration forum for the investing public to resolve their disputes with NFA Members, and educating Members about their



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regulatory obligations and customers about the risks involved in derivatives trading. NFA has no oversight over DCOs, which are not NFA Members.

The Commission's Request notes that although the Commission approved the first fully collateralized Retail DCO in 2004, Retail DCOs have become more numerous in recent years due to retail traders' growing interest in prediction and other event-type markets. The Request also notes that prior to Retail DCOs' rapid growth, most market participants (e.g., retail customers) have historically only accessed a DCO on an intermediated basis via FCMs, which are DCO members. The Commission's Request raises important customer protection and oversight questions about Retail DCOs.

Since 2022, NFA has filed three separate comment letters with the CFTC, which address many of the important customer protection issues raised in the Commission's most recent request. These letters include:

- A letter dated May 11, 2022 from Carol A. Wooding to Christopher J. Kirkpatrick in response to LedgerX, LLC d/b/a FTX US Derivatives' Request to Amend its DCO Registration Order [NFA News Center | NFA](#);
- A letter dated September 26, 2023 from Carol A. Wooding to Clark Hutchinson, Vincent McGonagle and Amanda Olear in response to a request for comment on the Impact of Affiliations on Certain CFTC-Regulated Entities [NFA News Center | NFA](#) and;
- A letter dated March 18, 2024 from Carol A. Wooding to Christopher J. Kirkpatrick in response to a request for comment on the Protection of Clearing Member Funds Held by Derivatives Clearing Organizations [NFA News Center | NFA](#).

The principles set forth and substance of NFA's three prior comment letters remain unchanged and NFA incorporates them by reference into this letter. As the industry's independent self-regulatory organization (SRO), we again remain focused primarily on the customer protection issues raised by the Commission's Request. For purposes of this letter, we reiterate below the most salient points contained in NFA's three prior comment letters.



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*The Commodity Exchange Act's Regulatory Framework Does Not Contemplate Retail DCOs*

Under the current Congressionally mandated regulatory framework, the CEA does not appear to allow either a Retail DCO or a designated contract market (DCM) to serve as a substitute for FCMs. The CEA and the CFTC's Regulations that effectuate the CEA are built on a framework in which separate entities (e.g., FCMs, DCMs, and DCOs) each play a critical role in the derivatives industry regulatory ecosystem. These entities perform key and separate functions to mitigate risk and protect customers. DCMs offer a centralized market, DCOs ensure the settlement of trades between anonymous counterparties thereby mitigating counterparty risk, and FCMs provide access to customers, abide by customer protection obligations, provide credit to customers, and as highly capitalized DCO members provide an additional layer of financial protection to guarantee customer trades.

Congress specifically requires persons engaging in certain activities to register as FCMs, and the CEA presumes that all customer-facing activities will flow through an intermediary. The omission of the activities performed by an FCM in other CFTC registration definitions does not mean that persons are permitted to substitute one Congressionally authorized CFTC registration category (e.g., DCO or DCM) for another (e.g., FCM). To the contrary, when Congress speaks affirmatively in one area of the CEA and omits similar language in other CEA provisions, legislative intent is clear and the omission is purposeful.<sup>1</sup>

As the Commission recognizes, a DCO (Retail or otherwise) is an essential and critical component of the industry's regulatory framework, and its primary regulatory purpose and objective is to manage counterparty risk and mutualize that risk among clearing members. Yet, as noted above, FCMs also play a vital and indispensable customer protection and financial risk mitigating role within the CEA's regulatory framework, and this structure should not be altered absent careful deliberation and clear Congressional authority to remove this vital layer of protection.

*A Potential Approach to Advance a New Direct Market Structure*

Given the CEA's current framework, NFA believes *for the time being* that the CFTC should effectuate the statute and prohibit Retail DCOs and DCMs to function as FCMs. No current core principle applicable to DCOs and DCMs require these

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<sup>1</sup> Specifically, the DCO definition under CEA's Section 1a(15) omits the key functions that require a person to register as an FCM—soliciting accounts; accepting orders for trades; and accepting money, securities, or property to margin, guarantee, or secure trades or contracts.



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registrants to maintain capital and excess customer funds (*i.e.*, residual interest) and adhere to the vital customer protection obligations placed on FCMs pursuant to the CFTC's Part 1 requirements.<sup>2</sup> This is not surprising since a retail disintermediated DCM and DCO market structure did not exist when the Commodity Futures Modernization Act of 2000 amended the CEA to adopt these core principles.

Therefore, instead of expending significant regulatory and industry resources to fit Retail DCOs into a statutory framework that simply is not currently adaptable to them, we recommend working within the current structure and recognize that there is nothing wrong with corporate structures that have separately registered and affiliated DCMs, DCOs, and FCMs for each of which the Commission has adopted principles and rules to effectively oversee. NFA opines that current market participants recognize that this overall corporate structure is operationally effective and efficient, and legally within the contours of the existing CEA given that there are currently ten registered FCMs and one pending FCM with DCM affiliates, many of which also are themselves or have affiliated registered DCOs. Growth in this affiliated market structure has been significant—in September 2023 there were four FCMs with DCM (and DCO) affiliates and two pending FCMs.

While the Commission effectuates the current CEA market structure, NFA also encourages the Commission and industry participants to work with Congress to create a new registration category for Retail DCOs. Legislation provides certainty and protects against future legal challenges. This has been accomplished in the past when various market models do not fit within the CEA's existing framework. Two examples over the past fifteen years include off-exchange principal-to-principal markets involving retail forex and swaps. In these cases, Congress created new registration categories for retail foreign exchange dealers and swap dealers, respectively, and provided the CFTC with the authority to adopt rules applicable to their market activities.

Today, the CFTC, market participants, and Congress are working on spot digital commodity market structure legislation. In this case, the legislation to date appears to favor expressly allowing digital commodity exchanges (DCE) to directly accept and hold retail customer funds and interface with retail customers.<sup>3</sup> If this legislation passes, Congress would amend the CEA to create a new registration category (*i.e.*, DCE) and place an oversight framework relating to direct customer activities.

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<sup>2</sup> Section 5b(a)(2)(B) and (F) contain DCO core principles relating to financial resources and the treatment of member and participant funds and assets. However, these core principles do not impose specific obligations on DCOs similar to the CFTC's detailed and stringent capital and segregation requirements applicable to FCMs pursuant to Sections 4d and 4f of the CEA and contained in CFTC Regulation Part 1.

<sup>3</sup> There is no role for a DCO in this digital commodity market structure.



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Specifically, on July 17, 2025, the House of Representatives on a bipartisan basis passed the *Digital Asset Market Clarity Act* (CLARITY Act). Section 404 of the CLARITY Act creates new Section 5i of the CEA governing the registration of DCEs and new subsection 5i(d) sets forth the segregation requirements for a DCE that holds customer funds. Clause 5i(a)(2)(B)(i) provides that, "if the [DCE] accepts customer funds required to be segregated under subsection (d)," the DCE shall become and remain a member of an RFA and clause (ii) of this section states that the Commission shall require any RFA with a DCE member to promulgate rules that further compliance with the segregation requirements in subsection (d), protect customers, and promote the public interest. The Senate Committee on Agriculture, Nutrition, and Forestry on February 2, 2026, voted to advance the Digital Commodity Intermediaries Act (DCIA), which took a slightly different approach to the oversight of DCEs. Section 202 of the DCIA also creates a new Section 5i of the CEA governing DCEs. Like CLARITY it contemplates DCEs directly soliciting and accepting customer funds. However, it does not impose a requirement that DCEs become RFA members. Instead, subsection 5i(d) requires the Commission to adopt rules that impose customer protection requirements related to disclosure, fair and balanced communication, and marketing and advertising, among other related matters. Therefore, the DCIA makes the CFTC the front-line regulator for these DCE activities. Both CLARITY and the DCIA appear to reflect Congress's ongoing view that market structures may require new CFTC registration categories and that registrants dealing directly with retail customers should be subject to robust customer protection rules.

Given this historical context, NFA believes as we noted in 2024 that there should be a separate CFTC registration category imbued within the CEA for Retail DCOs. NFA recommends that this category be only for Retail DCOs that act purely as settlement agents for markets that offer fully collateralized and fully paid-up (at trade initiation) contracts to retail participants. Entities clearing margined or leveraged products, however, would continue to register as DCOs and customer trades, including for retail participants, would be carried on an intermediated basis by the DCO's FCM members, which have proven over many years to be indispensable to safeguarding customers and ensuring the financial integrity of transactions.

Along with adopting a new Retail DCO registration category, Congress should also give the CFTC clear authority to adopt rules to align the protections afforded to natural persons utilizing Retail DCOs to the longstanding critically important regulatory protections afforded to FCM customers. Therefore, *all* retail customers are afforded the same level of protection—regardless of how they access markets that offer fully collateralized, pre-funded contracts. Today, this does not exist and the current Retail DCO structure creates an unlevel playing field, which deprives retail participants of the tried-and-true customer protection regime afforded via FCM intermediation.



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*Retail DCO Members Should Have the Same Protections as FCM Customers*

NFA's March 18, 2024 comment letter strongly encouraged the Commission to afford natural persons utilizing Retail DCOs the longstanding critically important regulatory protections provided to FCM customers. For example, FCMs, unlike Retail DCOs, are required to abide by specific CFTC rules that provide key protections relating to accepting, segregating and investing customer funds, which are designed to ensure the safety of those funds. Further, NFA requires FCMs to comply with other important customer protection requirements including NFA Compliance Rules 2-29 (sales practices and promotional materials) and 2-30 (know your customer and risk disclosures). In addition, CFTC and NFA rules require FCMs to supervise their activities, implement AML-CIP programs, maintain adequate capital, and prohibit the mishandling of customer funds. Further, the U.S. Bankruptcy Code and DCOs offer key protections to FCM customers in the event of a DCO's default but these protections become unclear in the event of a Retail DCO's default, particularly as to who receives priority—the DCO's direct retail participants or its FCM members' customers—if the Retail DCO offers a "hybrid" model.<sup>4</sup>

Among others, these are important customer protections that underpin the CEA's current regulatory framework. Once a new Retail DCO registration category is created, the CFTC should determine which of these key safeguards should be imposed on Retail DCOs.<sup>5</sup>

Additionally, if a separate DCO registration category for Retail DCOs is established, the Commission should consider the impact on its resources if Retail DCOs were to be regulated similar to how the Commission, NFA, and CME Group, Inc. (CME) oversee FCMs. Currently, NFA and CME assist the Commission by performing front-line regulatory oversight over FCMs; however, there is no similar oversight structure in place today for Retail DCOs, and the Commission is the front-line regulator. Therefore, the Commission would need the resources to adequately oversee Retail DCOs' customer funds and interfacing activities or look to an independent SRO to work with them to do so.

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<sup>4</sup> NFA believes that Congress must provide priority in the U.S. Bankruptcy Code to Retail DCO participants akin to FCM customers.

<sup>5</sup> It may be appropriate for certain of the key safeguards discussed above to be placed on and/or performed by the DCM offering the products cleared by an affiliated or non-affiliated DCO.



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*Vertical Integration and Affiliated FCMs*

As previously noted, there are currently ten registered FCMs and one pending FCM with DCM affiliates, many of which also are themselves or have affiliated registered DCOs. Affiliated relationships within the derivatives industry are not new but have become increasingly more prevalent since the early 2000s when FCMs first established or invested in new DCMs. As the number of affiliated relationships within the industry continues to increase, the attendant conflicts that arise under these circumstances are likely to increase as well—especially under a scenario where an FCM is a clearing member of an affiliated DCO. With respect to these relationships, NFA strongly believes that enhanced and transparent governance practices are critical to managing and mitigating or eliminating perceived and actual conflicts of interest. To achieve this objective, we believe that affiliated registered entities in most instances should have separate Board of Directors, key management personnel, appropriate information sharing barriers, and policies that manage and mitigate or eliminate conflicts of interest.

Furthermore, affiliated DCMs/DCOs may have SRO obligations to, in part, conduct periodic examinations of their FCM members to monitor them for compliance with the CFTC's financial requirements. As the Commission is aware, not all DCMs conduct periodic examinations of their FCM members. CFTC Regulation 1.52(d) allows a DCM to delegate its SRO function as described in CFTC Regulation 1.52(b) and (c) (e.g., on-site examinations) to a DSRO. When a designated SRO (DSRO) shares a common ownership interest with an affiliated FCM, the DSRO may have a perceived material conflict of interest—it may be more lenient examining and overseeing the risks associated with its affiliated FCM. To date, DCM/SROs have recognized this significant conflict of interest and acted rationally and proactively to eliminate it altogether. Since the early 2000s, no DCM with an affiliated FCM has sought to act as a DSRO and conduct its own examination activities for an affiliated FCM. Yet, NFA recommends that the Commission consider amending Regulation 1.52 to specifically address this issue (e.g., by adopting a prohibition) to eliminate the possibility that a DCM/DCO could attempt in the future to be the DSRO for its affiliated FCM.

Further, we recognize that affiliate relationships may raise other potential conflicts relating to today's DSRO framework. These conflicts need to be managed carefully and mitigated with appropriate safeguards. The SRO framework has proven to be an efficient and, more importantly, an effective regulatory framework in line with the CEA's fundamental purposes. Therefore, it is critical that the industry's SROs and DSROs work with the industry and the CFTC to address these potential conflicts issues to ensure the ongoing effectiveness of the self-regulatory framework.



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In closing, for nearly 45 years, NFA has worked closely with the Commission to safeguard the integrity of the derivatives markets and protect investors. Our collective efforts working with the industry's other SROs and industry participants have yielded significant results—customer complaints and single-event customer arbitrations filed at NFA, as well as CFTC reparation cases, remain near all-time lows. NFA believes that pragmatic investor protections are essential to the derivatives markets' continued growth and innovation. There is no doubt that the Congressionally established regulatory framework, amended over time in response to changes in the industry's markets, has contributed immensely to ensuring that appropriate customer and financial soundness safeguards are in place. We believe the Commission is well-positioned to perform a holistic review of today's evolving market structure and adopt necessary changes with Congressional action, if necessary, to ensure that these safeguards remain in place.

We appreciate the opportunity to again express our views regarding the important regulatory questions raised by Retail DCOs and related matters, including the critical issues raised by a non-intermediated market structure. We are available to further discuss any of these issues with Commission staff and to assist the Commission as it carefully evaluates the issues associated with Retail DCOs. If you have any questions on this letter or otherwise, please do not hesitate to contact me at [telliott@nfa.futures.org](mailto:telliott@nfa.futures.org).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Tim Elliott", written in a cursive style.

Tim Elliott  
General Counsel and Secretary