U.S. House of Representatives
Committee on Agriculture
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June 10, 2011

The Honorable Gary Gensler
Chairman
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Chairman Gensler,

For the last several months, Members of our Committee as well as the regulated community have stressed the need to reduce uncertainty associated with implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

As you know, as many as 175 of the provisions of Title VII arguably could automatically take effect on July 16, 2011. For those provisions that require a rulemaking, the Commodity Futures Trading Commission (CFTC) has the flexibility to establish the effective date for a statutory provision after July 16, 2011, but not less than 60 days after publication of the final rule implementing the provision. As you have noted Chairman, despite your best efforts the CFTC will not complete any, let alone, all of its Dodd-Frank rules by July 16. Therefore, some Dodd-Frank provisions will become effective before the rules establishing a comprehensive regulatory regime.

We commend you for acknowledging that it is far more important to our economy to get the regulations right than to complete them through a rushed and incomplete consideration process in order to comply with an illusory deadline. However, there are important issues that must be addressed because of the uncertainty regarding which statutory provisions take effect on July 16 and which do not because they relate to regulatory proposals currently under consideration by the CFTC.

As July 16 rapidly approaches, we are hearing escalating concerns from market participants that the Commission's failure to identify which Dodd-Frank provisions take effect on July 16 and which will not has already raised a multitude of legal and pragmatic questions and complexities. These questions have created significant uncertainty and costs. And, there remains the potential for substantial market disruption in the future.

On May 23, a petition was submitted to the CFTC by several trade associations representing suppliers of electric power across the country, "Electric Trade Associations." The petition seeks exemptive relief under Section 723(c)(1) of the Dodd-Frank Act, to allow these businesses to continue to rely on the exemptions in Section 2(h) of the Commodity Exchange Act (CEA) come July 16. As the petition states, if the CFTC grants this request, it "will allow members of the Electric Trade Associations to continue their existing business practices which are focused on providing reliable, affordable power supply and which also take into account concerns related to price stability and predictability until such time as new rules are finalized and implemented." This is only one example of potentially numerous other such petitions, as well as, a multitude of other legal issues that will arise.

We appreciate that the CFTC has announced it will hold a public meeting on June 14 to consider the effective dates of the provisions in Title VII. We would ask that you address the following questions in the public meeting to bring clarity and certainty to market participants in advance of July 16:

1.) How does the CFTC intend to address the lack of legal certainty for swaps contracts on July 16?

2.) Does the CFTC intend to grant petitions asking for grandfather relief under Section 723(c)(1)?

3.) Section 723(c) (1) only applies to Section 2(h) of the CEA. However, Section 723 (a)(2) preserves the Commission's authority in 4(c) of the CEA allowing the CFTC to exempt swap transactions from Dodd-Frank compliance. Will the Commission use this authority to provide exemptive relief for market participants and transactions operating under 2(d) and 2(g) of the CEA?

4.) How will the CFTC address the legal status of market participants on July 16? For example, once the swap definition is effective on July 16, any person engaged in soliciting or accepting orders for swaps must then be registered with the CFTC as an introducing broker. Swaps were added to the "introducing broker" definition by Dodd-Frank. CEA Section 4d(g) makes it unlawful for any person to be an "introducing broker" unless registered with the CFTC. Will any entity that solicits or accepts an order for a swap on or after July 16 be required to be registered with the CFTC as an IB? Will the Dodd-Frank Act's "swap" definition be effective on July 16 or will it be deferred until the Commission has completed its required rulemaking with the Securities Exchange Commission (SEC) to implement that definition?

5.) Also, new CEA § 4s(a)(1) as amended by Dodd-Frank requires swap dealers to register with the CFTC. No CFTC rules are required to implement that requirement or the statutory swap dealer definition in CEA 1a(49). Will entities be required to register with the CFTC as swap dealers on July 16?

6.) Section 754 of Title VII ties the effectiveness of statutory provisions to the effective date of Commission regulations that must be finalized in order to facilitate compliance with such provisions. How do you propose to proceed in light of Section 754 in order to ensure an orderly implementation of Title VII?

7.) In addition, what, if any, actions can the CFTC take to ensure that transactions and market participants are not exposed to unnecessary litigation risk?

8.) Is the CFTC coordinating with the SEC to ensure the agencies respond in a manner that is equivalent and concurrent?

Sincerely,

Frank D. Lucas

Frank D. Lucas,
Chairman