U.S. COMMODITY FUTURES TRADING COMMISSION
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Office of the General Counsel

November 7, 2011

Cass R. Sunstein
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Executive Office of the President
725 17th Street, NW
Washington, DC 20503

Re: Status Report on "Phase One" of the Commodity Futures Trading Commission's Plan for Retrospective Review of Agency Regulations under Executive Order 13563

Dear Administrator Sunstein:

This is to apprise you of the status of "Phase One" of the Commodity Futures Trading Commission's ("CFTC" or "Commission") Plan for Retrospective Review of Agency Regulations under Executive Order 13563 ("CFTC Plan" or "Plan"). The CFTC, an independent regulatory agency, voluntarily developed the Plan and published it in the Federal Register on June 30, 2011 (76 FR 38328, June 30, 2011) (entitled "Reducing Regulatory Burden: Retrospective Review under E.O. 13563"). In addition, as part of its ongoing efforts to implement the Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), the Commission has had the opportunity to modernize a significant portion of its existing regulatory scheme.

The CFTC Plan

The CFTC's Plan consists of two phases. In its Federal Register release, the CFTC observed that "[i]n determining the extent to which [the CFTC's] existing regulations have needed to be modified to conform to the Dodd-Frank Act's new requirements, the Commission already has subjected many of its rules to scrutiny." Accordingly, the CFTC stated, "'Phase One' of the Commission's retrospective review of its existing regulations is (and has been) well underway as a significant effort prior to the issuance of Executive Order 13563 and the [February 2, 2011] OIRA Memorandum."

Since the initial issuance of the Plan, the Commission has examined and revised a number of its existing regulations as part of its implementation of the Dodd-Frank Act. The Commission has reviewed and revised its regulations interpreting and applying the core principles for Derivatives Clearing Organizations. In promulgating regulations to implement the new anti-manipulation authority provided by the Dodd-Frank Act, the Commission reviewed, sought comment on, and issued new regulations clarifying its existing anti-manipulation authority. Similarly, in promulgating regulations to implement the Commission's new authority and mandate to establish position limits in energy, metals, and agricultural markets, the Commission reviewed, sought comment on, and revised its regulations regarding position limits and the bona fide hedging exemption from those limits.

This review also has included a number of proposed rulemakings to implement the Dodd-Frank Act. These proposed rulemakings address the revised core principles for Designated Contract Markets, as well as proposals concerning new categories of registrants and registered entities such as Swap Dealers, Swap Execution Facilities, and Swap Data Repositories. As part of these proposed rulemakings, the Commission has taken the opportunity to propose to update the existing regulatory structure.

In addition to the review undertaken coincident with the implementation of the Dodd-Frank Act, the CFTC has identified and proposed a number of rulemakings addressing: (i) conforming amendments to its regulations regarding the adaptation of regulations to incorporate swaps under 17 CFR Parts 1, 5, 7, 8, 15, 18, 21, 36, 41, 140, 145, 155, and 166 (76 FR 33066, June 7, 2011); (ii) the registration of intermediaries under 17 CFR Part 3 (76 FR 12888, Mar. 9, 2011); and (iii) the requirements under 17 CFR Part 4 governing the operations and activities of Commodity Pool Operators and Commodity Trading Advisors consistent with the Dodd-Frank Act (76 FR 11701, Mar. 3, 2011). The Commission continues to review comments concerning these proposals and expects to consider them further during the next year. The Commission also recently finalized a rule to adopt a more efficient expedited review process for the offer or sale, to persons in the U.S., of certain non-narrow-based security index futures contracts traded on foreign boards of trade (76 FR 59242, Sep. 26, 2011).

The CFTC Plan further stated that "[a]fter the substantial completion of the promulgation of final rules under the Dodd-Frank rulemaking process, including the revision of various existing Commission regulations to conform to the requirements of the Dodd-Frank legislation, the Commission intends to begin the process of the periodic, retrospective review of the remainder of its regulations (*i.e.*, those regulations that were not reviewed as part of the Dodd-Frank effort." This latter process, the CFTC explained, will constitute "Phase Two" of the Commission's retrospective review.

In addition to the two phases of its Plan, the Commission also notes that last year it concluded a comprehensive review of the no-action letters that previously had been issued. Those letters have been posted to the Commission's website in order to enhance transparency and give the public access to them. In this way, the CFTC intends to include substantially all of the existing regulatory structure, both rules and other agency actions, within its retrospective review while continuing to implement the Dodd-Frank Act, consistent with Congressional intent.

Comments Received on the CFTC Plan

The CFTC has received 3 comment letters regarding the CFTC Plan:

Minneapolis Grain Exchange (MGE)
The MGE supports periodic review of CFTC regulations. It recommends that the CFTC not rush to implement the list of outstanding rulemakings only to have to harmonize them afterwards. The MGE also recommends shifting many of the proposed rulemakings to Phase 2 because they are not required by the Dodd-Frank Act. It suggests that the CFTC establish a schedule to review the rules for both Phase 1 and Phase 2 of its review. MGE recommends in general that the CFTC continue to apply the core principle approach to regulation that has proved a successful model for the futures industry. The MGE supports an enhanced cost-benefit analysis.

National Rural Utilities Cooperative Finance Corporation (NRUCFC)
NRUCFC urges that the Commission pay special attention to very specific exclusions that Congress included in the Dodd-Frank Act. The NRUCFC attached a summary of specific statutory provisions that, it says, provide the CFTC with the authority to exempt NRUCFC, as a rural electric cooperative, from clearing and margin requirements.

Chicago Mercantile Exchange (CME)
The CME states that the agency has not provided a reasoned analysis of why the proposed rules justify their costs, and has not tailored the new regulations to make them minimally burdensome and costly. It recommends that the CFTC re-issue its cost-benefit analyses for its proposed rules under the Dodd-Frank Act and allow comment by interested parties on the revised analyses. The CME criticizes what it characterizes as the prescriptive nature. It argues for a principles-based regulatory regime because that approach facilitated growth and innovation, and it performed essential functions during the financial crisis in 2008. The CME further maintains that the new rules are not in harmony with international regulators.

Going Forward

The Commission continues to review the comments that it has received with respect to specific Dodd-Frank Act implementing proposals as well as the conforming amendments that it has proposed. As noted above, once the Commission completes the implementation of the Dodd-Frank Act, it will begin a periodic retrospective review of these regulations to assess their consequences.

Sincerely,

Dan M. Berkovitz
General Counsel