



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Patrick C. Lynch, Attorney General

November 17, 2010

Chairman Gary Gensler
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

RE: RIN 3038-AD01

Dear Chairman Gensler:

I would like to take this opportunity to commend you for your leadership on reform efforts in the wake of the credit, economic and foreclosure crisis. I am confident that under your leadership we will not make the regulatory mistakes of the past and will nurture a healthy financial system for future generations.

It is my hope that the rules promulgated by the commission will focus on expanded competition within the U.S. derivatives markets. I share Congressman Stephen Lynch's concern that the Congressional intent to prevent the domination of a clearinghouse, swap execution facility or exchange by a small number of dealers may be overlooked by regulators.

While Dodd-Frank was very specific in many areas, it was also left to regulatory bodies such as yours to draft rules that would carry out the intent of the Congress and to flesh out details in the actual application of the law.

Now the CFTC and the SEC have proposed a rule that addresses possible conflicts of interests in clearinghouse ownership. While the intent of the proposed rule is admirable, one provision contains a flaw that would not prevent the concentration of ownership of a clearinghouse by dealer banks.

Specifically, one of the proposed models of governance contains a provision by which a clearing facility may choose to limit the ownership voting interest of any participant, such as a dealer bank, to no more than 5 percent of the total, with no limitation on aggregate ownership by banks. This is the alternative to a limitation of 20 percent of voting interest by any single institution and 40 percent of voting interest owned collectively by all institutions.

I urge the commission to eliminate the 5 percent alternative, to ensure that banks cannot exploit this potential loophole to continue their dominance of clearing facilities and fostering an anticompetitive market. I also ask that you consider a rule extending the 20 percent/40 percent ownership limitations to exchanges and swap execution facilities as well as clearinghouses.

Through my efforts with the National Association of Attorneys General (NAAG) over the past several years, my colleagues from across the country and I have worked on consumer protection efforts aimed at stemming the tide of the foreclosure, credit and economic crisis in order to safeguard businesses and consumers alike. Specifically, as it relates to the unregulated nature of this market, state attorneys general have launched investigations of some of these banks and their dealings with state and local governments that enter into the derivatives market.

It is my hope that banks will not try to exploit such a loophole to continue control of the derivatives market. However, it is important for the commission to be forever vigilant to ensure that we do not repeat the mistakes of the past and bolster our critical regulatory safeguards.

Very truly yours,

A handwritten signature in cursive script, reading "Patrick C. Lynch". The signature is written in black ink and is positioned above the typed name.

Patrick C. Lynch
Attorney General