

TO: The Comment File
FROM: Nancy Schnabel
RE: Comment on Proposed Rule on Mitigation of Conflicts of Interest
DATE: October 27, 2010

On Wednesday, October 27, 2010, during a meeting between representatives of the Options Clearing Corporation (OCC) and the CFTC, OCC representatives commented on the proposed requirements for derivatives clearing organizations (DCOs) regarding the mitigation of conflicts of interest (Proposed Rule), which the Commission approved on October 1, 2010 pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

First, OCC representatives stated that, if a DCO is structured as a utility, the composition requirements for the Board of Directors and the Nominating Committee in the Proposed Rule, which emphasize the inclusion of public directors, would be unnecessary to mitigate conflicts of interest. They explained that, based on their experience in operating a clearing utility, a fair representation model sufficiently effects such mitigation.

Second, OCC representatives stated that a DCO clearing only futures transactions should not be subject to any final requirements on the mitigation of conflicts of interest. Alternatively, they proposed that the final requirements include a procedure for a DCO to apply for a waiver if its structural governance arrangements achieve the objectives of the Dodd-Frank Act.

Third, OCC representatives reiterated the importance of clearing member control of the Risk Management Committee. They also explained that the final requirements should permit

executive directors to participate in the Risk Management Committee, since such executives would be directly responsible for resolving DCO emergencies.

Finally, OCC representatives noted that the definition of “related persons” in the Proposed Rule may have certain unintended consequences with respect to limits on the ownership of DCO voting equity and the exercise of voting power. OCC representatives intend to propose a technical correction in a subsequent written comment to the Proposed Rule.

The following OCC representatives were present at the meeting:

- Wayne P. Luthringshausen (OCC)
- Michael E. Cahill (OCC)
- William H. Navin (OCC)
- Susan Milligan (OCC)
- James R. McDaniel (Sidley Austin LLP)

The following CFTC personnel were present at the meeting:

- Chairman Gensler
- Eric Juzenas
- Ananda Radhakrishnan
- John Lawton
- Nancy Schnabel
- Eileen Donovan