ANTHONY DELVICARIO
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October 25, 2010

Commodity Futures Trading Commission
Attention: David A. Stawick, Secretary
Three Lafayette Centre
115521st Street NW
Washington, DC 20581

RIN 3038–AD01

Dear Chairman Gary Gensler:

As an investor concerned about access to liquid and transparent markets, I was pleased to see the recent passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, a comprehensive package that included significant changes to the derivatives market. In particular, Dodd-Frank moved a greater number of derivatives transactions toward exchange trading, with an additional emphasis on clearing such transactions through clearinghouses. This was intended to foster greater transparency, competition and risk management in the massive derivatives market after a period of great crisis that brought our economy to the brink of collapse.

While Dodd-Frank is very specific in some areas, it leaves many implementation decisions to regulatory bodies such as yours to draft rules to carry out the intent of the Congress. Now the CFTC and the SEC have proposed a rule to addresses possible conflicts of interests in the ownership of derivatives clearinghouses. While the intent of the proposed rule is admirable, one provision contains a flaw that would fail to prevent the concentration of ownership in clearinghouses by large 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.

While the 20/40 rule would be effective in capping improper ownership interests, the 5 percent limitation would still allow a group of dealer banks to gain control of a clearing facility. A minimum of 11 banks, owning 5 percent each, could attain majority voting ownership and continue to pose the obstacles to increased clearing that Dodd-Frank is intended to overcome.

It is likely that banks will try to exploit such a loophole to continue their cartel-like control of the derivatives market. According to the Comptroller of the Currency, more than 95 percent of derivatives activity is controlled by the top five dealer banks. Banks already control many clearinghouses; using the 5 percent rule, they could continue to do so with only minor adjustments to their ownership stakes.

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The same principle of limited conflicts of interest should also apply to swap execution facilities, the exchanges that are the heart of the derivatives reforms envisioned by Dodd-Frank. Yet the ownership restriction deals with clearinghouses only, remaining silent on any similar limits on exchange ownership. This loophole, coupled with the 5 percent alternative limit for clearinghouses, endangers the true intent of the Dodd-Frank bill's derivative reforms.

I urge the commission to eliminate the 5 percent alternative, to ensure that banks cannot use it as back door to continue their dominance of clearing facilities and continuing their high profits in an anticompetitive market. I also ask that you consider a rule extending the 20 percent/40 percent ownership limitations to exchanges as well as clearinghouses. Without these steps, we run the risk of big banks continuing to control and exploit an uncompetitive market. The result would be a lack of transparency and accountability directly at odds with the intent of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Sincerely,

Anthony DelVicario