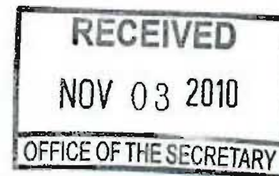
retiree benefit
solutions



October 29, 2010

Securities and Exchange Commission
Attention: Elizabeth M. Murphy, Secretary
100 F St., NE, Washington, DC 20549-1090.

RE: File Number S7-27-10.

Dear Chairman Mary Schapiro:

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 financial system. To reign in abuses and systemic risk in the multi-trillion dollar 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 clearinghouse facilities.

The *Wall Street Reform & Consumer Protection Act* is very specific in some areas, yet it leaves many important rule making decisions to regulatory bodies such as yours. Now the CFTC and the SEC have proposed rules to address 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.

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 limit on aggregate ownership by banks. This is an alternative to a 20 percent limit of voting interest by any single institution and 40 percent limit of voting interest owned collectively by all institutions.

While the 20/40 rule would be effective in preventing ownership abuses, the 5 percent limit 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.

1070 Kingstown Road • South Kingstown, Rhode Island 02879
p: 401.490.9350 • www.retireebenefitsolutions.com

Large dealer banks will likely 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 and using the 5 percent rule, they could continue to do so with only minor adjustments to their ownership stakes.

The same principle of limiting 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, with no similar limits proposed for 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 derivatives clearing facilities. I also ask that you consider a rule extending the 20 percent/40 percent ownership limits to exchanges as well as clearinghouses. These rule changes will help prevent conflicts of interest, increase competition and transparency, and better reflect Congress' true intent in passing the *Wall Street Reform & Consumer Protection Act*.

Sincerely,

Jesse Saglio
Vice President, Business Development
Retiree Benefit Solutions
1070 Kingstown Road
South Kingstown, RI 02879