

**TESTIMONY OF GARY GENSLER
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BEFORE THE
U.S. SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC
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Good afternoon Chairman Johnson, Ranking Member Shelby and members of the Committee. I thank you for inviting me to today's hearing on implementing Title VII of 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 pleased to testify alongside my fellow regulators from the Securities and Exchange Commission (SEC), Federal Reserve and Treasury Department.

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 made similar amendments to securities laws for security-based swaps. Title VII of the Act 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

The CFTC has overseen clearinghouses for decades. Title VIII of the Dodd-Frank Act provides for enhanced oversight of these clearinghouses. In close consultation with our fellow domestic and international regulators, and particularly with the Federal Reserve and the SEC, the CFTC proposed rulemakings on risk management for clearinghouses. These rulemakings take account of relevant international standards, particularly those developed by the Committee on

Payment and Settlement Systems and the International Organization of Securities Commissions (CPSS-IOSCO).

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.

The FSOC proposed a rule last month that complements the CFTC's rulemaking efforts. Public input will be valuable in determining how the Council should apply statutory criteria to determine which clearinghouses qualify for designation as systemically important.

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 the 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 had our first meeting with the 30 team leads the day before the President signed the law.

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

The CFTC is working deliberatively 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. We have thus far proposed rulemakings or interpretive orders in 28 of the 31 areas.

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.

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 Federal Deposit Insurance Corporation, the Office of the Controller of the Currency and other prudential regulators, which includes sharing many of our memos, term sheets and draft work products. We also are working closely with the Treasury Department and the new Office of Financial Research. As of Friday, CFTC staff has had 598 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. Three weeks ago, I traveled to Brussels to meet with the European Parliament's Economic and Monetary Affairs Committee and discuss the most important features of swaps oversight reform.

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 and have set up mailboxes for the public to comment directly prior to the Commission's rulemaking process. As of yesterday, we

had received 2,907 submissions from the public through the email inboxes as well as 8,991 official comments in response to notices of proposed rulemaking.

For the vast majority of proposed rulemakings, we have solicited public comments for a period of 60 days. On some occasions, the public comment period lasted 30 days.

Additionally, many individuals have asked for meetings with either our staff or Commissioners to discuss swaps regulation. As of yesterday, we have had 675 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.

At this point in the process, the CFTC has come to a natural pause as we have now promulgated proposals in most of the areas. As we receive comments from the public, we are looking at the whole mosaic of rules and how they interrelate. We will begin considering final rules only after staff can analyze, summarize and consider comments, after the Commissioners are able to discuss the comments and provide feedback to staff, and after the Commission consults with fellow regulators on the rules. We hope to move forward in the spring, summer and fall with final rules.

One component that we have asked the public about is phasing of implementation. The Dodd-Frank Act gave the CFTC flexibility as to setting implementation or effective dates of the rules to implement the Dodd-Frank Act. For example, even if we finish finalizing rules in a particular order, that doesn't mean that the rules will be required to become effective in that order. Effective dates and implementation schedules for certain rules may be conditioned upon other rules being finalized, their effective dates and the associated implementation schedules. For instance, the effective dates of some final rules may come only after the CFTC and SEC jointly finalize the entity or product definitions rules.

The Commission has the authority to phase implementation dates based upon a number of factors, including asset class, type of market participant and whether the requirement would apply to market platforms, like clearinghouses, or to specific transactions, such as real time reporting. For example, a rule might become effective for one asset class or one group of market participants before it is effective for other asset classes or other groups of market participants. We are looking to phase in implementation, considering the whole mosaic of rules. We look forward to hearing from market participants and regulators, both in the U.S. and abroad, regarding the phasing of implementation.

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.

Conclusion

Before I close, I will briefly address the resource needs of the CFTC. The futures marketplace that the CFTC currently oversees is approximately \$36 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 OCC, 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 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 \$168.8 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. The President's FY 2012 budget request included \$308 million for the CFTC and 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.