

**EXAMINING THE 2017 AGENDA FOR THE  
COMMODITY FUTURES TRADING COMMISSION**

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**HEARING**

BEFORE THE

**COMMITTEE ON AGRICULTURE  
HOUSE OF REPRESENTATIVES**

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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OCTOBER 11, 2017  
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**EXAMINING THE 2017 AGENDA FOR THE  
COMMODITY FUTURES TRADING COMMISSION**

**WEDNESDAY, OCTOBER 11, 2017**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON AGRICULTURE,  
*Washington, D.C.*

The Committee met, pursuant to call, at 10:00 a.m., in Room 1300 of the Longworth House Office Building, Hon. K. Michael Conaway [Chairman of the Committee] presiding.

Members present: Representatives Conaway, Thompson, Goodlatte, Lucas, King, Austin Scott of Georgia, Crawford, Hartzler, LaMalfa, Allen, Bost, Rouzer, Kelly, Comer, Marshall, Bacon, Faso, Arrington, Peterson, David Scott of Georgia, Costa, McGovern, Vela, Lujan Grisham, Kuster, Nolan, Bustos, Maloney, Adams, Evans, Lawson, O'Halleran, Panetta, Soto, and Blunt Rochester.

Staff present: Darryl Blakey, Paul Balzano, Rachel Millard, Stephanie Addison, Liz Friedlander, Matthew MacKenzie, Troy Phillips, Nicole Scott, and Carly Reedholm.

**OPENING STATEMENT OF HON. K. MICHAEL CONAWAY, A  
REPRESENTATIVE IN CONGRESS FROM TEXAS**

The CHAIRMAN. This hearing of the Committee on Agriculture entitled, *Examining the 2017 Agenda for the Commodity Futures Trading Commission*, will come to order.

I have asked Michael Bost to open us with a brief prayer. Michael.

Mr. BOST. Please bow your head. Dear Heavenly Father, we thank you so much for this opportunity to be here today. Lord, we thank you for this nation. We thank you that we can live freely, that we can debate issues to try to make this nation a better place for our families, for the prosperity of this nation. We ask your blessing be upon this nation. We ask you to protect our brothers and sisters right now that are in Puerto Rico, and the things they are suffering through. Lord, guide the hands of the people that are down there working, that you bless them and you bring their island back, Lord, that they prosper. That the other areas that have been hit by such devastation as the other two hurricanes and the fires, Lord God, we just ask your protective hand be on all of our citizens. Lord, we praise you, we worship you, guide us as we work on these issues today. Give us the Wisdom of Solomon, Lord, and help us to have the kind hearts that we need to have as public servants. We ask all this in Jesus Christ's name. Amen.

The CHAIRMAN. Thank you, Michael.

Good morning. I want to welcome Chairman Giancarlo for being here today to highlight his plans for the CFTC. I want to first congratulate him on his nomination and confirmation as Chairman. I count Chris as a friend, and I have enjoyed his counsel and the opportunity to work with him these past 3 years. He is going to make a fine Chairman of the CFTC, and I have all the confidence in the world that he will run that Commission in the way we would all like to see it run.

I also want to thank our colleagues in the Senate for their quick action in confirming Brian Quintenz and Russ Benham as new Commissioners. Having met with both of these gentlemen, I know they will be able and thoughtful Commissioners. I am also looking forward to the confirmation of Dawn Stump. The Senate is waiting to pair her with the nominee for the fifth and final seat, so hopefully that process moves along and we can finally have a full Commission. The ag community is deeply supportive of her nomination and is looking forward to having her perspective inside your building.

Mr. Chairman, I appreciate your willingness to take a look back at the regulatory responses made to the financial crisis of 2008. Many of our Members have been advocates of a comprehensive review of the CFTC's Title VII rulemakings. Too many end-users and market participants remain adversely impacted by the sprawling, complex rules. I share your conviction that we can improve economic growth by reducing unnecessary regulatory burdens.

I am also encouraged by your vision for improving the management at the CFTC. You have said you want to make the CFTC a 21st century regulator, and I look forward to more details about LabCFTC and the other modernization plans that you are proposing. You have also made structural changes and moved some personnel reporting lines, and I am interested in hearing about any early payoff that you have seen from those moves.

You have outlined an ambitious agenda that is headlined by two issues this Committee has spent substantial time examining: the SEF trading rules and the swap data reporting requirements. Progress on these two issues is critical to the success of the Title VII reforms. The *status quo* will leave fractured markets and near-sighted regulators. I am hopeful you can make meaningful headway on both these fronts.

Finally, international issues remain front and center before your Commission. As we have expected, trading venue equivalence is an important issue and I am encouraged by what I have heard in the news. But I am discouraged to read that CCP equivalence is again on the table. It is imperative that the U.S.-EU equivalence determination does not become collateral damage in the Brexit fight.

You have talked about deference between international regulators and I support that stance 100 percent. For three Congresses in a row, this Committee, and this House, have passed strong language that would have enshrined principles of mutual deference to competent regulators into law. These markets are too big and too important to strangle with bureaucratic infighting.

Again, thank you for coming today and the time you and your staff have spent preparing. We look forward to your testimony and working with you over the course of your term.

[The prepared statement of Mr. Conaway follows:]

PREPARED STATEMENT OF HON. K. MICHAEL CONAWAY, A REPRESENTATIVE IN  
CONGRESS FROM TEXAS

Good morning. I would like to thank Chairman Giancarlo for being here today to highlight his plans for the CFTC. I first want to congratulate him on his nomination and confirmation. I count Chris as a friend; I have enjoyed his counsel and the opportunity to work with him the past 3 years. He is going to make a fine Chairman of the CFTC and I have all the confidence in him.

I would also like to thank our colleagues in the Senate for their quick action in confirming Brian Quintenz and Russ Benham as new Commissioners. Having met with both of these gentlemen, I know they will be able and thoughtful Commissioners. I'm also looking forward to the confirmation of Dawn Stump. The Senate's waiting to pair her with the nominee for the fifth and final seat, so hopefully that process moves along and we can finally have a full Commission. The ag community is deeply supportive of her nomination and is looking forward to having her perspective inside the building.

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Again, thank you for coming in today and the time you and your staff have spent preparing. We look forward to your testimony and working with you over the course of your term.

I now turn to the Ranking Member, Mr. Peterson, for any comments he would like to make.

The CHAIRMAN. I now turn to the Ranking Member for his comments.

**OPENING STATEMENT OF HON. COLLIN C. PETERSON, A  
REPRESENTATIVE IN CONGRESS FROM MINNESOTA**

Mr. PETERSON. Well, thank you, Mr. Chairman. And welcome, Chairman Giancarlo, to the Agriculture Committee. You have appeared before the Committee before, and you have actually played in the band here in the Committee hearing room before, we welcome you.

I am looking forward to your testimony today on where we see the CFTC heading under your tenure. And I am particularly interested in how you see the final implementation of Dodd-Frank. I

have generally been impressed with how the Commission has gone about enacting the changes, and look forward to seeing continued efforts to bring more transparency to the derivatives marketplace.

I am concerned, however, that Europe's rules for their version of our swap execution facilities don't provide anywhere near the pre- and post-trade transparency that our rules do. I understand that you have been negotiating an equivalence agreement on those rules, and that you are close to reaching an agreement. Hopefully, any final agreement will be more closely aligned with our transparency rules than theirs.

The CFTC has a very important role to play, protecting the integrity of our derivatives market, and this protects not just those who use the market, but the economy as a whole.

So thank you again for being with us today, and I look forward to your testimony.

I yield back.

The CHAIRMAN. I thank the Ranking Member.

The chair would request other Members submit their opening statements for the record so that our witness may begin his testimony, and to ensure there is ample time for questions.

I want to welcome to the witness table the Honorable J. Christopher Giancarlo, Chairman of the U.S. Commodity Futures Trading Commission, Washington, D.C.

Chris, I trust that you will not use your role in the Ranking Member's band to exert undue influence over him as you play the banjo for the Second Amendment. So with that, Mr. Giancarlo, you are recognized. The table is yours.

**STATEMENT OF HON. J. CHRISTOPHER GIANCARLO,  
CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION,  
WASHINGTON, D.C.**

Mr. GIANCARLO. Thank you, Chairman Conaway, Ranking Member Peterson, and Members of the Committee. I am honored to testify before you as Chairman of the Commodity Futures Trading Commission.

In the 3 years that I have served on the Commission I have learned a lot from you about the issues facing America's farmers, ranchers, producers, and other users of commodity futures products. I have also traveled to many of your home states to meet with Americans who use and rely on our markets for these products. These visits have made me a much better regulator. I have also spent the past 3 years getting to know the agency, its staff, and its programs, and in that time my respect has grown for the hard-working men and women who serve the CFTC's important mission.

As you know, America's farmers and ranchers have used listed derivative products and markets for more than 100 years to hedge their costs of production and delivery. But derivative markets are not just useful for agricultural producers; they impact the price and availability of heating in American homes, of energy used in factories, of interest rates charged on home mortgages, and on the returns earned on Americans' life savings. They serve the needs of society to help moderate price, supply, and other commercial risks, and, thereby, free up capital for economic growth, job creation, and

much-needed prosperity. That is why we must be diligent in protecting these markets from fraud and abuse.

The day after the White House announced its intention to nominate me as Chairman, I said, "There will be no pause, no letup, or no reduction in our duty to enforce the law and punish wrongdoing in our derivative markets." And I have kept that pledge, and intend to continue to do so, and I look forward to detailing for this Committee the CFTC's vigorous enforcement program.

In preparing the CFTC's current budget request earlier this year, I reviewed the agency's various functions and expenditures. I identified several ways it can run more efficiently and save taxpayer money. But I also found areas where we need to devote additional resources. These include clearinghouse examinations, market economists, and technologists. And I would like to discuss these needs with you today.

I also look forward to discussing a new agency-wide review of CFTC rules, regulations, and practices to make them simpler, less burdensome, and less costly. This initiative is called Project KISS. Now, it is not about identifying rules for repeal; it is about taking our existing rules and applying them in ways that are simpler, less costly, and less burdensome, especially for smaller market participants and end-users. I would also like to discuss another initiative which we call LabCFTC. It serves as a focal point for our efforts to facilitate market-enhancing financial technology innovation along with fair competition for the benefit of the American public. It serves as a platform to deepen our understanding of emerging technologies and their impact on American markets. LabCFTC is meant to help the CFTC avoid being a last century analog regulator of today's 21st century digital markets.

Now, cybersecurity is certainly one of the greatest threats to market integrity and systemic stability of our time, and I look forward to reviewing for you the steps I have taken as Chairman to address this ever-evolving challenge.

One of my key priorities is to better coordinate the work of the CFTC and that of fellow regulators, including the SEC, and also the Fed when it comes to clearinghouse supervision. Equally important is to better harmonize our implementation of swaps market reforms with that of overseas regulators. I am committed to seeing that the CFTC's oversight of swaps and other derivatives is robust and effective, and yet compatible with overseas regulations to avoid fragmenting markets and trading activity. And to this end, I am hopeful that the CFTC and the EU will soon conclude satisfactory determinations on margin on uncleared swaps and trade execution.

Finally, I look forward to resolving outstanding regulatory issues before the Commission, such as the *de minimis* threshold. Not just resolve it, but get it right, using the latest and most complete data to make a determination based upon true risk to the financial system. Yet, it is hard to get something as complicated as this right when we are under a time crunch. On one hand, we are less than 90 days away from the New Year, when market participants will have to start counting the notional amount of their swaps transactions for *de minimis* purposes. On the other hand, we have two new Commissioners and a new division director who are just seeing internal agency trading data for the first time. I am reluctant to

ask them to make such an important decision in a rush. I have, therefore, decided to request that the Commission delay this decision for 1 further year. We will follow the same procedural steps that Chairman Massad used last year to implement this 1 year delay. It will give the new Commissioners and division staff adequate time to analyze extensive quantitative data, ask questions, analyze the answers, and arrive at a final decision. The goal is to get the right result, not a rushed result. Therefore, I intend to put before the Commission in the first half of 2018 a proposal for a final resolution of the swap dealer *de minimis* issues. I do not intend to roll over the decision on this issue again.

Thank you for inviting me to testify before you to review issues of critical importance to the work of the CFTC and the American people, and I look forward to your questions.

Thank you.

[The prepared statement of Mr. Giancarlo follows:]

PREPARED STATEMENT OF HON. J. CHRISTOPHER GIANCARLO, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Thank you Chairman Conaway, Ranking Member Peterson, and Members of the Committee.

I am honored to testify before you today as the 13th Chairman of the U.S. Commodity Futures Trading Commission (CFTC).

In the 3 years that I served as a Commissioner at the CFTC, I learned a lot from you about the issues facing America's farmers, ranchers, producers, and other users of commodity futures who depend on the CFTC regulated markets for their risk management needs. I am grateful now to give testimony as Chairman of the CFTC. Thank you for the opportunity to hear your concerns and answer your questions.

In 2014, as a nominee to the CFTC, I presented my background in commercial law and business to the Senate Agriculture Committee and acknowledged my rather obvious character flaw of not having been raised on a farm. I spoke about my experiences as a practicing lawyer and how I always tried to spend time with new clients at their business offices to learn what they did and how they did it. I believe you cannot truly serve someone you represent unless you first dig in and understand how they make a living. At that time, I committed to learning everything I could about the agricultural sector.

Since that time, I have had the honor to meet with hundreds of Americans who depend on CFTC-regulated derivatives markets. I have travelled to many of your home states, 19 in fact, to meet with farmers, ranchers, energy producers, and small and large manufacturers, all of whom use our markets to hedge production and price risk. I have milked dairy cows with family farmers in Melrose, Minnesota, and visited with cotton farmers in Bardwell, Texas. I have been 900' underground in a Kentucky coal mine and 90' above ground on a North Dakota natural gas rig. I have walked factory floors, oil refineries, grain elevators, and power plants all over this country.

And I still have more walking to do. We regulators must learn to walk in the shoes of our fellow Americans so that we can serve their needs back in Washington. While these visits have been incredible in their own right, they have most importantly made me a better informed regulator of America's commodity futures markets.

I have also spent the past 3 years on the Commission getting to know the agency, its staff, and its programs. My admiration and respect have not diminished, but grown. In January, upon becoming Acting Chairman, I began a process of looking at every function and expenditure undertaken by the Commission, just as I learned to do in my business career. In the private-sector, we would never simply take last year's budget number and add a percentage increase. Rather, each dollar requested had to serve a purpose. Likewise, when I first sat down with the CFTC leadership team, my budget baseline was zero. We built our budget from the ground up.

Drawing on my business experience, I have already identified several ways the agency can run more efficiently and save taxpayer dollars. I also discovered areas within our current mission where we need to devote additional resources. Moving forward, I have trust and confidence that with the right allocation of resources we can meet the challenges of an evolving 21st Century market.

### Importance of the CFTC

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

Even Americans not actively participating in the futures markets are impacted by the prices generated by them. Commodity futures markets provide a critical source of information about future harvest prices. For example, a grain elevator uses the futures market as the basis for the price it offers local farmers at harvest. In return, farmers look to exchange prices to determine for themselves whether they are getting fair value for their crop. The U.S. Department of Agriculture (USDA) uses that same information to make price projections, determine volatility measures, and make pay-outs on crop insurance.<sup>1</sup>

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

In short, derivatives serve the needs of society to help moderate price, supply and other commercial risks to free up capital for economic growth, job creation and prosperity. While often derided in the tabloid press as “risky,” derivatives—when used properly—are tools for efficient risk transfer and mitigation. It has been estimated that commercial derivatives usage added 1.1 percent to the size of the U.S. economy between 2003 and 2012.<sup>2</sup>

### Enforcement

I am committed to supporting and strengthening the CFTC’s mission to foster open, transparent, competitive, and financially sound markets for the trading of commodity and financial futures, swaps, and other derivatives. I am also committed to seeing that America’s derivatives markets operate free from fraud, manipulation, and other trading abuses.

The day after the White House announced its intention to nominate me as Chairman, I said “there will be no pause, let up or reduction in our duty to enforce the law and punish wrongdoing in our derivatives markets; the American people are counting on us.”<sup>3</sup>

Since then, I have appointed James McDonald as Director of Enforcement, a former Federal prosecutor who served as an Assistant United States Attorney from the Southern District of New York. I have strengthened our rules and procedures to better protect whistleblowers, brought new impactful enforcement cases, and successfully resolved other important enforcement cases. Our enforcement resources have also been enhanced. For example, I realigned our Market Surveillance Branch to report directly to the Director of Enforcement.

Since January of this year, the CFTC’s Division of Enforcement has brought important enforcement actions across our markets, which have strengthened market integrity and enhanced customer protections. For example, following an investigation by the Division, the Commission entered an Order earlier this year imposing

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

<sup>2</sup> The Milken Institute found the following economic benefits to the U.S. economy from derivatives: “[b]anks’ use of derivatives, by permitting greater extension of credit to the private-sector, increased U.S. quarterly real GDP by about \$2.7 billion each quarter from Q1 2003 to Q3 2012; [d]erivatives use by non-financial firms increased U.S. quarterly real GDP by about \$1 billion during the same period by improving the firms’ ability to undertake capital investments; [c]ombined, derivatives expanded U.S. real GDP by about \$3.7 billion each quarter; the total increase in U.S. economic activity was 1.1 percent (\$149.5 billion) between 2003 and 2012; [b]y the end of 2012, use of derivatives boosted U.S. employment by 530,400 (0.6 percent) and industrial production 2.1 percent.” See Apanard Prabha, *et al.*, *Deriving the Economic Impact of Derivatives*, Milken Institute, at 1 (Mar. 2014), available at <http://assets1b.milkeninstitute.org/assets/Publication/ResearchReport/PDF/Derivatives-Report.pdf>.

<sup>3</sup> J. Christopher Giancarlo, Chairman, U.S. Comm. Fut. Trading Comm’n, *CFTC: A New Direction Forward, Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL* (Mar. 15, 2017), available at <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20>.

sanctions for manipulation, among other things, in the live cattle futures market. The Division has continued to bring significant spoofing cases, and recently filed the largest precious metals fraud case in the history of the Commission. It has also prosecuted fraud in virtual currency markets. In fact, the Commission has filed ten new enforcement actions in September alone. Very recently, the CFTC filed civil fraud charges in the U.S. District Court for the Southern District of New York against a company over an alleged Bitcoin investment scheme, involving fraud, misappropriation, and issuing false account statements.<sup>4</sup>

In addition to actions utilizing the Commission's fraud and manipulation authority, the Division has also recommended actions concerning failure to supervise, as well as violations of position limits, record-keeping and reporting obligations, and registration rules. We are also continuing to work proactively alongside our law enforcement partners, including the Department of Justice, to ensure that, in the appropriate cases, we are facilitating criminal prosecutions of the most culpable actors.

The Division of Enforcement has also leveraged its resources through implementation of a self-reporting program designed to help the Division identify more culpable wrongdoers and hold them accountable. As this program demonstrates, we will follow the facts and the law to prosecute both corporations and responsible individuals. This self-reporting program is designed to help us identify the individuals, and where the evidence supports, prosecuting those individuals, most culpable for any wrongdoing. As we did, for example, in charging individuals at a major bank with spoofing violations earlier this year based in part on the cooperation of other, less culpable individuals.

This program does not—in any way, shape or form—suggest a lessening of the agency's efforts to enforce the law. Rather, it signals the CFTC's determination to prosecute a broader range of misbehavior than would otherwise be uncovered without self-reporting by responsible parties.

Moreover, the CFTC's self-reporting program enjoys bipartisan support. The foundation of the program is in the deferred prosecution protocols established under the chairmanship of Timothy Massad and adopted unanimously by the Commission. The current cooperation program was fully supported by former Commissioner Sharon Bowen<sup>5</sup> and mirrors similar programs established by the Justice Department, and the SEC during the Obama Administration.

### **21st Century Regulator**

As Chairman, I believe the CFTC's regulatory mission best serves the public interest when it fosters broad-based economic growth and American prosperity. It is my strong belief that for all segments of our economy to flourish, we need well-crafted and practical rules, regulations, and regulatory approaches that encourage participation and responsible innovation in our markets.

So much of our world today, from information to music to manufacturing to transportation to commerce—even farming, is undergoing a digital transformation. It should be no surprise that our capital, commodity, and futures markets are going through the same transformation. The electronification of markets over the past 30 to 40 years and the advent of exponential growth in digital technologies have altered trading, markets, and the entire financial landscape with far-ranging implications for capital formation and risk transfer.

The world is changing. Our parents' financial markets are gone. The 21st century digital transformation is well underway. And, as our markets continue to evolve, the CFTC cannot be an analog regulator in a digital age—instead we must also evolve. We must learn from the changes enveloping our world and adopt them in pursuit of our regulatory mission and the betterment of our markets.

### **LabCFTC**

With this in mind, CFTC recently launched an initiative called LabCFTC.<sup>6</sup> It serves as the focal point for Commission efforts to facilitate market-enhancing financial technology (FinTech) innovation and fair competition for the benefit of the American public. LabCFTC is designed to make the CFTC more accessible to FinTech innovators. It serves as a platform to inform the Commission's under-

<sup>4</sup>Press Release, U.S. Comm. Fut. Trading Comm'n, *CFTC Charges Nicholas Gelfman and Gelfman Blueprint, Inc. with Fraudulent Solicitation, Misappropriation, and Issuing False Account Statements in Bitcoin Ponzi Scheme* (Sept. 21, 2017), available at <http://www.cftc.gov/PressRoom/PressReleases/pr7614-17>.

<sup>5</sup>Neil Roland, *CFTC plan to reward firms that self-report misconduct is 'no lessening or softening' of enforcement*, Bowen says, MLEX, September 27, 2017.

<sup>6</sup>Press Release, U.S. Comm. Fut. Trading Comm'n, *CFTC Launches LabCFTC as Major Fintech Initiative* (May 17, 2017), available at <http://www.cftc.gov/PressRoom/PressReleases/pr7558-17>.

standing of emerging technologies. LabCFTC will enable the CFTC to be proactive and forward-thinking as FinTech applications continue to develop, and to help identify related regulatory opportunities, challenges, and risks.

The LabCFTC initiative will accomplish its mission through three primary work streams: The first is to provide greater regulatory certainty and understanding that encourages market-enhancing financial technology innovation to improve the quality, resiliency, and competitiveness of our markets. The second is to identify, understand, and utilize emerging technologies that will enable the CFTC to carry out its mission more effectively and efficiently in the new digital world. And, the third is to establish an internal resource to inform our staff on emerging technologies, while collaborating with external stakeholders, including domestic and international regulators, in order to share best practices related to FinTech innovation.

Emerging financial technologies ranging from blockchain to machine learning to predictive data analytics are transforming financial markets and services. The rapid pace of innovation and adoption, the potential disintermediation of traditional financial market functions, and the increasing speed and power of computers are raising important new opportunities and challenges for key market stakeholders, including banks, end-users, and regulators. In order to remain proactive and facilitate the emergence of market-enhancing technologies, regulators around the world are working to share developments, trends, and insights in order to understand and harness the potential of these innovations.

Two weeks ago, under the leadership of the CFTC's first-ever Chief Innovation Officer, LabCFTC held its second set of office hours in NYC. LabCFTC will be holding its next set of office hours in Chicago on Friday, October 20. LabCFTC is also targeting sessions in other technology centers including Silicon Valley, Austin Texas and Route 28 outside of Boston.

Since its launch a few months ago, LabCFTC has held over 100 meetings with market participants and FinTech innovators, ranging from established financial service firms to start-up companies. Among all LabCFTC inquiries, more than ⅔ were successfully resolved or require no further follow-up by LabCFTC. Technologies discussed include distributed ledger and blockchain, smart contracts, artificial intelligence/machine learning, predictive data analytics, algorithmic trading, cloud computing, digital identity, cyber-security, and RegTech. Potential applications of these technologies in CFTC markets could enhance efficiencies, reduce transaction costs, increase transparency, and bolster compliance.

LabCFTC seeks to assist and foster market-enhancing FinTech innovation in CFTC regulated markets here in America. We look to harness these rapidly evolving digital markets to be engines for economic freedom and opportunity—the ingredients that have always been, and always will be, essential for American prosperity.

And, yet, there is another equally important purpose for LabCFTC, one that is quite simple. That is to help the CFTC bridge the gap from where we are today to where we need to be—a twenty-first century regulator for twenty-first century digital markets.

### **Cybersecurity**

And before I move on from speaking about technology, I want to address cybersecurity—at the CFTC and the institutions in the markets we oversee. I know Congress is rightly concerned about cyber risk in light of recently announced breaches of Equifax and the Securities and Exchange Commission. Such concern is appropriate. As I have repeatedly said, cybersecurity is undoubtedly the most important single issue facing our markets today in terms of market integrity and financial stability.<sup>7</sup>

All Federal agencies and financial market participants must be vigilant about cybersecurity. That includes the CFTC. It is why we are constantly reviewing and updating our cybersecurity protections to guard against the growing threat of a breach. Our agency has successfully thwarted hundreds of attempted breaches. Yet, we can never be complacent or assume that past success is an indicator of future resilience.

In light of the relentlessness of the cyber threat, I have taken several steps since becoming Chairman. I meet monthly with the CFTC's Chief Cybersecurity Officer and review all recent cyber incidents and agency responses. We also discuss anticipated threats and emerging best practice defenses.

The CFTC recently worked with the Department of Homeland Security to conduct a half day, agency wide disaster recovery exercise based on a simulated cyber-attack on U.S. derivative markets. We have scheduled further exercises in the months to

<sup>7</sup>J. Christopher Giancarlo, Chairman, U.S. Comm. Fut. Trading Comm'n, *Harvard Law School Fidelity Guest Lecture Series on International Finance* (Dec. 1, 2015), available at <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-11>.

come. We have taken other significant steps to increase the CFTC's cyber defenses that cannot be publicly disclosed.

Notwithstanding our commitment to cyber vigilance, the CFTC takes nothing for granted. The cyber threat is persistent and ever-changing. It has rightly been said that it is not a question of "if" a cyber intrusion will occur, but "when" it will occur. That is why I have consistently expressed concerns about the government's handling of proprietary intellectual property for market participants.<sup>8</sup> We must carefully balance the agency's legitimate need to review market data and other information against unnecessarily holding proprietary trading information that could make us a larger target for a broader group of cybercriminals, including those engaged in commercial espionage.

Turning to the cybersecurity of the markets we oversee, I note that in September 2016 the CFTC unanimously adopted system safeguards and cyber resilience standards for clearinghouses, contract markets, swap execution facilities, and swap data repositories.<sup>9</sup> It now falls to the CFTC to examine registered entities for compliance with these safeguards. Unfortunately, the CFTC currently has a 75% staff vacancy rate in its CCP cyber-security program. The Commission needs funding to fill these positions with examiners who have the skills needed to measure compliance with CFTC regulations addressing cyber-security. This need is critical if the agency is to fulfill its mission during this time of increased cyber-attack and belligerence.

At the request of the U.S. Commodity Futures Trading Commission's Office of the Inspector General, from September 25, 2015 through July 25, 2016, Brown and Company CPAs and Management Consultants audited the CFTC's performance in reviewing information technology system safeguards in place at entities subject to CFTC regulatory oversight. Brown and Company's report concluded that the CFTC and its oversight divisions had developed policies and procedures to address cybersecurity risks at CFTC registrants operating in derivatives markets.<sup>10</sup> The review also recommended several areas where the CFTC could enhance its oversight of cybersecurity preparedness of agency registrants.<sup>11</sup> The CFTC was fully engaged with OIG, addressed all of the report's findings, and adopted several of its recommendations.

### Project KISS

Too often CFTC rules and regulations are applied in a needlessly complex and costly manner. They cause compliance to be too complex, costly or time-consuming for market participants especially derivatives end-users such as producers and farmers and ranchers. To address this problem, shortly after assuming the role as acting Chairman, I announced our Project KISS initiative.<sup>12</sup>

Project KISS stands for "Keep It Simple Stupid." It is an agency-wide review of CFTC rules, regulations, and practices to make them simpler, less burdensome, and less costly. On February 24, 2017, President Trump issued an Executive Order on "Enforcing the Regulatory Reform Agenda."<sup>13</sup> Although the CFTC as an independent agency is not strictly bound by President Trump's Executive Order, we believe that Project KISS is in line with the President's objectives.

As part of the Project KISS effort, the CFTC issued a call for recommendations from the public on regulatory reform. We now have a portal on our website for the public to provide suggestions that we can look to implement. The comment period for Project KISS recommendations closed on September 30.

We received 65 comments from the public, each of which is posted on our website. An initial review of the public comments indicates that a broad cross-section of the derivatives industry offered constructive suggestions for reducing regulatory burdens. In addition to the public comments, CFTC staff identified over forty examples of ways in which we might achieve the objectives I have set forth under Project KISS.

<sup>8</sup>J. Christopher Giancarlo, Chairman, U.S. Comm. Fut. Trading Comm'n, *Statement of Dissent Regarding Supplemental Notice of Proposed Rulemaking on Regulation Automated Trading* (Nov. 4, 2016), available at [http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement110416#P5\\_827](http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement110416#P5_827).

<sup>9</sup>*CFTC System Safeguard Testing Requirements*, 81 FED. REG. 64272 and 64322 (Sept. 19, 2016) (codified at 17 CFR pts. 37-39, 49).

<sup>10</sup>OIG Rep., U.S. Comm. Fut. Trading Comm'n, *Commodity Futures Trading Commission's Policies and Procedures for Reviewing Registrants' Cybersecurity Policies* 8 (Oct. 11, 2016).

<sup>11</sup>*Id.* at 16-24.

<sup>12</sup>J. Christopher Giancarlo, Chairman, U.S. Comm. Fut. Trading Comm'n, *CFTC: A New Direction Forward, Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL* (Mar. 15, 2017), available at <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20>.

<sup>13</sup>*Id.*

Project KISS is **not** about identifying rules for repeal. It is about taking our existing rules and applying them in ways that are simpler, less costly and less burdensome. I believe the American taxpayer expects us to do nothing less. For example, where we have the discretion to take a broad, outcomes-based approach to finding the regulatory regimes of foreign jurisdictions equivalent or comparable to our own, I believe that we should do so. Or, where it makes sense to codify existing, permanent staff no-action relief, again we should do so. Several submissions reference specific No-Action letters, such as *void ab initio* error trade procedures (NAL 17–27) and SEFs’ obligation to provide confirmations for uncleared swaps (NAL 17–17). Even tweaks as simple as streamlining registration or data submission forms, or changing them to integrate current technology, will make these necessary tasks more efficient and less burdensome for market participants.

We must also work with other agencies to better harmonize and simplify our rules, particularly where we have shared jurisdiction over certain types of markets. In this vein, SEC Chairman Clayton and I have been speaking since assuming our respective roles. At our very first meeting we discussed ways in which we could harmonize our respective rules and regulations. Since then, we have set up a Chairman to Chairman working group that meets regularly. In fact, we most recently met together for several hours last Monday. We hope to soon announce some interagency understandings that will result in real regulatory efficiencies.

### **Title VII**

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

I have not wavered in my support for these reforms in my 3 years on the Commission. Yes, I have criticized the agency’s implementation of some of the reforms—almost always where I believed it was impractical, overly burdensome or out of step with Congressional intent. In all cases, however, I advocated alternative approaches I believe better support healthy markets and are more faithful to the law. It is with those basic principles in mind that I have developed several policy priorities for the CFTC.

### **Swap Reforms**

The CFTC was the first major regulator worldwide to implement most of the G20 swaps reforms. You might call that framework “CFTC Swaps Reform Release 1.0.” We now have more than 4 years of experience with the varied strengths and shortcomings of the first release. I am therefore advocating for new and enhanced edition, CFTC Swaps Reform Release 2.0, which will be engineered to better support market durability, increase trading liquidity and participant diversity, and stimulate broad-based economic growth and revival. These changes will stay true to the Pittsburgh G20 reforms and be in full accordance with the letter of Dodd-Frank. Yet, they will incorporate lessons from our initial reform efforts into a new and better version.

I have been critical of the CFTC’s implementation of its swaps trading rules. Over 2 years ago, I published a white paper that analyzed this implementation.<sup>14</sup> In it, I explained the mismatch between the CFTC’s swaps trading framework and the swap market’s fundamental structure. I asserted that the CFTC’s current approach is highly over-engineered, disproportionately modeled on the U.S. futures market, and biased against both human discretion and technological innovation.

As predicted, the CFTC’s swaps trading implementation has caused a number of harms. It has driven global market participants away from transacting with U.S. entities. It has fragmented global markets into a series of distinct liquidity pools that are more vulnerable to market shocks.

Now, the CFTC must incorporate these lessons learned into a revised swaps trading framework. The CFTC must create a framework that is better aligned with swaps market dynamics and liquidity, and more closely adheres to the express language and spirit of Dodd-Frank. The revised swaps trading framework should be more flexible and allow market participants to choose the manner of swap trade execution suited to their business. It should help attract, rather than discourage, global participants to U.S. trading markets. It should better align regulatory oversight

<sup>14</sup>J. Christopher Giancarlo, *Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank*, White Paper, Jan. 29, 2015, <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf>.

with inherent characteristics of the swap market. Most importantly, the CFTC's revised swaps trading framework should facilitate healthy risk hedging activities in the private-sector that are essential for broad-based economic growth and revival.

In many ways, regulatory frameworks are like software applications. Some work well and attract a broad base of users. Others are plagued with bugs and flaws that, if not addressed, fail to attract those not otherwise subject to required usage.

Like software users, market participants will always look to participate in well-designed, regulatory frameworks. Trading counterparties seek neither the least nor the most regulated marketplaces, but market places that have the right balance of sensible, objective and reliable regulation—in other words: good software. Our goal is to oversee a U.S. swaps regulatory framework that has the optimal mix of well-considered rules and regulations that best foster open, transparent, competitive, and financially sound derivatives markets to support American economic growth, job creation, and prosperity.

### Swaps Data Reporting

At the heart of the 2008 financial crisis was the inability of regulators to assess and quantify the counterparty credit risk of large banks and swap dealers.<sup>15</sup> The legislative solution was to establish swap data repositories (SDRs) under the Dodd-Frank Act.<sup>16</sup> Although much hard work and effort has gone into establishing SDRs and supplying them with swaps data, 9 years after the financial crisis the SDRs still cannot provide regulators with a complete and accurate picture of bank counterparty credit risk in global markets.<sup>17</sup> In part, that is because international regulators have not yet harmonized global reporting protocols and data fields across international jurisdictions.<sup>18</sup>

Of all the many mandates to emerge from the financial crisis, visibility into counterparty credit risk of major financial institutions was perhaps the most pressing. The failure to accomplish it is certainly the most disappointing.

The CFTC is committed to success in the global reform efforts towards swaps data reporting. That is why we are actively engaged in global swaps data harmonization efforts while simultaneously looking to improve upon the current processes for swaps reporting that were put in place back in 2012 and 2013.

On the international front, the CFTC is co-leading several global initiatives to harmonize derivatives reporting along with fellow overseas regulators via Committee on Payments and Infrastructures—International Organization of Securities Commissioners (CPMI–IOSCO) and the Financial Stability Board (FSB):

- Unique transaction identifiers (or UTIs) to track the lifecycle of a derivative transaction from creation until final termination;
- Unique product identifiers (or UPIs) to identify the instrument type and elements of the product referenced in a derivative; and
- Critical data elements (or CDEs) to provide basic information about the terms of the transaction, such as notional amount, price, and collateral movements.

CPMI–IOSCO published final technical guidance on UTIs in early 2017 and final guidance on UPIs is expected soon. We expect that guidance on CDE fields to be published by Q1 of 2018.

An FSB sponsored group, the Group on UPI and UTI Governance, continues to work on governance issues for these identifiers, such as implementation. This important international work is ongoing with the CFTC's full support and involvement.

Meanwhile, here at home, the CFTC issued for comment in July a swaps data reporting "Roadmap."<sup>19</sup> The CFTC has received 20 comment letters on the Roadmap that were overwhelmingly well informed and supportive. DMO staff is carefully considering them.

A major focus of implementing the Roadmap will be incorporating harmonized UTI, UPI, and CDE guidance into our reporting regime. Wherever possible, we want

<sup>15</sup> Fin. Crisis Inquiry Comm'n, *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* 298–300, 329, 363, 386 (2011), available at [http://fcicstatic.law.stanford.edu/cdn\\_media/fcic-reports/fcic\\_final\\_report\\_full.pdf](http://fcicstatic.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf).

<sup>16</sup> 7 U.S.C. § 24a (2012), Commodity Exchange Act § 21.

<sup>17</sup> Silla Brush, *Dodd-Frank Swap Data Fails to Catch JPMorgan Whale*, O'Malia Says, BLOOMBERG, Mar. 19, 2013, available at <http://www.bloomberg.com/news/articles/2013-03-19/dodd-frank-swap-data-fails-to-catch-jpmorgan-whale-o-malia-says>.

<sup>18</sup> Neil Roland, *IOSCO's Wright Faults Authorities' Coordination on Derivatives Trade Reporting*, MLEX FS CORE, Nov. 18, 2015, available at <http://www.mlexscore.com/?=EAAAABgJFM16s4sxd6kwClh1BeL7zWr2TdKX9gEasKt9evFi>.

<sup>19</sup> U.S. Comm. Fut. Trading Comm'n, *Roadmap to Achieve High Quality Swaps Data* (July 10, 2017), available at <http://www.cftc.gov/PressRoom/PressReleases/pr7585-17>.

to harmonize CFTC reporting elements with international CDE guidance. Still, it is possible that the CFTC will require some additional fields for CFTC specific use cases that are not addressed at the international level.

The Roadmap has carefully calibrated the release of CFTC rules to follow the release of international technical guidance on CDE in order to avoid conflict. Furthermore, the Roadmap attempts to incorporate a realistic implementation timeline to allow for the appropriate building and testing by all relevant parties. We are sensitive to the complexity of changes to rules with multiple interconnected parts like swaps reporting. We will work with market participants to set realistic compliance dates.

To be clear, the international CPMI–IOSCO process is aimed at harmonizing *what* must be reported on a derivative, not *when* and *how* to report. We need to make sure that the *when* and *how* are also covered. In the end, CFTC *when* and *how* rules for swaps reporting may be different than those adopted by overseas regulators. In some areas, where we believe we have the better approach, such as single-sided reporting, we intend to pursue the CFTC’s current approach. Yet, in other areas where, in light of experience, it appears that overseas regulators have adopted a better way, such as T+1 *regulatory* reporting, we will consider making changes.

Swaps data reporting is new for all of us. No regulator has yet found the optimal approach to success. Yet, we are all determined to get there. None are more determined than the CFTC. That is why we published the swaps data Roadmap.

There is an old saying, “If you don’t know where you’re going, you’ll never get there.” The Roadmap shows where the CFTC is going. We are determined to get there.

#### **CCP/Cross Border**

In order for the CFTC to remain an effective regulator, it must keep pace with the evolution of our markets, or our regulations will become outdated and ineffective. This is especially so in its oversight of derivatives clearinghouses. Mandatory clearing of standardized swaps was a core component of the G20 reform agenda. The world’s largest Central Counterparties (CCPs), which collectively clear over 95 percent of the global cleared swaps market, are directly registered with CFTC as Designated Clearing Organizations (DCOs). These DCOs are located in the United States, as well as in major financial centers in Europe and Asia. I am committed to ensuring that the regulatory approach to oversight over these global markets is effective and robust without fragmenting markets and trading activity.

I recently returned from a 10 day trip in Europe where I met with key regulatory counterparts and policymakers from the European Union, France, Germany, and the United Kingdom to discuss how to ensure effective regulatory cooperation and coordination between the CFTC and Europe, especially with respect to the supervision of major cross-border CCPs. During my trip I spoke publicly, as well as contributed a guest op-ed in the leading French business paper *Les Echos*, expressing the view that regulatory and supervisory deference should underpin how U.S. and EU regulators supervise CCPs.

In the spring of 2016, under the leadership of Chairman Massad, the CFTC reached a key accord with the European Commission on recognition of swaps clearinghouses. This agreement was an important signal to the markets and the international regulatory community that the United States and Europe could work together successfully on critical cross-border issues. That agreement has contributed to stronger and more productive relations between the CFTC and its European and other overseas regulatory counterparts. The CFTC remains committed to honoring its obligations under this agreement.

I fully understand that Brexit raises new and challenging issues for how Europe regulates its financial markets. Nevertheless, if Brexit is indeed a trigger for a new approach in Europe regarding the supervision of cross-border CCPs, then it must be an approach developed with the cooperation and support of the CFTC. If the EU must reconsider its approach to cross-border supervision of systemically important CCPs, then we cannot have piecemeal and contradictory rule making. Instead, we should together strive for a comprehensive and universal solution that supports strong cross-border markets, recognizes and builds upon the strengths of our respective supervisory programs, and preserves as much as possible the basic tenets of the CFTC–EC equivalence agreement.

#### **Unfinished Business**

And, last, but certainly not least, I look forward to working closely with my fellow Commissioners on the priorities I have outlined above, as well as resolution of outstanding regulatory issues before the Commission, such as the *de minimis* exception and a position limits rule.

The level of the *de minimis* threshold is a critically important issue. Getting it right requires thoughtful analysis of the latest and most complete data to inform the best path forward in terms of managing risk to the financial system. Currently, work is actively being done by the Division of Swap Dealer and Intermediary Oversight (DSIO) under a new Division Director.

With respect to position limits, I committed in my confirmation hearing to finalizing a rule and I intend to do so. This is an enormously important undertaking that will impact America's farmers, ranchers, and manufacturers and their ability to hedge legitimate production costs. Any final rule must work in practice and not be overly burdensome. It will be complicated. This is a rulemaking has been underway for some time. There are thousands of comment letters on the topic, and there are opinions on all sides of the issue.

That is why final position limits rulemaking should be done properly by a full Commission. It will ensure that any final position limits rule is indeed final and stands the test of time and changes in future Administrations.

### **Conclusion**

Again, I am grateful for the chance to testify before you today and to outline issues that I believe are of critical importance to the work of the CFTC. I commit to working with each one of you, with candor and promptness, in our common purpose of serving the American people and the producers upon which we all rely.

Thank you. I look forward to answering your questions.

The CHAIRMAN. Well, thank you, Chairman Giancarlo. We appreciate you being here and your testimony.

I have something official to read real quick. The chair would remind Members they will be recognized for questioning in order of seniority for Members who were here at the start of the hearing. After that, Members will be recognized in order of arrival. I appreciate Members' understanding.

With that, I recognize myself for 5 minutes.

Again, Chris, thanks for being here. Can you talk further about the broader statement, the cross-border equivalence deference, the things that are going on, and maybe help some of us understand a little bit better, the Brexit issue, and what EU may be trying to do to take advantage of those changes, to try to impose a regime that was not necessarily contemplated earlier when you did come to an equivalence kind of conversation. Would you flush that out for us?

Mr. GIANCARLO. I would be happy to. Maybe just a little bit of background to just sort of set the stage.

Following the financial crisis in 2008, the world's G20 leaders met in Pittsburgh in 2009 and agreed on a number of fundamental reforms for the global swaps market; moving swaps off bank balance sheets to the extent possible into central clearing, having swaps transact on licensed and regulated platforms, reporting swaps transactions to central repositories, and then minimum capital and margin requirements.

Personally, I agree with all of these steps and said so at the time, and continue to believe they are the right steps. The question is about the implementation. Those G20 accords said that responsible regulatory authorities would implement these core reforms through their national regulatory and statutory processes.

The United States went first, in fact, the CFTC went first, and by 2013 and 2014 it implemented most of those changes and put them in place. We were a rule-maker in regard to the implementation of these, and in many cases, did a very effective job. Other cases I have been critical of some of the implementation, but not the underlying law. And other cases such as clearing, we have been

wildly successful, and now we are actually dealing with the second and third order impact of those changes.

Well, other jurisdictions haven't been as quick to putting their rules in place, and in many regards Europe is today getting ready to put in their big implementation; something called MiFID II, which comes into effect in January of 2018.

Since that time that our rules were in effect, we have learned a lot about them, and Europe has come to a point where they are now determining that our rulesets are either equivalent to theirs or not equivalent to theirs. And we have a number of important outstanding equivalence determinations that we have been working here at the CFTC very diligently with our European colleagues to get to a final resolution of, and as I mentioned in my opening remarks, I am hoping we will soon be there.

But on the subject of clearinghouse supervision, this is a very important issue, and it may be an issue of some degree of tension between us and Europe. As I said to you, the United States is a rule-maker. We are not a rule-taker. And this is a concern in the wake of the Brexit, that Britain will be taking a lot of its swaps rules wholesale from Europe, and Europe is now reformulating some of its rules in terms of clearinghouse supervision to have a third-country approach where they propose that they will have direct oversight of third-country clearinghouses which, in some cases, could export European substantive law into the way our clearinghouses operate.

Well, again, we are a rule-maker, not a rule-taker, in the United States. This Congress decides what our law should be and charges our agency to implement it. It doesn't tell us that we have to abide by foreign country substantive law. This is an area where we are working carefully with our European colleagues. We are making them aware of our concerns. I have just finished a 10 day visit to Europe where I had both private visits and some public statements, and even did an op-ed in a French newspaper to get our point across that we were the first to adopt these rules, we will continue to be diligent in our implementation of regulatory reform, but we are a sovereign nation and we have a sovereign approach to these rule implementations.

The CHAIRMAN. I didn't realize you were fluent in French.

Mr. GIANCARLO. With a little help of a good translator.

The CHAIRMAN. Well, I appreciate that. Again, I appreciate your leadership at the CFTC. I look forward to working with you on a variety of issues including reauthorization, funding levels for your agency, all those important questions moving forward, that we have a common interest in getting those done and done as quickly as possible.

So with that, I yield back and turn to the Ranking Member for 5 minutes.

Mr. PETERSON. Thank you, Mr. Chairman.

Following up on that regard, I remember when I took the Committee over to Europe, when we were doing all of this stuff way back when, and we had the people there tell us that they were shopping for the lowest level of regulation; well, actually, some of our companies in the U.S. were using London against New York in

terms of saying, "Well, if you don't give us what we want, we are going to go over to London." Clearly, they were doing that.

What I am concerned about is that apparently Clarus Financial Technology has found that under the European rules that they have set, 80 percent of the swaps would have no pre-trade transparency, and that 75 percent of the risk traded will remain dark for a month. What I am concerned about, are they going to try to set up some kind of regime where they are so upset with London that they are going to try to start negotiating against each other to try to weaken these regulations as part of their war with London. I am sure you are well aware of all of this stuff, so do you think that your negotiations are going to be able to overcome this, because my concern is that we continue to have a system that works and is transparent so we don't ever get into a situation like we were in, in 2007, when people didn't know who could make good on the risk, and the whole thing just about came apart.

Mr. GIANCARLO. Well, thank you for that question, Ranking Member.

As you rightly said, at the heart of the crisis back in 2008 was a lack of visibility, both for regulators and for the marketplace, into the counterparty credit exposure of one large bank to another large bank. And that led to an old-fashioned run on the bank and a full meltdown financial crisis. And fixing that risk profile of transparency is one of the most important imperatives to come out of Dodd-Frank and Title VII. And the shame of it is that here we are 9 years after the crisis, 8 years after the Pittsburgh Accord, 7 years after Dodd-Frank, and we still don't yet have the full mechanism in place to give us that full visibility into counterparty exposure.

Now, it is not for lack of trying. We have created the swap data repositories, we are collecting the data, but we are trying to bring order to a world in which every bank had a different protocol for how these trades were recorded within their own back office, let alone reported to regulators. We have different nation and jurisdictional methodologies, reporting methodologies.

Now, we at the CFTC are working very closely in international bodies, at IOSCO and others, to try to get these transaction identifiers right. And yet we have our own work to do in putting our own systems in place to do this. This is an imperative, and it is one that I am committed to following through at the Commission.

Now, you mentioned the European approach to transparency. I am concerned about it. There is a lot of discussion on transparency, but as we understand the MiFID II requirements, there are also a lot of exceptions to their own transparency requirements. We are still understanding that.

At heart though, I will say one thing is, I do believe that for the most part market participants don't search for the lowest common denominator when it comes to regulation. I think they search for the best. It is our job as regulators not to focus on whether we have the least amount of regulation or the most amount, it has to be to have the best regulation; the regulation that achieves the core principles and the guidance that Congress sets for it, but does it in a way that is sensible and is in tune with the market itself. And that is what we search for is, what is the optimal way to achieve the policy goals that Congress sets for us.

Mr. PETERSON. When do you think these discussions are going to end?

Mr. GIANCARLO. I think they are going to be going for a long time. The Pittsburgh Accords, when they called for these implementations they said what we must do is implement them in a way that is compatible. And trying to get the compatibility right is a long and complicated process. We will be at this for some time.

I wish it were simpler than that, but these are complex markets, and it is a complicated, regulatory landscape.

Mr. PETERSON. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman yields back.

Mr. Lucas, 5 minutes.

Mr. LUCAS. Thank you, Mr. Chairman.

Chairman Giancarlo, let's pull back just a little closer to home for a moment for what I hope will be a brief series of questions.

The Treasury released last week recommendations that CFTC and the SEC harmonize their treatment of inter-affiliate margin. And I know that your agency has been willing to acknowledge that these swaps are not presenting systematic risks to the wider market, but the banking regulators have yet to come around to that point of view. Would you agree that these two approaches should be harmonized, and, briefly, if so, how do you think the two agencies can go about it?

Mr. GIANCARLO. Thank you for that question.

As soon as Chairman Clayton at the SEC and I settled into our chairs, we reached out to one another and agreed that there are a whole range of issues that deserve a considerable amount of high-level attention of our agencies to resolve between our two agencies. And we have established now a Chairman-to-Chairman *ad hoc* working group, led by his chief of staff and my chief of staff, that meet several times a month, starting with a list of unresolved issues that we have been going through one at a time. And it led to recently a Chairman-to-Chairman meeting with our full staffs to go through these issues. And we will be now meeting every several weeks at the Chairman-to-Chairman level, in addition to our chiefs of staff meeting, more routinely, going through an issue. And I hope that by the end of this year we will have some announcements to make about having made progress on that.

But your point about compatibility, the one thing I would say is we need to get to a balance between the banking regulators' approach to swaps reforms and the market regulators' approach to swaps reforms. They need to be balanced out. I think that in some cases bank-driven concerns, concerns over bank solvency have overridden concerns about market trading liquidity, and in a healthy approach to swaps reform, we balance the concerns on both sides.

Mr. LUCAS. In the past, Chairman Giancarlo, you have pointed out the risks that come with the government agencies gathering highly sensitive trading information, and I agree with you on that score, particularly pertaining to last year's Regulation AT proposal from the Commission. These fears seem particularly appropriate given the SEC's EDGAR (Electronic Data Gathering, Analysis, and Retrieval system) hack in the last month.

So, Mr. Chairman, I guess what I would ask is this, should farmers and ranchers be concerned about a trove of sensitive trading information being hacked at the CFTC, and then used to upset the various commodity markets? Is that a fear we should have?

Mr. GIANCARLO. We all need to have a healthy, mature concern about cybercrime, cybersecurity in this day and age. I have told my staff that we should do everything we can to prevent it, but sometimes we have to think about it as not a question of if, but a question of when, and how do we minimize the damage. And to that end, I recently instituted a new instruction at the agency. We are in the process right now of doing three things. One is cataloging every use we have of PII, personally identifiable information, used by the agency. Second, once we have identified all of it, we will then determine where we can either eliminate or reduce our collection of PII. And then third, for that PII that we determine we do need to continue to collect, what will be our best practices in how we protect it, how we limit its utilization, how we encrypt the information, and what is the duration by which we will keep it before we will destroy it.

So we are taking three steps to identify how we use personal information, and hopefully, that will reduce the likelihood that if and when we are hacked, that information will get out into the wrong hands.

Mr. LUCAS. In February of last year, the Commission negotiated a common approach for recognizing transatlantic derivative clearinghouses as equivalent with the EU. For a moment, since I serve on a number of committees that look at a number of things from a number of different perspectives, let's say Congress repealed the Orderly Liquidation Authority for systematically important clearinghouses, how would that affect the equivalency determinations enjoyed by U.S. clearinghouses now?

Mr. GIANCARLO. Thank you. A very important question. The situation prior to Orderly Liquidation Authority, in the event a CCP; a central counterparty clearinghouse, needed to be resolved, is Title VII in bankruptcy, that is full wind-down under the oversight of a trustee in bankruptcy. I mentioned that some of the reforms of Dodd-Frank have been wildly successful. One is the clearing mandate which has now caused the supersizing of a number of swaps clearinghouses. Putting a swaps clearinghouse of enormous proportion into Title VII bankruptcy is not a good outcome. If Title II is repealed, we are back to the situation prior, which is not optimal.

What we need to do is take a look at Title II, which was designed for banks, and think about how it should be retailored for use by these new supersized clearinghouses which, in the event of a crisis, actually need to be run in a very orderly fashion to maintain orderly markets, which could be a lengthy duration of time, not wound down in an immediate fashion for the benefit of either creditors or depositors, which they don't have.

Mr. LUCAS. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman yields.

David Scott, 5 minutes.

Mr. DAVID SCOTT of Georgia. Thank you, Mr. Chairman.

Chairman Giancarlo, I strongly believe that we certainly, on the issue of cross-border, that we have to continue to press for U.S. in-

terests, but ultimately make principles-based agreements with foreign regulators so that we can continue to promote cross-border businesses.

Now, our American market participants and other exchanges like ICE, in my district in Atlanta, and clearinghouses, they need to continue to have access to the European market in a fair and reasonable way, not economic silos. Do you agree with that?

Mr. GIANCARLO. I couldn't agree more. I think you stated the balance exactly right in your remarks. We need to work with our overseas counterparts to pursue the core principles of the swaps reforms, but do it in a way that advances American interests. And finding that balance is the critically important task for us at the agency.

Mr. DAVID SCOTT of Georgia. Yes. Now, one thing that disturbs me about this Brexit situation, in relationship to that, are you aware that a fight has erupted between the United Kingdom and EU, of course, since this Brexit regarding the location of important derivatives clearinghouses such as LCH. And the EU has even threatened to impose, or either enhance supervision on these so-called relocation requirements? Are you aware of that?

Mr. GIANCARLO. I am very aware of it. I am following it very closely, Congressman.

Mr. DAVID SCOTT of Georgia. And what is your concern with that?

Mr. GIANCARLO. If I can be a little colorful on this, I am concerned sometimes, I feel as if the United States is being treated as the children of a divorcing couple.

Mr. DAVID SCOTT of Georgia. Absolutely. I couldn't have said that any better than that. And so you can see my position, and you are familiar with the Intercontinental Exchange and the great work that they are doing.

Now, let me go to one other point on this *de minimis* question. I am concerned that it could have devastating consequences if we lower it to \$3 billion. First of all, it would limit our banks' ability to provide the risk management solutions for our customers. And then second, it would raise the cost of providing the hedges that are so important for risk management.

And so my question to you is, considering how long this has been going on and how soon action is needed, and you touched upon it in your remarks, but will you pledge today to not lower that level from \$8 billion?

Mr. GIANCARLO. Well, let me say this. As in most of these things, there is a careful balancing that needs to be done here. The balancing is, one of the core reforms is that swap dealers would be subject to registration.

Mr. DAVID SCOTT of Georgia. Yes.

Mr. GIANCARLO. And this issue then becomes what is the *de minimis* of that; where is the cutoff. We want to get the cutoff right, whether it is at \$8 billion, \$3 billion, or any other billion, where we keep market participants making markets and serving especially the smaller market participants, and at the same time we honor our obligation to register them.

Mr. DAVID SCOTT of Georgia. Okay.

Mr. GIANCARLO. What I will pledge to you to do is to get the latest and the very best data, to put it in front of my Commissioners and ask them what is the right level where we keep the amount of market-making going on in the markets, so our smallest market participants have access to it and yet we honor our obligations to register those who are truly swap dealers.

Mr. DAVID SCOTT of Georgia. Okay.

Mr. GIANCARLO. And my goal is to get to the right outcome of this.

Mr. DAVID SCOTT of Georgia. Very good.

Finally, I serve as the Co-Chairman of the FinTech Caucus, and I want to get your opinion on what you see the future as far as regulation. Now, as you probably know, the Office of the Comptroller of the Currency has indicated that they want to now put a special order charter on these FinTech companies, which means once that happens, they have to register with the Federal Government. Once they register then they are going to come under all these regulations from a variety of different sources. And in your case, you have a unit that you are dealing with to look at this; so does the CFP, their unit is called Galaxy.

Mr. GIANCARLO. Yes.

Mr. DAVID SCOTT of Georgia. And so is the Fed. All of these regulators now are itching and looking to how to regulate, and the biggest problem that the FinTech companies have is, what do we do about this. And so I would like for you, my time is up, so maybe we can look at that, going down the—

Mr. GIANCARLO. Thank you. If I could respond briefly. Just at the risk of overgeneralizing, these new innovators come in two buckets. They are either the quintessential small garage startup new company, or they are big, incumbent operations like some of the big Wall Street banks and other big players. My fear is if we go to a charter basis, the big banks and all will have no problem meeting all those requirements, and hiring the lawyers and everything else that you need to do to do it, and the small firms will simply say we will go somewhere else. We are having a hard enough time doing accounting and payroll let alone being able to hire the lawyers and everything necessary to get one of these charters. And so we will have shifted the balance of power in favor of the big firms. And as we know in our own American experience of the last 30 years, sometimes it is these small innovators that bring some of the most fundamental change to markets.

We don't want to disadvantage the small players; we want a balance between the big and the small, because where the best innovation comes, we don't know, we want all sides of the equation innovating and bringing those new evolutions to our markets, hopefully to better our markets. And that is our job, to make sure they better our markets.

Mr. DAVID SCOTT of Georgia. Thank you. And thank you, Mr. Chairman, for giving us a little extra time.

The CHAIRMAN. The gentleman's time has expired.

Austin Scott.

Mr. AUSTIN SCOTT of Georgia. Thank you, Mr. Chairman. I was somewhat laughing at my colleague, David Scott from Georgia's question how good it was, because the one that I had written down

dealt with financial technology, and you have answered part of it, but now we have a little time, maybe you can elaborate, Mr. Chairman.

The global contest in this area, are we ahead of other countries or are we behind other countries with regard to encouraging the development of this financial technology, and are there certain countries that we need to catch up with?

Mr. GIANCARLO. Yes. There was a study done by one of the big accounting firms a year or so ago, and it ranked countries on the FinTech and what we call RegTech innovation going on in those jurisdictions, and it looked at the major jurisdictions, divided the U.S. into California and New York, and looked at London, Hong Kong, Singapore, Australia, and Japan. And on the case of financing access to technology talent of the university, the United States ranked number one. But when it came to the regulatory environment, the United States ranked dead last.

Our competing regulatory jurisdictions, especially in London, but also in Hong Kong and Singapore, are way ahead of us. They have developed what, in the UK, they call Project Innovate where they work directly with FinTech companies. I like to say what they have done is they have taken their old limestone building and smashed a new doorway that says innovators come in here. And innovators can go in and say, "Look, here is what we are trying to do," and there will be somebody there that says, "Well, our rules don't let you do that, but we will put you into a special innovation center where we will allow you to innovate, you will work with some young technologists on the staff of the Bank of England or the Monetary Authority of Singapore, you will keep them apprised of what you are doing, you will do your innovations, and then we will see whether we need to amend our rules to allow you to do that."

Mr. AUSTIN SCOTT of Georgia. Yes.

Mr. GIANCARLO. That is what we are trying to do at the CFTC, but we are sort of unprecedented, this hasn't been the U.S. Government's response to innovation. The answer to your question is we are definitely behind our fellow international regulators in this area, and need to catch up, I believe.

Mr. AUSTIN SCOTT of Georgia. So just a quick follow-up to that. You are talking about trying to make changes by rule, and my question as a follow-up would be, do you have the regulatory authority now that you need, or do you need additional authority through legislation to help you accomplish this?

Mr. GIANCARLO. We are going to need at some point additional authority through legislation.

Mr. AUSTIN SCOTT of Georgia. Okay.

Mr. GIANCARLO. What we are trying to do in the interim though is really understand and fine tune what that is.

Mr. AUSTIN SCOTT of Georgia. Okay.

Mr. GIANCARLO. We have a rulebook and a set of regulations at CFTC that was written for the 20th century analog markets; those markets that we are all familiar with, we see in movies of trading pits, and hooting and hollering and shouting. Those trading pits are all closed, and yet our rulebook still recognizes floor traders and floor brokers, categories that don't exist anymore. Our rulebook was written for a trading world that existed last century.

The markets have moved on and yet we have to catch our rulebook up to the way the markets are today, and that is what we are trying to do with our LabCFTC.

Mr. AUSTIN SCOTT of Georgia. As you have recommendations for the language in legislation, if you would let us know. I imagine my colleague, Congressman Scott, and I can probably find agreement on that. I look forward to working with you on it.

One last question: The issue of self-reporting, there is a lot of criticism of self-reporting in the media. Seems to be criticism of virtually everything in the media these days. Can you explain the rationale behind encouraging self-reporting?

Mr. GIANCARLO. I would be delighted to. And I can explain this on a number of levels. The criticism that has been the media has run the gamut, and *The New York Post* reported that we are using south Bronx tactics to go after white-collar defendants. On the other side of the spectrum we have been accused of waving the white flag to Wall Street. The criticism has been all over the place.

Thank you for the question, because I really want to address this head-on. And let me start with how the CFTC prosecutes wrongdoing. We have three traditional ways of finding out about wrongdoing, all three of which we have enhanced in the last 6 months, not shutdown, not diminished; not waved the white flag. Our three traditional ways; one is our own internal surveillance. We have enhanced that by actually moving it into our Division of Enforcement so it is more efficient in terms of uncovering wrongdoing. Second, we rely on tips and referrals from other law enforcement agencies. We have enhanced those relationships to make those tips received by us more efficiently.

Mr. AUSTIN SCOTT of Georgia. Yes.

Mr. GIANCARLO. And finally, we have a whistleblower program. We have enhanced that by adding new protections for whistleblowers to protect them to bring items to our attention. All three of those methodologies remain in place.

Our new cooperation agreement is an additional fourth channel that we have added to that. And what this is, is a way of us having companies themselves, if they become aware of wrongdoing, report that wrongdoing to us so that we can then act on it.

Now, my light is flashing so I am running out of time. I would like to talk about this more, if there is a further follow-up question, I want to talk more about this specific program.

Mr. AUSTIN SCOTT of Georgia. Mr. Chairman, thank you for your service and your family's service to the country, and thank you for visiting Georgia.

Mr. GIANCARLO. Thank you very much.

The CHAIRMAN. The gentleman's time had expired.

Mr. Maloney, 5 minutes.

Mr. MALONEY. Would you like to finish your previous answer, Mr. Chairman? I would be curious to let you do that.

Mr. GIANCARLO. Thank you very much.

I want to give you just an example of where this cooperation program can be really useful. Just picture a CEO walks into his office at 9 o'clock on a Wednesday morning, and standing outside is his Chief Compliance Officer, and he says, "Sir, we have a problem. We just discovered that Joe Blogs on one of our trading desks has been

engaged in completely illegal conduct. It has just come to our attention. I am bringing it to your attention.” The CEO rightfully says take him off the desk, send him home, let’s investigate and find out what is going on. A month later he gets the report. The report is this guy was a lone actor, as soon as they discovered it they took him off the desk. It seems like he was acting alone, but they know it was wrong. The CEO at that point is faced with a choice. One choice is to fire that employee, say nothing further, and be done with it. The other choice is to report it to the regulator.

Up until now, if they report it to the regulator, they are subject to the full panoply of punishment for doing that. Unfortunately, the choice that may be more likely to be made is that employee is fired and nothing more said about it. And the problem with that is that means that employee then goes across the street, gets a new job with another firm, and starts the same nonsense all over again, and we as the regulator don’t get to take that person out of the marketplace.

Mr. MALONEY. Okay, if I may.

Mr. GIANCARLO. Yes.

Mr. MALONEY. I am reclaiming my time, as my colleague Maxine Waters would say.

Mr. GIANCARLO. Of course. I am sorry.

Mr. MALONEY. I am interested in that, but I am also interested in systemic risk. What are the sources of systemic risk right now that we are not paying enough attention to?

Mr. GIANCARLO. That is a great question, and it is a complicated one for—

Mr. MALONEY. Do you want to start with clearinghouses?

Mr. GIANCARLO. Well, in some ways it is the victim of our own success. The swaps clearing mandate has been wildly successful, but I am not sure we fully thought of the dimension. Today, the London clearinghouse has eclipsed the Chicago Mercantile Exchanges, the world’s largest clearinghouse measured by initial margin.

Mr. MALONEY. Right. What happens if it fails?

Mr. GIANCARLO. Well, failure in the swaps world is complicated because clearinghouses traditionally don’t fail.

Mr. MALONEY. I know.

Mr. GIANCARLO. What they do is though—

Mr. MALONEY. But they are different now, right?

Mr. GIANCARLO. They can suffer short-term liquidity crunches where they have to pay initial margin, or a variation margin, in cash, and they have to convert collateral, often very good collateral, like T-bills and cash-like debt, but they have to convert it quickly into cash.

For our domestic clearinghouses, they have a facility under Title VIII of Dodd-Frank with the Federal Reserve that can give them short-term liquidity lending.

For overseas clearinghouses, they have the Bank of England but they don’t have direct access to our Federal Reserve. And yet something like 50 percent or so of what is in the London Clearinghouse is U.S. bank, and something like 44 percent is U.S.-dollar denominated. That is a concern.

Another concern I have is a consolidation that is taking place in the——

Mr. MALONEY. Yes, I am sorry, just quickly, what is the concern?

Mr. GIANCARLO. I don't want to use your time. Thank you.

Mr. MALONEY. The concern is that the Bank of London doesn't care the way it should about bailing out U.S. companies.

Mr. GIANCARLO. Well, the Bank of England is a very good regulator, and I have confidence in their ability to act quickly, but they would be having to act quickly with dollar facilities for those dollar deposits, and they may then need to turn around and use what is called a swap facility with our Federal Reserve to back that up. Now, I have spent time with the Bank of England, I believe the processes are in place for this, but in fast-moving crisis this could be a point of a fair amount of concern and tension.

Mr. MALONEY. I have less than a minute. Besides the clearing-houses, what are the other systemic risk concerns?

Mr. GIANCARLO. There is always a concern with swaps when you combine the complexity and the leverage that is involved in them, and that is one of the reasons why a lot of the reforms are the right reforms, when we register swap dealers, we inspect them, we want to make sure they understand how these products are used. We need to understand what the actors are in this, and why I have put forward a proposal to actually license intermediaries in this market, brokers in this market. It is not something that is in Dodd-Frank, and I feel it should be, and it is something we feel at the agency we can do, so that we make sure that the market participants themselves are knowledgeable in these products.

Mr. MALONEY. Thank you, Mr. Chairman. I knew you when you were a successful entrepreneur in New York City, in a space that was similar to the one I was in, and you had a better business model. I am very happy to see you in this chair today.

Mr. GIANCARLO. It is nice to see you again. Thank you, Congressman.

The CHAIRMAN. The gentleman yields back.

Mr. Crawford, 5 minutes.

Mr. CRAWFORD. Thank you, Mr. Chairman.

Mr. Chairman, thank you for being here today. Back in June, this Committee heard testimony supporting granting clearing-houses access to account services and limited discount window access at the Fed. Do you think extending such services to all derivative clearinghouses would help avoid a taxpayer bailout and reduce systemic risk, and if so, why?

Mr. GIANCARLO. I want to distinguish too big to fail, TARP-like bailouts of clearinghouses, which would be extraordinarily unforeseeable, with the two facilities that are available in Title VIII, which is depository facilities. Actually, to Mr. Maloney's question about systemic risk, one area of systemic risk is these clearinghouses are collecting all this margin and they are putting it with the same three or four custodial banks. Being able to put that money on deposit into the Federal Reserve system is a very valuable element of Title VIII, and that is a value. And that is not a too big to fail, that is simply putting up cash assets into a Fed reserve account. And the one is short-term liquidity provision in the event of a short-term liquidity crunch, where these clearinghouses

will be able to put up good assets again in terms of short-term cash liquidity on either a day or intraday, or several-day basis. Those are healthy facilities that could actually forestall a crisis.

Mr. CRAWFORD. Thank you.

I want to switch gears a little bit, Mr. Chairman. This is the Agriculture Committee, and I want to talk ag commodity trading as it applies to an everyday farmer who is making decisions about risk management, and how they deal with that day-to-day. I am a former Series 3 license holder. I don't pretend to know much about the commodity markets other than, as you described, a broad range of commodities under your purview. But I want to focus on the ag side just a little bit.

I have a theory, and you can either debunk this or validate it, whatever, but I have a theory that if we have more actuals in the market, and I am talking about commodities agriculturally, if we have more actuals in the market we reduce volatility. Would you agree with that?

Mr. GIANCARLO. There are a lot of new and emerging econometric views of markets. There is something called the adaptive markets theory that has come out of a professor named Andrew Lo at MIT that talks about markets like ecosystems.

Mr. CRAWFORD. Yes.

Mr. GIANCARLO. And, in the natural world the healthiest markets are the markets that have the greatest amount of biodiversity.

Mr. CRAWFORD. Yes.

Mr. GIANCARLO. And the market environments that are the least durable and the more prone to market shocks are the ones that have limited biodiversity. We see a similar thing in our markets; those markets that have the greatest multiplicity of market participants of all stripes; naturals, long-term hedgers, short-term hedgers, speculators, are the ones that are the most durable. And the ones where you have a small amount of market participants or of a similar trading style are the ones that are least durable. Our goal, as market overseers, ought to encourage the greatest diversity of market style, market strategy into marketplaces. And that is what we seek to do is to increase the biodiversity, if you will, of our markets.

Mr. CRAWFORD. Sure. Let me throw this out. My fear is that, as we have discussed this, and it has been an interesting conversation we have had thus far, but I am thinking the folks that are watching this on C-SPAN, the literally tens of people that are watching this right now—

Mr. GIANCARLO. With their eyes glazing over, at least when I am speaking.

Mr. CRAWFORD.—have kind of zoned out, and that is sort of the sense that I get from farmers is that they have been relegated to purely price takers, and that spec traders on either side are now responsible for price discovery. And there used to be a true price discovery in there for them, and that is when we saw probably more of a willingness for agricultural producers to become hedgers, because they are already in the market, they are already long actuals, so they need to hedge, they need to be short. But trying to sell that to a farmer with all that we are talking about right now in the broad sense, it is putting a lot of fear out there. And so my

point is this, we are relying almost exclusively on spec trading for price discovery. Your thoughts on that?

Mr. GIANCARLO. I worry about that too. And one of the things that we aim to do in our budget is really double the size of our econometrics unit. The CFTC used to be an agency driven by economics, and that has really winnowed down over the last decade, and because we need to understand the impact of these new market participants in the market. There is no magic wand, but it has to start with better intelligence about how our markets are changing as we go into this digital environment.

And I am very concerned, but I don't want to take action based upon fear and worry, I want to take it based upon sound, economic understanding as to what are the impacts of some of these new, nontraditional players in our ag markets.

Mr. CRAWFORD. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. The gentleman's time has expired.

Mr. Evans, 5 minutes.

Mr. EVANS. Thank you, Mr. Chairman.

Mr. Chairman, I would like to follow up on something that my colleague was raising in terms of can you think of laws and regulations that have changed with Dodd-Frank that still needs more refinement. You look like you had started to talk about that. You mentioned specifically some things that were not in Dodd-Frank. Can you go back to that aspect of it?

Mr. GIANCARLO. Sure. If we take the core reforms in Title VII that the CFTC was charged to implement, starting with probably the one that was most fundamental, and that was the clearing mandate the CFTC's implementation, as I said, was wildly successful. And now we have the second and third order ramifications of that, and that is the supersizing of some of our clearinghouses, including one in particular that is not even on American shores. And we have to face up to that challenge in an environment where even the European regulatory response is changing because of Brexit. That is a very complicated one, and will play out over the next year or so.

The second mandate that we implemented was swaps data reporting, and as I mentioned earlier, a vitally important reform, one that I fully support for different reasons. We haven't achieved its ultimate objective. It was an enormous undertaking.

Mr. EVANS. Did you say we have or have not?

Mr. GIANCARLO. Have not.

Mr. EVANS. Okay.

Mr. GIANCARLO. I am sorry if I didn't articulate. We have not fully achieved that. I am committed to doing it, but it is a big project, and that is because the marketplace itself had no agreement on what were the right ways of identifying transactions. They called the same instruments by different names throughout the marketplace, and different nation states have different approaches to this as well. It is an enormous task. We must get it done.

The third implementation was the one that I personally am most critical of, I believe in the need to regulate and register swaps intermediaries; what are called swap execution facilities. But I believe that the CFTC in its first crack at this got it wrong for two reasons. One is it didn't follow the instructions of Congress. Con-

gress said that swap execution facilities should be able to use any means of interstate commerce to transact, and the CFTC said, “Well, you can have any means as you want as long as it is either the two types we are prescribing.” And the two types were types that come out of the futures world, not out of the swaps world, so they used the wrong model on this. And so I wrote a lengthy white paper 2 years ago laying out an approach that is more consistent with Congress’ instruction there.

Those are the three major rule implementations that we have done, and moving forward, what I believe in the three principles that we want to do is optimize their implementation in a way that is healthy and is appropriate for our markets.

Mr. EVANS. You also said something else a few minutes earlier, you talked about the rulebook, the rulebook being established at one period of time, and then you talk about the modernization, where we are in the 21st century. How do you reconcile that aspect, and what recommendations do you make to us to try to somewhat reconcile that challenge?

Mr. GIANCARLO. I believe it is the case that we have a ruleset that was pretty much originated—our agency was founded in 1975, most of our accords were written in the 20th century, and yet our markets are changing dramatically in front of our eyes.

A quick experience I had visiting a farmer in Texas a year ago, he showed me how he was able to cut a field in the middle of the night in pitch darkness, using GPS satellite guidance for his combine, vehicle telemetry for his tractor, and a drone to be able to film the entire scene. He and his son cut the entire field in the middle of the night. Farming; an activity that is as old as mankind, has always been a daylight activity, thanks to digitization, is now a 24 hour a day activity. And that type of digitization of farming is mirrored in our markets as well. Our markets are being dramatically changed by these new exponential digital technologies, and we need to keep up.

Now, there is an old doctor adage; “First, do no harm.” We need to be careful how we make changes in our rulebook. They need to be appropriate, and we need to start with understanding the impact of these new technologies on our markets, understand it thoroughly so we can update our rulebook in line with hard data as to how our markets are being affected by these new digital technologies.

Mr. EVANS. Okay. Thank you, Mr. Chairman. I yield back the balance of my time.

The CHAIRMAN. The gentleman yields back. Thank you.

Mr. Comer, 5 minutes.

Mr. COMER. Thank you, Mr. Chairman.

My first question is going to revolve around digital currency jurisdiction.

Mr. GIANCARLO. Yes.

Mr. COMER. Bitcoin and distributed ledger technology are the subject of many interesting regulatory questions today. For example, the CFTC asserted jurisdiction over digital currency such as Bitcoin, calling them commodities, while the SEC asserted jurisdiction over DAO (decentralized autonomous organization) tokens, calling them securities.

Similar questions arise in connection with the treatment of distributed ledger technology by other regulators. What can you do to help clarify the regulatory treatment of these new technologies?

Mr. GIANCARLO. Yes. Here is a perfect example of how our rules and SEC rules were written for a time before there were digital currencies. And what we now need to do is reinterpret these rules in light of this very fast-paced technological innovation, which are these cryptocurrencies. And it is a volatile environment; it is one that is evolving very, very quickly.

And so what we are doing at the Commission is just calling it straight down the line. We are approaching this like a good umpire; we are calling balls and strikes. We read our statute and the definition of *commodities* to involve these new instruments. And you mentioned that we registered a cryptocurrency exchange, we did that because they met our requirements. And I had our lawyers go through it carefully and say, "Yes, they meet the requirements," so we registered it.

We also, however, have just taken on a Bitcoin Ponzi scheme, because we also believe they are meeting our requirements but in the wrong way, and they are violating those.

We are playing this straight down the line. We are interpreting our rules in light of this new technological innovation, and we are looking at this very carefully and very thoughtfully, but we have to reinterpret a rulebook that was written before those came in existence for the world that we have today.

Mr. COMER. Okay. Switching gears, the Volcker Rule is currently administered by five agencies jointly, including the CFTC. The Treasury Department recently criticized the rule for its extraordinarily complex and burdensome compliance regime, which hinders both market-making, functions necessary to ensure a healthy level of market liquidity, and hedging necessary to mitigate risk. What role do you think the CFTC should take in the future implementation of the Volcker Rule, and how do you scale that to your available resources?

Mr. GIANCARLO. Yes, the Treasury Secretary has taken the lead on this and it is in the Treasury report, and the Administration's view is not to call for the repeal of the Volcker Rule but to make it suitable for our markets, and ultimately suitable for broader economic growth and market health. And I believe that is the right course.

We will be in the boat rowing on fixing the Volcker Rule, but we won't be the lead oar; that will come out of Treasury, and we look forward to what recommendation is made.

As far as from a markets point of view, my concern with Volcker is that it be conducive to healthy market activity. There are some presumptions built into the current definition of the *Volcker Rule* that presumes that activity is impermissible proprietary trading as opposed to permissible market-making. And I have some questions with some of the presumptions. They don't seem to be based upon market reality, they seem to be based upon maybe a bias against markets. And as a market regulator, we are very concerned where we believe there is bias against healthy market activity.

Mr. COMER. Yes. With respect to position limits, the SEFs are required to set position limits, but have no view into the overall posi-

tions held by people who transact on their platform. Does it make sense to eliminate this requirement?

Mr. GIANCARLO. Well, it is a very complicated area. The nature of the swaps market is to have multiple execution points, unlike our futures market that has one execution point for most of the listed products. It is complicated. How do you have uniform position limits when it is actually implemented at multiple points, who don't necessarily have a means of communication, which is why, before I went to the government, I actually proposed to the CFTC a public-private partnership to form a council that would agree on position limits and apply it across the board. And that is something we are still looking at, at the Commission, and will continue to look at as to whether that might be a solution to this.

Mr. COMER. Okay. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. The gentleman yields back.

Mr. O'Halleran, 5 minutes.

Mr. O'HALLERAN. Thank you, Mr. Chairman. I guess my problem right now is I have so many notes, I can't organize them fast enough, but I have as many concerns also. Your testimony basically has said to me that after 9 years, we are not where we need to be, and that I don't think I have, in my experience with the CFTC I have never seen a time when you were funded appropriately to be able to meet your mission statement at all. And so I don't think you are funded appropriately now either. You had stated there are more knowns than unknowns. I don't know about that. There are more unknowns than knowns. That is a concern, given your current position. [Audio malfunction in hearing room.] and my math is bad too, as it appears. After all that diatribe, please catch up with me.

Mr. GIANCARLO. Thank you, Congressman. Now my notes are all over the place, and I will try to respond, if I could.

Thank you for the shout-out on our budget. As you know, we did use bypass authority to seek a 12 percent funding increase over the budget put forward by the White House. You asked about what is the strategic vision. I think the strategic vision is twofold. One is, I am committed to the core reforms of Title VII, personally. I was committed then, I am committed today. My goal is—

Mr. O'HALLERAN. You don't have the resources to get there.

Mr. GIANCARLO. Well, we have asked for a 12 percent budget increase, but within that we can achieve a lot.

Second, even with those reforms, Title VII doesn't address some of the biggest challenges we have today. Cyber is not addressed in Dodd-Frank. The digitization of our markets, not addressed in Dodd-Frank. The fragmentation of our markets, not addressed. The consolidation of market participants, including the consolidations of the futures commission merchants industry, not addressed. We are committed to completing that, but we also have to look forward to these other challenges that are not addressed, and that requires market intelligence. We really need to understand these changes.

I do want to address the issue on—

Mr. O'HALLERAN. I hear a tapping behind me.

Mr. GIANCARLO. If I could just on *The Wall Street Journal* piece, that compared the first 6 months of this year. As we explained to *The Wall Street Journal*, all of those cases were started under my

predecessor, so if they are disappointed in what has been done in the first 6 months, they are really addressing not my agenda, but the previous agenda.

The CHAIRMAN. The gentleman's time has expired.

Mr. Bost, 5 minutes.

Mr. BOST. Thank you, Mr. Chairman.

Chairman Giancarlo, the ongoing conflict between the UK and EU over Brexit has introduced significant risk to swap clearing. The EU may require euro-denominated swaps to be cleared in the EU. Alternatively, the EU may impose strict supervision requirements on clearinghouses outside of the borders.

Now, because of the luxury of this place, I am bouncing from one committee to another, so you may have answered some of these questions already, but I have four specific questions and I would like to have them addressed today, if we can. How might this affect the U.S. clearinghouses, how might it affect U.S. swap markets, why would we allow the EU to disrupt the equivalency agreements, and what can we do to make sure investments are adequately protected? Those are the four questions I have.

Mr. GIANCARLO. Thank you very much. The last one is investments are adequately protected?

Mr. BOST. Yes.

Mr. GIANCARLO. It will affect our U.S. clearinghouses. As I read the European proposal, they would export European substantive law, a mirror on the operation of our U.S. clearinghouses. They also would have a role for the European Central Bank in overseeing our clearinghouses. This is something that is unprecedented. Our Federal Reserve has no role in clearinghouses offshore. Yes, it would affect our U.S. clearinghouses.

It would also affect U.S. markets. We think it would lead to a greater fragmentation of markets. And as I used that analogy of markets like ecosystems, when you fragment ecosystems you weaken and create potential harm to ecosystems. And we think fragmenting markets is an existing problem which will be exacerbated by this proposal.

On the third point about the existing equivalence agreement, where I come from a deal is a deal. We reached a deal. And I give credit to my predecessor, Chairman Massad, he spent 3 years working on that deal. Concessions were made to reach that deal with the Europeans. A deal is a deal.

And then on investments in the market, whether the investment is shareholders in our clearinghouses, whether it is investment shareholders in other elements of our financial institution, a wholesale change like this will have impact on investment and the investment returns for market participants.

All four of your concerns are concerns that we share and we will be addressing in the months to come.

Mr. BOST. What is the answer that we can do from this Committee from a legislative standpoint to give an opportunity to protect our investors?

Mr. GIANCARLO. Well, the signals to the Europeans that the United States is a rule-maker, not a rule-taker are a start. We were the first rule-maker when it came to the implementation of the Pittsburgh Accord swaps reforms, and in many ways we did a

mighty fine job of it. And while we respect the Europeans' process of coming to their rulesets and rule-making, again, we are a sovereign nation, this Congress makes the laws, this agency implements the laws, and we have been doing this for a long time, and for the most part we are doing it quite successfully. Not in every case. We can always improve and we can always do better, but we certainly are recognized as the world's leader in derivatives regulation, and this Committee has a very important role to play. We are a rule-maker, not a rule-taker.

Mr. BOST. Thank you.

The CHAIRMAN. The gentleman yields back.

Mr. Panetta, 5 minutes.

Mr. PANETTA. Thank you, Mr. Chairman.

Mr. Giancarlo, welcome, and thank you for this opportunity for me to ask you questions. I appreciate this chance.

Mr. GIANCARLO. Thank you.

Mr. PANETTA. And thank you for your preparation as well as your testimony.

I have one question, but I have a little bit of a windup before I pitch it to you, if that is all right. It deals with the CFTC's enforcement of the impartial access provision. Now, prior to 2008 the swaps market was based on sort of a two-tier system; it went from the client, to the dealer, to the broker, and then back up that chain. The issue back then was that the dealer and the broker had sort of a, I guess, a relationship where they worked out more of a favorable rate. And the dealer would benefit, but then would charge the client at a much higher rate. And, therefore, I guess, Title VII of the Dodd-Frank, which was, I guess, crafted by this Committee, changed it from a two-tier system to a one-tier system, and put in a middleman for these standardized swaps, what they called them, and they are known as the swap execution facilities; SEFs. Now, they are supposed to be impartial and anonymous, reduce discriminatory pricing on these swaps, and require no customization whatsoever. And, in fact, the CFTC's SEF rule mandates that an SEF must ensure impartial access to its markets and market services for eligible participants, and that eligibility itself must be set at an impartial, transparent, fair, and nondiscriminatory manner.

Now, one of these eligible participants from my State of California would be CalPERS, the state agency responsible for managing retirement accounts for public employees. And by ensuring impartial access to CalPERS into this market, they and the 1.6 million Californians who depend on CalPERS, including myself on a past employment that I had, for their retirement and health benefits, they stand to gain.

In your written testimony, you state that the goal of the CFTC is to oversee a U.S. swaps regulatory framework that has the optimal mix of well-considered rules and regulations that best foster open, transparent, competitive, and financially sound derivative markets to support American economic growth, job creation, and prosperity. However, the SEF marketplace as it stands would not be fairly described as one where impartial access is the rule. Rather, it is the exception.

My question, why is the CFTC not ensuring impartial access to SEFs for standardized swap trading?

Mr. GIANCARLO. We will pursue failures of SEFs to impose impartial access as appropriate. That is a rule that we take seriously. We will.

More broadly, we believe that Congress took a very organic approach to market development in Title VII and did not dictate the form of market structure. The science of platform economics teaches that there are many different market structures and marketplaces. There are many markets that have wholesale and retail market structures, from the automobile market to many other marketplaces. I don't view Title VII as requiring an all-to-all marketplace. In fact, the swaps market is not a retail market; it is restricted to what is called eligible contract participants. It is a professional marketplace. And many professional marketplaces have wholesale elements and retail elements.

However, I entirely agree that whatever the market structure that evolves organically in the marketplace, the impartial access requirement is a fundamental requirement in that marketplace, and we will enforce that requirement as appropriate as and when we see it.

Mr. PANETTA. And do you see that happening any time soon, or when do you think that is going to happen?

Mr. GIANCARLO. Well, if we see a violation of it, we will respond to it.

Mr. PANETTA. Okay, great. Thank you. I appreciate it.

Thank you, Mr. Chairman. I yield back.

Mr. THOMPSON [presiding.] The gentleman yields back.

I now recognize the past Chairman of the Agriculture Committee, Mr. Goodlatte, for 5 minutes.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Giancarlo, thank you very much for appearing today. I appreciate it very much.

I would like to follow up on a line of questioning by Mr. Lucas earlier with regard to the recent Treasury report released just last week, where they observed that the regulatory distinction between swaps and security-based swaps did not reflect previous market practice, and the resulting split jurisdiction between the SEC and the CFTC has posed challenges for market participants. Large market participants have expressed their concern over being subjected to unnecessary costs and duplicative oversight by both the CFTC and the SEC, and have observed that it would be much more cost-effective for market participants and the derivatives market as a whole to adhere to one set of rule-makings.

As we sit here today, more than 7 years after the Dodd-Frank Act became law, the CFTC has largely implemented its swaps rules, whereas the SEC has yet to do so. Why would not right now be the right time to reconsider how we have divided swaps jurisdiction between the two agencies? Since you have done your homework on your agency.

Mr. GIANCARLO. Any time is right to reconsider whether a particular part of the statute may have been ill-advised or cause over-complexity. An example is in the credit default swaps marketplace where a trading desk that may engage in credit default swaps will

have both on the desk those trading single-name credit default swaps and those trading credit indices, and yet if they are trading one product, they are subject to SEC regulation, that is single-name credit default swaps, if they are trading credit indices they will be subject to CFTC regulation. And since sometimes these indices have different components in them, if it is ten or less it is SEC regulation, if it is ten or more it is CFTC regulation, and the components can change. You can have a trading desk that the division between who their regulator is can shift, and yet in real time they are trading the marketplace.

Yes, some of these definitions are overly complex, especially more complex by the fact that we have our rules set in place and the SEC is still doing it.

I do believe there are other products, however, in the securities-based category that probably are suitable for the SEC, such as equity-based derivatives. If Congress were to take up the challenge of reconsidering this, both I and Chairman Clayton would be pleased to participate in this in an informed fashion to get the optimal mix of what should be SEC jurisdiction, what should be CFTC jurisdiction, and perhaps we don't have that optimal mix today.

Mr. GOODLATTE. Let me ask another question related to Mr. Lucas' line of questioning. You talked about the financial stability of some of the commodity exchanges, and what is the best way to deal with a collapse of one of those exchanges, which we certainly hope doesn't happen but it can happen. Have you had the opportunity to look at the legislation passed by the House, which originated in the Judiciary Committee, which I chair, dealing with a new way to handle large financial institutions in bankruptcy? It primarily focused on banks that were considered to be too big to fail. But I would like to know whether you have looked at that, whether you know anything about whether that could work for these types of institutions, or whether something else could be done, or whether that legislation could be tweaked to make it work better, to be prepared in the event that there is a need to liquidate an exchange.

Mr. GIANCARLO. Thank you for that.

I am aware of the existence of that legislation. I apologize that I am not conversant with the details. What I did note in it is that, from my perspective, you appear to be saying, "Okay, Title II of Title VII was passed in the wake of a crisis, it was rushed and it was rather wooden, perhaps, and crude in its approach. How do we fine-tune this in a more thoughtful fashion based upon what we have learned, and get to an outcome that is a better and more refined outcome." And that is where we need to go with some of our systemically important clearinghouses in the swaps area. Title II is a rather wooden and really bank-centric approach, and yet we need something much more tailored to clearinghouses which, in the event of a resolution, which is highly unlikely, need a more long-term solution than simply taking them out of the market. That could cause tremendous market harm. They need to be operated for the health of the markets perhaps for a long duration, and that is not really possible under Title II of Dodd-Frank as I read it today.

A more refined approach would be very welcome.

Mr. GOODLATTE. Well, I would be interested if you would take a closer look at that and give us your thoughts, and I would be happy to make available the attorneys on our Regulatory Reform Subcommittee that deal with bankruptcy law to hear your thoughts on anything we might be able to do in that area to make it work better for other types of financial institution failures.

Mr. GIANCARLO. We will do that, Congressman, and we will be in touch with your office on that. Thank you.

Mr. GOODLATTE. Thank you, Mr. Chairman.

The CHAIRMAN [presiding.] The gentleman's time has expired.

Ms. Blunt Rochester, 5 minutes.

Ms. BLUNT ROCHESTER. Thank you, Mr. Chairman. And thank you so much, Mr. Giancarlo, for being here.

My question is a little different than some of the other ones that you have heard this morning. Congress will once again face a vote to lift the debt ceiling, and at our full Committee hearing on clearinghouse resiliency this year we heard a great deal of testimony regarding the paramount importance of U.S. treasuries to the clearinghouses and, thus, cleared markets you oversee. Some of my colleagues in Congress, including colleagues on our Committee, have publicly stated that their belief that failing to raise the debt ceiling would actually, "not be that big a deal." Would you please describe the impact of such a failure on the markets the CFTC oversees?

Mr. GIANCARLO. All parties probably would agree, and I certainly would agree, that widespread concerns that the U.S. would not make payments on its securities would be harmful to markets, and certainly would affect their usefulness as collateral in our clearinghouses to support swaps transactions.

Ms. BLUNT ROCHESTER. Yes. Given the nature of this, and I watch CNBC, I love this kind of stuff, but the thought of what this could mean to our country as you describe it, and also as I hear about it, and kind of the pain that it would inflict upon us for what seems to be maybe political, in the end, can you tell us do you think it is time to end this practice? Do you agree with the President that it is time to abolish it?

Mr. GIANCARLO. Yes. As the head of a regulatory agency, I am loath to tell Congress how it should conduct its affairs. These are important instruments in the marketplace, but how Congress organizes its funding and how the debate goes I will leave to those who have stood for public election and represent their constituents, and will make those decisions as they see fit.

Ms. BLUNT ROCHESTER. Well, I appreciate your having confidence in us, and we have confidence in you as well. I mean so that is one of the reasons we ask your opinion on something like this, and particularly since it is something that the President himself has said it is time to abolish. I was just curious if you agree with that.

Mr. GIANCARLO. I truly do believe that the creditworthiness of the United States Government is vitally important to both our domestic and global financial markets, unquestionably.

Ms. BLUNT ROCHESTER. Okay. And I am going to shift a little bit because I have the same kind of questions that the two Mr. Scotts and Mr. O'Halleran had about FinTech, and I was really interested in what you said about the study and how we compared to other countries, and where you said that we are number one is on the

financing and access to talent, basically. And where you said we are falling behind, or are the last, is on the regulatory environment. And I was just curious if you could just share with us things that you think we need to do, your agency needs to do, so that we move ahead and move from the bottom to the top.

Mr. GIANCARLO. Yes. One of the things that was cited in the study that I mentioned as a very optimal outcome is what the Brits do. There is a coordinated program between the Treasury, the Bank of England, and the market regulator; the FCA, on this Project Innovate. They work together so innovators can do pretty much one-stop shopping when they talk to the regulators and the government about their innovations.

Now, I also think they are very prudent about the way they go, but they don't just simply say, "Oh, new innovation, great, knock yourselves out, go for it," they are very diligent in how they approach these innovators, they work with them carefully, they are not going to willy-nilly make rule changes simply because some new innovation is coming around. But the innovators know from day one where they stand when they speak to the British regulators. And the same is true in Singapore and Hong Kong, in my experience.

That is not the approach here. What we have here is an alphabet soup of regulators. We have our LabCFTC, others have no place for innovators to go. And I have heard some stories about one innovator that went to one regulator and said, "Well, we want to try something new," and the regulator said, "Well, you can't, our rules don't allow for it." And they said, "But this is, potentially, really beneficial to the market," and the regulatory officer they met with said simply, "Maybe our rule will change, but for now that is the way it is, end of story." That is not the reception they would have in the UK, and that is not the reception we want to give in this country. We are the home of innovation. I mean we created the Internet. We should be a place where innovators receive a warm and intelligent reception, thoughtful reception, a cautious one; we always need to be cautious, but a thoughtful one. And that is where we need to get to.

The CHAIRMAN. The gentlelady's time has expired.

Mr. Faso, 5 minutes.

Mr. FASO. Mr. Chairman, thank you for that. And, Chairman Giancarlo, thank you for being here today, and I have enjoyed your testimony.

Mr. Bost, unfortunately, asked the question I was thinking of, but picking up on what Ms. Blunt Rochester just said, I am wondering if you could blue sky with us for a moment. If we do not modernize our regulatory pattern and approach where do you think these markets will be in 10 years, and what risk do we have domestically if we do not keep up with innovations and regulatory reforms which may be taking place in other markets around the world; Singapore and other places?

Mr. GIANCARLO. Actually, when I spoke to an official from the Monetary Authority of Singapore, they told me that they modeled their approach to innovation on the U.S. And I said, "On us?" And they said, "Yes, but 20 years ago. We modeled it on the U.S. in the 1980s when a thoughtful Congress and the White House got to-

gether and said the Internet is happening here, why don't we take a first, do no harm approach to the Internet and encourage its innovation in the United States." And so foreign jurisdictions are taking a page out of our book and we are not following our own good example in this way. And so we are seeing big innovation environments develop offshore in England.

China has devoted a whole province and funded it to develop this new distributed ledger technology, and its leading university in that area is receiving government money. China is so committed to the market innovations, we need to have just some portion of that same fortitude and determination and we would do equally well, if not better, because so much of the science is here, so much of the funding is here. But we need the same regulatory approach. We need an open regulatory approach.

Mr. FASO. Let's try to bring this to a practical level. To the average person who might be watching this out in America, to our consumers, to our farmers, to our businesses, what are the practical implications if we don't modernize and reform?

Mr. GIANCARLO. Well, we fall behind, and so the big context here is that other countries view markets as vital national interests. The Chinese are the largest consumers of cotton in the world, the largest consumers of precious metals in the world, the largest consumers of rare earth metals, and yet all of those commodities are priced in western markets. And they say to themselves, but we consume those products, why are they not priced in Yuan, why are they priced in dollars. They would love to own those markets. They would love to have those markets. We need to have the same approach to our markets as vital national interests, that other countries see as vital national interests.

Mr. FASO. But persuade the consumer out there, tell the American consumer what does this actually mean to them.

Mr. GIANCARLO. I will give you a perfect example. I was in a grain elevator in Montana a few months ago and the grain elevator operator showed me his chart of his prices, and all of his prices were coming off of prices traded on the Chicago Mercantile Exchange. When a farmer in Montana goes to the grain elevator, the price signals, even if he is not hedging in his markets, the prices are coming from American markets. Well, let's say those markets, however, move offshore, and the prices are not coming from Chicago but are coming from Shanghai. That is why these markets are vitally important, because our consumers can rely on American markets to set the price for their production.

Mr. FASO. In other words, there is less volatility in terms of what the predictability of prices could be, because they are priced in dollar-denominated, not foreign-denominated.

What does that mean to a consumer in the grocery store looking at the cost of various staples that they buy each week?

Mr. GIANCARLO. When any of us go in the grocery store we enjoy the luxury of not having to stop for a minute and say, "Wow, I wonder if it was a good condition on the American farm, I wonder if it was a good growing season, because I want to know if there are going to be fresh vegetables when I get to the vegetable section, or if there will be bread on the shelves." We enjoy that luxury of stable prices, and it is not just in our groceries but in our 30 year

mortgages. We are the only country in the world that, as a standard homeownership tool, uses a 30 year fixed rate mortgage, because our interest rate swaps market enable our banks to hedge the risk of variable interest rates. Same thing with our heating oil, all our energy products are priced in dollars. If it were priced in foreign markets without our strong regulation, and priced in different currencies, the consistency we enjoy in our western way of life would be dramatically changed.

Mr. FASO. This is the critical ingredient that we need to drive home to the American consumer as to the importance of modernization of these rules, because it provides more predictability and stability to prices here for our consumers, our businesses in the United States.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. The gentleman yields back.

Ms. Adams, 5 minutes.

Ms. ADAMS. Thank you, Mr. Chairman. And thank you to the Ranking Member. And thank you very much for your testimony.

The new self-reporting and compliance approach that you outlined in your testimony does not provide a formula or benchmark for the benefit a company may derive from self-reporting. An earlier draft of the new advisory specified a reduction of up to 75 percent of the total penalty, but the final version simply said that the company will see substantial reduction in their penalty if they self-report.

How do you expect companies to calculate the benefits of self-reporting without specific numbers, and will CFTC be issuing further guidance?

Mr. GIANCARLO. Thank you very much for that, Congresswoman.

Some of this is an iterative process; we will learn as we go. The program we have in place is not a Republican or a Democratic program, in fact, in many ways it is based upon programs originated under the Obama Administration at the Department of Justice and the SEC. In fact, what we have at our Commission was built upon some deferred prosecution procedures that were put in place by my predecessor, Chairman Massad, and the program we have was put forward jointly by me and Commissioner Bowen, my Democratic colleague, over the last few months. What we are doing has a great deal of precedent in the prior Administration and support by my former fellow Democratic Commissioner on the Commission.

But what we are trying to do is build into this gradually. We are going to learn as we go. It is new for our Commission, even if it isn't new in other parts of the Federal Government and other law enforcement agencies. We are going to learn as we go what is the right level. And some of that level of redress in our penalties will be built upon the degree of cooperation we get from firms; how fully do they disclose to us the wrongdoing, how cooperative are they. If they are not fully cooperative and don't fully disclose, then all bets are off.

Ms. ADAMS. Thank you. Under the new self-reporting and compliance approach to enforcement that you outlined in your testimony, will every self-report to the CFTC result in an enforcement investigation?

Mr. GIANCARLO. They have to report to the Enforcement Division.

Ms. ADAMS. Okay. The Security and Exchange Commission's information technology budget last year was significantly higher than yours, and yet the SEC suffered a significant cybersecurity breach of its active system. Cybersecurity breaches like this have become common. Just last week we learned about more breaches at Equifax and Yahoo. Do you feel that your agency has sufficient resources to prevent a future cyber attack, or to respond to one if and when it occurs?

Mr. GIANCARLO. Thank you. I want to be very careful to say that there will never be a successful attack. I will tell you that we currently encounter about 10,000 attacks on our agency's systems per month. That is a lot of attacks, and I can't say that someday some one of them won't be successful, but I can tell you that we will do everything we can. Since I have been Chairman, I have initiated a number of new cyber procedures. The first thing is I now meet with our Chief Cybersecurity Officer monthly, and I review with them the nature of those attacks, whether we are seeing any changes in the attacks, whether there are any significant attacks that he wants to bring to my attention. We also review latest developments in our own cybersecurity defenses.

Second, a few months ago we initiated the first ever agency-wide cybersecurity drill where we created a hypothetical cybersecurity attack on our marketplace, and then we drilled our senior executives to see how they responded to it.

There is an old adage in the U.S. Army that says, "You fight as you drill," and so we are going to be drilling a great deal at the CFTC from here on out.

And then third, as I mentioned to you, we now are doing a full inventory of our collection of personally identifiable information to see where we can either eliminate or reduce the collection of it, and where we do feel we do need to collect it, what would be the best way of protecting that information.

Ms. ADAMS. Thank you very much. Mr. Chairman, I yield back.

The CHAIRMAN. The gentlelady yields back.

Mr. Thompson, 5 minutes.

Mr. THOMPSON. Mr. Chairman, thank you. And, Chairman Giancarlo, welcome. I am glad to have you here.

Many of the CFTC regulations are rooted in outmoded expectations of how business is conducted, such as trading futures in pits that no longer exist, or through floor traders that no have no floor. What are you doing to help CFTC's regulations catch up to modern business practices?

Mr. GIANCARLO. This is why we have designed LabCFTC. The first thing we need to do is really understand the impact of this digitized financial marketplace, and how is it changing the dynamics, who are the new players, how are they interacting in the market, how are they using technology.

LabCFTC is our outreach; it is our way of interacting with them to understand what they are doing. But then second, how can we maybe use some of those technologies in what we are doing to keep us and to allow us to keep pace with the innovation. Second, we are really looking to get back to solid, econometric work at the

agency. I must say that one of my biggest disappointments of the agency is the way in which the Office of Chief Economist was allowed to wither on the vine over the last few years, and we really want to build that back up. If we are ever going to understand these changing markets, we need world-class economists helping us understand it.

I am not someone who wants to make policy changes based upon the latest anecdote or the latest newspaper article. I really want to make it on sound science, sound understanding of how the markets are changing and, therefore, that should drive what the policy response is.

Before I can just spout and say, "Well, we are going to do this about algos, or we are going to do this about automated trading," I really want to understand what the impact is, and that should then drive what do we need to do as a policy response.

Mr. THOMPSON. As a follow-up to that, at least at this point, what legislative changes do you need to implement your priorities and to help better manage the agency?

Mr. GIANCARLO. There are a number of things that we have been looking at. There are a couple of things the SEC does that we would like to emulate, but we have some statutory prohibitions. The SEC is able to second employees with other regulators here and abroad. I mentioned that about 75 percent of the global swaps market is cleared in London, and yet we have no one in London. If there is a crisis overnight in London, we are 5 hours behind, by the time we wake up and get our arms around it, it is already happening. I would like to be able to second an employee to the Bank of England or to the Financial Conduct Authority, and I have been invited to do so, and yet we don't have statutory authority to do that. It is something we would like to look at.

We also would like to be able to, in our LabCFTC we have been invited by some of these new innovations to participate as a participant in something what they call proof of concepts, or these beta tests of some of these new developments. And yet if we were to accept that, it would be accepting a contribution to the government, and would have to go through a procurement process. We would like to see whether we can have the same ability to participate in the way that our fellow regulators abroad do. The Brits participate in these programs all the time, and we would like to see if we can do the same thing that the British regulators do.

We mentioned OLA, the orderly liquidation authority, we would like to work with Congress on, if there will be changes in that, how do we tailor that for our clearinghouses. There are some areas in the Treasury part where they are concerned about financial end-users. We would like to look at that. Insured depository institutions, some of the language there could be improved.

There are some areas around the edges that we would like to work with this Committee and with Congress as we go forward that we could find some ways of improving things.

Mr. THOMPSON. Given that we know that qualifying for end-user exceptions can be burdensome and complicated, and even Treasury recently released a report recommending legislative amendments, how would you suggest we simplify the clearing and margin exemptions for end-users?

Mr. GIANCARLO. Broadly, one of the most important elements of Title VII was to exempt end-users from it. End-users were not the cause of the financial crisis, and yet so much of the rule is falling on them. This is an area where we really need to focus. The Treasury report called on us to focus, and there are a number of areas where we can make some improvements. I mentioned the insured depository institution relief, and certainly financial end-users as well are perhaps areas where the rules have been overly broad and overly restrictive, goes against the fundamental decision that was made in Dodd-Frank to exempt end-users from its reach. It is an area where we really need to bring our best thinking, and think about what we can do to get that right.

Mr. THOMPSON. Okay, thank you. I yield back.

The CHAIRMAN. The gentleman's time has expired.

Mr. Soto, 5 minutes.

Mr. SOTO. Thank you, Mr. Chairman. And, Chairman Giancarlo, congratulations on your recent confirmation.

I wanted to get a sense of sort of your philosophy on the scope of what our future trading universe should be. Can you give me your philosophy on the scope as opposed to what crop insurance does or what Wall Street and the stock market in New York does? Where are the boundaries of what we should be doing with the futures trading?

Mr. GIANCARLO. Thank you very much. And nice to see you again, and my heart goes out to the people of Puerto Rico. I know it is a concern of yours.

Mr. SOTO. Thank you.

Mr. GIANCARLO. Yes. These markets are very important to not just end-users and farmers and producers that use the markets directly to hedge, but also indirectly the price of their produce is being priced off these markets. Even if they are not hedging themselves, when they go to the grain elevator, when they go to the distributor, the price they are being offered is set as a spread to the price that that product is trading in the futures market.

It is vitally important for us as a regulator to make sure those prices are set fairly, that there is no fraud and manipulation in the markets, to make sure that those prices are the accurate market price, even for those market participants who are not directly using them to hedge, but are affected by the price signals that come out of it. There is a very important retail-level impact of these markets way far away from Wall Street, that is our job as regulators to make sure we police and get right.

Mr. SOTO. I yield back.

The CHAIRMAN. The gentleman yields back.

Mr. Allen, 5 minutes.

Mr. ALLEN. Thank you, Mr. Chairman. And thank you, Mr. Chairman, for being with us today and trying to help us understand exactly how this thing works.

Just a quick question on the effect on our community banks which my district is, particularly with agriculture, dependent on our community banks. And regarding the *de minimis*, Congress intended to help community banks by excluding from the *de minimis* calculation swaps between an insured depository institution and a customer in connection with originating a loan. The CFTC inter-

preted that exclusion very narrowly. And as you examine the *de minimis* level, will you consider a proper scope of that exclusion?

Mr. GIANCARLO. Absolutely. Thank you for bringing that up because that is an area that in some ways often gets overlooked. It was one or two errant words or ambiguous words in the statute led to three or four pages of extensive restrictions in our ruleset. And that is an area that is absolutely ripe for us to take another look at and simplify.

At heart, it is about whether an insured depository institution can make a loan and then hedge the loan. And as you know, if they can't adequately hedge the loan, they may be less reluctant to make the loan or might charge more for it. We want lending and we want hedging. We want these smaller institutions to make loans to their local constituents and then actually properly hedge it, so on their balance sheet it is not an exposure to them.

Our over-regulation, our overwriting of this rule is restricting the very activity that we want to promote in a growing economy. This is something that is very ripe for us to take another look at, and we will take another look at this.

Mr. ALLEN. Good. Again, I am glad to hear that.

Well, as you know, with commodity prices, farm income is down a bit over 55 percent over the last 3 years. Of course, 5 years ago they were at their highest level. And, of course, now they are down. We have some trade issues that may account for some of that. But how does this commodity, obviously, we are hedging in a global marketplace.

Mr. GIANCARLO. Right.

Mr. ALLEN. Okay? But then you have countries, like China, that will pay their farmers over \$1 a pound for cotton, yet our world market price right now, I don't know, it is probably a little less than 70¢, which is too low. From a trade standpoint, how do you work with our trade ambassador to deal with how we actually hedge these things?

Mr. GIANCARLO. You are absolutely right. I mean it is a complicated environment, when we operate a free market for the setting of prices in our commodities, and our commodities no longer face a domestic market, but truly a global market, and they compete against low-cost producers in developing parts of the globe. And yet some of the very markets that are importing our products themselves have price protection on their own commodities. It is a very complicated balance, and it is one that is a big challenge for our trade representatives as well as our Agriculture Secretary, who I believe is really up to the job, but it is a big job and a complicated job.

I had the opportunity to meet with Secretary Perdue in Montana a few months ago and talk about some of these very issues. I know he is focused on it, and I pledged to him my support of anything we can do, and he knows he has it and we will be there for him.

Mr. ALLEN. Well, that is good because it is a big concern out there. Really the fluctuation, I mean even though it has been over 5 years it is nearly impossible. I mean right now, we are obviously planting more peanuts than we are cotton because of the current farm program. But somehow we have to restore stability in this marketplace for these folks to be able to plant ahead. Right?

Mr. GIANCARLO. Exactly right.

Mr. ALLEN. Well, thank you, Mr. Chairman. And I yield back.

The CHAIRMAN. The gentleman yields back.

Mr. Lawson, 5 minutes.

Mr. LAWSON. Thank you very much, and welcome to the Committee. And the more I hear you speak, the more complicated the issue gets, which I don't come close to understanding. But what I will say, when financial institutions are doing a downturn over the financial crisis, holding more contracts than they have cash on hand, and then when the mortgage rates go down and they are not able to meet those obligations, could you explain what really happens when they hit that point?

Mr. GIANCARLO. Well, as you know, one of the tremendously important reforms in Dodd-Frank was to standardize the margin that must be provided, or must be utilized, in transactions for swaps that don't go through a clearinghouse in order to avoid that very problem. If there is a payout required under the terms of that derivative instrument, that the necessary margin is there to support that position. That was a concern during the crisis that was addressed in the law, and now it is up to us as the regulators to make sure that that the way the margin is calculated, the way it is applied, the way it is charged is done in a way that is effective to meet that very concern that you raise.

Mr. LAWSON. Okay. Well, let me ask you this, because I want you to comment. A couple of months ago the large financial institutions were here and were saying we need a repeal of Dodd-Frank. And from what information that you have given, Dodd-Frank was supposed to provide some relief and regulations. Why, in your opinion, did the larger banks say that it is time now to move away from Dodd-Frank?

Mr. GIANCARLO. Well, those that may have that opinion, it is not an opinion I share when it comes to Title VII, and Title VII is the provision that my agency is directly charged to implement, and I am personally supportive of it, and institutionally as an agency we support it. I don't know what or who expressed that view, but it doesn't reflect the view of either me or the Commodity Futures Trading Commission. We believe that Title VII, I have said this many a time, I will say it again, I think Congress got Title VII right, and now it is up to us as an agency to make sure we get the implementation right.

Mr. LAWSON. Okay. I saw something that I wanted to ask you about, about the trade, where there are hedges, about the cost, were they going to stay at a certain level and the price might go down, but there are fees that are implemented, and there is a winner and a loser in this process, according to what I just read. Is this a normal practice all the time in trading commodities?

Mr. GIANCARLO. And are you—

Mr. LAWSON. If it makes any sense what I am saying.

Mr. GIANCARLO. Are you referring to what is called the variation margin that parties to a trade must post?

Mr. LAWSON. Right.

Mr. GIANCARLO. Well, in the futures market this is a long-standing practice that has survived one financial crisis after another. It is a very sound practice, it works very well, and it is

where we look when we think about how we should then have a variation margin program, and if so, in swaps, and how do we get the balance right. But where we utilize variation margin in the futures world, it is a very sound practice, and our clearinghouses do a very good job of calculating it and applying it.

Mr. LAWSON. Okay. Mr. Chairman, with that, I yield back.

The CHAIRMAN. The gentleman yields back.

Ms. KUSTER, 5 minutes.

Ms. KUSTER. Thank you very much. And thank you for being with us today, Chairman Giancarlo. Congratulations on your unanimous confirmation, and I wish you well in your new position.

I appreciated the opportunity to meet with you back in April, and I wanted to thank you for our discussion. We talked about your appropriation, which I support increasing, and your approach to implementing Dodd-Frank and the enforcement of bad actors in our derivatives market.

And I want to expand on that enforcement discussion, if I could. In your testimony you outlined several steps you have taken to strengthen the CFTC's mission to deterring fraud and abuse within our derivative markets. And one aspect that I want to hone in on, can you describe in detail which types of penalties, and I want to get out the criminal or civil, will be addressed in the self-reporting mechanism? On the surface it may appear that the "significant reduction" in penalties that the CFTC's Enforcement Division would award to companies may let bad actors off the hook. And so that is my concern. And then as a follow-up, can you describe how this mechanism will hold bad actors accountable, and prevent them from trading on the derivatives market in the future if they have been engaged in wrongdoing? And under the new self-reporting and compliance approach, will every self-report to the CFTC result in an enforcement investigation?

Mr. GIANCARLO. Thank you for those questions.

We do not have criminal authority at the CFTC. We work with a criminal law enforcement authority, such as the Department of Justice, if we are aware of what we believe to be crimes and we report that. We have civil authority, and we pursue that where it leads.

In the case of self-reporting, we expect a number of things for self-reporters, and that is complete, candid, and accurate reporting, we expect them to take their own actions to immediately discontinue any bad conduct, and then we expect full cooperation through the process. We will assess after all that whether there is appropriate credit for self-reporting, and we expect full, as I said, full and complete and candid cooperation with us throughout the process.

Ms. KUSTER. At what point would you make the determination to refer to the Department of Justice if it was criminal in nature?

Mr. GIANCARLO. Yes.

Ms. KUSTER. How do you make that decision if you are relying on self-reporting?

Mr. GIANCARLO. Yes. The same basis we do today in all other matters. If we see criminal activity, we bring in the Department of Justice early on in the process.

Ms. KUSTER. And then the other question, I know that you have a strategy for a successful whistleblower program that began under your predecessor, I am wondering if you will continue that program to ensure that we can weed out bad actors, and whether you would substantially increase your standard civil monetary penalty for individuals above the current rate. It is only about \$150,000, that doesn't seem like much of a deterrent for people that could be committing fraud and making millions of dollars.

Mr. GIANCARLO. Well, thank you for that. I believe in the whistleblower program. In fact, in my first few weeks as acting Chairman I, in fact, put forward an enhancement of the whistleblower protections; protections for whistleblowers, and that stands as a statement of my commitment to that program. We do not intend to winnow down that program in any way.

I would be happy to look at those penalties. That isn't something that enforcement brought to my attention, but I would be happy to look at those to see if they are suitable for their purpose or whether they can be increased in any way.

Ms. KUSTER. And I guess I would just ask you on an ongoing basis, because I still do have concerns about this self-reporting, if we had relied on self-reporting on Wall Street we would have probably seen some serious bad actors cause serious harm to consumers across this country. Could we ask you for a reporting-back mechanism to this Committee on the success of the self-reporting, and any outcome from the whistleblower protection program, and just an accounting of your referrals to the DOJ, in other words, a full picture of how this works, going forward, so you can reassure us if it is working, or you can make adjustments.

Mr. GIANCARLO. Yes. And I want to make something perfectly clear. We are not relying on the self-reporting program. We are continuing every form of wrongful behavior detecting activity that we do today, from tips and referrals to our own surveillance process, which I have also enhanced since I have been acting Chairman, through our whistleblower program. All of those remain in place and will continue to be important sources. This self-reporting is an enhancement to that.

And the answer is I would be happy to have my staff brief you on a regular basis of what we are doing on this. Our new enforcement that will be giving some figures on self-reporting once we have a period of time under our belt, and our whistleblower awards are publicly available.

Ms. KUSTER. I think it would be helpful for all the Members of the Committee.

Thank you, and I yield back.

The CHAIRMAN. The gentlelady's time has expired.

Chris, thank you for being here. The term *deference* is currently being used in the vernacular. I have used it, you have. Can you give us a couple of sentences on what you mean by the phrase *deference*?

Mr. GIANCARLO. Yes. It is really a fairly simple concept, and that is that the nation state regulator is the primary regulator of their domestic clearinghouses, and overseas regulators should defer to the supervision done by the local regulator. What we mean by that is we believe that we are the competent local regulator of our do-

mestic clearinghouses. We have been doing this for 4 decades now, and we work very well with our colleagues in Europe and abroad. But if they have issues and concerns as to how we regulate our clearinghouse, we are their first port of call. We will work with them, we will cooperate with them, provide them with the information they need to understand how we go about our regulatory duties. And we believe that is the best approach in an increasingly complicated world for clearinghouse supervision.

The CHAIRMAN. Well, thank you very much. Mr. Peterson, any final comments?

Well, Chris, thanks for being here this morning. You did make a tactical error. I found it much more helpful when I am doing a presentation that I introduce my wife right at the start, because I typically get better treatment that way. I appreciate Regina being here with us this morning. Should have said that right in early on, buddy.

Mr. GIANCARLO. Absolutely. Complete tactical error, and she will make me know it when I get home. My wife, Regina Giancarlo.

The CHAIRMAN. I got you. Well, thank you both for being here this morning, and your testimony. I appreciate the evolutionary agenda that you are putting forward with the agency, rather than reactionary. It is a good place to be in and in line with where the Committee has been with Title VII since its enactment. We are supportive of the goals of Title VII and the efforts to reduce systemic risk, but wary of the way it has been implemented and the impacts that that implementation has on market cohesion and liquidity.

We can have the best rulesets in the world, but without cooperation between global regulators we are going to break global risk markets. And I believe that the best markets serve people and businesses who need them, and not necessarily the regulators who oversee them.

In December 2012, we had testimony from Patrick Pearson, the head of the Financial Market Infrastructure Unit at the European Commission. Mr. Pearson observed, "If we don't reach agreement on a sensible cross-border approach then conflicts, inconsistencies, and gaps will persist. Trades won't take place, trades won't be cleared, and they will be reported in a fragmented way. Companies in our economies will not be able to hedge risks they will not be able to hedge risks they have to hedge to do business, commercial or financial." I believe that Mr. Pearson was right then and he is right today.

I said this in my opening statement, and I would like to say it again because I believe it is important, that Chris has proposed a thoughtful plan based on deference between competent regulators. It is the right plan not just for the regulation of global clearinghouses, but also for all other new requirements that we are imposing on these swaps markets. If we fail to make progress on international cooperation in the regulation of global markets, we just simply won't have global markets.

And with that, I again appreciate Mr. Giancarlo being here with us this morning. Under the Rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive ad-

ditional material and supplementary written responses from the witness to any question posed by a Member.

This hearing of the Committee on Agriculture is adjourned.

[Whereupon, at 12:00 p.m., the Committee was adjourned.]

[Material submitted for inclusion in the record follows:]

## SUBMITTED QUESTIONS

**Response from Hon. J. Christopher Giancarlo, Chairman, Commodity Futures Trading Commission**

*Question Submitted by Hon. Vicky Hartzler, a Representative in Congress from Missouri*

*Question.* Chairman Giancarlo, I want to thank you for working with me and my constituents to address issues many coops, rural electric co-ops, and everyday end-users were having with the Ownership Control and Reporting rule also known as the OCR rule. I appreciate the September 25th no action relief and expansion of flexibility on the final rule. I had an amendment to that passed the House earlier this year as part of the CFTC reauthorization, which altered the level of contracts traded each day that triggered compliance with the OCR rule. I was very pleased to see the CFTC make that much needed change.

In the September 25th announcement, the CFTC called for further review of the underlying regulations to match the regulatory relief. I believe regulating through no action relief letters is poor governance although necessary at times for expedient flexibility while an agency conducts the formal rule making process. Can you please tell me your plans for making long term changes to the OCR rule and when you expect this to be finalized?

*Answer.* Following up on the September 25th No-Action Relief announcement, CFTC staff began cataloguing and analyzing all of the open issues with the OCR rule, with a view toward making a recommendation for a permanent fix to the rule. Staff has been looking at the three issues that are the subject of your amendment to H.R. 238, namely: the 50 contract threshold triggering certain OCR reporting; natural person controller data; and foreign privacy law reporting restrictions.

CFTC staff has also reached out to representatives of interested parties to ensure that no issues are missed and that their understanding of the issues is up to date. CFTC staff will focus on issues of concern to your co-op, rural electric coop, and everyday end-user constituents as we consider changes to the OCR rule. I also invite you and your constituents to provide comments and input during the rulemaking process.

I agree with your concerns about regulating through No-Action letters, as well as your acknowledgment that they are sometimes expedient and provide flexibility in advance of a rulemaking.

I would like to present proposed changes to the OCR rule to my fellow Commissioners before the end of next year. I can assure you and your constituents that a permanent fix to the OCR rule is on my list of priorities during my tenure as Chairman.

*Questions Submitted by Hon. Stacey E. Plaskett, a Delegate in Congress from Virgin Islands*

*Question 1.* Energy costs are of great concern to my constituents. As you know, in 2010, the Dodd-Frank Act provided the Commission with specific tools, including position limits, to prevent manipulation in energy markets. The Commission was given power to impose limits on the size of positions in physical commodity derivatives, such as those based on oil futures, and new authority over margin levels—the amount put down to buy or sell swaps.

Again, this was in 2010, and while the Commission has finalized its rulemaking on margin requirements for uncleared swaps, it has not yet done so for position limits.

When do you expect the Commission to finalize its position limits rule? Will it be strong enough to lessen the kind of trading that gave rise to concerns about price manipulation in energy markets, and lead to lower and more stable prices for consumers?

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

*Question 2.* As you know, the Commission's leasing decisions continue to be scrutinized. Reports have been issued on underutilized office space, which of course comes at cost to taxpayers.

Last year, the GAO came out with findings of the Commission improperly recording lease obligations, and that it did not make cost-effective decisions regarding lease procurement and internal controls.

I know the Commission deals with very complex situations in its oversight duties.

Given that there is already an agency—the General Services Administration (GSA)—with duties to provide real estate services and lease negotiations so that other agencies can focus on core matters, are you open to working through GSA to have them negotiate future leasing?

The CFTC reauthorization bill that passed our chamber earlier this year included a provision to designate other agencies to manage leasing for the Commission, and I'd like to know your thoughts on that as well.

*Answer.* The Commission recognizes the value that the General Services Administration (GSA) provides as the Federal expert in the area of Federal leasing. We therefore signed a Memorandum of Understanding, in November of 2016 that established a relationship with GSA for collaborating on the development of a comprehensive real estate portfolio strategy, as well as the execution of CFTC future leasing needs. As the Agency's current leases expire, the CFTC will utilize the services of GSA to execute those leases.

Statutory changes are not required for the Commission to allow GSA to negotiate future leases on behalf of the Agency.

