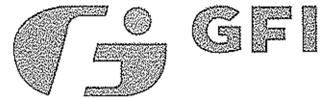
ADDRESS
55 Water Street
New York, NY 10041
CONTACT
phone 212.968.4100
fax 212.968.2386
INTERNET
www.GFIgroup.com



May 16, 2011

VIA ELECTRONIC SUBMISSION ***(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: Antidisruptive Practices Authority
76 Fed. Reg. 14943 (March 18, 2011)

Dear Mr. Stawick:

GFI Group Inc. ("GFI") is submitting this letter in response to the request for comment regarding the proposed interpretation issued by the Commodity Futures Trading Commission (the "Commission") regarding antidisruptive trading practices.[1] As discussed below, GFI is concerned that the Proposed Interpretation may have the unintended effect of imposing a "trade-through" rule on market participants that makes it difficult to achieve the goal of promoting the trading of swaps on swap execution facilities ("SEFs").[2]

Section 4c(a)(5)(A) of the Commodity Exchange Act ("CEA") makes it unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that violates bids or offers.[3] The Commission has proposed to interpret Section 4c(a)(5)(A)

[1] *See* 76 Fed. Reg. 14943 (March 18, 2011) (the "Proposed Interpretation"). GFI, its subsidiaries and affiliates provide competitive wholesale market brokerage services in a multitude of global over-the-counter and exchange-listed cash and derivatives markets for fixed income, equity, financial and commodity products. 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] As used in the securities markets, the term "trade-through" is generally understood to refer to a transaction that is not executed at the best possible price on a given trading platform based on the quoted prices available at other trading platforms. We have used this term more generally in this letter to refer to trades that are not executed at the best possible price on a particular trading platform.

[3] All references to various sections of the CEA herein are to such sections as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act").

as prohibiting any person from buying a contract at a price that is higher than the lowest available offer price and/or selling a contract at a price that is lower than the highest available bid price.

The Proposed Interpretation would apply this prohibition to SEFs to the extent that SEF participants exercise some control over the selection of the bids or offers with which they transact, including the execution of transactions through automated trading systems that operate without pre-determined matching algorithms. GFI believes that the Proposed Interpretation would effectively impose a trade-through rule on SEFs that utilize trading methods that are not strictly automated, and that such a requirement is neither required by the Dodd-Frank Act nor furthers the purposes of the CEA. In this regard, GFI believes that there are a number of legitimate reasons for market participants to take factors other than price into account when executing transactions on a SEF.

First, and as the Commission has observed, the Dodd-Frank Act rejects the "vertical silo" model that currently prevails in the futures markets and thus allows different clearinghouses to clear the same swap. Because market participants that execute transactions on a SEF may clear their transactions at different clearinghouses, they must have the flexibility to take clearing considerations into account when executing transactions on a SEF.

For example, assume that SEF Participant *A* is looking to buy a given interest rate swap; that SEF Participant *B*, which clears its interest rate swaps at LCH.Clearnet ("LCH"), is offering to sell that swap at 10; and that SEF Participant *C*, which clears at the Chicago Mercantile Exchange ("CME"), is offering that swap at 11. If *A* is a clearing member of, or otherwise has arrangements in place which permit it to clear at both CME and LCH, it might choose to buy from *C* at 11, even though *B* was offering a better price, because *A* may incur lower clearing costs at the CME than at LCH. In addition, *A* might have had open positions at the CME that it was looking to close out. However, because the interest rate swaps cleared at CME and LCH would not be fungible, it would be required to bypass the opportunity to trade at a more favorable price with *B* in order to close out those positions. Similarly, *A* might bypass the opportunity to trade with *B* if the trade was hedging or spreading against an existing position at the CME, because holding two legs of the hedge or spread at different clearinghouses could result in greater margin requirements than they would if they were held as part of a combined portfolio at a single clearinghouse.

The Commission has noted that the Proposed Interpretation is consistent with the rules of designated contract markets ("DCMs") that prohibit the violation of bids and offers. Unfortunately, that overlooks the fact that the Core Principles for SEFs and DCMs differ in one significant respect. As the Commission has noted previously, the Dodd-Frank Act amended DCM Core Principle 9 to require that a DCM provide a competitive, open and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.[4] To comply with that requirement, the electronic order execution systems of the DCMs match orders on the basis of a strict price-time priority. By contrast, no such requirement exists for SEFs. Instead, SEFs are required to provide certain functionality to their participants, but are not subject to any price-time priority requirements or

4 See 75 Fed. Reg. 80572, 80589 (December 22, 2010).

trade-through rules. Thus, by effectively requiring SEFs to adopt trade-through rules, the Proposed Interpretation would nullify an important statutory distinction between SEFs and DCMs.

GFI accordingly recommends that the Commission modify the Proposed Interpretation to clarify that a market participant that trades on a SEF will not be deemed to violate Section 4c(a)(5)(A) if it buys at a price that is higher than the lowest offer price that is available to that market participant on that SEF, or sells at a price that is lower then the highest bid price that is available to that market participant on that SEF, if the market participant buys or sells at such price based on factors in addition to price.

* * *

GFI appreciates the opportunity to submit these comments on the Proposed Interpretation. If the Commission has any questions concerning the matters discussed in this letter, please contact me at (212) 968-2954, or Daniel 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