

TESTIMONY OF GARY GENSLER
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BEFORE THE
U.S. HOUSE FINANCIAL SERVICES SUBCOMMITTEES ON FINANCIAL
INSTITUTIONS & CONSUMER CREDIT AND CAPITAL MARKETS &
GOVERNMENT SPONSORED ENTERPRISES
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Good morning Chairman Capito and Chairman Garrett and members of the subcommittees. I thank you for inviting me to today's hearing on the Volcker Rule. I also am glad to join my fellow regulators in testifying today.

Three years ago, the financial system failed, and the financial regulatory system failed as well. We are still feeling the aftershocks of these twin failures. While the crisis had many causes, it is evident that swaps played a central role. Swaps added leverage to the financial system with more risk being backed by less capital. They contributed, particularly through credit default swaps, to the bubble in the housing market. They contributed to a system where large financial institutions were considered not only too big to fail, but too interconnected to fail. Swaps – developed to help manage and lower risk for end-users – also concentrated and heightened risk in the financial system and to the public.

Congress and the President responded to the 2008 crisis – they came together to pass the historic Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The law gave the CFTC and Securities and Exchange Commission (SEC) oversight of the more than \$300 trillion swaps market. The CFTC and SEC are working hard to write new rules of the road to make the swaps market more transparent and safer for the American public.

Congress also included in Dodd-Frank the Volcker Rule. It prohibits certain banking entities from engaging in proprietary trading, yet also permits certain activities, such as market-making and risk-mitigating hedging. The law requires that banking entities with significant trading assets have policies and procedures in place to identify and prevent violations of the statutory prohibition on proprietary trading. In addition to swaps, the Volcker Rule applies to covered financial products, such as securities and futures.

Section 619 of the Dodd-Frank Act amended the Banking Holding Company Act to direct the CFTC to write rules implementing Volcker Rule requirements for banking entities for which the agency is the primary financial regulator. The CFTC's role regarding the Volcker Rule is significant, but as a supporting member. The bank regulators have the lead role.

Dodd-Frank requires the various financial regulators to consult and coordinate with each other to write consistent rules. The Secretary of the Treasury, as the Chairperson of the Financial Stability Oversight Council, is responsible for the coordination of the various regulations issued under Section 619.

Following Congress' mandate, the CFTC's proposal is consistent with the joint rule proposed in October 2011 by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the SEC. However, the Commission's proposal also includes several additional questions seeking public comment on whether certain provisions of the common rules are applicable to CFTC-regulated banking entities.

The CFTC's proposed rule would apply to the activities of the banking entities' CFTC-registered affiliates and subsidiaries, such as futures commission merchants (FCMs), swap dealers, and commodity pool operators. For example, for a joint FCM/broker-dealer that is a banking entity, the CFTC has Volcker Rule jurisdiction over the FCM's activities, while the SEC's regulations would apply to the broker-dealer activities.

The CFTC's limited enforcement authority under the Volcker Rule provisions includes recordkeeping and reporting, as well as examination of those books and records. In addition, the CFTC could order violators of the proprietary trading prohibition to terminate the activity and dispose of their investment. The banking regulators, particularly the Federal Reserve, have broader enforcement authority under the Banking Holding Company Act. The Federal Reserve also has authority regarding the possible extension of the time period for conforming with the rules.

The banking regulators and the SEC proposed the joint rule in October, and the CFTC did so January 11. The reason for the CFTC's delay was a matter of the capacity of the Commission

to give the rule consideration. Over the past year, the CFTC has been working diligently to implement the Dodd-Frank Act. To date, the Commission has held 23 public meetings on Dodd-Frank rules, considered more than 50 proposals and finalized 25 rules.

As with all of our rules, the CFTC is working to implement the Volcker Rule in a thoughtful, balanced way – not against a clock. The Commission is specifically requesting comments from the public regarding the costs and benefits and economic effects of the proposed rule, and we will carefully consider all of the incoming comments.

In your January 6 invitation letter to me, you asked a number of questions associated with Volcker Rule implementation. The Commission's rulemaking solicits public comment regarding the topics addressed in your letter.

In adopting the Volcker rule, Congress prohibited banking entities from proprietary trading, an activity that may put taxpayers at risk. At the same time, Congress permitted banking entities to engage in market making, among other activities. One of the challenges in finalizing a rule is achieving these dual objectives. It will be critical to hear from the public on how to best achieve Congress' mandate. The public has been invited to comment on the CFTC's proposal for 60 days, and I very much look forward to the substantial public input I anticipate we will receive on this rule.

Thank you, and I would be happy to take questions.