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November 10, 2010

Commodity Futures Trading Commission
Attention: David A. Stawick, Secretary
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

RE: RIN 3038–AD01

Dear Secretary Stawick:

I am writing to express my concern about a potential loophole in one of the proposed models of governance for derivative clearinghouses under the Dodd-Frank Wall Street Reform and Consumer Protection Act. While the rule is intended to address potential conflicts of interest in clearinghouse ownership, instead it provides a backdoor for dealer banks to continue their dominance of the derivatives market. As you know, more than 95 percent of derivatives activity is controlled by the top five dealer banks. Many clearinghouses are already controlled by banks, and under the proposed rules as they stand they can continue their dominance of the derivatives market.

The specific rule of concern is the proposed model of governance that would allow a clearinghouse to limit the ownership interest of any participant to no more than 5 percent of the total, with no limitation on aggregate ownership by banks. Under this provision, a group of banks could attain voting majority of a clearinghouse and create obstacles to increased clearing of derivatives. This is contrary to the goal of the Dodd-Frank reform of creating more transparency and competition in the derivatives market.

The alternative is a limitation of 20 percent of voting interest by any single institution and 40 percent of voting interest owned collectively by all institutions. This would be a much more effective way to prevent improper ownership of clearinghouses.

Also of concern are the rules governing ownership of derivative exchanges and swaps. For exchanges and swaps, the proposed rule is even weaker, allowing a group of dealer banks to attain outright ownership of a swap or exchange facility. Without extending the 20/40 rule to cover exchange and swap facilities along with clearinghouses, there will be a backdoor for dealer banks to continue their dominance of the derivatives market.

Please eliminate the 5 percent alternative and extend the 20/40 rule so that it applies to exchange and swap facilities in addition to clearinghouses. Without these changes to the rules of governance of clearinghouses, exchanges, and swaps, dealer banks will continue their control of the derivatives market. This will result in less transparency, competition, and stability in the derivatives market.
Sincerely,

Sincerely,

ROBERT L. RICE, JR.
State Representative
2nd Worcester District