

February 27, 2026

Mr. Christopher J. Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street
Washington, DC 20581

Re: Request for Comment on Direct Clearing by Retail Participants (Release Number 9158-25)

Cboe Global Markets, Inc. (“Cboe”) appreciates the opportunity to provide input to the Commodity Futures Trading Commission (“CFTC” or “Commission”) regarding its request for comment on direct clearing by retail participants. As an operator of multiple CFTC-registered entities, including a designated contract market (“DCM”) (Cboe Futures Exchange, LLC), a swap execution facility (“SEF”) (Cboe SEF, LLC), and a derivatives clearing organization (“DCO”) (Cboe Clear US, LLC), Cboe is well suited to reply with a holistic perspective on the ramifications of direct clearing by retail participants.

When considering this request for comment, it is impossible not to be reminded of FTX. In March 2022, the CFTC published a request for comment on FTX’s proposed DCO amendment to allow non-intermediated, margined clearing for all products and customers, including retail clients. The industry expressed a number of concerns, questioning the proposal’s transparency; the adequacy of customer funds segregation and default resources; and conflicts of interest, among many other concerns.¹ Shortly thereafter, FTX was in bankruptcy.

This cautionary tale does not itself justify rejecting all new forms of clearing, but it must inform overarching policy considerations and the scrutiny applied to new approaches.

Appendix I below includes Cboe’s feedback with respect to the specific questions asked by the Commission. In summary, our views are as follows:

¹ See Letter from Cboe Global Markets, Inc. (May 9, 2022), *available at*, https://cdn.cboe.com/resources/government_relations/comment_letters/CFTC_Margin_Final.pdf

- Intermediated clearing: The FCM-intermediated clearing model has reliably supported investors and markets for decades. FCMs play a key role in managing risk because they often see customers' positions across asset classes and venues, bringing additional resources to bear and providing critical risk management services such as setting limits, monitoring orders, and conducting stress tests. Any proposed alternative to this default framework must be supported by data and analysis that affirmatively demonstrate there are adequate risk management mechanisms in place and that there will be no significant unintended consequences for customers, FCMs, DCOs and the market more generally.
- Fully collateralized, non-intermediated retail clearing: To the extent direct retail clearing by DCOs remains an aspect of our markets, it is clear that the obligations typically falling to FCM's under the intermediated model should be performed by DCOs under the direct clearing model, such as AML/KYC, segregation of customer funds, customer disclosures, books and records, etc. Any direct retail clearing proposal also has the burden of demonstrating that it would not create a material competitive advantage for the DCO. If a direct retail DCO is unencumbered by important FCM obligations it is not only a risk management and customer protection concern, but it also becomes more likely that there is an unlevel playing field that could ultimately reduce the number FCMs – which could create negative externalities for the markets more broadly.
- Leveraged, non-intermediated retail clearing: With respect to leveraged direct retail clearing, all of the concerns raised in response to FTX's proposal remain valid. Any similar proposal from another DCO must be heavily scrutinized, and all proposed processes and risks must be adequately explained and supported with thorough analysis before the CFTC entertains such an approach. Even assuming a DCO provides the necessary transparency and analysis, substantial policy concerns remain. It must be asked whether leveraged, non-intermediated retail clearing is worth the additional idiosyncratic and systemic risks.
- DCO-affiliated FCMs: There remain concerns with DCO/FCM affiliations. If an FCM is affiliated with a DCO, there must be transparency about the relationship and risk management processes in place, and regulatory obligations must ensure there are clear separation of duties and staff for all risk-related operations. The Commission must also ensure that DCO's apply the same standards to both affiliated and non-affiliated FCMs (e.g., default fund, margin, risk reviews, etc.) and strictly adhere to the fair and open access requirements of CFTC principles. Competing FCMs must be on a level playing field with DCO-affiliated FCMs.
- Self-Certification: The public interest would be served by additional transparency from registered entities with respect to the information submitted to the CFTC as part of the self-certification process.
- CFTC Rulemaking: We encourage the Commission to follow this request for comment with a roundtable and potentially a rulemaking. The public interest also would be best served

through a rulemaking that allows a more thorough discussion of the issues, provides a cost-benefit analysis, and creates a proposed ruleset generally applicable to all DCOs.

We thank the Commission for its thoughtful attention to these important matters and welcome the opportunity to discuss these comments further.

Sincerely,

/s/ Patrick Sexton

Patrick Sexton
EVP, General Counsel, and Corporate Secretary
Cboe Global Markets, Inc.

Appendix I

1) The retail direct clearing of derivatives, by construction, omits any intermediation by FCMs between the clearinghouse and all active market participants. Given this, there is a gap for responsibilities usually taken on by the FCM (e.g. KYC/AML, protections and guarantees for customer funds, prohibitions against abusive sales or marketing practices, participant default management). Current regulations would require the DCO to engage in some, but not all, of these FCM responsibilities.

- a. Is there a need to ensure that all FCM duties with respect to customer clearing are fulfilled by the DCO in a Retail DCO model? If so, why? If not, which duties would not need to be replicated?**

FCMs perform important risk management duties and maintain operational layers that help prevent systemic risks. We do not see a compelling reason to allow a DCO to operate a retail direct clearing model without adhering to the additional obligations that are typically the responsibility of the FCM in the intermediated model. In fact, allowing a retail DCO to operate unencumbered by FCM obligations would not only dilute investor protections, it may impose a material anticompetitive burden on the market. Direct retail DCOs are, in effect, in competition with FCMs for retail customers. FCMs bear the cost of compliance in exchange risk management enjoyed by the entire financial system. It follows that retail DCOs also should bear this cost; otherwise, we risk creating an imbalance in the market that reduces the number of FCMs and therefore degrades the risk management embedded in the system.

- b. Typically, DCMs and DCOs are part of the same corporate group but do not have affiliated FCMs. The Commission's regulations impose customer protection requirements on FCMs, including for retail customers, but not on DCOs. Due to market structure developments, many Retail DCOs are or seek to adopt a vertically integrated trading and clearing structure (e.g. FCM, DCM, and DCO entities that are part of the same corporate group) and currently have affiliated FCMs. To address the gap in risk management responsibilities and customer protections provided by an FCM for retail customers in a traditional DCO with intermediation, but is absent in a direct clearing structure without FCM intermediation in a Retail DCO, should direct retail participants be required to become customers of the Retail DCO's affiliated FCM and therefore subject to FCM customer protections and other safeguards that DCOs are not required to provide? Why or why not?**

This question suggests a potential hybrid approach to direct retail clearing whereby direct retail clearing is allowed but also requires a form of FCM-intermediation. If direct retail clearing is

*allowed, we believe the better approach would be to require the direct retail DCO adhere to the risk management responsibilities and customer protections that are typically the responsibility of the FCM in the intermediated model. In cases where direct retail clearing is not allowed (e.g., margined products), FCM intermediation would be the default model, but DCOs should not be required to utilize an **affiliate** FCM. As noted, there are concerns associated with DCO-affiliated FCMs (e.g., risk management, competition, and conflicts of interest).*

- c. Should a Retail DCO that does not have an affiliated FCM be required to establish one for its direct retail participants to become affiliated FCM customers, maintaining the same vertically integrated market structure but with an FCM to provide risk management responsibilities and customer protections? Why or why not? Are there cases where the costs of this structure would not necessarily balance the resulting benefits?**

*We do not see the benefit of mandating vertical integration. Vertical integration may be a consequence of natural market dynamics, but it should not be a regulatory obligation. We believe the question is whether a DCO should be required to utilize a FCM, not whether they should be required to utilize an **affiliate** FCM. As noted, to the extent retail DCOs exist without FCM intermediation, they should be required to adhere to risk management and customer protections typically provided by FCMs.*

- d. In cases where a Retail DCO chooses to, or is required to, establish an affiliated FCM:**
- i. What additional requirements may be necessary to address conflicts of interest between:**
- 1. The Retail DCO and the affiliated FCM?**
 - 2. The Retail DCO and non-affiliated FCMs?**
 - 3. The affiliated FCM and non-affiliated FCM clearing members?**
 - 4. The Retail DCO and non-FCM clearing members such as dealers or proprietary trading firms?**
 - 5. FCM clearing members and non-FCM clearing members such as dealers or proprietary trading firms?**

As noted, DCOs should not be required to have an affiliate FCM. To the extent a DCO has an affiliate FCM, regulatory obligations should ensure there are clear separation of duties and staff for all risk and operational considerations. Additionally, DCO oversight should ensure that DCO's apply the same standards to both affiliated and non-affiliated FCMs (e.g., default fund, margin, risk reviews, etc.). Moreover, it is important that the CFTC principle of fair and open access remains strong such that competing FCMs would be on a level playing field with a DCO affiliated FCM.

- ii. **What are the implications if all retail direct participants of a Retail DCO are required to become customers of either an affiliated FCM, in a fully-collateralized model, or either an affiliated FCM or non-affiliated FCM, in a hybrid model?**

Requiring retail direct participants of a retail DCO to become customers of an FCM would bring additional risk management resources to bear, but it also may increase costs for the customer. For fully collateralized products, the additional risk management resources of an FCM entity may not be necessary to address the risk of a fully collateralized position, provided direct retail DCOs adopt requirements typically covered by FCMs. For leveraged products, FCM resources would be beneficial and may be necessary to address relevant risks. Beyond the threshold question of whether an FCM is required, DCO obligations generally should be the same, regardless of whether the DCO operates a fully collateralized direct retail model, a margined model or a hybrid. In other words, there should be no regulatory advantage for operating a direct retail clearing model. Of course, if a DCO is allowed to operate a direct retail clearing model for leveraged products, their obligations should be significantly more robust, but it is difficult to assess such arrangements without a more comprehensive rulemaking from the CFTC and a specific proposal from a DCO. As with the FTX proposal, the burden will be on the applicant to demonstrate that the risk management framework is appropriate.

- iii. **Should affiliated FCMs of a Retail DCO be “captive” and prohibited from clearing membership in a non-affiliated DCO? Would this address potential conflicts of interest or risk management concerns? Why or why not?**

We have identified some concerns when an FCM is a member of a DCO affiliate. However, we do not currently believe that an FCM affiliated with a DCO would face the same issues if it became a member of an unaffiliated DCO. Provided that affiliated FCMs follow the same rules and regulations as other FCMs and operate fairly alongside their competitors, there is no justification for requiring affiliated FCMs to be restricted only to their DCO affiliate.

- iv. **What additional regulations or requirements may be necessary to protect against unanticipated, and disruptive, risk transfer between a Retail DCO and an affiliated FCM?**

- 2) **As noted earlier, a few Retail DCOs allow for a “hybrid” clearing structure in a service line or product, with retail traders able to engage in direct clearing with the DCO or intermediated clearing through an FCM (whether affiliated or non-affiliated).**
 - a. **In the case of these hybrid models, are there additional risk management protections that Retail DCOs should engage in to either: 1) ensure that retail direct clearing activity does not place undue risk on intermediated clearing members or their customers or 2) the reverse?**

It is important that retail DCOs abide by FCM-related obligations, such as AML/KYC, segregation of customer funds, customer disclosures, books and records, etc. As previously noted, allowing a retail DCO to operate unencumbered by FCM obligations would not only dilute investor protections, it may impose a material anticompetitive burden on the market.

- b. Related, is there a need to divide either default-related resources, or other risk management protections, such that distinct resources or protections are used for retail direct participants or intermediated clearing members or their customers?**

We disagree with the need to divide default resources. Requiring separate default funds could lead to significant capital inefficiencies. A central counterparty (CCP) is best positioned to understand the unique attributes of the products it clears, as well as the appropriate risk management practices and necessary financial resources. Furthermore, the mutualization of risk is most effective and efficient when there is a single default fund. This approach allows for optimal resource allocation and collective risk-sharing among participants, thereby enhancing the overall stability and resilience of the clearing system.

- c. Might certain default events result in unexpected or undue “risk transfer” between direct and intermediated participants? Are there protections which would be needed, or desired, to mitigate these risks?**

We do not believe additional regulatory requirements in this area are necessary. There are a variety of clearing fund models, and CCPs are in the best position to manage these models, as well as the relationship with their FCM clients.

- d. Are there any circumstances under which hybrid models of this type should not be permitted due to the risks they may pose? What is the nature of these circumstances and related risks?**

As previously noted, when a DCO operates a hybrid model – offering direct retail clearing and FCM clearing – the DCO is, in effect, in competition with FCMs for retail customers. If DCOs have fewer obligations than FCMs, there may be a competitive disadvantage. However, it is difficult to assess such arrangements without a more comprehensive rulemaking from the CFTC and a specific proposal from a DCO.

- 3) Also noted earlier, a few Retail DCOs provide clearing services for multiple product classes under the same legal entity, such as fully-collateralized retail direct clearing for some products like event contracts and leveraged or margined intermediated clearing for FCM retail customers.**

See responses to Question 2.

- a. In the case of these structures, are there additional risk management protections that Retail DCOs should engage in to either: 1) ensure that direct clearing services do not place undue risk on intermediated services or 2) the reverse?
 - b. Relatedly, is there a need to divide either default-related resources, or other risk management protections, such that distinct resources or protections are used for each subset, such as fully-collateralized products or leveraged/margined products?
 - c. Might certain default events result in unexpected or undue “risk transfer” between collateral for fully-collateralized products, or collateral or guarantees for leveraged/margined products? Are there protections which would be needed, or desired, to mitigate these risks?
 - d. Are there any circumstances under which hybrid models of this type should not be permitted due to the risks they may pose? What is the nature of these circumstances and related risks?
- 4) Given the nature of retail trading and retail direct clearing, and the characteristics that distinguish it from other clearing structures, is there a need for, or a benefit in, establishing a separate DCO registration sub-category for Retail DCOs?

We do not believe different types of DCOs should be subject to separate registration categories. However, it would be beneficial to increase transparency in the self-certification process to ensure that CFTC requirements are being properly met. Currently, certifications are often redacted in ways that prevent the intended level of public scrutiny. Enhancing transparency in this area would serve the public interest by allowing for more effective oversight and accountability.

- a. If so, in what ways should a registration sub-category be tailored to Retail DCOs? Which distinctions would arise from the fully, or primarily, retail trader participation and risks or considerations regarding market conduct and protections for retail traders against abusive sales or marketing practices or abusive trading practices? Which distinctions would arise from risks or considerations regarding retail direct clearing structures, whether fully collateralized or on a leveraged/margined basis?
 - b. Are there other important factors that should be considered in developing a new registration sub-category for Retail DCOs?
- 5) Commission Regulation 39.19 requires that a DCO provide detailed reports related to its exposures and resources, including daily reports on clearing member positions and associated collateral. Given noted differences between intermediated and direct

clearing structures, such as the default management practices described above, is there a need for different, or additional, reporting requirements for Retail DCOs?

Whether a DCO is a direct retail DCO, the CFTC should continue to require DCOs to report all position, collateral, and exposure information. If the CFTC addresses gaps in DCO obligations by incorporating requirements that are typically applicable to FCMs, it may be necessary to apply certain of the FCM reporting obligations to DCOs as well.

6) Are there any other requirements that Retail DCOs should be subject to beyond those of existing regulations, whether for retail protection, governance and risk management, market conduct and integrity, transparency, or anything else?

We may have more recommendations in this area in the future.