



January 31, 2011

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Hon. Gary Gensler  
Chairman  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

Dear Chairman Gensler:

The American Federation of State, County and Municipal Employees (“AFSCME”), is the largest union in the AFL-CIO representing 1.6 million state and local government, health care and child care workers. AFSCME members participate in over 150 public pension systems whose assets total over \$1 trillion. In addition, the AFSCME Employees Pension Plan (the “Plan”) is a long-term shareholder that manages \$850 million in assets for its participants, who are staff members of AFSCME and its affiliates.

During consideration of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), AFSCME strongly supported the inclusion of provisions establishing the strongest possible market reforms, oversight and transparency for the “shadow markets” – principally the over-the-counter market that has grown to a size that dwarfs other more transparent derivatives markets.

We are writing to address the President’s Executive Order of January 18, 2011, to Improve Regulation and Regulatory Review (the “Order”), and the approach to be taken by the CFTC.

As we read the order, it requires that regulators implementing new statutory directions from Congress balance the benefits and burdens of regulation. Applying the principle behind the law to the reality of the marketplace should be done in a way that is both effective in achieving the law’s goals, and efficient in how that achievement takes place. The Order reiterates obligations that agencies must follow in implementing Congressional direction. It is our understanding that you intend for the CFTC, as an independent agency, to comply nonetheless with the spirit of the Order. Furthermore, we understand that compliance will not require a departure from the regulatory process that the CFTC already follows in eliciting public comment and evaluating the costs and benefits of alternative ways forward. We support the Administration’s goals and the approach articulated by the CFTC.

**American Federation of State, County and Municipal Employees, AFL-CIO**

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We are greatly troubled, however, by the interpretation applied by others to the Order – and to the responsibility that Congress, through the Wall Street Reform Act, has given the CFTC. The theme being developed by the opponents of reform seems to be two-fold: one, that delays in your work somehow protect the economy; and two, that delay is needed so “varied risk management strategies remain affordable and relevant.”

Relevant? The public comment period is eliciting great confirmation that “risk management strategies” – otherwise known as over-the-counter derivatives – are very relevant in the lives of American families and business, usually in ways they do not see and cannot evaluate. Firms are using derivatives to manage rising commodity prices – but derivatives play a role in rising commodity prices. Employers are using derivatives as part of pension funding strategies – but derivatives have a lot to do with some of the pension funding shortfalls that employers and employees are facing. Derivatives are used to manage currency fluctuations that challenge international business operations. Then again, derivatives have a lot to do with the imbalances that many countries are experiencing.

Keeping these products “relevant” does not seem to be the problem. Keeping derivatives opaque so that buyers, regulators and counterparties remain vulnerable should not be allowed.

Effective rules that fulfill the promise of the Wall Street Reform Act are needed, sooner rather than later, precisely because these investments are everywhere. In fact, they are so widely used – and with such disastrous results in the last few years – that many of the buyers seem almost afraid to speak out about what they need, what they did not know, and what they still cannot find out.

Tackling a market of this size – a derivatives market big enough, dark enough and interconnected enough to trigger unstoppable global consequences, complex enough so that Wall Street CEOs can claim to Congress that they misunderstood the product – means by definition applying sunshine, comparability and real market protections where they did not exist before. Is that a big job, and one that will involve retaining additional staff to tackle a new workload? Does it mean hiring particular skills that are hard to find outside Wall Street? Does it require eliciting enough input from players in the market so that competing views help to reveal what oversimplified rules might miss? Yes.

Doing the job right means doing it promptly, devoting sufficient resources and senior staff to it, and developing a rich understanding of the costs and benefits of alternative approaches to transparency and security. Delay does the opposite – it perpetuates confusion and uncertainty, it perpetuates the existence of invisible linkages that could pose systemic risk, and it perpetuates the legal and financial uncertainty that leaves employers economically frozen and jobs even harder to come by. Delay means postponing – again – clarity about what kind of product is subject to which rules, what kind of product is supervised by which regulator, how it is taxed, and what duty and accountability buyers can demand. Delay is good for the economy and good for jobs? Nothing could be further from the truth.

There is something cynical and unfair in interrupting the productive work of eliciting comment and the diverse opinions that will help to promote transparent markets worthy of consumer and investor confidence. There is something cynical about letting lobbyists for securities dealers – in all their guises – put agency staff on the defensive, divert staff from studying new reforms, and then use the roadblocks they have created as a pretext for further delaying reform needed by buyers – to protect valuable turf for sellers.

There is also something familiar about the spin that is worth noting. Wall Street's front men would have us believe that their cost-benefit delay strategy is specific to efforts to address the causes of the financial crisis by bringing real market operation to derivatives. However, this is the same pitch made to gut consumer protections after Enron, WorldCom, Global Crossing and Tyco failed, revealing problems in corporate accounting and auditor practices; after Wall Street trading practices and conflicts of interest resulted in litigation and legislation shortly thereafter; and again in 2007 and 2008, even as financial disasters were building.

A call for deregulation is nothing new, and is meant to put the agency implementing teams who work for American taxpayers on defense. The effort slows agencies down at the expense of workers, taxpayers and retirees, while firms find new ways to modify the product and its distribution in order to circumvent new rules.

We will urge others not to fall for this delay and distortion campaign. We take heart from the President's Executive Order and urge others to read it fully. We strongly support its recognition that there are not only quantitative measures of costs and benefits to consider but also qualitative measures – and we believe both are vital to rebuilding real economic stability and promoting job growth.

Finally, we applaud the CFTC for making such significant efforts to speak plainly and to translate complex market dynamics, products and players. We believe the CFTC works hard to speak to its regulated community in technically sophisticated - and low-burden – ways, and works never to forget the investors, the buyers, and the buyers using other people's money, whose needs are no less weighty.

We look forward to your continuing efforts to fulfill the promise made to workers, consumers and investors of all types and sizes through the Wall Street Reform Act.

Sincerely,



GERALD W. McENTEE  
International President