Gary Gensler, chairman of the Commodity Futures Trading Commission speaks at the George Washington University Law School on October 23, 2009 in Washington, DC. The law school held a symposium on regulatory reform and the response to the financial crisis.

(Photo by Mark Wilson/Getty Images)

In the Tradition of Quality Reporting, the Commodity Futures Trading Commission Proudly Presents the FY 2010 Performance and Accountability Report

A Message from the Chairman

Two years ago, the financial system and the financial regulatory system failed. This summer, the Administration and the Congress responded by enacting the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Dodd-Frank Act will—for the first time—bring comprehensive regulation to the swaps marketplace. Swaps dealers will be subject to robust oversight. Standardized swaps will be required to trade on open platforms and be submitted for clearing to central counterparties, all of which will be subject to Federal regulation and supervision. The CFTC looks forward to implementing the Dodd-Frank Act to help lower risk, promote transparency, and protect the American public.

Dodd-Frank and the CFTC

The CFTC and its predecessor agencies have regulated derivatives since the 1920s. The first derivatives—called futures—began trading at the time of the Civil War, when grain merchants came together and created this new marketplace. It took nearly 60 years until Congress first regulated the futures markets. President Franklin Roosevelt and the Congress significantly strengthened this regulatory regime with the passage of the Commodity Exchange Act (CEA) in 1936.

The CFTC ensures that commodity futures and options exchanges have procedures to protect market participants and ensure fair and orderly trading that is free from fraud, manipulation, and other abuses. The CFTC registers and oversees futures clearinghouses, known as derivatives clearing organizations (DCOs), to ensure that they have appropriate risk management standards. The Commission has wide-ranging transparency efforts designed to provide aggregate information about commodity futures markets and trading to the American public. The agency also uses its broad surveillance powers to police the markets.

The CFTC is now tasked with bringing its regulatory expertise to the swaps marketplace. Though the Commission has much experience regulating the on-exchange derivatives marketplace—having done so for more than 70 years—the Dodd-Frank Act presents new responsibilities and authorities. The futures marketplace that the CFTC currently oversees is a $39 trillion industry in notional amount. The swaps market that the Dodd-Frank Act tasks the CFTC with regulating has a far larger notional amount. The Office of the Comptroller of the Currency estimates that, as of the first quarter of 2010, swaps entered into by U.S. commercial banks have a notional amount of $217 trillion. Others estimate that the market could be as big as $300 trillion in the United States alone, or roughly nine times the size of the futures markets.

President Barack Obama meets with regulators in the Roosevelt Room of the White House, Washington, DC. (L-R) Senior Advisor and Assistant to the President Valerie Jarrett (back), Comptroller of the Currency John C. Dugan, U.S. Securities and Exchange Commission Mary Shapiro, US Secretary of the Treasury, Timothy Geithner, President Obama, US Chairman of the Board of Governors Ben Bernanke, Chairman of the U.S. Federal Deposit Insurance Corporation Sheila Bair, Chairman of the U.S. Commodity Futures Trading Commission Gary Gensler.

(Photo by Aude Guerrucci/Pool/Corbis)

In bringing oversight to the swaps market, Congress built upon strengths from the futures marketplace. Futures and swaps are both derivatives. It is only natural that Congress would treat them similarly and apply similar protections to both markets.

While the swaps marketplace has only been around since the 1980s, the futures marketplace has existed since the 1860s. The CFTC and its predecessor agencies have been regulating and working with the futures markets since the 1920s. The Dodd-Frank Act builds upon the benefits of clearing in the futures markets. It builds upon the transparency that centralized trading brings to the futures markets. It builds upon the concept that intermediaries should be regulated to lower risk in the markets.

To implement the Dodd-Frank Act, the CFTC is consulting heavily with both other regulators and the broader public. We are working very closely with the Securities and Exchange Commission (SEC), the Federal Reserve, other prudential regulators. We also are working closely with international regulators to promote effective and consistent regulation of the swaps markets. In addition, we 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 submit their views directly. We want to engage the public as broadly as possible throughout the rule-writing process.

In addition to setting up mailboxes for the public to comment, we also have organized public roundtables to hear on particular subjects. Additionally, many individuals have asked for meetings with the CFTC to discuss swaps regulation. We have had hundreds of such meetings. Just as we believe in bringing transparency to the swaps markets, we also have added additional transparency to our rule-writing efforts. We are now posting on our Web site a list of all of our meetings, as well as the participants, issues discussed and all materials given to us.

The challenge before the agency is significant, but manageable, provided we are sufficiently resourced. The Commission has begun writing proposed rulemakings and will continue publishing proposals in the coming months. The Dodd-Frank Act requires the CFTC to complete rules generally by July 15, 2011.

Futures and Options Markets

The CFTC is working to fulfill its mission to protect market users and the public in the commodity futures and options markets. The Commission polices the markets to protect against fraud, manipulation and abusive practices and works to foster open, competitive and financially sound futures and options markets.

In FY 2010, the CFTC fulfilled its statutory obligations under the Food, Conservation, and Energy Act (Farm Bill) of 2008 to regulate certain derivatives, including energy derivatives traded on exempt commercial markets (ECMs). These "significant price discovery contracts" and the facilities on which they trade are subject to heightened regulation and must comply with key core principles that also apply to the trading of futures contracts. For example, the Commission found that the highest-volume natural gas contract on the Intercontinental Exchange (ICE)— among others—performs a significant price discovery function. ICE is now regulated for this contract in accordance with the core principles laid out in the Farm Bill.

As directed by the Farm Bill, the CFTC also finalized new regulations with respect to off-exchange retail foreign currency (forex) transactions. The rules establish standards to promote fair dealings, require honest and meaningful risk and performance disclosure, and impose dealer capital requirements.

The CFTC vigorously policed the markets for fraud, manipulation and other unlawful conduct. In the last fiscal year, the agency filed 57 enforcement actions, constituting a 14 percent increase in filings over the prior year. Commission enforcement actions resulted in more than $121 million in civil monetary penalties and $65 million in restitution and disgorgement from respondents and defendants in CFTC enforcement actions.

Sen. Susan Collins, R-Maine, the ranking Republican of the Senate Financial Services and General Government subcommittee, center, talks with Securities and Exchange Commission (SEC) Chair Mary Schapiro, left, and Commodities Futures Trading Commission (CFTC) Chairman Gary Gensler, on Capitol Hill in Washington, Wednesday, April 28, 2010, prior to the start of the subcommittee's hearing on proposed fiscal 2011 appropriations for the CFTC and for the SEC. (AP Photo/Harry Hamburg)

The CFTC implemented new transparency efforts to give more accurate depictions of the makeup of the futures markets to the public. In FY 2009, we began disaggregating our weekly Commitments of Traders (COT) reports to provide the public with information about swap dealers and managed accounts. In FY 2010, we improved upon this technology initiative by beginning to release data on index investors on a monthly basis. Furthermore, we have begun releasing a new weekly "*Traders in Financial Futures*" report, which—for the first time—breaks out dealers, asset managers, leveraged funds and others in the financial futures markets.

In January 2010, the CFTC proposed rules to restore position limits in the four major energy futures contracts. Position limits have been used in futures market regulation to address

Gary Gensler, chairman of the Commodity Futures Trading Commission (CFTC), speaks to reporter following a Senate Banking Committee hearing on the causes and lessons of the May 6 stock market plunge in Washington, D.C., U.S., on Thursday, May 20, 2010. U.S. regulators, responding to this month's market crash, pledged to examine whether new rules are needed for stock and futures traders who use automated computer strategies to execute thousands of transactions in milliseconds. *(Photo by Andrew Harrer/Bloomberg via Getty Images)*

the effects of excessive speculation and position concentration. Limits that had been in effect for energy contracts were removed in 2001. The CFTC has since withdrawn the proposed rulemaking and will re-issue a proposal that fulfills new requirements in the Dodd-Frank Act.

In addition to working closely with the SEC on Dodd-Frank implementation, we have been coordinating on a broad range of regulatory matters. For the first time in our history, we have set up a joint advisory committee on emerging regulatory issues. We are working together to review the contributing factors of unusual market events on May 6, 2010. Staff released a joint report on those events on May 18, 2010, and released a supplemental report with additional findings on October 1, 2010.

This year, the CFTC reestablished the Technology Advisory Committee, which held its first meeting since 2005. The Committee will play a significant role in informing the Commission of emerging technology and challenges so that we can best regulate the markets and protect the American public.

The CFTC received for the sixth consecutive year an unqualified opinion on our financial statements. For the fourth consecutive year, the auditors disclosed no material instances of noncompliance with laws and regulations. I can also report that we had no material internal control weaknesses and that our financial and performance data in this report are reliable and complete under the Office of Management and Budget (OMB's) guidance.

Conclusion

The CFTC faces many challenges in the months ahead. I note the thoughtful work of the staff and Commissioners in the oversight of the futures markets and in implementing the Dodd-Frank Act. We are working hard to update our organization and information technology to reflect our evolving mission. The CFTC intends to publish a new strategic plan in February 2011 that will be the foundation for the FY 2013 performance budget.

Through vigorous oversight of the swaps market and commodity futures and options markets, we must close the gaps in our regulatory structure that left the nation unprepared and unable to respond quickly to the rapidly-evolving markets. Only through strong, intelligent regulation—coupled with aggressive enforcement mechanisms—can we fully protect the American people and keep our economy strong.

Gary Gensler

November 15, 2010