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VIA ELECTRONIC MAIL

David Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Re: Requirements for Derivatives Clearing, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest. 75 Federal Register 63,732 (October 18, 2010)

Dear Mr. Stawick:

Evolution Markets Inc. ("Evolution Markets") has reviewed the Commodity Futures Trading Commission's (the "Commission") notice of proposed rulemaking regarding mitigation of conflicts of interest for swap execution facilities ("SEF"). As a long-time participant in several U.S. commodity markets, Evolution Markets recognizes the importance of the regulations under consideration by the Commission, and welcomes an opportunity to provide its perspective on the impact these regulations may have on the markets it serves.

Evolution Markets provides over-the-counter brokerage and structured transaction services in global environmental and energy markets and the clean energy sector. Since its founding in 2000, the company has specialized in facilitating transactions on behalf of clients in green markets, including the global carbon, U.S. emissions (SO₂ and NO_x emissions allowances), renewable energy credit (REC), and weather derivative markets. We also act as an institutional broker for over-the-counter coal, natural gas, nuclear fuel and biofuels markets. Relative to other brokers in the markets Evolution Markets serves, we are small and entrepreneurial in nature, with approximately 60 brokers and structured transaction professionals serving clients in more than 40 countries from offices in New York, San Francisco, London and Beijing.

Evolution Markets plays a vital and unique role in emerging and niche commodity trading markets; markets that are slow to garner the attention of major transactional platforms. Many of Evolution Markets' core markets are created by government programs, typically to serve environmental objectives. As a pioneer in these markets, Evolution Markets often advises governments on sound market design, educates potential market participants, assists in crafting contracts for tradable products, and structures trades in the new commodities on behalf of its clients.



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Some of these markets emerge to become highly commoditized and highly liquid, while others remain bespoke or illiquid. In all cases, Evolution Markets will continue to serve the market by providing transparency and an unbiased transactional marketplace.

In recognition that many of the swap transactions in niche environmental and energy markets currently served by Evolution Markets will be required to be cleared and transacted through a SEF, Evolution Markets is concerned with the impact that proposed conflict of interest rules will have on the development of these markets. Specifically, Evolution Markets believes proposed governance requirements and ownership restrictions would inhibit the development of SEFs designed to serve emerging environmental and energy markets, ultimately restricting liquidity, increasing risk to end user counterparties, and in many cases impairing the ability of these markets to assist in meeting stated environmental objectives.

Evolution Markets' specific comments are as follows:

Proposed Governance Rules Would Unduly Burden Small Enterprises Serving Niche Markets

Rules proposed by the CFTC would require at least 35% (and no less than two) public directors on the Board of a SEF, or its controlling entity. Evolution Markets believes this proposal would inhibit the ability of small enterprises like itself from creating and operating a SEF, particularly in emerging or small commodity markets with limited liquidity and few alternatives for transactional platforms.

Evolution Markets and similar types of market intermediaries may find the requirements to maintain a Board of Directors of seven members, either at the corporate level or at the SEF, a disproportionate burden. It presents a significant added cost to the operation of a SEF serving markets that are of limited liquidity and therefore less able to generate revenue to sustain a sizable corporate structure. This mandate would make the operation of a SEF for smaller, niche commodity markets less cost efficient – and perhaps prohibitively so.

As such, Evolution Markets believes that in order to avoid unintended barriers to entry for smaller business operations, the Commission should consider waiving provisions for smaller enterprises and/or for enterprises primarily serving smaller or niche commodity markets that are interested in setting up a SEF.

Proposed SEF Ownership Rules are too Restrictive for Small Enterprises

Similarly, Evolution Markets is concerned that the Commission's proposed rules for SEF ownership may preclude the participation of small entrants and restrict the ability to create SEFs to serve less liquid swaps markets for niche energy and environmental commodities. Such rules would make the creation of SEFs too costly and inefficient for small market players and act as a disincentive for the creation of SEFs to serve smaller, niche commodity markets.

The proposed rules would restrict SEF members to beneficial ownership of no more than 20% of the voting equity in the SEF. What is not clear is whether a SEF must have members in order to operate. In fact, Evolution Markets can envision a SEF structure whereby the facility is built, operated, and wholly owned by one entity – provided this entity is using the SEF solely for the purpose of facilitating trades



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equally for all counterparties in a many-to-many trading environment. This would allow an entity to build the infrastructure for swaps transactions and retain sufficient ownership to incentivize its efficient and open operation.

This is a particularly acute issue in many of the markets served by Evolution Markets, which have limited trade volume and are not considered highly liquid. If the CFTC mandates SEFs be structured with exclusive ownership of participating members, Evolution Markets is concerned that proposed ownership restrictions pose too high a hurdle for the development of a SEF or SEFs to serve these markets.

In certain markets, Evolution Markets anticipates it may be difficult to identify at least four other entities willing to join ownership in a SEF, and thereby meet proposed ownership requirements. Environmental markets, for instance, are often dominated by end users such as utilities or industrial companies, which transact in swaps markets by necessity but would likely have no capability or interest in owning a portion of a SEF.

Evolution Markets, however, may be willing to build and operate a SEF in niche commodity markets where others are not, thereby providing an essential market service. Evolution Markets understands these types of markets, and the company has built its business in these markets. It is important the Commission not erect barriers to entry for small enterprises like Evolution Markets or other start up enterprises seeking to serve the transactional needs of niche commodity trading markets.

Therefore, Evolution Markets recommends the Commission eliminate the percentage ownership restrictions for SEFs for small enterprises seeking to serve commodity swap markets. These restrictions should remain in place for large corporations, which are more likely to create SEFs to serve trading markets with significantly greater size, deeper liquidity and higher transactional turnover than the niche markets referenced above.

Alternatively, Evolution Markets would recommend the Commission consider a waiver process from SEF ownership requirements for smaller entities or start up enterprises, similar to that under consideration by the Commission for Derivatives Clearing Organizations [Section 39.25(b)(3)]. Evolution Markets recommends an extension of this process to SEFs in order to ensure competition and venue exists for managing risk in all markets. The Commissions could consider waiving SEF ownership restrictions in instances where they are not necessary to improve governance of the SEF and in instances in which such a waiver would promote competition in specific markets.

Evolution Markets appreciates the opportunity to comment on proposed regulations governing the creation of SEFs. We look forward to continuing to provide our perspective as the rulemaking process moves ahead.

Best regards,

Andrew Ertel
President and Chief Executive Officer

