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DOJ Recommends Tighter Ownership Restrictions and Conflict Rules for DCMs, DCOs and SEFs

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The U.S. Department of Justice (DOJ), in a comment letter submitted to the Commodity Futures Trading Commission, has urged the implementation of more-stringent rules relating to ownership and conflicts of interest for designated contract markets (DCMs), derivatives clearing organizations (DCOs) and swap execution facilities (SEFs). The DOJ comment letter was submitted in response to an October 2010 rule proposal by the CFTC, which would impose specific structural governance requirements and limitations on the ownership of DCMs, DCOs and SEFs.

In its letter, the DOJ expressed concern that the ownership limitations proposed for DCMs and SEFs, which limit the voting power that may be exercised by any single member thereof, do not also include aggregate voting limitations to restrict the aggregate voting power that may be held by major dealers and financial institutions. Absent such limitations, the DOJ is concerned that such entities may be able to use their control over these trading platforms to limit competition. The DOJ also recommends enhancing the CFTC's proposed governance requirements by increasing the participation of independent directors on DCM, DCO and SEF boards and/or board committees.

The DOJ comment letter is available here. The CFTC's rule proposal is available here.

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