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November 17, 2010

(Via Email (dcodcmsefGovernance@cftc.gov))

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Proposed Limits on Ownership or Voting Power of Derivative Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities

Dear Mr. Stawick:

GFI Securities LLC (“GFI”)¹ is submitting this letter in response to the requests for comment with respect to the rule proposal by the Commodity Futures Trading Commission (“Commission”) regarding conflicts of interest with respect to derivatives clearing organizations (“DCOs”), designated contract markets (“DCMs”) and swap execution facilities (“SEFs”).² Among other things, the Commission’s proposal provides that a SEF may not permit any member (together with any “related persons” of a member) to own more than 20% of the voting equity in the SEF. The Commission explained that this proposal is intended to address the potential conflicts of interest that may arise as a SEF balances its commercial interests and its self-regulatory responsibilities.

¹ GFI and its affiliates provide competitive wholesale market brokerage services in a multitude of global over-the-counter (“OTC”) and exchange listed cash and derivatives markets for fixed income, equities, financials and commodities. GFI and its affiliates are industry leaders in various fixed income and energy and commodity markets according to recent market surveys published by Risk and Energy Risk magazines. GFI’s parent company is headquartered in New York and employs more than 1,700 people with additional offices in London, Paris, Hong Kong, Seoul, Tokyo, Singapore, Sydney, Cape Town, Dubai, Tel Aviv, Dublin, Calgary, Englewood, New Jersey and Sugar Land, Texas. GFI and its affiliates provide services and products to over 2,400 institutional clients, including leading banks, corporations, insurance companies and hedge funds

² See 75 Fed. Reg. 63732 (October 18, 2010) (the “Proposing Release”).

GFI may desire to operate a SEF that will be registered as such with the Commission.³ While the organizational structure of this SEF has not yet been determined, GFI currently contemplates that the SEF will be a Delaware limited liability company, the sole member of which will be GFI or one of its affiliates (the "Sole Member"). Persons that desire to participate in the SEF will become contractually bound to comply with any rules promulgated by the SEF, but will not own any equity interest in the SEF. While the Sole Member would be responsible for managing the SEF, it would not effect transactions with any person that participates in the SEF.

GFI believes that the proposed SEF ownership restrictions appear to be reasonably designed to implement the policies and goals of the Dodd-Frank Act. However, as discussed in more detail below, GFI respectfully requests that the Commission clarify the scope of these restrictions to ensure that they do not unnecessarily impact the organizational structure of a SEF.

As stated above, proposed Regulation 37.19(d)(2) provides in relevant part that a registered SEF may not permit any member, together with its related persons,⁴ to own more than 20% of the voting equity of the SEF. Proposed Regulation 37.19 does not define the term "member," and this term is not defined in Commission Regulation 1.3.⁵ GFI requests that the Commission clarify that the membership concept embodied in this proposed Regulation is synonymous with participation. More specifically, GFI requests that the Commission confirm that the term "member" as used in proposed Regulation 37.19 is intended to refer only to persons who execute transactions directly on a SEF, and does not refer to persons who may be designated as "members" of the SEF under state limited liability company statutes but who do not themselves effect transactions on the SEF.

We note that this interpretation is consistent with the ownership restrictions that the SEC has proposed for security-based swap execution facilities. In this regard, SEC Proposed Rule 702(b) generally provides that no security-based swap execution facility participant may own, directly or indirectly, more than 20 percent of any class of securities issued by such security-based swap execution facility. Under proposed SEC Rule 700(z), however, the term "security-

³ GFI may seek registration as a SEF and a security-based SEF. At the present time, it is not clear whether GFI or one of its affiliates will register as a SEF or whether GFI will form a new entity for this purpose.

⁴ In general, a "related person" of a member includes any person that directly or indirectly is a parent or subsidiary of, or shares a common parent with, such member. See proposed Regulation 37.19(d)(1)(i)(A).

⁵ We note that CFTC Regulation 1.3(q) provides that the term "member of a contract market" means and includes individuals, associations, partnerships, corporations, and trusts owning or holding membership in, or admitted to membership representation on, a contract market or given members' trading privileges thereon. See 17 C.F.R. 1.3(q) (2010).

based swap execution facility participant” means a person that is permitted to effect transactions directly on the security-based swap execution facility. Thus, the SEC’s proposed ownership restrictions are limited to persons that effect transactions a security-based swap execution facility.

We also note that this interpretation would be consistent with the purposes underlying the conflict of interest provisions set forth in the Dodd-Frank Act. As the Commission noted in the Proposing Release, increased competition between SEFs and designated contract markets may cause a SEF to prioritize its commercial interests over its self regulatory responsibilities. While this appears to be a valid concern with respect to significant equity owners of SEFs who trade on a SEF, this concern does not seem to arise in a situation in which the sole member of a SEF acts as a neutral system operator and does not execute transactions on the SEF for its own account. Indeed, a significant equity owner that favors one participant over another would actually harm its own commercial interests because such action would discourage market participants from trading on the SEF. Thus, it does not appear necessary to impose the equity ownership limitations described above on all “members” of a SEF, but only on those members that actually trade on the SEF.

We believe that the interpretation proposed above appears to be consistent with other aspects of the Commission’s rule proposal. In this regard, proposed Regulation 37.19(c) would require a SEF to have a Membership or Participation Committee which, among other things, would establish the requirements for persons that desire to become *members of or participants in* a SEF. In our view, the terminology used to describe the responsibilities of this Committee further evidences the fact that “membership” and “participation” should be viewed as equivalent concepts and that the proposed restrictions on SEF ownership should apply only to persons that actually effect transactions on a SEF.

Finally, the failure to limit the scope of the Commission’s proposed SEF ownership restrictions in the manner set forth above could have a significant adverse effect on market participants that desire to operate SEFs and security-based SEFs. As the Commission is aware, the regulatory requirements for SEFs and security-based SEFs are virtually identical, and we believe that many market participants that desire to operate these facilities will form a single entity that will be registered as a SEF with the Commission and as a security-based SEF with the SEC. If the Commission elects not to interpret its proposed SEF ownership restrictions in the manner set forth above, market participants may be forced to operate two separate SEFs (*i.e.*, a SEF that is registered with the Commission and a security-based SEF that is registered with the SEC) as a way of minimizing the adverse effects of the Commission’s proposal. This, in turn, may discourage competition in the marketplace for swap execution facilities by subjecting market participants that operate SEFs and security-based SEFs to duplicative expenses and

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regulatory requirements. Thus, we believe that the interpretation proposed above will promote efficiencies by reducing costs and thus encourage competition among SEFs.

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GFI appreciates the opportunity to submit these comments on the proposed ownership requirements for SEFs. If the Commission has any questions concerning the matters discussed in this letter, please contact me at (212) 968-2954.

Sincerely,



Scott Pintoff
General Counsel

cc: Honorable Gary Gensler
Honorable Michael Dunn
Honorable Jill E. Sommers
Honorable Bart Chilton,
Honorable Scott O'Malia