

WILLIAMS & JENSEN, PLLC

CONGRESSIONAL HEARING REPORT

DATE OF HEARING: June 22, 2017
SUBJECT: “Nomination of J. Christopher Giancarlo”
COMMITTEE: Senate Agriculture
STAFF MEMBER COVERING HEARING: Alex Barcham

Members Present

Republicans: Chairman Pat Roberts (KS)

Democrats: Ranking Member Debbie Stabenow (MI), Senator Kirsten Gillibrand (NY),
Senator Amy Klobuchar (MN)

Witness

[J. Christopher Giancarlo](#), Acting Chairman, Commodity Futures Trading Commission

Overview

On June 22, the Senate Agriculture Committee held a [hearing](#) to consider the nomination of J. Christopher Giancarlo to serve as Chairman of the Commodity Futures Trading Commission (CFTC).

Topics discussed in the hearing included: (1) Regulatory Reform; (2) Position Limits; (3) CFTC Funding; (4) Cybersecurity; (5) High Frequency Trading; (6) Cross-Border Jurisdiction; and (7) Glass-Steagall.

Member Statements

Chairman Pat Roberts (R-KS) said CFTC is charged with fostering open, transparent and financially sound markets, as well as with protecting users from fraud and manipulation related to derivatives and other products. He stated that the CFTC’s work allows end-users to hedge their risks. He stressed the need for the CFTC to have strong leadership. He said the Committee previously approved Giancarlo’s nomination to serve as a CFTC Commissioner by a unanimous vote. He asserted that end-users did not contribute to the 2008 financial crisis. **Roberts** said there was bipartisan agreement in the drafting of the Dodd-Frank Act (DFA) that non-financial end-users should be exempted, but the CFTC has engaged in overreach. He stressed the need to provide appropriate relief to U.S. agricultural producers. He commended Giancarlo for his initiative to reduce regulatory burdens. He said he is encouraged by the CFTC’s launch of LabCFTC, which is intended to foster financial technology innovation. He urged the CFTC to stay ahead of the curve on financial technology. He stressed the need to allow farmers to engage in affordable risk management. **Roberts** stated that Giancarlo is abundantly qualified to lead the CFTC.

Ranking Member Debbie Stabenow (D-MI) congratulated Giancarlo on his nomination to serve as CFTC Chairman. She said Giancarlo has worked with the other Commissioners to fulfill the mission of the CFTC. She commended Giancarlo's willingness to work on a bipartisan basis to achieve consensus. She said Wall Street reform has brought greater transparency to the swaps market, but additional work is needed at the Commission. She stated that the Commission plays a crucial role in overseeing the derivatives market, detecting bad actors, and monitoring systemic risk. She suggested that the CFTC has unfinished business on capital requirements and position limits, urging them to act quickly on these rules which were required by the DFA. **Stabenow** stated that the CFTC has an insufficient budget. She said the President's budget request falls well short of the CFTC's needs, commended Giancarlo for breaking with the Administration and offering his own request. She stressed the need to provide the CFTC with the resources it requires to do its work, suggesting that they cannot do so at current funding levels. She noted that on Tuesday, Commissioner Sharon Bowen announced that she would be leaving the Commission in the coming months. She said Congress will need to confirm nominees for the four vacant Commissioner positions as soon as possible.

Witness Testimony

J. Christopher Giancarlo, Acting Chairman, Commodity Futures Trading Commission said he has met extensively with farmers and ranchers during his time as a Commissioner. He said his visits with farmers and manufacturers have made him a better regulator of agricultural commodities. He said he is a long standing supporter of derivatives reform, noting that he supported the three critical reforms in Title VII of the DFA: (1) central clearing of swaps; (2) swaps data reporting; and (3) regulated swaps trading. **Giancarlo** stated that if confirmed he would have three priorities: (1) fostering open, transparent, competitive and durable derivatives market free from fraud and manipulation; (2) conducting the agency's regulatory mission in support of broad-based economic growth; and (3) conducting the CFTC's mission in a way that respects the taxpayers. He stressed the need for the CFTC to keep up with modern digital markets. He said he intends to return the CFTC to regular order and apply regulations in ways which are less burdensome to the economy. He stated that if confirmed he will continue to act in a bipartisan manner.

Question and Answer

Regulatory Reform

Chairman Pat Roberts (R-KS) said Giancarlo announced the launch of an initiative to review CFTC rules, regulations and practices. He said the initiative is meant to identify existing rules and apply them in a less burdensome manner. He asked how Giancarlo intends to address regulatory reform and what limitations he might encounter. **Giancarlo** said regulations built up over time sometimes conflict with one another, while others are out of date. He said the CFTC recently revised a rule which required filing of information by fax, stressing the need to adapt rules to technological changes. He said the initiative looks at the practical application of rules and examines whether they can be applied in less burdensome ways.

Ranking Member Debbie Stabenow (D-MI) said the CFTC has launched Project Keep It Simple Stupid (KISS). She said the White House has signed an executive order aimed at rolling back Wall

Street reforms. She emphasized the importance of Title VII of the DFA. **Giancarlo** emphasized that Project KISS is not about rolling back the DFA, stressing that he is a supporter of Title VII. He said Project KISS is about applying regulations in a simpler and more straight-forward manner.

Senator Kirsten Gillibrand (D-NY) said Giancarlo has stated that Project KISS is about streamlining rather than repealing rules. She asked if President Trump or any member of the Administration has identified CFTC regulations that they would like to rewrite. **Giancarlo** responded in the negative.

Position Limits

Ranking Member Debbie Stabenow (D-MI) said the CFTC has made multiple efforts to complete its position limits rule. She asked if Giancarlo would commit to completing this rule without further delay. **Giancarlo** responded in the affirmative, noting that he voted for the most recent proposal. He said he believes the Commission can get a position limits rule completed.

Senator Amy Klobuchar (D-MN) said derivatives affect consumer prices for products like home heating fuel and propane. She asked what the CFTC is doing to prevent the price hikes which have been seen in the past. **Giancarlo** stressed the need to get position limits right. He noted that he visited First Energy in Ohio, which has a small trading desk that does six or seven trades per day and does not speculate. He stated that if one of First Energy's generators breaks during a cold period they may have to go into the market and break a position limit. He said position limits must allow for flexibility while preventing excessive speculation. **Klobuchar** asked what should be done about speculation. **Giancarlo** said Congress has asserted that the CFTC should use position limits as appropriate to address excessive speculation. He stated that he believes the CFTC can get a position limits rule done, but they must address the concerns of energy and agriculture producers.

CFTC Funding

Ranking Member Debbie Stabenow (D-MI) said Giancarlo released his own budget request for the CFTC, which was higher than that of the President. She suggested that additional resources are needed beyond Giancarlo's request. She asked what market oversight and personnel risks the Commission will face if its budget is not increased. **Giancarlo** said he will work with the budget provided by the appropriators. He stated that his budget request includes some new elements to help keep pace with the market. He noted that he would be making his case for his budget request in the Senate Appropriations Committee next week. **Stabenow** suggested that the CFTC has been chronically underfunded. She asked if Giancarlo will be advocating for the budget he put forward rather than what was proposed by the White House. **Giancarlo** said he proposed a budget of \$281 million, suggesting that this is the appropriate amount to allow the CFTC to fulfill its mission.

Senator Kirsten Gillibrand (D-NY) said the U.S. derivatives market is worth about \$300 trillion. She said the CFTC is budget is \$250 million, which is far below that of prudential regulators with similar responsibilities. She said Giancarlo requested a 13 percent increase, while the President's budget request would provide flat funding. She asked if Congress should look at how other prudential regulators like the SEC are funded. She suggested that mandatory funding mechanisms could be used to provide stable funding to the CFTC. **Giancarlo** said Presidents from both parties

have called for a funding mechanism for the CFTC. He stated that the self-regulatory organization (SRO), in the derivatives market, the National Futures Association (NFA), is self-funded. He raised concerns about the changing nature of liquidity in the markets. He stated that the does not support imposing transaction fees because of their impact on liquidity. He stated that he would utilize the funding mechanism if Congress decides to impose one.

Cybersecurity

Ranking Member Debbie Stabenow (D-MI) asked how Giancarlo intends to address cybersecurity risks. **Giancarlo** said cybersecurity is the biggest risk to the market the CFTC oversees. He said he meets with the CFTC's cybersecurity head every month. He stated that the CFTC must play a vigorous role in dealing with cybersecurity.

High Frequency Trading

Senator Amy Klobuchar (D-MN) said the commodity markets involve commercial end-users and financial institutions. She asked about the importance of the CFTC to commercial end-users. **Giancarlo** said he met with dairy farmers in Minnesota. He noted that farmers who do not use derivatives still rely on them for prices signals, stressing that those signals must not be distorted by algorithms or speculators. He said the CFTC's role is to ensure accurate price discovery. **Klobuchar** said the CFTC has been working on Regulation Automated Trading (AT), which would impose best practices. She said Regulation AT would be a good first step. She asked what other steps the CFTC should take to deal with high frequency traders (HFTs) and speculators. **Giancarlo** said he hears lots of anecdotal concerns about HFT, but the CFTC lacks the analytical capabilities to fully understand their role in the market. He said HFTs provide liquidity in the market. He said he has requested funding to hire twelve additional economists. He emphasized that any restrictions on HFTs must be based on hard data.

Cross-Border Jurisdiction

Senator Kirsten Gillibrand (D-NY) pointed to the CFTC's U.S. person rule, also known as the cross-border jurisdiction rule, which provides the CFTC the ability to guard against risk from around the world. She asked how often the CFTC has heard from participants who want to curtail this rule. **Giancarlo** said he supported the rule on capital for swap dealers. He stated that he does not recall specific concerns being raised on this rule. **Gillibrand** asked if Giancarlo anticipates any changes to the U.S. person rule for the UK or the EU, particularly in anticipation of Brexit. **Giancarlo** said he agrees with former Chairman Gary Gensler that risks that build up anywhere in the world can come back to the U.S. He stated that he supports taking a territorial approach and not exporting the U.S. approach to swaps execution abroad. He stressed the need for a global approach to systemic risk. **Gillibrand** asked if Giancarlo anticipates any changes to these rules which would dilute the CFTC's jurisdiction. **Giancarlo** said he does not anticipate any changes which would dilute the CFTC's jurisdiction. He noted that in 2015 he wrote a White Paper about how the CFTC erred in implementing its swap execution rules. He emphasized that swaps execution should be done through any means of interstate commerce, as was directed by Congress. He said the CFTC got it right on clearing and swap reporting.

Glass-Steagall

Senator Kirsten Gillibrand (D-NY) said President Trump campaigned on the idea of separating commercial banking from riskier financial activities. He asked if President Trump or any member of the economic team has spoken to Giancarlo about implementing an updated version of Glass-Steagall. **Giancarlo** responded in the negative. **Gillibrand** asked if Giancarlo has examined how the CFTC could separate derivatives dealing from commercial banking through regulation and enforcement. **Giancarlo** responded in the negative.