COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS SENATE

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COMMENT

COMMITTEES:
REVENUE (CHAIR)
HIGHER EDUCATION (ACTING CHAIR)
WAYS & MEANS
ECONOMIC DEVELOPMENT AND EMERGING TECHNOLOGIES
CONSUMER PROTECTION AND PROFESSIONAL LICENSURE
VETERANS & FEDERAL AFFAIRS

October 29, 2010

Gary Gensler, Chairmen
Commodity Futures Trading Commission
Three Lafeyette Centre
1155 21st Street Northwest
Washington, D.C. 20581

Re: Relative to Clearinghouse Ownership in the Dodd-Frank Wall Street Reform and the Consumer Protection Act

Dear Chairmen Gensler:

As you review and consider rules to address potential conflicts of interests in clearinghouse ownership under the Dodd-Frank Wall Street Reform and Consumer Protection Act, I encourage you to examine a potential flaw in the 5 percent rule which would not prevent concentrated ownership of a clearinghouse by dealer banks. If not addressed, this will result in less transparency, competition and risk management in the derivatives market.

As you know, 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 the more effective rule of a limitation of 20 percent of voting interest by any single institution and 40 percent of voting interest owned collectively by all institutions. The 20/40 rule would be effective in capping improper ownership interests, however the 5 percent limitation would allow a group of banks to attain voting majority ownership of a clearinghouse and ultimately prevent increased clearing of derivatives. Concentrated ownership of clearinghouses can lead to derivatives transactions not being cleared, and less transparency and competition.

These same concerns apply to exchanges and swap execution facilities. The proposed ownership restrictions for exchanges are even weaker than the clearinghouse restrictions and endanger the intent of the Dodd-Frank reforms. In addition to eliminating the 5 percent alterative, please consider extending the 20/40 rule to exchanges and swap execution facilities.

I urge you to eliminate the 5 percent alternative so banks cannot continue their dominance of clearing facilities and to extend the 20/40 limitation to exchanges as well as clearinghouses. These steps combined will make the derivatives market more transparent and will increase risk management and competition.

Sincerely,

BENJAMIN B. DOWNING, *State Senator*
Berkshire, Hampshire and Franklin District

BBD/dw