

**NOMINATION OF
J. CHRISTOPHER GIANCARLO,
OF NEW JERSEY, TO BE CHAIRMAN,
COMMODITY FUTURES TRADING COMMISSION**

HEARING
BEFORE THE
COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY
UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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JUNE 22, 2017
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**NOMINATION OF
J. CHRISTOPHER GIANCARLO,
OF NEW JERSEY, TO BE CHAIRMAN,
COMMODITY FUTURES TRADING COMMISSION**

Thursday, June 22, 2017

UNITED STATES SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC

The Committee met, pursuant to notice, at 9:46 a.m. in room 328, Russell Senate Office Building, Hon. Pat Roberts, Chairman of the Committee, presiding.

Present or submitting a statement: Senators Roberts, Stabenow, Brown, Klobuchar, Bennet, Gillibrand, Casey, and Van Hollen.

**STATEMENT OF HON. PAT ROBERTS, U.S. SENATOR FROM THE
STATE OF KANSAS, CHAIRMAN, U.S. COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY**

Chairman ROBERTS. I call this hearing of the Senate Agriculture, Nutrition, and Forestry Committee to order.

I welcome my colleagues as we consider the nomination of Mr. J. Christopher Giancarlo to serve as Chairman of the U.S. Commodity Futures Trading Commission.

Mr. Giancarlo, it was a pleasure to see you in Montana a few weeks ago. It reminds me of a Merle Haggard song, but we will not go there.

[Laughter.]

Chairman ROBERTS. I thank you for being with us here today. I note that you have your wife, children, and other close family and friends in the audience today. Allow me to welcome the family and you all to the Ag Committee. Thank you for coming.

As noted in the CFTC's mission statement, this agency is charged with fostering open, transparent, competitive, and financially sound markets, while working to prevent systemic risk.

Further, the Commission is tasked with protecting market users and their funds and consumers and the public from fraud, any manipulation, abusive practices related to derivatives and other products that are subject to the Commodity Exchange Act.

The services provided by the CFTC allow farmers, ranchers, commercial companies, municipalities, pension funds, and others who rely on derivatives to hedge commercial risk and focus on what they do best—innovating and creating jobs and producing food, goods, and services for the economy. I might add that is a pretty big deal.

It is essential the CFTC have individuals in charge who truly take its mission statement and responsibilities to heart. Mr. Giancarlo, you have demonstrated your understanding of that mission during your time at the CFTC. In fact—and I want to underscore this—in fact, in 2014, this Committee voted unanimously to advance your nomination, and the Senate confirmed you by a voice vote.

Happy birthday Let us not forget, it was not the farmer, rancher, rural cooperative, electric utility, nor other end users who contributed to the financial crisis of 2008. Many members raised concern during consideration of Dodd-Frank effort and insisted the legislation provide flexibility to those who rely on these markets but did not contribute to the 2008 crisis. It is important to note that this was a bipartisan concern, yet when Dodd-Frank became law and the CFTC began writing new regulations, limited flexibility was provided from the heavy hand of government overreach.

Therefore, moving forward, I think it is imperative that both Congress and our Federal financial regulators work to provide necessary and appropriate relief to our nation's providers of food and energy and to those who export U.S. goods.

To do this, we need a functioning CFTC which handles regulations practically and looks to reduce Federal overreach. In fact, I believe the recent announcement of your initiative to apply current rules and regulations in a less burdensome manner is a perfect example of getting our Federal agencies back to how they were intended to function--governing, not ruling—and to be a true partner to our nation's market participants.

Further, I am encouraged by the CFTC's launch of LabCFTC, which is intended to foster financial technological innovation, something that is happening at light speed today whether we like it or not. I am glad you intend to stay out ahead of the curve and engage with the modern derivatives marketplace.

Mr. Giancarlo, it is imperative all Commissioners understand the historic nature of a portion of the markets the CFTC regulates, which is to provide risk management tools for producers of agriculture commodities. It is often lost on many in Washington that these financial markets create and allow for stability, stability that we all appreciate when we go to the grocery store on any given day and buy food at affordable prices.

Functioning markets benefit every hardworking family in America. Those families would feel the effects if our agricultural producers lacked the market's affordable and effective risk management tools to help lock in fair and reasonable prices. This is especially true today as the farm economy is struggling, as we have talked about.

I am grateful you understand and are committed to fostering a functional marketplace for all participants, and I especially appreciate your commitment to our rural stakeholders.

Again, I thank the nominee for being here today. I look forward to your testimony.

I now turn to my distinguished colleague and our Ranking Member, former Chairperson, for her opening remarks.

**STATEMENT OF HON. DEBBIE STABENOW, U.S. SENATOR
FROM THE STATE OF MICHIGAN**

Senator STABENOW. Well, thank you very much, Mr. Chairman, and welcome again and congratulations, Mr. Giancarlo, on your nomination. I too want to welcome your family back again. Your secret weapon, your mom, is with you today, so we welcome her as well.

Mr. Giancarlo, you testified last time before us in 2014 as a nominee for CFTC Commissioner. Back then, you shared the witness table with Commissioner Bowen and former Chairman Massad. I think it is fair to say the three of you worked hard to find consensus where possible in order to support the core mission of the CFTC to maintain transparency and competitive derivative markets.

The CFTC Chairman has a wide range of responsibilities, as you know, that have a tremendous effect on farmers and families. If confirmed as Chairman, the decisions you make day to day will have a much larger impact on financial markets and consumers both here and abroad.

As a Commissioner, I appreciate that you showed a willingness to work on a bipartisan basis to find consensus.

I would like to also personally thank you for visiting Michigan last summer to listen to both farmers and manufacturers about their concerns and to discuss the importance of the CFTC.

Having played a pivotal role at the Commission over the past 3 years, you understand as well as anyone what work lies ahead for the CFTC.

While Wall Street reform has brought much needed transparency to the previously unregulated swaps market, there is much more work to be done at the Commission.

The 2008 financial crisis exposed gaping weaknesses in our regulatory system, left the economy in ruins, and put millions and millions of Americans out of work.

Nearly nine years since the crisis, parts of our economy have shown great resiliency and progress. However, we should not be complacent with the improvements we have seen. We need to keep moving forward, not backward.

This Committee and the CFTC must not forget some of the Commission's crucial roles in overseeing the derivatives market: holding bad actors accountable, surveilling market participants, and monitoring systemic risk. From speculative position limits to capital requirements, the CFTC has unfinished business.

It is critical that the Commission take action quickly on these issues to finish the rulemakings required under Dodd-Frank. The Commission should continue to build on the progress we have made and the progress we have seen in recent years.

Mr. Giancarlo, I look forward to learning more about your plans for finishing this critical work. We cannot afford to delay any longer.

Of equal importance is the CFTC's insufficient budget. Less than 2 months ago, the White House issued a budget proposal, which fell woefully short of what the CFTC needs to fulfill its mission. It is something you and I talked about. I appreciate that you courageously broke from the administration to issue your own proposal,

recognizing the CFTC must be better funded in order to be a world-class regulator.

I commend you for this, and I think it is very important that we work together to get the resources that are truly needed for this Commission to be able to do its work. I am committing my support to work with you on that.

Simply put, the Commission cannot meet its responsibilities at the current funding level. The risks to our economy, which directly affect thousands and potentially millions of jobs, is too great to ignore any longer.

I also note that on Tuesday, Commissioner Bowen announced she will be leaving the Commission in the coming months. With this announcement, Mr. Chairman, we need to confirm nominees for the four open Commissioner seats as soon as we can. We need to move quickly to ensure we have a full leadership team in place so the CFTC can do its important work. I look forward to working with you in that effort.

Today, I look forward to learning more about your vision, Mr. Giancarlo, for the CFTC and how we can continue to build on the progress of reform to create more certainty for our agricultural producers, commercial businesses, and consumers.

Whether we realize it or not, derivatives markets play an integral role in the everyday life of Americans. We must ensure regulators and market participants are fulfilling their responsibilities to promote safe and transparent markets.

Thank you.

Chairman ROBERTS. Mr. Giancarlo, as is the tradition and custom of the Committee, before we nominate witnesses, to provide testimony, I need to administer the oath. Please stand and raise your right hand. First, do you swear that the testimony you are about to present is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GIANCARLO. I do.

Chairman ROBERTS. Second, do you agree that, if confirmed, you will appear before any duly constituted committee of Congress if asked to appear?

Mr. GIANCARLO. I will.

Chairman ROBERTS. Thank you. Please proceed with your testimony.

TESTIMONY OF J. CHRISTOPHER GIANCARLO, NOMINEE TO BE CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION

Mr. GIANCARLO. Thank you. Thank you, Chairman Roberts, Ranking Member Stabenow, and members of the Committee.

I am honored to testify before you. With your permission, I would like to introduce members of my family: my wife and my joy for 28 years, Regina; my dear brother, Dr. Tim Giancarlo; and my son, Henry Giancarlo. My older son, Luke, and my wonderful daughter, Emma, could not be with us this morning due to other responsibilities. But I would also like to introduce my wonderful mother, Mrs. Ella Jane Keegan.

Mom?

Chairman ROBERTS. You can stand.

[Applause.]

Chairman ROBERTS. Thank you, mom.

Mr. GIANCARLO. Mom taught my brothers and me three simple lessons, and that was arrive early to work, leave your workplace better than you found it, and give thanks every night for God's grace. I am blessed to have her as a mother and blessed by my wonderful family. Thank you.

I thank many of you on the Committee for meeting with me before this meeting and over the past several years. You have all taught me a lot about the issues facing American agriculture.

I last appeared before this Committee in 2014 upon my nomination by President Obama. At that hearing, I presented my professional credentials, and I also admitted my personal shortcomings of not having been raised on a farm. Nevertheless, I promised you that I would learn about American agriculture.

In the 3 years since, I have met with farmers, ranchers, energy producers, and small and large manufacturers who use our markets to hedge production and price risk.

I have been to Kansas, Michigan, Indiana, Illinois, South Dakota, North Dakota, Iowa, Minnesota, New York, New Jersey, Missouri, Kentucky, Ohio, Louisiana, Florida, California, Texas, and just a few weeks ago, Montana. I am not done traveling.

I have milked dairy cows with family farmers in Minnesota, and I visited with grain and livestock growers in Iowa. I have walked factory floors in Illinois, oil refineries in Texas, grain elevators in Indiana, and power plants in Ohio. I have been 900 feet underground in a Kentucky coal mine and 90 feet above ground on a North Dakota natural oil rig.

In Kansas, I met with Mary and Pat Ross at their feed lot in Lawrence, called on corn farmer Ken McCauley in White Cloud, and harvested soybeans with Pat O'Trimble in Perry. In Michigan, I toured the Fort Rouge automobile plant, visited the Star of the West flour mill, and talked to grain growers at Crop Production Services warehouse in Henderson.

Now, while these visits have been delightful in their own right, they have made me a much better regulator of our ag commodity markets, and I thank members of this Committee for encouraging me to make these visits.

As you know, for over a hundred years, American farmers and ranchers have used futures to hedge volatile commodity prices. They are the reason why consumers enjoy stable prices in the grocery store, whatever the conditions out on the farm.

But derivatives also stabilize the cost of heating our homes, powering our factories, supporting residential mortgages, and generating returns on retirement savings. In short, derivatives help moderate price, supply, and other commercial risk, and thereby free up capital for economic growth, job creation, and prosperity.

When I last testified, I said that my best qualification to serve was my expertise in over-the-counter swaps and that I was a supporter of the reforms in Title VII of the Dodd-Frank Act. In fact, I may well be the most longstanding supporter of market reform from either political party to serve at the CFTC.

When Congress began drafting the bills that would become Title VII of the law, I had already championed its three key reforms: central clearing of swaps, swaps data reporting, and regulated

swaps trading. My support is not based on academic theory or political ideology; it is based on my practical experience of 14 years in the markets.

If confirmed, I have three priorities; first, to foster open, transparent, competitive, and durable derivative markets, free from fraud and manipulation. The day after the White House stated its intention to nominate me, I told a large gathering of industry executives that there would be no pause, no let-up, no reduction in our duty to enforce the law and punish wrongdoing, and I make that commitment again to you today.

Second, we will conduct the agency's regulatory mission in support of broad-based economic growth. That means completing swaps market reforms that underpin healthy, durable, and vibrant markets, and it also means getting from where we are today to where we need to be, and that is a 21st century regulator for 21st century digital markets.

Finally, we will carry out our regulatory mission in a way that respects the American taxpayer. We will get back to regular order in our operations, carefully manage appropriated resources, and apply our existing rules in ways that are simpler and less burdensome to the economy.

Chairman and Ranking Member, this Committee has a strong tradition of bipartisanship, and I believe that practice—I have followed that practice at the CFTC by working constructively with my fellow Commissioners. I have voted with the majority in over 95 percent of the matters before the Commission over the past 3 years, and if confirmed, I will continue to act without partisanship. I will work with each of you with candor and promptness in our common purpose of serving the American people and the agricultural producers on which we all rely.

Thank you. I look forward to your questions.

[The prepared statement of Mr. Giancarlo can be found on page 16 in the appendix.]

Chairman ROBERTS. Thank you, sir.

Not long ago, you announced the launch of an agency initiative to review CFTC rules, regulations, and practices furthering the President's executive order to reduce excessive regulatory burdens. I understand your initiative is meant to identify existing rules and apply them in a less burdensome manner.

In addition to this initiative, how do you plan to address regulatory reform, and what limitations might you encounter?

Mr. GIANCARLO. Thank you very much, Chairman.

The CFTC has been in operation for almost—over 40 years now, and over the course of time, it is no surprise that regulations that have built up over time in some cases conflict with one another and other cases are out of date and in some cases just need a revisit and a refresh.

I will give you an example. We recently revised a rule that at the time it was adopted years ago, it was considered to be very forward-looking in its technology application; that is, it required filing of information by fax. Here we are in 2017, and few people have fax machines anymore.

So, over time, technology changes, market conditions change, and if rules are not occasionally and from time to time brought up to

date and relooked at, they become stale and they become burdensome on the market as a whole.

So what we have done with our Project KISS is to look at our existing rules, not the policies behind them, but the rules themselves, the practical application of the rules, and see whether they can be applied in ways that are simpler, less costly, and more straightforward and still achieve our policy objectives.

Chairman ROBERTS. Thank you for that.

Senator STABENOW.

Senator STABENOW. Thank you very much, Mr. Chairman, and welcome again, Mr. Giancarlo.

As you and I have talked about, the Commission at this point has had multiple efforts to complete the position limits rule that was mandated by Congress as part of Wall Street reform to protect families from spikes in food and energy costs that are caused by speculation. Will you commit to completing this critical rule as CFTC Chairman without further delay?

Mr. GIANCARLO. Yes. If I could add—

Senator STABENOW. Yes.

Mr. GIANCARLO. —I think it is very important. I think the opportunity is at hand. As you know, I voted for the most recent iteration of this rule, the most recent proposal. The comment period is now closed. We are going through those comments, and I believe we can get a position limits rule done.

Senator STABENOW. Thank you.

As I said in my opening comments, you recently stepped forward with a different budget proposal than what was proposed by the White House. The question that I have is even though your proposal was better in my judgement, there are still additional resources beyond that that are needed. What market oversight and personnel risk will the Commission face if its budget is not increased?

Mr. GIANCARLO. You know, before going into government, I spent 30 years in the private sector and most recently 14 years as an executive of a public company. I will work with whatever budget the appropriators give us, and I will make sure the mission is done. However, we have put forward a budget that does have some new elements in it, some elements as the markets have evolved, elements that I believe are necessary for us to keep pace with the market.

So I will be making my case next week in front of Senate appropriators for our budget, which as you know is more than last year, and I am hoping they will see their way to the money. But whatever appropriators give us, we will do our mission with it.

Senator STABENOW. I understand. I mean, that is what the CFTC has been doing and the Chairman has been doing for years which is, unfortunately, in my mind, limping along and not having the resources to fully do what is needed to really enforce the laws of to gain the confidence of those who count on the Commission to be able to do its job.

So you will be advocating for the number that you have proposed, then—

Mr. GIANCARLO. Yes.

Senator STABENOW. —as opposed to what the White House has proposed?

Mr. GIANCARLO. We have put forward the number of \$281.5 million, which is an increase of \$31.5 million over the prior year's appropriation.

I believe the number we are asking for is the right number for the CFTC with the mission it has before it today.

Senator STABENOW. Thank you.

The Chairman talked about and you have talked about what you call Project KISS—

Mr. GIANCARLO. Yes.

Senator STABENOW. Keep It Simple Stupid. We all appreciate that, reducing the regulatory burdens.

But at the same time, we have the White House signing an executive order aimed at rolling back the Wall Street reforms.

Mr. GIANCARLO. Yes.

Senator STABENOW. So how do both of those proposals relate to each other? Please speak about whether the intention overall is to roll back critical reforms to Title VII and to the derivatives.

Mr. GIANCARLO. So let me—

Senator STABENOW. —markets.

Mr. GIANCARLO. Let me—thank you. Let me be very clear. Project KISS is not about rolling back Dodd-Frank or Wall Street reforms in any shape or fashion. I am a supporter of Title VII, of Dodd-Frank, which has amended the Commodities Exchange Act with regard to the swaps that we oversee. I support those reforms, and so we are not looking to use Project KISS in any way to address that.

Project KISS is a complete approach to our—the way that our agency applies reforms to see if we can do that in a simpler, more straightforward fashion.

Senator STABENOW. Thank you.

Then, finally, as Chairman, knowing what we know now about the enormous risk of cyberattacks—

Mr. GIANCARLO. Yes.

Senator STABENOW. —in terms of national security, what are your intentions to address this growing challenge. Do you believe that our Committee needs to provide additional authority to the CFTC to better protect the financial markets it oversees?

Mr. GIANCARLO. Thank you very much.

I have said before and I share with former Chairman Massad the view that cyber risk is the number one threat to the markets that we oversee, and therefore, it has to be a priority in everything we do.

Since I have stepped in as Acting Chairman, our head of cyber security now meets with me monthly and reviews not only all the attacks we have seen in the markets as a whole but every attack that we receive at the agency itself.

I believe that the approach to cyber needs to be both a public and private approach, and that is because the nature of the threats we face are both from private actors and from state actors. So I think there is a very vigorous role for us at the agency. We work with U.S. law enforcement agencies. We work with regulatory agencies

abroad as well as self-regulatory organizations as well as all of our major market participants.

Cyber is a critical priority and will remain so.

Senator STABENOW. I agree.

Thank you, Mr. Chairman.

Senator STABENOW. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much.

Mr. Giancarlo, congratulations. Congratulations to your mom and your family.

I think we talked before about this, and I know you talked about it at your last hearing. The commodity markets you have oversight of involve essentially two kinds of participants, the commercial end users who base their trades on actual physical products and then financial institutions, like hedge funds and investors who base their derivatives trades, of course, on fluctuations in prices or the index. So that is a particular concern of mine, just because we have a lot of products and grouping of people who fall into the first category.

I know you visited Mackinson Dairy Farm, Blue Diamond Dairy.

Mr. GIANCARLO. Yes.

Senator KLOBUCHAR. I am very impressed you milked a cow. Your mom raised you well.

[Laughter.]

Senator KLOBUCHAR. But what did you learn about the importance of the CFTC to these economic sectors, and what is going on with these sectors? How do you think that the CFTC could be responsive?

Mr. GIANCARLO. Thank you for that. I mean, you are absolutely right. I mean, my experience with that family dairy near Melrose in your state was formative. I often think about the Frericks family when I think about really the most basic element of our market participants, and that is some of our America's small-family farms. That even if they do not use these hedging instruments, they rely on the price signals that come from these futures markets to determine whether they are getting a fair price from their distributor. So that family, when they sell their milk, they are relying on price signals that come from our markets to know whether they are based on market fundamentals and not distorted by algorithms or speculators in the market.

So that brought that very much home to me, and so our role as an agency is to make sure that the give-and-take of all the different market participants in our markets results in a fair price.

Senator KLOBUCHAR. Exactly.

Mr. GIANCARLO. It is a challenge in a world today that is increasingly dominated by these algorithmic traders.

Senator KLOBUCHAR. Exactly.

You mentioned that issue of speculation, and we have spoken about that before. I know in high-frequency trading, the CFTC has been working on this regulation, automated trading, and I think those best practices are a good first step. What other steps do you think the CFTC can take to ensure that the pricing is accurate and it is not influenced by things it should not be influenced by?

Mr. GIANCARLO. Thank you.

You know, when I talk to farmers and ranchers and they ask me questions about what is the role of high-frequency trading in the markets, I hear a lot of anecdotal concerns, but what we do not yet have is the—we are getting the data, but we do not have the analytical tools to really know whether the role in the market of these traders is harmful or benign or what mixture of the two.

They do provide important liquidity in the markets. You could not have a market of just naturals. You would not have a market. So what I have asked for in our budget request is 12 additional economists, because what we really need to do is go beyond anecdotal concern and get to—and to take our data and bring it down to really hard analysis so that will drive our policy decisions. If we need to make policy decisions that might restrict some participation in the market, it needs to be based on hard data, and so I am looking to really beef up our analytical capability.

Senator KLOBUCHAR. Back to some of the product issues, in your testimony you note that the derivatives markets are not just useful for ag producers but impact many consumer issues like home heating fuels and propane. What steps are you currently taking to prevent the type of price hikes that we have seen in the past in the Midwest when it comes to heating?

Mr. GIANCARLO. So we have got to get our position limits right.

I will tell you a story about a visit I made to First Energy in Akron, Ohio, and they told me that—it does not happen often. They have a small trading desk. I actually met with the person who does their energy trading. They only do about six or seven trades a day. They never speculate. If they are buying forward, it is to protect a position.

They say a couple of winters, when you have got a polar vortex, if one of their generators goes down, they need to go into the market and they need to buy forward. They may have to break a position limit, and they need to know that they can do that. Otherwise, they are going to turn off the lights in some homes and turn off some heat. So we have got to make sure we have the flexibility built into our limits, yet at the same time, we are all concerned about the role of excessive speculations. So getting that balance right is vitally important.

Senator KLOBUCHAR. Very good.

On the speculation front, what do you think needs to be done there? Then I will end.

Mr. GIANCARLO. Well, Congress has said that we should use position limits as appropriate to address the issue of excessive speculation, and as I said in response to the Ranking Member, I think we can get this done, provided that we address the concerns that have been raised by our energy providers and by our agriculture producers.

Senator KLOBUCHAR. Thank you very much.

Mr. GIANCARLO. Thank you.

Chairman ROBERTS. Senator Gillibrand.

Senator GILLIBRAND. Well, thank you so much for being here, and thank you for your dedication to serving others. Thank you for visiting my state. I am very grateful that you were able to spend some time in New York.

In March of this year, you gave a speech where you remarked on your intention to comply with President Trump's executive order. This was your Keep It Simple Stupid deregulation view, and you mentioned that this is not an exercise in repeal or rewriting rules but rather streamlining. Has President Trump or anyone in his administration identified CFTC regulations they would like to eliminate or rewrite under the executive order or under your program?

Mr. GIANCARLO. No.

Senator GILLIBRAND. One of the strengths of the CFTC's regulation is the U.S. person rule or cross-border jurisdiction rule, which provides the CFTC the power to guard against financial risk around the world.

It is clear from the 2008 financial collapse that pooled risk anywhere in the world can cause significant problems at home. How often have you heard from market participants on reforming or curbing the current U.S. person rule specifically for U.S.-based entities?

Mr. GIANCARLO. Well, I support it, the rule on capital for swap dealers, and I think Chairman Massad and I came to the right place on that rule. So I was proud to support him on that.

I do not recall specific concerns raised on that in particular that has come to my attention.

Senator GILLIBRAND. Do you foresee any changes to the U.S. person rules for the European or UK markets, especially as Brexit continues and you negotiate directly with the UK?

Mr. GIANCARLO. So this is an area where I actually agree with Chairman Gensler in that when it comes to our rules that concern our swaps rules, that concern a systemic risk, we do need to take the view that risk that builds up anywhere in the globe can come back to the United States.

When it comes to issues of mechanics, then I am in favor of a more territorial approach and not exporting our mechanical approach to, say, swaps execution abroad. But on systemic risk concerns, then I think we have to take a global approach.

Senator GILLIBRAND. Do you believe that you will rewrite these rules, or do you anticipate any actions to dilute the CFTC's jurisdiction?

Mr. GIANCARLO. No, no actions to dilute the CFTC's jurisdictions.

I did propose in 2015—in fact, I wrote an 89-page white paper saying where I think the CFTC mis-implemented its swaps execution rules, and I said I think we got it wrong primarily because we did not follow Congress' stated prescription in the law itself that swaps executions should be done through any means of interstate commerce. That is the area where I have been very clear that I think the rule is in need of a rewrite. I think the law is correct.

As I said before, Congress got it right. I think the CFTC got the swaps execution rules wrong. When it comes to swaps clearing, I have said we have got it right, and swaps transparency in terms of swaps reporting to swap data repositories, I believe we have got that right as well. The disappointment is we still have not realized it, 9 years after the crisis.

Senator GILLIBRAND. One of the things President Trump campaigned on and members of his economic team actually endorsed, the idea of separating commercial banking from riskier financial

activities. Has President Trump or anyone in the White House, including his economic team or the National Economic Council, spoken to you or anyone at the CFTC about reinstating an updated version of Glass-Steagall or any action that would divide commercial banking from riskier financial activities?

Mr. GIANCARLO. No.

Senator GILLIBRAND. Have you examined how the CFTC may be employed through regulation and enforcement to separate derivatives dealing from commercial banking under that kind of framework?

Mr. GIANCARLO. I am not aware of any.

Senator GILLIBRAND. Okay. The U.S. derivatives market is approximately worth \$300 trillion. That includes \$34 trillion worth of futures and options and \$270 trillion in swaps. There are approximately 750 people that work at the CFTC. Currently, the budget, as the Ranking Member mentioned—currently, the CFTC budget is \$250 million, far below other prudential regulators with similar regulatory responsibilities.

Previous budgetary requests asked for a 30 percent increase, while your request is closer to 13 percent, and the President's budget has flat funding. Don't you think that Congress should look at how other prudential regulators like the SEC use mandatory funding mechanisms to provide a more reliable and standard funding source for the CFTC?

Mr. GIANCARLO. So I know this is a conversation that has been going on for a long time, and I know that senior people, including presidents of both parties, have called for a funding mechanism. Yet, at the same time, we have self-funding in our markets and through our self-regulatory organization, NFA, which charges fees.

I have been concerned and have been raising concerns for the last 3 years about the changing nature of liquidity in our markets.

Last week, I had breakfast with some of America's most prominent corporations, their corporate treasurers, including from Hershey's chocolates to General Motors, and they raised with me their decreasing ability to access liquidity in the market. So I do not advocate transaction fees for the reason of trading liquidity in the markets. I am concerned about that impact, but ultimately, this is a decision for our appropriators and our authorizers, and if they were to see fit to provide this mechanism, then we clearly would work within it.

Senator GILLIBRAND. Thank you, Mr. Chairman.

Chairman ROBERTS. I thank the Senator.

I wish to thank Senator Gillibrand, Senator Klobuchar for appearing in person. This is—I think this is the latest women's movement here that we have on the Committee. I do not know what happened. Well, never mind. We are not going to go down that—

Senator STABENOW. You should be worried, Mr. Chairman.

Senator KLOBUCHAR. Very, very worried.

[Laughter.]

Chairman ROBERTS. It is no problem.

That will conclude our hearing today.

In closing, I would like to bring attention to a letter from a coalition of nearly 20 agriculture groups in support of Mr. Giancarlo's nomination, and that list includes some of the largest councils and

cooperatives and associations in the ag sector. I am grateful to them for voicing their support.

Without objection, the letter will be entered into the record at this point.

[The letter can be found on page 24 in the appendix.]

Chairman ROBERTS. Thank you, Mr. Giancarlo, for taking time to address this Committee and to answer the Committee's questions. It is clear that you are abundantly qualified to lead the CFTC and motivated to tackle the challenges that lay ahead.

To my fellow members, I would ask that any additional questions you may have for the record be submitted to the Committee Clerk by 5:00 p.m. tomorrow, June 23. We look forward to receiving your responses, Mr. Giancarlo, and to further considering your nomination.

The Committee is adjourned.

Mr. GIANCARLO. Thank you.

[Whereupon, at 10:23 a.m., the Committee was adjourned.]

A P P E N D I X

JUNE 22, 2017

Statement of
J. Christopher Giancarlo
Acting Chairman
U.S. Commodity Futures Trading Commission
Before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry
June 22, 2017

Thank you Chairman Roberts, Ranking Member Stabenow and members of the Committee.

I am honored to testify before you today as the President's nominee to serve as the thirteenth Chairman of the U.S. Commodity Futures Trading Commission (CFTC).

I want to thank many of you for the courtesy of meeting with me leading up to this hearing and over the past few years. I have learned a lot from you about the issues facing America's farmers and users of commodity futures. I am grateful for the opportunity today to listen to your concerns and answer your questions.

With your permission, Chairman Roberts, I would like to introduce members of my family who are here with me today. I am joined by my wife and best friend of 28 years, Regina, our sons Luke and Henry, and my brother Dr. Timothy Giancarlo. My daughter Emma could not join us because of work commitments.

I am also pleased to introduce my mother, Mrs. Ella Jane Keegan, a registered nurse. Together with my recently deceased father, a physician, she founded a fifty-year-old family business caring for the elderly, where I worked growing up. My parents taught my three brothers and me to arrive early to work, to leave things better than we found them and to give thanks at night for the blessings of this wonderful country. They also taught us that there is no job worth doing that doesn't require hard work and no service worth providing that is beneath your dignity. I am grateful for these lessons and for their love and constant support.

I appeared before this Committee in 2014 upon my nomination as Commissioner to the CFTC by President Obama. At that hearing, I presented my background in commercial law and business. I also acknowledged my rather obvious character flaw of not having been raised on a farm. Nevertheless, I committed then to learning everything I could about the agricultural sector.

When I was a practicing lawyer, I always tried to spend time with new clients at their business offices to learn what they did and how they did it. I believe you cannot truly serve someone you represent unless you first dig in and understand how they make a living.

In the three years I have served at the CFTC, I have had the honor to meet with hundreds of Americans who depend on CFTC-regulated derivatives markets. I have travelled to Kansas, Michigan, Indiana, Illinois, Iowa, Minnesota, South Dakota, North Dakota, New York, Missouri, Kentucky, Ohio, Montana and more to meet with farmers, ranchers, energy producers, and small and large manufacturers, all of whom use our markets to hedge production and price risk.

I have been 900 feet underground in a Kentucky coal mine and 90 feet above ground on a North Dakota natural gas rig. I have milked dairy cows with family farmers in Melrose, Minnesota, and met with grain and livestock farmers from New York to Montana and Iowa to Louisiana. I have walked factory floors in Illinois, oil refineries in Texas, grain elevators in Indiana and power plants in Ohio.

In Kansas, I met Mary and Pat Ross at their feed lot in Lawrence, traveled to Ken McCauley's corn farm in White Cloud, and Pat O'Trimble's soybean farm in Perry. In Michigan, I toured the Ford Rouge automobile manufacturing plant, visited a grain mill and met with farmers and agricultural product suppliers at a fertilizer supply depot in Henderson.

While these visits have been delightful in their own right, they have made me a better informed regulator of American commodity futures markets. I thank members of this Committee for encouraging these visits.

As you well know, American farmers and ranchers have used listed derivatives markets to hedge their costs of production and delivery for more than 100 years. These markets allow the risks of variable production costs, such as the price of raw materials, energy, foreign currency and interest rates, to be transferred from those who cannot afford them to those who can. They are the reason why American consumers enjoy stable prices in the grocery store, whatever the conditions out on the farm.

Even Americans not actively participating in the futures markets are impacted by the prices generated by them. Commodity futures markets provide a critical source of information about future harvest prices. For example, a grain elevator uses the futures market to accurately price grain when the local farmer comes to sell it. In return, farmers know they are getting a fair value for their crop and can make well-informed decisions. The U.S. Department of Agriculture (USDA) uses that same information to

make price projections, determine volatility measures and make payouts on crop insurance.¹

But derivatives markets are not just useful for agricultural producers. They impact the price and availability of heating in American homes, the energy used in factories, the interest rates borrowers pay on home mortgages and the returns workers earn on their retirement savings. More than 90 percent of *Fortune 500* companies use derivatives to manage commercial or market risk in their worldwide business operations.

In short, derivatives serve the needs of society to help moderate price, supply and other commercial risks to free up capital for economic growth, job creation and prosperity.

When I spoke to you in 2014, I explained that my best qualification to serve on the CFTC was my commercial expertise in the global over-the-counter swaps markets. I was then - and remain today - a supporter of the swaps reforms established in 2009 by the G20 leaders and embodied in Title VII of the Dodd-Frank Act. I said that my support for these reforms was not based on academic theory or political ideology. It was based on practical experience.

I have not wavered in my support for these reforms in my three years on the Commission. Yes, I have criticized some of the agency's implementation of the reforms - almost always where I believed it was impractical, overly burdensome or out of step with Congressional intent. Yet, in all cases, I advocated alternative approaches I believe better support healthy markets and are more faithful to the law.

That is why we must get our regulations right. And that is the basis for my three priorities for the CFTC:

First, if confirmed, I will faithfully serve the CFTC's mission to foster open, transparent, competitive and financially sound markets - free from fraud and manipulation - for the trading of commodity and financial futures, swaps and other derivatives.

The day after the White House announced in March its intention to nominate me as Chairman, I spoke publicly and said that, "There will be no pause, let up or reduction in our duty to enforce the law and punish wrongdoing in our derivatives markets. The American people are counting on us."

¹ USDA, Informational Memorandum: PM-17-012, *2017 Crop Year (CY) Common Crop Insurance Policy and Area Risk Protection Insurance Projected Prices and Volatility Factors; Malting Barley Endorsement Projected Price Component and Volatility Factor; and Hybrid Seed Price Endorsement - Hybrid Seed Corn Prices* (Mar. 1, 2017). Available at <https://www.rma.usda.gov/bulletins/pm/2017/17-012.pdf>.

Since then, I have appointed as our Director of Enforcement a well-regarded Assistant Attorney General from the Southern District of New York; strengthened our rules and procedures to better protect whistleblowers; reorganized our Market Surveillance Branch to report directly to the Director of Enforcement; requested additional funding for enforcement investigators and successfully concluded important enforcement cases, including imposing penalties and achieving monetary settlements for wrongdoing in markets for U.S. Dollar Interest Rate Swaps, retail foreign exchange, binary options and precious metals. These steps evidence my priority to oversee robust enforcement of our rules and root out bad actors and wrongful practices.

Second, if confirmed, I will serve the CFTC's regulatory mission in a way that best fosters broad-based economic growth and American prosperity. In order for all segments of our economy to flourish, we need thoughtful rules and regulations that encourage participation and innovation in our markets. The CFTC must promote policies that do not needlessly impinge on the ability to hedge against adverse price moves. We must provide all market participants with legal certainty and regulations whose benefits unambiguously justify their costs.

Yet, we must also look to the future. So much of our world today, especially farming, has undergone a digital transformation. And it should be no surprise that our capital, commodity and futures markets are going through the same digital transformation. The electrification of markets over the past 30 to 40 years and the advent of exponential growth in digital technologies have altered trading, markets and the entire financial landscape with far-ranging implications for capital formation and risk transfer.

The world is changing. Our parents' financial markets are gone. The 21st century digital transformation is well underway, and the digital technology genie will not go back in the bottle. In order for the CFTC to remain an effective regulator, it must keep pace with these changes or our regulations will become outdated and ineffective.

We recently launched an initiative called LabCFTC. Its purpose is twofold: The first is to provide greater regulatory certainty that encourages market-enhancing financial technology innovation to improve the quality, resiliency, and competitiveness of our markets. The second is to identify and utilize emerging technologies that will enable the CFTC to carry out its mission more effectively and efficiently in the new digital world.

Simply put, LabCFTC is intended to help bridge the gap from where we are today to where we need to be: a 21st century regulator for 21st century digital markets.

As derivatives markets continue to evolve, the CFTC must be a regulatory thought leader. This is especially so in its oversight of derivatives clearing houses.

Mandatory clearing of standardized swaps was a core component of the G-20 reform agenda. The world's largest CCPs, which collectively clear over 95 percent of the global cleared swaps market, are directly registered with CFTC as Designated Clearing Organizations (DCOs). These DCOs are located in the United States as well as in major financial centers in Europe and Asia. I am committed to ensuring that the regulatory approach to oversight over these global markets is effective and robust without fragmenting markets and trading activity.

Third, if confirmed, I will serve our regulatory mission in a way that respects the American taxpayer. That means getting back to regular order in operations, conducting more thorough econometric analysis and efficiently managing appropriated resources.

On February 24, 2017, President Trump issued an executive order furthering his regulatory reform agenda to stimulate economic revival.² To achieve it, our first step is to reduce excessive regulatory burdens. The President's executive order directs federal agencies to establish Regulatory Reform Task Forces.³ Accordingly, I recently announced the launch of a new agency initiative: Project KISS.

Project KISS stands for "Keep It Simple Stupid." It is an agency-wide review of CFTC rules, regulations and practices to make them simpler, less burdensome and less costly. As part of that effort, Project KISS recently issued a call for recommendations from the public on regulatory reform. We now have a portal on our website for the public to provide suggestions that we can look to implement.

Project KISS is NOT about identifying rules for repeal or even rewrite. What it IS about is taking our existing rules as they are and applying them in ways that are simpler, and less burdensome. I believe the American taxpayer expects us to do nothing less.

If confirmed, I intend to do all I can to focus on these priorities. I pledge to the Members of this Committee to always be available to listen to your priorities as well.

Chairman Roberts and Ranking Member Stabenow, this Committee has a long tradition of bipartisanship. During my time on the Commission, I have mirrored that practice by working constructively with my fellow commissioners. I have voted with them on more than 95 percent of the matters before us. This has remained so in recent months as Commissioner Sharon Bowen and I have unanimously advanced a number of new initiatives, such as LabCFTC and Project KISS mentioned above.

² Exec. Order No. 13777, 82 Fed. Reg. 12285 (Feb. 24, 2017). Available at <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>.

³ *id.*

If confirmed, I will continue to put aside partisanship at the agency and will work with each of you, with candor and promptness, in our common purpose of serving the American people and the agricultural producers upon which we all rely.

Again, thank you for the honor to testify before you.

I look forward to answering your questions.

DOCUMENTS SUBMITTED FOR THE RECORD

JUNE 22, 2017

June 21, 2017

The Honorable Pat Roberts
Chairman
Senate Agriculture, Nutrition,
and Forestry Committee
United States Senate
Washington, DC 20510

The Honorable Debbie Stabenow
Ranking Member
Senate Agriculture, Nutrition,
and Forestry Committee
United States Senate
Washington, DC 20510

Dear Chairman Roberts and Ranking Member Stabenow:

The undersigned organizations write to express our support for confirming Chris Giancarlo to be Chairman of the Commodity Futures Trading Commission (CFTC). We represent farmers, cooperative associations, grain dealers and millers, food processors, feed manufacturers and others who produce and distribute our nation's food, feed, fuel, and fiber. Our members rely on the agriculture and energy derivative markets – both exchange-traded futures and options, and over-the-counter products – to hedge the commercial risks inherent to agricultural production, processing, and marketing.

Given his financial industry background, we commend CFTC Acting Chairman Giancarlo for the considerable amount of time and effort he has devoted to understanding the agriculture sector and its use of the derivatives markets. In fact, Mr. Giancarlo has visited a number of our members' farms and facilities over the past few years to learn about the industry first-hand from those who are actual commodity producers and market participants.

We believe Mr. Giancarlo, if confirmed, will strike the right balance in overseeing CFTC's regulation of the financial and commodity markets. This includes providing for reduced systemic risk, ensuring market integrity and regulatory consistency, while also considering the important role these markets play in the ability of commercial end users to effectively and efficiently hedge their commercial risks.

We appreciate your continued leadership in the support of U.S. production agriculture and agribusiness.

Sincerely,

AMCOT
American Cotton Shippers Association
American Feed Industry Association
American Soybean Association
American Sugar Alliance
Commodity Market Council
Farm Credit Council
National Association of Wheat Growers
National Cattlemen's Beef Association

National Corn Growers Association
National Cotton Council
National Council of Farmer Cooperatives
National Grain and Feed Association
National Pork Producers Council
National Sorghum Producers
North American Export Grain Association
North American Millers' Association
USA Rice

cc: Majority Leader Mitch McConnell
Minority Leader Chuck Schumer
Members of the Senate Committee on Agriculture, Nutrition, and Forestry



U.S. Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581

J. Christopher Giancarlo
Acting Chairman

(202) 418-5030
JC.Giancarlo@CFTC.gov

June 19, 2017

The Honorable Pat Roberts
Chairman
Committee on Agriculture, Nutrition, and Forestry
United States Senate
Washington, DC 20510

The Honorable Debbie Stabenow
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate
Washington, DC 20510

Dear Chairman Roberts and Ranking Member Stabenow:

Please be advised that pursuant to section 101(b) of the Ethics in Government Act of 1978, as amended, I have informed the appropriate ethics officials that the information required by section 102(a) (1)(A) of the Act with respect to income and honoraria contained in OGE Form 278e (Executive Branch Public Financial Disclosure Report) executed by me on March 27, 2017 is correct. This information is current as of Monday, June 19, 2017. This date is within five days prior to the date of the first hearing scheduled to consider my nomination.

Sincerely,

A handwritten signature in black ink that reads "JC Giancarlo". The signature is fluid and cursive.

J. Christopher Giancarlo
Acting Chairman

U.S. SENATE COMMITTEE ON AGRICULTURE, NUTRITION & FORESTRY
 Questions for Executive Nominees
 115th Congress

1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<u>Name of Position</u>	<u>Date of Nomination</u>
Chairman, Commodity Futures Trading Commission	May 10, 2017

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
James	Christopher	Giancarlo	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 1155 21 st Street, NW		
City: Haworth	NJ	07641	Washington	DC	20581

<i>Other Names Used</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Check if Multiple Names</u>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
Year of Birth <i>(Do not include month and day.)</i>	Place of Birth
1959	Jersey City, NJ

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married <input type="checkbox"/>	Married <input checked="" type="checkbox"/>	Separated <input type="checkbox"/>	Annulled <input type="checkbox"/>	Divorced <input type="checkbox"/>	Widowed <input type="checkbox"/>

<i>Spouse's Name</i> <i>(current spouse only)</i>			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
Regina	Marie	Giancarlo	

<i>Spouse's Other Names Used</i> <i>(current spouse only)</i>						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
Regina	Marie	Beyel		X	June 1959	June 1989
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
First Name	Middle Name	Last Name	Suffix
Emma	Mary	Giancarlo	
Luke	Christopher	Giancarlo	
James	Henry	Giancarlo	

2. Education

List all post-secondary schools attended.

Name of School	Type of School (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	Date Began School (month/year) (check box if estimate)	Date Ended School (month/year) (check box if estimate) (check "present" box if still in school)	Degree	Date Awarded
Skidmore	4 year private college	September, 1977	June 1981	B.A.	June 1981
Vanderbilt University	Private University	September, 1981	June 1984	J.D.	June 1984
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>		
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>		

3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other)	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) "present" box if still employed)
Non-Government Employment	GFI Group Inc.	Executive V.P.	New York, NY	May, 2001	June, 2014
Non-Government Employment	Fenies Ltd.	Executive, V.P.	New York, NY	April, 2000	May 2000
Non-Government Employment	Brown Raysman Millstein Felder & Steiner LLP	Law Partner	New York, NY	September, 1997	April, 2000
Non-Government Employment	Giancarlo & Gleiberman	Law Partner	New York, NY	January, 1992	September, 1997
Non-Government Employment	Curtis Mallet-Provest, Colt & Mosle	Associate Attorney	New York, NY	October, 1985	December, 1991
Non-Government Employment	Mudge Rose LLP	Associate Attorney	New York, NY	September, 1984	October, 1985

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
Borough of Haworth (NJ) Board of Adjustment	Member (unpaid) of non-partisan municipal board; appointed by Mayor (Democrat)	January, 2004	December, 2012

		Est □	Est □	Present □
		Est □	Est □	Present □

4. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

Phi Beta Kappa (National Academic Honor Society.) Inducted: June 1981

5. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam’s Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
French Academy of Bilingual Culture, Board of Directors	Feb. 2007 to Aug. 2013	Chairman of the Board of Directors (unpaid)
Wholesale Markets Brokers Association, Americas	Feb. 2010 to April 8, 2013	Board Member and Past Chairman (unpaid)
Advanced Markets Holdings LLC Board of Directors	July 2010 to March 2013	Board Member (unpaid)
National Investor Relations Institute	2004 to June 2014	None
New York Athletic Club	1998 to Present	None
Knights of Columbus	2008 to Present	None

6. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>
Bergen County (NJ) Republican County Committee	Elected	Nov. 2011	2011 to 2014

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
Republican: Romney Victory (NY) Finance Committee	No Office/Fund Raising Services	Fund Raising	April – Nov 2012
Republican: Giuliani for President Finance Committee (NJ)	No Office/Fund Raising Services	Fund Raising	Sept. 2007 – Jan. 2008

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(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Romney for President	\$2,500	4/17/12
Joe Kyrillos for Senate	\$2,000	5/22/12
Scott Garrett for Congress	\$2,500	6/13/12
Romney for President	\$2,500	9/8/12
Joe Kyrillos for Senate	\$250	9/18/12
PAT PAC	\$250	9/27/12
Haworth Republican Club	\$200	10/12/12
Friends of Jack Kingston	\$250	4/16/13
Chris Christie for Governor	\$3,800	4/29/13
Garrett for Congress	\$4,800	6/7/13
Friends of Rob Astorino	\$500	9/24/13
Haworth Republican Club	\$200	9/25/13
Abbott for Governor	\$500	9/25/13
Schepisi for Assembly	\$250	10/3/13
Bob Auth for Assembly	\$250	10/3/13

NJ Senate Republican majority	\$400	10/22/13
McConnell Senate Committee	\$1,100	10/24/13
Holly Schepisi for Assembly	\$250	5/12/14
National Republican Senate Committee	\$15,000	6/21/14
New Jersey GOP	\$7,500	7/15/14
Trump for America Inaugural Committee	\$2,500	12/6/17

8. Lobbying

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

NO

Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e)

Filer's Information

Giancarlo, James C

Chairman, Commodity Futures Trading Commission

Other Federal Government Positions Held During the Preceding 12 Months:

Commissioner, CFTC (6/2014 - Present)

Names of Congressional Committees Considering Nomination:

- **Committee on Agriculture, Nutrition, and Forestry**

Electronic Signature - I certify that the statements I have made in this form are true, complete and correct to the best of my knowledge.

/s/ Giancarlo, James C [electronically signed on 03/27/2017 by Giancarlo, James C in Integrity.gov]

Agency Ethics Official's Opinion - On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments below).

/s/ Davis, Daniel J, Certifying Official [electronically signed on 05/11/2017 by Davis, Daniel J in Integrity.gov]

Other review conducted by

U.S. Office of Government Ethics Certification

/s/ Shaub, Walter M, Certifying Official [electronically signed on 05/17/2017 by Shaub, Walter M in Integrity.gov]

1. Filer's Positions Held Outside United States Government

#	ORGANIZATION NAME		CITY, STATE	ORGANIZATION TYPE	POSITION HELD	FROM	TO
1	Estate of Family Member		Del Ray Beach, Florida	Estate of deceased family member	Personal Representative/Executor	10/2015	4/2017
2	1995 Irrevocable Family Trust		Del Ray Beach, Florida	Trust	Trustee	10/2015	4/2017
3	2014 Family Trust	See Endnote	Del Ray Beach, Florida	Trust	Trustee	10/2015	4/2017
4	Sora Montana, LLC	See Endnote	Kalispell, Montana	Corporation	Managing Member	8/2016	4/2017
5	181 South Woodland, LLC	See Endnote	Del Ray Beach, Florida	Corporation	Managing Member	1/2015	4/2017

2. Filer's Employment Assets & Income and Retirement Accounts

None

3. Filer's Employment Agreements and Arrangements

None

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

None

5. Spouse's Employment Assets & Income and Retirement Accounts

None

6. Other Assets and Income

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Northwest Mutual Select 100 Life Insurance (whole life)	N/A	\$15,001 - \$50,000	Dividends	\$1,001 - \$2,500
2	SILVERLAKE TECHNOLOGY ASSOCIATES SUMERU L.P.	See Endnote	None (or less than \$1,001)	Capital Gains	\$100,001 - \$1,000,000
2.1	Velocity Inc. Application Strategies Company, NY, NY	N/A	None (or less than \$1,001)	See endnote at item 2.	
2.2	AVI-SPL Video Technology Inc. Tampa, FL	N/A	None (or less than \$1,001)	See endnote at item 2.	
2.3	LocaWeb Web Browsing Company San Paulo, Brazil	N/A	None (or less than \$1,001)	See endnote at item 2.	
2.4	MedSeek Corp, Medical Software Company Brimingham AL	N/A	None (or less than \$1,001)	See endnote at item 2.	
2.5	Opera Software, Mobile Advertising Company, Oslo, Norway	N/A	None (or less than \$1,001)	See endnote at item 2.	
2.6	Smart Modular Technology Inc., Memory Modules Company, Nevada, CA	N/A	None (or less than \$1,001)	See endnote at item 2.	
2.7	Talend Corp., Data Architect Company, Los Altos, CA	N/A	None (or less than \$1,001)	See endnote at item 2.	
2.8	Blackline Systems, Accounting Software company, Woodland Hills, CA	N/A	None (or less than \$1,001)	See endnote at item 2.	
2.9	Foreflight Corp., Aviation Support Software, Asutin TX	N/A	None (or less than \$1,001)	See endnote at item 2.	
3	1998 Life Insurance Trust				
3.1	Northwest Mutual ECL Life Insurance (whole life)	N/A	\$100,001 - \$250,000	Dividends	\$2,501 - \$5,000

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
4	John Hancock Freedom 529 College Savings Plan (Alaska)				
4.1	John Hancock Equity Portfolio 529-C	Yes	\$250,001 - \$500,000		\$5,001 - \$15,000
5	SEP FBO Filer				
5.1	American Funds AMCAP F-2 (AMCFX)	Yes	\$100,001 - \$250,000		\$5,001 - \$15,000
5.2	Dodge & Cox Income Fund (DODIX)	Yes	\$50,001 - \$100,000		\$2,501 - \$5,000
5.3	Fidelity Advisor Mid Cap II I (FIIMX)	Yes	\$15,001 - \$50,000		\$201 - \$1,000
5.4	METROPOLITAN WEST TOTAL RETURN BOND CL I (MWTIX)	Yes	\$15,001 - \$50,000		\$1,001 - \$2,500
5.5	Dreyfus/Standish Global Fixed Income I (SDGIX)	Yes	\$15,001 - \$50,000		\$2,501 - \$5,000
5.6	Templeton Global Total Return Adv (TTRZX)	Yes	\$1,001 - \$15,000		\$1,001 - \$2,500
5.7	Oakmark Select Fund I (OAKLX)	Yes	\$50,001 - \$100,000		\$2,501 - \$5,000
5.8	John Hancock Disciplined Value Mid Cap I (JVMIX)	Yes	\$15,001 - \$50,000		\$1,001 - \$2,500
5.9	MFS International Value Class I (MINIX)	Yes	\$50,001 - \$100,000		\$1,001 - \$2,500
5.10	DFA INTERNATIONAL REAL ESTATE SECURITIES CL I (DFITX)	Yes	\$1,001 - \$15,000		\$1,001 - \$2,500
5.11	Oakmark Small Cap (OAKEX)	Yes	\$15,001 - \$50,000		\$201 - \$1,000
5.12	Oppenheimer Developing Markets Y (ODVYX)	Yes	\$15,001 - \$50,000		\$1,001 - \$2,500
5.13	Vanguard Value Index (VVIAX)	Yes	\$50,001 - \$100,000		\$1,001 - \$2,500
5.14	Vanguard Global Ex US Real Estate Index Inv (VGXRX)	Yes	\$1,001 - \$15,000		\$201 - \$1,000

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
5.15	BlackRock Strategic Income Opps Instl (BSIX)	Yes	None (or less than \$1,001)		\$1,001 - \$2,500
5.16	Fidelity Advisor Total Bond I (FEPIX)	Yes	\$15,001 - \$50,000		\$2,501 - \$5,000
5.17	NORTHERN SMALL CAP VALUE (NOSGX)	Yes	\$15,001 - \$50,000		\$1,001 - \$2,500
5.18	OAKMARK INTERNATIONAL FUND INVESTOR CL (OAKIX)	Yes	\$15,001 - \$50,000		\$1,001 - \$2,500
5.19	Oppenheimer Global Y (OGLYX)	Yes	\$50,001 - \$100,000		\$2,501 - \$5,000
5.20	Oppenheimer International Small Mid Company Y (OSMYX)	Yes	\$15,001 - \$50,000		\$1,001 - \$2,500
5.21	VANGUARD SHORT TERM INVESTMENT GRADE ADMIRAL CL (VFSUX)	Yes	\$15,001 - \$50,000		\$2,501 - \$5,000
5.22	Vanguard REIT Index Admiral Shares (VGSIX)	Yes	\$15,001 - \$50,000		\$1,001 - \$2,500
6	IRA FBO Spouse U.S. brokerage custodian account				
6.1	METROPOLITAN WEST TOTAL RETURN BOND CL I	Yes	\$1,001 - \$15,000		\$201 - \$1,000
6.2	Oppenheimer Global Y (OGLYX)	Yes	\$1,001 - \$15,000		\$201 - \$1,000
6.3	American Funds AMCAP F-2 (AMCFX)	Yes	\$1,001 - \$15,000		\$1,001 - \$2,500
6.4	BlackRock Strategic Income Opps Instl (BSIX)	Yes	None (or less than \$1,001)		\$201 - \$1,000
6.5	DFA Intl Real Estate (DFITX)	Yes	\$1,001 - \$15,000		None (or less than \$201)
6.6	DFA US Small Cap (DFSTX)	Yes	\$1,001 - \$15,000		None (or less than \$201)
6.7	JP Morgan Mid-Cap Growth (JMGXZ)	Yes	\$1,001 - \$15,000		None (or less than \$201)
6.8	DFA INTL SMALL CAP VALUE CL I	Yes	\$1,001 - \$15,000		None (or less than \$201)

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
6.9	American Funds New World F-2 (NFFFX)	Yes	\$1,001 - \$15,000		None (or less than \$201)
6.10	Oppenheimer Global I (OGLIX)	Yes	\$1,001 - \$15,000		\$201 - \$1,000
6.11	Dreyfus/Standish Global Fixed Income I (SDGIX)	Yes	\$1,001 - \$15,000		None (or less than \$201)
6.12	JOHN HANCOCK DISCIPLINED VAL MID CAP CL I (JVMIX)	Yes	\$1,001 - \$15,000		\$201 - \$1,000
6.13	Oppenheimer International Small Mid Company Y (OSMYX)	Yes	\$1,001 - \$15,000		None (or less than \$201)
6.14	Templeton Global Total Return Adv (TTRZX)	Yes	\$1,001 - \$15,000		None (or less than \$201)
6.15	Vanguard REIT Index Admiral Shares (VGSLX)	Yes	\$1,001 - \$15,000		None (or less than \$201)
6.16	Vanguard Short-Term Investment-Grade (VFSTX)	Yes	\$1,001 - \$15,000		None (or less than \$201)
6.17	Vanguard Value Index Admiral Shares (VVIAX)	Yes	\$15,001 - \$50,000		\$201 - \$1,000
7	U.S. brokerage Joint Account JTWROS	No			
7.1	ALLIANZGI NFJ INTL VALUE FUND CL P (AFVPX)	Yes	\$1,001 - \$15,000		None (or less than \$201)
7.2	COHEN & STEERS REALTY SHARES FUND CL N (CSRSX)	Yes	None (or less than \$1,001)		\$201 - \$1,000
7.3	ISHARES CORE HIGH DIVIDEND ETF (HDV)	Yes	\$1,001 - \$15,000		\$201 - \$1,000
7.4	ISHARES RUSSELL 1000 GROWTH (IWF)	Yes	\$1,001 - \$15,000		\$201 - \$1,000
7.5	ISHARES SELECT DIVIDEND ETF (DVI)	Yes	\$1,001 - \$15,000		\$201 - \$1,000
7.6	LOOMIS SAYLES BOND FD INSTL CL (LSBDX)	Yes	\$1,001 - \$15,000		\$201 - \$1,000
7.7	THE OAKMARK INTL FUND (OAKIX)	Yes	\$1,001 - \$15,000		None (or less than \$201)
7.8	WESTERN ASSET CORE BOND FD CL I (WATFX)	Yes	\$15,001 - \$50,000		\$201 - \$1,000

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
7.9	U.S. brokerage Bank Deposit Program (cash)	N/A	\$100,001 - \$250,000		None (or less than \$201)
7.10	COHEN & STEERS REAL ESTATE SECURITIES FD I (CSDIX)	Yes	\$1,001 - \$15,000		None (or less than \$201)
7.11	CLEARBRIDGE AGGRESSIVE GROWTH FUND I (SAGYX)	Yes	\$15,001 - \$50,000		\$201 - \$1,000
7.12	JP MORGAN UNDSVCRD MNGRS BEHAVRL VAL FD SELECT CL (UBVSX)	Yes	\$1,001 - \$15,000		\$201 - \$1,000
8	2015 Revocable Family Trust	No			
8.1	Allendale Nursing Home, Inc., a closely held private health care business (non-voting shares) (minority interest), Allendale, Nj	N/A	\$1,000,001 - \$5,000,000	Dividends	\$100,001 - \$1,000,000
9	UTMA U.S. brokerage account FBO DC#1				
9.1	GUGGENHEIM S&P500 EQUAL WEIGHT INDEX (RYDEX) (RSP)	Yes	\$1,001 - \$15,000		None (or less than \$201)
9.2	SPDR MSCI ACWI (ex-US) (CWI)	Yes	\$1,001 - \$15,000		None (or less than \$201)
10	UTMA U.S. brokerage account FBO DC#2				
10.1	PowerShares ETF Trust II S&P 400 Low Volatility Portfolio (XMLV)	Yes	\$1,001 - \$15,000		None (or less than \$201)
10.2	GUGGENHEIM S&P500 EQUAL WEIGHT (RYDEX) (RSP)	Yes	\$1,001 - \$15,000		None (or less than \$201)
10.3	SPDR MSCI ACWI IMI (ACWI)	Yes	\$1,001 - \$15,000		None (or less than \$201)
10.4	SPDR MSCI ACWI (ex-US) (CWI)	Yes	\$1,001 - \$15,000		None (or less than \$201)
11	UTMA U.S. brokerage account FBO DC#3				
11.1	PowerShares ETF Trust II S&P 400 Low Volatility Portfolio (XMLV)	Yes	\$1,001 - \$15,000		None (or less than \$201)
11.2	GUGGENHEIM S&P 500 EQUAL WEIGHT (RYDEX) (RSP)	Yes	\$1,001 - \$15,000		None (or less than \$201)

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
11.3	SPDR MSCI ACWI (ex-US) (CWI)	Yes	\$1,001 - \$15,000		None (or less than \$201)
12	Merrill Lynch NextGen 529 College Savings Plan (Maine) FBO DC#2	No			
12.1	BLACKROCK AGE 17 TO 19 YRS A (NAABF)	Yes	\$15,001 - \$50,000		None (or less than \$201)
12.2	BLACKROCK AGE 17 TO 19 YRS C (NAAGA)	Yes	\$100,001 - \$250,000		\$201 - \$1,000
13	Merrill Lynch NextGen 529 College Savings Plan (Maine) FBO DC#3	No			
13.1	BLACKROCK AGE 20+ YEARS C (NAAGB)	Yes	\$15,001 - \$50,000		None (or less than \$201)
13.2	BLACKROCK AGE 17 TO 19 YRS C (NAAGA)	Yes	None (or less than \$1,001)		\$2,501 - \$5,000
14	Merrill Lynch NextGen 529 College Savings Plan (Maine) FBO DC#1	No			
14.1	FRANKLIN TEMPLETON GROWTH & INCOME C (NAAFL)	Yes	\$1,001 - \$15,000		\$15,001 - \$50,000
15	2014 Family Trust	No			
15.1	BlackRock Treasury Strategies Institutional Fund (MLIXX)	Yes	\$500,001 - \$1,000,000		None (or less than \$201)
15.2	U.S. Brokerage Bank Deposit Program (cash)	No	\$100,001 - \$250,000		None (or less than \$201)
15.3	Sora Montana, LLC (holding company for personal property of late family member) (value not readily ascertainable)	N/A			None (or less than \$201)
15.4	181 South Woodland, LLC (holding company for real property of late family member) Englewood, NJ	N/A	\$1,000,001 - \$5,000,000		None (or less than \$201)
16	Estate of Family Member	No			None (or less than \$201)

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
16.1	Allendale Nursing Home, Inc., a closely held private health care business (voting shares) Allendale, NJ	N/A	\$5,000,001 - \$25,000,000		None (or less than \$201)
16.2	Archangel Inc. (in-home nursing service) Allendale, NJ	N/A	\$250,001 - \$500,000		None (or less than \$201)
16.3	U.S. Brokerage Bank Deposit Program (cash)	N/A	\$1,000,001 - \$5,000,000		None (or less than \$201)

7. Transactions

(N/A) - Not required for this type of report

8. Liabilities

#	CREDITOR NAME	TYPE	AMOUNT	YEAR INCURRED	RATE	TERM
1	Bank of America, N.A.	Mortgage on Personal Residence	\$500,001 - \$1,000,000	2013	3.1250%	30 Year

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9. Gifts and Travel Reimbursements

(N/A) - Not required for this type of report

Endnotes

PART	#	ENDNOTE
1.	3	Owns cash, personal property and 100% ownership of the two LLCs

PART	#	ENDNOTE
1.	4	This entity is a holding company for personal property of my late family member and is wholly owned by the 2014 Family Trust.
1.	5	This entity is a holding company for real property of my late family member and is wholly owned by the 2014 Family Trust.
6.	2	Entire interest sold June 13, 2016.

Summary of Contents

1. Filer's Positions Held Outside United States Government

Part 1 discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation.

This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

2. Filer's Employment Assets & Income and Retirement Accounts

Part 2 discloses the following:

- Sources of earned and other non-investment income of the filer totaling more than \$200 during the reporting period (e.g., salary, fees, partnership share, honoraria, scholarships, and prizes)
- Assets related to the filer's business, employment, or other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

3. Filer's Employment Agreements and Arrangements

Part 3 discloses agreements or arrangements that the filer had during the reporting period with an employer or former employer (except the United States Government), such as the following:

- Future employment
- Leave of absence
- Continuing payments from an employer, including severance and payments not yet received for previous work (excluding ordinary salary from a current employer)
- Continuing participation in an employee welfare, retirement, or other benefit plan, such as pensions or a deferred compensation plan
- Retention or disposition of employer-awarded equity, sharing in profits or carried interests (e.g., vested and unvested stock options, restricted stock, future share of a company's profits, etc.)

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

Part 4 discloses sources (except the United States Government) that paid more than \$5,000 in a calendar year for the filer's services during any year of the reporting period.

The filer discloses payments both from employers and from any clients to whom the filer personally provided services. The filer discloses a source even if the source made its payment to the filer's employer and not to the filer. The filer does not disclose a client's payment to the filer's employer if the filer did not provide the services for which the client is paying.

5. Spouse's Employment Assets & Income and Retirement Accounts

Part 5 discloses the following:

- Sources of earned income (excluding honoraria) for the filer's spouse totaling more than \$1,000 during the reporting period (e.g., salary, consulting fees, and partnership share)
- Sources of honoraria for the filer's spouse greater than \$200 during the reporting period
- Assets related to the filer's spouse's employment, business activities, other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's spouse's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF). Amounts of income are not required for a spouse's earned income (excluding honoraria).

6. Other Assets and Income

Part 6 discloses each asset, not already reported, that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in investment income during the reporting period. For purposes of the value and income thresholds, the filer aggregates the filer's interests with those of the filer's spouse and dependent children.

This section does not include the following types of assets: (1) a personal residence (unless it was rented out during the reporting period); (2) income or retirement benefits associated with United States Government employment (e.g., Thrift Savings Plan); and (3) cash accounts (e.g., checking, savings, money market accounts) at a single financial institution with a value of \$5,000 or less (unless more than \$200 of income was produced). Additional exceptions apply. Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

7. Transactions

Part 7 discloses purchases, sales, or exchanges of real property or securities in excess of \$1,000 made on behalf of the filer, the filer's spouse or dependent child during reporting period.

This section does not include transactions that concern the following: (1) a personal residence, unless rented out; (2) cash accounts (e.g., checking, savings, CDs, money market accounts) and money market mutual funds; (3) Treasury bills, bonds, and notes; and (4) holdings within a federal Thrift Savings Plan account. Additional exceptions apply.

8. Liabilities

Part 8 discloses liabilities over \$10,000 that the filer, the filer's spouse or dependent child owed at any time during the reporting period.

This section does not include the following types of liabilities: (1) mortgages on a personal residence, unless rented out (limitations apply for PAS filers); (2) loans secured by a personal motor vehicle, household furniture, or appliances, unless the loan exceeds the item's purchase price; and (3) revolving charge accounts, such as credit card balances, if the outstanding liability did not exceed \$10,000 at the end of the reporting period. Additional exceptions apply.

9. Gifts and Travel Reimbursements

This section discloses:

- Gifts totaling more than \$375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.
- Travel reimbursements totaling more than \$375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.

For purposes of this section, the filer need not aggregate any gift or travel reimbursement with a value of \$150 or less. Regardless of the value, this section does not include the following items: (1) anything received from relatives; (2) anything received from the United States Government or from the District of Columbia, state, or local governments; (3) bequests and other forms of inheritance; (4) gifts and travel reimbursements given to the filer's agency in connection with the filer's official travel; (5) gifts of hospitality (food, lodging, entertainment) at the donor's residence or personal premises; and (6) anything received by the filer's spouse or dependent children totally independent of their relationship to the filer. Additional exceptions apply.

Privacy Act Statement

Title I of the Ethics in Government Act of 1978, as amended (the Act), 5 U.S.C. app. § 101 et seq., as amended by the Stop Trading on Congressional Knowledge Act of 2012 (Pub. L. 112-105) (STOCK Act), and 5 C.F.R. Part 2634 of the U. S. Office of Government Ethics regulations require the reporting of this information. The primary use of the information on this report is for review by Government officials to determine compliance with applicable Federal laws and regulations. This report may also be disclosed upon request to any requesting person in accordance with sections 105 and 402(b)(1) of the Act or as otherwise authorized by law. You may inspect applications for public access of your own form upon request. Additional disclosures of the information on this report may be made: (1) to any requesting person, subject to the limitation contained in section 208(d)(1) of title 18, any determination granting an exemption pursuant to sections 208(b)(1) and 208(b)(3) of title 18; (2) to a Federal, State, or local law enforcement agency if the disclosing agency becomes aware of violations or potential violations of law or regulation; (3) to another Federal agency, court or party in a court or Federal administrative proceeding when the Government is a party or in order to comply with a judge-issued subpoena; (4) to a source when necessary to obtain information relevant to a conflict of interest investigation or determination; (5) to the National Archives and Records Administration or the General Services Administration in records management inspections; (6) to the Office of Management and Budget during legislative coordination on private relief legislation; (7) to the Department of Justice or in certain legal proceedings when the disclosing agency, an employee of the disclosing agency, or the United States is a party to litigation or has an interest in the litigation and the use of such records is deemed relevant and necessary to the litigation; (8) to reviewing officials in a new office, department or agency when an employee transfers or is detailed from one covered position to another; (9) to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record; (10) to contractors and other non-Government employees working on a contract, service or assignment for the Federal Government when necessary to accomplish a function related to an OGE Government-wide system of records; and (11) on the OGE Website and to any person, department or agency, any written ethics agreement filed with OGE by an individual nominated by the President to a position requiring Senate confirmation. See also the OGE/GOVT-1 executive branch-wide Privacy Act system of records.

Public Burden Information

This collection of information is estimated to take an average of three hours per response, including time for reviewing the instructions, gathering the data needed, and completing the form. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Program Counsel, U.S. Office of Government Ethics (OGE), Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number, 3209-0001, is displayed here and at the top of the first page of this OGE Form 278e).

May 3, 2017

Mr. Daniel Davis, Esq.
General Counsel and Designated Agency Ethics Official
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Dear Mr. Davis:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Chairman and Commissioner for the Commodity Futures Trading Commission ("CFTC").

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I retain a vested beneficial interest in the Estate of a late Family Member and have disclosed the assets of this estate on my OGE Form 278e Public Financial Disclosure Report. In April 2017, I resigned from my position as the executor of this estate. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the Estate of a late Family Member, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). For a period of one year after my resignation as executor of the Estate of a late Family Member, I will not participate personally and substantially in any particular matter involving specific parties in which the Estate of a late Family Member is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I also retain a vested beneficial interest in the holdings of the 2014 Family Trust, including vested beneficial interests in 181 South Woodland, LLC and Sora Montana, LLC, two limited liability corporations held in the 2014 Family Trust, and have disclosed the assets on my OGE Form 278e Public Financial Disclosure Report. In April 2017, I resigned from my position as a trustee of the 2014 Family Trust, as the Managing Member of Sora Montana, LLC, and as the Managing Member of 181 South Woodland, LLC. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the 2014 Family Trust, Sora Montana, LLC, and/or 181 South Woodland, LLC,

unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). For a period of one year after my resignation as trustee of the 2014 Family Trust, Managing Member of Sora Montana, LLC, and Managing Member of 181 South Woodland, I will not participate personally and substantially in any particular matter involving specific parties in which any of these entities is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

In April 2017, I resigned as the trustee of the 1995 Irrevocable Family Trust. For a period of one year after my resignation as trustee of the 1995 Irrevocable Family Trust, I will not participate personally and substantially in any particular matter involving specific parties in which the 1995 Irrevocable Family Trust is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I understand that, if I am confirmed as Chairman and Commissioner of the CFTC, I must comply with the requirements of 7 U.S.C. § 2(a)(8), 7 U.S.C. § 13(c), 7 U.S.C. § 13(d), and the CFTC's supplemental ethics regulations.

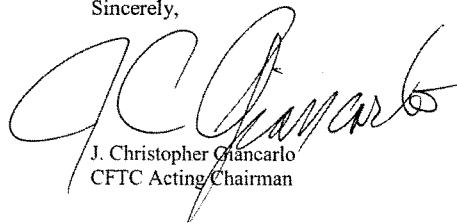
If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I will meet in person with you during the first week of my service in the position of Chairman in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

Finally, I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,



J. Christopher Giancarlo
CFTC Acting Chairman

UNITED STATES OFFICE OF
GOVERNMENT ETHICS

May 17, 2017

The Honorable Pat Roberts
Chairman
Committee on Agriculture, Nutrition,
and Forestry
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by J. Christopher Giancarlo, who has been nominated by President Trump for the positions of Commissioner and Chairman, Commodity Futures Trading Commission.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,
**WALTER
SHAUB**

Walter M. Shaub, Jr.
Director

Digitally signed by WALTER SHAUB
DN: cn=Dr. WALTER SHAUB, o=U.S. Government, ou=Office of
Government Ethics, cn=WALTER SHAUB,
#1.2.840.113549.1.1.1-194912824655
Date: 2017.05.17 14:46:42 -0400

Enclosures





U.S. Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581

J. Christopher Giancarlo
Acting Chairman

(202) 418-5030
JC.Giancarlo@CFTC.gov

June 19, 2017

The Honorable Pat Roberts
Chairman
Committee on Agriculture, Nutrition, and Forestry
United States Senate
Washington, DC 20510

The Honorable Debbie Stabenow
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate
Washington, DC 20510

Dear Chairman Roberts and Ranking Member Stabenow:

As discussed and agreed to, the information below and attached clarifies and updates responses to my Core Questionnaire submitted on May 24, 2017.

Included in the attached documents are updates to the following questions:

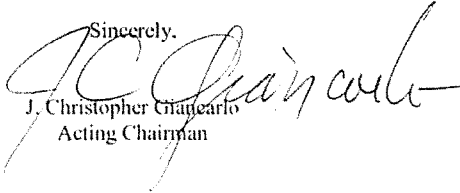
#3 (A) Employment: List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history. Included in the attached list of employment activities is a reference to government employment with the Commodity Futures Trading Commission.

#6 (C) Political Activity: Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year. Included in the attached list of contributions is a donation of \$250, made on 11/8/2013, to Conaway for Congress.

7 Publications: *List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet.* Attached is a list of publications found on the internet at:
<http://www.cfic.gov/About/Commissioners/JChristopherGiancarlo/index.htm>.

If you have further questions, please do not hesitate to contact Charlie Thornton, my Director of Legislative Affairs at cthorton@cfic.gov.

Sincerely,



J. Christopher Giancarlo
Acting Chairman

3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month year) (check box if estimate)	<u>Date Employment Ended</u> (month year) (check box if estimate) (check "present" box if still employed)
Government Employment	Commodity Futures Trading Commission	Acting Chairman	Washington, DC	January 20, 2017	Present
Government Employment	Commodity Futures Trading Commission	Commissioner	Washington, DC	June 16, 2014	January 19, 2017

6. Political Activity

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Conaway for Congress	\$250	11/8/13

7. Publications

List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
Commissioner J. Christopher Giancarlo	http://www.cftc.gov/About/Commissioners/JChristopherGiancarlo/index.htm	August 2013 - May 23, 2017
	Testimony of J. Christopher Giancarlo Acting-Chairman, Commodity Futures Trading Commission before the U.S. House of Representatives Committee on Appropriations Subcommittee on Agriculture, Rural Development and Related Agencies	June 8, 2017
	Address of CFTC Acting Chairman J. Christopher Giancarlo before the New York FinTech Innovation Lab	May 17, 2017
	Remarks of Acting Chairman J. Christopher Giancarlo before International Swaps and Derivatives Association 32nd Annual Meeting, Lisbon, Portugal	May 10, 2017
	Remarks of Acting Chairman J. Christopher Giancarlo before the 11th Annual Capital Market Summit: Financing American Business, US Chamber of Commerce	March 30, 2017
	Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL	March 15, 2017
	Statement of CFTC Acting Chairman J. Christopher Giancarlo Concerning Staff No-Action Relief for March 1, 2017 Implementation of Variation Margin on Uncleared Swaps	February 13, 2017
	Keynote Address of CFTC Commissioner J. Christopher Giancarlo Before SEFCO VII	January 18, 2017
	Statement of Commissioner Chris Giancarlo regarding the Resignation of Chairman Tim Massad	January 3, 2017
	Keynote Address of CFTC Commissioner J. Christopher Giancarlo before the ISDA's Trade Execution Legal Forum	December 9, 2016
	Statement of Commissioner J. Christopher Giancarlo on Proposed Rule for Position Limits for Derivatives	December 5, 2016
	Statement of Commissioner J. Christopher Giancarlo on Proposed Rule for Capital Requirements of Swap Dealers and Major Swap Participants	December 2, 2016
	Statement of Dissent by Commissioner J. Christopher Giancarlo Regarding Supplemental Notice of Proposed Rulemaking on Regulation Automated Trading	November 4, 2016
	Statement of Commissioner J. Christopher Giancarlo on the Southwest Power Pool Final Order and the Amended RTO-ISO Order	October 18, 2016

	Statement of Commissioner J. Christopher Giancarlo Regarding the October 7, 2016 Flash Crash in the British Pound	October 11, 2016
	Statement of Commissioner J. Christopher Giancarlo on the Proposed Rule on Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants	October 11, 2016
	Commissioner J. Christopher Giancarlo Releases Latest Podcast: 21st Century Markets Need 21st Century Regulation	October 5, 2016
	Address of CFTC Commissioner J. Christopher Giancarlo to the American Enterprise Institute	September 21, 2016
	Statement of Commissioner J. Christopher Giancarlo Regarding System Safeguards Testing Requirements for Derivatives Clearing Organizations	September 8, 2016
	Statement of Commissioner J. Christopher Giancarlo on the Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants	September 8, 2016
	Statement of Commissioner J. Christopher Giancarlo Regarding the Implementation Date for Margin for Uncleared Swaps	August 31, 2016
	Statement of Commissioner J. Christopher Giancarlo Swap Dealer De Minimis Exception Final Report	August 15, 2016
	Statement of Commissioner J. Christopher Giancarlo Regarding Final Response to District Court Remand Order in Securities Industry and Financial Markets Association, et al. v. United States Commodity Futures Trading Commission	August 4, 2016
	Opening Statement of Commissioner J. Christopher Giancarlo before the CFTC Staff Roundtable on Regulation Automated Trading	June 10, 2016
	Statement of Commissioner J. Christopher Giancarlo Regarding Supplemental Proposal on Position Limits for Derivatives: Certain Exemptions and Guidance	May 26, 2016
	Keynote Address of CFTC Commissioner J. Christopher Giancarlo before the American Cotton Shippers Association Annual Conference	May 26, 2016
	Statement of Dissent by Commissioner J. Christopher Giancarlo on the Cross-Border Application of the Margin Requirements	May 24, 2016
	Keynote Address of Commissioner J. Christopher Giancarlo before the Market Group, 2016 Annual Customer Conference New York	May 10, 2016
	Statement of Dissent by CFTC Commissioner J. Christopher Giancarlo on the Proposed Amendment to the RTO-ISO Order	May 10, 2016
	Statement of CFTC Commissioner J. Christopher Giancarlo Regarding the Final Rule on Amendments to the Definitions of "Portfolio Reconciliation" and "Material Terms" for Purposes of Swap Portfolio Reconciliation	May 2, 2016
	Statement of Commissioner J. Christopher Giancarlo before the Market Risk Advisory Committee Meeting	April 26, 2016

	Keynote Address of CFTC Commissioner J. Christopher Giancarlo Before the Cato Institute, Cryptocurrency: The Policy Challenges of a Decentralized Revolution	April 12, 2016
	Special Address of CFTC Commissioner J. Christopher Giancarlo Before the Depository Trust & Clearing Corporation 2016 Blockchain Symposium	March 29, 2016
	Statement of CFTC Commissioner J. Christopher Giancarlo Comparability Determination for the European Union: Dually-Registered Derivatives Clearing Organizations and Central Counterparties	March 16, 2016
	Keynote Address of CFTC Commissioner J. Christopher Giancarlo before the National Grain and Feed Association Annual Conference	March 14, 2016
	Statement of Commissioner J. Christopher Giancarlo, Sponsor of the CFTC Energy and Environmental Markets Advisory Committee	March 11, 2016
	Opening Statement of Commissioner J. Christopher Giancarlo before the February 25, 2016, Meeting of the Energy and Environmental Markets Advisory Committee	February 25, 2016
	Opening Statement of Commissioner J. Christopher Giancarlo before the CFTC Technology Advisory Committee Meeting	February 23, 2016
	Statement of Commissioner J. Christopher Giancarlo on European Union Determination of U.S. Central Counterparty Clearinghouse Equivalence	February 10, 2016
	Commissioner J. Christopher Giancarlo Releases Podcast About 6 Mega-Trends Facing 21st Century Financial Markets	February 4, 2016
	Statement of Commissioner J. Christopher Giancarlo Regarding Full Registrations of Swap Execution Facilities	January 22, 2016
	Statement of Commissioner J. Christopher Giancarlo Regarding Final Rule on Records of Commodity Interest and Related Cash or Forward Transactions	December 18, 2015
	Statement of Commissioner J. Christopher Giancarlo Regarding Final Rule on Margin Requirements for Uncleared Swaps	December 16, 2015
	Statement of Commissioner J. Christopher Giancarlo Regarding Proposed Rule on System Safeguards Testing Requirements	December 16, 2015
	Statement of Commissioner J. Christopher Giancarlo on Enactment of the FAST Act	December 7, 2015
	Guest Lecture of Commissioner J. Christopher Giancarlo, Harvard Law School, Fidelity Guest Lecture Series on International Finance	December 1, 2015
	Statement of Commissioner J. Christopher Giancarlo Regarding Notice of Proposed Rulemaking on Regulation Automated Trading	November 24, 2015
	Statement of Commissioner J. Christopher Giancarlo Swap Dealer De Minimis Exception Preliminary Report	November 18, 2015

	Keynote Address of CFTC Commissioner J. Christopher Giancarlo before the 2015 ISDA Annual Asia Pacific Conference	October 25, 2015
	Statement of Commissioner J. Christopher Giancarlo on the Fourth No-Action Letter Delay for Certain Package Transactions	October 14, 2015
	Statement of Commissioner J. Christopher Giancarlo on the Issuance of Conditional Time-Limited No-Action Relief from Certain Ownership and Control Data Reporting Requirements under Parts 17, 18 and 20 of the Commission's Regulations	September 28, 2015
	Keynote Address of CFTC Commissioner J. Christopher Giancarlo before the 13th Annual Forex Network Chicago 2015	September 24, 2015
	Statement of Commissioner J. Christopher Giancarlo on the Proposed Changes to Aggregation Rules as Part of the CFTC Position Limits Regime	September 22, 2015
	Statement of Commissioner J. Christopher Giancarlo for the Agricultural Advisory Committee Meeting	September 22, 2015
	Keynote Address of CFTC Commissioner J. Christopher Giancarlo before the 7th Annual Capital Link Global Commodities, Energy & Shipping Forum	September 16, 2015
	Statement of Commissioner J. Christopher Giancarlo on the Proposal to Amend the Definition of "Material Terms" for Purposes of Swap Portfolio Reconciliation	September 15, 2015
	Statement of Commissioner J. Christopher Giancarlo, Notice of Proposed Rulemaking on Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps	August 19, 2015
	Statement of Commissioner J. Christopher Giancarlo on the Fifth No-Action Letter Delay of Staff Advisory 13-69 (Washington, DC)	August 13, 2015
	Statement from Commissioner Giancarlo on the Passing of EEMAC Member Andrew Soto (Washington, DC)	August 5, 2015
	Statement of Commissioner J. Christopher Giancarlo, Six Month Progress Report on CFTC Swaps Trading Rules: Incomplete Action and Fragmented Markets (Washington, DC)	August 4, 2015
	Opening Statement of Commissioner J. Christopher Giancarlo Before the Second Meeting of the CFTC's Energy and Environmental Markets Advisory Committee (Washington, DC)	July 29, 2015
	Statement of Commissioner J. Christopher Giancarlo on the DMO Made Available to Trade Process Roundtable (Washington, DC)	July 14, 2015
	Statement of Commissioner J. Christopher Giancarlo on Cross-Border Margin (Washington, DC)	June 29, 2015
	Keynote Address of CFTC Commissioner J. Christopher Giancarlo before the Cato Summit on Financial Regulation	June 2, 2015
	Statement of Commissioner J. Christopher Giancarlo for the Market Risk Advisory Committee Meeting	June 1, 2015

	Keynote Address of CFTC Commissioner J. Christopher Giancarlo before the EnergyRisk Summit USA	May 13, 2015
	Statement of Commissioner J. Christopher Giancarlo Regarding Trade Options Rule	April 30, 2015
	Statement of Commissioner J. Christopher Giancarlo on the Commodity Futures Trading Commission's Recent Steps to Improve its Swaps Trading Regulations	April 27, 2015
	Testimony of Commissioner J. Christopher Giancarlo before the U.S. House Committee on Agriculture, Subcommittee on Commodity Exchanges, Energy, and Credit	April 14, 2015
	Statement of Commissioner J. Christopher Giancarlo in Support of Adoption of Amendments to CFTC Regulation 1.22 (Residual Interest Deadline for Futures Commission Merchants)	March 17, 2015
	Opening Statement of Commissioner J. Christopher Giancarlo Before the First Meeting of the CFTC's Energy and Environmental Markets Advisory Committee	February 26, 2015
	Keynote Address by CFTC Commissioner J. Christopher Giancarlo	January 29, 2015
	CFTC Commissioner J. Christopher Giancarlo Releases Swaps Trading Rules White Paper	January 29, 2015
	Keynote Address by CFTC Commissioner J. Christopher Giancarlo, Commodity Markets Council, State of the Industry Conference	January 26, 2015
	Address by CFTC Commissioner J. Christopher Giancarlo Before the ABA Business Law Section, Derivatives & Futures Law Committee Winter Meeting	January 23, 2015
	Opening Statement of Commissioner J. Christopher Giancarlo before the CFTC Agricultural Advisory Committee Meeting	December 9, 2014
	Remarks of CFTC Commissioner J. Christopher Giancarlo before the U.S. Chamber of Commerce	November 20, 2014
	Statement from Commissioner J. Christopher Giancarlo: Reconsidering the CFTC's Swaps Trading Rules for Greater Effectiveness in the Global Economy	November 12, 2014
	Opening Statement of Commissioner J. Christopher Giancarlo, Commission Open Meeting	November 3, 2015
	Keynote Address of CFTC Commissioner J. Christopher Giancarlo at The Global Forum for Derivatives Markets, 35th Annual Burgenstock Conference, Geneva, Switzerland	September 24, 2014
	Opening Statement of Commissioner J. Christopher Giancarlo, Open Meeting on Proposed Rule on Margin Requirements for Uncleared Swaps and Final Rule on Utility Special Entities	September 17, 2014

QUESTIONS AND ANSWERS

JUNE 22, 2017

Senate Committee on Agriculture, Nutrition, & Forestry
Hearing to consider the nomination of J. Christopher Giancarlo
to be Chairman of the Commodity Futures Trading Commission
June 22, 2017
Questions for the Record

Chairman Pat Roberts

- (1) **The derivatives market has its origin in agriculture. The earliest futures contracts were for agricultural commodities, with their federal regulation beginning under the Grain Futures Act of 1922. In the modern era of markets, and especially during these tough economic times in agriculture, it is important for producers, and other end-users, to manage their risks. Last Congress, I moved a CFTC reauthorization package out of this Committee in an effort to address some of the most pressing issues for market participants, such as setting an appropriate “de-minimis” level and defining what constitutes a “bona fide” hedge. What options are available at the Commission to address these issues?**

Response: I am concerned that a drop in the de minimis threshold from \$8 billion to \$3 billion would have the effect of causing many non-financial companies to curtail or terminate risk-hedging activities with their customers, limiting risk-management options for end-users and ultimately consolidating marketplace risk in only a few large swap dealers. Furthermore, it appears that the potential drop in the threshold may be already having a negative impact on the marketplace and hurting small players who have fewer swap counterparties with which to hedge. I will also note that the phase in period for the threshold was established by the Commission over five years ago, during a time when the available swap data was in its nascent stages. I believe it makes sense to obtain the latest and most complete data to inform the best path forward in terms of managing risk to the financial system. To that end, I have recently asked the Division of Swap Dealer and Intermediary Oversight to gather and analyze new data on the subject and I look forward to their findings.

I am committed to presenting to the full Commission a workable position limits rulemaking that balances the public interest in restricting excessive speculation while allowing America’s farmers, ranchers, energy producers and manufacturers to hedge bona fide risks of production costs and volatile commodity prices. Such rule should strike an appropriate balance among key levels and standards, such as deliverable supply

levels and position limits, set by the Commission and those set by exchanges and self-regulatory bodies that is in the best interest of America's agricultural producers upon which we all rely.

- (2) Distributed Ledger Technology has been touted as an innovation that might transform clearing and settlement, including in particular those processes in the international commodities markets. What is the appropriate regulatory role for the CFTC?**

Response: I believe that the CFTC and its fellow U.S. market regulators must affirmatively embrace innovation. That means that our rules must “first, do no harm” to “blockchain” and other promising FinTech innovations using the same forward-thinking approach American regulators took two decades ago in the early days of the Internet. Embracing innovation also means regulators must take positive steps to promote American innovation, such as hiring innovation-savvy regulatory staff who speak the language of FinTech. It also means regulators must give FinTech firms “breathing room” to develop, collaborate with them in commercial FinTech experiments, listen and learn about the rules that need to be adapted to allow for technical advances and collaborate with other regulators both here and abroad.

I have previously spoken about the great promise that distributed ledger or “blockchain” technology holds for regulators in meeting their mission to view and analyze accurate trading data, oversee healthy markets and mitigate financial and operational risk. It is imperative that we open wider our agency doors and regulatory minds to benefit from FinTech innovation. Regulators must engage in a constant and evolving dialogue with innovators precisely because we need to understand the impact they are having on the very marketplaces we are charged to supervise. We must partner with them, experiment with them, learn from them and innovate alongside them, if we are ever to keep pace with the digitization of modern markets and protect their 21st century participants.

- (3) Commercial end users, such as electric companies, rely on commodity derivative contracts with embedded optionality to protect themselves and their customers from volatile changes in the prices of commodities. However, while the CFTC has acted to provide clarity, these contracts that are intended to be physically settled are still classified as a swap, which increases uncertainty and regulatory costs. Does the Commission have any plans to re-visit its guidance and clarify that stand-alone or embedded options that are intended to be physically settled are excluded from the defined term “swap”?**

Response: In April 2012, pursuant to section 4c (b) of the Commodity Exchange Act (“CEA”),¹ the Commission issued a final rule to repeal and replace part 32 of its regulations concerning commodity options.² The Commission undertook this effort to address section 721 of the Dodd-Frank Act,³ which, among other things, amended the CEA to define the term “swap” to include commodity options.⁴ There is no distinction in the statute between financially- and physically-settled commodity options.

In response to requests from commenters, the Commission in 2016 amended part 32 such that commodity options that are intended to be physically-settled, termed “trade options,” between two commercial end-users are exempt from all requirements in the CEA and the Commission’s regulations that are otherwise applicable to swaps, except for certain antifraud requirements.⁵

The 2016 trade options rulemaking was generally intended to permit commercial parties to hedge or otherwise enter into commodity option transactions for commercial purposes without being subject to the full Dodd-Frank swaps regime. This limited exemption (limited in the sense that antifraud requirements still apply) continued the Commission’s longstanding practice of providing commercial participants in trade options with relief from certain requirements that would otherwise apply to commodity options.⁶

¹ 7 U.S.C. § 6c(b) (providing that “[n]o person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as an ‘option’... contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe”).

² See *Commodity Options*, 77 FR 25320 (Apr. 27, 2012) (“Commodity Options Release”).

³ Public Law 111–203, 124 Stat. 1376 (2010).

⁴ See 7 U.S.C. § 1a(47)(A)(i) (defining “swap” to include “[an] option of any kind that is for the purchase or sale, or based on the value, of 1 or more . . . commodities . . .”); 7 U.S.C. § 1a(47)(B)(i) (excluding options on futures from the definition of “swap”); 7 U.S.C. § 1a(36) (defining an “option” as “an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an ‘option’ . . .”). The Commission defines “commodity option” or “commodity option transaction” as “any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an ‘option,’ ‘privilege,’ ‘indemnity,’ ‘bid,’ ‘offer,’ ‘call,’ ‘put,’ ‘advance guaranty’ or ‘decline guaranty’ and which is subject to regulation under the Act and these regulations.” See 17 C.F.R. § 1.3(hh).

⁵ See 17 CFR 32.3; see also *Trade Options*, 81 FR 14966 (Mar. 21, 2016).

⁶ See *Regulation and Fraud in Connection with Commodity and Commodity Option Transactions*, 41 FR 51808 (Nov. 24, 1976) (adopting an exemption from the general requirement that commodity options be traded on-exchange for commodity option transaction for certain transactions involving commercial parties); *Suspension of the Offer and Sale of Commodity Options*, 43 FR 16153, 16155 (Apr. 17, 1978) (adopting a rule suspending all trading in commodity options other than such exempt trade options); *Trade Options on the Enumerated Agricultural Commodities*, 63 FR 18821 (Apr. 16, 1998) (authorizing the off-exchange trading of trade options in agricultural commodities).

With respect to embedded volumetric optionality, in the joint rulemaking with the Securities and Exchange Commission further defining the term swap, the CFTC adopted an interpretation that identifies when an agreement, contract, or transaction would fall within the forward contract exclusion from the “swap” definition in the CEA even though it contains embedded volumetric optionality. In providing its interpretation, the CFTC was guided by, and sought to reconcile, agency precedent regarding forward contracts containing embedded options with the statutory definition of “swap.”⁷

In 2015, the CFTC adopted a clarification of its interpretation. In this clarification, the CFTC noted that embedded volumetric optionality offers commercial parties the flexibility to vary the amount of the nonfinancial commodity delivered during the life of the contract in response to uncertainty in the demand for or supply of the nonfinancial commodity. Accordingly, the CFTC focused its interpretation on whether (among other factors) the embedded volumetric optionality is primarily intended, at the time that the parties enter into the agreement, contract, or transaction, to address physical factors or regulatory requirements that reasonably influence demand for, or supply of, the nonfinancial commodity.⁸

- (4) I am concerned about protecting customer funds - the money our farmer co-ops often put up in my home state of Kansas while managing risk. What are your views about providing clearinghouses with the option to deposit these margin funds at the Federal Reserve, as is currently the practice for those clearinghouses deemed to be systemically important? Is this a policy which mitigates overall systemic risk?**

Response: Offering clearinghouses the option to protect their customer funds in Federal Reserve accounts is an important tool in mitigating systemic risk. These funds – which represent the collateral of agricultural, energy, and other market participants using futures and swaps to lay off risk – should have the option of being safeguarded at the Fed like other reserves rather than left to be levered up in the private banking system. Such safeguarding of funds reduces the likelihood of a run at a clearinghouse during a shock to the financial system. I believe that the criterion for such Fed account access should be registration with the CFTC as a DCO, rather than designation by FSOC.

⁷ See *Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”*; *Mixed Swaps: Security-Based Swap Agreement Recordkeeping*, 77 FR 48207, 48236-42 & n. 335 (Aug. 13, 2012).

⁸ See *Forward Contracts with Embedded Volumetric Optionality*, 80 FR 28239, 28241 (May 18, 2015).

Senator Stabenow

- (18) I look forward to having a close working relationship with you, if you are confirmed. The work in this very important area is truly a bipartisan effort. If confirmed, do you agree without reservation to:
- a. Reply promptly to any request for information from me? YES
 - b. Reply promptly to any request from other members of this Committee and other Senators? YES
 - c. Respond to my requests for data and technical assistance in drafting legislation? YES
 - d. Notify me or my staff in advance of making public any major changes CFTC decides to make or major decisions CFTC makes during your tenure? YES
 - e. Provide to this Committee any reports provided by CFTC to the Senate Appropriations Committee or the Financial Services and General Government Subcommittee? YES
- (19) During your nomination hearing you committed to promulgating a final position limits rule without further delay. I thank you for this commitment. This rule is long overdue and is an important part of Wall Street Reform.
- a. Will you make finalizing the position limits rule a priority? YES
 - b. What is your timeline for promulgating this final rule? Please provide me with a specific deadline by which CFTC will adopt the final rule.

Response: It is my intention to direct the CFTC's Division of Market Oversight to complete as soon as possible its review of the many comments received on the current position limits proposal. I will also direct the staff to present recommendations for appropriate amendments, if any, to the earlier proposal. I will then instruct the staff to incorporate any such amendments into draft rules that thereupon will be presented to the full Commission for their review and consideration for final adoption. Any final rule will require the affirmative vote of the Commission.

- c. **Will you commit to providing Senate Agriculture, Nutrition, and Forestry Committee staff with quarterly briefings on the status of adopting a final rule until the position limits rule is adopted? YES.**
- d. **Will you commit to having the CFTC implement its own speculative limits and not simply outsourcing limits solely to exchanges and other self-regulatory organizations?**

Response: I am committed to presenting to the full Commission a workable position limits rulemaking that balances the public interest in restricting excessive speculation with allowing America's farmers, ranchers, energy producers and manufacturers to hedge bona fide risks of production costs and volatile commodity prices. Such rule should strike an appropriate balance among key levels and standards, such as deliverable supply levels and position limits, set by the Commission and those set by exchanges and self-regulatory bodies that is in the best interest of America's agricultural producers upon which we all rely.

- (20) **One of the CFTC's most important oversight tools is market surveillance. As Acting Chairman, you created a Chief Market Intelligence Officer, moving market surveillance from the division of market oversight into the division of enforcement. Will this change have an adverse effect on the CFTC's ability to monitor systemic risk? What was your motivation in making this change?**

Response: Elements of the market surveillance branch, currently housed in the Division of Market Oversight (DMO), will move to the Division of Enforcement (DOE). This realignment will strengthen our mission to identify and prosecute violations of law and regulation, such as spoofing, manipulation and fraud. It will foster increased efficiencies through knowledge-sharing and cross-training under unified leadership; thus benefitting the Commission's surveillance mission and enforcement responsibilities.

Other elements will be reorganized within DMO as a new market intelligence branch, the function of which is to understand, analyze and communicate current and emerging derivatives market dynamics, developments and trends – such as the impact of new technologies and trading methodologies.

By separating the two units – surveillance within DOE and market intelligence within DMO – we will sharpen our surveillance capability while increasing our knowledge of evolving market structures and practices to inform sound policymaking at the Commission and promote efficient and sound markets. The overall goal is to make the CFTC more adept in each of the two disciplines.

The Chief Market Intelligence Officer (CMIO) will report directly to the Chairman. The CMIO will engage with industry participants, other regulators and the new Market Intelligence Unit. The CMIO will help activate our agency's latent capability for market intelligence, giving us better insight into the needs of participants in the futures and swaps we oversee.

The CMIO will also be tasked with helping the public understand risk transfer markets and why they are so important to prosperity. Too many people, including investors, don't know what we do or why we do it – both from a marketplace and regulatory perspective. Greater understanding of why the risk transfer markets are vital to economic growth will enable the CFTC to enact policy reforms.

- (21) **Your 2015 white paper on SEF reform called for changes to the existing framework arguing a less prescriptive model would encourage more transparent trading. More than two years since you released the paper, do you believe the trading of swaps on SEFs still suffers from the same issues you highlighted in 2015? YES**
- (22) **If you were to propose changes as Chairman, would they contradict the main principles of market reform under Title VII of Dodd-Frank? NO. They will further such principles.**
- (23) **The swaps de minimis threshold is set to drop to \$3 billion in December. The CFTC, under Chairman Massad's leadership, finalized a report last year, which you critiqued because it did not provide recommendations to the Commission. You have also stated that you believe a lower threshold would hinder risk management activities, specifically among smaller entities.**

- a. **Have you received any new data that has changed your position, and do you believe the de minimis level should be increased?**

Response: We have received a considerable amount of current data since the phase in period for the threshold was established by the Commission over five years ago when the available swap data was in its nascent stages.

I believe it makes sense to obtain the best and most up to date data that will inform the best path forward in terms of managing risk to the financial system. I have instructed the CFTC's Division of Swaps and Intermediary Oversight (DSIO) to analyze the most recent market data and formulate a recommendation to the Commission as to whether a lower threshold would bring additional market participants under CFTC regulatory oversight without hindering bona fide risk management activities. I look forward to that recommendation.

- b. **Will you follow current law and let the threshold drop to \$3 billion in December?**

Response: I will be guided by an analysis of relevant data in accordance with the law.

- c. **Many are deeply concerned about the prospect of the threshold not dropping to \$3 billion, often citing the rolling black outs on the west coast as an example of a large physical trader influencing the retail, while not being subject to appropriate regulatory oversight. Do you think if the threshold is unchanged, certain market participants will escape necessary and meaningful CFTC regulatory oversight?**

Response: I look forward to the analysis I have requested from the DSIO as to whether a lower threshold would bring additional market participants under CFTC regulatory oversight without hindering bona fide risk management activities.

- (24) **What market oversight and personnel risks will the Commission face if its budget is not increased? If CFTC's budget is not sufficiently increased will you support regulatory fee for service?**

Response: A common criticism of the rule-making process has been the lack of quantitative assessments of costs and benefits. While there was a paucity of relevant data for Dodd-Frank implementation, we believe that market participants and the public will be expecting the CFTC to leverage the data sources now available to inform future rulemaking. The current staff dedicated to economic analysis is inadequate to address the level of econometric analysis required by a regulatory agency with oversight of more than 35 percent of the global derivatives markets.

Derivatives markets are distinct from the constant liquidity and trading volume in the equities markets. It my belief that additional user fees on these particular markets would be a negative drag on liquidity, further diminishing their value to end users and hampering U.S. economic growth.

- (25) **What are the most important actions the CFTC needs to take on cybersecurity? Who are your most important partners to address the ever growing threat to our cybersecurity?**

Response: The CFTC has ratcheted up its cybersecurity program since January, and in the wake of recent worldwide attacks like the ransomware episode. The Chairman's office now gets brief every month (rather than quarterly) by the agency's cybersecurity lead. We have also recently turned on and calibrated our anti-phishing security tool that had been dormant in order to protect our infrastructure against a commonly used breach tactic. The CFTC's next step in this area will be to conduct a tabletop cybersecurity drill and a live one that spans the entirety of the agency. We are working with Treasury and the Department of Homeland Security, which recently collaborated on a tabletop exercise, to plan this.

The CFTC's partners in the cybersecurity space include its counterpart financial regulators led by Treasury under the auspices of the Financial and Banking Information Infrastructure Committee (FBII), which meets quarterly at the direction of Secretary Mnuchin. This collaboration extends from safeguarding the agencies themselves to the cybersecurity of the financial system and its most systemically important institutions. The institutions the CFTC regulates and supervises for cybersecurity – namely, registered derivative clearinghouse organizations and swap data repositories – are also important partners in this effort. We also rely on the work of and collaboration with Congress through its oversight of the federal government's cybersecurity posture and review of the most pressing threats to America's cyber infrastructure.

(26) On March 14, 2016, the CFTC and the EPA entered into a Memorandum of Understanding (MOU) on the sharing of information available to EPA related to the function of renewable fuel and related markets. The MOU stated that CFTC will use information to advise EPA on techniques for and conducting investigations into potential fraud, market abuse, or other violations and trading in Renewable Identification Numbers.

a. Please describe in detail what actions have been taken under this MOU. How has CFTC assisted EPA in conducting and providing techniques to EPA for investigations into potential fraud, market abuse, or other violations and trading in Renewable Identification Numbers?

Response: On March 15, 2016, the CFTC and EPA signed an MOU to address the sharing of information in the possession of the EPA with the CFTC. Under the MOU, the CFTC, subject to the availability of appropriated funds and the agency's budget priorities, uses information shared by the EPA to advise the EPA on techniques that could be employed to minimize fraud, market abuses or other violations, and to conduct

appropriate oversight in RIN and renewable fuel markets to aid the EPA in successfully fulfilling the EPA's statutory functions under the Clean Air Act.

Thus far, this MOU has been utilized to assist the EPA in responding to a request from the Renewable Fuels Association ("RFA"). In this letter, the RFA expressed concerns about "potential manipulation of the Renewable Identification Numbers ("RIN") market. The EPA provided the CFTC with a dataset of matched transactions from its EMTS system. The CFTC's Division of Market Oversight Surveillance reviewed the matched transactions for indications of possible manipulative behavior and provided a memorandum to the EPA.

- (27) Dodd-Frank included requirements for the creation of swap data repositories (SDRs) to provide central facilities for swap data reporting and recordkeeping - including for security-based swaps. You have said that you plan to help bring greater transparency to the swaps market. Both the CFTC and the SEC have promulgated regulations to address these requirements, however differences exist. The CFTC's rules have already been implemented, but the SEC's rules have not yet been implemented. A complete picture of the swaps market requires transparency into the securities-based swaps market. As you work towards bringing greater transparency to the swaps market will you coordinate with the SEC to help ensure the rules work together?**

Response: Yes. I will coordinate with the SEC.

At the heart of the 2008 financial crisis was the inability of regulators to assess and quantify the counterparty credit risk of large banks and swap dealers. The legislative solution was the establishment of swap data repositories under the Dodd-Frank Act, which I support. Yet, nine years after the financial crisis and despite much hard work and effort, SDRs still cannot provide the full transparency into global counterparty exposure that Dodd-Frank was designed to provide.

Of all the many mandates to emerge from the financial crisis, visibility into counterparty credit risk of major financial institutions was perhaps the most pressing. The failure to accomplish it is certainly the most disappointing. The truth is that global regulators cannot by themselves achieve the objective of full counterparty credit risk transparency. What is needed is a concerted effort by regulators, academics and the private sector that draws on the emerging network science of financial markets. It is well past time to make that happen.

- (28) Will you commit to protecting whistleblowers who identify problems with CFTC related issues? If yes, what specific measures will you take to ensure whistleblowers are protected?**

Response: YES. In 2011 the CFTC adopted Part 165 of its Regulations to implement rules required by Section 748 of the Dodd-Frank Act with regard to whistleblowers who provide information to the Commission relating to violations of the Commodity Exchange Act. In May 2017, the Commission amended Part 165 to strengthen anti-retaliation protections for whistleblowers and add transparency to the Commission's process for deciding whistleblower award claims.

In addition, the Whistleblower Protection Act (P.L. 101-12) addresses whistleblower protections for federal employees and contractors. If confirmed, I will ensure that the anti-retaliation protections for whistleblowers embodied in Part 165 of the Commission's Regulations and the Whistleblower Protection Act are followed.

- (29) What will you do to ensure transparency in settlements in enforcement actions?**

Response: It has been a long-standing practice for the CFTC, when it reaches a settlement in an enforcement action, to issue a press release on its website describing the action and the terms of the settlement, and to provide a link to the relevant CFTC order. If I am confirmed the agency will continue this practice of publicizing settlements in enforcement actions.

- (30) What is your approach to managing staff, and how has it developed in your previous management experiences?**

Response: My approach to management derives from my rearing in a three-generation, small family business and from thirty years in the private sector, including as a senior officer of a publically traded company. My approach has three key elements: (1) active leadership from the top; (2) clear objectives; and (3) recruiting and empowering effective managers.

- (31) What actions in your past executive experiences demonstrate your style and approach in the area of labor-management relations?**

Response: I do not have professional experience in labor-management relations in a union setting. Nevertheless, I respect the right of the CFTC workforce to choose to be represented by a union to include negotiations with management over working

conditions. I have endeavored and will continue to endeavor to engage with the CFTC's union representatives with goodwill and in good faith.

(32) What do you believe CFTC can do to recruit and hire the personnel needed to achieve results?

Response: By adopting a standard of operational excellence in every aspect of the work of the CFTC, I believe the agency will be able to recruit and hire highly talented and motivated men and women wishing to render public service to their country.

(33) What role would you like to see unions play at CFTC, and what style or arrangements involving labor and management do you intend to foster? For example, will you foster labor-management partnerships at the CFTC or do you believe that other kinds of arrangements would be preferable? What steps would you take to achieve the kind of labor-management relationships you want?

Response: Since taking the reins of the Commission as acting chairman I have made a constructive relationship with the CFTC's two unions, the National Treasury Employees Union ("NTEU") and the American Federal of Government Employees ("AFGE"), a priority. One of my first meetings as acting chairman was with our union Presidents, and they know my door is always open to their concerns.

You may know that under the previous leadership, the Commission and one of those unions, the NTEU, were unable to come to agreement on pay for employees for 2016. This issue was ultimately sent to the Federal Services Impasses Panel. The panel's decision in March 2017 resulted in: (1) a one-time lump sum bonus of 1 percent of each individual employee's total salary as of March 1, 2017; (2) a 1 percent pay increase retroactive to October, 2016. While the final decision from the impasse panel was welcome to both employees and the management of the Commission, the many months of uncertainty were extremely negative to the morale of the agency. I am pleased to inform you that under my leadership the Commission has already come to an agreement with our unions for pay this year. This agreement brings certainty to both employees and the Commission's budget for 2017.

We are in the process of negotiating a multi-year collective bargaining agreement with the NTEU. While this process has not been without some obstacles, I believe the negotiations between the union and the management have been conducted in an atmosphere of mutual concern for the long-term health of our employees and the Commission.

(34) The CFTC has important enforcement authority which should be carried out impartially. Both Republican and Democratic administrations have had written policies limiting White House contacts with agencies that have investigatory and enforcement responsibilities.

a. Do you agree that it is important to keep political influence out of CFTC decisions regarding investigations and enforcement, such as whether to launch an investigation, continue it, go forward with an enforcement action or close the matter? YES.

b. Will you commit to restricting communications between the CFTC and White House staff regarding specific investigations and enforcement matters?

Response: The CFTC has a long-standing policy of keeping specific investigations and enforcement matters confidential. If confirmed, I will ensure that the Commission continues to follow that policy.

(35) Will you commit to providing staff of the Senate Agriculture, Nutrition, and Forestry Committee quarterly briefings on the status of Project KISS? YES.

(36) Has the CFTC observed a decline in market liquidity directly attributable to the development and delivery of crop insurance products?

Response: This issue has not been addressed in recent liquidity studies by staff.

(37) Following the issuance of a report regarding position limits by the Energy & Environment Market Advisory Committee, which you sponsored, Senator Leahy and I sent a letter to the Commission asking for more transparency into the conduct of each of the Commission's advisory committees to ensure that every advisory committee member is included in the discussion, drafting, and delivering of any advisory committee work product. Has the Commission taken any action since our 2016 letter to address these concerns? If so, what? Please explain in detail.

Response: Yes. Following your 2016 letter, the charters of each of the Commission's advisory committees were amended to include the following language: "Reports and/or recommendations shall be developed in consultation with all members of the [committee] and any transmission to the Commission shall include dissenting or minority views, if any."

- (38) **What is your general position towards the role of the CFTC versus self-regulatory organizations? Do you agree that the CFTC should have a more rules based, hands on approach to monitoring the market for function and bad actors?**

Response: I believe that self-regulatory organizations (SROs) play a vital role in overseeing the futures, options, and swaps markets. Congress has recognized the complementary relationship between the CFTC and SROs and has granted the CFTC delegation authority in the Commodity Exchange Act. SROs serve as the first line of defense against bad actors and in market oversight. The CFTC and the SROs work hand in hand to monitor the market. I believe that more cops on the beat are always better than fewer.

- (39) **As you know, the CFTC is currently seeking to establish a regulatory framework overseeing automated trading, including oversight of individuals and market participants that utilize the technology in the marketplace. You have publicly critiqued the Commission's approach, opposing the November 2016 supplemental notice of proposed rulemaking for several reasons, including the strong tension between preserving the intellectual property rights of automated traders and trading firms, specifically source code and algorithms that drive the automated trading strategy, versus the importance of appropriate regulatory transparency within the technology, which may include access to source code and algorithms. For obvious reasons, appropriate regulatory transparency can be used as a critical tool in enforcement actions seeking to stop market manipulation, and prevent future market disruptions like the 2010 and 2015 flash crashes.**

If confirmed, what factors will you consider when determining the balance between regulatory access to information and data, possibly including source code and algorithms within the automated trading context, versus protecting the intellectual property of individuals and firms participating in the marketplace?

Response: I support regulatory access to information and data, including as appropriate source code and algorithms of automated trading systems. In fact, the CFTC can today obtain the computer source code of market participants pursuant to a subpoena. The issue is not whether the CFTC can examine source code of automated traders where appropriate to investigate suspected market misbehavior – the CFTC can and does today. (In my time on the Commission, I have supported issuing subpoenas to obtain such source code.) The issue is whether the rights of property owners are adequately balanced with the government's legitimate interest in regulatory transparency.

The subpoena process provides property owners with due process of law. Its purpose is to provide an opportunity to review the scope, timing and manner of discovery and whether any legal privileges apply to the process of surrendering intellectual property. The subpoena process therefore provides a fair compromise between the rights of property owners and the government's legitimate interest in regulatory transparency.

- (40) Risk and leverage associated with bilateral, over-the-counter swaps played a significant role in the financial crisis. Recognizing this, Congress mandated, among other things, central clearing of certain standardized swaps under Section 723 of the Dodd-Frank Act. Since 2010, the transition to mandatory clearing has been long and challenging; however, a majority of standardized swaps are now being cleared through registered derivatives clearing organizations (DCOs). Since this transition, there have been many discussions by policy makers, regulators, and market participants regarding the new risk profile of DCOs. Ultimately, the question has become, with the new mandate, have clearinghouses, and the market "plumbing" services they now provide, become too systemically risky. Another question that has arisen deals with which parties are responsible for ensuring that clearinghouses are properly capitalized in case of a market disruption.**

What role do you believe a clearinghouse plays vis a vis its clearing members in terms of responsibility for appropriate capital contributions as a measure to alleviate market stress during a bankruptcy, dissolution scenario, or capital shortfall?

Response: These are all valid and highly critical questions. Given the global nature of the swaps markets, and especially the extensive cross-border reach of the largest DCOs, there is broad consensus that the regulatory approach to these and related issues ought to be harmonized and standardized at the international level. CFTC is continuing to engage closely with the relevant authorities and DCOs and their members, as well as members' clients, to address these complex and interconnected issues.

Senator John Boozman

- (5) **When we talked in my office, we discussed cybersecurity at length. As the CFTC collects more and more data, it is imperative that we keep this information protected and secure. If you are confirmed as Chairman, what steps will you take to ensure that data collected by the CFTC will be kept safe?**

Response: The CFTC is compliant with the Federal Information Security Modernization Act (FISMA) and the Federal mandates as pertains to the protection of its data and information systems. The Commission leverages the National Institute of Standards and Technology (NIST) guidelines and Federal Information Process Standards (FIPS) as directed by FISMA to ensure the protection its information systems.

The Commission demonstrates its successful compliance with FISMA and the Federal mandates on an annual basis through annual FISMA audits conducted by the CFTC Office of Inspector General (OIG) and the annual FISMA report submitted to congress by the Office of Management and Budget (OMB). The CFTC is committed to continue improving its security posture by utilizing the NIST Cybersecurity Framework (CSF) as directed by the Executive Order on Cybersecurity and leveraging industry best practices to protect its information systems and the data collected from the market participants.

Here are some of the important steps the CFTC takes to ensure that the data collected by market participants is safe:

- **Access control:** The CFTC limits access to data to those who have legitimate business need to access it. Access to data sets is usually approved by the business or information owner
- **Encryption:** The CFTC utilizes encrypted tunnels when data is transferred between the market participants and the CFTC
- **Hardened Systems:** The CFTC stores market participants data on hardened serves and computer systems to prevent unauthorized access
- **Malware and antivirus protection:** The CFTC network and computers are protected with professional grade enterprise malware and virus protection software
- **End user Security and Privacy Awareness Training:** The CFTC conducts an annual end user security and privacy awareness training that is required by anyone who has access to CFTC information systems

- **The Use of PIV Cards and Two-Factor Authentication:** CFTC users are required to log on to the CFTC network with their PIV cards to authenticate when accessing the CFTC network locally or remotely.
- **Perimeter Protection:** The CFTC is utilizing a myriad of security devices and tools to protect the network and the computer systems from hackers and unauthorized users, this includes but not limited to: Firewalls, Intrusion Detection Systems, Data Leak Prevention software

Additionally, several financial regulators, including the CFTC, SEC, Fed and others, have proposed or finalized cybersecurity regulations. However, I have heard some concerns regarding how these various regulations will work together. What role do you think the CFTC should play in helping to provide a more harmonized approach when dealing with cyber threats?

Response: While each financial regulator is best suited to craft cybersecurity regulations for the parts of the system where they exercise primary oversight, it is very important that these various regulations – just like the overlapping regulations besides cyber – are harmonized to the extent that they enable rather than hinder the financial system in putting on the best possible cybersecurity defense. The CFTC can play a role in this objective by using its position on FSOC and the Financial and Banking Information Infrastructure Committee (FBIIC) to share with other regulators the purpose and effect behind its cybersecurity regulations and working with those counterparts to determine whether any rules needed to be amended to work more effectively as they overlap.

Secretary Mnuchin has stated that FSOC should be empowered to coordinate regulation and supervision when it comes to cybersecurity. What are your views on this approach?

Response: I agree with Secretary Mnuchin that FSOC should be used coordinate regulation and supervision when it comes to cybersecurity, the way it should be used for other important issues facing our financial system. FSOC's most important purpose is for the financial regulators to share, collaborate, and come to terms on methods to mitigate systemic risk. This includes cybersecurity threats.

Senator John Hoeven

- (6) Mr. Giancarlo, as you know Title VII of Dodd-Frank directed the CFTC and the SEC to further define the term “swap dealer” and to include a *de minimis* exception. The *de minimis* exception provides that a person is not a swap dealer unless its swap dealing activity exceeds an aggregate gross notional amount of \$3 billion. However, to date, there has been a phase in period during which the threshold has been \$8 billion. Under the CFTC’s rules, absent further action by the CFTC, the phase-in period will end on December 31, 2018. Once the CFTC’s temporary delay expires, the threshold will decrease to \$3 billion.

What are your thoughts regarding the CFTC retaining a swap dealing *de minimis* threshold of \$8 billion?

Response: As I have previously stated, I am concerned that a drop in the *de minimis* threshold from \$8 billion to \$3 billion would have the effect of causing many non-financial companies to curtail or terminate risk-hedging activities with their customers, limiting risk-management options for end-users and ultimately consolidating marketplace risk in only a few large swap dealers. Furthermore, it appears that the potential drop in the threshold may be already having a negative impact on the marketplace and hurting small players who have fewer swap counterparties with which to hedge. I will also note that the phase in period for the threshold was established by the Commission over five years ago, during a time when the available swap data was in its nascent stages. I believe it makes sense to obtain the latest and most complete data to inform the best path forward in terms of managing risk to the financial system. To that end, I have recently asked the Division of Swap Dealer and Intermediary Oversight to gather and analyze new data on the subject and I look forward to their findings.

- (7) To calculate whether a would-be swap dealer exceeds the CFTC’s *de minimis* swap dealer threshold, the dealer must include its own swap dealing transactions, as well as those entered into by its affiliates under common control. Under the CFTC’s “cross-border guidance,” a non-U.S. person generally is not required to count its swap dealing activity with non-U.S. person counterparties towards its corporate group’s *de minimis* threshold. However, on October 18, 2016, the CFTC proposed rules that would require a corporate group to count towards its *de minimis* threshold the swap dealing activity of a foreign consolidated subsidiary with non-U.S. counterparties. This proposal is a departure from the CFTC’s previous guidance and an expansion of Dodd-Frank.

What are your thoughts on the FCS rule, should the commission adopt this rule or should the commission find an alternative?

Response: In May 2016, the Commission defined the term Foreign Consolidated Subsidiary (FCS) for purposes of the cross-border application of uncleared margin requirements for swap dealers and major swap participants (Cross-Border Margin Rule). 81 Fed. Reg. 34818 (May 31, 2016). While I dissented from the Cross-Border Margin Rule on various grounds, I did not specifically object to the definition of FCS for purposes of that rule. *Id.* at 34853-54.

In its October 18, 2016 proposal, the Commission proposed to apply the FCS concept in a manner consistent with how that term was defined in the Cross-Border Margin Rule for purposes of determining which swaps would count toward the swap dealer *de minimis* threshold. In the preamble to that proposal, the Commission stated that “[i]f adopted, the Commission intends that [this] definition would be relevant not only within the context of the proposed rule, but for purposes of any subsequent rulemakings specifically addressing the cross-border application of other substantive Dodd-Frank requirements, unless the context or a specific rule or regulation otherwise requires.” 81 Fed. Reg. 71946, 71947 (Oct. 18, 2016). The comment period for the proposal closed on December 19, 2016.

CFTC staff are currently analyzing the comments received and will be preparing recommendations for the Commission to consider. Before reaching a decision I intend to carefully consider the public comments and any staff recommendations.

Senator John Thune

(8) For the past several years we have heard that resources, including personnel at CFTC, are insufficient to meet required operations and oversight. What are your thoughts on staffing and resources? Will you be asking for more?

Response: To effectively oversee the evolving derivatives markets, the Commission is requesting \$281.5 million and 739 full-time equivalents (FTE) for fiscal year 2018 operations. This is an increase of \$31.5 million and 36 FTE over the FY 2017 level. The increase is not a formulaic or superficial number. Instead, it is the result of my initiative to perform a bottom up budget review this past spring. In building the budget from the ground up I identified several areas where the agency could run more efficiently and save taxpayer dollars. However, I also discovered several areas that needed additional investment to provide more effective oversight. These areas of investment include the following:

- Enhancing cost benefit/economic analysis to analyze large volumes of trade data and improve our understanding of markets – including monitoring systemic risk in the derivative markets, in particular with regard to central counterparty clearinghouses.
- Conducting all required examinations, including the London Clearinghouse (LCH), and enabling the Commission to keep pace with the explosive growth in the number and value of swaps cleared by designated clearing organizations (DCOs.)
- Implementing the CFTC FinTech initiative that addresses three fundamental issues arising from transformations in FinTech:
 - How the CFTC can leverage FinTech innovation to be a more effective regulator.
 - How FinTech can help the CFTC identify outdated rules and regulations for today's digital markets.
 - The role of the Commission in supporting U.S. FinTech innovation in CFTC regulated markets.
- Increasing the IT budget to support the existing systems and infrastructure of the CFTC.

Under my direction the Commission has utilized its ability to provide a budget directly to the Congress. I did not take this rarely used step lightly. This is the first budget submission under my leadership, and I thought it important to articulate the needs of the Commission based on my perspective and vision for a renewed and refocused CFTC. The FY 2018 budget submitted by the Commission reflects the true needs of a policy setting and civil law enforcement agency that has the duty to ensure the derivatives markets operate effectively. This budget will give the Commission the resources it needs to put in place and oversee responsible regulations that allow for innovation and allow our markets to remain cooperative and safe at home and abroad.

- (9) We've heard complaints, especially from our livestock producers, that the Chicago Mercantile Exchange, or CME, is not performing as it should, which they say is negatively impacting cattle prices. What are your thoughts on this? With your oversight of CME is there anything it is doing that raises concerns with you or CFTC regarding lack of transparency or price manipulation?**

Response: We were approached by the National Cattlemen's Beef Association with concerns about the impact of high frequency trading on prices in the Live Cattle futures contract on certain dates in 2015 and 2016. We take such concerns very seriously.

Our agriculture futures market specialists in the CFTC's surveillance and market intelligence branches did a thorough analysis of trading data across our markets. They examined the trading patterns and practices of all major types of market participants, including natural hedgers, market speculators, proprietary and high frequency traders and large asset managers. From that analysis, our market experts did not see patterns of behavior by any particular group that had an overall negative impact on the marketplace.

Nevertheless, our market intelligence and market surveillance branches will continue to carefully observe and analyze trading patterns and activities in these markets. Should we observe any inappropriate or improper activity, we will take any and all action that may be necessary or appropriate.

We are also aware of concerns raised by the Ranchers-Cattlemen Action Legal Fund about whether meat packers negatively impacted prices in the cash and futures markets in 2015. Chairman Grassley asked the Government Accounting Office (GAO) to investigate these concerns, and we are helping the GAO in that effort.

In addition to responding to concerns with market participants' trading of the Live Cattle futures contract, the CFTC Ag Team analyzed the contract itself to ensure that it was

designed appropriately. Our Ag Team worked cooperatively with the Chicago Mercantile Exchange (CME) and the cattle industry. We identified design issues that, when addressed, preserved and strengthened the stockyard delivery system and made the terms of the contract more transparent to market participants. Two weeks ago, the CME published for comment a set of proposals that are designed to improve the contract's price discovery and risk management functions. The proposals seek to make the delivery process more efficient and ensuring the contract reflects cash market practices. The CME should be commended for these sensible improvements. Nevertheless, the CFTC will continue to monitor the contract as these improvements come into effect.

- (10) **With the agriculture economy suffering from a critically depressed economy, do you think this environment will result in any increase in fraud, price manipulations or abusive trading practices?**

Response: The CFTC's vigilance to enforce the laws in the derivatives markets suffers no let-up, whatever the business cycle. Its enforcement arm studies market dynamics closely to help monitor bad behavior. At this time, we do not observe any noticeable change in instances of fraud, price manipulations or abusive trading practices, but we continue to study whether there is any linkage.

- (11) **As in production agriculture, advancing technology is changing how commodity crops, livestock and financial products are marketed. How is CFTC using technology to better regulate an ever evolving industry?**

Response: CFTC continues to invest in new technologies and analytical tools to study and surveil the commodity derivatives markets. Among other things, it is developing capabilities to look across futures, swaps, and the underlying spot markets.

The CFTC's 2018 budget request seeks funding for enhanced technological and economic capabilities so that the agency can keep pace with an ever evolving marketplace.

Senator Steve Daines(12) *Vacant CFTC Commissioner Positions*

- (a) **Commissioner Sharon Bowen announced her intention to retire early in the coming months, although her term doesn't expire until April of 2018. Could you share your thoughts on the practical impacts of not filling all five commissioner slots?**

Response: The practical impacts of not having the Commission at full strength with all five commissioners are: (i) loss of full range of views and perspectives on proposed Commission policies and regulations; (ii) loss of important points of contact with stakeholders in markets under Commission oversight; and (iii) loss of effective sponsors for the five advisory committees established by the Commission.

- (b) **Will you commit to filling this office as quickly as possible?**

Response: I will provide any assistance requested by the Administration in considering nominees for open Commission slots and, as requested, assist the Senate Agriculture Committee in considering such nominees for confirmation.

- (c) **Given your perspective and experience in working with other commissioners, what traits do you believe are most important for us to consider to ensure the CFTC functions properly to ensure market integrity and price stability?**

Response: I believe the most important traits to consider in confirmation of nominees for the CFTC are readiness to meet with and understand the concerns of farmers, ranchers, manufacturers, market participants and others who use and rely on the market integrity, durability and vibrancy of American futures and swaps markets.

(13) *Futures Commission Merchants*

There's a Brookings Institution report which shows that since March 2017, the number of futures commission merchants has dramatically fallen from 171 in March 2007 to 64 in March this year. That is an over 62 percent consolidation in the market.

- (a) **What are the practical impacts of this reduction?**

Response: The practical impacts of this reduction are loss of service providers offering access to the risk hedging function of futures and other derivatives markets for farmers, ranchers, manufacturers and other smaller market participants which do not have the financial magnitude and wherewithal to obtain the services of large futures commission merchants integrated with large global banking institutions.

(b) What are the culprits of the consolidation and is there any action Congress should consider to reverse this trend?

Response: I believe there are three primary culprits: (1) fraud and mismanagement, which was the cause of failures of FCMs like MF Global, Refco and Peregrine Financial; (2) the U.S. monetary policy of near zero interest rates, which has eliminated a source of income for FCMs through reinvestment of excess customer money; and (3) burdensome regulations. The collapse of MF Global and Peregrine Financial prompted a series of new customer protection rules,⁹ some of which were undoubtedly needed. However, these new rules have impacted small FCMs. The CFTC's new rules on ownership and control reporting imposed new compliance and paperwork requirements for FCMs.¹⁰ The CFTC also further expanded FCM recordkeeping obligations to include the recording of oral and written communications leading up to the execution of a transaction.¹¹ The supplementary leverage ratio (SLR) rule issued last year by U.S. prudential regulators is likely to make it more expensive for bank-owned FCMs to clear customer trades. That is because the SLR requires banks to hold more capital for the assets on their books, even margin held for clients on cleared trades of commodity futures, leading to diminished FCM margins and increased client costs.

(14) *Bona Fide Hedge Exemption*

In Montana, a lot of farmers and utility companies use futures to hedge against crop and energy price volatility, but we don't have many speculators.

To keep prices low for both these businesses and consumers, it important that these parties are recognized under the bona fide hedge exemption.

⁹ Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 FR 68506, 68510-12 (Nov. 14, 2013) (discussing recent customer protection initiatives).

¹⁰ Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, 78 FR 69178 (Nov. 18, 2013).

¹¹ 17 C.F.R. 1.35. The rule applies to transactions in a commodity interest and related cash or forward transactions. Oral communications that lead solely to the execution of a related cash or forward transaction are excluded.

(a) Can you explain how the CFTC's re-proposed rule in December 2016 would provide greater flexibility for farmers and utility companies?

Response: Hedging is a critical tool for risk management and therefore a primary way that producers with variable cost structures – such as farmers and power suppliers – can mitigate those risks. The CFTC's 2016 re-proposal (1) eliminated certain redundant provisions from the previously proposed bona fide hedging definition; (2) removed a twelve-month constraint on certain anticipatory hedges for agricultural commodities and the condition that a utility be required or encouraged to hedge by its public utility commission; and (3) eliminated the previously proposed safe harbor quantitative test for cross-commodity hedges, among other things.

While this was a step in the right direction, it is critical that any final definition of bona fide hedging and any list of enumerated bona fide hedges recognize important risk management practices that farmers and utility companies have used for decades, including anticipatory and merchandising hedges.

Before adopting a final position limits rule I will carefully consider the public comments to ensure that maximum flexibility is provided for legitimate bona fide hedging while protecting the markets from excessive speculation.

(b) How will consumers, who purchase groceries and pay utility bills, benefit from the greater flexibility provided by this rule?

Response: When producers of food and energy are able to mitigate the variable costs associated with their products, their customers will see the benefit of more stable prices at the check-out line and in their utility bills. It is therefore crucial that the Commission get the final position limits rules right. As noted above, I am committed to providing maximum flexibility for legitimate bona fide hedging while protecting the markets from excessive speculation.

Senator Luther Strange

- (15) **As you know, the commodities industry has a significant interest in legal certainty around the definition of “actual delivery” for cryptocurrencies. However, the CFTC has never undertaken any rulemaking initiatives with respect to this issue, only having finalized interpretive guidance in 2013 as it relates to the “actual delivery” of commodities in general. Please comment on whether the CFTC currently is undertaking or has considered undertaking a rulemaking to define what constitutes “actual delivery” of cryptocurrency, and if so, what your definition of “actual delivery” would be.**

Response: The CFTC has received two petitions urging the Commission to undertake a rulemaking concerning the requirements of “actual delivery” in the context of cryptocurrency markets utilizing blockchain technology for executing transactions. It has also received several requests for no-action relief in this area. CFTC staff are currently analyzing the requests and will be making recommendations for the Commission’s consideration. If the Commission were to undertake a rulemaking, the definition of actual delivery would be determined by a Commission vote, only after proper notice and comment, as required by the Administrative Procedure Act.

Of course, the concept of “actual delivery” extends beyond the realm of cryptocurrencies to other types of commodities. If the CFTC were to engage in such a rulemaking during your tenure as Chairman, would this rulemaking be limited specifically to cryptocurrencies as a commodity, limited to certain categories of commodities, such as foreign exchange or precious metals, or be applicable to all categories of commodities?

Response: As noted above, CFTC staff are currently analyzing various requests for more clarity with respect to what constitutes “actual delivery” in the context of cryptocurrency contracts executed through blockchain technology. If the Commission were to undertake a rulemaking, it would consider all public comments regarding whether such a rulemaking should cover only certain categories of commodities or all categories of commodities.

- (16) **In 2013, the CFTC finalized interpretive guidance addressing the standard for effecting “actual delivery” under the Commodities Exchange Act (“CEA”). In that guidance, which was applicable to all categories of commodities, the CFTC indicated that “actual delivery” would be deemed to have occurred if (a) the commodities at issue were purchased on a leveraged, margined, or financed basis and stored in a depository**

in the purchaser's name or (b) if the commodities purchased are paid in full and the purchaser takes actual possession of the commodities. Do you agree with the 2013 guidance that both of the above scenarios satisfy the criteria for "actual delivery" under the CEA?

Response: The CEA generally treats retail commodity transactions entered into, or offered, on a leveraged, margined, or financed basis as if they are futures contracts unless, among other exceptions not relevant here, the contract results in actual delivery within 28 days or such longer period of time as the Commission may determine based upon the typical commercial practice in cash or spot markets for the commodity involved. In its 2013 interpretive guidance, the Commission provided two examples of when delivery will be deemed to have occurred as follows:

Example 1 – Actual delivery will have occurred if, within 28 days, the seller has physically delivered the entire quantity of the commodity purchased, including any portion of the purchase made using leverage, margin or financing, into the possession of the buyer and has transferred title to that quantity of the commodity to the buyer.

Example 2 – Actual delivery will have occurred if, within 28 days, the seller has:

- (1) physically delivered the entire quantity of the commodity purchased by the buyer, including any portion of the purchase made using leverage, margin, or financing, whether in specifically segregated or fungible bulk form, into the possession of a depository other than the seller and its parent company, partners, agents, and other affiliates, that is:
 - (a) a financial institution as defined by the CEA;
 - (b) a depository, the warrants or warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the Commission; or
 - (c) a storage facility licensed or regulated by the United States or any United States agency; and
- (2) has transferred title to that quantity of the commodity to the buyer.

- (17) In the absence of a rulemaking that clearly delineates what constitutes "actual delivery," market participants have found it increasingly difficult to navigate a landscape that is defined by settlements of enforcement actions focused on individual institutions rather than the industry as a whole. As you know, settlements of enforcement actions are neither precedential nor binding on other parties, and the**

CFTC has been criticized on more than one occasion for seeking to impose its own view of the law through enforcement actions rather than through the rulemaking process – notably, with respect to the “actual delivery” issue, in the *Worth* decision (*CFTC v. Worth Group, Inc.* 9:13-cv-80796 S.D. Fla. Aug. 18, 2014). Given that there could be far-reaching implications on how the CFTC defines “actual delivery,” do you believe that it is appropriate for the CFTC to be construing the definition of “actual delivery” through piecemeal enforcement actions as opposed to engaging in a thorough and thoughtful rulemaking?

Response: I believe that further clarification of what constitutes “actual delivery,” either through a rulemaking or further guidance subject to notice and public comment, may be appropriate. I will carefully consider any recommendations made by staff in response to the requests for rulemaking and no-action relief mentioned above. It is my general philosophy that the Commission should not make important regulatory policy decisions through piecemeal enforcement actions.

Senator Sherrod Brown

(41) Margin rules

You have pushed to delay the CFTC's margin rules when foreign regulators have delayed their rules, and then you have criticized the U.S. banking regulators when their margin rules have been stronger than the CFTC's.

I understand your argument that markets need to work "efficiently," but arguments about efficiency – both now and when people were making them in the early 2000s – always seem to conveniently lead to weaker rules and slower reforms.

Do you agree capital and margin are critical to protect against the concentration of risky trades we saw leading up to the crisis – at places like AIG and Wall Street banks?

YES.

How will you prevent – rather than promote – another race to the bottom?

Response: I support regulation requiring margin on swaps transactions. On December 16, 2015, I voted in favor of the CFTC's Final Rule on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swaps Participants. I continue to support this important rulemaking.

(42) Leverage Ratio

You have criticized the leverage ratios that the banking agencies have finalized, in particular the one aimed at reducing the likelihood and the costs of the failure of the very largest U.S. banks, who also happen to be outsized players in the derivatives market. I support these rules, and have communicated my concerns with the CFTC's position on the leverage ratio to Chairman Massad on at least two occasions.

You have said that, because of the leverage ratio: "The FCM marketplace has declined from 100 CFTC-registered entities in 2002 to 55 at the beginning of 2017. Of these 55, just 19 were holding customer funds for swaps clearing. Many large banks have exited the business, including State Street, Bank of New York-Mellon, Nomura, RBS and Deutsche Bank."

A number of FCMs have left the market over the period that you cite for a variety of reasons. For example, Lehman Brothers, Bear Stearns, Wachovia, and Merrill Lynch all had registered FCMs that were in some way consolidated with other institutions when their parent companies failed or were merged to avoid failure. In part, those failures were brought on by a lack of adequate capital, liquidity, and margin. Also, to my knowledge, three of the five institutions that you list are subject to the eSLR, the regulation that industry has advocated be weakened.

- a. **Are you arguing that the leverage ratio caused the decline in registered FCMs from 2002 to the present? In particular, are you arguing that the five institutions that you list about – including the nonbank broker-dealer Nomura – have exited client clearing because of the leverage ratio? If so, please present any evidence that you have linking these events to either the SLR or the eSLR.**

Response: The registered FCM marketplace began consolidating long before the supplementary leverage ratio was adopted by the U.S. through the Basel accords of 2014. Its long-run consolidation dating back to 2002 has been driven primarily by extreme low interest rates. Since July 2002, the effective monthly fed funds rate has averaged 51 basis points. Since the Fed instituted a near zero interest rate policy in December 2008, the monthly rate has averaged just 15 basis points. This compares to a monthly average of 5.15 percent between 1954 when the Fed began keeping records and 2002. Near zero interest rates eliminate the revenue stream of FCM's to reinvest excess client collateral (limited in the CEA to U.S. government-backed short-term investments). Without that revenue source, they are reliant on client clearing fees – an already low margin business.

The CFTC's own regulations have contributed toward the more recent FCM consolidation. Its rules dating to 2013 on ownership and control reporting imposed new compliance and paperwork burdens. The CFTC also further expanded recordkeeping obligations to include the recording of oral and written communications leading up to the execution of a transaction in a commodity interest. These rules hurt small and medium-sized FCMs and their similar-sized clients disproportionately – causing the fragmentation of this important "Main Street" section of the marketplace.

The banks that face a three to five percent leverage ratio charge on client cash margin held at a CCP have an incentive to exit the FCM business. Deutsche Bank, Bank of New York Mellon, RBS, and State Street are G-SIBs that faced this capital charge and subsequently chose to stop providing client clearing.

Some of the consolidation is also due to changes in market structure, especially, the transition from floor based to electronic trading. Large numbers of FCMs who serviced the floor trading community were likely not willing to make the investments necessary to

operate in the increasingly automated environment. Electronic trading also allows willing FCMs to invest in technology and scale up their business.

While the application of the leverage ratio to client cash collateral and gross notional derivative exposure is one of several public policies outlined above that have contributed to the consolidation of FCMs, it became the inflection point for those four G-SIBs to shed their FCMs. It remains a risk for other large banks to follow suit. Given that just 19 FCMs at the beginning of 2017 were active in swaps clearing, this is detrimental to Congress's directive in Title VII of the Dodd-Frank Act for mandatory clearing of most over-the-counter derivatives.

I do not advocate eliminating the leverage ratio, only amending it to exempt from the bank's leverage calculation:

1. Customer cash collateral held with central clearers (CCPs);
2. Other collateral held in segregated CCP accounts.

I believe these two changes will enhance the ability of FCMs to offer their services to clients. This will further the objectives of Title VII of Dodd Frank to increase central clearing of formerly bilateral swaps – an objective I fully support.

You have also said: “The suggested SLR rule changes will significantly reduce capital costs for clearing members. By CFTC estimates, this potential reduction in capital costs for these clearing members could be as high as 70 percent; but these will translate into a small one percent capital reduction at the bank holding company level.”

Please provide the following:

- b. **The amount of segregated customer margin currently held by FCMs affiliated with BHCs or IDIs subject to i) the SLR; and ii) the eSLR;**
- c. **The amount of such segregated margin that is being held in transactions on behalf of non-financial end users subject to the exemption for posting initial margin;**
- d. **An explanation of your calculation on the effects of banks' capital levels, including:**
 - i. **Whether the term “capital reduction” refers to the leverage ratio or some other measure;**
 - ii. **Whether the “one percent” that you reference means a one percent reduction in the denominator of the leverage ratio, or a one percentage point increase in the BHCs' leverage ratios;**
 - iii. **The applicable leverage ratio denominator including segregated margin vs. the leverage ratio denominator excluding segregated**

margin, on an both an aggregate and institution-by-institution basis;
and

- iv. **The institution-by-institution leverage ratios including segregated margin vs. the leverage ratios excluding segregated margin on both an aggregate and institution-by-institution basis.**

Response: Staff estimates were based on data regularly submitted by FCMs, with emphasis on the top nine bank-affiliated FCMs in aggregate. The 70 percent reduction in exposure was calculated assuming relief was provided for client margin offset in the capital rules. This reduction in exposure translates into a 70 percent reduction in capital for these FCMs in aggregate. Assuming Tier 1 capital of US banks is \$1.5 trillion approx., the reduction in capital at the FCM level is equivalent to less than 1 percent reduction in total bank capital.

(43) **Advisory Committees**

I was troubled by both the composition of the EEMAC, as well as the flawed report on position limits that it first released and then withdrew – both of which happened under your leadership of that committee.

As Chair, will you ensure that more balanced views are represented on the CFTC’s advisory committees?

Response: Section 5(b)(2) of the Federal Advisory Committee Act (FACA) requires that the membership of advisory committees be balanced in terms of the points of view represented and the functions to be performed. FACA regulations provide that agencies must provide a description of their plan to attain fairly balanced membership through the creation of a Membership Balance Plan. While the EEMAC is not subject to the FACA or its implementing regulations, if confirmed, I will ensure that all of the Commission’s advisory committees comply with the FACA Membership Balance Plan requirements.

Will you support efforts to amend the statutory provision – section 751 of the Dodd-Frank Act – to ensure that EEMAC explicitly represents a more balanced range of interests, similar to the other advisory committee structures, and is more transparent and accountable?

Response: Should Congressional efforts to amend Section 751 of the Dodd-Frank Act result in changes to the structure and proceedings of the CFTC’s Energy and

Environmental Markets Advisory Committee, I will, if confirmed, direct the CFTC to fully abide all such provisions.

(44) **CFTC Budget**

The CFTC is responsible for a growing and more complex market, but year after year has been denied adequate funding. You have asked for a modest increase in funding, but the current budget proposal proposes a fourth year of flat funding. Earlier this year you announced the plan to move the CFTC's market surveillance function into its Enforcement Division in an effort to strengthen and improve the agency's enforcement work. You are literally trying to do more with less.

How can you fulfill the CFTC's mandate without proper funding and are you willing to press Congress and the Administration for more funding?

Response: To effectively oversee the evolving derivatives markets, the Commission is requesting \$281.5 million and 739 full-time equivalents (FTE) for fiscal year 2018 operations. This is an increase of \$31.5 million and 36 FTE over the FY 2017 level. The \$31.5 million in additional funds is not a formulaic or superficial number, but a thorough and informed assessment of what the CFTC needs to execute its mission in FY 2018.

Under my direction the Commission has utilized its ability to provide a budget directly to the Congress. I did not take this rarely used step lightly. This is the first budget submission under my leadership, and I thought it important to articulate the needs of the Commission based on my perspective and vision for a renewed and refocused CFTC. I bring to this process my experience, not in politics, but as a former senior executive of a publicly-traded company. In business, everything we did -- every expenditure and every investment -- had to contribute to shareholder value. The P&L was our scorecard and it didn't lie. You were either adding value to the enterprise or you were looking for another line of work.

On January 20th, I began a process of looking at every function undertaken by the Commission. In the private sector, you would never simply take last year's budget number and add a percentage increase. Rather, each dollar requested must serve a purpose. Likewise, when I sat down with our leadership team, my budget baseline was zero. We built this budget from the ground up. Drawing on my many years of business experience, I have already identified several areas in which the agency can run more efficiently and save taxpayer dollars. For example, I reviewed the needs of the offices that provide various support services to our divisions, and intend to gain efficiencies by

instituting a central-services organizational model that is a best practice in the private sector. We also discovered areas within our current mission where we need additional investment. The \$281.5 million FY 2018 budget request reflects the current needs of the CFTC based on this analysis.

Senator Amy Klobuchar

(45) Cybersecurity

It has unfortunately become near routine that we learn of another cyber-attack and data breach resulting in compromised financial information. We've seen cyber-attacks at retailers like Home Depot, financial institutions like J.P. Morgan and major corporations like Sony.

As you noted in your testimony, exchanges and clearinghouses are also vulnerable to attack. I know that you are working with the exchanges and clearinghouses to make sure that they are taking the necessary steps to prevent a cyber-attack. I believe that it is vital that the federal government, private business, and law enforcement coordinate their efforts to prevent and respond to these attacks.

- *Do you think that the exchanges and clearinghouses are putting increased emphasis on data security as a part of their business plans and not waiting for the next crash?*

Response: YES. The exchanges and clearinghouses deploy extensive financial resources to ensure that data security is as foolproof as technology allows. U.S. exchanges and clearinghouses are industry leaders in data security. Data security is an executive leadership function. Executives are part of integrated cyber response teams at the exchanges and clearinghouses and are responsible for recovery and decision making protocols.

Additionally the exchanges and clearinghouses conduct regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve the required recovery time objective in the event of a wide-scale disruption.

Each systemically important derivatives clearing organization (and subpart C derivatives clearing organization) must have the objective of enabling, and the physical, technological, and personnel resources to enable it to recover its operations and resume daily processing, clearing, and settlement no later than two hours following the disruption, for any disruption including a wide-scale disruption.

- *What are the disclosure requirements for the exchanges and clearinghouses in the event of a cyber-attack?*

Response: A derivatives clearing organization must notify staff of the Division of Clearing and Risk promptly of any hardware or software malfunction, security incident, or targeted threat that materially impairs, or creates a significant likelihood of material impairment, of automated system operation, reliability, security, or capacity; or any activation of the derivatives clearing organization's business continuity and disaster recovery plan.

SEFs and DCMs must notify Commission staff promptly of all cyber security incidents or targeted threats that actually or potentially jeopardize automated systems operation, reliability, security, or capacity. *See* 17 CFR 37.1401(d)(2); 17 CFR 38.1051(e)(2).

- ***What are the possible implications for capital formation and risk management if we fail to adequately address the risks as a part of the digital transformation?***

Response: Capital can only be deployed efficiently for broad-based prosperity when the risks associated with it are well understood. Given that so much investment is now devoted toward cyber infrastructure as part of the digital transformation, it is vital for financial regulators to make clear through their rules and applicable supervision the extent that cybersecurity must factor into risk management standards. Simply put, a successful digital transformation for our markets hinges on a sufficient vigilance and defense against cyber threats. The CFTC as lead regulator of the derivatives markets must play a leading role in this.

(46) Renewable Identification Number (RIN)

I believe the Renewable Fuel Standard (RFS) is important. The renewable fuel industry which generates an estimated \$5 billion in economic output and sustains nearly 12,600 jobs in Minnesota. It's an issue that is important to a number of members of this Committee, and a number of members who I have been working with on the importance of a strong RFS rule.

In your May 19, 2017 letter (attached), you stated that, "the CFTC stands ready to assist the EPA in its analysis of the RINs market."

- ***What role do you believe the CFTC can play to reduce volatility and enhance transparency in the physical and cash RIN market?***
- ***What role does the CFTC have in the RIN and renewable fuels market?***
- ***How can the CFTC help the EPA successfully meet its statutory functions under the Clean Air Act?***

Response: The CFTC's regulatory authority extends to futures and swaps contracts in any commodity. The CEA broadly defines the term commodity to include services, rights and interests. As Renewable Identification Numbers ("RIN") meet the definition of commodity, the CFTC has regulatory jurisdiction over futures and swaps markets on them. The CEA grants the Commission broad authority to take enforcement action for fraud, manipulation, and attempted manipulation in connection with futures contracts, swaps, and commodities in interstate commerce.

Activity in RIN futures is non-existent. Currently, CME Group lists two vintage 2016 RIN futures with contract months through February 2018; however since being listed at the end of December 2015, there was only one trading day with limited volume across three months in the biodiesel RIN future. Its maximum total open interest was 30 contracts and there has been no open interest in these futures since the September 2016 contract expired with an open interest of ten. Also, based on data submitted to the Commission, there were fewer than 300 open swaps based on the RIN market as of April 1, 2017.

On March 15, 2016, the CFTC and EPA signed an MOU to address the sharing of information in the possession of the EPA with the CFTC. I believe this MOU is an important contribution to inter-agency cooperation. Under the MOU, the CFTC uses information shared by the EPA to advise the EPA on techniques that could be employed to minimize fraud, market abuses or other violations, and to conduct appropriate oversight in RIN and renewable fuel markets to aid the EPA in successfully fulfilling the EPA's statutory functions under the Clean Air Act.

Thus far, this MOU has been utilized to assist the EPA in responding to a request from the Renewable Fuels Association ("RFA"). In this letter, the RFA expressed concerns about "potential manipulation of the Renewable Identification Numbers ("RIN") market.

The EPA provided the CFTC with a dataset of matched transactions from its EMTS system. The CFTC's Division of Market Oversight Surveillance reviewed the matched transactions for indications of possible manipulative behavior and provided a memorandum to the EPA.

Senator Joe Donnelly

(47) You submitted a separate budget request from the president, requesting \$31.5 million more for the commission than the administration. Ensuring the agency has sufficient resources to properly do its job is a significant concern. You said in a letter to several members of this committee that CFTC's ability to coordinate with the EPA in monitoring RIN markets for manipulation and excessive speculation is "subject to the availability of appropriated funds and the agency's budget priorities" and that the CFTC "stands ready to assist the EPA...to the extent consistent with its limited resources."

- Does the CFTC currently have the resources to adequately assist the EPA oversee RIN markets, and will it have the necessary resources at the budget levels you requested? If not, what level of resources is needed?
- Will assistance to EPA be a budget priority for you if you're confirmed as Chairman?
- Have budget levels during your time as a commissioner placed any constraints on the commission's ability to work with EPA? If so, can you detail what kind of activities CFTC has been unable to conduct because of those constraints?

Response: The CFTC's regulatory authority extends to futures and swaps contracts in any commodity. The CEA broadly defines the term commodity to include services, rights and interests. As Renewable Identification Numbers ("RIN") meet the definition of commodity, the CFTC has regulatory jurisdiction over futures and swaps markets on them. The CEA grants the Commission broad authority to take enforcement action for fraud, manipulation, and attempted manipulation in connection with futures contracts, swaps, and commodities in interstate commerce.

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It is difficult to know with certainty whether the Commission's budget will be sufficient to assist the EPA. Thus far, the Commission has been able to assist the EPA in analyzing its EMTS data as described above and lack of resources has not constrained our ability to work with the EPA while I have served as commissioner. Should the EPA request further assistance in analyzing data from the cash markets under their direct supervision, if confirmed, I will endeavor to extend our assistance under the MOU.

- (48) In your 2014 testimony for your current position on the CFTC, you said that the position limits rule was "vitaly important" and that "we have got to get [the rule] right" so that "loopholes are not created through it." It's now over three years after you gave that testimony and almost seven years after legislation was enacted directing the commission to finalize a position limits rule. The position limits rule, however, is still not finalized and the latest proposal has many concerned that there are significant loopholes in the rule.**

When you first came before this committee in 2014, I talked about how these seemingly obscure CFTC rules can potentially have significant impacts on Hoosier lives. We discussed Hoosiers who were dealing with spiking gas prices, and as a result, many hard-working families were having to put off doing things like buying their kids a new pair of shoes for basketball season or getting some new clothes for the school year in order to fill up the tank of gas to get to work every day. At the time, you said it was an

“important objective for [the] Commission” to gather the data and come to the conclusions about “what we need to do about [excessive speculation].”

- **Would you say that you’ve come to the conclusion that we need a position limits rule that allows exchanges to determine for themselves what gets an exemption from the rule; allows financial firms to qualify for exemptions even though they’re not actually engaged in the physical market; and further delays the rule for the swaps market because the exchanges won’t have the necessary information to be the primary regulators? NO.**
- **Or have you come to the conclusion that we don’t need a position limits rule at all, like the Energy and Environmental Markets Advisory Committee (EEMAC) recommended in a report that you requested? NO.**

Response: In December 2016, I voted alongside fellow Commissioners, Tim Massad and Sharon Bowen, in favor of the CFTC’s current position limits proposal. I said that the proposal “provides the basis for the implementation of a final position limits rule that I could support.” My view has not changed.

I have always been open to supporting a well-conceived and practical position limits rule that restricts excessive speculation. That is so long as it protects the ability of America’s farmers, ranchers and producers to hedge risks of agricultural commodities and the ability of America’s energy producers and distributors to control risks of energy production, storage and distribution.

Early in my term at the CFTC, I traveled to Jeffersonville, Indiana to tour an elevator and distribution facility operated by Consolidated Grain and Barge. The plant manager explained to me that the elevator served the critical function of providing liquidity for Indiana grain and soybean farmers when end-users are not interested in buying, and providing a market for end-users when farmers are not interested in selling. The elevator thus allows for the management of price risk at both ends of the supply chain.

During that visit to Jeffersonville I learned how the CFTC’s then-current (2014) proposal would have harmed the participants it claimed to protect because it would prevent grain merchandisers like Consolidated Grain and Barge from hedging “anticipated” transactions, such as hedges of unfilled storage and futures positions ahead of anticipated processing requirements. I learned that in late winter, prior to spring wheat planting, an Indiana grain elevator with storage capacity that is sitting completely empty locks in a spread on a portion of its expected throughput for the crop year by buying July wheat futures for the current year and selling July wheat

futures for the following year. Regardless of whether the elevator actually buys wheat during the current year, this transaction represents a hedge by the elevator of its capacity (i.e. the value of its grain storage assets). If there is a crop failure during the current year resulting in little to no wheat deliveries at the elevator, the spread position hedge will perform by providing the elevator the economic value of the position hedging against such event. Alternatively, if the elevator does buy wheat, it will hedge these specific price risks by taking appropriate futures positions and reducing the July/July wheat spread. Unfortunately, the CFTC's proposed position limits rule did not provide for such hedging.

From this Indiana meeting and other meetings with farmers, elevators and other ag service providers in almost two dozen states, I was convinced that we must carefully consider the impact of this very complex rule on America's almost nine thousand grain elevators, two million family farms and 147 million electric utility customers. We must get it right.

If confirmed, I intend to direct the CFTC's Division of Market Oversight to complete as soon as possible its review of the many comments received on the current position limits proposal. I will also direct the staff to present recommendations for appropriate amendments, if any, to the earlier proposal. I will then instruct the staff to incorporate any such amendments into draft rules to be presented to the full Commission for their review and consideration for final adoption. Any final rule will require the affirmative vote of the Commission.

If confirmed, I am committed to putting forth a workable position limits rulemaking that balances the public interest in restricting excessive speculation while allowing America's farmers, ranchers, energy producers and manufacturers to hedge bona fide risks of production costs and volatile commodity prices.

