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BEFORE THE
U.S. HOUSE FINANCIAL SERVICES SUBCOMMITTEE ON CAPITAL MARKETS
AND GOVERNMENT SPONSORED ENTERPRISES
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Good morning Chairman Garrett, Ranking Member Waters and members of the Subcommittee. I thank you for inviting me to today's hearing on implementation of Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) swaps market reforms. I would like to thank Robert Cook from the Securities and Exchange Commission (SEC). I'd also like to thank my friend, Chairman Mary Schapiro, who has been a terrific partner. Our agencies have consistently coordinated on this reform effort. I also want to thank my fellow Commissioners and the CFTC staff for their hard work and dedication.

The New Era of Swaps Market Reform

Swaps market reform is now becoming a reality. The marketplace is increasingly shifting to implementation of the common-sense rules of the road that Congress included in the Dodd-Frank Act.

The financial crisis cost eight million American jobs, millions of people lost their homes, and thousands of businesses closed their doors – in part because of the unregulated swaps market. In the aftermath of the crisis, President Obama convened the G-20 leaders in Pittsburgh in 2009. They came to an international consensus that the opaque swaps market should be brought into the light through transparency and oversight, and that standardized swaps between financial entities should be centrally cleared by the end of 2012.

In 2010, Congress and President Obama came together to pass the historic Dodd-Frank Act. The key objectives of the law's swaps provisions are:

- Lowering the risk of the interconnected financial system by bringing standardized swaps into centralized clearing;
- Bringing public transparency to the marketplace; and
- Ensuring that swap dealers and major swap participants are specifically regulated for their swaps activity.

The CFTC has made significant progress in each of these areas. October 12, given the completed foundational definition rules, marked the new era of swaps market reform.

As a result of completed reforms:

- Standardized swaps between financial entities will be cleared starting in March, fulfilling the U.S. commitment at the G-20 meeting in Pittsburgh;

- Initial data reporting to regulators has begun and will be expanded as swap dealers report their transactions. The public will benefit from real-time reporting early next year; and
- Swap dealers have begun the process of registering, and we anticipate many dealers will do so later this month.

With 42 finalized swaps market reforms, the CFTC has completed about 80 percent of the Dodd-Frank swaps rules. We are seeking to consider and finalize the remaining rules in the first half of 2013. I believe it's also critical that we continue our efforts to put in place aggregate speculative position limits across futures and swaps on physical commodities, as Congress directed the CFTC to do.

Throughout this process, the CFTC has worked toward a smooth transition to a transparent, regulated swaps marketplace and has phased in the timing for compliance to give market participants appropriate time to adjust.

I will now go into further detail on the Commission's swaps market reform efforts.

Lowering Risk and Democratizing the Market through Clearing

Central clearing, the first building block of Dodd-Frank reform, lowers the risk of the highly interconnected financial system. It also broadens access to many more market participants, as they no longer will have to individually determine counterparty credit risk.

Now clearinghouses will stand between buyers and sellers. This broadened access through central clearing will help promote greater competition and lower costs to users of swaps.

Clearinghouses have lowered risk for the public and fostered competition in the futures markets since the late 19th century. Now central clearing will do the same for the swaps market.

A key milestone was reached last month with the adoption of the first clearing requirement determinations. This follows through on the U.S. commitment at the G-20 meeting that standardized swaps between financial entities should be brought into central clearing by the end of 2012. The vast majority of interest rate swaps and credit default index swaps will be brought into central clearing. Swap dealers and the largest hedge funds will be required to clear in March, and compliance will be phased in for other market participants through the summer of 2013. Consistent with congressional intent, the CFTC finalized rules to ensure that end-users using swaps to hedge or mitigate commercial risk will not be required to bring swaps into central clearing. The CFTC will continue working with market participants on implementation.

Promoting Transparency

Transparency, the second building block of reform, lowers costs for investors, consumers and businesses. It increases liquidity, efficiency and competition. It provides

critical pricing information to businesses across the country that use swaps markets to lock in a price or hedge a risk.

Bright lights have begun to shine on the swaps market. As a result, swaps transactions are being reported to regulators through swap data repositories. The public also will benefit from real-time reporting of the price and volume of transactions beginning in early 2013, based on rules the CFTC completed in 2011. In addition, the daily valuation over the life of uncleared swaps will be provided to each counterparty. For cleared swaps, it will be provided to the public as well. With these transparency reforms, the public and regulators will have their first full window into the swaps marketplace, a fundamental shift that Congress included in the Dodd-Frank Act.

Looking ahead, Commissioners are now reviewing final rules that would allow market participants to view the prices of available bids and offers. These reforms on trading platforms called swap execution facilities (SEFs) and minimum block sizes will bring pre-trade transparency to the swaps market, further enhancing liquidity and price competition. These rules will build on the democratization of the swaps market that comes with the clearing of standardized swaps.

Promoting Market Integrity and Lowering Risk through Swap Dealer Oversight

Comprehensive oversight of swap dealers, the third building block of reform, will promote market integrity and lower their risk to taxpayers and the rest of the economy.

As the result of CFTC rules completed in the first half of this year, swap dealers have begun the process of registering and, for the first time, will come under comprehensive oversight. We anticipate many dealers will register by the end of this month.

Once swaps dealers register, they will report their trades with U.S. persons to both regulators and the public. In addition, they will implement crucial back office standards that lower risk and increase integrity. These include promoting the timely confirmation of trades and documentation of the trading relationship. Swap dealers also will be required to implement sales practice standards that prohibit fraud, treat customers fairly and improve transparency. These reforms will be phased in next year.

We are collaborating closely internationally on a global approach to margin requirements for uncleared swaps through the Basel Committee on Banking Supervision and the International Organization of Securities Commissions (IOSCO). I would anticipate that the CFTC, in consultation with European regulators, would take up the margin rules, as well as related rules on capital, next year with the benefit of this international work.

International Coordination on Swaps Market Reform

In enacting financial reform, Congress recognized the basic lessons of modern finance and the 2008 crisis. During a default or crisis, risk knows no geographic border. If a run starts on one part of a modern financial institution, almost regardless of where it is

around the globe, it invariably means a funding and liquidity crisis rapidly spreads to the entire consolidated entity. Then finance, rather than serving the rest of the economy, can threaten the rest of the economy.

To give financial institutions and market participants operating outside the U.S. guidance on the cross-border application of Dodd-Frank, the CFTC in June sought public consultation on its interpretation of the Dodd-Frank cross-border provisions. The guidance is a balanced, measured approach, consistent with the cross-border provisions in Dodd-Frank and Congress' recognition that risk easily crosses borders.

Under the guidance, foreign firms that do more than a de minimis amount of swap-dealing activity with U.S. persons will register with the CFTC two months after crossing the de minimis threshold. Many will do so shortly, with others following later.

For firms that do register with the CFTC, we are very committed to allowing for substituted compliance, or permitting market participants to comply with Dodd-Frank through complying with comparable and comprehensive foreign regulatory requirements.

The guidance includes a tiered approach for foreign swap dealer requirements, which was developed in consultation with foreign regulators and market participants. Some requirements would be considered entity-level, such as for capital, chief compliance officer and swap data recordkeeping. Some requirements would be considered transaction-level,

such as clearing, margin, real-time public reporting, trade execution, trading documentation and sales practices.

Entity-level requirements would apply to all registered swap dealers, but in certain circumstances, foreign swap dealers could meet these requirements through substituted compliance. In a separate release, the Commission proposed phased compliance regarding entity-level requirements until July 2013. Such phased compliance will allow time for the CFTC, other regulators and market participants to continue coordinating on regulation of cross-border swaps activity.

Foreign swap dealers would comply with Dodd-Frank for transaction-level requirements facing U.S. persons. The timing of transaction-level compliance with U.S. persons will be determined according to the generally applicable schedule of each of the CFTC's rules. The timing of compliance would be phased, however, for transactions facing guaranteed affiliates of U.S. persons, as well as foreign branches of U.S. persons, until next summer.

Pending further action on the cross-border guidance, the CFTC issued time-limited relief to certain foreign legal entities regarding the counting of swaps toward the de minimis swap-dealing threshold.

The CFTC also will continue to engage with our international counterparts through bilateral and multilateral discussions on reform and cross-border swaps activity. We are

bound to have some differences, given our different cultures and political systems, but we've made great progress internationally on an aligned approach to reform. We are committed to working through any instances where the CFTC is made aware of a conflict between U.S. law and that of another jurisdiction.

International regulators met in New York in late November and had a very productive meeting regarding the CFTC's guidance and how other jurisdictions are handling cross-border application of swaps market reform.

The regulators and policymakers at the meeting agreed to a joint statement regarding our progress so far. In short, the statement said:

- Authorities should consult with each other prior to making final determinations regarding which derivatives products will be subject to required clearing;
- Robust supervisory cooperation arrangements should be established;
- Authorities should have appropriate access to data held in trade repositories;
- The application of reforms to market participants should be clear, and jurisdictions should consider reasonable, time-limited transition periods so that market participants have adequate time to comply; and
- The authorities agreed to continue working together, including on substituted compliance, and to meet regularly, starting in early 2013.

Market Implementation of Swaps Market Reform

As we near the end of 2012, market participants are moving to implementation of swaps market reform.

Given the magnitude of the crisis, Congress gave the CFTC but one year to complete implementing rules.

The CFTC, however, has been working to complete these rules in a deliberative way - not against a clock. We have been careful to consider significant public input, as well as the costs and benefits of each rule. CFTC Commissioners and staff have met nearly 2,000 times with members of the public, and we have held 19 public roundtables on important issues related to Dodd-Frank reform. The agency has received nearly 37,000 comment letters on matters related to reform. Our rules also have benefited from close consultation with domestic and international regulators and policy makers.

The CFTC has been working on smoothing the transition from a marketplace that lacked regulation to a new era of transparency and common-sense oversight. We have consulted broadly on appropriately phasing in reforms over time. In the spring of last year, we put out a concepts document for public comment and held a roundtable with the SEC on phased implementation. Subsequently, we proposed and finalized rules on implementation phasing. For instance, the clearing determinations will be phased in depending on the type market participant in March, then June, then September of 2013. Other reforms include

built-in phasing. For instance, data reporting requirements are phased in depending on asset classes and market participants. Clearinghouses began reporting for interest rate and credit derivatives on October 12. Swap dealers will follow when they register. Reporting for foreign exchange, equity swaps and physical commodity swaps (including agricultural and energy swaps) begins in February 2013 for swap dealers and major swap participants. Reporting for all other market participants begins in April 2013. Extensive information on the compliance schedules for each of the CFTC's reforms is available on our website.

Market Participant Inquiries

Now that the market is moving to implementation, it's the natural order of things that market participants have questions and have come to us for further guidance. As it is sometimes the case with human nature, the agency receives many inquiries as compliance deadlines approach.

The Commission has sought to ensure that market participants have time to prepare. It has now been two and a half years since the Dodd-Frank Act passed. It has been a year or more since many CFTC rules have been finalized. In particular, the data rules that will largely go into effect in January were adopted by the Commission in 2011. The swap dealer definition and registration rules were completed in the first half of this year.

The CFTC, however, still welcomes inquiries from market participants, as some fine-tuning is expected. Prior to the milestone of October 12 when the foundational definition

rules became effective, my fellow commissioners and I, along with CFTC staff, listened to market participants and thoughtfully sorted through issues as they were brought to our attention. We will continue to do so as we approach other important milestones in the future.

For example, CFTC staff issued a number of time-limited no-action letters while the Commission considers related exemptive petitions. These include exemptive petitions for electricity-related transactions on markets administered by Regional Transmission Organizations and Independent System Operators, as well as transactions among rural electric cooperatives and municipal-owned utilities.

Similarly, yesterday, CFTC staff issued a time-limited no-action letter to allow certain swap trading facilities and trading platforms to continue operating while the Commission completes its final rules for SEFs.

CFTC staff has also issued a number of interpretations and no-action letters regarding the definition of U.S. person and what swap dealing activity would be counted toward the de minimis swap-dealing threshold.

In addition, staff has issued interpretations and letters with regard to registration with the CFTC as commodity pool operators. Before October 12, relief was provided for equity real estate investment trusts, which are real estate investment trusts that own and operate real property; and certain securitization vehicles that issue securities backed by financial assets, are regulated by the SEC and do not use swaps to generate investment exposure.

We also sought public comment regarding other entities with inquiries about commodity pool operator registration. After October 12, guidance was provided for additional securitization vehicles. These letters addressed “legacy” securitization vehicles, backed by cash or synthetic assets, that have not and will not issue securities after October 12, 2012; and mortgage real estate investment trusts, which primarily invest in mortgage-backed securities and mortgages on residential and commercial property. In addition, these letters addressed family offices that are exempt from SEC regulation as investment advisers; business development companies that only engage in a minimal amount of commodity interest trading; and funds of funds on a time-limited basis while staff considers additional guidance for those vehicles.

We have also addressed a number of issues related to data. CFTC staff set a common date for compliance with the data reporting requirement so that a swap dealer that registers early will be subject to this requirement on the same day as one that registers later. We further phased compliance for swaps dealers to report data regarding certain swaps due to disruptions caused by Hurricane Sandy. We also provided additional time for foreign market participants on the reporting of identifying counterparty information in jurisdictions where secrecy or blocking laws forbid such reporting.

Staff is still considering a number of other specific requests for phased compliance. For instance, to facilitate compliance with new documentation requirements, the International Swaps and Derivatives Association (ISDA) has sponsored a number of documentation

protocols for its members and other market participants. The Commission is considering the ISDA and its member firms' petition for additional time to complete the protocol process or any bilateral amendments to trading documentation.

The CFTC makes all of these interpretations, guidance and no-action letters public through our website and press releases.

Resources

With the market moving to implementation, additional resources for the CFTC are all the more essential. We need resources for the people and technology necessary for effective market surveillance and to enhance customer protection programs. We need resources to handle the incoming registration requests from many new market participants. We need resources to answer all of the questions from market participants on implementation of reform.

At 703 on-board staff, the CFTC's hardworking team is just 10 percent more in numbers than at our peak in the 1990s. Yet since that time, the futures market has grown more than five-fold, and the swaps market is eight times larger than the futures market.

Picture the NFL expanding eightfold to play more than 100 football games in a weekend without increasing the number of referees. This would leave just one referee per

game, and, in some cases, no referee. Imagine the mayhem on the field, the resulting injuries to players, and the loss of confidence fans would have in the integrity of the game.

Given this reality, the President has requested additional resources for both staff and investments in technology for this agency. People and technological resources are critical for the CFTC to properly oversee the futures and swaps markets.

Conclusion

The common-sense rules of the road for the swaps market that Congress laid out in the Dodd-Frank Act are now the order of the day. Standardized swaps between financial entities will be cleared starting in March. Initial data reporting to regulators has begun, and the public will benefit from real-time reporting next year. We anticipate many swap dealers will register at the end of this month. I thank you and look forward to your questions.