April 27, 2012

Mr. David Stawick
Secretary

Alicia L. Lewis
Special Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: (RIN 3038-AD01) Requirements for DCOs, DCMs, and SEFs Regarding the Mitigation of Conflicts of Interest

Dear Mr. Stawick:

The undersigned entities (the "***Coalition***"), all of whom either intend to register as swap execution facilities ("***SEFs***") or have significant business interests relating to SEFs, respectfully submit these comments to the Commodity Futures Trading Commission (the "***Commission***") in relation to the proposed rule entitled Requirements for DCOs, DCMs, and SEFs Regarding the Mitigation of Conflicts of Interest (the "***Proposed Rule***").[1] The undersigned entities operate many of the leading platforms for the execution of spot, forward and swap contracts. In order to register as a SEF, each of us must place several "public directors" on our boards of directors, and we respectfully submit that the qualifications for public directors set forth in the Proposed Rule may unnecessarily and disproportionately impact SEFs in their ability to do so. We therefore provide these comments in order to identify these issues and propose several alternative solutions which we believe will achieve the goals of the Proposed Rule for DCMs, SEFs and DCOs.[2]

EXECUTIVE SUMMARY

In summary, we believe that the Commission should maintain the public director standards currently applicable to designated contract markets ("***DCMs***"), and apply the same standard to SEFs and derivatives clearing organizations ("***DCOs***"), instead of expanding the disqualifying factors to include employment by or compensation from a member.

Instead of maintaining the current standard and without the mandate to do so in the Dodd-Frank Act of 2010 ("***DFA***"),[3] however, the Proposed Rule seeks to, among other things, materially revise the definition of "public director" in relation to DCMs, and imposes the same requirements on SEFs and DCOs. While the Coalition understands the Commission's goal to reduce any potential conflicts of interest with respect to SEFs, DCMs and DCOs (collectively, "***SROs***"), we believe that the Proposed Rule does not necessarily serve that goal and we are

[1] Requirements for DCOs, DCMs, and SEFs Regarding the Mitigation of Conflicts of Interest, 75 Fed. Reg. 63732 (Oct. 18, 2010).
[2] This comment letter does not directly address the requirements in the Proposed Rule for SEFs, DCMs, and DCOs to compose their boards of directors and committees of certain percentages of public directors, and does not fully discuss the implementation of the Proposed Rule, but we would be open to discussing these topics further.
[3] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010) (the "***DFA***").

concerned that the revised definition will have unintended consequences, particularly with respect to SEFs.

Specifically, the Proposed Rule will effectively disqualify persons from serving as public directors if they receive (or have recently received) any compensation of any kind from an SRO member. We believe that this: (i) will exclude an incredible number of qualified and independent persons from serving as public directors; (ii) could, as a result, lead to SRO boards of directors being less experienced and sophisticated; and (iii) disqualify a disproportionate number of persons from serving as public directors of a SEF as compared to a DCM or DCO because SEFs will typically and likely be non-intermediated trading platforms providing direct access to a large number of previously unregistered participants. Moreover, these numerous participants will have many affiliates, thousands of employees, multitude of consultants and services providers as well as their family members – all of whom will be disqualified.[4]

We therefore believe that the Commission should leverage the existing DCM rules with respect to governance by removing the provisions in the Proposed Rule related to compensation from and employment by a member or member affiliate. Specifically, the Coalition believes that the Commission should:

1. Maintain the public director standards currently applicable to DCMs and apply those to SEFs and DCOs. In doing so, we recommend that the Commission revise the Proposed Rule by deleting the proposed text as follows:

   § 1.3 Definitions
   (ccc) * * *
   (1) For purposes of this definition, a "material relationship" is one that reasonably could affect the independent judgment or decision-making of the director. In making the finding specified in paragraph (ccc) of this section, the Board of Directors need not consider previous service as a director of the registered entity to constitute a "material relationship." Circumstances in which a director shall be considered to have a "material relationship" with the registered entity include, but are not limited to, the following:

   * * *

   (iv) Such director, or an entity with which the director is a partner, an officer, ~~an employee~~, or a director, receives more than $100,000 in combined annual payments for legal, accounting, or consulting services from the registered entity~~,~~ or any affiliate thereof (as defined in paragraph (ccc)(1)(i) of this section)~~, any member of the registered entity (as defined in paragraph (ccc)(1)(ii) of this section), or any affiliate of such member~~. Compensation for services as a director of the registered entity or as a director of an affiliate thereof does not count toward the $100,000 payment limit, nor does deferred compensation for services rendered prior to becoming a director of the registered entity, so long as such compensation is in no way contingent, conditioned, or revocable.~~; or~~
   ~~(v) Notwithstanding paragraph (ccc)(1)(iv) of this section, in the case of a public director that is a member of the Regulatory Oversight Committee, the Risk Management Committee (or any subcommittee thereof), or the Membership or Participation~~

[4] For example, this would likely disqualify any currently (or recently) employed person within the financial services industry or by a mid- to large-sized corporation.

~~Committee (or any committee serving a similar function), such director (other than in the capacity of a member of such committee, any other committee, or the Board of Directors, in each case, of the registered entity), accepts, directly or indirectly, any consulting, advisory, or other compensatory fee from the registered entity, any affiliate thereof (as defined in paragraph (ccc)(1)(i) of this section), any member of the registered entity (as defined in paragraph (ccc)(1)(ii) of this section), or any affiliate of such member, other than deferred compensation for service rendered prior to becoming a member of the Regulatory Oversight Committee, the Risk Management Committee (or any subcommittee thereof), or the Membership or Participation Committee (or any committee serving a similar function), provided that such compensation is in no way contingent, conditioned, or revocable.~~[5]

Alternatively, we recommend that the Commission do the following:

2. Adopt the Securities and Exchange Commission's ("***SEC***") more flexible approach to limiting the compensation a public director (or "independent directors" as referred to by the SEC) may receive from a member in order to harmonize the rules and provide SROs with more flexibility in choosing public directors; or
3. Limit the disqualification of public directors to employees of SRO members instead of any person who receives compensation from such members.

BACKGROUND ON THE PROPOSED RULE

The Proposed Rule would prohibit a person from serving as a public director of an SRO if, among other things, that person: (i) received more than $100,000 during the past year in combined payments for legal, accounting or consulting services from an SRO "member"[6] or any affiliate of such member, or (ii) is, or has been within the past year, an officer, director or employee of an SRO member (referred to collectively herein as "***Member Relationships***").[7]

The rule goes even further, however, with respect to the Regulatory Oversight Committee ("***ROC***") (which must consist entirely of public directors)[8] and certain other committees.[9] Specifically, the Proposed Rule would disqualify a person from serving as a public director on

[5] The deleted language is the language from the Proposed Rule as compared to the original CFTC rule that we believe should be reinstated. *See* Guidance on, and Acceptable Practices in, Compliance with Core Principles, 17 C.F.R. pt. 38, app. B.

[6] The Proposed Rule defines "member" in accordance with Section 1a(34) of the CEA. That Section defines "member" with respect to registered entities (including SEFs) as, among other things, "an individual, association, partnership, corporation, or trust having trading privileges on the registered entity. . . ." *See* 7 U.S.C. § 1a(34). Indeed, we note that the Commission's general SEF rule refers to "members" in some places, *see* Core Principles and Other Requirements for Swap Execution Facilities, 76 Fed. Reg. 1214, 1229 (Jan. 7, 2011) (the "***SEF Rule***") ("Under proposed § 37.702(a), a SEF must ensure that all its members meet the definition of [an ECP]"), and to "members *or market participants*" in other instances, *see* SEF Rule, 76 Fed. Reg. at 1223 ("a SEF must require each member or market participant to consent to its jurisdiction."). In contrast, the Proposed Rule only refers to a SEF's "members." *See* Proposed Rule, 75 Fed. Reg. at 63747. We believe the Commission should synthesize the terms used in these rules or clarify the differences.

[7] Proposed Rule, 75 Fed. Reg. at 63747 (to be codified at 17 C.F.R. §§ 1.3(ccc)(1)(ii), (1)(iv)).

[8] *Id.* at 63747-48 (to be codified at 17 C.F.R. §§ 37.19(b)(1), (b)(3)); *id.* at 63749 (to be codified at 17 C.F.R. §§ 38.851(b)(1), (b)(3)).

[9] Specifically, these additional requirements for public directors would apply to the Membership or Participation Committee (for SEFs and DCMs) and the Risk Management Committee (for DCOs).

these committees if that person accepts *any level* of consulting, advisory or "other compensatory fee" from any member of the SRO, or any affiliate of such member.[10] These restrictions would apply equally to the immediate family of any such person.[11]

COMMENTS

I. THE PROPOSED RULE OVERREACHES BY DISQUALIFYING NUMEROUS INDEPENDENT AND QUALIFIED DIRECTORS AND WILL HAVE A DISPROPORTIONATE IMPACT ON SEFs

As explained above, the Proposed Rule would exclude any person from serving as a public director for an SRO if they or their firm received more than $100,000 from an SRO member.[12] We do not believe the Commission should automatically assume that a director has a material relationship with an SRO member if that director or their firm received any set amount of money from the member. Some experienced people and firms may command tens of thousands of dollars or more for providing advice or academic research, for example, and we do not believe that a director should be assumed to have a material relationship with a company for providing such services.

The Proposed Rule would stretch even further, though, because it would also exclude any person from serving as a public director on the ROC and certain other committees if that person received or receives *any level* of *any type* of compensatory fee.[13] Practically speaking, it is unlikely that an SRO will have a different set of public directors for its board and its committees (especially due to the standards applicable to each public director). As a result, SROs will have to locate persons to fill 35% of the board and the entirety of the ROC who have not received and will not receive *any* compensation at all from an SRO member or affiliate thereof. This means, for example, that an SRO's public directors cannot give a single speech for which they are compensated in any way by any SRO member or participant. We believe that many qualified candidates for an SRO's board of directors will be exactly the types of persons who will be interested in providing speeches or other types of presentations to organizations in the financial industry. Moreover, most of these organizations are likely to be SRO members, particularly of the larger SROs.

Even further, the Proposed Rule would disqualify any director with an immediate family member who receives any compensatory fee from a member or participant.[14] This rule, especially when read in conjunction with the other limitations, will result in countless people being disqualified from serving as a public director when they have no legitimate conflicts of interest. For example, a person could not serve as a public director of an SRO if his or her brother-in-law receives any compensation from an SRO member, whether as a member of its board of directors or as a security guard. See the hypotheticals in Exhibit A for additional illustrations of the Proposed Rule's potential consequences.

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[10] *Id.* at 63747 (to be codified at 17 C.F.R. § 1.3(ccc)(1)(v)).
[11] *Id.* (to be codified at 17 C.F.R. § 1.3(ccc)(1)(vi)) (defining "immediate family" as the director's spouse, parents, children, and siblings, in each case, whether by blood, marriage or adoption, or any person residing in the home of the director or that of his or her "immediate family").
[12] *Id*. at 63747 (to be codified at 17 C.F.R. § 1.3(ccc)(1)(iv)).
[13] *See id.* (to be codified at 17 C.F.R. § 1.3(ccc)(1)(v)).
[14] *See id.* (to be codified at 17 C.F.R. § 1.3(ccc)(1)(vi).

The net effect of the Proposed Rule will be exacerbated for SEFs because they are predominantly, if not entirely, direct participation organizations, not membership organizations.[15] Whereas a DCM or DCO's membership is generally restricted to certain Commission-registered entities that often hold an ownership interest in the entity and, in the case of a DCM, provide intermediated access to the platform, SEFs are far more likely to offer non-intermediated trading platforms providing direct access to a large number of diverse participants. Unlike DCM and DCO members, therefore, SEFs will have participants that are Fortune 500 companies, municipalities, pension plans, financial advisors and other types of market participants with many affiliates and thousands of employees. Because the Proposed Rule will apply to affiliates of each "member," and the immediate family of each person, the number of persons who would be disqualified from serving as a public director of a SEF may well be significantly larger than that of DCMs or DCOs. The result is that SEFs will be disproportionately and adversely impacted by the Proposed Rule because they will have to expend substantially more time and resources (particularly cost) searching for qualified public directors.[16] We also believe that this could lead to less sophistication and experience on the boards of SEFs and, as a result, SEFs may be less adept at carrying out their self-regulatory functions.[17]

We note that the DFA does not require the Commission to restrict Member Relationships, and indeed conditions the authority provided regarding governance rules upon the Commission finding that such rules are appropriate. Specifically, the DFA provides the Commission with authority to promulgate rules to improve the governance of an SRO "if it determines . . . that such rules are necessary and appropriate."[18] As described below, we do not believe that the Proposed Rule explains why limitations on Membership Relationships are necessary or appropriate.

II. THE COMMISSION SHOULD MAINTAIN THE PUBLIC DIRECTOR STANDARDS CURRENTLY APPLICABLE TO DCMs AND APPLY THOSE STANDARDS TO SEFs AND DCOs

We believe that the Commission could mitigate the potential consequences described above by maintaining the standards currently applicable to public directors of DCMs. Under current DCM

[15] *See* 7 U.S.C. 7b-3(f) (referencing "market participants" instead of members with respect to SEFs).

[16] For example, a person trading swaps for a corporation on a DCM through an FCM would not be disqualified for being a DCM member, but if that same person traded swaps directly on a SEF, he or she *would* be disqualified from serving as a public director because his corporation is a SEF "member." This disproportionate treatment is not met by a similar increase in the Proposed Rule's ability to mitigate conflicts of interest with respect to SEFs and, as such, results in an unwarranted restriction.

[17] SEFs will be additionally impacted because they must find these uniquely pristine public directors all at the same time upon implementation of the rule. Given that there may be twenty or more SEFs in the initial implementation period, the competition for this very small pool of candidates will be intense. This could cause SEFs to have to accept less qualified directors than would be otherwise desired. To that end, there is some confusion about the scope of the 2 year transition period for entities that currently offer trade execution platforms for swaps, *see* Proposed Rule, 75 Fed. Reg. at 63745, and we request that the Commission clarify that the 2 year transition period applies equally to these existing operating facilities applying to be registered as SEFs as they apply to registered DCMs and DCOs (and to the extent the Commission considers a shorter transition period, given the existing governance of these entities, we believe the transition period should be no shorter than 1 year and the application of the transition period be the same for SEFs as they would be for registered DCMs and DCOs).

[18] *See* DFA, § 726(b).

rules, compensation is only a disqualifying factor for public directors if "[t]he director, or a firm with which the director is an officer, director, or partner, receives more than $100,000 in combined annual payments from the contract market, or any affiliate of the contract market . . . for legal, accounting, or consulting services."[19] This rule therefore does not apply to compensation received from a DCM's members and also does not disqualify employees of a DCM's members.

These qualifications for public directors of DCMs were only finalized one year before the Proposed Rule was proposed, and were the result of two years of work by the Commission.[20] During these two years of consideration, the Commission expressly determined *not* to disqualify persons who receive compensation from a DCM member from being public directors,[21] and also determined *not* to disqualify employees of DCM members from being public directors.[22] In making these decisions, the Commission stated that it was ensuring that self-regulation would be "vigorous, effective, and impartial."[23]

The Commission does not provide an adequate explanation for changing these policies in the Proposed Rule. Instead, the Commission broadly states that the modifications to the public director definition are intended to "allow for greater harmonization" with the definition of "independent director" proposed by the SEC in 2004 (the "***2004 Proposal***")[24] and as reflected in currently accepted practices.[25] The 2004 Proposal was never finalized, however, and, as discussed in Section III, the SEC recently issued a new proposed rule that would allow for greater flexibility than that provided under the Proposed Rule. Thus, the Commission should aim to harmonize its rule with the SEC's recently proposed rule instead of a proposal from eight years ago that the SEC itself appears to have rejected.

We also do not believe that prohibiting Member Relationships is warranted by currently accepted practices to address similar concerns. For example, regulations from NYSE and NASDAQ aimed at mitigating conflicts of interest in the governance of public corporations (which regulations were approved by the SEC) have restrictions that are more similar to the current DCM rules than the restrictions in the Proposed Rule. Under NYSE and NASDAQ rules, for example, a director is only disqualified from serving as an independent director if he or she has received, or has an immediate family member who has received, during any twelve-month period within the last three years, more than $120,000 in direct compensation from the listed company

[19] *See* Guidance on, and Acceptable Practices in, Compliance with Core Principles, 17 C.F.R. pt. 38, app. B.
[20] *See* Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations, 74 Fed. Reg. 18982, 18984 (April 27, 2009) (the "***2009 Final Rule***") (discussing the Commission's two year process of implementing Core Principle 15 for DCMs).
[21] *Compare* Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations ("SROs"), 72 Fed. Reg. 6936, 6957 (Feb. 14, 2007) (disqualifying persons receiving more than $100,000 from DCM members), *with* 2009 Final Rule, 74 Fed. Reg. at 18985 (noting that the Commission opted not to include such a disqualification).
[22] *See* Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations, 74 Fed. Reg. at 18984.
[23] *See id.*
[24] Fair Administration and Governance of Self-Regulatory Organizations; Disclosure and Regulatory Reporting by Self-Regulatory Organizations; Recordkeeping Requirements for Self-Regulatory Organizations; Ownership and Voting Limitations for Members of Self-Regulatory Organizations; Ownership Reporting Requirements for Members of Self-Regulatory Organizations; Listing and Trading of Affiliated Securities by a Self-Regulatory Organization, 69 Fed. Reg. 71126 (Dec. 8, 2004).
[25] Proposed Rule, 75 Fed. Reg. at 63742.

itself.[26] Thus, simply serving in a legal, accounting or consulting capacity (or even as a direct employee) for one of the listed company's customers or suppliers does not disqualify a person from serving the listed company as an independent director.

The Proposed Rule's changes to the definition of "public director," especially as they relate to SEFs, also do not coincide with the Commission's stated goal of balancing between "the need to minimize conflicts of interest in [the] decision-making processes" and "the need for expertise and efficiency in such processes."[27] Instead, we believe that the Commission's currently-existing rules for public directors of DCMs strike a better balance of these goals, and we are unaware of any empirically-based reasons to change these rules. We therefore strongly urge the Commission to remove, in their entirety, the exclusions relating to Member Relationships from the public director definition in the Proposed Rule.

III. ALTERNATIVELY, THE COMMISSION SHOULD ADOPT THE DEFINITION CONTAINED IN THE SEC's CURRENT PROPOSED RULE

In attempting to "harmonize" the public director definition with the SEC's independent director concept, the Proposed Rule makes reference to the 2004 Proposal; however, the SEC never finalized that rule and, in fact, has recently issued a new proposed rule (the "***SEC Proposal***")[28] that takes a different approach. Specifically, under the SEC Proposal, a person would only be disqualified from serving as an independent director if, in the opinion of the security-based SEF's board, the person has a "relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director."[29] The SEC Proposal explains that this includes certain payments from security-based SEFs or their members,[30] but only if those payments could reasonably affect the independent judgment of that director.[31] The SEC Proposal is therefore qualified by a reasonableness test. It also does not set a bright-line limit or create additional disqualifying factors for persons who will serve as independent directors of the ROC.[32]

We believe that the Commission should, if it decides not to accept the above proposal, adopt the more flexible test proposed by the SEC. This would strike a better balance between ensuring

[26] *See* NYSE Rule 303A.02(b)(ii); NASDAQ Rule 5605(a). These rules also exclude controlling shareholders and executive officers of organizations to which the listed company made, or from which the listed company received, certain payments for property or services. These restrictions do not go as far as the CFTC's rule, however, which apply to any person receiving compensation from a member, regardless of that person's relationship with the member.

[27] Proposed Rule, 75 Fed. Reg. at 63738.

[28] Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Security Exchanges with Respect to Security-Based Swaps under Regulation MC, 75 Fed. Reg. 65882 (Oct. 26, 2010) (the "***SEC Proposal***").

[29] *See id.* at 65930 (to be codified at 17 C.F.R. § 242.700(l)).

[30] The SEC Proposal defines "member" in accordance with Section 3(a)(3) of the Exchange Act, which states that "member" means, among other things, "any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker." 15 U.S.C. § 78c(a)(30).

[31] *See* SEC Proposal, 75 Fed. Reg.at 65928 (to be codified at 17 C.F.R. § 242.700 (j)(2)(iii)).

[32] The SEC Proposal would disqualify a person from serving as an independent director of any *audit committee* if that person received any compensation from a SB SEF member, but the rule does not actually require the SB SEF to have an audit committee. *See id.* at 65929 (to be codified at 17 C.F.R. § 242.700 (j)(2)(vii)).

proper regulatory compliance and allowing SROs the flexibility to retain experienced individuals who present little risk of creating a conflict of interest.

IV. AS A SECOND ALTERNATIVE, ONLY EMPLOYEES OF SRO MEMBERS SHOULD BE DISQUALIFIED FROM SERVING AS PUBLIC DIRECTORS

As explained above, we believe that the Proposed Rule casts too wide of a net and could result in less experience and sophistication on SRO boards of directors than is necessary to mitigate conflicts of interest concerns. For the avoidance of doubt, we believe that disqualifying member or participant employees also reaches too far. However, if the Commission does not adopt our proposals described above because of continuing concerns about conflicts of interest posed by SRO members or participants, we believe the Commission should disqualify only employees of SRO members or participants (in addition to directors and officers). This would already exceed the regulations currently applicable to DCMs, but would more effectively balance the costs of limiting available public directors with the benefits of reducing theoretical conflicts of interest.[33] As explained above, we believe that applying the public director disqualification any further will result in unnecessary hardship, particularly for SEFs (because of the nature of their participants), and have several unintended consequences, as set forth further in Exhibit A.

If the Commission does not accept any of the above suggestions, therefore, we respectfully request that the Commission revise the Proposed Rule so that only employees of SRO members are disqualified from serving as public directors.

V. CONCLUSION

As discussed above, we strongly believe that the Proposed Rule should be revised to apply the same standard currently applicable to DCMs to SROs generally. In the alternative, we believe that the Commission's bright-line rules should be removed or revised to match the SEC's proposed definition of independent directors. Finally, and at the very least, we believe that the Commission should only disqualify employees of SRO member/participants instead of any person who receives compensation from a member or participant.

The Coalition appreciates the opportunity to provide the Commission with its perspective on the Proposed Rule. Please feel free to contact any of the undersigned entities / persons with any questions.

Commodity Markets Council
FX Alliance Inc.
ICAP plc
IMedge, LLC
IntercontinentalExchange, Inc.
Javelin Capital Markets, LLC
Nodal Exchange, LLC
Thomson Reuters
Tradeweb Markets LLC

[33] In this instance, we believe the definition of "immediate family" should be limited to the director's spouse, children, and any person residing in the home of the director.

cc: Peter Y. Malyshev (Latham & Watkins LLP), counsel for FX Alliance Inc., and IMedge, LLC

Exhibit A

Hypothetical Situations Demonstrating the Application of the Proposed Rule

In order to demonstrate the types of well-qualified and independent persons who would nonetheless be disqualified from serving as a public director for a SEF, consider the following hypotheticals:

1) A well respected professor of economics at a prestigious university is an "independent director" of a national securities exchange under SEC rules. The professor makes a presentation on the possible effect of proposed tax legislation to the managers of a mutual fund. He is paid $5,000. The investment advisor affiliate of the mutual fund is a SEF participant. Because the mutual fund is an affiliate of the SEF participant, the professor is disqualified from serving on the ROC at all and the Participation Committee as a public director. If the professor is paid more than $100,000 total as a consultant to five mutual funds who each have an investment advisor affiliate that is a SEF participant, then the professor is disqualified as a public director on the SEF Board as well.

2) A former CFTC Commissioner serves on two corporate boards and qualifies as an "independent director" under NYSE and NASDAQ rules. The Commissioner's father is a doctor who works on cancer research. One of his drug trials is sponsored by a major drug company who pays the doctor for work on the drug trial. The drug company is a participant on the SEF. Because the restrictions apply to "immediate family", including parents, and the drug company is a SEF participant, the Commissioner is disqualified from serving on the ROC at all and the Participation Committee as a public director. If the doctor is paid more than $100,000, then the Commissioner is disqualified as a public director on the SEF Board as well.

3) A retired general is the president of a charitable organization for international disaster relief. He is currently a "public director" of a DCM and his term is ending. The general's wife is an associate at a law firm and a partner at her firm provides legal advice regarding labor law to an FCM that is a participant of the SEF. The law firm is paid over $100,000 by the FCM and the associate's salary is over $100,000. Further, the general attends an annual golf event sponsored by a major investment bank that raises funds for several charities, including the general's. The general's travel expenses are paid by the bank, which is a SEF participant. Because the investment bank is a SEF participant, the general is disqualified from serving on the ROC at all and the Participation Committee as a public director. In addition, because the restrictions apply to "immediate family", including spouses, and the associate and her firm are paid more than $100,000 by the FCM SEF participant, then the general is disqualified as public director on the SEF Board as well.

4) A minister of a large church in a major southern city is an "independent director" of a Fortune 100 beverage company under NYSE rules. The company is a SEF participant. Because the minister is a director of a SEF participant he is disqualified as public director on the SEF Board.

5) A law firm represents a pharmaceutical company in a real estate transaction that is completely unrelated to derivatives and swaps trading. The law firm receives

compensation in excess of $100,000 from the pharmaceutical company. The pharmaceutical company trades credit default swaps on a SEF among the other 5,000 participants. A derivatives lawyer at the law firm cannot be a public director at a SEF because he or she works for an entity that received compensation from one of the SEF "members" in excess of $100,000.

We believe these hypotheticals illustrate the unnecessary breadth of the Proposed Rule. In order to address the problems caused by this breadth, we believe the Commission must revise the Proposed Rule as discussed above.