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VIA WEBSITE (http://comments.cftc.gov)

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Risk Management Requirements for Derivatives Clearing Organizations – 76 Fed. Reg. 3698 (January 20, 2011) - RIN 3038–AC98

Dear Mr. Stawick:

GFI Group Inc. ("GFI")[1] is submitting this letter in response to the request for comment with respect to the rule proposal by the Commodity Futures Trading Commission (the "Commission") regarding risk management requirements for derivatives clearing organizations ("DCOs").[2] Among other things, the Commission's proposal would require DCOs to use margin models with general initial margin requirements that are sufficient to cover their potential future exposures to their clearing members. As discussed below, GFI is concerned that that one aspect of this proposal would inadvertently place swap execution facilities ("SEFs") that list cleared swaps for trading at a disadvantage relative to designated contract markets ("DCMs") that list the same swaps. Such disadvantage would be in contravention with the swaps market structure envisioned under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

As noted in the Proposing Release, proposed Regulation 39.13(g)(2) (the "Proposed Rule") would set forth requirements regarding DCO margin methodology. First, the Proposed

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1 GFI and its affiliates provide competitive wholesale market brokerage services in a multitude of global over-the-counter ("OTC") and exchange-listed cash and derivatives markets for fixed income, equity, financial and commodity products. GFI and its affiliates are industry leaders in various fixed income and energy and commodity markets according to recent market surveys published by *Risk* and *Energy Risk* magazines. GFI's parent company is headquartered in New York and employs more than 1,700 people, with additional offices in London, Paris, Hong Kong, Seoul, Tokyo, Singapore, Sydney, Cape Town, Dubai, Tel Aviv, Dublin, Calgary, Englewood, New Jersey and Sugar Land, Texas. GFI and its affiliates provide services and products to over 2,400 institutional clients, including leading banks, corporations, insurance companies and hedge funds. GFI intends to operate a swap execution facility that will be registered as such with the Commission.

2 *See* 76 Fed. Reg. 3698 (January 20, 2011) (the "Proposing Release").

Rule would require a DCO to establish initial margin requirements that are commensurate with the risks of each product that it clears. In addition, the Proposed Rule would require a DCO to use a margin model that takes into account the amount of time needed to liquidate a defaulting clearing member's positions. Under the Proposed Rule, a DCO would be required to use a five-business day liquidation horizon for cleared swaps that are not executed on a DCM, but would be permitted to use a one-business day liquidation horizon for all other products that it clears. The Proposing Release explains that while the one-business day standard is the current standard that DCOs generally apply to futures and options on futures contracts, a minimum of five business days is appropriate for cleared swaps that are not executed on a DCM because such a time period may be necessary to close out swaps in a cost-effective manner.[3]

If adopted as proposed, the Proposed Rule would require DCOs to impose higher margin requirements for swaps that are executed on SEFs than for swaps that are executed on DCMs. We believe that this disparity is potentially inconsistent with the provisions of Section 2(h)(1)(B) of the Commodity Exchange Act (the "Act") and proposed Commission Regulation 39.12(b)(2), which require a DCO to adopt rules providing that all swaps with the same terms and conditions submitted to the DCO for clearing are economically equivalent within the DCO and may be offset with each other within the DCO. We recognize that a swap that is traded on a DCO and a swap that is traded on a SEF will not in all cases have the same terms and conditions, but we believe that the disparate treatment that is mandated by the Proposed Rule is inappropriate even for swaps that are not economically equivalent.

As an initial matter, we note that the Dodd-Frank generally does not require the Commission to distinguish between cleared swaps that are traded on a SEF and cleared swaps that are traded on a DCM. Instead, Dodd-Frank amends the Act to provide that a swap that is subject to mandatory clearing must be executed on a SEF or a DCM, but does not favor one venue over the other. Further, the SEF core principles and the Commission's proposed rules for SEFs are substantially similar to and are based on the core principles and the Commission's proposed rules for DCMs.[4]

The rationale for prescribing different liquidation horizons for swaps that are traded on SEFs and DCMs is not clear, and we have been unable to find any discussion of this issue in the Proposing Release. We note that there is a wide range of swap products that enjoy robust liquidity in the over-the-counter market, where they are traded through entities that will become registered as SEFs. Rather than mandate that a DCO impose higher margin requirements on a swap simply because it was executed on a SEF, we believe that the Commission should revise the Proposed Rule to permit a DCO to make its own determination of the appropriate liquidation horizon for such swaps, subject to the one-day minimum standard set forth in the Proposed Rule. Any such determination should be based on the DCO's unbiased assessment of whether a liquid trading market exists for a swap, rather than on the registration status of the market in which the

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[3] *Id.* at 3704.

[4] *Compare* 76 Fed. Reg. 1214 (January 7, 2011) (the "SEF Proposal") *with* 75 Fed. Reg. 80572 (December 22, 2010). Indeed, the Commission noted in the SEF Proposal that the majority of information required under proposed Form SEF consists of information that Commission staff has historically found necessary when considering DCM applications. 76 Fed. Reg. at 1216.

swap was executed, and should be subject in all cases to the fair access requirements of DCO Core Principle C, which prohibits discrimination by DCOs against unaffiliated SEFs. This approach would permit a DCO to collect margin to manage its potential exposure in a prudent manner without penalizing market participants that may desire to effect swap transactions on a SEF rather than on a DCM. In the absence of such a change, the Proposed Rule would effectively place a "tax" on market participants that desire to trade swaps on a SEF and would thus put SEFs at a competitive disadvantage that is neither necessary nor appropriate under the Act.

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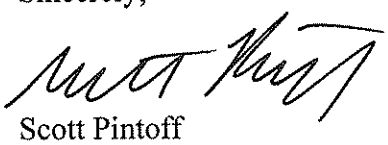
GFI appreciates the opportunity to submit these comments on the proposed risk management requirements for DCOs. If the Commission has any questions concerning the matters discussed in this letter, please contact me at (212) 968-2954, or Daniel E. Glatter, Assistant General Counsel, at (212) 968-2982.

Sincerely,



Scott Pintoff
General Counsel

cc: Honorable Gary Gensler
Honorable Michael Dunn
Honorable Jill E. Sommers
Honorable Bart Chilton
Honorable Scott O'Malia