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March 11, 2011

A. Roy Lavik
Inspector General
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington DC 20581

Dear Inspector General:

It is the responsibility of this Committee to oversee the implementation of Title VII of the Dodd Frank Wall Street Reform and Consumer Protection Act by the Commodity Futures Trading Commission. Principally, our objective in exercising oversight is to ensure that the proposed rules will efficiently and effectively regulate the derivatives markets, without imposing undue or unnecessary burdens that will hamper price discovery and risk mitigation to the detriment of economic growth and job creation.

As you know, the task before the CFTC in writing rules to implement Title VII is monumental. It involves a complete and drastic overhaul of swaps regulation, and the consequences, both intended and unintended, will impact every segment of our economy. As such, ensuring the CFTC is meeting its obligations to conduct a thorough cost-benefit analysis of each rule it proposes is critical. Indeed, the assurance of such cost-benefit analysis was set forth as a priority by the Obama Administration in issuing an Executive Order on January 18, 2011 to "Improve Regulation and Regulatory Review."

Unfortunately, despite its role as a principal implementer of one of the most significant regulatory overhauls undertaken by an Administration in decades, the CFTC is an independent agency and therefore exempt from the order. Chairman Gensler has committed to adhering to the order only in "principle" citing inconsistencies between the Executive Order and the cost-benefit analysis required by Section 15(a) of the Commodity Exchange Act (CEA).

At the same time, recent public comments indicate that the CFTC is failing to adequately conduct cost-benefit analysis – either as required by the CEA or the principles

of the Executive Order. Across diverse market participants, concerns regarding the lack of analysis are noted:

From the Coalition of Derivatives End-Users, in a letter filed February 22, 2011 to the Proposed Rule “End-User Exception to Mandatory Clearing,” 75 FR 80747:

“...the Commission has made no attempt to estimate or objectively value the costs imposed by this and other rulemakings under the Dodd-Frank Act. We believe the Commission’s current approach does not satisfy the requirements of Section 15(a) (of the CEA).”

From the Working Group of Commercial Energy Firms, in a letter filed December 15, 2010 regarding the Proposed Rule “Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants,” 75 FR 71297:

“In order for a commercial energy firm that is deemed a Swap Dealer or Major Swap Participant to implement a “comprehensive risk management program” ...the Working Group estimates it will require at least five new full-time employees....which, at a minimum, is 63 times greater than the Commission’s estimate (11% of one full-time employee).”

Or similarly, an additional comment letter the Working Group filed on January 24, 2011 regarding the same rule:

“The Commission estimates, for the purposes of the Paperwork Reduction Act, that the burden imposed by the Proposed Rules is \$20,450. The Working Group estimates that, at a minimum, complying with the Proposed Rules would cost at least \$418,440, or over 20 times the Commission’s estimate.”

From the International Swaps and Derivatives Association in a letter filed February 28, 2011 in response to the Notice of proposed rulemaking “Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants” 75 FR 81519:

“We respectfully submit that the Commission’s estimate of the cost of compliance with the Proposed Regulations is too low. The Commission pegs the upfront cost for technological improvements at \$2400 for each SD and MSP, whereas at this juncture we believe that initial compliance with the Proposed Regulations will cost each such entity approximately \$5-10 million.”

In addition, the CFTC has taken a vague and minimalist approach to cost-benefit analysis that is directly contrary to the President’s Executive Order, and fails to achieve the objectives of Section 15(a) of the CEA. For example, in the Proposed Rule “Swap Data Recordkeeping and Reporting Requirements” issued on December 8, 2010 75 FR 76573, the Commission provides this analysis of the “costs”:

...the Commission believes that the proposed reporting and recordkeeping requirements could impose significant compliance costs on some SDR's, SEFs, DCMs, DCOs, SDs, MSPs and non-SD/MSP counterparties. The proposed regulations could require capital expenditures for some such entities that could affect the ability of some regulated entities to compete in the global marketplace because of reductions in available resources."

Particularly during tough economic times, it is incumbent upon the CFTC to approach cost-benefit thoroughly and responsibly to understand the costs, and therefore the economic impact any proposed regulation will have on regulated entities and markets. Further, in order to evaluate costs and benefits as the CEA requires, at the very least Commission staff should undertake a detailed analysis that attempts to quantify the impact using an objective, data-driven approach. Such an approach is altogether absent in subjective and unquantified assessments such as, "*could impose significant compliance costs.*" And without a detailed and diligent approach to cost-benefit analysis, the CFTC appears to be failing to comply with both the Executive Order and the spirit or "principle" of that order.

As such, we request that you initiate an investigation of the cost-benefit analysis performed by the Commission. We ask that the investigation include a review of the accuracy of the CFTC's calculation of the costs and benefits. We further ask that the investigation assess whether the CFTC is abiding by requirements in Section 15(a) to perform cost-benefit analysis in a meaningful manner that instructs the rulemaking process. In addition, we would ask that you make any necessary recommendations to the CFTC regarding its cost-benefit analysis to ensure its rules are consistent with the goals of promoting economy, efficiency and effectiveness.

In light of the volume of rules that have been issued since the enactment of Dodd-Frank, we recommend that you limit your review to the following rules:

- 1.) Proposed Rule: "Further Defining "Swap Dealer", "Security-based Swap Dealer", "Major Swap Participant," "Major Security-based Swap Participant," and "Eligible Contract Participant," December 21, 2010 75 FR 80174;
- 2.) Notice of Proposed Rulemaking: "Confirmation, Portfolio Reconciliation, Compression Requirements for Swap Dealers and Major Swap Participants," issued on December 28, 2010 75 FR 81519.
- 3.) Proposed Rule: "Core Principles and Other Requirements for Designated Contract Markets," issued on December 22, 2010 75 FR 80572.
- 4.) Notice of Proposed Rulemaking: "Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants," issued on November 23, 2010 75 FR 71297;

Please also review the following factors in your investigation:

- 1.) The methodologies the CFTC uses to evaluate costs and benefits;

- 2.) Whether the sequence by which rules are proposed impacts the CFTC's ability to adequately evaluate costs and benefits;
- 3.) The extent to which, in light of budget constraints, the CFTC has sought outside input and expertise in evaluating costs and benefits;
- 4.) The extent to which the CFTC has evaluated and distinguished the costs and benefits of proposed regulations on market participants of diverse sizes and from diverse sectors. For example, did the CFTC give consideration to the costs and benefits a "Swap Dealer" designation would have for non-bank, non-financial companies in addition to large global financial institutions?
- 5.) The extent to which the CFTC gives special consideration to evaluating the costs and benefits for small businesses;
- 6.) The amount of time, on average, that Commission staff spends per rule evaluating costs and benefits as required by 15(a);
- 7.) When one proposed rule is highly dependent on another, as is often the case in Title VII, the extent to which the CFTC gives consideration to the impact preceding or subsequent rules may have on the costs or the benefits of the rule under consideration;
- 8.) The impact the current statutory deadline of Title VII has on the Commission's ability to conduct meaningful cost-benefit analysis and the extent to which an extension of the statutory deadline would improve the Commission's ability to consider the costs associated with proposed rules.

As the CFTC engages in rulemaking to implement a regulatory regime that fosters transparency and promotes the mitigation of systemic risk, it is essential that it do so deliberately and carefully without burdening the economy and market participants with unnecessary and unjustified costs.

Thank you for your consideration of this request. Respectfully, we would ask that you respond to this request by April 15, 2011.

Please do not hesitate to contact us if you have any questions.



Frank D. Lucas
Chairman
Committee on Agriculture



K. Michael Conaway
Chairman, Subcommittee
Subcommittee on General Farm
Commodities and Risk Management