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TIMOTHY J. WALZ
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VETERANS' AFFAIRS
Oversight

November 17, 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 express my serious concerns over the proposed rules under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. As a member of the House Agriculture Committee, I am fully aware that over-the-counter derivatives markets, while providing great benefits, have been characterized by a lack of transparency, anemic competition, and dangerous interconnectedness among financial institutions. The CFTC and SEC, in their proposed rulemakings, neglect to adequately address these issues by failing to establish an aggregate cap on voting control and by including a significant loophole that would allow swap dealers and other enumerated entities to control all of the voting stock of a clearinghouse.

The proposed rulemakings make it clear that the CFTC and SEC are aware of the numerous conflicts of interest that exist in the control of critical market infrastructure by swap dealers and other select market participants. They correctly note that over 97 percent of derivatives are held by the five largest dealers. The regulators also recognize that, as the SEC states, "increased use of central clearing may be contrary to the economic interests of some participants." These dealers, if allowed to control the clearing function, could restrict access to clearing, limit which products are cleared, and skew the clearinghouse's risk management decision-making process.

If applied across the board, a 40 percent limit on the aggregate interests of swap dealers and other significant market participants would ensure that control of the clearing function rests in independent hands. The agencies, while proposing this rule as one alternative, also offer another option under which dealers could own 100 percent of a clearinghouse, as long as each owner limits its individual interest to 5 percent. It is fair to assume that allowing this loophole would result in dealers directing their business to one monopolistic dealer-owned clearing facility, and its governance being dominated by the largest dealers. This outcome would fail to address the conflicts identified by the agencies, and would work against Congress's direction for the agencies to adopt rules that promote competition.

The CFTC and SEC have identified significant conflicts of interest with respect to swap execution facilities (SEFs) and exchanges, but have failed to propose meaningful limits. Dealers that control trading facilities could foreseeably work to keep products over-the-counter by restricting access, limiting price transparency, and constraining the number of products deemed eligible for trading. The agencies have not proposed sufficient limits to prevent the five dominant dealers in this market from owning an exchange or SEF outright. With five dealers controlling 97 percent of the order flow, the trading and clearing of derivatives will remain under the control of a monopoly unless regulators implement adequate control limits.

The Dodd-Frank Act aims to ensure that risks are continually evaluated and mitigated through the use of exchanges and other trading facilities that promote transparency and competition. I urge the Commissions to fulfill the mandate of Dodd-Frank by ensuring that domination of clearinghouses, SEFs, and exchanges is prevented. Strong rules to address conflicts of interest are vital to the successful implementation of financial services reform.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Walz", written in a cursive style.

Tim Walz
Member of Congress