

**TESTIMONY OF GARY GENSLER**  
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**BEFORE THE**  
**SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS**  
**WASHINGTON, DC**  
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Good morning Chairman Dodd, 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 honored to appear at today's hearing alongside fellow regulators with whom we are working so closely to implement the Dodd-Frank Act. I also look forward to joining my fellow panelists as members of the new Financial Stability Oversight Council (FSOC). I am pleased to testify on behalf of the Commodity Futures Trading Commission (CFTC). I also thank my fellow Commissioners for their hard work and commitment on implementing the legislation.

Before I move into the testimony, I want to thank Chairman Dodd for his leadership on the Banking Committee and in the Senate. On a personal note, I'd like to thank Chairman Dodd for his support over the last 13 years. I first worked with Chairman Dodd in the late 1990s during my time in the Treasury Department. I again worked closely with Chairman Dodd on the Sarbanes-Oxley Act. He actually introduced the first bill in committee on that issue before Chairman Sarbanes did so. I am honored and pleased to have had this most recent chance to

once again work with Chairman Dodd on what became the Dodd-Frank Wall Street Reform and Consumer Protection Act.

### **Implementing the Dodd-Frank Act**

The Dodd-Frank Act brings three critical reforms to the previously unregulated swaps marketplace. These reforms lower interconnectedness and risk in the financial system while promoting transparency. First, the Act requires swap dealers to come under comprehensive regulation. Second, the Act moves the bulk of the swaps marketplace onto transparent trading facilities – either exchanges or swap execution facilities (SEFs). Third, the Act requires clearing of standardized swaps by regulated clearinghouses to lower risk in the marketplace.

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 Securities and Exchange Commission (SEC), working with our fellow regulators, to write rules generally within 360 days. That means that we have 289 days left. At the CFTC, we have organized our effort around 30 teams who have been actively at work. We had our first meeting with the 30 team leads the day before the President signed the law.

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 Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and other prudential regulators. Within 24 hours of the President signing the Dodd-Frank Act, more than 20 of our rule-writing team leads were meeting at the SEC with their counterparts. Our staff was having similar meetings the following week with staff from the Federal Reserve.

Specifically, our rule-writing teams are working with the Federal Reserve in several critical areas: swap dealer regulation, clearinghouse regulation and swap data repositories, though we are consulting with them on a number of other areas as well. With the SEC, we are working on the entire range of rule-writing, including those previously mentioned as well as trading requirements, real time reporting and key definitions. To the best of our ability, we will be aligning our public meeting schedule with the SEC. Tomorrow, the CFTC will hold a public meeting to consider rules relating to (1) an interim final rule relating to the time frame for reporting pre-enactment unexpired swaps to a swap data repository or to the Commission, (2) proposed rules regarding financial resources of clearing organizations and (3) proposed rules regarding governance of clearinghouses, designated contract markets (DCMs) and SEFs.

Coordination with the SEC, the Federal Reserve and other regulators has been strong both at the staff level and at the Chairman's level. I have personally met with leaders at each of my fellow regulators testifying here this morning, starting the week the President signed the bill. In each circumstance, we have continued the active dialogue, including both exchanging written materials as well as having additional meetings.

In addition to working with our American counterparts, we have reached out to and are actively consulting with international regulators to harmonize our approach to swaps oversight. I returned yesterday from Brussels where I met with senior European regulators. In particular, our early discussions have focused on clearing requirements, clearinghouses more generally and data repositories. Two weeks ago, the European Commission released their detailed proposal to bring regulation to the swaps marketplace. Based upon their release and the Dodd-Frank Act, I am confident that we will bring strong and consistent regulation to the American and European swaps markets. Each of our rule-writing teams will be referring to these new proposals in Europe as we seek consistency in our regulatory approaches.

We also are soliciting broad public input into the rules. This began the day the President signed the Dodd-Frank Act when we listed the 30 rule-writing teams and set up mailboxes for the public to comment directly. We want to engage the public as broadly as possible even before publishing proposed rules.

In some circumstances, we are organizing roundtables with the SEC to hear specifically on particular subjects. We have had three days of meetings to date, which have been very beneficial. So far we have heard 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 SEFs. Based on how helpful these have been, we intend to have additional roundtables in the next month or two.

Additionally, many individuals have asked for meetings with either our staff or Commissioners to discuss swaps regulation. In the first seven weeks after the bill was signed, we had more than 141 such meetings. We are now posting on our website a list of all of the meetings CFTC staff or I have with outside organizations, as well as the participants, issues discussed and all materials given to us.

We plan to actively publish proposed rules in the fall, using weekly public Commission meetings for this purpose. Our first such meeting will be tomorrow at 9:30 am. Public meetings will allow us to propose rules in the open. With each proposed rulemaking, we will solicit public comments for a period not less than 30 days. Since a number of the rules we are publishing have Paperwork Reduction Act requirements and thus must stay open for public comment for at least 60 days, we have to publish our proposed rulemakings quickly. This is as it generally takes us four to six months to review all of the public comments on proposed rules and finalize those rules. Though as with any such plan, some things may be delayed, our current goal is to publish the vast majority of our proposed rules by the end of December.

We already have published one final rulemaking regarding retail foreign exchange transactions. Further, with the SEC, we have published an advanced notice of proposed rulemaking seeking comments on the definitions of key terms in the Dodd-Frank Act.

## **Regulating the Dealers**

Now I will address just a few of the key areas where we will write rules regulating the swaps marketplace. The first is regulating the dealers. Six of our rule teams are focused specifically on this area. One team is working jointly with the SEC on defining key terms, such as “swap dealer” and “major swap participant.” Another team is working on registration requirements for dealers. We also have teams working on business conduct standards, capital and margin requirements and rules for segregating customer funds.

It is estimated that as many as 200 entities may register with the CFTC as swap dealers. This includes:

- Approximately 80 global and regional banks currently known to offer swaps in the U.S. Of the International Swaps and Derivatives Association’s (ISDA) 830 members, 209 are “Primary Members.” Under ISDA’s bylaws, a firm is only eligible for primary member status if it deals in derivatives for purposes other than “risk hedging or asset or liability management.” Though many of the dealers in emerging markets may not seek to register in the U.S., it is likely that most, if not all, of ISDA’s global and international members would;
- Approximately 60 affiliates of existing swap dealers, based upon the Dodd-Frank Act’s Section 716 requirement that banks push out their swaps desks to affiliates;
- Approximately 40 non-bank swap dealers currently offering commodity and other swaps; and
- Approximately 20 potential new market makers that wish to become swap dealers.

I would emphasize, however, that at this point these numbers are only preliminary estimates. The final numbers will, of course, depend upon the decisions of market participants as well as the outcome of the rulemaking process.

In addition to regulating dealers, we also are tasked with regulating major swap participants. The major swap participant category is comprised of entities that are not swap dealers but whose participation in the swaps market is substantial enough to significantly affect or present systemic risks to the economy or the financial system as a whole.

### **Transparent Trading Requirement**

In addition to regulating swap dealers, the Dodd-Frank Act brings transparency to the swaps marketplace by requiring standardized swaps to trade on exchanges or SEFs. A SEF is “a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants.” We have five teams focused on writing rules related to trading. It is anticipated that as many as 30 new entities will register as SEFs or DCMs. That is in addition to the 16 futures exchanges that we already regulate.

Congress also mandated that if a swap both is clearable and it is “made available for trading” on a SEF or an exchange, then there is a mandate that it be traded on such a facility. Congress also has been very specific that market participants and end-users will benefit from real time reporting and that such post-trade transparency must be achieved “as soon as technologically practicable” after a swap is executed. Further, the statute says that one of the

goals of SEFs is “to promote pre-trade transparency in the swaps market,” though it appropriately authorizes the CFTC to write rules to facilitate block trades.

### **Centralized Clearing**

The Dodd-Frank Act requires that standardized derivatives be cleared through central clearinghouses. At the CFTC, we have six teams focused on rules related to clearing, including determining which contracts will be subject to the mandatory clearing requirement. Though we do not yet know the total number of contracts that will be submitted for clearing, and the Commission may be able to group many by class, the largest swaps clearinghouse currently clears nearly one million unique contracts. It is anticipated that the number of registered derivatives clearing organizations will increase from 14 to around 20 as a result of the Dodd-Frank Act.

Furthermore, for the first time, some derivatives clearinghouses may be designated systemically important by the FSOC. For those clearinghouses, there will be enhanced rules for financial resources, risk management and other prudential standards. In this regard, we are consulting very closely with the Federal Reserve and international regulators. We recognize the need for very robust risk management standards, particularly as more swaps are moved into central clearinghouses.

### **Data**

Moreover, the Dodd-Frank Act for the first time sets up a new registration category called swap data repositories (SDRs). The bill requires registrants – including swap dealers, major swap participants, SEFs and DCMs – to have robust recordkeeping and reporting, including an audit trail, for swaps, and to report each swap to an SDR or to the regulators.

We anticipate rules in this area to require SDRs to perform their core function of collecting and maintaining swaps data and making it directly and electronically available to regulators. We also anticipate rules governing how data must be maintained by registrants and sent to the data repositories.

### **Position Limits**

In January, the CFTC proposed rules to restore position limits in the four major energy futures contracts. Position limits have long been relied upon in futures market regulation to address the effects of excessive speculation and position concentration. Fixed limits that had been in effect for energy contracts were removed in 2001. Under the Dodd-Frank Act, the CFTC now is required to publish rules setting aggregate position limits on exempt and agricultural commodities across markets, including futures, swaps that perform significant price discovery functions and linked contracts on foreign boards of trade that operate in the U.S. As a result, the CFTC has withdrawn its January proposed rule and will build off that proposal and comments that were received as we write a new rule that satisfies the Dodd-Frank Act's mandate.

The Commission currently administers position limits on nine exchange-listed agricultural futures contracts. Under the Dodd-Frank Act, the CFTC is required to set position limits on more than 30 commodities. In general, the Act requires that rules establishing position limits be completed within 180 days from the date of enactment for energy and metals and within 270 days for agricultural contracts.

### **Foreign Boards of Trade**

The Dodd-Frank Act empowers the CFTC to require that a foreign board of trade (FBOT) offering direct access to U.S. persons register with the Commission. This requirement replaces the agency's no-action regime, under which FBOTs were permitted to offer access to U.S. investors upon meeting certain conditions.

### **Conclusion**

The next year of rule writing will test the very talented staff of the CFTC. Our staff has significant expertise regulating the on-exchange derivatives markets that will translate well into regulating the over-the-counter swaps markets. Still, we need significant new resources.

The President's budget called for \$261 million for the CFTC for fiscal year 2011, which is a substantial boost in funding. The House Appropriations Subcommittee with jurisdiction over the CFTC matched the President's request. The Senate Appropriations Subcommittee with jurisdiction over the CFTC boosted that amount to \$286 million. Though we have the resources

to write the rules required by Dodd-Frank, we will need more staff to implement and enforce them in the years to come.

The CFTC faces challenges in the months ahead, but we are prepared and geared up to meet those challenges. We look forward to continuing our excellent collaboration with other regulators to implement the Dodd-Frank Act. Thank you, and I'd be happy to take questions.