

**TESTIMONY OF GARY GENSLER**  
**CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION**  
**BEFORE THE**  
**U.S. SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS**  
**WASHINGTON, DC**  
**February 17, 2011**

Good morning Chairman Johnson, Ranking Member Shelby and members of the Committee. I thank you for inviting me to today's hearing on implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act. I am pleased to testify on behalf of the Commodity Futures Trading Commission (CFTC). I also thank my fellow Commissioners and CFTC staff for their hard work and commitment on implementing the legislation.

I am honored to appear at today's hearing alongside fellow regulators with whom we are working so closely to implement the Dodd-Frank Act. We have consulted and coordinated closely with the Securities and Exchange Commission (SEC), Federal Reserve Board, Treasury Department, Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency and other regulators on rulemakings to oversee the swaps markets. Throughout this process, interagency cooperation has been extraordinary and has improved our proposed rulemakings.

Before I move into the testimony, I want to congratulate Chairman Johnson on becoming Chairman of the Committee. I look forward to working with you and all Members of the Committee.

### **The Dodd-Frank Act**

On July 21, 2010, President Obama signed the Dodd-Frank Act. The Act amended the Commodity Exchange Act (CEA) to establish a comprehensive new regulatory framework for swaps and security-based swaps. Title VII of the Act, which relates to swaps, was enacted to reduce risk, increase transparency and promote market integrity within the financial system by, among other things:

1. Providing for the registration and comprehensive regulation of swap dealers and major swap participants;
2. Imposing clearing and trade execution requirements on standardized derivatives products;
3. Creating robust recordkeeping and real-time reporting regimes; and
4. Enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

The reforms mandated by Congress will reduce systemic risk to our financial system and bring sunshine and competition to the swaps markets. Markets work best when they are

transparent, open and competitive. The American public has benefited from these attributes in the futures and securities markets since the great regulatory reforms of the 1930s. The reforms of Title VII will bring similar features to the swaps markets. Lowering risk and improving transparency will make the swaps markets safer and improve pricing for end-users.

Title VIII of the Dodd-Frank Act gives the Financial Stability Oversight Council (FSOC) and the Federal Reserve Board important roles in clearinghouse oversight by authorizing the Council to designate certain clearinghouses as systemically important and by permitting the Federal Reserve to recommend heightened prudential standards in certain circumstances. It also gives the CFTC heightened authorities with respect to those clearinghouses that are deemed systemically important by the FSOC.

## **Implementation**

The Dodd-Frank Act is very detailed, addressing all of the key policy issues regarding regulation of the swaps marketplace. To implement these regulations, the Act requires the CFTC and SEC, working with our fellow regulators, to write rules generally within 360 days. At the CFTC, we initially organized our effort around 30 teams who have been actively at work. We have recently added another team. We had our first meeting with the 30 team leads the day before the President signed the law.

The CFTC is working deliberately and efficiently to promulgate rules required by Congress. The talented and dedicated staff of the CFTC has stepped up to the challenge and has

recommended thoughtful rules – with a great deal of input from each of the five Commissioners – that would implement the Act. Thus far, the CFTC has approved 39 notices of proposed rulemaking, two interim final rules, four advanced notices of proposed rulemaking and one final rule.

The CFTC’s process to implement the rulemakings required by the Act includes enhancements over the agency’s prior practices in five important areas. Our goal was to provide the public with additional opportunities to inform the Commission on rulemakings, even before official public comment periods. I will expand on each of these five points in my testimony.

1. We began soliciting views from the public immediately after the Act was signed and prior to approving proposed rulemakings. This allowed the agency to receive input before the pens hit the paper.
2. We hosted a series of public, staff-led roundtables to hear ideas from the public prior to considering proposed rulemakings.
3. We engaged in significant outreach with other regulators – both foreign and domestic – to seek input on each rulemaking.
4. Information on both staff’s and Commissioners’ meetings with members of the public to hear their views on rulemakings has been made publicly available at [cftc.gov](http://cftc.gov).
5. The Commission held public meetings to consider proposed rulemakings. The meetings were webcast so that the Commission’s deliberations were available to the public. Archive webcasts are available on our website as well.

Two principles are guiding us throughout the rule-writing process. First is the statute itself. We intend to comply fully with the statute's provisions and Congressional intent to lower risk and bring transparency to these markets.

Second, we are consulting heavily with both other regulators and the broader public. We are working very closely with the SEC, the Federal Reserve, the FDIC, the OCC and other prudential regulators, which includes sharing many of our memos, term sheets and draft work product. We also are working closely with Treasury and the new Office of Financial Research. As of Tuesday, CFTC staff has had 422 meetings with other regulators on implementation of the Act.

In addition to working with our American counterparts, we have reached out to and are actively consulting and coordinating with international regulators to harmonize our approach to swaps oversight. As we are with domestic regulators, we are sharing many of our memos, term sheets and draft work product with international regulators as well. Our discussions have focused on clearing and trading requirements, clearinghouses more generally and swaps data reporting issues, among many other topics.

Specifically, we have been consulting directly and sharing documentation with the European Commission, the European Central Bank, the UK Financial Services Authority and the new European Securities and Markets Authority. We also have shared documents with the Japanese Financial Services Authority and consulted with Members of the European Parliament and regulators in Canada, France, Germany and Switzerland.

Through this consultation, we are working to bring consistency to regulation of the swaps markets. In September of last year, the European Commission released its swaps proposal. As we had in the Dodd-Frank Act, the E.C.'s proposal covers the entire derivatives marketplace – both bilateral and cleared – and the entire product suite, including interest rate swaps, currency swaps, commodity swaps, equity swaps and credit default swaps. The proposal includes requirements for central clearing of swaps, robust oversight of central counterparties and reporting of all swaps to a trade repository. The E.C. also is considering revisions to its existing Markets in Financial Instruments Directive (MiFID), which includes a trade execution requirement, the creation of a report with aggregate data on the markets similar to the CFTC's Commitments of Traders reports and accountability levels or position limits on various commodity markets.

We also are soliciting broad public input into the rules. On July 21<sup>st</sup>, we listed the 30 rule-writing teams and set up mailboxes for the public to comment directly. We determined it would be best to engage the public as broadly as possible even before publishing proposed rules. As of Tuesday, we have received 2,856 submissions from the public through the email inboxes as well as 1,258 official comments in response to notices of proposed rulemaking. The CFTC and the SEC in December proposed a joint rule to further define the terms “swap dealer” and “major swap participant.” The comment period on this proposal is open until February 22. To the extent that members of the public have comments on other rules that apply to swap dealers and major swap participants and have not yet submitted them, they may include those comments

within their submissions on this rule. The CFTC will use its discretion to include those in the comment files and consider them for the related rules.

We also have organized nine roundtables to hear specifically on particular subjects. We have coordinated the majority of our roundtables with the SEC and have joined with other regulators on several of them as well. These meetings have allowed us to hear directly from investors, market participants, end-users, academics, exchanges and clearinghouses on key topics including governance and conflicts of interest, real time reporting, swap data recordkeeping and swap execution facilities, among others. The roundtables have been open to the public, and we have established call-in numbers for each of them so that anyone can listen in.

Additionally, many individuals have asked for meetings with either our staff or Commissioners to discuss swaps regulation. As of Tuesday, we have had more than 540 such meetings. We are now posting on our website a list of all of the meetings CFTC staff and I have with outside organizations, as well as the participants, issues discussed and all materials given to us.

We began publishing proposed rulemakings at our first public meeting to implement the Act on October 1, 2010. We have sequenced our proposed rulemakings over 11 public meetings thus far. Our next meeting is scheduled for February 24.

Public meetings have allowed us to discuss proposed rules in the open. For the vast majority of proposed rulemakings, we have solicited public comments for a period of 60 days.

On a few occasions, the public comment period lasted 30 days. As part of seeking public comment on each of the individual rules, we also have asked a question within many of the proposed rulemakings relating to the timing for the implementation of various requirements under these rules. In looking across the entire set of rules and taking into consideration the costs of cumulative regulations, public comments will help inform the Commission as to what requirements can be met sooner and which ones will take a bit more time.

We have thus far proposed rulemakings in 26 of the 30 areas established last July. We still must propose rules on capital and margin requirements, product definitions (jointly with the SEC) and the Volcker Rule. We also are considering comments received in response to advanced notices of proposed rulemaking with regard to disruptive trading practices and segregation of funds for cleared swaps.

A number of months ago we also set up a 31<sup>st</sup> rulemaking team tasked with developing conforming rules to update the CFTC's existing regulations to take into account the provisions of the Act.

### **End-User Margin**

One of the rules on which the CFTC is working closely with the SEC, the Federal Reserve and other prudential regulators will address margin requirements for swap dealers and major swap participants.

Congress recognized the different levels of risk posed by transactions between financial entities and those that involve non-financial entities, as reflected in the non-financial end-user exception to clearing. Transactions involving non-financial entities do not present the same risk to the financial system as those solely between financial entities. The risk of a crisis spreading throughout the financial system is greater the more interconnected financial companies are to each other. Interconnectedness among financial entities allows one entity's failure to cause uncertainty and possible runs on the funding of other financial entities, which can spread risk and economic harm throughout the economy. Consistent with this, proposed rules on margin requirements should focus only on transactions between financial entities rather than those transactions that involve non-financial end-users.

### **Existing Derivatives Contracts**

Congress provided for the legal certainty for swaps entered into prior to the date of enactment of the Dodd-Frank Act. Questions also have been raised regarding the clearing mandate and margin requirements. With respect to the clearing requirement and margin, I believe that the new rules should apply on a prospective basis only as to transactions entered into after the rules take effect.

### **Financial Stability Oversight Council**

The Dodd-Frank Act established the FSOC to ensure protections for the American public. I am honored to serve on the Council. The financial system should allow people who want to

hedge their risk to do so without concentrating risk. One of the challenges for this Council and for the American public is that like so many other industries, the financial industry has gotten very concentrated. Adding to our challenge is the perverse outcome of the financial crisis, which may be that some in the markets have come to believe that large financial firms will – if in trouble – have the backing of the taxpayers. As it is unlikely that we could ever ensure that no financial institution will fail – because surely, some will in the future – we must do our utmost to ensure that when those challenges arise, the taxpayers are not forced to stand behind those institutions and that these institutions are free to fail.

There are very important decisions that the Council will make, such as determinations about systemically important nonbank financial companies and systemically important financial market utilities and clearinghouses, resolving disputes between agencies and completing important studies as dictated by the Dodd-Frank Act. Though these specific decisions are significant, it is essential that we make sure that the American public doesn't bare the risk of the financial system and that the system works for the American public, investors, small businesses, retirees and homeowners.

The Council's eight current voting members have coordinated closely. Treasury's leadership has been invaluable. To support the FSOC, the CFTC is providing both data and expertise relating to a variety of systemic risks, how those risks can spread through the financial system and the economy and potential ways to mitigate those risks. We also have had the opportunity to coordinate with Treasury and the Council on each of the studies and proposed rules issued by the FSOC.

## **Conclusion**

Before I close, I will briefly address the resource needs of the CFTC. The futures marketplace that the CFTC currently oversees is approximately \$40 trillion in notional amount. The swaps market that the Act tasks the CFTC with regulating has a notional amount roughly seven times the size of that of the futures market and is significantly more complex. Based upon figures compiled by the Office of the Comptroller of the Currency, the largest 25 bank holding companies currently have \$277 trillion notional amount of swaps.

The CFTC's current funding is far less than what is required to properly fulfill our significantly expanded mission. Though we have an excellent, hardworking and talented staff, we just this past year got back to the staff levels that we had in the 1990s. To take on the challenges of our expanded mission, we will need significantly more staff resources and – very importantly – significantly more resources for technology. Technology is critical so that we can be as efficient as an agency as possible in overseeing these vast markets.

The CFTC currently is operating under a continuing resolution that provides funding at an annualized level of \$169 million. The President requested \$261 million for the CFTC in his proposed fiscal year (FY) 2011 budget. This included \$216 million and 745 full-time equivalent employees for pre-reform authorities and \$45 million to provide half of the staff estimated at that time needed to implement the Act. Under the continuing resolution, the Commission has operated in FY 2011 at its FY 2010 level. In the budget released on Monday, the President

requested \$308 million for the CFTC for FY 2012 that would provide for 983 full-time equivalent employees.

Given the resource needs of the CFTC, we are working very closely with self regulatory organizations, including the National Futures Association, to determine what duties and roles they can take on in the swaps markets. Nevertheless, the CFTC has the ultimate statutory authority and responsibility for overseeing these markets. Therefore, it is essential that the CFTC have additional resources to reduce risk and promote transparency in the swaps markets.

Thank you, and I'd be happy to take questions.