Committee on Financial Services

Committee on Transportation and Infrastructure

Committee on House Administration

Democratic Steering & Policy Committee

Democratic Caucus; Chair, Committee on Organization, Study & Review

Chair, Speaker's Task Force on Ethics Enforcement

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Congress of the United States
House of Representatives
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October 28, 2010

Chairman Gary Gensler
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

Chairman Mary Schapiro
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairmen Gensler and Schapiro:

I am writing to convey my serious concerns that the CFTC and SEC have proposed rules under Sections 726 and 765 of the Dodd-Frank Financial Services Reform Act which do not follow the intentions of Congress. These sections direct the agencies to adopt rules that promote competition and mitigate systemic risk and conflicts of interest. The Act does this by authorizing specific numerical limits on the collective ownership of swap dealers over clearinghouses, swap execution facilities (SEFs) and exchanges.

In the proposed rulemakings on this topic, the CFTC and the SEC correctly identify many of the conflicts of interest that will arise if swap dealers control market infrastructure. As the agencies note, just five large dealers control over 97% of this market. The agencies also correctly point out that if these dealers are allowed to control the clearing function, they will restrict access to clearing, limit the number of products that are cleared, and skew the clearinghouse's risk management decisions, because, as the SEC states in its proposing release, "increased use of central clearing may be contrary to the economic interests of some participants."

Having identified these conflicts and given the mandate of Congress in Sections 726 and 765, it is incumbent on the regulators to adopt strong rules to address them. The agencies' recent proposal to limit individual swap dealer ownership to 5% would still allow dealers to collectively own 100% of a clearinghouse. Even worse, the proposed rules would allow just five dealer banks to own a swap execution facility or exchange that trade swaps. This type of rule would still result in dealers directing their business to a single, monopolistic clearing facility owned exclusively by dealers. This approach would fail to address the conflicts identified by the agencies and would completely miss Congress' goal of adopting rules that promote competition.

It is painfully clear that clearing and trading will be monopolized unless the agencies put stronger collective ownership limits in place. I urge the Commissions to live up to the mandate of Dodd-Frank by stopping any one entity or class of entities from dominating a majority ownership of the clearinghouses, SEFs and exchanges that are so vital for successful implementation of Dodd-Frank.

Sincerely,

Michael E. Capuano

Michael E. Capuano
Member of Congress