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October 20, 2010

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

RE: RIN 3038-AD01

Dear Chairman Gensler:

In July President Obama signed 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 packaging 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 and upheaval that threatened the nation's economy.

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.

While the 20/40 rule seems to 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 continuing 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. We have seen that such concentrated ownership can lead to derivatives transactions not being cleared, meaning increased fees paid to the owner banks and little transparency and competition.

The same principle of limited conflicts of interest applies to exchanges and swap execution facilities, the new trading facilities that are the heart of the derivatives reform envisioned by Dodd-Frank. But the

proposed ownership restriction is even weaker in the case of exchange ownership, allowing five dealers to own an exchange or swap execution facility outright. This loophole, coupled with the 5 percent alternative limit for clearinghouses, endangers the true intent of the Dodd-Frank 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, 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 and swap execution facilities as well as clearinghouses. Without such steps, we run the danger of seeing banks continue to control and exploit an uncompetitive market. The result would be a lack of transparency and accountability would run counter to the spirit and objectives of Dodd-Frank and prolong the danger of economic crisis in the future.

Sincerely,

Lynn Warne

Lynn Warne
President