S. HRG. 111–240

NOMINATION HEARING TO CONSIDER GARY GENSLER TO BE CHAIRMAN OF THE CFTC

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

FEBRUARY 25, 2009

Printed for the use of the
Committee on Agriculture, Nutrition, and Forestry

Available via the World Wide Web: http://www.agriculture.senate.gov

U.S. GOVERNMENT PRINTING OFFICE

54–564 PDF WASHINGTON : 2010

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

TOM HARKIN, Iowa, *Chairman*

PATRICK J. LEAHY, Vermont
KENT CONRAD, North Dakota
MAX BAUCUS, Montana
BLANCHE L. LINCOLN, Arkansas
DEBBIE A. STABENOW, Michigan
E. BENJAMIN NELSON, Nebraska
SHERROD BROWN, Ohio
ROBERT P. CASEY, Jr., Pennsylvania
AMY KLOBUCHAR, Minnesota
KIRSTEN GILLIBRAND, New York
MICHAEL BENNET, Colorado

SAXBY CHAMBLISS, Georgia
RICHARD G. LUGAR, Indiana
THAD COCHRAN, Mississippi
MITCH McCONNELL, Kentucky
PAT ROBERTS, Kansas
MIKE JOHANNS, Nebraska
CHARLES E. GRASSLEY, Iowa
JOHN THUNE, South Dakota

MARK HALVERSON, *Majority Staff Director*
JESSICA L. WILLIAMS, *Chief Clerk*
MARTHA SCOTT POINDEXTER, *Minority Staff Director*
VERNIE HUBERT, *Minority Chief Counsel*

CONTENTS

NOMINATION HEARING TO CONSIDER GARY GENSLER TO BE CHAIRMAN OF THE CFTC

Wednesday, February 25, 2009

U.S. SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC

The Committee met, pursuant to notice, at 2:40 p.m., in room SD–106, Dirksen Senate Office Building, Hon. Tom Harkin, Chairman of the Committee, presiding.

Present: Senators Harkin, Conrad, Stabenow, Nelson, Klobuchar, Chambliss, Lugar, Roberts, Grassley, and Thune.

STATEMENT OF HON. TOM HARKIN, U.S. SENATOR FROM THE STATE OF IOWA, CHAIRMAN, COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Chairman HARKIN. The Senate Committee on Agriculture, Nutrition, and Forestry will come to order. I know we just had a vote. We are waiting on some Senators to arrive. Senator Chambliss said he would be a few minutes late and to go ahead and proceed.

Good afternoon, and we thank you all for joining us today. We meet this afternoon to consider the nomination of Mr. Gary Gensler to serve as the Chairman of the Commodity Futures Trading Commission. As many of you know, Mr. Gensler is not new to public service. He served as Assistant Secretary for Financial Markets, and later as Under Secretary for Domestic Finance at the Department of Treasury. He was at Treasury about 3 years, so he brings this experience to this CFTC position.

This nomination comes at a very challenging time. Since the CFTC was created 35 years ago, it has never faced more daunting market challenges than those that the next Chairman and Commissioners will face. Our financial markets are still unstable, and the physical commodities of energy, agriculture and metals have experienced dramatic price movements and volatility.

Again and again, actions in our futures markets have caused some havoc across our country and economy. I thought about this, and in principle are supposed to provide some stability and certainty and not to create havoc.

One year ago this weekend, we had an experience in the cotton market. Speculative funds ran up the prices of the cotton futures market at a time when there were record surpluses of cotton and not very much demand. So there was a ton of money, speculative money, going into the futures markets that had absolutely nothing to do with supply and demand. It served no constructive economic purpose except maybe to make some people wealthy.

The markets for other agricultural commodities experienced similar disruptions for wheat, corn, and soybeans. They rose to record levels last year. Country elevators that had offered producers forward contracts and then hedged their positions on the Chicago Board of Trade struggled to find the cash resources to meet margin calls. Users of commodities from bakers to pork producers to ethanol facilities, suddenly realized that the price they would have to pay for the most critical inputs was double the price they had paid just a couple months before.

Prices in the energy sector also shot up to unprecedented levels last summer. Energy users from airlines to commuters to farmers struggled with higher fuel costs. So in places like my State of Iowa, people are wondering; is Washington really asleep at the switch? Do we understand the disruption and damage caused by ineffective and inadequate oversight and regulation?

Last night, President Obama urged Congress to move quickly on legislation that will finally reform our outdated regulatory system. He called for tough new common-sense rules of the road so that our financial market rewards drive innovation and punishes short-cuts and abuse. So it is our responsibility to rise to the President's challenge.

This Committee and the Commodity Futures Trading Commission have a profound responsibility to craft and implement tough-minded regulatory reforms. Last month, I reintroduced the Derivatives Trading Integrity Act. "Integrity" is a synonym for honesty. The bill would require that all futures contracts trade on a regulated exchange, including all derivatives contracts. I came to that position after our hearing in October on derivatives. Exchange-traded contracts are subject to a level of transparency and oversight that is just not possible in over-the-counter markets.

The best-intentioned and most brilliantly crafted legislation will be only as effective as the regulators who implement it. We must have an unflinching determination on the part of the Commodity Futures Trading Commission to restore integrity to these important markets.

That is why the position of Chairman of the CFTC is so critical. And that is why this Committee must gain assurance that the nominee before us is prepared to provide strong leadership at the CFTC, to work with this Committee to develop solutions to ensure that markets are open, transparent, free of excessive speculation, and that all trades clear. We need to know if Mr. Gensler will be committed to repairing the damage from abuses and mistakes of the past and ensuring that they are never repeated.

With that, I will hold the record open at this point for a statement by Senator Chambliss. I would ask if Senator Lugar or others would have opening statements that they would care to make at this time.

Senator Chambliss, for an opening statement.

STATEMENT OF HON. SAXBY CHAMBLISS, U.S. SENATOR FROM THE STATE OF GEORGIA

Senator CHAMBLISS. Mr. Chairman, thank you.

I will submit my opening statement for the record, and let me just echo, Mr. Gensler, we welcome you to the Committee, and we welcome your girls to the Committee.

We have had the opportunity to visit and obviously I know your background. We look forward to continuing a dialog on the issues that we know face this industry and look forward to working with you down the road with respect to making sure that we continue to provide financial investors in this country the type of regulation that is fair, reasonable, and will ensure safety and security in the market.

So thank you, Mr. Chairman.

Chairman HARKIN. Thank you, Senator Chambliss.

Senator Lugar.

STATEMENT OF HON. RICHARD G. LUGAR, U.S. SENATOR FROM THE STATE OF INDIANA

Senator LUGAR. Mr. Chairman, let me just add that I appreciated especially the hearing you conducted in which we participated last October. I felt that was an educational experience for us and for the American people, and I appreciate the progress that has occurred at CFTC subsequent to that hearing. People were able to do some things administratively.

But I would just simply chime in to say that as a very junior Senator, Senator Leahy and I sat at the end of the table and were assigned by Chairman Herman Talmadge the responsibility of oversight of the CFTC, because apparently no one else on the Committee understood what he was doing and no one really wanted to find out. So we have had some parental responsibilities in subsequent years, and I appreciate very much the evolution. But this is a pivotal moment today as we take a look at a new chairmanship, a new era, the regulatory suggestions you have made and other members likewise. And so I look forward to the hearing.

Chairman HARKIN. Thank you very much, Senator Lugar.

Senator Nelson?

Senator NELSON. Thank you, Mr. Chairman. Unfortunately, I have to leave, so I am going to make a couple of statements and leave open a question which I hope Mr. Gensler can respond back to us in writing.

You have outlined very clearly and succinctly the problems that we face today with the volatility that we have experienced in the markets. I hope we have the opportunity to see where the weaknesses are and what fixes are necessary. Credit derivatives, obviously regular commodities, physical commodities, need to be bound by certain rules. But it is important that whatever regulations are put in place does not constitute strangulation of the commodities in the whole.

I think the CFTC must preserve the price discovery aspect of the markets and risk management hedging benefits that it provides. It needs to regulate with a focus on what has become more and more important, the system risk, and not just look for bad actors in the situation.

I think the thing that interests me most is the need that the CFTC should be proactive and try to anticipate matters that pose a threat to systemic risk than always be reacting. I know it is a very challenging thing to be able to predict and to anticipate without some market experience to guide you as to what needs to be done. But waiting until the systemic risk is so big or the fire is beyond the capability of being put out is not a course of action that we would like to see happen again.

The question that I really have of Mr. Gensler, should he be confirmed, is—we proposed that the CFTC issued—they issued a report, and we came back and we asked that the report's recommendation of the review of, quote, whether to eliminate the bonafide hedge exemption for swap dealers and replace it with a new risk management exemption subject to certain conditions that we suggested that be done. And my question is do you know whether that has been done or, if it has not, whether it will be done. And if you can just get back to me on that, that certainly will satisfy me.

But thank you very much for your willingness to serve, and I look forward to my two colleagues giving a great introduction of you. Thank you.

Chairman HARKIN. Thank you, Senator Nelson.

Senator Grassley.

Senator GRASSLEY. Yes, thank you very much, Mr. Chairman. Obviously, we need to congratulate Mr. Gensler. I think we ought to also thank Walt and Michael for their acting chairmanship and the hard work that they put into the work of the Commission. I think our last year has shown that more aggressive activity on the part of the CFTC is really needed.

This is a year when we are going to have to decide to a greater extent the appropriate role of regulation of speculators to a greater extent than we have in the past. We are going to have to decide if we are serious about giving the CFTC the resources it needs to do its job effectively. And that is what new leadership is all about, I hope, and, of course, the work of this Committee as well.

So I am not going to be able to stay around here to ask questions, but I told Mr. Gensler that I would be submitting about eight questions for answer in writing. So I thank you, Mr. Chairman, for the privilege of making a statement, and I will put my entire statement in the record.

Chairman HARKIN. Thank you very much, Senator Grassley.

We have a distinguished colleague and a distinguished former colleague, and I will recognize them in order for purposes of introduction. Senator Mikulski from the great State of Maryland, welcome to the Agriculture Committee.

STATEMENT OF HON. BARBARA A. MIKULSKI, U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MIKULSKI. Thank you very much, Mr. Chairman, and also Senator Cardin, who is currently presiding, will also be joining us, and it shows the enthusiastic support that Mr. Gensler enjoys from the Maryland delegation.

First of all, in terms of the Commodity Futures Trading Commission, we know how important this Commission is. But as Senator Lugar so aptly said, it is often little understood or little noted, unless there is a crisis in the markets. And last summer, also the whole issue of commodities and the futures trading just exploded in our community and our media and in our marketplace.

I had bakers lined up throughout in my office and out in the community wondering how they were going to buy rye and wheat and so on to keep their small and medium-sized businesses going. We were talking about the high price of gasoline. We were talking about something called the "London loophole" and how we needed to close that.

So the whole issue of commodities we are seeing not only as something that was primarily an Agriculture Committee issue, but an American issue and how it affects our community.

There is grave concern whether there was adequate oversight, adequate regulation, and what we needed to do. Well, I think now we are on the path in the right direction. But whatever the rules of the road, whatever Congress chooses to do, we need to have the right person in charge of the CFTC. That is why I enthusiastically endorse and introduce Gary Gensler to the Committee to be the Chairman of the Commodity Futures Trading Commission. We know his work when he was in the Senate. We know his work in the Clinton administration, and also he is and continues to be a community leader in Maryland.

I know him to be a man of principle and great intelligence. He has a deep understanding of finance, both domestic and international, and how to turn that knowledge into workable policies that will protect the interests of our country and the interests of our consumer.

During this time of great financial turmoil and uncertainty, we need someone with these skills, this background and experience, and these values to lead the Commission. So I enthusiastically support him for this important position.

When you look at his resume, we know that he worked hard at Treasury and received the Alexander Hamilton Award, the highest award that the Department can give. He worked with our colleague Senator Sarbanes in terms of fashioning a response to not only the Enron scandal, but how we could make corporate America more responsible, the Sarbanes-Oxley bill.

He has worked as a top economic adviser both in our own government and on Wall Street. He is also a strong community leader. Whether he has been on the board of Johns Hopkins University or whether he has helped the Community Enterprise Foundation be able to provide affordable housing, Gary has always been someone who has given of his own time and, I might add, of his own dime.

And just speaking as a woman, I watched him and my heart went out to him when his own beloved wife, Francesca, struggled with breast cancer. He had to be a father; he had to be a mother; he had to be a devoted husband. He was always at his wife's side, and at the same time tending to his children.

Someone who knows what sorrow is and has to go through that, and also what it means to his family, and then while he was doing that, to stay civically engaged while at the same time watching the marketplace. I think we have someone who brings talent, who brings dedication, and who brings values. I think the Committee would be well served in approving his nomination.

Chairman HARKIN. Thank you very much, Senator Mikulski, for that very strong supportive statement.

Now our distinguished former colleague, Senator Sarbanes. Welcome back.

Senator SARBANES. Mr. Chairman, thank you very much, and I appreciate your courtesy in allowing me to appear. It is a risky proposition on your part because former Senators do not get much of a chance to speak, and there is always a danger they will abuse the microphone when the opportunity presents itself. But I know you want to move along.

Actually, I will withhold and defer to Ben and keep it in—I am out of office, and they are in office, and I respect the difference very much. Do you want to go ahead?

Senator CARDIN. I usually yield to my constituents, and Senator Sarbanes is my constituent. But let me——

[Laughter.]

Chairman HARKIN. Senator Cardin.

STATEMENT OF HON. BENJAMIN L. CARDIN, U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Mr. Chairman, let me thank you for the courtesy of just a few remarks with regard to Gary Gensler. He is a friend. He is a person I have known for many years. I deeply respect his intellect, his integrity, his financial knowledge, and his commitment to public service. And I join Senator Mikulski and Senator Sarbanes in recommending him for confirmation.

Gary has a tremendous depth and breadth of knowledge on financial issues. He was in the Department of Treasury from 1997 to 2001, Assistant Secretary for Financial Markets and Under Secretary for Domestic Finance. He was a senior adviser to both Secretary Rubin and Secretary Summers.

He received the Treasury Department's highest award, the Alexander Hamilton Award. He was an adviser to a very distinguished member of the U.S. Senate, Chairman Sarbanes, when Paul chaired the Banking Committee and helped Senator Sarbanes when we passed the Sarbanes-Oxley legislation, which regulated corporate America—very important legislation on corporate responsibility—we could use more of that today—and accounting and security laws.

So Gary is well prepared through his experience to take on this very important responsibility as Chair of the Commodity Futures Trading Commission. But I want to tell you just one more thing about him. His background in the community, the type of volunteer activities that he has committed himself to, in helping educational institutions and helping health care institutions and helping those who are disadvantaged. It tells you a lot more about him. He is a person committed to our community.

I will tell you one more thing about him. He has participated in nine marathons, and if he is confirmed, helping repair our economy will be his tenth marathon, and I am sure he will be just as determined to bring us to a successful goal, and I encourage his confirmation.

Thank you, Mr. Chairman.

Chairman HARKIN. Thank you very much, Senator Cardin.

Now Senator Sarbanes.

STATEMENT OF HON. PAUL SARBANES, FORMER U.S. SENATOR FROM THE STATE OF MARYLAND

Senator SARBANES. Well, thank you very much, Mr. Chairman.

First of all, I want to just underscore something that both Senator Mikulski and Senator Cardin said, and that is the very substantial, positive contribution that Gary Gensler has made in the Baltimore community through his civic involvement. If we talk about being a good citizen and sort of participating and meeting your responsibilities, this is a prime example of someone who has done that. And it has been of enormous benefit to our community, and we are all deeply indebted to him for it.

He has been in a sense a star from the beginning. He was a summa cum laude graduate from the Wharton School of Business at the University of Pennsylvania, first a BA and then an MBA. He then went to work in the financial industry where he had extensive experience, and then he was in the Treasury for, I think, close to 4 years. He then wrote a book about mutual funds, and then I was fortunate enough—I was then Chairman of the Banking Committee, and we were confronted with the Enron situation.

Enron was the seventh largest company in the country. It was reporting record profits in the first part of 2001, first quarter, second quarter, 20–percent increase in profits each quarter. By October, they were restating their earnings. November, they restated them again. December, they declared bankruptcy. The largest bankruptcy in U.S. history up to that point. It was subsequently eclipsed by WorldCom in June of 2002.

The Committee, which I then chaired, was charged with the responsibility of addressing the situation, and one of the things we did which made an enormous difference, as it turned out, was to get Gary Gensler to come and work with us as a senior adviser to the Chairman. And his contribution was enormous.

He was integrally involved in shaping the legislation, which, of course, dealt with oversight of the accounting industry, the reform of corporate governance, and investor protection measures. And let me just quickly outline for the Committee the qualities he brought to that work, which I think will stand all of us in good stead should he be confirmed as Chairman of the CFTC.

First of all, he thinks comprehensively in terms of what is necessary to make the financial system work. So he has a breadth and depth of vision which is somewhat rare, but which is extremely important, particularly when you are trying to deal with a situation where the system is breaking—seems to be breaking down and it needs to be, as it were, restructured and put back together again.

He is extremely smart. I indicated his past accomplishments. Nowadays, people are around developing more and more complex instruments all the time, and you have got to have someone there who can not only stay with them every step of the way, but can be ahead of them, can anticipate what is coming and seek to address it.

He knows the markets well, and he is very committed to ensuring that the markets work honestly and fairly. And the markets are an important part of the workings of our economic system. But if they do not work honestly and fairly, they will drive the economic system down, and all of us will pay a very high price for that.

He is very hard-working. He is not ideological. He is pragmatic. He is a good listener. He seeks practical solutions, seeks to develop constructive and positive approaches. He is firm and fair. And he brings excellent judgment and very strong leadership skills. I think he will be very effective in heading the agency and imparting a sense of mission to the employees in terms of what needs to be done.

I want to say to the members of the Committee, I have absolute confidence in his integrity and in his judgment, and I think it is an opportunity for the country to put his superior understanding of financial markets and his extensive experience to work on behalf of the American people. I can assure you he will be a fierce enemy of fraud and manipulation, that he will find it, root it out, and also try to make the systemic changes that will contribute to it not recurring again, which is, of course, very important. We can go after the bad actors, but we want to have a system in place that precludes the bad actors from coming along in the first place.

Gary Gensler has a very, very deep commitment to the public interest. I have had occasion to talk to him at length about his feeling for the country, his own opportunities in life, and the need to make the system work fairly for all.

And, finally, Mr. Chairman, let me just say he appreciates, I think, the role of the Congress and the workings of our political system. Sometimes you get these people in the executive branch, and they have difficulty understanding there is a legislative branch that plays a very important role. Gary Gensler I think clearly understands the role of the Congress. I think he is sensitive to it. He appreciates it is an important partner. And I want to say to the Committee I think he will be an absolutely first-rate partner for the Congress as you move to address the economic challenges which you, Mr. Chairman, and the other members of the Committee outlined at the beginning of this hearing.

Thank you again for the chance to come and be with you.

Chairman HARKIN. Well, thank you very much, Senator Sarbanes. Good to see you back, and I am sure we do not have any questions for all of you, but I just would say for the record that Mr. Gensler is indeed very fortunate to have three such well-respected and well-liked advocates for his position as the two sitting Senators and the previous Senator from the State of Maryland. Thank you all very much for being here.

Now I would like to call Mr. Gensler to the witness table.

Mr. Gensler, before you take your seat, if you would rise, we have an oath that we have to administer.

Mr. Gensler, do you swear to tell the truth, the whole truth, and nothing but the truth?

Mr. GENSLER. I do, Mr. Chairman.

Chairman HARKIN. And, Mr. Gensler, do you agree that, if confirmed, you will appear before any duly constituted committee of the Congress if asked?

Mr. GENSLER. I do, Mr. Chairman.

Chairman HARKIN. Thank you very much, Mr. Gensler. Please have a seat.

Mr. Gensler, welcome to the Committee. My congratulations on your nomination by the President, and we have your written statement. It will be made a part of the record in its entirety, and the floor is yours. You may proceed as you so desire.

TESTIMONY OF GARY GENSLER, NOMINEE TO BE CHAIRMAN AND COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION

Mr. GENSLER. Chairman Harkin, Ranking Member Chambliss, members of the Committee, thank you for the opportunity to appear here before you today. I am honored to be President Obama's nominee to be Chairman of the Commodity Futures Trading Commitment at this critical time in the commodities markets, and for our Nation.

As a champion of the public's interest—for farmers, consumers, small businesses—the CFTC plays an essential role in our financial regulatory system and affects the lives of all Americans. And I firmly believe that strong, intelligent regulation with aggressive enforcement is what our economy needs and benefits the public.

The current economic crisis clearly has shown, though, that our financial and regulatory systems have failed the American public terribly. Those of us who have spent our time, our professional lives, around markets have to approach the current crisis with humility following such broad failures. We have learned the limits of our ability to foresee how markets may evolve. We have learned the importance of being candid with the American public about the risks we face and that we must be unceasingly vigilant to address these risks. We have also learned that there is no substitute for strong, independent regulation, that we must bring transparency and accountability throughout the system, and we must always err on the side of protecting the American public.

These are the lessons I draw from what has transpired this past decade. And, if confirmed, I pledge to this Committee and to the Congress that I will not forget these lessons.

We must repair our regulatory system by enacting much needed reforms that promote transparency, fairness, and safety.

If confirmed, I will fight hard on four essential priorities for reforming the commodities markets and our financial system.

First, the CFTC must vigorously fulfill its mandates: enforcing existing laws, promoting market integrity, preventing against fraud and manipulation, and guarding against excessive speculation. I will work tirelessly to ensure that the Commission leaves no stone unturned, ferreting out and putting to a stop activities and practices that hurt the American public.

I also look forward to working with Congress to provide the adequate resources for this agency which I believe currently lacks the sufficient funds to do even its current mission, let alone the missions I think it needs to take on.

Second, I believe that increased speculation in energy and agricultural products hurts American farmers and consumers and businesses. I do not have any doubt about that. A transparent and consistent playing field for all physical commodity futures should be the foundation of our regulations. Position limits must be applied consistently across all markets, across all trading platforms, and exemption to them must be limited and well defined.

Third, we must now urgently develop a broad regulatory regime for over-the-counter derivatives. Standardized products need to be brought into mandated clearing and mandated exchanges. Beyond this, I believe the institutions themselves—the derivative dealers that make the markets in derivatives—need to have direct regulation under Federal statute, capital rules, business conduct reporting, and regulations need to be developed for customized swaps and for credit default swaps given their unique nature.

And, fourth, I believe the CFTC must work with Congress and other regulators around the globe to ensure that failures of the regulatory and financial systems, failures that the American people public has taken such a toll, never happen again. Now, this will not be easy. These are complex financial markets, and markets are irreversibly linked. But we will have to work with our global partners to make sure that around the world we have the same rules that we have here. This is the only way that Americans can really be protected.

Mr. Chairman, Ranking Member Chambliss, I am a proud believer in financial reform, tough regulation enforcement. I have been privileged to have had broad exposure to financial markets, here and in Asia, in public service and on Wall Street, as an investor advocate, and as a Government official.

And my experience has taught me the importance of having a strong working relationship with Congress. I appreciate Senator Sarbanes' comments on that. In these transformational times, I do believe we have a unique opportunity working together to bring bold and necessary reform forward. We must, though, take this opportunity to ensure we deliver on the expectations that all Americans have for us.

I would like to close by saying how much the support of my family—my three daughters—means to me, and the great sacrifices they will make if I am so honored to serve. My eldest, Anna, is a freshman at college and could not be here. My two other daughters, Lee and Isabel, if it would be appropriate, I would just like to introduce to the Committee.

Chairman HARKIN. Please introduce them.

Mr. GENSLER. This is Isabel, my youngest, who is 12, and then my daughter Lee, who is 17, who are here with us today.

Chairman HARKIN. Welcome to the Committee.

Mr. GENSLER. Mr. Chairman, Ranking Member Chambliss, members of the Committee, I look forward to taking your questions.

[The prepared statement of Mr. Gensler can be found on page 43 in the appendix.]

Chairman HARKIN. Thank you very much, Mr. Gensler.

Mr. Gensler, in confirming nominees and moving their nominations forward, I like to know about their background and history and where they are now, their present views and outlook. Obviously, you have had experience, you have served in a previous administration. I would like to cover some of that with you as a way of examining where we were in the late 1990's and where we are today regarding issues under CFTCS jurisdiction.

On May the 18th, 1999, you testified before the House Agriculture Committee's Subcommittee covering risk management. In response to questioning by our distinguished ranking member, when he was a member of the House Agriculture Committee, you said you "positively, unambiguously" agreed with Mr. Larry Summers in his testimony to the Senate Agriculture Committee opposing additional regulation of the institutional over-the-counter derivatives market.

You went on to refer to the "vibrancy and importance" of the global over-the-counter derivatives market.

Here is a direct quotation. You said quote, "That large and vibrant market is part of, I believe, the American success. And we should recognize that and put the burden on those who are suggesting changes and further regulation, put the burden on them before we tamper on some of the successes of this marketplace for the economy."

Well, that is quite a resounding, unqualified, and categorical statement, no second thoughts or ambiguity.

Ms. Brooksley Born, who was about to leave as the Chairperson of the CFTC, had advocated strenuously over the previous few years, including before this Committee, that the risk of these over-the-counter derivatives needed to be evaluated and appropriately regulated.

However, you were part of the team arguing—and you can correct me if I am wrong on that—for a statutory enactment to take away all CFTC regulatory power over these over-the-counter derivatives. According to the Washington Post of October 15th, 2008, this team was really quite dismissive of Ms. Born, to the point of it kind of becoming personal at that time. But I do not need to go into that.

But this team was quite direct in advocating that these be exempted from CFTC regulation.

Mr. Gensler, what was your own personal role in dealing with Ms. Born during the time she was chair of the CFTC? Did you attend any meetings during that period of time in 1998 or 1999 or did you have any telephone calls or communications over that period of time with her? What was the nature of those interactions, and did you have any advice for her at that time?

Mr. GENSLER. Mr. Chairman, thank you for your question.

First, may I say, looking back now it is clear to me that all of us that were involved at the time—and certainly myself—should have done more to protect the American public through aggressive regulation, comprehensive regulation. We should have fought harder for some of the things that we raised with Congress at the time, whether that be regulating derivative dealers or keeping the oil and metals markets consistently regulated with the corn and wheat and soybean markets. These were things we recommended and we should have fought harder for.

I clearly look back on some things outside the jurisdiction of this Committee that I should have fought harder for, guarding against predatory lending practices.

I believe there are many things that at the time that we could not foresee, or did not see. They were just dots on the landscape, as you, I believe, and other Senators here commented. And we have to do a far better job seeing that which is out on the horizon.

You asked specifically about meetings with Chairman Born and I recall working with her, working with her as a staff member at Treasury. I was an Assistant Secretary working on a report on long-term capital management and the after effects of the collapse of long-term capital management where there was a joint report put together in the spring of 1999.

During those earlier periods of 1998, when there was different views of the Treasury, the Federal Reserve, and the SEC from the CFTC, Ms. Born raised very good questions but I, in fact, at the time was recused because it did relate to a particular matter of my former employer. I had been at the full, big set piece President's Working Group meetings, as would be customary for the Assistant Secretary to attend, along with other staff of Treasury.

Chairman HARKIN. Well, Mr. Gensler, that is a very straightforward answer and I appreciate that. So would you say that your views and your thoughts on this have evolved and changed over the intervening years, looking back at what has happened in the last several years?

Mr. GENSLER. Mr. Chairman, I very much would say that my views have evolved. There is so much that has happened in the marketplace as electronic trading facilities, even that our exchanges now are public and for-profit enterprises and back then were not for-profit and public. And the financial crisis itself, to me, goes to the heart of some of the assumptions that I think collectively all of the Federal agencies and even Congress at the time grappled with.

I believe now it is just so important that we bring the whole over-the-counter derivatives marketplace on the market, into exchanges, as you do. I share that goal. And to also bring that over-the-counter derivatives marketplace onto centralized clearing.

I, frankly, though do not think that is enough. I also think we need regulation of the institutions, that Congress would actually have a statutory regime for derivative dealers, somewhat like we have for banks, where you have capital rules which address the excess leverage, have business conduct rules to make sure there is not fraud and manipulation in the sales practices. And then, of course, last and very importantly, reporting rules. These dealers—there is about 15 or 20 around the globe that make up 99 percent of the market for over-the-counter derivatives.

So I have come to believe strongly we need both, the market side, clearing and exchanges for the standardized products, the derivative dealers clearly regulated, all the information coming in.

Chairman HARKIN. I am going to follow that up in my second round because I want to ask about this whole idea of having some derivatives that are not on a regulated exchange. I will get to that.

In my reading, my memory but also my reading of that period of time from 1998 through about 2000, was that the President's Working Group was very forceful in their position that these OTC derivatives should be exempted from the CFTC. As I said, to the point one time where it also got personal with Ms. Born. I remember that.

And in my reading of it, about that, from various sources, it appears, of course, that you have some very strong personalities there. You have Mr. Greenspan, who was driving this, quite frankly. And he is a very forceful personality. He was driving this.

Then you have Mr. Summers. He is no shrinking violet, as we all know. He was driving this, also.

Then you have Mr. Rubin there, also. So you have a very forceful group.

CFTC was sort of shunted aside. Well, Mr. Gensler, should you get this position as the Chairman of the CFTC, you will be on the President's Working Group. And I needn't remind you that you will not be working for Mr. Geithner. You may be a friend of his; that is fine. You will not be working for him. You do not work for Mr. Summers. You do not work for Mr. Bernanke. You are the chairman of an independent regulatory agency. You do not even work for the President. You are chairman of an independent regulatory agency.

And as such, your views and your positions that you have should be that of a chairman of an independent agency. And one should not be reticent in advocating a position even to the extent that some of the other forceful personalities may not agree, if you get my point.

I just want some assurances from you that you will be that independent voice. Like I said, I am not asking you to sever friendships or the like. I am saying the mindset, the mindset of the Chairman of the CFTC cannot be working for Mr. Summers or Mr. Bernanke or Mr. Geithner or anybody else. And that you will bring that independent mindset to the President's Working Group.

Mr. GENSLER. Mr. Chairman, I thank you for that question. I think being Chairman of the CFTC is an independent regulatory agency. The commitment I give this Committee and to the American public that I will bring that independence. If I have a concern or thought about the regulatory protections that the American public needs, I will absolutely share it as one of the President's advisors, as part of the President's Working Group, with the President and senior members of his economic team.

But if we cannot reach any consensus and I believe something, I am going to bring it to this Committee, I am going to bring it to the American public. There is a real difference, in my mind, of being an Assistant Secretary of Treasury and being the chairman of an independent regulator.

I appreciate that when the President asked me—then President-Elect Obama—to be his nominee in December and we had a chance to chat, that was what he understood and that is what I understood, that I will certainly be advising the President. It would be a great honor to advise him on regulatory reform and all that we need.

But that which is at the core of my beliefs, that we have to bring the entire over-the-counter derivatives marketplace into a regulatory regime, these two pieces that I have talked about, these two big pieces I have talked about and the goals that we share, they have heard me saying this straight through since December 18th and they are going to keep hearing me say it. And I make that commitment to you, sir.

Chairman HARKIN. Thank you very much, Mr. Gensler. I will return to the issue of derivatives and trading on exchanges during the second round.

With that, I would of course yield to our distinguished ranking member, Senator Chambliss.

Senator CHAMBLISS. Thank you, Mr. Chairman.

Mr. Gensler, in your statement you state, and I quote, "The current economic crisis clearly has shown that our financial and regulatory systems have failed the American people terribly."

I know you are very familiar with the workings of the CFTC. Surely you have followed the markets over the last several years since your direct involvement at Treasury. Is there anywhere that you think, or any particular instance you think where CFTC falls into that category of having failed the American people terribly?

Mr. GENSLER. Senator Chambliss, I think that the great failures are largely beyond the CFTC. But even in this area, the CFTC is, by Congress, that Act in 2000 that the Chairman referred to, asserted that they are an agency that has to look after systemic risk as well. And we clearly have had a systemic failure.

Second, though the CFTC, I do not think, has the tools to look after that much, I do believe that we have had speculation that contributed and hurt farmers and consumers and all Americans.

And if confirmed, I would fight hard to make sure that we have the resources and that we can bring what is needed to be borne to these markets within the current authorities at the CFTC.

Senator CHAMBLISS. With the current authority that is out there and the current resources that you are familiar with, do you think there is anything that the CFTC did not do that they should have done relative to this systemic risk issue that you are talking about?

Mr. GENSLER. Well, again, when the failure is so broad and complete, Senator, I just think all regulators have to look into themselves and say what could we have done differently? I do that personally, in terms of my own record.

I think that the CFTC has aggressively fought and tried to enforce fraud and manipulation in other areas. But if confirmed, I would certainly want to take a look at all of the individual hedge exemptions that are currently in place, some for 20 years or so. I think it is time to look back and see whether those exemptions are still appropriate, given the current times.

There are processes that the CFTC uses to allow for markets or individuals to take action sometimes that are not brought up to the full Commission level, and I think we need to do that, as well.

So these might sound like they are around the edges of a big financial calamity, but I think every agency needs to take a look to see what can we do better and what can we do more.

Senator CHAMBLISS. You and I talked about the potential for an SEC/CFTC merger that a lot of folks are advocating and have been advocating. And I noticed you are quoted, and I hope this is an accurate quote, "CFTC performs vital functions and it is critical that all of its mandates are preserved, even as the demands on our regulatory agencies expand. A merger makes sense only if it enhances our ability to carry out the important task with which the CFTC is entrusted. Thus, I would not consider a merger simply for merger's sake."

I want to say that on the vital function of the CFTC, certainly you and I are very much in accord there. There has been much discussion about merging these two agencies, as well as the creation of a new systemic risk regulator to oversee all Federal financial regulators.

Personally, I have great reservation about bringing these two regulatory bodies together, as I expressed to you. For one, the SEC's performance in regulating their current portfolio has been less than stellar. And second, the CFTC uses principle-based regulation that has proven an effective approach to regulating commodity futures. It is difficult for me to see how welding these two regulators together will serve Americans well.

First, are you a proponent of the CFTC's principle-based regulatory approach? And if so will you, as Chairman of the CFTC, work to preserve this regulatory approach, as regulatory reforms and reshuffling of bureaucratic boxes are contemplated and proposed? And second, what problems could you see arising from an SEC/CFTC merger?

Mr. GENSLER. Senator Chambliss, I appreciated the time we spent in your office. I think we may have talked about this as well at that moment, too.

As I said, and that was an accurate quote, I think this financial crisis brings to bear so many other problems other than, as you say, the boxes. The CFTC was formed in 1974, but really it was formed back in 1922 to protect the interest of—at that time—grain merchants and farmers so that they could appropriately and reliably hedge their risk in the future about their corn and wheat and then later soybean. And of course, we have added many other products to it.

I think that is fundamentally very different than what the SEC does. They are both market regulators. They both need to be strong on enforcement and anti-fraud and anti-manipulation, and look out for the public.

But at the core, the CFTC's mission about protecting farmers and merchants and later oil and metals, and though it has been expanded to financial products and it is critical to get the over-the-counter derivatives marketplace correct as well, is sort of around a different set of mission and goal than that which is the SEC.

I think both very vitally important. And as you rightfully point out, one of them principles-based which, as Chairman of the CFTC, I would support and make sure it works. And if it did not work, I would be back here readily to work with Congress to see if we needed to fix something. And the Securities and Exchange Commission has another approach.

Senator CHAMBLISS. The 2000 Modernization Act was a very complicated piece of legislation that you were involved with back then, as were a number of us. We thought we were doing the right thing and I think we did absolutely the right thing by allowing the market to expand and putting more flexibility out there. As a result we saw these markets grow in a tremendous way. I think all of that has been healthy for the economy.

Obviously, as you alluded to, over the last 10 years—or well, 9 years we have seen major changes in the industry. We have seen very volatile prices from time to time which can be attributed to any number of issues.

But my question to you is looking back at the 2000 Act, and knowing what you knew then, is there any recommendation that you think was made that we did not follow that should have been followed that we ought to think about now? Or do you think that act worked the way that all of us intended for it to at that time?

Mr. GENSLER. Well, I believe, looking back now, knowing what we know now, there are two areas that we did raise then but we should have fought harder for, I personally felt—thank you, Senator—should have fought harder for.

One was the concept of regulating the dealers themselves, the brokers, the voice brokers or derivative dealers that are making markets. We all know their names. I will not name them here, but the large financial institutions.

We recommended that. In some cases, they were the affiliates of the broker-dealers. But one of the big lessons out of AIG, the insurance company that failed, they had an unregulated dealer in the derivatives business. And now, in that case, it was $450 billion in size. In that case, it was largely credit default swaps. But it was also unregulated. There was no, not the New York State Insurance Commissioner, nor any Federal regulation about its capital, its business conduct, its reporting. I think we need to put that in place.

Second, at the time the President's Working Group did suggest and recommend that oil and metals and cotton and wheat all have a consistent regulatory regime. We were unable to achieve that, working with the various committees in Congress in working that through.

But I think that is a good foundation. I still think that is the right foundation, that if something has finite supply and is more easily manipulated, that we should think of consistent regulation and make sure that we get that in.

Senator CHAMBLISS. Thank you, Mr. Chairman.

Chairman HARKIN. Thank you, Senator Chambliss.

Senator Lugar.

Senator LUGAR. Thank you, Mr. Chairman.

You have just mentioned, Mr. Gensler, the ideal of having the agricultural commodities but likewise, a broader group together. Certainly in testimony that we heard in October and before many advisors, even to pension funds and to college endowment funds, suggested a grouping of commodities which included corn and soybeans but also metals and oil and these combinations of commodities that serve those interests well for a period of time.

But it did lead to an interesting question with regard to regulation of them, and it is a discussion that we had at the time of the reauthorization of CFTC a while back which, without going into who was for and against, the problem of the regulation of oil, for example, or of various other energy products, was fiercely resisted by some Senators, by some witnesses, by some members of the Administration at the time, as I recall.

I mention that now because I really want your judgment as to what should be the scope of the CFTC? We think about the agricultural scene, that seems fairly clear. It has never been quite that clear with regards to other commodities, as they are thought of generally.

What sort of scope do you envision as ideal, in terms of a regulatory regime?

Mr. GENSLER. Senator, I thank you for the question and I thank you for having—we had a good meeting together on these subjects.

I think that the Commodity Futures Trading Commission currently has exclusive jurisdiction from Congress to regulate the futures markets. And it has proven well, as Senator Chambliss said, though in the midst of a crisis everybody has to look within. It has proven well in regulating over these 35 years the futures markets.

I believe that if we are able to bring over-the-counter derivatives into centralized clearing, into exchanges for these products, that the CFTC is best situated with expertise on the derivatives marketplace, if appropriately funded I must add. But I think they are best situated amongst the Federal regulators for these authorities.

Senator LUGAR. Now the appropriately funded point which you touched upon in your opening remarks, and which has often been touched upon by the leadership of the Commission, just has not been occurring. There is not an understanding I think, perhaps, of the scope of what this means if you are to take in all of the different types of derivative contracts and various other situations.

From the beginning will you be able to give the Committee and work with us in terms of how many people you actually need or what sort of facilities are required to achieve something which the American people clearly want at this point?

Mr. GENSLER. Senator Lugar, I look forward, if confirmed, working with you and the Committee on that. I know under its current authorities the CFTC has just under 500 people. This is the same size it was in 1974.

Senator LUGAR. Yes.

Mr. GENSLER. So in 35 years, when the markets have grown more than 50–fold—again, markets have grown 50–fold, the agency is the same size. That is either efficiency or well, or it is underfunded. And maybe it is some of both, but I think it is underfunded.

It was 600 people just a few years ago. The enforcement arm had 150 lawyers, it is now only 110 lawyers, just to enforce the laws currently in place.

I believe the Agency has put a request in, and I am a private citizen but I was able to read this letter in the last few days, to get back up to 690 people. That gives you a sense of what they believe right now they need.

Senator LUGAR. I think it is probably incumbent upon us, but you if confirmed, to gain greater recognition for what the CFTC does. I think it has always remained in the shadows. But no longer. We have a financial crisis that still goes on.

Let me add one further thought, as you are thinking about the budgets. I have no idea what the result will be of our debates on energy resources, climate change. But let us say that a cap and trade system was established in this country in which there was really a very conspicuous and very expensive market for carbon.

I ask sort of in advance what your judgment would be as to whether the CFTC should be the agency that regulates huge sums that are likely to be involved if a very serious cap and trade situation involving all of our industries, utility, so forth, was to come about?

Mr. GENSLER. Senator Lugar, I believe under the current statutory authorities that the CFTC does have that oversight, and there is a very small cap and trade market now I am told, regional market, that they have some oversight.

Senator LUGAR. Yes.

Mr. GENSLER. If that were to grow into a national market, be listed on an exchange or in other ways, the CFTC, I have been told in my early investigation, does have that authority. But I would certainly look forward to working with Congress if we need to put more of that into statute and address that specifically.

Senator LUGAR. Let me just ask as a personal inquiry, I have become a member of the Chicago Climate Exchange, largely as a demonstration that farmers who have hardwood trees and have proper measurement and so forth are sequestering carbon in their trees. And each year we have an update of how much more is there.

So on the website of the Chicago Climate Exchange, every day there is a quote for their price of a ton of carbon. It is $1.95 today. It was up to $7 at one point during the year.

Similar situations in Europe, however, have had quotes of anywhere from $20 to $50 per ton, depending on the Kyoto Protocol and how seriously some countries looked at this.

I mention this because there is, as you say, a modest attempt being made by people in Chicago, who also are working with the Europeans in this. And it may come to pass that the Congress debates this issue but puts it aside, as was the case last year.

But if we do not put it aside, this is going to be a very, very large set of problems and sums of money and implications for something well beyond agriculture or speculators in commodities. And that is why I wanted to try to establish who is responsible. And your judgment, and I agree with it, is that it is the CFTC.

But having the personnel, the regulations, the rest of it for this is sort of a quantum leap and is the type of thing which hopefully we will not look back in a hearing 10 years later and say why did we have no vision, no preparation, and no people.

Mr. GENSLER. Right. And Senator, I think you raise a very good point. The Commodity Futures Trading Commission has the best experience and background and current authorities regulating the futures markets.

But just as it does also work with the Department of Agriculture that has the best authorities and expertise on agriculture and the cash markets and so forth. So there is some shared protection of the American public between the Department of Agriculture and the CFTC in corn and wheat and other products, where the CFTC is focused on the futures.

There may well be multiple agencies in a cap and trade situation where the CFTC brings its expertise to protect the American public in the futures markets and other agencies bring their expertise to protect the public in other regards.

Senator LUGAR. Thank you.

Chairman HARKIN. Thank you, Senator Lugar.

Senator Stabenow.

Senator STABENOW. Thank you very much, Mr. Chairman.

First of all, welcome and I look forward to supporting your nomination.

Mr. GENSLER. Thank you, Senator.

Senator STABENOW. Is this microphone on? It is not working. Well, I am going to move over here, just a second. We will see if this one works.

OK, that is working, and I am not Senator Conrad.

Welcome again, and I will say for the record, with the microphone on, I look forward to supporting your nomination on the floor and to working with you.

I wanted to follow up with Senator Lugar, I think, what Senator Lugar was speaking about, the engines of cap and trade, which I think is such an important new area for us to focus on. President Obama spoke about it last night. We know that there is a lot of work being done, important work, being done to craft the right kind of balance for moving forward to tackle this issue, which I hope we will do.

And some believe this will create the largest derivative market in the world. So there are a number of questions that I have in terms of how we approach this. It is a real opportunity, I think, to design a transparent, efficient, carbon market that builds on the practices for market regulation that we have.

So I am wondering what you believe the lessons are that we have learned from other financial markets that would guide us, guide Congress and Federal regulators as we design a new carbon market?

Mr. GENSLER. Senator, first let me thank you for the support and confidence you have in me in this nomination, and that means a great deal to me.

As I indicated, the carbon markets and the cap and trade markets may grow. The CFTC does have expertise in terms of the futures markets. And though I have not studied these issues in any depth, let me just mention a couple of things.

I think that it is important, just as in other futures markets, to make sure that we have a transparent marketplace. So if there is a design of a contract, as there is design of contracts in corn and wheat and oil and so forth, design of contracts that there is some transparency and there is a marketplace where it trades, there the public can see and corporations can see that marketplace and have the benefit of that transparency. And that there really are protections, just as there are in other futures, from fraud and manipulation.

But there may be things that are specific to this market that I, if confirmed, would look forward to working with you and your staff and this committee to better understand and better advise you as you go forward.

Senator STABENOW. Thank you.

This may be something, as well, that you have not focused on specifically regarding carbon. But there is another issue related to that which relates to bonafide hedgers and what is a bonafide hedger in this contact. And I would be interested in knowing if you have any thoughts on a definition or what the CFTC and the Congress should do relative to this issue when we think about the nascent carbon market.

Mr. GENSLER. Senator, I think that all of the markets that the CFTC has oversight for, futures markets and hopefully these other over-the-counter derivatives, where there is something of finite supply, it is susceptible, that underlying product is susceptible to both manipulation, corners—what is called corners and squeezes. I am old enough to remember when the Hunt brothers cornered the silver market. I know the lack of hair, but I remember that.

And I am not familiar enough with the carbon markets, but I think that is probably a market that would fall into this category which is susceptible to some finite supply.

And also, the position limits are critical to protect against excess speculation. Hedgers need the benefit of speculators on the other side. We have had, for 130–plus years, contracts in the futures market and hedgers want somebody on the other side to take a risk. But there is a burden if it gets so excessive, and we saw that volatility in the last several years.

So I think as it relates to this new market, the lessons of guarding against manipulation, guarding against excessive speculation would inform me, as Chairman if confirmed, and quite possibly inform Congress as to thinking about a regime in the carbon market, as well.

Senator STABENOW. Thank you. I look forward to working with you on this issue. We have a number of different discussions we need to have that relate to regulating carbon, how this is going to be done in a transparent way, how there is accountability, how we—again, as you indicated, make sure that we are doing everything we can to deal with speculation in the marketplace driving up costs and so on.

So I think there is a very important opportunity and role going forward for the CFTC in this whole discussion, and what I hope will end up being a strategy for us to be able to address the issue of carbon and cap and trade.

Mr. GENSLER. Senator, if confirmed, I look forward to working with you on that.

Senator STABENOW. Thank you.

Chairman HARKIN. Thank you very much, Senator Stabenow.

Mr. Gensler, I had this chart prepared here. No, I am not Senator Conrad.

[Laughter.]

Chairman HARKIN. He sits right there. That is an inside joke referring to Senator Conrad's use of charts.

But this is the oil market from 1997, here is 2007, and here is the price spike of last year coming back down here to about $40, maybe a little bit less than $40 a barrel right now, somewhere in that neighborhood. So the consumers see this and they suspect something is wrong with this big spike. There really wasn't less oil. In fact, if anything, we were beginning to see the situation improve in Iraq, and Iraq has significant oil reserves. So it really wasn't a lack of a supply.

So if these wild price swings are not a function of normal market factors, how is that explained to the public? As Chairman of the

CFTC, how would you explain something like this to the public that happened last year in oil? How would you explain that?

Mr. GENSLER. Mr. Chairman, I think that we had an asset bubble in the oil markets, an asset bubble even in other commodity markets. To the American public, I would say, as we saw——

Chairman HARKIN. Explain that asset bubble as it regards this.

Mr. GENSLER. Well, similar to in the housing market, but driven by different factors, but just as the housing market, housing prices went up beyond what one might have said was the underlying cost to build the homes and so forth. In this marketplace, I believe that we had a great many people come to the conclusion that it is another asset class. The stock market is someplace you can invest. Maybe the bond market is someplace you can invest. Now the commodity markets is a third place one might invest to diversify risk, and there are great theories of diversification and theories I generally believe in.

But that risk diversification led some investors to try to invest in commodities and I think over this period, just before the run-up, but over the period from 2004 to 2007, that some statistics that I saw, that increase of outside investors, and I have said publicly and I will say again here I believe that investors that were investing as an asset class, whether they were index investors or hedge funds or other financial investors around the globe, not just here, had the perception that this price was just going to keep going up so that the—they were wrong. They were terribly wrong. But as a factor in that, the American public was hurt. I mean, it was terribly hurt by this speculative bubble.

Chairman HARKIN. So I could substitute speculators for the word "investors." You use the word "investors," but they were speculators. They were speculating on this market continuing to go up all the time.

Mr. GENSLER. That is true, like some people speculated on home values or some people speculated on real estate or other things.

Chairman HARKIN. This is something that I have wrestled with since I first came here in 1975 to the House Agriculture Committee and that is the role of speculators. The term speculator has a bad connotation. So what is the proper role for a speculator in a market? I don't care whether it is oil, it can be grains, it can be metals. What is the proper role? Is it beneficial? And how do you explain to the consuming public, most of whom, if you ask them should speculators be driven from the market, would say yes—nine out of ten, I bet, would say that—so how do you explain, what is the beneficial role of speculators?

Mr. GENSLER. I think at the history and the core of the futures markets, going back to the 1870's, in fact, when a farmer wanted to have a reliable price for corn or wheat that they might want to sell at the end of the harvest and know how much money they would have to plant their fields, on the other side of that transaction, there needed to be somebody who was willing to bear risk, almost like writing insurance.

So for 130 years, since futures started trading, we have had a concept, and I believe it to be the right one, sir, where commercial interests, farmers, ranchers, and then later oil producers and natural gas companies and grain elevators and so forth, all wanted to have a reliable price for their product so that they can make business decisions.21Well, on the other side, then there is somebody in essence writing—taking on that risk. It is not an insurance company. In fact, it is somebody we call a speculator, somebody who is taking a position on the other side.

What is at the heart of the CFTC authorities dating back to its founding is that that is to be allowed, but we also want to protect against excessive speculation and the burdens of excessive speculation, and there is a whole regime of position limits to limit that, and there is also clearly an important public interest to protect the American public against manipulation in markets. And sometimes when you see spikes like this, you say it broke down. What was happening may have broken down.

Chairman HARKIN. Could the CFTC have started to do something in here to stop that speculative bubble in oil prices?

Mr. GENSLER. I believe that all of these products need a consistent regime of position limits and those position limits should apply around the globe. The CFTC, in working with Congress, has addressed a number of these features. In the farm bill last year, I believe, to the credit of this committee, working with other members of the Senate and the House, you put in place a way to close part of that. There is also things that the CFTC has done subsequently, working with the regulators in London to try to address some limits so there is more transparency and that limits, where they are in place, apply to all markets consistently around the globe.

Chairman HARKIN. Well, at least with the oil market, you could see it happening. But I would like to turn, if I could, to over-the-counter derivatives, which really is an opaque market and which you can't see happening. First of all, would you agree or slightly agree or disagree with the statement that derivatives are more like futures contracts than just about anything else. Is a derivative a futures contract?

Mr. GENSLER. Senator, a future is actually technically a derivative. A derivative is just a broader term, and I believe that all of these products have great similarity. So I think that hopefully answers the question. And what they have similarities is that they derive their value from some other product. A future derives its value from the corn or wheat or——

Chairman HARKIN. That is a future. That is right.

Mr. GENSLER. That is a future, and an over-the-counter derivative derives its value possibly also from corn or wheat or oil or it might be from underlying interest rates. So they are very similar products. They are all forms of financial instruments that derive their value from some underlying feature.

Chairman HARKIN. OK. And a derivative's value basically depends on something happening in the future. A derivative is tied to something either happening or not happening in the future. So I always think of derivatives trading as a futures market. So, therefore, why should they be exempted? Why should they be exempted from the CFTC?

Mr. GENSLER. Mr. Chairman, I believe that the entire over-the-counter derivatives marketplace, we need to bring those standardized products onto centralized clearing, and we get a great benefit from centralized clearing and we will lower the risk in the system and add to transparency. We actually attempted to do some of this 8 years ago and there was a voluntary clearing mechanism that was in that bill. I believe now it should be mandated for interest rate product, currency product, commodity product, credit default swaps, and the equity products, the whole regime.

I also think the standardized products, we get great benefit from the transparency that can come from being on exchanges. There are some exchanges for these derivative products, but we can get a great deal more benefit from transparency from bringing those standardized products onto exchanges.

Chairman HARKIN. Help me think through this. I have a concern that you keep using the word "standardized," and I saw that in your response to questions asked of you by both Senator Cantwell and Senator Levin. And you referred to it a number of times here, about the standardized credit default swaps for example, standardize.

But it seems to me that if someone wanted to trade in an over-the-counter derivative market and not on a regulated exchange, they could simply do little things to make the contract customized, and you can't, in all your wisdom, define every little thing that could make it a customized rather than just a standardized swap or derivative. So how can you have both a regulated exchange for standardized, and then an over-the-counter for customized? How do you define what is custom?

Mr. GENSLER. Mr. Chairman, I couldn't agree with you more. I believe that is why we also need, working with Congress, to come up with a regime for the customized product. There is still commercial interest, whether they be a grain elevator or it can be an airline that wants a certain grade of jet fuel delivered on a certain day to a certain airport, and those dates and that grade of jet fuel and that airport may be different than a particular contract. That is customized.

But at the same time, if we bring reporting to that and required reporting, required capital or margin requirements, and we level the playing field between that and what might be the standardized products, I believe that working together still allows the legitimate commercial interest to try to hedge in that little example a particular jet fuel at a particular date at a particular airport.

Chairman HARKIN. Maybe there is something here I don't understand, because I have thought about this a lot and I have read a lot about it. But it just seems to me that if you are going to close the loophole, you have got to put them all on a regulated change. If someone says they have got a custom deal, well, put it on the exchange anyway. Then we know what you are doing.

Many thousands of contracts would avoid daylight by one little custom change. I have said before, if you and I want to swap something, you want to swap your tie for my tie, no one else cares. But if you own a whole portfolio of stocks and bonds and you want to swap that for my little piece of land someplace that may have tenants on it and things like that, well, then you see a lot of other people are involved in that custom swap.

And I am thinking, why not just put those on a regulated exchange? And if you can't do that, well, then you are just—you just outlaw those customized kind of swaps unless they are willing to put them on a regulated exchange.

Mr. GENSLER. Mr. Chairman, that is why actually I believe that we, in addition to what we are talking about, also bring a full regulatory regime to the dealers themselves, these large financial actors that deal in these markets. My fear, Mr. Chairman, of saying they are outlawed entirely is not only that which might hurt, whether it is a grain elevator in Iowa or whether it is an airline that wants a certain jet fuel on a certain date in a certain city, that they will find some other way. That is true economics. An airline wants to hedge that risk some other way that is then outside of the regime.

So I think working with Congress, if confirmed, I would look forward to making sure that 100 percent is reported, that it is not opaque, that it is all brought in and aggregated into central data warehouses, which I know a number of Members of Congress have looked at and worked on, that there is no hole in the bottom of the boat that it all flows out of, but that the hundreds of products and the great majority of the products that are standardized are on exchanges, and if an exchange accepts it on the exchange, it has got to be on the exchange. And if the clearinghouse accepts it in the clearinghouse, it has to be in the clearinghouse.

But we still—like you said, if we swap ties—and I do like your tie—but if we swap ties, Mr. Chairman, that it might well be that that has to be reported and we have to have capital charges for it but not have that on an exchange.

Chairman HARKIN. I see Senator Klobuchar is here and I am going to yield to her. I have more to go into on the topic in a little more depth, but it just seems that once you have an over-the-counter market, derivative market for customized contracts, you can just about exempt anything. If I have a futures market that says the expiration date is July 20, but then I say, no, I need July 21, does that make it a custom contract? Does that exempt it from exchange trading? That is what I mean. It just seems to me I can make any little change and all of a sudden I am exempt and can trade the contract over-the-counter.

Now, you say, well, you report the trading anyway and so forth, but I am still not certain that gets to the nub of the benefit of putting the trade on that regulated change where every day it is transparent. One can know exactly what is happening and you don't have these customized things drifting around out in the OTC market. I think you just open the door for proliferation of inadequately regulated OTC trading.

Mr. GENSLER. Mr. Chairman, you and I share exactly the same goal, that we bring this whole marketplace into what I believe is two regimes. One regime is the centralized clearing in the marketplaces. The other regime is that the dealers themselves have serious regulation on capital, business conduct, and reporting, and that we rely on both to bring a marketplace that is very important and large into our economy, but under regulation.

Chairman HARKIN. Thank you very much, Mr. Gensler.

Senator Klobuchar?

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. We will have to leave the tie swap idea behind because I don't have one.

Mr. GENSLER. Thank you, Senator.

Senator KLOBUCHAR. But I wanted to congratulate you on your nomination. I appreciate, Mr. Chairman, that this nomination hearing was held in such a timely manner, given what we are facing here, how important it is, and that we need a cop on the beat to monitor commodity trading and giving us good advice about what to do with financial derivatives.

I just noticed that the President at this very moment is holding a press conference on financial regulations and what he thinks needs to be done here. I have been just stunned by everything that has gone on here. I remember your predecessor, Mr. Lukken, when he appeared before our committee, and as a former prosecutor, I was giving him some ideas of the things that I thought maybe we could give to him as tools to use to improve things.

We talked about staff improvements, which I think is important, or additional staff. But then we talked about this idea of more tools and he actually said, no, he didn't want that tool. No, he didn't want this tool. We talked about the London loophole or would he like more ability to go after certain things, and he said that he didn't want that ability.

I said, you know, as a prosecutor, you want—if you think a statute will help you with a certain group but you are not sure if you are going to use it, you still might want that statute. I just wonder how you would respond to that, because that is what most stunned me about that hearing.

Mr. GENSLER. Senator, thank you for asking the question and taking the time at this hearing in your busy schedule. I absolutely believe the CFTC needs more tools, unambiguously. I believe it has to be a tough cop on the beat and strong on enforcement. We need more resources to do that. I mentioned to some others that the enforcement wing itself has 150 lawyers, was shrunk to 110. This is in a period of time that the futures markets went up sixfold in volume, in the last 8 years.

But beyond that, I believe that we do, working with Congress, have a broad agenda, if I am confirmed, to try to get additional authorities to address some of the very real issues in the agriculture and energy markets and the over-the-counter markets to control some of the excesses that we have seen.

Senator KLOBUCHAR. Well, one of the things we talked about last year was closing the so-called London loophole, to stop traders from routing transactions through offshore markets to get around limits on speculation. I worked with Senator Dorgan and a lot of others on this speculation issue. Do you think that would be helpful?

Mr. GENSLER. Senator, I do. I congratulate your efforts on that. I think that the CFTC has done some things administratively, but I think it would be very helpful, working with Congress, if confirmed, to actually have that in statute. And it is really—the core principle I would have is that markets are so interlinked around the globe that if it affects American consumers, that we should make sure, even though we might have reciprocal arrangements with other regulators around the globe, that fraud and manipulation, that position limits and reporting have some consistent regime. And so I would look forward to working together on that and

I do believe it is important to have these position limits apply to various trading platforms around the globe.

Senator KLOBUCHAR. You know, credit default swaps have been blamed for helping to accelerate the over-leveraging on Wall Street. Do you share this view and do you think that something should be done about this?

Mr. GENSLER. Senator, I believe a great deal needs to be done with regard to the over-the-counter derivatives marketplace, not just credit default swaps but, as the Chairman and I were discussing as you came in, to bring the whole over-the-counter derivatives marketplace into a regulatory regime with centralized clearing and exchanges.

Senator KLOBUCHAR. Right.

Mr. GENSLER. But beyond that, I do think credit default swaps raise an additional set of unique challenges. In AIG, we saw a book of business that wasn't even regulated. The transactions weren't and the financial institution wasn't. I am recommending that those should be regulated, and the credit default swaps' unique properties, because often they are very much like a corporate bond and it is a corporate bond with a lot of leverage in it. And I believe that regulators need there to work together to find the appropriate controls in addition to clearing and exchanges. I think there is appropriate further regulation in that market that is needed.

Senator KLOBUCHAR. Good. One last question, following up with the last questions that the Chairman was asking with the custom issue. Last September, the CFTC issued a report on the over-the-counter markets and it contained some recommendations, and one important recommendation was to create enforceable position limits by developing limited risk management exemptions for swap dealers and requiring dealers to, first of all, report to the CFTC about large customer positions, and second, certify that none of the non-commercial customers exceeded specific position limits in related exchange trading contracts.

Do you support this action? Do you think that this is a recommendation, and should that rulemaking activity continue?

Mr. GENSLER. Senator, I do, but even further, as I understand it, and again, I look forward to learning more about this, if confirmed, but these various position limits that are at the heart of the framework to comply with the mission of this agency have some exemption that have been issued going back nearly 20 years. Many of them were issued by staff, "no action" letters. I believe that every one of those exemptions needs to be reviewed. As Chairman, I would be looking forward to working with my fellow Commissioners, Mike Dunn and Bart Chilton, Jill Sommers, Walt Lukken, and really take a look at all of these.

And second, also look at the process of issuing "no action" letters themselves. Some should stay at staff level. But others really are consequential and that is why you have Senate-confirmed people in the jobs to look at these things.

Senator KLOBUCHAR. OK. Thank you very much. I appreciate it.

Mr. GENSLER. Thank you, Senator.

Chairman HARKIN. Thank you, Senator Klobuchar.

Senator Chambliss.

Senator CHAMBLISS. Thank you. If I could go back to the Chairman's chart there for a minute, Mr. Gensler, and I want to see if I can ask this question the right way. I don't want to take your language and interpret it in some way other than exactly what you meant. But when you talk about the spikes in the market and you talk about speculators causing that huge spike, is it not a fair statement to say that speculators who sought to manipulate the market are the ones that may have influenced that spike versus speculators per se causing that spike?

Mr. GENSLER. I think that what I believe is that there are many contributing factors, that we have had in our economy and around the globe many imbalances, low savings rates here, very high savings rates, nearly 40 percent saving rate in China. There are great global imbalances that have been flooding into markets.

Within those global imbalances, I believe that commodities started to be viewed as an asset class for investment. And so one of the contributing factors—there were other contributing factors, too, but one of the contributive factors, I think, is as investors started to look at commodities as an asset class, and unfortunately, over the globe, risk was underappreciated, terribly underappreciated, and when I say that, I mean it was underpriced.

There were too many investors, and, yes, speculators who thought it was more likely that something would go up than down, that the demand factors from China and India or the low refining capacity would keep pushing these prices up. And that collective misjudgment of market participants is what I think you see there, but not necessarily—I don't have the facts or figures to say that it was manipulation, sir.

Senator CHAMBLISS. You made a statement which I think is correct and which I have argued with my colleagues who would like to see all speculators eliminated. Are you going to have a market that functions properly without speculators?

Mr. GENSLER. Senator, again, I think at the heart of the futures market since the first contracts, I believe, were put in place in the 1870's is that for a hedger to have somebody on the other side who is willing to bear that risk, we call the person on the other side a speculator. We need—the markets need that so that the commercial interests, the farmer, the rancher, the grain merchant, has somebody on the other side to bear that risk.

Senator CHAMBLISS. And you have been on both sides of this. You have been on the investment side as well as on the regulatory side. You have got extensive experience on both sides. If an investor in the market, somebody who trades in the market regularly, is overregulated, including adding position limits, and they have the availability of going offshore, what is that person as an investor who feels like he is overregulated going to do with respect to the American market that CFTC regulates versus trading offshore?

Mr. GENSLER. Senator, I believe these markets are completely interlinked at this stage. So I think that it is critical that the U.S. regulators work with our global counterparties in Europe and in Asia to assure ourselves that there is consistent regulation. And where we are unable to get that consistent regulation, to work still to protect the American public the best we can as to the transactions with the American public, or where there is American product, a product like West Texas intermediate, or products that are right here.

But I agree with you, sir, that paramount is working with the global regulators. I believe that we can find that consensus. But if confirmed, I know there will be challenges to hopefully make sure it is around the globe.

Senator CHAMBLISS. Well, if you are an investor, whether you sit in Washington or New York or Atlanta, and you want to buy a contract of a product that is sold internationally or on a market that is regulated by CFTC and you have got the choice of where to go to buy that, as an investor, are you going to look for a market that gives you the greatest amount of flexibility and therefore the greatest opportunity and a safe way to ensure a profit, or are you going to go to a market that just overregulates you to death?

Mr. GENSLER. Senator, I think that investors in these markets are so interlinked that they will find a fungible place to go, and that is why, if confirmed, my commitment to you is to, first, to raise with you and the rest of the administration what rules I think will best protect the American public, but then second to work feverishly with international regulators to try to see if they agree, and where we agree, hopefully adopt a consistent regime. Where there are disagreements, at least come back to this Congress and the administration, because those differences will possibly be important. Hopefully, those differences won't be, but they may be really important to the American public.

Senator CHAMBLISS. Well, I think all of us want to make sure that the American public is totally protected and make sure that anybody who invests in the market is going to have the assurance that somebody is looking over their shoulder. But the fact is that these markets are traded on by individuals who are extremely sophisticated, and as you said, things have changed so much over the last 9 years. Gosh, we didn't have electronic trading back then, and now, very few trades probably are not in some way not connected to the electronic side of it.

And I know from talking to traders who have told me, look, you start putting position limits on me, pure and simple, hey, I can trade on the London Exchange from Atlanta just like I can trade on ICE or CME or New York Exchange, and that is what we will do. I just want to make sure that there is a clear understanding that we can go too far and we have got to be careful about that.

Mr. GENSLER. And I think that, Senator, you and this committee and the rest of this Congress worked last year, as I understand, in the farm bill to say contracts that look like the contracts here—they are called look-alike contracts—that had a particular relevance to these markets here, those were the ones that position limits.

There may be other contracts overseas that really are on other markets involving other products. But where it really was sort of almost like twins, those look-alike contracts, it was appropriate to have consistent regulation. But I certainly, if confirmed, understand it, as you say. I think that my experience both on Wall Street and in government provides a certain background to understand, exactly as you said, that we have to get this right.

Senator CHAMBLISS. With respect to the standardization of products versus the customized products out there, I think if I heard you correct, you say that there ought to be a clearinghouse for the standardized products. But you and I, I think, agree that we have got to be very careful with the customized products because I am not sure how you do that, how you are going to have a clearinghouse for all customized products.

I know one thing that has concerned some of my colleagues is that the way we all know these markets work are that a customized product may change hands two or three, four, five, ten times in one single day, and how in the world we are going to clear all of those in a manner that has a regulator looking over their shoulder, I don't know. I am concerned about those types of contracts certainly going overseas.

But am I wrong in my thinking somehow? Is there some way that you think that we can come up with a regulatory process that not only is a clearinghouse for the standardized product, but the customized product, also?

Mr. GENSLER. I do, Senator. I know these are very complex markets and these are challenges, but I do, and I think that there can be a product that changes hands multiple times a day is probably, with all respect, more standardized than customized. There has been a number of approaches, I know both here in the Senate and the House and some draft bills on how to define what might be customized.

But centralized clearing adds a great benefit because it means that these individual financial institutions, these 15 or 20 large financial institutions, are no longer exposed to each other. And one of the great calamities of this past crisis is that one financial institution couldn't fail because if it failed, it was like interconnected, so interwoven that it was going to bring down the whole system.

One of the big benefits of centralized clearing is that all of these trades, rather than with each other, is with a central mechanism, and there would be a posting, like on the futures exchanges, a posting of collateral on a regular basis. AIG, when it got the call, had to post $40 billion of collateral. Well, we know what happened then. The U.S. taxpayers stepped in and loaned the money to AIG.

I believe we really have to work feverishly and urgently to try to make sure that doesn't happen again. I think that centralized clearing, I think the bias that I am suggesting is toward getting those contracts in, and if a clearing mechanism, and there are a number of competing clearing mechanisms, but if a clearing mechanism would accept a contract, that is certainly one test it should be there, and then Congress can also dictate certain rules. I mean, there is a lot that we would need to work together, if confirmed, on how to structure this. But I do think it does help lower the risk tremendously.

Senator CHAMBLISS. The "no action" letter, would you support elimination of "no action" letters, or do you support still utilizing the "no action" letter process in appropriate situations?

Mr. GENSLER. As I have come to understand it, all of the major regulatory agencies, whether it is the FTC or the SEC, CFTC, has a form of "no action" letters. There are some things that are truly administrative and staff writes a letter and says they are not taking an action.

What I believe we need to do at the CFTC, working with the other Commissioners, is really look at that process and see how is that done and which ones are consequential and which should come up to the full Commission, a five-member Senate-confirmed Commission. So I believe at the end, there would still be some that are really truly either administrative or ministerial or consistent with role, but there are consequential ones, I believe looking now in hindsight, and hindsight is—I know we are foresight here, but I believe that we need probably to really look at which ones come up to the full Commission for their consideration.

Senator CHAMBLISS. Last, let me just say, I think Senator Lugar had a really good point. Even in Math 101 at the University of Georgia, they taught me that if you can buy something for $1.96 in the United States and take it to Europe and sell it for $20, that is a pretty good deal.

I can envision 10 years down the road, if we have a true cap on trade system, we are going to see these things traded on a global market. So I just say that is something that has got to be in your line of thinking here as we go through the next 12 months, 24 months, whatever it may be, if something does come out of Congress in that respect, because, gee whiz, you talk about electronic trading being a milestone. This is going to overwhelm us, it would look like to me, with this international cap in trade system that we potentially have out there.

Thank you, Mr. Chairman.

Chairman HARKIN. Thank you very much, Senator Chambliss.

We have been joined by our distinguished colleague from North Dakota, Senator Conrad.

Senator CONRAD. Thank you so much, Mr. Chairman and Ranking Member Chambliss. Thank you, Mr. Gensler, for being here.

I was here earlier and had to go to—you know how this place is—other obligations. I very much apologize for not being here for the rest of the hearing. I was so struck by having Senator Mikulski, Senator Cardin, and one of my all time favorites, Senator Sarbanes, here, and it reminded me of my favorite story about Senator Sarbanes, who was a great baseball player in his youth.

Mr. GENSLER. He was. He was. Not a lot of people know that, but it is true.

Senator CONRAD. Yes, he was a terrific athlete. He was selected for the Maryland All-Star Team as a shortstop, and he went to the practices and it came time for the game and he was listed as starting at second base. And he went to the coach and he said, “Why is it that I am at second base? I was chosen as the shortstop.” And the coach said, “Kaline will be playing shortstop.”

[Laughter.]

Senator CONRAD. That was Al Kaline. And I thought, that is a great story, isn’t it?

Mr. GENSLER. It is terrific.

Senator CONRAD. Sarbanes had to stand aside for Al Kaline.

Well, you, in essence, are coming into the big leagues, too, and this is a different kind of big leagues. Our country and our world are in very serious shape. I just spoke to a group from back home talking about how we got in the situation we are in, and I believe it is a combination of a very loose monetary policy, a very loose fiscal policy, a very loose trade policy, all coupled with deregulation, that created the seed bed for bubbles to form. And we didn't get just a housing bubble. We got an energy bubble. We got a commodity bubble. And when those bubbles burst, it did enormous damage. There is a lot of wreckage here. And all of us have responsibilities.

While I fought against what I thought was a very dangerous fiscal policy and a dangerous trade policy, I, along with others of my colleagues, voted for the Modernization Act, which you supported, and I look back, while there were many good things in the Modernization Act, I think there was one part of it that was very, very wrong, and I regret deeply my own going along with it, although I had grave reservations about it, and that is the question of credit default swaps and derivatives and whether or not they are regulated. You and others told us, don't worry, these are very sophisticated players and there will be a self-regulation because they are better able to monitor those markets than we are.

Well, the more I have looked into it, the more convinced I have become that this is one of the great Ponzi schemes of all time. We think about Madoff's Ponzi scheme. That is a $50 billion Ponzi scheme. I think derivatives, while probably the vast majority of it is completely legitimate, the part that was not was the assessment of risk, the assessment of risk.

Last year, I was with a man who was head of all derivatives trading for one of the major global financial firms and I said to him, have you ever looked at the formulas these PhDs in math have come up with to determine risk in these contracts? He said, "Yes." I said, could you understand it? He said, "No." I said, I will tell you—and this is the guy who was in charge of all derivatives trading. I said, I have got a master's in business. I asked my staff to bring me one of these formulas. I couldn't make head nor tails out of it. And it turns out they didn't have in these risk formulas any assessment of housing prices going down.

Well, to make a long story short, all of us who participated in supporting that bear responsibility. There are many other elements, the fiscal policy, monetary policy, other deregulation that was done. But you, too, have responsibility, because, you know, at least for some small part of that, you gave us bum advice.

What can you say that would make us comfortable, if we have that view, and maybe you have got a different view and I certainly respect that, especially in the presence of your daughters, who are very patient—what would you say to us who are now deeply concerned about the mistakes that were made? What would you say to assure us that you would be part of the solution?

Mr. GENSLER. Senator Conrad, I appreciate the question. Looking back now, it is clear to me that those of us involved at the time should have done more to protect the American public through strong, comprehensive, and aggressive regulation. There are some things that we raised and looking back now should have fought harder for, to regulate the actual institutions, the derivative dealers, to keep oil and metals consistently regulated with wheat and corn and other products. We should have fought—we did recommend that, but in the final bill were unable to achieve either of those. We should have fought harder.

I think there were also things that were but dots on the landscape. You raised credit default swaps at the time of that legislation. Approximately 97 percent of the market were interest rate derivatives and currency derivatives, and the bulk of the remaining 3 percent was actually equity derivatives and commodity derivatives, as small as they were back then. And that market has burgeoned since then.

Senator CONRAD. Exploded.

Mr. GENSLER. And in very consequential ways, where an AIG had a book of business so significant, and I believe that those credit default swaps at AIG were often being misused, and sometimes by regulated institutions, banks in Europe that were getting protection and lowering their capital charges with regard to that.

I think also, Senator, and you raised this in your question, I think there was an assumption at the time about whether the regulation of institutions, these large financial institutions, would be enough. And I do think in retrospect that assumption was thoroughly tested for a couple of reasons.

One, even where there was broad regulation, at the holding company and of everything, there was no specific regulation of the derivatives affiliate. I believe that even now, where the Federal Reserve might have broad holding company regulation, that if confirmed, I would look forward to working with Congress and the other regulators to make sure that the dealers themselves have to have capital, business conduct, and reporting requirements. But capital is the shock absorber, so to speak, to guard against excess leverage. I have come firmly to believe that.

At the same time, I believe that we need to have a full regulatory regime for the market so that the centralized clearing, and we could get the benefits of centralized clearing as we have in the futures market, and those benefits might sound like back-office plumbing, but they are very real because just as in the futures markets, you have to post margin on a regular basis and have a sort of a daily reckoning of these contracts and at the same time have to send in the information and have all the positions and the recordkeeping and reporting.

Exchanges bring transparency to transactions. Where small businesses, small commercial interests right now, I believe, actually pay more for even the standardized products, more because they don't have that transparency. Now, just one basis point might be a little bit, but transparency to an overall market, I think, brings further economic prosperity, as well.

So I do think, looking back now, it is clear to me we should have done more. But over time, I believe that some of these weaknesses have been sorely tested. The regulatory and financial system completely failed the American public in this regard. And I look forward, if confirmed, working with you, as I did with Senator Sarbanes, to try to sort of sort through some of that complexity, the dust that might be kicked up by opponents, and they will be very strong and loud opponents, some of them raising legitimate concerns, but trying to find how we can best protect the American public and bring a regulatory regime to a field that hasn't had one to this date.

Senator CONRAD. Well, I appreciate that answer. You know, I look back. I have been trying to write an analysis of what has happened here, a broader look at all the factors that contributed, and I do very much believe that it is a very unusual combination of a loose monetary policy, after 9/11 we had very low interest rates for a very extended period of time, a very loose fiscal policy with massive Federal deficits.

At the time when the economy was strong, we still had a very loose fiscal policy, very unusual to have loose monetary policy and loose fiscal policy simultaneously, coupled with very loose trade policy with record trade deficits. And then the deregulation that occurred and, you know, I will stand up and I will be held accountable. I made a mistake.

I mean, I will assert there were many good things in that Financial Modernization Act, but I believe there was an Achilles heel that some of us were worried about at the time but we thought the good things would overcome that weakness. Well, we were wrong and we were wrong big time and all of us need to 'fess up about mistakes that have been made here. We have got to try to get this back on track.

I thank the Chairman for your patience.

Mr. GENSLER. Senator, I thank you for that. I agree with your assessment, if I could, Mr. Chairman, that there was a great many things that were imbalances, and you named those, but also the regulation, that if confirmed, I would look forward to working with you and this Congress that we really do bring a full regulatory regime not only to the institutions, which I think we need to do, but also, as the Chairman has laid out in his bill, with the goal to bring it to the markets, as well.

Senator CONRAD. Thank you, Mr. Gensler. Thank you for your very honest answers.

Mr. GENSLER. Thank you.

Chairman HARKIN. Thank you, Senator Conrad.

Well, Mr. Gensler, this has been a great hearing. I think we have gotten great responses and an open and frank discussion. I don't mean to belabor it any longer, although in listening to just the last two questioners here, Senator Chambliss and Senator Conrad, I was just jotting down here CMS, CVOs, CMOs, CMBSs that is commercial mortgage-backed securities—CDSs. Now we have gotten into things like CDO-squared, CDO-cubed, and you just keep slicing these tranches of derivatives out there all the time.

The financial sector has come up with all of these exotic products. No one really understands them except maybe a few people on Wall Street, and they may not fully. But credit default swaps didn't exist before about 1998, not really.

Mr. GENSLER. That is right, sir.

Chairman HARKIN. And the world seemed to operate just fine without them. The same with collateralized debt obligations or collateralized mortgage obligations. All this creativity in new contracts happened in the early 1980's, through the late 1980's, and then they really boomed in the 1990's, all these different derivative contracts and financial products.

I asked the question in our October hearing, I said, what market forces out there demanded these products? Who was demanding this? The answer came, no one. It is just that a few of the financial institutions had some of these whiz kids and mathematical geniuses. Now they have big computers that could slice and dice these obligations into all these little tranches, securitize them as bonds, and then sell tranches, a highly leveraged tranche, or one that is not so highly leveraged, and on and on until finally you get this morass out there of instruments that no one really understands.

I asked Secretary Paulson one time when we had one of our meetings last fall, before the TARP. I said, why don't we insist, if we are going to put this money out, we insist that each one of those entities receiving this federal money give us a valuation of each one of those instruments that they have and insist on what is the value. His response, and we were all in that room together, his response was, "Well, they don't even know what the value is." Billions of dollars, and they have no idea what the value is.

Well, I don't know. I just think we have to—and this is not really in your bailiwick, but I just think we in the Congress have to really think about whether or not all these financial products and instruments are worthy of legitimacy. And they are all off exchanges. These aren't on exchanges. We have no idea what is going on out there. So I don't know if they are legitimate or not. I tend to think in some of these cases they are probably not, especially when you get into synthetic derivatives or you get into the naked credit default swaps. It boggles the mind about what people are doing with these instruments.

Now, it would be all right if these investment bankers were using their own money to do that. I could care less. But they are using my money, your money, my constituents' money that is in 401(k)s, pension plans, all other kinds of devices where they have taken money now and are investing it in these and so they are playing with our money.

So I just raise the question, I guess, on markets. We all believe in the market, but as you pointed out, I think for a market to really function, you have to have three things. Correct me if I am wrong. You have an MBA; I don't.

[Laughter.]

Mr. GENSLER. But an MBA, sir, doesn't mean—with all respect, it doesn't mean that you have——

Chairman HARKIN. I am just kidding you. My daughter has one. I keep asking her this. But it seems for a market to function, you have to have many buyers, many sellers, and transparency. If you mess up one of those, you don't really have a market. You may call it a market. Many buyers, many sellers, transparency. Once you have few buyers, many sellers, or you have buyers and sellers and you don't have transparency, you don't have a market.

And so when we talk about markets, we have to keep in mind just what we are talking about. What kind of markets do we want? Very few real markets exist any longer out there.

Mr. GENSLER. Mr. Chairman, I would—I know that you mean this, but I would add something else to what is a component of markets. We need regulation. We need regulated markets and so that is what I am here to say, and if confirmed, I would look forward to working with you. Senator Conrad had asked me about what I had done in the past, and, I mean, I even wrote a book called The Great Mutual Fund Trap, and it wasn't by mistake that on the cover of the book it has that old three monte game. I mean, I just brought it here just because I remember it. But there is a reason that the book has that here.

Chairman HARKIN. I have got to read that.

Mr. GENSLER. Well, we will give it—it is all right if you don't read it. I am just saying there is a reason that is there.

Chairman HARKIN. But what I say about sellers, buyers, and transparency, that is what is called the, quote, "unfettered free market." Now, you are right. Do we want an unfettered free market? Do we want the free flow of capital? I hear that all the time. I read that we want the free flow of capital. Well, an economist who was at our hearing in October said, I am not certain we want the free flow of capital. We want the efficient flow of capital.

And he used an analogy which struck home with me. He said, well, it is like traffic. If you want the free flow of traffic, get rid of all your stop signs. Get rid of the stoplights. Get rid of the speed limit signs. Get rid of all the warning signs. You will have the free flow of traffic, but you will have a lot of wrecks. What you want is the efficient flow of traffic.

The same is true in financial markets. You want the efficient flow. Therefore, you need the stop signs and the caution signs and the regulations so that capital is efficient, not just free.

So anyway, I just wanted to make that point, to say that I think we really have to take a look at whether all of these types of instruments are really necessary and legitimate. If they are, they ought to be regulated. That is all I am saying.

Now, this does get into your bailiwick. Every single one of those instruments, I submit, is a future. Every single one of them is some derivative and it is based on something happening or not happening in the future and therefore would come under the purview of the CFTC. I don't know if you have any comment about that, but if we are going to continue these kinds of contracts, should they not be regulated?

Mr. GENSLER. Sir, I believe that we do need regulation and many of the list, and it was a bit of an alphabet soup for the public, but many of them are actually currently even regulated around what is called asset securitizations, not by the CFTC, but by the SEC as securities. Collateralized debt obligation is actually an asset security.

And I believe that part of regulatory reform, as the President has called for and Congress and the President are going to work closely together, and if confirmed, I am eager to lend a hand there, is that I believe that we really have to look at all asset securitizations, whether they are called collateralized debt obligations, asset-backed securities, commercial mortgage-backed securities that you mentioned, or even asset-backed securities, uncollateralized debt obligations, which because there are two sets of letters there, somebody caused that squared term you called it. That whole world of asset securitization needs to be looked at.

At the same time, the American public, though, needs the benefit of capital to start moving again, to purchase their automobile, to have the student loans, to get their credit cards rolled over, and to get their mortgages, and a lot of that is done in this securitization market, particularly as banks have so constrained their market.

So we need the rules, just like you said on the road. We need that flow of capital to the American homeowner to get the student loan, to get the car loan, to get their mortgage. But at the same time, I believe, and if confirmed, I look forward to working with you on the additional regulations that are needed even in the world of asset securitizations that come under another regulator than the CFTC.

Chairman HARKIN. We need to discuss this further because I had a student loan, and I bought a car with a loan long before any of these derivatives ever existed. So what was wrong? I don't know if these derivatives are necessary for people to get car loans or student loans or mortgages or anything else.

Mr. GENSLER. It worked well in America and it worked well for you. As many things were just dots on the landscape eight or 9 years ago, this market, too, has taken off, and so I believe it is time to work together as regulators and with Congress to see what additional rules are necessary there. Again, somewhat out of the jurisdiction of the CFTC.

Chairman HARKIN. That is true, and some of what I described is not part of the CFTC's jurisdiction.

Senator CHAMBLISS. Mr. Chairman?

Chairman HARKIN. Yes?

Senator CHAMBLISS. One reason that I was kind of pursuing a line of questioning relative to what may happen with respect to offshore trading is I think Mr. Gensler is exactly right, that we didn't envision 10 years ago what was going to happen in the marketplace. You talk about eliminating products. Shoot, there are some smart guys out there right now that are thinking about additional products.

Chairman HARKIN. That is true.

Senator CHAMBLISS. We can't even conceive what they are.

Chairman HARKIN. That is true.

Senator CHAMBLISS. But the one thing I am impressed with is that when you say that we need to think this through and we need to make sure that we regulate these in the right way, we have got to look ahead to what type of products there may be out there that get us into this same mess again 10 years, 20 years from now if we aren't careful. We are never going to be able to anticipate exactly what those products are and nobody ever thought about packing mortgages and selling them five or six times a day.

If you talk about eliminating, I think you really cause problems. But if you are talking about making sure that you regulate in the right way and you give these guys the tools and the resources, primarily, which they don't have now, then I think we will do a better service to the consumer out there.

Chairman HARKIN. Well, Mr. Gensler, thank you very much. I thought this was a very enlightening session. I appreciate your forthrightness.

We have several letters of support, and, I might add, one letter in opposition to Mr. Gensler's nomination. I ask unanimous consent that these letters be made a part of the record.

[The following information can be found on page 70 in the appendix.]

Chairman HARKIN. I ask unanimous consent that if there are materials that other Senators wish to submit for the record, that those also be included.

I will leave the record open until noon tomorrow for any additional written questions that any Senators want to submit to Mr. Gensler, and then the record will be closed at noon tomorrow.

Mr. GENSLER. Mr. Chairman, Ranking Member Chambliss, if I can thank you both for your hearing and the inquiry. I also want to thank Senator Mikulski, Senator Cardin, and Senator Sarbanes on the record for their support. If confirmed, I look forward to working with you and your staffs on this very significant agenda we have forward.

Chairman HARKIN. Mr. Gensler, may I say that it is great you have had two of your daughters here. They probably think it is probably the most boring thing that has happened to them in a long time and they deserve to have a nice dinner out tonight.

[Laughter.]

Mr. GENSLER. I thank you. I think you are right about that.

Chairman HARKIN. Thank you very much. The committee will stand adjourned.

[Whereupon, at 4:56 p.m., the committee was adjourned.]

A P P E N D I X

FEBRUARY 25, 2009

Statement of Senator Thad Cochran

February 25, 2009

Mr. Chairman, thank you for holding this nomination hearing. This hearing is very timely considering the current economic situation and the ongoing review of certain financial instruments.

The role of the Commodity Futures Trading Commission (CFTC) to help protect market participants from fraud and manipulation has never been more important. As is the case with any economic downturn, consumers often times blame government agencies for their lack of oversight and enforcement. I commend the Commission's employees for their tireless work enforcing current rules and regulations. It is critical that this Committee review and move forward with this nominee and allow the CFTC to operate with a full slate of Commissioners.

As we move forward with a full review of futures markets, it is important to keep agriculture producers in mind. Unlike speculators, agriculture producers and their lending institutions depend on these markets to hedge risks. The price volatility experienced last summer brought about challenges for many agricultural market participants, and many questions about the real impact of speculators remain open.

I am pleased that the Commodity Futures Trading Commission has announced new initiatives to address the concerns which have been raised by agriculture industries.

This past year, the CFTC announced an investigation of the cotton futures market. I urge the nominee before us today to allow this investigation to move forward and at the appropriate time provide updated information to Committee Members. Price volatility in the cotton market resulted in significant losses due to increased margin calls.

In addition, I would like to briefly highlight increased funding provided through the fiscal year 2009 omnibus appropriations bill. As you may know, the bill provides an increase of over $34 million to hire additional staff. This significant increase of funding will allow the commission to increase staff positions and improve surveillance and enforcement of the laws.

We should be careful to select well qualified Commissioners and give them the resources they need to carry out their responsibilities. I congratulate Mr. Gensler on his nomination and look forward to continuing our review of his qualifications.

Statement of Gary Gensler
Nominee for Chairman of the Commodity Futures Trading Commission
Before the United States Senate
Committee on Agriculture, Nutrition and Forestry
February 25, 2008

Chairman Harkin, Ranking Member Chambliss, and members of this Committee, thank you for the opportunity to appear before you today. I am honored to be President Obama's nominee for Chairman of the Commodity Futures Trading Commission at this critical time for the commodities markets, and for our nation.

As a champion of the public's interest – for farmers, consumers, small businesses -- the CFTC plays an essential role in our financial regulatory system and affects the lives of all Americans. I firmly believe that strong, intelligent regulation with aggressive enforcement benefits our economy and the public.

The current economic crisis clearly has shown that our financial and regulatory systems have failed the American people terribly. Those of us who have spent our professional lives around markets have to approach the current crisis with humility following these broad failures. We have learned the limits of our ability to foresee how markets may evolve, the importance for absolute candor with the public about the risks we face and the need for unceasing vigilance to address them. We have learned that there is no substitute for strong independent regulation and that transparency and accountability are essential throughout the system. We must always err on the side of protecting the American people.

Those are the lessons that I draw from what has dramatically transpired over the past decade. If confirmed by the Senate, I pledge to this committee that I will not forget these lessons.

We must now repair our regulatory system by enacting much-needed reforms that promote transparency, fairness, and safety. To be effective, these regulations must be able to adapt quickly to developing technologies, new products, and to changes in our global economy.

If confirmed, I will tackle what I believe are four essential priorities for reforming the commodities markets and the financial system:

- Strengthen Enforcement

First, the CFTC must vigorously fulfill its mandates: enforcing existing laws strongly, promoting market integrity, preventing fraud and manipulation, and guarding against excessive speculation. I will work tirelessly to ensure the Commission leaves no stone unturned in ferreting out and putting a stop to activities and practices that hurt the American public. We also must work together to provide adequate funds for this agency which I believe currently lacks sufficient resources to fulfill its mission.

- Prevent Excessive Speculation

Second, I believe increased speculation in energy and agricultural products has hurt farmers and consumers. A transparent and consistent playing field for all physical commodity futures should be the foundation of our regulations. Position limits must be applied consistently to all markets and trading platforms and exemptions to them must be limited and well-defined.

- Regulate Over-the-Counter Derivatives

Third, we must urgently develop a broad regulatory regime for over-the-counter derivatives markets. Standardized derivatives should be brought into mandated centralized clearing and onto exchanges. Derivatives dealers need direct regulation, including capital, business conduct, and reporting rules. Additionally, regulations need to be developed for customized bilateral swaps while allowing commercial interests the benefit of these hedging tools. Credit default swaps, given their unique nature, also will require further regulation.

- System Wide Reform

Fourth, I believe that the CFTC must work with Congress, with other regulators, and with our global financial partners to ensure that the failures of our regulatory and financial systems, failures which have already taken a toll on every American, never happen again.
Today's complex financial markets are global and irreversibly interlinked. We must ensure that our partners in regulating markets around the world apply the same rigor in enforcing standards that we demand of our markets. This is the only way we can be sure that Americans are fully protected.

I am a proud believer in financial reform, tough regulation and enforcement. I have been privileged to have had broad exposure to financial markets, here and in Asia, in public service and on Wall Street, as an investor advocate and a government official.

My experiences have taught me the importance of having a strong working relationship with Congress. In these transformational times, we have a unique opportunity – working together --to bring bold and necessary reform to our financial market regulation. We must make the most of the opportunity to ensure that we deliver on the clear expectations Americans have set for us.

I would like to close by saying how much the support of my family and my three daughters – who will sacrifice much if I am honored with this challenge – means to me. Anna, my eldest, is a freshman in college and could not be here. Her sisters, Lee and Isabel, are with me and it gives me great pride to introduce them to you.

Thank you Mr. Chairman, Ranking Member Chambliss, and members of this Committee. I look forward to answering your questions.

DOCUMENTS SUBMITTED FOR THE RECORD

FEBRUARY 25, 2009

BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used). - Gary Gensler

2. Date and place of birth. – October 18, 1957

3. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

   I am widowed, having been married to Francesca Danieli, who was an artist.

4. Education: List each college and graduate or professional school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   I graduated summa cum laude from the University of Pennsylvania's Wharton School in 1978, with a Bachelor of Science in Economics, having matriculated in September 1975. I received a Master of Business Administration from the Wharton School's graduate division in 1979, having matriculated in September 1977.

5. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college; include a title and brief job description.

   I have had the following employment:

   a) Ernst & Whinney, staff accountant for the summer of 1978
   b) Goldman Sachs Group, 18 years from 1979 to 1997, a partner from 1988 to 1997. I joined the Mergers & Acquisitions Department in 1979 and assumed responsibility for the firm's efforts in advising media companies in 1984. I subsequently joined the Fixed Income Division in the Mortgage Department and then directed Goldman's Fixed Income and Currency trading efforts in Tokyo. My last role was Co-head of Finance, responsible for worldwide Controllers and Treasury for Goldman Sachs.
   c) See question 7 for government service

   I have had the following associations with for-profit enterprises:

   a) Enterprise Community Investments, Director, 2001 to 2008
   b) New Mountain Capital, Advisory Board member and investor, 2001 to present
   c) Strayer Education, Director, 2001 to present
   d) WageWorks, Director, 2006 to present

I have had the following associations with non-profit enterprises:

a) The Baltimore Museum of Art, Trustee, 2001 to 2007
b) The Bryn Mawr School, Trustee, 2002 to 2008
c) East Baltimore Development, Inc., Director, 2003 to 2007
d) Enterprise Community Partners, Trustee, 2001 to present
e) Johns Hopkins Center for Talented Youth, Advisory Board Member, 2003 to present
f) Maryland Democratic Party, Treasurer, 2003 & 2004
g) The Park School of Baltimore, Trustee, 2007 to present
h) Robert F Kennedy Center for Justice and Human Rights, Trustee, 2008 to present
i) Tilles Foundation, Trustee, 1989 to present
j) University of Maryland, Baltimore County, Advisory Board Member, 2002 to 2007
k) Washington Hospital Center, Director, 2006 to present

Though not ever as an employee, I also have had associations with various family entities as I have indicated to the Office of Government Ethics and the Commodities Futures Trading Commission designated agency ethics officials.

6. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None

7. Government Service: State (chronologically) your government service or public offices you have held, including the terms of service grade levels and whether such positions were elected or appointed.

a) US Department of Treasury, Assistant Secretary for Financial Markets. September 19, 1997 - Confirmed by the Senate by Voice Vote. Grade: PAS
b) US Department of Treasury, Under Secretary for Domestic Finance. April 21, 1999 - Confirmed by the Senate by Voice Vote. Grade: PAS
c) Senator Paul Sarbanes, Senior Advisor in 2002, on the legislative effort that became the Sarbanes-Oxley Act

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you received and believe would be of interest to the Committee.

None

9. Political Affiliation: The statute creating the Commodity Futures Trading Commission requires that no more than three members be from the same political party. List your current political party registration or affiliation.

Democratic Party

10. Other Memberships: List all organizations to which you belong, excluding religious organizations.

    a) American Automobile Association
    b) The Baltimore Museum of Art
    c) Maryland Athletic Club

11. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published materials (including published speeches) you have written. Please include on this list published materials on which you are listed as the principal editor. It would be helpful to the Committee if you could provide one copy of all published material that may not be readily available. Also, to the maximum extent practicable, please supply a copy of all unpublished speeches you made during the past five years on issues involving agriculture, nutrition, forestry or commodity futures policy or related matters.

    Books – *The Great Mutual Fund Trap* published by Random House, September 24, 2002; Articles – None; Columns – I wrote two columns which appeared in the Baltimore Sun, one in May, 2001 about the challenges facing the US Postal Services and the other on February 11, 2002 about the State of Maryland's Retirement Pension system. I do not have copies of either column. Speeches – None on the enumerated issues.

12. Health: What is the present state of your health?

    Excellent

FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Have you severed all connections with your immediate past private sector employers, business firms, associations, and/or organizations?

   I will upon confirmation

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers.

   As a participant in a Goldman Sachs defined benefit pension plan, which was frozen in 1986, I am to receive a single life annuity of $6700 per year upon reaching age 65 in 2022.

   I have a total of 11041 vested stock options in a private company, WageWorks. (208 options with a strike price at $3.33 and 10833 options with a strike price at $4.14) In addition, I have 26959 unvested options that will terminate upon my resignation from the board of WageWorks.

3. Do you, or does any partnership or closely held corporation in which you have an interest, own or operate a farm or ranch? (If yes, please give a brief description including location, size and type of operation.)

   No

4. Have you, or any partnership or closely held corporation in which you have an interest, ever participated in Federal commodity price support programs? (If yes, provide all details including amounts of direct government payments and loans received or forfeited by crop and farm, etc. during the past five years.)

   No

5. Have you, or any partnership or closely held corporation in which you have an interest, ever received a direct or guaranteed loan from or cosigned a note to the Rural Business-Cooperative Service, Rural Housing Service, the Rural Utilities Service or their predecessor agencies, the Farmers Home Administration, the Rural Development Administration, the Rural Housing and Cooperative Development Service or the Rural Electrification Administration? (If yes, give details of any such loan activity during the past 5 years.)

   No

6. Have you, or any partnership or closely held corporation in which you have an interest, ever received payments for crop losses from the Federal Crop Insurance program? (If yes, give details.)

   No

7. If confirmed, do you have any plans, commitments, or agreements to pursue outside employment or engage in any business or vocation, with or without compensation, during your service with the government? (If so, explain.)

   None

8. Do you have any plans to resume employment, affiliation, or practice with your previous employers, business firms, associations, or organizations after completing government service? (If yes, give details.)

   None

9. Has anyone made a commitment to employ you or retain your services in any capacity after you leave government service? (If yes, please specify.)

   None

10. Identify all investments, obligations, liabilities, or other relationships which involve potential conflicts of interest in the position to which you have been nominated.

    In connection with the nomination process, I have consulted with the Office of Government Ethics and the Commodities Futures Trading Commission's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Commission's designated agency ethics official.

11. Have you ever received a government guaranteed student loan? If so, has it been repaid?

    None

12. If confirmed, explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

    In connection with the nomination process, I have consulted with the Office of Government Ethics and the Commodities Futures Trading Commission's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Commission's designated agency ethics official.

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

January 22, 2009

The Honorable Tom Harkin
Chairman
Committee on Agriculture, Nutrition,
and Forestry
United States Senate
Washington, DC 20510-6000

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Gary Gensler, who has been nominated by President Obama for the position of Chairman, Commodity Futures Trading Commission.

We have reviewed the report and have also obtained advice from the Commodity Futures Trading Commission concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated January 21, 2009, from Mr. Gensler to the agency's ethics official, outlining the steps Mr. Gensler will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with any action he agreed to take in his ethics agreement.

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

Sincerely,

Robert I. Cusick
Director

Enclosures

January 21, 2009

Mr. John P. Dolan
Counsel and
Alternate Designated 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. Dolan:

This letter describes the steps I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Chairman 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 that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, 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 was formerly employed by Goldman Sachs as a Partner and terminated my position in 1997. I am a participant in a Goldman Sachs defined benefit pension plan, which was frozen in 1986 and will receive a single life annuity of $6700 per year upon reaching age 65 in 2022. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of Goldman Sachs to provide this contractual benefit, 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).

Within 90 days of my confirmation, I will divest my interests in the following entities, which I hold through Annabel Lee, LLC: New Mountain Affiliated Investors, New Mountain Affiliated Investors II, New Mountain Affiliated Investors (Cayman), and New Mountain Affiliated Investors III. With regard to each of these entities, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the entity until I have divested it, 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).

Upon my confirmation, I will resign from my positions with the following entities: the Park School of Baltimore; the John Hopkins Center for Talented Youth; the Robert F. Kennedy Center for Justice and Human Rights; Enterprise Community Partners; Washington Hospital Center; and New Mountain Capital. For a period of one year after my resignation from each of these entities, I will not participate personally and substantially in any particular matter involving specific parties, in which that entity is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Upon my confirmation, I will resign from my position on the board of WageWorks. Upon my resignation, I will forfeit my unvested stock options in WageWorks. Because I will continue to own both stock and vested stock options in WageWorks, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of WageWorks, 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).

Upon my confirmation, I will resign from my positions on the board of Strayer Education. Upon my resignation and consistent with the policy of Strayer Education, Strayer Education will accelerate the vesting of my restricted stock. I will continue to hold my stock in Strayer Education. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of Strayer Education, 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).

On June 30, 2008, I terminated my positions with the following entities: the Bryn Mawr School and Enterprise Community Investments. For a period of one year after my resignation from each of these entities, I will not participate personally and substantially in any particular matter involving specific parties in which that entity is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Upon my confirmation, I will resign from my position with the Gensler Family Trust. Because I will retain a financial interest in this trust, I will comply with the requirements of 18 U.S.C. § 208(a) as to its holdings.

I have disclosed in my financial disclosure report a financial interest in the New Mountain Vantage Fund, which I hold through Annabel Lee, LLC. However, the fund's manager declined to provide me with sufficient information to enable me to disclose the fund's underlying assets in my financial disclosure report. Therefore, I will divest my financial interest in the New Mountain Vantage Fund within 90 days of my confirmation. Until I have divested New

Mountain Vantage Fund, I will not participate personally and substantially in any particular matter in which to my knowledge I have a financial interest, if the particular matter has a direct and predictable effect on the financial interests of New Mountain Vantage Fund, or its underlying assets, 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).

Sincerely,

Gary Gensler

SF278 (Rev. 03/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Form Approved:
OMB No. 3209-0001

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Date of Appointment, Candidacy, Election or Nomination (*Month, Day, Year*)	Reporting Status (Check appropriate boxes): ☐ Incumbent; Calendar Year Covered by Report: ; ☒ New Entrant, Nominee, or Candidate; ☐ Termination Filer	Termination Date (*If Applicable*) (*Month, Day, Year*)	
Reporting Individual's Name	Last Name: Gensler	First Name and Middle Initial: Gary	
Position for Which Filing	Title of Position: Chairman	Department or Agency (*If Applicable*): Commodity Futures Trading Commission	
Location of Present Office (or forwarding address)	Address (*Number, Street, City, State, and ZIP Code*): 451 6th Street; Washington, DC 20001	Telephone No. (*Include Area Code*): 202-540-3268	
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held: None		
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Committee on Agriculture, Nutrition and Forestry	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual	Date (*Month, Day, Year*): January 21, 2009	
Other Review (If desired by agency)	Signature of Other Reviewer	Date (*Month, Day, Year*): 01-21-2009	
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 in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official	Date (*Month, Day, Year*): 1.21.09	
Office of Government Ethics Use Only	Signature	Date (*Month, Day, Year*): 1/22/09	

Comments of Reviewing Officials (*If additional space is required, use the reverse side of this sheet*)

(*Check box if filing extension granted & indicate number of days* ______) ☐

(*Check box if comments are continued on the reverse side*) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a $200 fee.

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A—The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B—Not applicable.

Schedule C, Part I (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)—Show any agreements or arrangements as of the date of filing.

Schedule D—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only
JAN 21 2009

SF278 (Rev. 03/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE A	Page Number
Gary Gensler		Page 2 of 15

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
Examples	Doe Jones & Smith, Hometown, State																															Law Partnership Income $130,000	
Examples	Kempstone Equity Fund					x								x										x									
Examples	IRA: Heartland 500 Index Fund							x						x											x								
1	Bank of America Checking Account		x																		x												
2	Bank of America Checking Account		x																		x												
3	Metropolitan Life Insurance Whole Life Insurance Policies					x											x					x											
4	Vanguard Tax Exempt Money Market Fund					x								x										x									
5	Strayer Education Restricted Common Stock					x											x						x										
6	Strayer Education Common Stock									x							x									x							

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF278 (Rev. 03/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name		Page Number
Gary Gensler	**SCHEDULE A continued** (Use only if needed)	Page 3 of 15

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

None ☐

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust
1	Union Hospital Municipal Bond							X								
2	Johns Hopkins Hospital Municipal Bond									X						
3	BWI Airport Municipal Bond									X						
4	IRA - Vanguard European Stock Index Fund						x							X		
5	IRA - Vanguard Total Stock Market Index Fund							X						X		
6	IRA - Vanguard Emerging Market Stock Index Fund						x							X		
7 J	Gensler Family Trust - Vanguard Tax Exempt Money Market Fund				x									X		
8 J	Gensler Family Trust - Vanguard Emerging Markets ETF					X								X		
9 J	Gensler Family Trust - Vanguard European Stock ETF					X								X		

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1			x								x						
2			x	X								X					
3			x	X								X					
4										X							
5										X							
6										X							
7						X											
8									x								
9									x								

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
Gary Gensler		Page 4 of 15

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.

Block B: Valuation of Assets at close of reporting period

Assets and Income (BLOCK A) None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust
1 Gensler Family Trust - T Rowe Price Global Stock Fund J							X						X		
2 Francesca Danieli Revocable Trust - Vanguard Tax Exempt Money Market Fund J			X										X		
3 Francesca Danieli Revocable Trust - Vanguard European Stock Index Fund J									X				X		
4 Francesca Danieli Revocable Trust - Strayer Education Common Stock J							X								
5 Francesca Danieli Revocable Trust - Vanguard Total Stock Market Index ETF J									X				X		
6 Annabel Lee, LLC - Vanguard Tax Exempt Money Market Fund J				X									X		
7 Annabel Lee, LLC - Vanguard 500 Index Fund J				X									X		
8 Annabel Lee, LLC - Vanguard European Stock Index Fund J					X								X		
9 Annabel Lee, LLC - iShares MSCI EAFE ETF J									X				X		

Block C: Income — Type and Amount

Assets and Income (BLOCK A)	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Gensler Family Trust - T Rowe Price Global Stock Fund										X							
2 Francesca Danieli Revocable Trust - Vanguard Tax Exempt Money Market Fund							X										
3 Francesca Danieli Revocable Trust - Vanguard European Stock Index Fund												X					
4 Francesca Danieli Revocable Trust - Strayer Education Common Stock	X								X								
5 Francesca Danieli Revocable Trust - Vanguard Total Stock Market Index ETF											X						
6 Annabel Lee, LLC - Vanguard Tax Exempt Money Market Fund									X								
7 Annabel Lee, LLC - Vanguard 500 Index Fund							X										
8 Annabel Lee, LLC - Vanguard European Stock Index Fund										X							
9 Annabel Lee, LLC - iShares MSCI EAFE ETF												X					

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF278 (Rev. 03/2000)
5 C F R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE A continued	Page Number
Gary Gensler	(Use only if needed)	Page 5 of 15

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

None ☐

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 J	Annabel Lee, LLC - Vanguard Emerging Markets ETF						x							x												x							
2 J	Annabel Lee, LLC - Vanguard European Stock ETF			x										x										x									
3 J	Annabel Lee, LLC - Vanguard Small Cap Index ETF						x							x											x								
4 J	Annabel Lee, LLC - Vanguard Total Stock Market ETF									x				x												x							
5 J	Annabel Lee, LLC - New Mountain Affiliated Investors: 3 Underlying Assets Listed Below							x									x		x													$10,800	
6 J	Applis Inc. (Government Technology) Contracting) 45% of capital																																
7 J	Overland Solutions (Outsourced Insurance Services) 48% of capital																																
8 J	SXC Health Solutions 7 % of capital																																
9																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Gary Gensler

SCHEDULE A continued
(Use only if needed)

Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
None ☐																																
1 Annabel Lee, LLC - New Mountain Affiliated Investors II - 6 Underlying Assets Listed Below																x		x													$12,900	
2 Connexions, Inc. (Healthcare) 12% of capital																																
3 Deltek, Inc. 13% of capital																																
4 Ikaria Holdings, Inc. (Specialty Pharmaceuticals) 36% of capital																																
5 Inmar Holdings, Inc. (Reverse Logistics) 15% of capital																																
6 Mail South, Inc. (Shared Mail) 12% of capital																																
7 Oakleaf Global Holdings, Inc. (Facilities Management) 12% of capital																																
8																																
9																																

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name		Page Number
Gary Gensler	**SCHEDULE A continued** (Use only if needed)	Page 7 of 15

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

None ☐

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Annabel Lee, LLC - New Mountain Affiliated Investors (Cayman) - 2 Underlying Assets Listed Below						x										x															$14,700	
2	Paris Re Holdings Limited 19% of capital																																
3	Validus Holdings, Ltd. 81% of capital																																
4	Annabel Lee, LLC - New Mountain Affiliated Investors III - 3 Underlying Holdings Listed Below					x											x		x		x												
5	Maritime Holdings (Delaware), LLC (Ocean Transport & Logistics) 31% of capital																																
6	Oakleaf Global Holdings, Inc. (Facilities Management) 46% of capital																																
7	Tygris Commercial Finance Group (Commercial Finance) 23% of capital																																
8	Annabel Lee, LLC - New Mountain Vantage - Underlying Holdings Not Disclosed; Fund Manager does									x											x												
9	Not Reveal to Investors																																

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name		Page Number
Gary Gensler	**SCHEDULE A continued** (Use only if needed)	Page 8 of 16

Assets and Income BLOCK A — None ☐

Valuation of Assets at close of reporting period — BLOCK B

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust
1 J	Annabel Lee, LLC - WageWorks Common Stock (Employee Benefit Transaction Processing Company)						x									
2 J	Annabel Lee, LLC - WageWorks Preferred Stock							x								
3	WageWorks Common Stock				x											
4	WageWorks Vested Stock Options, 208 shares at $3.33, 10833 shares at $4.14		x													
5	WageWorks Unvested Stock Options 24792 shares at $3.33, 2167 shares at $4.14, vesting through 2/3/10															
6	Goldman Sachs Defined Benefit Retirement Plan - Value not readily ascertainable															
7	Loans to Annabel Lee, LLC									x						
8																
9																

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1					x												
2					x												
3					x												
4					x												
5					x												
6																Will Receive 6700 per year at age 65	
7			x									x					
8																	
9																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name		Page Number
Gary Gensler	**SCHEDULE A continued** (Use only if needed)	Page 9 of 15

#	**Assets and Income** BLOCK A (None ☐)	**Valuation of Assets** at close of reporting period BLOCK B: None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	**Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. BLOCK C — Type: Dividends	Rent and Royalties	Interest	Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Strayer Education Board																															Board Fees $89660	
2	WageWorks Board																															Board Fees 36500	
3	New Mountain Capital Advisory Board																															Board Fees 70000	
4																																	
5																																	
6																																	
7																																	
8																																	
9																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF278 (Rev. 03/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name		Page Number
Gary Gensler	**SCHEDULE A continued** (Use only if needed)	Page 10 of 15

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

None ☐

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 DC	DC1 Beta Trust - Vanguard Tax Exempt Money Market Fund		X											X								X											
2 DC	DC1 Beta Trust - Vanguard Emerging Markets ETF		X											X								X											
3 DC	DC1 Beta Trust - Vanguard European Index ETF			X										X								X											
4 DC	DC1 Beta Trust - Vanguard Total Stock Market Index ETF			X										X							X												
5 DC	DC2 Beta Trust - Vanguard Tax Exempt Money Market Fund		X											X								X											
6 DC	DC2 Beta Trust - Vanguard Emerging Markets ETF		X											X								X											
7 DC	DC2 Beta Trust - Vanguard European Index ETF			X										X								X											
8 DC	DC2 Beta Trust - Vanguard Total Stock Market Index ETF			X										X							X												
9																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF278 (Rev. 03/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
Gary Gensler		Page 11 of 15

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

None ☐

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	DC3 Alpha Trust - Vanguard Tax Exempt Money Market Fund DC		x											x								x											
2	DC3 Alpha Trust - Vanguard Emerging Markets ETF DC		x											x								x											
3	DC3 Alpha Trust - Vanguard European Index ETF DC			x										x								x											
4	DC3 Alpha Trust - Vanguard Total Stock Market ETF DC			x										x							x												
5	DC1 - Israel Bond DC		x																x			x											
6	DC2 - Israel Bond DC		x																x			x											
7	DC3 - Israel Bond DC		x																x			x											
8	Bank of America Checking Account DC		x																		x												
9																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF 278 (Rev. 03/2000)
5 C F R Part 2634
U.S. Office of Government Ethics

Do not Complete Schedule B if you are a new entrant, nominee, Vice Presidential or Presidential Candidate

Reporting Individual's Name		Page Number
Gary Gensler	**SCHEDULE B**	Page 12 of 15

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example:	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260; and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (*Name and Address*)	Brief Description	Value
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name		Page Number
Gary Gensler	**SCHEDULE C**	Page 13 of 15

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude a mortgage on your** personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None [x]

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples:	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10 %	on demand					x						
1																
2																
3																
4																
5																

* This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: continuing participation in an employee benefit plan (e.g. 401k, deferred compensation; (2) continuation payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits

None [ ]

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example:	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	I had been fully vested under a Goldman Sachs Pension Plan, a defined beneifit pension plan. My accrued benefit payable as a single life annuity at age 65 starting in 2022 is approximately $6700 per year.	Goldman Sachs	11/86
2	Upon resignation and consistant with its policy, Strayer Education will accelerate the vesting of my restricted stock.	Strayer Education	1/09
3			
4			
5			
6			

SF 278 (Rev. 03/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name		Page Number
Gary Gensler	**SCHEDULE D**	Page 14 of 15

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (*Name and Address*)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	See Attachment				
2					
3					
4					
5					
6					

Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate

None ☐

	Source (*Name and Address*)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	New Mountain Capital	Advisory Board Service
2	Strayer Education	Board Service
3	WageWorks	Board Service
4		
5		
6		

Prior Editions Cannot Be Used.

SF 278
Schedule D Part 1
Positions Held Outside US Government

a. Annabel Lee, LLC; Family Investment Company, Managing Member, 2005 to present
b. The Baltimore Museum of Art; Non-Profit Museum, Trustee, 2001 to 2007
c. The Bryn Mawr School; Non-Profit Education, Trustee, 2002 to 2008
d. East Baltimore Development, Inc.; Non-Profit Community Development Organization, Director, 2003 to 2007
e. Enterprise Community Investments; For-Profit Community Development Organization, Director, 2001 to 2008
f. Enterprise Community Partners; Non-Profit Community Development Organization, Trustee, 2001 to present
g. Francesca Danieli Revocable Trust; Deceased Spouse's Testamentary Trust, Trustee, 2005 to present
h. Gensler Family Trust; Irrevocable Family Trust, Trustee, 2006 to present
i. Johns Hopkins Center for Talented Youth; Non-Profit Education, Advisory Board Member, 2003 to present
j. New Mountain Capital; For-Profit Private Equity Firm, Advisory Board Member and investor, 2001 to present
k. The Park School of Baltimore; Non-Profit Education, Trustee, 2007 to present
l. Robert F Kennedy Center for Justice and Human Rights; Non-Profit Foundation, Trustee, 2008 to present
m. Strayer Education; For-Profit, Director, 2001 to present
n. Tilles Foundation; Charitable Foundation, Trustee, 1989 to present
o. WageWorks; For-Profit, Director, 2006 to present
p. Washington Hospital Center; Non-Profit Health, Director, 2006 to present

THE PETROLEUM MARKETERS ASSOCIATION OF AMERICA

February 20, 2009

The Honorable Tom Harkin
Chairman, Committee on Agriculture,
Nutritition and Forestry
United States Senate
Washington, DC 20510

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

Dear Chairman Harkin and Ranking Member Chambliss:

The Petroleum Marketers Association of America (PMAA) would like to express support for the nomination of Mr. Gary Gensler to serve as Chairman of the U.S. Commodity Futures Trading Commission (CFTC).

PMAA is a leading national trade association in the petroleum industry representing 8,000 independent petroleum marketing companies. It is organized as a national federation of 47 state and regional trade associations who represent wholesalers and retailers of gasoline, diesel, heating oil, lubricants and renewable fuels. PMAA companies own 60,000 retail fuel outlets such as gas stations, convenience stores and truck stops. Additionally, these companies supply motor fuels to 40,000 independently owned retail outlets and heating oil to 7 million homes and businesses.

Over the last few years, futures markets have become disconnected from supply and demand fundamentals of the physical commodities. PMAA has communicated about this issue for three years and has testified before Congress on multiple occasions.

After a productive dialogue with Mr. Gensler, PMAA is convinced that he shares our commitment of reforming futures markets by imposing aggregate speculative position limits on energy futures across all contract markets at the control entity level, to prevent excessive speculation and manipulation; closing all loopholes in current law including the "swaps loophole" and the "London loophole;" encouraging mandated clearing of most over-the-counter products; reviewing all bona fide hedge exemptions; and finally, increasing staff levels and resources at the CFTC.

PMAA strongly supports the free exchange of commodity futures on open, well regulated and transparent exchanges that are subject to the rule of law and accountability. Reliable futures markets are crucial to the entire petroleum industry and the American economy.

We appreciate your consideration, and we hope that you and your Senate colleagues will act swiftly to confirm Mr. Gensler to serve as Chairman of the U.S. CFTC.

Sincerely,

Dan Gilligan
PMAA President

Petroleum Marketers Association of America, 1901 North Ft. Myer Drive - Suite 500 Arlington VA, 22209
Tel: (703) 351-8000 info@pmaa.org

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

Michael V. Dunn
Acting Chairman

(202) 418-5070
(202) 418-5072 Facsimile
mdunn@cftc.gov

February 23, 2009

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

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

Dear Chairman Harkin and Ranking Member Chambliss:

I am pleased to write to you in support of the nomination of Gary Gensler to serve as Chairman of the Commodity Futures Trading Commission.

Since his nomination, I have met Mr. Gensler on several occasions. Mr. Gensler, in my opinion, has done an outstanding job of studying the issues and concerns that the Commission currently faces. Not only does he have a good understanding of the issues, he has indicated that he is ready to set a course of action that will enhance the ability of the Commission to address these issues.

Futures industry participants, consumers and Congress have called for the CFTC to provide greater transparency, accountability and oversight of the commodity markets. From meetings with Mr. Gensler and reviewing his recent communications with members of Congress, I believe that his leadership will guide the CFTC to answer these calls.

We are at a critical time in financial regulatory reform. The new Administration is making decisions on how best to craft a regulatory regime that addresses our current financial crisis. It is imperative that the CFTC be a full partner in these deliberations. This can best be accomplished by confirming President Obama's choice for permanent Chairman of the CFTC as soon as possible.

Thank you for your consideration.

Sincerely,

Michael V. Dunn

Michael V. Dunn
Acting Chairman,
Commodity Futures Trading Commission

QUESTIONS AND ANSWERS

FEBRUARY 25, 2009

QUESTIONS SUBMITTED BY CHAIRMAN TOM HARKIN

Regulation of over-the-counter derivatives

In your written testimony you addressed the urgent need to develop a broad regulatory regime for over-the-counter derivatives, stating that, "Standardized derivatives should be brought into mandated centralized clearing and onto exchanges." Your testimony suggests that customized bilateral swaps would not necessarily need to be centrally cleared or traded on exchanges. I am concerned that if we allow commercial interests to continue to enter into bilateral swaps, and to avoid exchange trading or clearing simply through what might be minor custom features in contracts, we will allow a loophole that will seriously jeopardize our efforts to restore derivatives trading to the full scrutiny and integrity of regulated exchange trading and centralized clearing. Hence your testimony draws a distinction between standardized derivatives and customized bilateral swaps, but that begs the question how to go about distinguishing between those two categories of derivative contracts, since the terms do not have obvious, set definitions and the consequences of drawing this distinction are critical.

Without necessarily prescribing a specific proposed rule, would you please explain what in your view are relevant and appropriate considerations, criteria, and approaches which should be weighed in drawing the distinction or division between standardized derivatives contracts and truly customized, individualized swaps contracts?

United States Enrichment Corporation

I understand that when you served as Assistant Secretary of Treasury for Financial Markets, Secretary Rubin delegated to you the responsibility to supervise and approve privatization of the United States Enrichment Corporation (USEC). The sale of USEC was supposed to be conditioned on specific statutory requirements, most of which proved not to have been met as subsequent events unfolded.

First, the proceeds from privatization were supposed to at least equal the net present value of the Corporation. Although the proceeds from the sale may have met this test, when the sales proceeds of $1.8 billion were reduced by the $325 million expenditure to buy Russian uranium and the $381 million cost to put the Ohio plant on cold standby, the United States lost money from this transaction.

Second, the sale was not supposed to jeopardize either the health and safety of the public or the common defense and security of the country. In fact, shortly after privatization, the price of uranium collapsed and Russia suspended shipments of uranium to the United States. Russia's continued participation in the nonproliferation of nuclear material agreement was critical to this country's national security. The Department of Energy had to step in and purchase uranium from the Russians at above market prices to preserve the nonproliferation agreement.

Third, the sale was conditioned on a reasonable assurance that adequate enrichment capability would remain in the United States to meet the demands of the domestic electric utility industry and on the continued operations of the Department of Energy's two gaseous diffusion plants through December 31, 2004. In fact, only 25 percent of the nuclear industry's fuel requirements are met from domestic sources and USEC closed the Ohio uranium enrichment plant in 2001.

Fourth, privatization was supposed to provide for the long term viability of the enrichment corporation. The corporation has a minimal credit rating of CCC.

Fifth, privatization was supposed to protect the public interest in maintaining a reliable and economical domestic source of uranium mining, enrichment, and conversion services and industries. When USEC sold off its uranium inventory to raise cash, uranium prices collapsed leading to the closure of uranium mines, and U.S. uranium output. Conversion services and industries suffered collateral damage from the reduction in U.S. uranium production.

Please respond to each of these points to justify your recommendation in July of 1998 that Treasury approve the 1998 privatization of the United States Enrichment Corporation.

Divergence between cash and futures prices in agricultural commodities

For the past two years, the prices of the wheat futures contract on the Chicago Board of Trade have failed to converge with cash prices at the expiration of the futures contracts. It is not entirely clear why this market has not demonstrated reasonable convergence, but it suggests that the futures contract is not functioning as it should. This lack of convergence creates problems for farmers, grain elevators, grain merchants, and processors who rely on futures markets to hedge grain prices.

What would you see as the CFTC's role in taking corrective action so the situation is not prolonged further and cash basis returns to more normal levels?

Will you pledge to follow up if confirmed and devote your personal attention to this problem of lack of convergence in futures and cash prices?

Role of index funds in futures prices

Many traditional participants who use the futures markets to hedge their price and inventory risk believe that a large influx of investment capital into the futures markets contributed to artificially high futures prices.

As Chairman of the CFTC, what steps would you take to help ensure that futures markets work for the intended users and that the price discovery function is not distorted by investment capital?

Position limits

In your statement, you comment that increased speculation in energy and agricultural products has hurt farmers and consumers and that position limits must be applied consistently to all markets and trading platforms and exemptions to them must be limited and well-defined. Under current CFTC practice, swaps dealers and index funds have been allowed to claim exemptions from position limits to hedge financial risk.

Would you support position limits that apply to all traders with the only exemptions for those with a bona fide risk in the cash market for a physical commodity? If not, why not?

Senator Sherrod Brown
Question for the Record for Gary Gensler

1. The privatization of United States Enrichment Corporation (USEC) raises significant questions. USEC was sold despite the fact that most of the conditions for the sale were unmet. Today, the company continues to rely on the government. You played an integral role in the privatization. Can you explain why the sale took place despite the failure to meet the conditions of the sale?

2. The failure to fulfill promises on the conditions that attached to the sale was not the last broken promise in connection with USEC. The plant in Piketon Ohio did not remain open until 2005, contrary to the agreement, and pensioners have been denied the COLAs they were promised. All the while, the United States share of the domestic uranium market continues to dwindle.

   Was the privatization a mistake? Would you go about it again knowing what you know now? What would you have done differently?

3. In your role as an Undersecretary at the Treasury Department, you worked on the 1999 report on Over-the-Counter Derivatives Markets and the Commodity Exchange Act. Given the regulatory failures of the past two years, what part of that report would you change?

4. In your capacity as an Undersecretary at the Treasury Department, what was your involvement with the enactment of the Commodity Futures Modernization Act of 2000? Have your views changed since that time regarding the need for regulation of over-the-counter swaps and derivatives by CFTC?

5. If confirmed as Chairman of the CFTC, would you support some form of mandatory clearinghouse for all over-the-counter (OTC) derivatives? This would allow regulators to fully view all OTC transactions, unlike the opaque environment that exists presently, to determine if they are adversely affecting the market's price-discovery function.

6. In your opinion, what has been the role of excessive speculation in creating unwarranted fluctuations in commodity prices? Do you support position limits on all traded commodities, regardless of where they are executed, to eliminate excessive speculation in these markets? If you would not, why not?

Senator Bob Casey
Questions for the Record

Oil Speculation

There has been a lot of debate about the impact of speculation and futures contracts on the price of oil. What is your view on the excessive speculation contributing to oil prices that would not normally be supported by the market? And what do you think the role of the CFTC should be in determining and overseeing speculation that is "excessive"?

CFTC Modernization

What do you think of proposals to combine the CFTC and the Securities Exchange Commission into a combine oversight authority that will regulate derivatives contacts and credit default swaps?

Public Confidence

Government has a lot of work to do in order to rebuild confidence in our ability to oversee markets and protect the public interest. What would you do as the chairman of the CFTC to rebuild that public trust and provide oversight, transparency and accountability?

Statement of Senator Charles E Grassley
Nomination of Gary S. Gensler
to be Chairman of the Commodity Futures Trading Commission (CFTC)
February 25, 2009

First off, I want to congratulate you Mr. Gensler on your nomination by President Obama to the Commodity Futures Trading Commission. The nomination in and of itself is a great honor and I welcome you here to the committee.

I want to start by thanking both Walt Lukken and Michael Dunn for their service as Acting Chairmen. I know this has not been an easy position to fill recently and I want to acknowledge their willingness to serve in this capacity.

The last year of events has taken a toll on both our economy and the morale of the American people. But that doesn't mean that changes we make now can't help better the situation in the future.

The CFTC has traditionally played an under the radar role, but I think that is going to change. Just by the nature of what's happening in our markets, it's time that this agency has a higher profile role.

Clearly there is a lot of disagreement about the level of problems that derivatives and credit default swaps have caused on our financial markets.
And there is going to be even more disagreement about whether regulation is necessary and if so, who should be regulating these products.

This year Congress is also going to have to decide what the appropriate role of speculators is in our commodity markets. And we are going to have to decide if we are serious about giving CFTC the resources it needs to do its job effectively.

I am anxious to hear your outlook and answers on these important topics. But, I'd also like to learn more about how you believe you can separate your many years at Goldman Sachs with what will be your new responsibilities at CFTC.

Again, welcome to the committee and congratulations on your nomination.

Questions:

1) Do you believe there is evidence that crude oil prices were being driven by speculators last year? If so, what do you believe is the CFTC's responsibility with regard to limiting the amount of institutional speculation?

2) Do you think that the CFTC has acted aggressively enough to determine the impact of institutional investors and speculators on commodity markets?

3) Does CFTC currently have all the tools necessary to respond to the speculation in commodities by hedge funds, investment banks and pension funds? Does Congress need to act to provide additional authority to the CFTC? If so, please provide specific recommendations for additional authority.

4) When testifying before the Agriculture Committee last year, Acting Chairman Lukken and Commissioner Chilton discussed several new initiatives to improve trade collection and dissemination efforts to bring more transparency in the areas of agriculture and energy markets. Do you think the steps taken by the CFTC in recent months go far enough to bring greater transparency and scrutiny in energy and agriculture trades? If not, what suggestions can you offer?

5) Do you believe that further oversight of commodities trading is needed in light of the increased pressure on margin calls and market volatility that led to local elevators and major grain trading companies not being able to offer forward contracts to producers last summer?

6) In a hearing last year in the Senate Commerce Committee, Michael Greenberger, a law professor at the University of Maryland and former head of the CFTC's Division of Trading & Markets, suggested that if the CFTC required all U.S. crude trades to be subject to CFTC regulation and trading limits, oil prices would drop by 25% overnight. At the high, the price of a barrel of oil was $147 last summer. Now it's under $40. Did all these speculators suddenly leave the market? Why without CFTC regulation did the price actually drop to less than a 1/3 of the original price?

7) It's been reported that you actually advocated exempting derivatives and credit default swaps from regulation when you were in the Clinton Administration at Treasury. Do you still feel the same way?

8) What do you believe is the appropriate oversight of derivatives? Which federal agency should have oversight responsibilities of these contracts?

Senator Ben Nelson
Questions for the Record
Nomination of Gary Gensler, Chair CFTC
February 25, 2009

Questions:

(1) Last September, CFTC issues a staff report on Commodity Swap Dealers and Index Traders. While this report was generally deficient and continued CFTC's inability or unwillingness to see problems in the market, it did contain one very valuable recommendation that I would like to ask you to follow-up on. The report recommended a review of "whether to eliminate the *bona fide* hedge exemption for Swap Dealers and replace it with a new limited risk management exemption" subject to certain conditions. Specifically, CFTC staff was instructed to develop an advanced notice of proposed rulemaking for this purpose. Do you know whether that recommendation has been followed and whether the rulemaking will be forthcoming (and when)? If it has not been followed, do you have any intention of seeing that it is?

(2) What are your views regarding mandatory clearing on an exchange for all over-the-counter (OTC) derivatives particularly the physical commodities including energy, energy products, and agriculture?

(3) What are your views regarding the imposition of strong position limits on all traded physical commodities – including energy and agriculture – for all speculators, regardless of where they execute their orders – OTC, on exchange, or elsewhere – to eliminate excessive speculation in these markets?

Senator Pat Roberts
Senate Agriculture Committee
Statement and Questions for the Record
Nomination Hearing of Mr. Gary Gensler
CFTC Chairman
February 25, 2009

Mr. Gensler, first, thank you for meeting with me several weeks ago. You travel in good company with Senators Sarbanes, Mikulski and Cardin at your side. In reading through your statement and subsequent responses to questions not only from members of this committee but several of our colleagues in the Senate, I think it's fair to say you have an in depth knowledge of the trading instruments used today in the marketplace.

I don't think you'll find much disagreement that based on recent history the CFTC and our other financial regulators need improvements; be that either investments in resources or policy authority. The debate will be over how much of both.

1. It is the nature of Congress to over-react. When the marketplace is over-regulated, Congress historically loosens the ~~reigns~~ reins too much. When the marketplace is under-regulated, Congress pulls the reigns in too tightly. I think it's obvious we are coming through a period where those reigns have been too loose.

However; as we move forward on legislative proposals, we will look to you and your fellow commissioners to guide us on how to pull those reigns back in at an appropriate level without repeating mistakes of the past. How do you suggest we find that equilibrium between regulations that protect all market participants, producers, and the public with those that provide the flexibility necessary for commerce to grow and evolve?

2. Some of the talk around here has been whether CFTC and SEC should merge. Many of my constituents are fearful that such a merger would result in the loss of expertise in the agricultural market regulators. How do you feel about proposals for a merger?

3. Members of this committee know all too well that futures prices fluctuate. This fluctuation has encouraged our producers to become not just "sellers" of their crops but "marketers." Successfully marketing one's crop helps hedge against price fluctuations and can bring stability to an operation's bottom line. But this growing practice depends upon a sound, transparent market that is free from manipulation. As head of the CFTC, what will you do to ensure that our agriculture producers are both protected and yet able to fully utilize the benefits of the futures markets?

4. Last year, Acting CFTC Chairman Lukken and SEC Chairman Cox signed a Memorandum of Understanding to work cooperatively on outstanding issues. Do you plan to honor the process outlined in that MOU? Is there another process which would be preferable to this MOU process?

5. In your statement, you advocate for mandatory clearing of all standardized derivatives contracts. You go on to support establishing a regulatory regime for customized contracts as well but not mandated clearing. Some legislative proposals being debated today would mandate that all Over-The-Counter derivative contracts go through a centralized clearinghouse. What concerns if any do you have with this proposal for mandatory clearing of all OTC derivatives contracts?

Senator Stabenow
Questions for the Record – Gary Gensler
February 25, 2009

We have often heard that one of the problems that occurred during the run up in commodities last year was that the CFTC did not have access to enough data concerning all market participants.

- Are you concerned with over-the-counter markets, which the CFTC has limited data and oversight over? Do you believe that a window is needed into off-exchange markets?
- Along those lines would you support requiring the CFTC to adopt rules defining and classifying index and swap traders for the purpose of data reporting? If so, how would you go about doing this and in your opinion who would constitute "index traders?"

The Commodity Futures Modernization Act was passed in 2000, which among other things, restricted the ability of the CFTC and the SEC to regulate swaps, including credit default swaps which have played a role in our current crisis.

- Do you support re-regulating over-the-counter derivatives and if so what do you think is the appropriate framework for regulation?
- Do you believe that there should be a requirement to clear or to transact on exchange all derivatives--even those that are not standardized and liquid?
- How do we achieve transparency for participants and regulators but not eliminate the markets or send them overseas?

February 11, 2009

The Honorable Maria Cantwell
United States Senator
511 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Cantwell:

I am writing in response to your series of questions regarding my nomination to be Chairman of the Commodity Futures Trading Commission. I appreciate your meeting with me on January 15 and your leadership on the many issues facing the Commission. Please find my responses attached.

I believe the CFTC must vigorously fulfill its mandates: enforcing existing laws aggressively, promoting market integrity, preventing fraud and manipulation, and guarding against excessive speculation.

We also are at a transformational time that requires bold leadership to strengthen our regulatory system. The American public and our economy benefit from strong, intelligent regulation. We must apply the hard lessons we have learned to repair our regulatory system and to enact far-reaching rules that promote transparency, accountability, fairness, and safety.

If confirmed by the Senate, I look forward to working with you on much needed regulatory reform. I believe we must enhance the CFTC's ability to guard against excessive speculation in commodities markets. Furthermore, I believe we must urgently move to enact a broad regulatory regime for the over-the-counter derivatives marketplace.

Should you have further questions, please do not hesitate to contact me.

Sincerely,

Gary Gensler

Please Explain your work at the Treasury Department

1. **In your capacity as an Undersecretary at the Treasury Department, you worked on the November 1999 Report of the President's Working Group on Financial Markets report on *Over-the-Counter Derivative Markets and the Commodity Exchange Act.* What specific part, if any, of this report do you disagree with today?**

We have learned a great deal in the nearly ten years since the President's Working Group on Financial Markets' report was published. Capital markets have been transformed by new financial products, the increased use of asset securitizations and 'off balance sheet' financings, the development of fully electronic markets, the significant participation of index and hedge fund investors in commodity markets, and other financial and technical innovations. We also have witnessed the harsh aftermath of Wall Street's excess leverage and risk taking, mortgage originators' weak underwriting practices, and rating agencies' shortcomings. Our financial system and our regulatory system both have failed the American people.

I believe that we must move swiftly now to apply the hard lessons we have learned. We must repair our regulatory system and enact far-reaching rules that promote transparency, accountability, fairness, and safety. To be effective regulations must adapt and stay abreast of developing technologies and new products. I firmly believe that the American public and our economy benefit from strong, intelligent regulation.

First, we must ensure that the CFTC is revitalized in order to vigorously enforce existing laws and fulfill its mandates: to promote market integrity, to prevent fraud and manipulation, and to guard against excessive speculation.

Second, we must enhance the CFTC's ability to guard against excessive speculation in commodities markets. I believe that all physical commodities futures, including agricultural, metals and energy, should have consistent regulation under the Commodities Exchange Act. I also believe we must increase the CFTC's ability to guard against excessive speculation by increasing transparency around index and other non-commercial investors, reviewing all current exemptions from position limits, and ensuring that position limits are applied consistently across all markets and trading platforms. If confirmed by the Senate, I look forward to working with Congress to achieve these objectives.

Third, we must urgently move to enact a broad regulatory regime for the over-the-counter derivatives marketplace that best promotes transparency, accountability, and safety. If confirmed by the Senate, I look forward to working with Congress to bring all standardized over-the-counter derivatives into mandated centralized clearing and onto exchanges, establish a statutory and regulatory framework for derivatives dealers, formulate appropriate oversight for bilateral customized derivatives, and consider further additional regulation for credit default swaps.

Finally, as this crisis has powerfully demonstrated, we must work more closely with our international partners on all of these issues. Today's complex financial markets are global, and as we have seen, absolutely and irreversibly interlinked. We need to ensure that our partners in regulating markets around the world apply the same rigor in enforcing standards of transparency, accountability and safety for investors that we will demand of our markets. If confirmed, I look forward to working with Congress and international regulators to achieve these goals.

2. **As an Assistant Secretary and Under Secretary of Treasury in 1998-2001, did you oppose the regulation of over-the-counter swaps and derivatives by the CFTC? What specific actions did you take in this regard?**

During 1998, I was not involved in these matters, which occurred primarily during the spring and summer. This was during my first year at the Treasury Department and I had been advised by Treasury Department Counsel that I was recused from these particular matters since they might relate directly to my former employer. The subsequent drafting and passing of the Commodity Futures Modernization Act (CFMA) legislation was a lengthy and complex process, involving at least four government agencies including the Federal Reserve, the SEC, the CFTC and the Treasury Department. Hearings were held in front of at least five Congressional Committees. As I was no longer subject to the restrictions of recusal in 2000, I was a member of a team that worked with and advised then-Treasury Secretary Lawrence Summers on Treasury and the Administration's positions.

3. **In your capacity as an Undersecretary at the Treasury department, did you work to enact the Commodity Futures Modernization Act of 2000 (CFMA) which specifically exempted swaps from CFTC regulation? Did you intend to exempt credit default swaps from regulation as part of the CFMA?**

I was a member of a team that worked with and advised then-Treasury Secretary Summers on Treasury and the Administration's positions. At the time, the vast majority of over-the-counter derivative contracts were interest rate and currency swaps, constituting 97% of the market. These swaps made up 29 out of 30 derivative transactions in those days. The bulk of those remaining were equity and commodity derivatives transactions. Credit default swaps were an insignificant product at the time and not a focus during the legislative process.

4. **Do you still support the policy to exempt swaps from regulation by the CFTC? Has your opinion changed?**

As I have previously stated, I believe we must enact a broad regulatory regime for the over-the-counter derivatives marketplace that promotes transparency, accountability, and safety. If confirmed by the Senate, I look forward to working with Congress to bring all standardized over-the-counter derivatives into mandated centralized clearing and onto exchanges, establish a statutory and regulatory framework for derivatives dealers, formulate appropriate oversight for bilateral customized derivatives, and consider further additional regulation for credit default swaps.

5. **To what extent to you believe the enactment of the CFMA contributed to the current financial sector crisis?**

I believe that both our financial system and our regulatory system failed the American people. There were many elements that contributed to these failures. To repair and reform the system, we must apply the hard lessons we have learned and tackle a robust agenda including modifying regulation of mortgage origination and securitization, credit rating agencies, hedge funds, over-the-counter derivatives markets, and capital rules and counterparty risk standards. Additionally, we must improve systemic regulation, increase transparency, and put new protections in place for investors, consumers, and farmers.

I believe we must enact a broad regulatory regime for the over-the-counter derivatives marketplace. If confirmed by the Senate, I look forward to working with Congress, the Administration, and other regulators to amend the Commodities Exchange Act and create regulatory oversight for the over-the-counter derivatives market that best promotes transparency, accountability, and safety.

6. **To what extent is unregulated trading in credit default swaps responsible for the current financial crisis?**

I believe that many factors contributed to the current financial crisis. One of the significant lessons we have learned is that unregulated derivatives dealers, many of which were affiliates of broker dealers, threatened and in some cases destroyed their parent or affiliate, causing global shockwaves.

This was the case in AIG's failure, for example. AIG, a leading global insurance company, with many state regulated insurance subsidiaries, had an unregulated capital markets and derivatives affiliate, AIG Financial Products. This unregulated affiliate developed a significant credit default swap business. By June, 2008, they reported having a $447 billion net notional amount of credit default swaps. Approximately two thirds of this was written to support regulatory capital of major banks, primarily in Europe. The other third was written largely in support of asset securitizations. Regulators failed to institute appropriate oversight for this unregulated dealer and others like it. Global regulators also failed to keep pace with this new and rapidly growing market, and systematically serious consequences resulted.

While serving at the Treasury Department as the Under Secretary for Domestic Finance in the late 1990's, as part of the Treasury team, I advocated for regulation of the then unregulated derivatives dealers affiliated with brokerage houses. I feel even more strongly that this is the right course of action today. If confirmed by the Senate, a high priority for me will be working with Congress and other regulators on a statutory and regulatory framework for all derivatives dealers including appropriate capital requirements, business conduct standards, and other rules.

Furthermore, if confirmed by the Senate, I look forward to working with Congress on considering further regulations for credit default swaps. This would be in addition to bringing all standardized over-the-counter derivatives into mandated centralized clearing and onto exchanges, establishing a statutory and regulatory framework for derivatives dealers, and formulating appropriate oversight for bilateral customized derivatives. Credit default swaps have a close relationship to corporate bonds and other securities. Credit default swaps also were used by some banks to manage their bank capital requirements and to structure asset securitizations. Given these unique characteristics of credit default swaps, I believe multi-agency regulatory review and cooperation will be necessary in working with Congress to design possible new federal regulations specific to these products.

7. **Do you believe all credit default swaps should be subject to mandatory clearing on a prospective basis? Or do you prefer a policy of voluntary clearing?**

I believe that all standardized over-the-counter derivatives, including interest rate, currency, equity, commodities and credit default swaps, should be brought into mandated centralized clearing. As I have discussed above, I believe that further regulations for credit default swaps should be considered in addition to bringing all standardized over-the-counter derivatives into mandated centralized clearing and onto exchanges, establishing a regulatory framework for derivatives dealers, and formulating appropriate oversight for bilateral customized derivatives.

8. **Should existing credit default swaps be subject to mandatory clearing?**

I believe this is an important issue not only with regard to credit default swaps, but for all outstanding over-the-counter derivatives. Bringing standardized over-the-counter derivatives into mandated centralized clearing could ensure for the daily valuation of transactions through mark to market accounting, enhance the soundness of the system by requiring the timely posting of collateral, and increase transparency into dealers' total aggregate trading positions by underlying commodities.

Most existing over-the-counter derivatives contracts, however, were entered into on a bilateral basis. In addition, a review of publicly available data suggests that the majority of outstanding mark-to-market exposures for derivatives dealers have not been fully collateralized. To do so would require significant additional resources and capital for the major banks.

If confirmed by the Senate, I look forward to working with Congress and other regulators to consider this important question and how to best achieve the benefits that mandated centralized clearing of existing over-the-counter derivatives could provide.

9. Which agency should Congress designate as the regulator of organizations which will clear credit default swaps: the CFTC, the Securities and Exchange Commission (SEC) or the Federal Reserve?

The CFTC has a well established record of successfully overseeing and regulating derivatives clearing organizations in the US. In my view, this experience makes the CFTC best suited for overseeing central counterparty clearing of credit default swaps.

10. Should credit default swaps be regulated as insurance? If so, should this be state based regulation or federal regulation?

Some credit default swaps have insurance-like characteristics. For example, AIG Financial Products, the unregulated affiliate of AIG discussed above, was writing credit protection for European banks and asset securitizations. This shared many characteristics with the bond insurance protection being written at the same time by monoline financial guarantee insurers like MBIA and AMBAC. Given this and other unique characteristics of credit default swaps, I believe multi-agency regulatory cooperation will be necessary in working with Congress to design possible new federal regulations for these products.

11. What is the social benefit from naked credit default swaps (e.g. the entity does not own the property that is covered by the swap but is simply speculating on the failure of an institution or governmental unit)? Should "naked" credit default swaps be outlawed altogether? If not, why not?

Naked credit default swaps, particularly those related to single issuers, have many attributes of a short sale of a corporate bond. Approximately half of the current credit default swap marketplace relates to single-issuer credit default swaps. Congress is currently considering legislation that would ban naked credit default swaps. If confirmed by the Senate, I look forward to working with Congress and other regulators to consider how to best protect against manipulation and market abuse that may result from trading in naked credit default swaps.

Please explain oil prices and the CFTC's regulatory response in 2008

12. What is your explanation for why oil prices increased from about $90 per barrel in December 2007 to about $150 per barrel in July 2008, to fall to less than $40 today? To what extent was speculation by large banks and index investors in swaps or futures responsible for a portion of the run up?

I believe that rapid growth in commodity index funds was a contributing factor to a bubble in commodities prices that peaked in mid-2008. The expanding number of hedge funds and other investors who were increasing asset allocations to commodities within their portfolios also put upward pressure on prices.

If confirmed by the Senate, I look forward to working with Congress to take a fresh look at the role of speculation in the commodity futures markets.

13. How would you have used the regulatory tools available to the CFTC differently than the CFTC did this year to address the unprecedented spike in oil prices?

Guarding against excessive speculation and market manipulation are two core functions of the CFTC's oversight responsibility. If confirmed by the Senate, I look forward to working with Congress and my fellow Commissioners to increase the CFTC's ability to guard against excessive speculation by increasing transparency around index and other non-commercial investors, reviewing all current hedge exemptions from position limits, and ensuring that position limits are applied consistently across all markets and trading platforms.

I believe that the CFTC could have been more vigilant in guarding against excessive speculation in the commodities futures markets. The CFTC has used no-action letters for important regulatory decisions such as allowing foreign boards of trade direct access to US customers and granting hedge exemptions. These no-action letters have had consequential effects on the Commission's regulatory programs. If confirmed by the Senate, I would undertake a thorough review of the process and standards for which matters come to the Commission and through which no-action letters are issued.

I also believe that the CFTC should promote greater transparency by providing more useful and comprehensive data to the public. For example, the CFTC currently provides weekly "Commitments of Traders" reports (COT's), which show large position interests in certain commodities subject to CFTC oversight. These published reports are segmented into "commercial" and "non-commercial" positions and in some cases, nearly 90% of reported open interests are held by non-commercial traders. I believe we could promote greater transparency and market integrity by providing a further breakdown of non-commercial open interests. If confirmed by the Senate, I will work with the CFTC staff to use the tools at our disposal to protect consumers, investors, and farmers by promoting transparency through more sophisticated data collection and dissemination.

The Commodities Futures Modernization Act of 2000

14. Do you agree that it was prudent to provide "legal certainty" as part of the CFMA to exempt swaps form CFTC regulation?

We have learned a great deal since that time. Capital markets have been transformed and we have witnessed the harsh aftermath of Wall Street's excesses. I firmly believe that the American public and our economy benefit from strong, intelligent regulation. To be effective, though, regulations must adapt and stay abreast of developing technologies and new products. We must move swiftly now to apply the hard lessons we have learned. We must better protect investors, consumers, and farmers by reforming our regulatory system and enacting far-reaching rules that promote transparency, accountability, fairness, and safety and ensure a crisis of this severity does not happen again.

I believe we must enact a broad regulatory regime for the over-the-counter derivatives market. If confirmed by the Senate, I look forward to working with Congress to bring all standardized over-the-counter derivatives into mandated centralized clearing and onto exchanges, establish a statutory and regulatory framework for derivatives dealers, formulate appropriate oversight for bilateral customized derivatives, and consider further additional regulation for credit default swaps.

Regarding the 'legal certainty' of over the counter derivatives, this issue had been discussed since the establishment of the CFTC in 1974. Since that time, bilateral over-the-counter derivatives entered into between institutional counterparties had not been regulated by the CFTC. This was based upon a combination of the statutory language of the Commodities Exchange Act setting up the CFTC, subsequent Congressional actions, CFTC interpretations and policy statements, case law, and regulatory practice. For instance, in 1974, Congress incorporated the 'Treasury Amendment,' which exempted from CFTC regulation transactions in foreign currencies, government securities, mortgage securities, and certain other debt instruments. Later, in 1989 the CFTC Swaps Policy Statement was issued, followed in 1992 by the Futures Trading Practices Act and subsequently, in 1993, both the CFTC Swaps Exemption and Forward Contract Exemption were issued. One of the principal goals of the 2000 legislation was to provide further legal certainty under the CEA for the then existing regulatory practice.

15. Would you support a complete repeal of the CFMA?
16. If not, what specific part of the CFMA would you repeal?

<u>Answer to 15 & 16</u>

I believe there are many areas where the Commodities Exchange Act should be amended and improved.

In particular, I believe we must enhance the CFTC's ability to guard against excessive speculation in commodities markets and enact a broad regulatory regime for the over-the-counter derivatives marketplace that promotes transparency, accountability, and safety.

If confirmed by the Senate, I look forward to working with Congress to increase the CFTC's ability to guard against excessive speculation by increasing transparency around index and other non-commercial investors, reviewing all current exemptions from position limits, and ensuring that position limits are applied consistently across all markets and trading platforms.

I also believe that all physical commodities, including agricultural, metals and energy, should have consistent regulation under the Commodities Exchange Act. If confirmed by the Senate, I look forward to working with Congress to achieve this objective.

I believe we must also reform regulation of the over-the-counter derivatives market. If confirmed by the Senate, I look forward to working with Congress to bring all standardized over-the-counter derivatives into mandated centralized clearing and onto exchanges, establish a statutory and regulatory framework for derivatives dealers, formulate appropriate oversight for bilateral customized derivatives, and consider further additional regulation for credit default swaps.

Bringing all standardized over-the-counter derivatives into mandated centralized clearing could ensure the daily valuation of transactions through mark to market accounting, enhance the soundness of the system by requiring the timely posting of collateral, and increase transparency into dealers' total aggregate trading positions by underlying commodities.

Bringing standardized derivatives products onto exchanges would promote transparency, increase market integrity, enhance the price discovery function, and provide additional safeguards for investors.

I believe we must establish a statutory and regulatory framework for derivatives dealers including appropriate capital requirements, business conduct standards, and other rules.

I also believe we need to consider appropriate regulations for customized bilateral derivatives that will allow commercial interests and hedgers to maintain the benefits of these contracts, while assuring the transparency, accountability and safety of the system.

Credit default swaps have a close relationship to corporate bonds and other securities. Credit default swaps were used also by some banks to manage their bank capital requirements and to structure asset securitizations. Given these factors, I believe multi-agency regulatory cooperation will be necessary in working with Congress to design possible new regulations for these products.

17. What part of the economy is better off today because of the CFMA?

We are struggling through a time of unprecedented economic turmoil. The challenges cannot be overstated. I believe that both our financial system and our regulatory structure failed the American people. Many elements contributed to these failures and we have learned a great deal.

I firmly believe that the American public and our economy benefit from strong, intelligent regulation. We must apply the hard lessons we have learned to reform and amend the Commodities Exchange Act to better protect investors, consumers, and farmers by reforming our regulations and enacting far-reaching rules to ensure a crisis of this severity does not happen again.

Do you support strong regulatory authority and closing ALL loopholes? Please answer the following questions yes or no.

18. ***Eliminating exemptions and exclusions*: Eliminate the over the counter market exemptions by requiring all future transactions, including credit default swaps, to not only be subject to clearing, but to be conducted on fully regulated exchanges**

I believe that all standardized over-the-counter derivatives, including interest rate, currency, equity, commodities and credit default swaps, should be brought into mandated centralized clearing and onto exchanges. I also believe we need to consider appropriate regulations for customized bilateral derivatives that will allow commercial interests and hedgers to maintain the benefits of these contracts, while assuring the transparency, accountability and safety of the system.

Furthermore, I believe that all physical commodities, including agricultural, metals and energy, should have consistent regulation under the Commodities Exchange Act. If confirmed by the Senate, I look forward to working with Congress to achieve these objectives.

19. ***London Loophole*: Require all Foreign Boards of Trade that solicit or accept more than a certain level of the business volume from the U.S. to register as fully regulated domestic exchanges and thus be ineligible for "no action" letters?**

I support the CFTC's 2008 actions to close the "London Loophole" and ensure that foreign futures exchanges with permanent trading terminals in the U.S. comply with the position limitations applied to U.S. exchanges. Furthermore, I believe any foreign futures exchanges that have terminals in the United States to which our investors have access and whose contracts are based on the same underlying commodities should have consistent regulation applied, including position limits. If confirmed by the Senate, I look forward to working with Congress to codify the CFTC's authority to promulgate regulations regarding look-alike contracts trading on foreign futures exchanges that affect U.S. investors.

20. *Enron Loophole*: **Eliminate Exempt Commercial Markets as an eligible registration class and require existing Exempt Commercial Markets to register as fully regulated exchanges like a Designated Contract Market or a Designated Transaction Execution Facility?**

I believe that the "Enron Loophole" should be closed and that uniform standards must be applied to contracts for physical commodities that have the same practical pricing effects, as called for in the 2008 Farm Bill. As I have stated previously, I believe that all physical commodities, including agricultural, metals and energy, should have consistent regulation under the Commodities Exchange Act.

21. *Aggregate Speculation Limits*: **Set aggregate speculative position limits on energy and agriculture futures across all contract markets at the control or ownership level?**

I believe the CFTC should examine ways to set aggregate speculative position limits on energy and agriculture futures across all contract markets at the control or ownership level.

22. *Manipulation Standard*: **Strengthen the Commission's anti-manipulation authority from a "specific intent" burden to a "recklessness" burden bringing the CFTC more in line with the SEC, Federal Energy Regulatory commission (FERC), and the Federal Trade Commission (FTC)?**

Currently, because of recent grants of anti-manipulation authority by Congress to the FERC and FTC based upon SEC case law, there is the possibility that the same set of actions in a market could be subject to different legal standards for manipulation depending upon the agency bringing the case.

If confirmed by the Senate, I look forward to working with Congress and other regulators to consider how to best utilize and interpret the CFTC's anti-manipulation authority to consistently protect consumers and enhance market integrity.

Increased Resources for the Commission

23. *User-Fee Model*: **Adopt a futures transaction-fee model, that FERC uses and that the SEC has used since its inception, to increase available resources to the CFTC?**

I believe the CFTC is significantly underfunded to simply meet its current mandates. The CFTC also lacks the necessary technology to monitor today's markets effectively. Likewise, I am concerned that the CFTC has not directed enough resources towards developing a robust staff of independent economists, whose work is essential to the Commission and Congress.

Today, the staff numbers approximately 490, a decline of nearly 20% from earlier in the decade. Over the same time, exchange trading has grown exponentially, and the issues the CFTC faces have increased in complexity. Contracts traded or cleared on US futures exchanges have gone up nearly six-fold from 2000 to 2008. Thus, the CFTC's current resources do not seem appropriate to respond to the challenges we face or the times in which we live.

If Congress acts to expand the CFTC's mission and authority to better regulate over-the-counter derivatives markets, address excessive speculation, and increase investor protection, significant additional resources will be required.

I believe the critical issue is to find adequate resources to support the important work that lies ahead for this Commission. While I have not made an independent determination about user funding, if confirmed by the Senate, I intend to work with Congress and the Office of Management and Budget to find the most effective ways to secure the resources necessary for the CFTC to function fully.

FERC and FTC anti-manipulation authority – please answer the following question yes or no

24. **Congress specifically modeled the FERC's and FTC's anti-manipulation authority to allow the agencies to pursue manipulative activity in the futures markets that impact transactions in the cash markets. On the basis of the CEA's "exclusive jurisdiction" provision, the CFTC has resisted FERC's utilization of this authority when pursuing manipulative activity which originated in the futures markets and impacted their jurisdictional cash markets, and has strongly opposed the FTC's rulemaking that would allow it to bring actions which span the physical and financial markets. Will you support dropping this opposition to the FERC's authority in court, and work cooperatively with both the FERC and FTC on allowing them to exercise their authorities to pursue manipulative conduct which spans the physical and financial markets? If not, why not?**

If confirmed by the Senate, I would make it a high priority as Chairman to ensure the CFTC works with all other agencies effectively to prevent manipulation, protect investors, and enhance integrity in the physical and financial markets. We must ensure that we use the fullest grants of authority to pursue a robust enforcement agenda. More specifically, if confirmed by the Senate, I would meet with the Chairman of the FERC and of the FTC to find the most effective way to work together in furtherance of the public interest.

Sharing Answers

25. May I share your answers with interested colleagues?

I welcome your sharing these answers with interested colleagues and look forward to making myself available for meetings for follow up discussions.

February 11, 2009

The Honorable Dianne Feinstein
United States Senator
331 Hart Senate Office Building
Washington, DC 20510

Dear Senator Feinstein:

Thank you for your congratulations on my nomination to serve as Chairman of the Commodity Futures Trading Commission. I appreciate your interest and leadership on the many issues facing the Commission. Please find attached my responses to your specific questions.

I believe the CFTC must vigorously fulfill its mandates: enforcing existing laws aggressively, promoting market integrity, preventing fraud and manipulation, and guarding against excessive speculation.

We also are at a transformational time that requires bold leadership to strengthen our regulatory system. The American public and our economy benefit from strong, intelligent regulation. We must apply the hard lessons we have learned to repair our regulatory system and to enact far-reaching rules that promote transparency, accountability, fairness, and safety.

If confirmed by the Senate, I look forward to working with you on much needed regulatory reform. I believe we must enhance the CFTC's ability to guard against excessive speculation in commodities markets. Furthermore, I believe we must urgently move to enact a broad regulatory regime for the over-the-counter derivatives marketplace.

I look forward to sitting down with you to discuss my nomination and the important work facing the CFTC.

Sincerely,

Gary Gensler

1. **Commodity Futures Modernization Act. During your tenure as Undersecretary of the Treasury, Congress drafted the Commodity Futures Modernization Act that eliminated oversight of electronic markets – the Enron Loophole – and statutorily enshrined CFTC Chairman Wendy Graham's 1992 regulatory decision to exempt all bilateral swaps from CFTC oversight.**

   - **Did you support exempting energy trading on electronic markets and bilateral swaps from CFTC oversight?**

I firmly believe that the American public and our economy benefit from strong, intelligent regulation. We have learned a great deal in the nearly ten years since the President's Working Group on Financial Markets' Report on derivatives was published. I believe that we must now move swiftly to revise the Commodities Exchange Act (CEA) in light of many lessons learned to best promote transparency, accountability and safety.

The President's Working Group's 1999 Report called for swap agreements that "involve a non-financial commodity with a finite supply" to be fully regulated under the CEA without exclusions. The subsequent drafting and passing of the legislation was a lengthy process that was unable to achieve this recommendation. The legislation also did not incorporate the recommendation for enhanced regulation of derivative dealers affiliated with broker dealers.

I feel even more strongly today that all physical commodities, including agricultural, metals and energy, should have consistent regulation under the Commodities Exchange Act. I also believe that we must move swiftly to enact a broad regulatory regime for the over-the-counter derivatives marketplace. If confirmed by the Senate, I look forward to working with Congress to achieve these objectives.

   - **What role did you play in drafting this legislation, and what was your view of these exemptions at the time?**

I was not involved during 1998, when the Treasury, Federal Reserve and SEC articulated significant policy positions on these matters. This was during my first year at Treasury and I had been advised by Treasury Department Counsel that I was recused from these particular matters since they might relate directly to my former employer. The subsequent drafting and passing of the Commodity Futures Modernization Act (CFMA) was a lengthy and complex process, involving at least four government agencies including the Federal Reserve, SEC, CFTC and Treasury Department. Hearings were held in front of at least five Congressional Committees. As I was no longer subject to the restrictions of recusal in 2000, I was a member of a team that worked with and advised then-Treasury Secretary Lawrence Summers on Treasury and the Administration's positions.

   - **President Clinton's Working Group on Financial Markets recommended regulation of derivative and swaps dealers and called for swaps clearing. Did**

you recommend that President Clinton support the final legislation that included neither of these financial safeguards?

I believe we must urgently move to enact a broad regulatory regime for the over-the-counter derivatives market that best promotes transparency, accountability, and safety. If confirmed by the Senate, I look forward to working with Congress to bring all standardized over-the-counter derivatives into mandated centralized clearing and onto exchanges and to establish a statutory and regulatory framework for derivatives dealers. In addition, I would work with Congress to formulate appropriate oversight for bilateral customized derivatives, and consider further additional regulation for credit default swaps.

While serving as the Under Secretary for Domestic Finance, as part of the Treasury team, I advocated for regulation of the then unregulated derivatives dealers affiliated with brokerage houses. We were unable to achieve this objective working with Congress on legislation. The hard lessons of the financial crisis further highlight that regulating all derivatives dealers is the right course of action today. If confirmed by the Senate, I look forward to working with Congress and other regulators on a statutory and regulatory framework for derivatives dealers including appropriate capital requirements, business conduct standards, and other rules

One of the President's Working Group's recommendations nearly ten years ago was to facilitate clearing houses for over-the-counter derivatives. I feel strongly that we must now bring all standardized over-the-counter derivatives into mandated centralized clearing. I believe that this should cover all standardized products, including interest rate, currency, equity, commodities and credit default swaps. This step could ensure the daily valuation of transactions through mark to market accounting, enhance the soundness of the system by requiring the timely posting of collateral, and increase transparency into dealers' total aggregate trading positions by underlying commodities.

- **Do you view the Commodity Futures Modernization Act as a mistake?**

I believe that both our financial system and our regulatory system failed the American people. There were many elements that contributed to these failures and we have learned a great deal since the legislation was enacted. To repair and reform the system, I believe we must tackle a robust agenda including modifying regulation of mortgage origination and securitization, credit rating agencies, hedge funds, over-the-counter derivatives markets, and capital rules and counterparty risk standards. Additionally, we must improve systemic regulation, increase transparency, and put new protections in place for consumers, investors, and farmers.

To be effective, financial regulations must adapt and stay abreast of developing technologies, products and markets. I believe that we must now move swiftly to revise the Commodities Exchange Act (CEA) in light of many lessons learned to best promote transparency, accountability and safety.

- **What specific sections of this legislation do you support repealing today?**

First, we must enhance the CFTC's ability to guard against excessive speculation in commodities markets. I believe that all physical commodities futures, including agricultural, metals and energy, should have consistent regulation under the Commodities Exchange Act. I also believe we must increase the CFTC's ability to guard against excessive speculation by increasing transparency around index and other non-commercial investors, reviewing all current exemptions from position limits, and ensuring that position limits are applied consistently across all markets and trading platforms. If confirmed by the Senate, I look forward to working with Congress to achieve these objectives.

Second, we must urgently move to enact a broad regulatory regime for the over-the-counter derivatives marketplace that best promotes transparency, accountability, and safety.
If confirmed by the Senate, I look forward to working with Congress to bring all standardized over-the-counter derivatives into mandated centralized clearing and onto exchanges, establish a statutory and regulatory framework for derivatives dealers, formulate appropriate oversight for bilateral customized derivatives, and consider further additional regulation for credit default swaps.

2. **Swaps regulation. Much like OTC energy derivative swaps, voice-brokered credit default swaps markets operate with no market monitoring to prevent manipulation, no clearinghouse holding collateral to back transactions, and no comprehensive records of who is trading what. Do you support repealing the "swaps loopholes" in Section 2 of the Commodity Exchange Act? Would you support legislation striking subsection (d), subsection (g) and paragraphs (1) and (2) of subsection (h) of the Act?**

I believe that we must urgently move to enact a broad regulatory regime for the over-the-counter derivatives marketplace that best promotes transparency, accountability, and safety.

If confirmed by the Senate, I look forward to working with Congress to bring all standardized over-the-counter derivatives into mandated centralized clearing and onto exchanges, establish a statutory and regulatory framework for derivatives dealers, formulate appropriate oversight for bilateral customized derivatives, and consider further additional regulation for credit default swaps.

I also believe that all physical commodities futures, including agricultural, metals and energy, should have consistent regulation under the CEA.

To achieve these goals, amending each of the referenced subsections of the CEA would be required. If confirmed, I look forward to working with Congress to achieve these objectives.

3. **Enron Loophole. The 2007 Farm Bill closed the Enron Loophole by requiring electronic exchanges to actively monitor trading of significant price discovery contracts. CFTC must review electronic contracts on an ongoing basis to ensure that all**

significant price discovery contracts are regulated. What will you do to ensure that CFTC's review is thorough and effective?

I believe that the "Enron Loophole" should be closed and that uniform standards must be applied to contracts for physical commodities that have the same practical pricing effects, as called for in the Farm Bill. I believe that all physical commodities, including agricultural, metals and energy, should have consistent regulation under the Commodities Exchange Act.

If confirmed by the Senate, I am committed to ensuring that the CFTC vigorously fulfills its mandates: enforcing existing laws aggressively, promoting market integrity, preventing fraud and manipulation, and guarding against excessive speculation. I believe a critical issue is finding adequate resources to support the important work required of this Commission. The CFTC is significantly underfunded to simply meet its current mandates, and its mandates are increasing. I intend to work with Congress and the Office of Management and Budget to find the most effective ways to secure the resources necessary for the CFTC to function fully.

4. **Prevent systemic risk through a new clearinghouse. The President's Working Group on Financial Markets (PWG) has signed a memorandum of understanding to guide oversight of a credit default swap clearinghouse, but both the SEC and the CFTC have stated in testimony that their ability to regulate a swaps clearinghouse is limited by the Commodity Futures Modernization Act.**

   - **Do you support legislation requiring a credit default swap clearinghouse to be registered with CFTC as a Derivatives Clearing Organization?**

I support legislation requiring a credit default swap clearinghouse to be registered with the CFTC as a Derivatives Clearing Organization (DCO).

   - **CFTC is the federal agency with the most substantial history of regulating clearing organizations. The Federal Reserve has the legal power to regulate clearing, but Congress has not specified regulatory principles under which the Federal Reserve would perform this regulation. Do you believe CFTC should be the lead agency overseeing swaps clearing?**

The CFTC has a well established record of successfully overseeing and regulating derivatives clearing organizations in the US. In my view, this experience makes the CFTC best suited for overseeing central counterparty clearing of credit default swaps.

   - **If multiple regulators oversee different clearinghouses, would it be difficult to ensure that any one regulator would have a comprehensive market view?**

As this financial and economic crisis has powerfully demonstrated, regulators must work more closely together and with our international partners on all of these issues. Today's complex financial markets are global, and as we have seen, absolutely and irreversibly interlinked. We need to ensure that our partners in regulating markets both here and around the world apply the same rigor in enforcing standards of transparency, accountability and safety for investors. Regulators must have a comprehensive market view in order to fulfill their mission. If confirmed by the Senate, I look forward to working with Congress to ensure we achieve these goals.

- **Does the current memorandum of understanding allow clearinghouses to choose their regulator based on which agency is least onerous, creating a "race to the bottom" effect?**

I believe we need to work with Congress and international regulators to ensure the highest standards of customer protection and market integrity by promoting consistent guidelines for transparency, accountability, and safety that are established and strictly enforced across all global commodities markets.

5. **Require FDIC insured banks to clear all swaps in energy and credit. A clearinghouse prevents systemic risk only if large banks use it. Even if the PWG succeeds in establishing a clearinghouse, large institutions will be able to execute uncleared trades at lower cost, exposing shareholders and the American people to counterparty default risk and our economy to systemic risk. Do you support legislation to require that FDIC guaranteed entities must clear all swaps contracts?**

I believe that all standardized over-the-counter derivatives, including interest rate, currency, equity, commodities and credit default swaps, should be brought into mandated centralized clearing. This would include those entered into by FDIC-guaranteed entities.

6. **Risk Based Swaps Oversight. The swaps loophole allows financial and energy bilateral over-the-counter contracts to be traded without government oversight of any kind. While bilateral swaps are private contracts of infinite variation, many have a substantive impact on the market. Acting CFTC Chairman Walter Lukken advocated using a risk-based approach to monitor selectively those swaps contracts traded in large volumes, used as a price reference, standardized, or expose the market to systemic risk. This approach was adopted in the Farm Bill provisions and in the Over-the-Counter Swaps Speculation Limit Act that I introduced in September. How do you propose to regulate bilateral swaps contracts to protect the market?**

I believe we must urgently move to enact a broad regulatory regime for the over-the-counter derivatives marketplace that best promotes transparency, accountability, and safety.

If confirmed by the Senate, I look forward to working with Congress to bring all standardized over-the-counter derivatives into mandated centralized clearing and onto exchanges, establish a statutory and regulatory framework for derivatives dealers, formulate appropriate oversight for bilateral customized derivatives, and consider further additional regulation for credit default swaps.

Bringing all standardized over-the-counter derivatives into mandated centralized clearing could ensure the daily valuation of transactions through mark to market accounting, enhance the soundness of the system by requiring the timely posting of collateral, and increase transparency into dealers' total aggregate trading positions by underlying commodities.

Bringing standardized derivatives products onto exchanges would promote transparency, increase market integrity, enhance the price discovery function, and provide additional safeguards for investors.

I believe we must establish a statutory and regulatory framework for derivatives dealers including appropriate capital requirements, business conduct standards, and other rules.

I also believe we need to consider appropriate regulations for customized bilateral derivatives that will allow commercial interests and hedgers to maintain the benefits of these contracts, while assuring the transparency, accountability and safety of the system.

Credit default swaps have a close relationship to corporate bonds and other securities. Credit default swaps were used also by some banks to manage their bank capital requirements and to structure asset securitizations. Given these factors, I believe multi-agency regulatory cooperation will be necessary in working with Congress to design possible new regulations for these products.

7. **A Central, Real-Time Trading Database. My attempts to require large trader reporting of bilateral swaps failed in 2002 and 2003. As a result, no centralized source of information about voice brokered swaps exists. According to Texas Law Professor Henry Hu, "a data clearinghouse may help provide advance notice to regulators of possible entity-specific or system-wide problems and early remediation. Should problems arise, this data clearinghouse can contribute materially to the informational predicate for proper regulatory responses to such problems."**

   In examples including Enron, Amaranth, and AIG, regulators failed to anticipate market failures of devastating proportion because they did not have a picture of the marketplace. A data clearinghouse would enable the regulator to anticipate problems and address them.

   - **Do you support creating central database of all bilateral swaps positions in both financial and energy markets held by any large trader?**

As I have stated, I believe that all standardized over-the-counter derivatives, should be brought into mandated centralized clearing and onto exchanges. I also believe that we need to formulate appropriate oversight for bilateral customized derivatives. Registration of all derivatives clearing houses with the CFTC as DCOs, along with appropriate reporting requirements for customized bilateral swaps, could serve the goal of creating a central database of all bilateral derivatives positions in both the financial and energy markets.

- **In 2008, CFTC used its special call authority to solicit swaps positions held by institutional investors, but this dataset was incomplete. Will you use CFTC's existing special call authority to establish a central swaps database for large traders within 120 days of your confirmation?**

I believe that a broad regulatory regime is needed for over-the-counter derivatives. Moving all standardized over-the-counter derivatives into mandated centralized clearing and onto exchanges, formulating appropriate oversight of customized derivatives, and regulating derivatives dealers, should provide the means to establish and maintain such a central database for large traders. The CFTC also has a special call authority to solicit information from institutional investors. If confirmed by the Senate, I look forward to working swiftly with Congress to determine the best means of establishing a central swaps database for large traders.

8. **Position Limits. OTC bilateral swaps speculators currently may hold unlimited positions, even if they do not have exposure to the underlying commodity or debt obligation. In energy commodities, unlimited speculation allows speculative positions to drive prices instead of supply and demand, and in credit default swaps traders even speculate on the third party's demise.**

- **Do you support imposing position limits on speculators in the energy swaps market and credit default swaps markets?**

Guarding against excessive speculation and market manipulation are two core functions of the CFTC's oversight responsibility. If confirmed by the Senate, I look forward to working with Congress and my fellow Commissioners to increase the CFTC's ability to guard against excessive speculation by increasing transparency around index and other non-commercial investors, reviewing all current hedge exemptions from position limits, and ensuring that position limits are applied consistently across all markets and trading platforms.

- **Do you support legislation that would limit speculative positions to ensure liquidity while preventing speculators from dominating the market?**

I believe that the CFTC may exercise its authority at its discretion to establish position limits over all commodity futures. If confirmed by the Senate, I will ensure that all available resources and authorities are deployed to protect investors in the commodities futures markets. If those authorities are insufficient, I will not hesitate to ask Congress for additional statutory authority to ensure liquidity and guard against excessive speculation.

- **Do you support imposing aggregate position limits on energy traders, so that position limits consider positions in functionally identical products, whether they are held in bilateral swaps, on electronic exchanges, on registered exchanges, or on foreign boards of trade?**

I believe the CFTC should examine ways to set aggregate speculative position limits on energy and agriculture futures across all contract markets. If confirmed by the Senate, I look forward to working with Congress on legislation to codify the CFTC's authority to promulgate regulations regarding look-alike contracts.

9. **Close the London loophole. Closing the London Loophole would prevent U.S. oil and financial derivatives from being traded on international exchanges without robust oversight. According to CFTC, U.S. oil futures traders on ICE Futures Europe exceeded U.S. speculation limits every single week from 2006 to 2008. In June, CFTC announced it would limit this offshore market speculation and require recordkeeping. But legislation is still needed to require foreign exchanges with U.S. customers to adopt the same speculation trading limits and reporting requirements that apply to United States trades – ending the regulatory race to the bottom. Will you endorse legislation to close the London loophole, which Senator Levin and I introduced in 2008?**

I support all actions to close the "London Loophole" and ensure that foreign futures exchanges with permanent trading terminals in the U.S. comply with the position limitations and reporting requirements that are applied to trades made on U.S. exchanges. Furthermore, I believe any foreign futures exchanges that have terminals in the United States to which our investors have access and whose contracts are based on the same underlying commodities should have consistent regulation applied, including position limits. If confirmed by the Senate, I look forward to working with Congress on legislation to codify the CFTC's authority to promulgate regulations regarding look-alike contracts trading on foreign futures exchanges that affect U.S. investors.

10. **U.S. Leadership in an international reform effort. Electronic markets, fluid capital flows, and new financial centers in emerging markets make the balkanized financial regulatory system inadequate to meet new challenges. The United States could help restore our standing in the world by calling for and leading an effort to establish minimum international standards for market transparency, accountability, and oversight. How do you intend to pursue improved international cooperation?**

As this crisis has powerfully demonstrated, we must work more closely with our international partners on all of these issues. Today's complex financial markets are global, and as we have seen, absolutely and irreversibly interlinked. We need to ensure that our partners in regulating markets around the world apply the same rigor in enforcing standards of transparency, accountability and safety for investors that we will demand of our markets. If confirmed, I look forward to working with Congress and international regulators to ensure we achieve these goals.

11. **Improve federal regulatory structure and coordination. American financial markets are overseen by seven regulators: the Federal Reserve System, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration. In light of the**

conversion by Goldman Sachs and JPMorgan Chase into bank holding companies and recent acquisitions by other major financial institutions, the jurisdiction of regulatory authority has been blurred. A forward-looking, unified oversight structure should be developed to coordinate regulatory efforts and limit future gaps in oversight. What do you believe to be the benefits of maintaining CFTC independence, and what do you believe would be the benefits of combining the CFTC with other regulators?

If confirmed by the Senate, one of my principal goals will be to help reform our regulatory system, which has failed to keep Americans out of harm's way. I have a longstanding commitment to advocating for investor protection and for progressive reforms.

To revitalize our financial system, I believe we must tackle a robust agenda including modifying regulation of mortgage origination and securitization, credit rating agencies, hedge funds, over-the-counter derivatives markets, and capital rules and counterparty risk standards. Additionally, we must improve systemic regulation, increase transparency, and put new protections in place for consumers, borrowers, and investors.

I believe accomplishing these objectives must be the primary consideration in any proposed agency reforms. The CFTC performs vital functions and it is critical that all of its mandates are preserved, even as the demands on our regulatory agencies expand. A merger makes sense only if it enhances our ability to carry out the important tasks with which the CFTC is entrusted. Thus, I would not consider a merger simply for merger's sake.

January 26, 2009

The Honorable Carl Levin
United States Senator
269 Russell Office Building
Washington, DC 20510

Dear Senator Levin,

I am writing to respond to your series of questions regarding my nomination to be Chairman the Commodity Futures Trading Commission. Please find my responses attached.

I appreciated the opportunity to meet with you on January 14, 2009 to discuss the clear needs to strengthen the role of the CFTC. In addition I would like to thank you for your questions to further clarify my views on these important issues. I believe we are at a transformational time that requires bold leadership to strengthen our regulatory system.

As Chairman of the Permanent Subcommittee on Investigations of the Senate Committee on Homeland Security and Government Affairs, I look forward to working with you should I be confirmed by the United States Senate.

Should you have further questions, please do not hesitate to contact me.

Sincerely,

Gary Gensler

Questions for CFTC Chairman-Designee Gary Gensler
From Senator Carl Levin (D-MI)
January 26, 2009

1. **Do you believe that speculation in commodity futures markets -- trading or investing in commodities by persons who do not produce or use the commodity in order to profit from commodity price changes -- can affect the price of commodity futures? Can speculation in futures markets affect the actual cash price of a commodity?**

I believe that speculative trading or investing by persons who do not produce or use a commodity in order to profit from commodity price changes can affect prices for commodity futures as well as for the underlying commodities. I think we have seen this demonstrated in the commodity futures markets during the past several years.

If confirmed by the Senate, I look forward to working with Congress and my fellow CFTC Commissioners to take a fresh look at the role of speculation in commodity futures markets.

2. **Section 4a of the Commodity Exchange Act states: "Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets or derivatives transaction execution facilities causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. . . ." Section 4a directs the CFTC to establish position limits to prevent such burdens. Do you believe that excessive speculation in commodity futures traded on CFTC-regulated exchanges can cause "sudden or unreasonable fluctuations or unwarranted changes" in commodity prices?**

I believe that excessive speculation in commodity futures can cause sudden or unreasonable fluctuations or unwarranted changes in commodity prices. If confirmed by the Senate, I will ensure that the CFTC fulfills its statutory mission to guard against excessive speculation.

3. **The CFTC has used the authority under section 4a to establish position limits to prevent traders from acquiring large positions that could be used to manipulate the price of commodities traded on futures exchanges and to prevent price distortions at contract expiration. It has generally not used this authority to establish position limits to prevent levels of speculation that, absent proof of manipulation, may nonetheless significantly affect commodity prices. Do you believe that the CFTC should establish position limits to ensure that excessive levels of speculation, even in the absence of manipulation, are not causing**

"sudden or unreasonable fluctuations or unwarranted changes" in the prices of commodities?

Guarding against excessive speculation and market manipulation are two core functions of the CFTC's oversight responsibility. I believe that the CFTC may exercise its authority at its discretion to establish position limits over all physical commodities, including agricultural, metals and energy commodities. If confirmed by the Senate, I will ensure that all available resources and authorities are deployed to protect investors in the commodities markets.

For example, I believe there is a need to analyze all outstanding exemptions to position limits that have been granted previously to non-commercial hedgers ('hedge exemptions'). If confirmed by the Senate, I will ask the CFTC staff to undertake a review of all outstanding hedge exemptions, to consider the appropriateness of those exemptions, and to evaluate potential practices for instituting regular review and increased reporting by exemption-holders

4. **Do you believe that trading in commodity markets not regulated by the CFTC, such as over-the-counter (OTC) markets or foreign exchanges, can affect the prices of commodities in markets or exchanges regulated by the CFTC?**

I believe that trading in over-the-counter derivatives markets or on foreign futures exchanges can and does affect the cash prices of commodities in the spot markets and the prices of commodity futures traded on regulated exchanges.

If confirmed by the Senate, I look forward to working with Congress and my fellow Commissioners in considering greater oversight and consistent regulation, where appropriate, for all markets relating to commodities.

5. **Do you support amending the Commodity Exchange Act to provide the CFTC with sufficient authority to regulate commodity swaps and other instruments traded in OTC markets to ensure the integrity and transparency of the price of commodities traded in markets currently regulated by the CFTC?**

I believe that both our financial system and our regulatory structure have failed the American people. To achieve the regulatory reform required by our citizens and the overall system, I believe we must work to ensure for a far more stable and resilient financial system, to better protect market integrity and the price discovery function, and to provide increased protection for consumers, borrowers, and investors. If confirmed by the Senate, I look forward to working with Congress, the Administration and other regulators to create a transparent, open and accountable regulatory oversight structure for the over-the-counter derivatives market.

I believe that we need to bring standardized products into mandated centralized clearinghouses and onto exchanges, establish a regulatory framework for derivatives dealers and formulate appropriate oversight for credit default swaps.

Bringing standardized derivatives products into mandated centralized clearinghouses would ensure the discipline of daily valuation of transactions through mark to market accounting. This measure would enhance the safety and soundness of the system by requiring timely posting of collateral. Clearinghouses also would give regulators a direct window into dealers' total aggregate trading positions by underlying commodities. Likewise, bringing standardized derivatives products onto exchanges would promote transparency, increase market integrity, and enhance the price discovery function.

If confirmed by the Senate, I look forward to working with Congress as well to consider appropriate regulations for customized bilateral over-the-counter derivatives.

One of the significant lessons of the financial crisis is that unregulated derivative dealers, many of which were affiliates of insurance companies or broker dealers, threatened and in some cases destroyed their parent or affiliate, causing global shockwaves. This was the case in AIG's failure, for example.

While serving at the Treasury Department as the Under Secretary for Domestic Finance in the late 1990's, I advocated for regulation of the then unregulated derivatives dealers affiliated with brokerage houses. I feel even more strongly that this is the right course of action today. If confirmed by the Senate, I look forward to working with Congress, my fellow Commissioners and other regulators to consider appropriate capital requirements, business conduct standards, and other rules for derivatives dealers.

Finally, if confirmed by the Senate, I look forward to working with Congress on considering possible further regulation of credit default swaps. Given the unique nature and close relationship of credit default swaps to corporate bonds and other securities, the CFTC, the SEC and other regulators, working in tandem, need to consider possible additional regulations to protect the integrity of the markets and investors.

6. Do you support providing the CFTC with authority to require the reporting of large trades in OTC markets in order to prevent manipulation, price distortion, or excessive speculation in CFTC-regulated futures markets?

As I stated in question 4, I believe trading and pricing in over-the-counter derivatives markets can and does have a direct effect on regulated futures markets. The initiatives I have set forth in question 5 would give the CFTC greater visibility into the over-the-counter derivatives markets if enacted. Furthermore, if confirmed by the Senate, I look forward to working with Congress to consider both the appropriateness and the potential means of extending position limits to certain of these markets.

7. **The 2008 Farm Bill provided the CFTC with authority and directed the CFTC to promulgate rules to regulate commodity contracts traded on electronic trading facilities that the CFTC finds perform a significant price discovery function.**

   a) **Do you believe that the trading of commodity contracts on electronic trading facilities like the Intercontinental Exchange (ICE) can affect the price of similar contracts traded on CFTC-regulate futures exchanges?**

I believe that trading of "look-alike" contracts on electronic-trading facilities can and does affect the prices of similar contracts traded on regulated futures exchanges.

   b) **What priority would you place, if confirmed, on issuing the regulations called for in the Farm Bill for contracts that perform a significant price discovery function?**

If confirmed, I would place a high priority on closing the "Enron Loophole" and promoting uniform standards for contracts that have the same practical pricing effects, as called for in the Farm Bill.

   c) **Do you agree that under the 2008 Farm Bill the CFTC has unilateral authority to determine which contracts perform a significant price discovery function and that a formal hearing or rulemaking is not required to make this determination?**

The statute as enacted is clear that the CFTC has unilateral authority to determine whether an agreement, contract, or transaction performs a significant price discovery function.

8. **What is your view on whether and how the growth of commodity index funds over the last 5 years has affected commodity prices?**

I believe that rapid growth in commodity index funds was a contributing factor to a bubble in commodities prices that peaked in mid-2008. The expanding number of hedge funds and other investors who were increasing asset allocations to commodities within their portfolios also put upward pressure on prices. Notably, though, no reliable data about the size or effect of these two influential investor groups has been readily accessible to market participants.

If confirmed by the Senate, I look forward to working with my fellow Commissioners and the Congress to increase transparency around these commodity index funds and investors. The CFTC currently provides weekly "Commitments of Traders" reports (COT's), which show large position interests in certain commodities subject to CFTC oversight. These published reports are segmented into "commercial" and "non-commercial" positions and in some cases, nearly 90% of reported open interests are held by non-commercial traders. I believe we could promote greater transparency and market integrity by providing a further breakdown of non-commercial open interests.

9. If confirmed, would you seek to improve the CFTC's data and public reporting of data to improve the understanding of how commodity index funds affect commodity markets? What improvements in data would you like to see?

As I have stated above in my answer to question 8, if confirmed by the Senate, I plan to reevaluate the CFTC's data collection and production capacity, particularly as it relates to the effect of commodity index funds and non-commercial traders on the broader commodities markets. The CFTC is likely to require further resources and additional technology to accomplish this goal.

10. If confirmed, how would you strengthen and improve the CFTC's market surveillance and oversight?

Providing market surveillance and oversight is one of the CFTC's core functions. As outlined in questions 5 and 6, if confirmed by the Senate, I look forward to working with Congress to address the regulation of over-the-counter derivatives and excessive speculation in commodities markets. I believe the CFTC will require increased resources to carry out these new initiatives, which will promote market integrity and increase transparency, thereby improving the surveillance and oversight functions. If confirmed by the Senate, I look forward to working with the Congress to secure the much-needed additional resources to undertake these reforms and strengthen this area.

11. What is your view of the CFTC's enforcement capabilities? How would you strengthen and improve the CFTC's enforcement capabilities and activities?

A highly functioning enforcement capability is critical to an effective CFTC. The CFTC's enforcement division has brought some notable recent actions with limited current resources. If confirmed by the Senate, I will request more attorneys and investigators to detect and prosecute fraud and manipulation in these markets and to enforce possible new regulations regarding over-the-counter derivatives and excessive speculation in the commodities markets.

12. Do you agree that the CFTC's budgetary and staff resources have not kept pace with the growth in commodity markets over the past decade? Do you agree that the CFTC is currently underfunded? If confirmed, how would you seek to improve the CFTC's budgetary and staff resources?

The CFTC is underfunded in terms of both budget and staff. Today, the staff numbers approximately 490, a decline of nearly 20% from earlier in the decade. During this time, markets have grown exponentially, and the issues the CFTC faces have increased in complexity. I am also concerned that the CFTC lacks the necessary technology to monitor today's markets effectively.

If Congress acts to expand the CFTC's mission and authority to better regulate over-the-counter derivatives markets, address excessive speculation, and increase investor protection, significant additional resources will be required.

13. For many years, the President's budget has recommended that Congress impose a user fee on commodity market participants to fund part of the CFTC's activities. The CFTC is currently the only major U.S. financial regulator that is not at least partially funded through user fees. Do you support the imposition of user fees to fund CFTC activities?

I believe the critical issue is to find adequate resources to support the important work that lies ahead for this Commission. The CFTC is significantly underfunded to simply meet its current mandates. While I have not made an independent determination about user funding, I intend to work with Congress and the Office of Management and Budget to find the most effective ways to secure the resources necessary for the CFTC to function fully.

14. Currently, the CFTC permits certain foreign exchanges, such as ICE Futures and the Dubai Mercantile Exchange, to install trading terminals in the United States so as to permit traders located in the United States to trade various U.S. energy commodities on these foreign exchanges as well as on U.S. exchanges. In 2008, the CFTC determined that in order for ICE Futures to continue to operate its trading terminals in the United States it would require ICE Futures to impose comparable position limits to those of the NYMEX for commodities traded on both exchanges. ICE Futures and the U.K. Financial Services Authority have agreed to these conditions.

a) Do you support the CFTC's actions in 2008 to ensure that foreign exchanges that are operating in the United States impose position limits that are comparable to those of the U.S. exchanges that trade the same commodities?

I support the CFTC's 2008 actions to close the "London Loophole" and ensure that foreign futures exchanges with permanent trading terminals in the U.S. comply with the position limitations applied to U.S. exchanges.

b) If confirmed, would you impose similar conditions on the Dubai Mercantile Exchange and its regulatory authority, if it has not already agreed to them?

I believe any foreign futures exchanges that have terminals in the United States to which our investors have access and whose contracts are based on the same underlying commodities should have consistent regulation applied, including position limits.

c) Would you support legislation to codify the CFTC's authority to require such comparable position limits and reporting requirements in order to ensure that all foreign exchanges that seek to operate in the United States and trade U.S. commodities are subject to comparable requirements?

If confirmed by the Senate, I look forward to working with Congress on legislation to codify the CFTC's authority to promulgate regulations regarding look-alike contracts trading on foreign futures exchanges that affect U.S. investors.

d) Do you believe the CFTC currently has enforcement authority over traders in the United States who are trading on a foreign exchange through foreign terminals located in the United States if those trades affect the prices of commodities in the United States?

I believe that the CFTC has enforcement authority over traders in the U.S. who are trading on a foreign exchange through foreign terminals located in the U.S. when and if those trades affect the prices of U.S. commodities. If confirmed by the Senate, I would work aggressively with the CFTC's legal staff to ensure that U.S. interests are protected, and I would not hesitate to come back to Congress and ask for further enforcement authorization if necessary.

15. It has been reported in the press that during the Clinton Administration you supported efforts to restrict the CFTC's jurisdiction over various types of swaps and other derivatives. In 2000, Congress enacted the Commodity Futures Modernization Act (CFMA) which restricted both the CFTC's and SEC's authority to regulate commodity and financial derivatives.

a) What were your job titles and positions from 1998-2000?

I was Assistant Secretary of Financial Markets at the Treasury Department from September of 1997 through April 1999; thereafter through the end of the administration I was Under Secretary for Domestic Finance.

b) Please describe your role, if any, in the efforts by the SEC, Department of Treasury, and Federal Reserve to oppose the CFTC's potential assertion of regulatory authority over swaps and derivatives in 1998.

I was not involved in these matters, which occurred primarily during the spring and summer of 1998. This was during my first year at the Treasury Department and I had been advised by Treasury Department Counsel that I was recused from these particular matters since they might relate directly to my former employer.

c) Please describe your role during the negotiations over the CFMA, including over provisions in the CFMA to limit SEC and CFTC authority to regulate swaps, including interest rate, currency, equity, credit default, and commodity swaps. Please also include any role you played during the negotiation to limit state authority to regulate these swaps.

The drafting and passing of the CFMA legislation was a lengthy and complex process, involving at least four government agencies including the Federal Reserve, the SEC, the CFTC and the Treasury Department, as well as hearings in front of at least five Congressional Committees. As I was no longer subject to the restrictions of recusal in

2000, I was a member of a team that worked with and advised then-Treasury Secretary Lawrence Summers on Treasury's positions. I do not recall participating in any negotiations over state regulatory authority.

16. In 1998, former SEC Chairman Arthur Levitt, Treasury Secretary Lawrence Summers, and Federal Reserve Chairman Alan Greenspan all opposed the CFTC's attempts to examine the OTC swaps market, and then supported the 2000 statutory restrictions on the SEC's and CFTC's authority over swaps in the CFMA. Former Chairman Levitt recently stated that he now regrets the position he took during those years: "The market was too large, too explosive in growth to merely allow pure market forces to suffice as self-regulatory mechanisms. I have some regrets about it, clearly." In October 2008, Mr. Levitt wrote: "Our nation's financial markets are in the midst of their darkest hour in 76 years. We are in this situation because of an adherence to a deregulatory approach to the explosive growth and expansion of America's major financial institutions. Our regulatory system failed to adapt to important, dynamic and potentially lethal new financial instruments as the storm clouds gathered."

a) Do you agree with former Chairman Levitt's statement that our regulatory system has failed to adapt to the development of new financial instruments and that the positions taken in 1998-2000 to deregulate these markets was, in retrospect, a mistake? If so, how would you correct this deficiency?

b) Would you support repealing the statutory prohibitions in the CFMA on federal regulation of swaps? If so, should these swaps be regulated as commodities or securities?

Response to a) and b):

I believe that both our financial system and our regulatory structure failed the American people. There were many elements that contributed to these failures. Certainly one of these was regulators' inability to adapt to new financial instruments and technologies.

It is important now to move swiftly and intelligently to repair the system. If confirmed by the Senate, I look forward to bringing my experience in the Executive Branch, in the Legislative Branch as a senior advisor to Senator Sarbanes, in the private sector, and as an investor advocate, to help bring about far-reaching regulatory reform.

While I believe markets are central to innovation and growth, I have always advocated for sensible regulation. Well-designed financial rules with strong enforcement mechanisms are critical to protecting homeowners, investors, farmers and the integrity of our markets and economy. I believe we must create a more stable and resilient financial system, ensure market integrity by promoting transparency and accountability, and increase protection for consumers, borrowers, and investors.

As outlined in questions 5 and 6, if confirmed by the Senate, I look forward to working with Congress to address the regulation of over-the-counter derivatives and excessive speculation in commodities markets. With respect to over-the-counter derivatives, I look forward to working to bring standardized products into mandatory centralized clearinghouses and onto exchanges, establish a regulatory framework for derivatives dealers, and consider possible further regulation for credit default swaps.

17. **Former Federal Reserve Chairman Alan Greenspan testified in October that he, too, now believes that the conceptual framework underlying the deregulation of swaps in the CFMA was a mistake. Mr. Greenspan testified: "I made a mistake in presuming that the self-interests of organizations, specifically banks and others, were such as that they were best capable of protecting their own shareholders and their equity in the firms. . . . So the problem here is something which looked to be a very solid edifice and, indeed, a critical pillar to market competition and free markets did break down."**

    a) **Do you agree with Mr. Greenspan's recent statements that the financial collapse of 2008 has demonstrated the errors in the assumptions underlying the deregulatory approach in the CFMA? Can we rely on commodity market participants and unfettered free market forces to prevent systemic risks and unreasonable price fluctuations in U.S. commodity markets?**

    b) **Do you support stronger regulation of U.S. commodity markets to protect market participants and prevent systemic risks and unreasonable price fluctuations, and, if so, how?**

Response to a) and b):

I believe that the American public and our economy benefit from a regulated market system. The recent crisis revealed that market participants have failed at their own risk management and in their obligation to protect their customers, their investors' money, their shareholders and even their franchises in many cases.

Our regulatory system also failed to protect investors, savers, borrowers, farmers and homeowners. As I mentioned in my previous answer, I believe that we must have additional safeguards in place to protect markets and investors against the risks we have witnessed in the past year. If confirmed by the Senate, I look forward to working with Congress and the Administration to meet the responsibilities that lie before us. To reform the financial system, we must establish a regulatory framework that ensures a strong and stable financial infrastructure, promotes market integrity and the price discovery function, and provides increased protection for consumers, borrowers, and investors.

As I have stated in my previous answers, I support stronger regulation of U.S. commodity markets. If confirmed by the Senate, I look forward to working to bring over-the-counter derivatives into mandatory central clearinghouses and onto exchanges, establish a regulatory structure for derivatives dealers, and consider possible additional regulation for credit default swaps.

18. What is your view of the proposal to merge the SEC and the CFTC? Would you support or oppose such a merger, prefer to retain the CFTC as a separate independent agency, or prefer some other approach?

If confirmed by the Senate, my principal goal will be to help reform our regulatory system, which failed to keep so many Americans out of harm's way. I have a longstanding commitment to advocating for investor protection and for progressive reforms. To revitalize our financial system, I believe we must tackle a robust agenda including modifying regulation of mortgage origination and securitization, credit rating agencies, hedge funds, over-the-counter derivatives markets, and capital rules and counterparty risk standards. Additionally, we must improve systemic regulation, increase transparency, and put new protections in place for consumers, borrowers, and investors.

I believe accomplishing these objectives must be the primary consideration in any proposed regulatory reforms. The CFTC performs vital functions and it is critical that all of its mandates are preserved, even as the demands on our regulatory agencies expand. A merger makes sense only if it enhances our ability to carry out the important tasks with which the CFTC is entrusted. Thus, I would not consider a merger simply for merger's sake.

19. In 2004, Congress enacted legislation imposing a one-year cooling-off period before federal bank examiners could take a job with a bank they oversaw. If confirmed, would you support a similar cooling-off period for commodity regulators?

If confirmed by the Senate, I would support a similar cooling-off period for commodity regulators.

○