October 25, 2010

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

COMMENT

RE: RIN 3038-AD01

Dear Chairman Gary Gensler:

The recent passage of the Dodd-Frank *Wall Street Reform & Consumer Protection Act*, including significant reforms to the derivatives market, was an important step toward re-regulating our broken financial system. To reign in abuses and systemic risk in the derivatives market, the Dodd-Frank bill will move a greater number of derivatives transactions toward exchange trading, with an additional emphasis on clearing these transactions through clearinghouses. These common sense reforms are intended to foster greater transparency, competition and risk management in the multi-trillion dollar derivatives market.

While the *Wall Street Reform & Consumer Protection Act* is very specific in some areas, it leaves many important rule making decisions to regulatory bodies such as yours. Now the CFTC and the SEC have proposed rules to addresses possible conflicts of interests in the ownership of derivatives clearinghouses. While these rules are well intentioned, they contain a serious flaw that would fail to prevent monopolistic 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 an 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 majority control of a clearing facility. A minimum of 11 banks, owning 5 percent each, could attain majority voting ownership and continue to pose obstacles to increased clearing that the *Wall Street Reform & Consumer Protection Act* is intended to overcome.

It is likely that banks will try to exploit such a loophole to continue their monopolistic 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.

The same principle of limiting monopolistic control and conflicts of interest should also apply to swap execution facilities, the exchanges that are the heart of the derivatives reforms envisioned in the *Wall Street Reform & Consumer Protection Act.* Yet the ownership restrictions proposed by the CFTC and SEC only apply to clearinghouses, remaining silent on similar limits on exchange ownership. This loophole, coupled with the 5 percent alternative limit for clearinghouses, endangers the intent of the derivative reforms in the *Wall Street Reform & Consumer Protection Act.*

I urge the commission to eliminate the 5 percent alternative, so banks cannot use it as a back door to continue their dominance of clearing facilities and continue 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 monopolize and exploit an uncompetitive derivatives market.

Sincerely,

Patrick A. Lynch
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