

U.S. House of Representatives
Committee on Agriculture
Washington, DC 20515

January 26, 2011

Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St NW
Washington D.C. 20581

Dear Chairman Gensler:

As you know, President Obama recently released an Executive Order issuing principles and instructions to certain federal agencies and departments for improving regulation and regulatory review to supplement existing Executive Order 12866. However, as an independent federal agency, the Commodity Futures Trading Commission (CFTC) is exempt from the order. As a principal implementing agency of an unprecedented number of new regulations required under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), I am writing to strongly recommend that you voluntarily submit your agency to adhere to the order.

The principles and guidance in the order are straightforward: regulators should evaluate costs and benefits before issuing regulations, foster open debate and dialogue about pending rules, and among other things, minimize the burden new regulations impose upon businesses. Simply put, it acknowledges that agencies can achieve regulatory objectives without encumbering our economy and our nation's job creators – large and small – with unnecessary or misguided regulation.

Adhering to the President's order would respond to legitimate and growing concerns from businesses across the country about the rulemaking process underway at the CFTC. Title VII has the potential to impact every segment of the economy – from financial firms to farmers, manufacturers to health care companies, technology firms to real estate developers. The wide ranging impact Title VII will have on the economy alone warrants a commitment to uphold the same standard of review that the President has set for other federal agencies.

In addition, the speed with which the CFTC is issuing rules¹ raises several concerns about the capacity of both the CFTC and stakeholders to adequately analyze costs and benefits and identify implications of the rules. For example, in a comment letter recently filed with the CFTC, the Working Group of Commercial Energy Firms highlights the substantial underestimation of costs by the Commission when performing cost-benefit analyses.² The Working Group's calculation of the man-hours necessary to comply with the Commission's rule regarding duties of Swap Dealers and Major Swap Participants was **63** times greater than that of the Commission's.

¹ http://www.capmktreg.org/pdfs/2010.12.15_Rulemaking_Timeline_Letter.pdf

² <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26748&SearchText=>

Further, by prioritizing speed over deliberation in writing rules, the CFTC has created an irrational sequence of rule proposals that prevents stakeholders and the public from providing meaningful comments after rules are proposed. Because so many of the rule proposals hinge upon components of other rules and/or categories of rules, how has the Commission had the information necessary to understand the impact of the rules currently being written when all of the rules are implemented comprehensively? For example, in November the Commission proposed rules related to business conduct standards for Major Swap Participants and Swap Dealers³. However, the rule providing clarification of the types of entities that would be Swap Dealers or Major Swap Participants was not issued until late December⁴. How did the Commission staff responsible for drafting the proposed rules for business conduct standards perform an adequate cost-benefit analysis without a clear understanding of the universe of entities to which the rules would apply? How were stakeholders and the public to provide meaningful input? Is the period of time provided for rulemaking under Title VII sufficient to conduct careful and accurate cost benefit analyses and to propose rules in a sequence that supports useful public comment?

The CFTC should make a commitment to enhance the CFTC's practices and methodologies for analyzing and calculating a cost benefit analysis of the regulations, consistent with the principles in Section 1(b) of the order to "propose or adopt a regulation only upon a reasonable determination that its benefits justify its costs," and to "tailor...regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account...the costs of cumulative regulations."

I recognize the challenges you face in meeting the responsibilities delegated to you by Dodd-Frank, and appreciate and commend the time and effort you and your staff have put forth. Using the authority you have to comply with the President's order and slow the process, rationalize the sequence of rules, and improve the quality of cost-benefit analysis will give the public a more meaningful opportunity to provide input, and help to mitigate negative and unintended consequences to our economy.

Thank you for your attention to this letter. I look forward to your response.

Sincerely,



Frank D. Lucas
Chairman
Committee on Agriculture



K. Michael Conaway
Chairman
Subcommittee on General Farm
Commodities and Risk Management

³ *Implementation of Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants*, 75 Federal Register 71391, (Nov. 23, 2010).

⁴ *Further Definition of Swap Dealer, Security-Based Swap Dealer, Major Swap Participant, Major Security-Based Swap Participant, and Eligible Contract Participant*, 75 Federal Register 80174 (Dec. 21, 2010).