Legislative Oversight of the CFTC: A Primer

Presented by: Steptoe

May 18, 2017
The webinar will be recorded and posted to the FIA website following the conclusion of the live webinar.

A question and answer period will conclude the presentation.

- Please use the “question” function on your webinar control panel to ask a question to the moderator or speakers. Questions will be answered at the conclusion of the webinar.
Upcoming L&C Webinars and Events

10th Annual International Derivatives Expo
5-7 June 2017 | The Brewery | London, England

Customer Collateral Protections for Listed Derivatives in the US and UK
8 June 2017 | 10:00 AM – 11:00 AM EDT | Webinar

Learn more and register at FIA.org/lc
Today’s Speakers

Michael Dunn
Senior Policy Advisor
Former CFTC Acting Chairman

Micah Green
Partner

Matthew Kulkin
Partner

Darryl Nirenberg
Partner
Agenda

• Review of existing/proposed legislation
• Legislative oversight authority
• “Personnel is Policy”
• Appropriations & budgets
But first...we cannot ignore:
- Legislative environment
- Agency discretion in policymaking
- General timelines for 2017
Part I: Legislation

Commodity Exchange Act ("CEA")

- 7 U.S.C. §1 (P.L. 74-675)
- Enacted in 1936, amends Grain Futures Act of 1922
- Commodity Futures Trading Commission Act of 1974 (P.L. 93-463) created the CFTC
- Governing framework for the regulation of the trading of commodity futures and swaps by the CFTC
- Corresponding regulations promulgated in Title 17 Chapter I of the Code of Federal Regulations ("CFR")
Legislation (cont’d)

• Notable recent amendments to CEA:
  o Commodity Futures Modernization Act of 2000 (“CFMA”)
  o Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)

• 23 bills in the 114th Congress sought to amend CEA
Commodity Futures Modernization Act of 2000 ("CFMA")

- Enacted December 2000
- Public Law 106-554
- Significant reforms to the CEA with respect to issues related to over-the-counter ("OTC") derivatives, futures exchange regulation, contracts, prohibited transactions, and boards of trade
  - For example, excluded from regulation certain swaps and other OTC derivatives
Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)  

• Public Law 111 – 203  
• Enacted in July 2010 in response to the 2008 financial crisis  
• Comprehensive financial services reform legislation  
• Title VII: Guiding regulatory principles with respect to the swap market –  
  – (1) reporting of swaps  
  – (2) regulated trading of swaps  
  – (3) centralized clearing of swaps
H.R. 238 – *Commodity End-User Relief Act*

- Introduced by House Ag Committee Chairman Michael Conaway (R-TX)
- Reauthorizes CFTC through FY 2021
- Amends the CEA:
  - exempts certain entities from certain clearing requirements
  - revises certain swap dealer registration requirements
  - certain CFTC cost-benefit considerations
  - CFTC internal structural organization/workflow provisions
  - futures commission merchant procedural and reporting requirements
  - source code for algorithmic trading
  - position limits

- Passed by US House of Representatives 239 - 182 on January 12, 2017
HR 10 – The Financial CHOICE Act

- Introduced by House Financial Services Committee Chairman Jeb Hensarling (R-TX)
- Primarily focused on consumer finance, systemic risk, securities and capital markets (and SEC regulation),
- Impacts the CFTC’s
  - ability to set financial standards as a part of any foreign or multinational entity
  - treatment of affiliate swaps
  - economic cost-benefit analysis, regulatory impact analysis and other measures to reduce regulatory burdens
- Passed by the House Financial Services Committee 34 – 26 on May 4, 2017. Joint referral to House Agriculture Committee.
Discussion: Congressional action vs CFTC action

- Congress: power to legislate
- CFTC: power to interpret
  - Regulations
  - No-action letters
  - Interpretive guidance
  - Enforcement
2017 Policy Agenda

- Swap execution facilities
  - Algorithmic trading
  - Swap data standards
    - CCP risk
    - Position limits
    - Cybersecurity
  - Distributed ledger/cryptocurrency
    - Capital, leverage
  - Uncleared swap margin
    - Volcker Rule
- Swap dealer business conduct standards
Part II: Oversight

Congress conducts oversight of the CFTC primarily through the following mechanisms:

- Hearings
- Letters
- Reports
Hearings

• *Oversight* – Congressional review of an agency’s activities
  
  ○ *e.g.*, House Agriculture Committee: “CFTC Reauthorization” (Mar. 24, 2015)

• *Subject specific* – related to an event or initiative
  
  ○ *e.g.*, House Agriculture Committee: “To review the G-20 swap data reporting goals” (Feb. 25, 2016)

• *Precede legislation* – used to gather information and perspectives from potentially impacted groups
  
  ○ *e.g.*, House Financial Services Committee: “Making a Financial Choice: More Capital or More Government Control?” (July 12, 2016)
Letters

- Oversight
- Subject specific
- Precede legislation

在这个文档中，您将会看到一封关于农业委员会的信件，以及一些与农业和政策相关的讨论。信件内容可能涉及农业政策、立法和监管等话题。
Reports

• Keep legislators apprised of progress
• Deterrent to agency overaction
• Two primary methods
  – Prospective/analytical (please evaluate the impact of X and report back finding)
  – Progress/update (please inform the committee, on an annual basis, of the threat of Y impacting the financial system)
• Difference between reports to Congress and reports by Congress
Part III:  Nominations

Article II, Section 2 of the Constitution:

“He shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law”
Part III: Nominations

• Typical process:
  – Vetting
  – White House nomination
    • Consultation with minority party’s Senate leadership
  – Committee confirmation hearing
  – Committee discharges nomination
  – Senate confirmation
Trump Administration nominations (as of May 16):

- Of the 557 key positions requiring Senate confirmation:
  - 29 confirmed
  - 49 nominated
  - 24 awaiting nomination
  - 455 vacant

Source: Washington Post
Part IV: Appropriations

- “Regular Order v. Continuing Resolution”
- President Trump’s FY 2018 Proposal
- CEA Reauthorization Level Funding at $250 million
  - H.R. 239 Commodity End-User Relief Act
Appropriations (cont’d)

• Understanding the May 2017 Federal budget agreement
• What happens in September?
• Budget reconciliation
• CFTC Chairman Giancarlo Remarks before the Annual International Futures Industry Conference (Mar. 15, 2017):
  o “A few weeks ago, I launched a comprehensive budget and spending review as a first step prior to engaging with the White House and Congressional appropriators over future agency funding . . . Our budget review has already identified several areas in which the agency can run more efficiently. We are looking for more. Our message is a willingness to do more with what we have. The tighter we run the ship, the greater will be the trust placed in the CFTC by our Congressional overseers and US taxpayers, who are our ultimate shareholders.”
Questions?

Please use the “question” function on your webinar control panel to ask a question to the moderator or speakers.

<table>
<thead>
<tr>
<th>Name</th>
<th>Email</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael Dunn</td>
<td><a href="mailto:mdunn@steptoe.com">mdunn@steptoe.com</a></td>
<td>202 429 6206</td>
</tr>
<tr>
<td>Micah Green</td>
<td><a href="mailto:mgreen@steptoe.com">mgreen@steptoe.com</a></td>
<td>202 429 6290</td>
</tr>
<tr>
<td>Matthew Kulkin</td>
<td><a href="mailto:mkulkin@steptoe.com">mkulkin@steptoe.com</a></td>
<td>202 429 6273</td>
</tr>
<tr>
<td>Darryl Nirenberg</td>
<td><a href="mailto:dnirenberg@steptoe.com">dnirenberg@steptoe.com</a></td>
<td>202 429 6739</td>
</tr>
<tr>
<td>Leslie Belcher</td>
<td><a href="mailto:lbelcher@steptoe.com">lbelcher@steptoe.com</a></td>
<td>202 429 3906</td>
</tr>
</tbody>
</table>

@SteptoeFinServ