COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 38

DCM Impartial Access Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretation.

SUMMARY: The Commodity Futures Trading Commission ("**Commission**" or "**CFTC**") is issuing an interpretation of the requirement that designated contract markets ("**DCMs**") provide competitive, open, fair, and impartial access to their members and persons with trading privileges under Commission Regulation 38.151(b) ("**Impartial Access Requirements**"). Specifically, this final interpretive guidance is being issued to inform the public of the Commission's views on Impartial Access Requirements that should be guiding exchanges' selections of access criteria. The Commission issues this interpretive guidance after a significant amount of time and effort overseeing the listing and trading of event contracts and other financial assets, as well as monitoring DCM access requirements.

DATES: Effective [INSERT DATE OF PUBLICATION].

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SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS

I. BACKGROUND
II. REGULATORY FRAMEWORK REQUIRING IMPARTIAL ACCESS
III. GENERAL IMPARTIAL ACCESS PRINCIPLES
IV. ACCESS CRITERIA BASED ON GEOGRAPHIC LOCATION

I. BACKGROUND

A core component of the Commodity Exchange Act (**"CEA"**)[1] is the requirement that DCMs provide competitive, open, fair, and impartial access to their members and persons with trading privileges. This measure prevents the inappropriate use of discriminatory access as a competitive tool against market participants. Moreover, it benefits DCMs and national markets by increasing overall liquidity and by maximizing risk management opportunities and price- and information-discovery functions.

The Commission is issuing this interpretive guidance to share with DCMs and their affiliates and partners certain views based on staff's experience overseeing the listing and trading of event contracts and other financial assets as well as monitoring DCMs' access requirements.

This final interpretive guidance is being issued to inform the public of the Commission's views on the Impartial Access Requirements that should be guiding exchanges' selections of access criteria.

II. REGULATORY FRAMEWORK REQUIRING IMPARTIAL ACCESS

DCMs must comply with 23 statutory Core Principles set forth in the CEA,[2] as well as applicable CFTC rules and regulations.[3] The Core Principles for DCMs reflect the important role that these exchanges play in promoting the integrity of derivatives markets by, among other things, establishing and enforcing rules for trading on the DCM—including setting open and impartial access criteria—and monitoring trading activity.

Core Principle 2 of the CEA provides that a DCM "shall establish, monitor, and enforce compliance with the rules of the [DCM], including … access requirements."[4] Core Principle 9 requires a DCM to "provide a competitive, open, and efficient market and mechanism for

[1] 7 U.S.C. 1 et seq.
[2] *See generally* CEA Section 5(d), 7 U.S.C. 7(d).
[3] *See generally* 17 CFR Part 38.
[4] 7 U.S.C. § 7(d)(2)(A)(i).

executing transactions that protects the price discovery process of trading in the centralized market of the board of trade."[5]

Specifically, a DCM "must provide its members, persons with trading privileges, and independent software vendors with impartial access to its markets and services, including … [a]ccess criteria that are impartial, transparent, and applied in a non-discriminatory manner."[6] A DCM "must establish and impartially enforce rules governing denials, suspensions, and revocations of a member's and a person with trading privileges' access privileges to the designated contract market, including when such actions are part of a disciplinary or emergency action by the designated contract market."[7]

III. GENERAL IMPARTIAL ACCESS PRINCIPLES

In 2012, the Commission explained that "impartial access rules are necessary in order to prevent the use of discriminatory access requirements as a competitive tool against certain participants."[8] To achieve this goal, the Commission has set forth basic principles that should guide regulated entities in developing access criteria. "In particular, access to a DCM should be based on the financial and operational soundness of a participant, not on factors that could bar access and result in discriminatory access or act as a barrier to entry."[9] Adopting fair and evenhanded access standards benefits both DCMs and their members. For example, "granting impartial access to participants that satisfy a DCM's access requirements will likely enhance the DCM's liquidity and the overall transparency of the swaps and futures markets."[10] A guiding principle is that "DCMs may establish different categories of market participants, but may not discriminate within a particular category."[11]

As a general matter, the Commission believes that discriminatory limitations on participation affects the overall health and efficiency of a market. When a DCM restricts access or disincentivizes participation for broad categories of otherwise financially or operationally sound participants, market liquidity may be diminished. Reduced liquidity, in turn, may result in less robust price discovery. This degradation of pricing and market efficiency may then lead to increased volatility, as fewer participants are available in the ordinary course to absorb and respond to market shocks. Ultimately, these effects could undermine a DCM's ability to function as an effective marketplace for trading and risk management.

As such, the Commission believes that market participants seeking to access a DCM must be evaluated against criteria that are clearly defined, published in advance, and applied uniformly. These standards should ensure that every participant is aware of the requirements and can prepare accordingly, fostering a fair environment for access to the DCM. Access criteria that are opaque, arbitrary, or unrelated to the financial and operational soundness of a participant undermine the

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[5] *Id.* § 7(d)(9)
[6] 17 C.F.R. § 38.151(b)(1).
[7] *Id.* § 38.151(c).
[8] Core Principles and Other Requirements for Designated Contract Markets, 77 Fed. Reg. 36612, 36625 (June 19, 2012).
[9] *Id.*
[10] *Id.*
[11] *Id.* at 36672.

principles of impartial access under Commission Regulation 38.151. Therefore, the Commission believes that when objective and transparent financial and operational eligibility requirements are met, DCMs have an obligation to grant access without bias. This approach supports a competitive and robust derivatives market that allows a wide range of participants to contribute to market liquidity.

Previously, when market trends and behavior have implicated impartial access concerns, the Commission has responded by releasing guidance to regulated entities. For example, in 2011, the Commission announced significant requirements that would be placed on swap execution facilities ("**SEFs**") to ensure impartial access, resulting in a final rule promulgated in 2013.[12] Also in 2013, Division of Market Oversight ("**DMO**"), the Division of Clearing and Risk, and the Market Participants Division (formerly the Division of Swap Dealer and Intermediary Oversight) published a guidance document addressing certain trading restraints or "enablement mechanisms" implemented by certain SEFs.[13] Earlier this year, the Commission released a staff letter setting forth guidelines for DCMs in setting comparable fee structures in incentive programs.[14]

IV. ACCESS CRITERIA BASED ON GEOGRAPHIC LOCATION

The Commission is aware that some DCMs have adopted access criteria that restrict access to certain event contract markets based on prospective traders' location or residence.

The CEA and Commission Regulations generally do not permit a DCM to limit access based on the location of an otherwise eligible market participant within the United States.[15] In enacting the CEA, Congress specifically identified a "national public interest" in federal regulation of derivatives markets because those markets "provid[e] a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities."[16] Derivatives markets must operate on a uniform basis at a national scale in order to achieve the CEA's purpose.

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[12] *See* Core Principles and Other Requirements for Swap Execution Facilities, 76 Fed. Reg. 1214 (Jan. 7, 2011) (Notice of Proposed Rulemaking); Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33476 (June 4, 2013) (Final Rule).

[13] Division of Clearing and Risk, Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities (Nov. 14, 2013).

[14] CFTC Letter No. 26-23 (Aug. 12, 2026), https://www.cftc.gov/csl/26-23/download.

[15] Because Core Principle 2 does not allow a DCM to restrict access based on geography, DCMs must take reasonable steps to ensure that intermediaries, who must comply with DCM membership rules, do not impose geographic restrictions that violate impartial access. *See* 7 U.S.C. § 7(d)(2)(B) (DCMs must "have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market"). Further, Core Principle 12 requires DCMs, as self-regulatory organizations, "to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant" and "promote fair and equitable trading on the contract market." 7 U.S.C. § 5(d)(12). This responsibility includes "having methods and resources appropriate to the nature of the trading system and the structure of the market to detect trade practice and market abuses and to discipline such behavior, in accordance with Core Principles 2 and 4, and the associated regulations … respectively." 17 CFR § 38.651. As such, the Commission believes that DCMs are responsible for ensuring that intermediaries are not impeding the DCM's impartial access requirements under Core Principle 2. *See also* 7 U.S.C. § 5(d)(11) and 17 CFR § 1.52(c).

[16] 7 U.S.C. § 5(a). The Congressional purpose of fostering national derivatives trading is reinforced by the CEA's enjoining authority, one basis of which allows the CFTC to bring injunctive action against anyone "restraining trading in any commodity for future delivery or any swap." 7 U.S.C. § 13a-1(a).

As noted above, DCMs may not implement access criteria that intentionally exclude or discourage participation from market participants who otherwise meet eligibility requirements. When a DCM restricts access based on domestic geographic location—permitting participants from one region or State within the United States while barring those from another—it excludes otherwise eligible individuals. Such selective restrictions undermine the principle of impartial access, as they do not uniformly apply to all similarly situated (in terms of financial or operational soundness) eligible market participants and arbitrarily differentiate between such market participants based solely on their location.

Limiting access by geographic location raises significant concerns for both financial integrity and risk management within derivatives markets. For instance, if a market participant establishes a position in a region where access is allowed but subsequently travels to a location where access is restricted, that participant would be unable to manage their position. That participant may not be able to adequately manage their position, respond to market events, or meet margin calls. When participants are unable to manage their positions or meet margin calls due to geographic restrictions, forced liquidations may occur. This process can generate losses for both the futures commission merchants and clearing organizations involved, ultimately heightening systemic risk across the derivatives and broader financial markets. As such, the resulting disruption may affect not only individual participants, but also the relevant market as a whole, undermining its integrity and efficiency.

Limiting access based on location also detracts from a DCM's price-discovery function and overall efficiency. In certain markets, barring residents of certain States or regions from participating may cause distortions because States and regions have differently composed economies. Restricting access in States or regions that are home to large concentrations of high-volume traders (*e.g.*, where market making entities are located) is likely to introduce liquidity concerns, and such consequences may disproportionately affect particular contracts. This, in turn, would reduce overall volume and lead to wider bid-ask spreads, raising the cost of trading for all participants.

Location-based restrictions may also fragment a national pool of liquidity. Fragmentation may impede arbitrage between related contracts or between derivatives and their underlying cash markets when relevant participants cannot access all markets from their location. Under those circumstances, temporary price discrepancies could persist for longer, and participants may face greater basis risk if available hedges track their exposures less closely.

Further, location-based restrictions may concentrate trading activity among a smaller or less diverse set of participants. A broader participant base can supply different time horizons, risk tolerances, information, and trading strategies, which may make liquidity more resilient when conditions change. Removing an entire jurisdiction could increase dependence on a more limited group of market participants, particularly when the excluded jurisdiction accounts for meaningful activity. Sports-related contracts illustrate the point. Insomuch as particular contracts attract disproportionately regional interest (e.g., whether a home team advances to its playoffs), excluding such regions could decrease the contracts' overall liquidity.

Moreover, location-based access restrictions undermine hedging opportunities and DCMs' price and information-discovery functions in additional ways when the excluded jurisdiction contains participants with relevant commercial experience, localized exposure or knowledge, or significant trading activity. For example, the exclusion of a region prone to extreme weather events from weather-related contracts would deprive that region's traders of a mechanism to hedge their exposures to such weather events. Likewise, to the extent a restriction excludes energy producers, merchants, or traders located in a region with substantial energy production and infrastructure, it could limit their ability to hedge production, shipping, and storage-related exposures, and could remove price signals from such hedging, arbitrages, or speculative activity. Similar effects may arise in other economically specialized areas, at least to some extent, including for example areas with concentrations of financial, agricultural, cultural, and technological expertise.

Election markets may be particularly sensitive to harms stemming from geographic access restrictions. Some statewide and more localized election markets may generate the most volume and/or knowledge from residents of the State or locality where the election takes place. Accordingly, restricting access to a particular State's residents could severely undercut volume and/or the information-discovery function of any market concerning an election in that State. This is especially problematic given election contract markets' uniquely valuable information-discovery role, with benefits accruing nationwide even while the most informed trading may be sourced on a State or local basis. Such effects may extend beyond the immediate trading population because third parties, including media organizations and other observers, may use election-contract prices as one source of information about expected outcomes.

For these reasons, the Commission believes that geographic access restrictions are inconsistent with the CEA and Commission rules and regulations. The Commission expects DCMs to evaluate their access criteria, exchange rules, and intermediary access arrangements to ensure compliance.

The Office of Management and Budget has determined that this action is not a significant regulatory action as defined in Executive Order 12866, as amended, and therefore it was not subject to Executive Order 12866 review.

Issued in Washington, DC, on November __, 2026 by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.