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HEARING TO REVIEW IMPLEMENTATION OF CHANGES TO THE COMMODITY EXCHANGE ACT CONTAINED IN THE 2008 FARM BILL

HEARING

BEFORE THE

SUBCOMMITTEE ON
GENERAL FARM COMMODITIES
AND RISK MANAGEMENT

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

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HEARING TO REVIEW IMPLEMENTATION OF CHANGES TO THE COMMODITY EXCHANGE ACT CONTAINED IN THE 2008 FARM BILL

WEDNESDAY, MARCH 3, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GENERAL FARM COMMODITIES AND RISK MANAGEMENT,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Subcommittee met, pursuant to call, at 9:38 a.m., in Room 1300 of the Longworth House Office Building, Hon. Leonard L. Boswell [Chairman of the Subcommittee] presiding.

Members present: Representatives Boswell, Marshall, Herseth Sandlin, Kissell, Peterson (*ex officio*), Moran, Johnson, Conaway, Latta, and Luetkemeyer.

Staff present: Aleta Botts, Claiborn Crain, John Konya, Clark Ogilvie, James Ryder, April Slayton, Debbie Smith, Rebekah Solem, Kevin Kramp, Josh Mathis, and Sangina Wright.

OPENING STATEMENT OF HON. LEONARD L. BOSWELL, A REPRESENTATIVE IN CONGRESS FROM IOWA

The CHAIRMAN. The hearing of the Subcommittee on General Farm Commodities and Risk Management to review implementation of changes to the Commodity Exchange Act contained in the 2008 Farm Bill will now come to order. I would like to thank everyone for joining us here today as we take a thorough examination of the changes to the Commodity Exchange Act and newly proposed rules by the Commodity Futures Trade Commission, CFTC. I would like to especially thank the witness, Chairman Gensler, for testifying before the Committee and for offering his insight into current issues facing the futures markets. I very much look forward to hearing your testimony.

In the 2008 Farm Bill, the Committee strengthened the CFTC's authority over retail foreign currency for forex transactions. In January, the CFTC published a proposed rule to implement that authority. This rule put in place requirements for registration, disclosure, record-keeping, financial reporting and minimal capital standards for forex trading. However, this rule also would impose a new leverage requirement on retail foreign exchange customer accounts that many believe will just force customers to take their business overseas.

Today, I am interested in hearing more from the CFTC on the development of this proposed rule regarding forex transactions, and

if the narrow *Zelener* fix in the farm bill has given them enough authority. Also, I hope Chairman Gensler can elaborate today on the proposed, slightly controversial, rule to limit size of positions that traders can take on futures and options contracts on four energy commodities and explain how they differed from position limits to those imposed on agricultural commodities. In particular, I am interested in distinctions that the CFTC is making between agricultural and energy commodities with regard to the use of aggregate position limits.

Our job in Congress, and on this Subcommittee, is to bring greater transparency and oversight to the over-the-counter derivatives markets and ensure that we provide necessary oversight of these markets without hindering legitimate consumers from operating within them. To the extent fraudulent activity is taking place and hard-working Americans are getting taken to the cleaners, we need to ensure that Federal regulators have the tools necessary to protect consumers. And I would like to yield to my Ranking Member, the gentleman from Kansas.

OPENING STATEMENT OF HON. JERRY MORAN, A REPRESENTATIVE IN CONGRESS FROM KANSAS

Mr. MORAN. Mr. Chairman, thank you very much. I thank you for holding this hearing. I am interested in hearing what the Chairman has to say. Chairman Gensler, I welcome you to our Subcommittee and look forward to being educated one more time on very complex and important issues. And with that, Mr. Chairman, I think we should begin our hearing.

The CHAIRMAN. I think we will move on into the testimony. Thank you for being here. We are anxious to hear your remarks, Chairman Gensler.

STATEMENT OF HON. GARY GENSLER, CHAIRMAN, U.S. COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Mr. GENSLER. Chairman Boswell, Ranking Member Moran, and Members of the Subcommittee, thank you for inviting me here today to testify on behalf of the Commodity Futures Trading Commission, and I ask that my full written testimony be entered into the record. In that written testimony, I review three principal areas. First, the CFTC's use of existing authorities, and I go through eight items there. I guess I could had gone through more or less, but there are eight key ones. Second, the need for additional authorities, which this Committee and the House of Representatives addressed, and I want to express my deep appreciation for all the work this Committee did on that bill. There is a great deal more to do working with the Congress and hopefully reconciling and getting something to the President, for over-the-counter derivatives reform. Third, the testimony focuses on the still needed additional resources at the CFTC, which of course we will be working with the appropriators on, going forward.

In terms of the existing authorities, if I could just quickly focus on and highlight three areas, and I know there will be questions on some others. One is our enforcement program, and, two, status of two things out of the farm bill. One was this foreign currency

directive that we took up, and, second, the CFTC's approach to significant price discovery contract determinations which was also in the farm bill. In terms of our enforcement programs, the CFTC Division of Enforcement has been very active policing the markets against fraud, manipulation and other abuses in the last fiscal year filing 50 enforcement cases, a 25 percent increase from the prior year, and resulting in approximately $280,000 in civil monetary penalties.

Within that, there were some new provisions about policing the markets and FX. I think there were 15 or 16 cases that came directly out of the new authorities from the farm bill. Also, the farm bill included provisions on exempt commercial markets. These were markets that were set up out of the 2000 Commodity Futures Modernization Act, but some exempt commercial markets that had contracts that showed significant price discovery features. They were either linked or they were referenced by others in markets that these contracts should have enhanced regulation. We put out rules last year, and following those rules we sought public comment, 43 contracts to ask whether they were significant price discovery contracts.

The first was found to be a significant price discovery contract, the big contract on the Henry Hub traded on ICE. There are 42 additional contracts that are still out for determination, and our staff is reviewing them. Hopefully not too long from now, the Commission will make some determinations on them as well. The good news is that on that first contract, ICE is now regulating that contract in accordance with the core principles that were embedded in the farm bill that you all worked so hard on. In terms of the forex rulemaking in January, the Commission proposed rules so we are in a public comment period right now concerning off-exchange retail foreign exchange transactions.

This is really to help protect the public, in accordance with the farm bill, through registration, disclosure, record-keeping and financial reporting, and as the Chairman said does include a feature on leverage ratios to protect the public. And, so we are in this rulemaking period. We look forward to hearing from the public on this and comply with the farm bill and to make sure that we protect the public. Once again, I want to thank the Committee for all your work on over-the-counter derivatives, and I know it is not the reason for this hearing, but I am certainly here to take any questions you might have. And, if I could, just before I close, mention resources. The Commission actually shrank during the 8 years before I started. It shrank about 22 or 23 percent in terms of head count, and this is in the face of a market that was growing five or sixfold during that period. It was also increasing in complexity.

Fortunately, working with Congress, we are now back up to about 590 staff, maybe 600 staff, which is just a little bit more than we were 10 years ago, and, oddly enough, not that much different than we were in the late 1970's, even though the markets are so much larger today. But with Congress' help this year, we can probably bring ourselves up to the mid-600 range depending upon how we bring them on, maybe as many as 680 by the end of this year. And the President put forward a budget to move us up to funding that would support about 745 people. We think that that

is the right complement. If over-the-counter derivatives reform were to go forward, the President's budget also envisions another $45 million to help get a start on the funding of the technology needs because there will be a lot of technology needs on that in addition to the staffing needs. With that, I look forward to your questions.

[The prepared statement of Mr. Gensler follows:]

PREPARED STATEMENT OF HON. GARY GENSLER, CHAIRMAN, U.S. COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Good morning Chairman Boswell, Ranking Member Moran and Members of the Subcommittee. Thank you for inviting me to testify regarding the implementation of changes to the Commodity Exchange Act contained in the 2008 Farm Bill. I am please to testify on behalf of the Commodity Futures Trading Commission (CFTC). I will focus my testimony today on three principal issues: the CFTC's use of existing authorities to fulfill our mission, the need for additional authorities to oversee the over-the-counter derivatives marketplace, and the need for additional resources to best protect the American public.

CFTC Regulatory Regime

Before I get to the three topic areas outlined above, I will take a moment to discuss the CFTC's oversight of the futures markets. Futures have traded in the United States since the Civil War, when farmers and grain merchants came together and created a new type of marketplace. It was not until 60 years later that the Congress first passed legislation to regulate these markets. In 1922, Congress passed the Grain Futures Act that first provided a regulatory structure over futures and established the Federal authority that eventually became the CFTC. In the midst of the Great Depression, Congress passed the Commodity Exchange Act to strengthen that regulatory structure.

The CFTC ensures that futures and commodity options exchanges have procedures to ensure that trading is fair and orderly and free from fraud, manipulation and other abuses. Exchanges are where buyers and sellers meet and enter into a transaction. Specifically, the CFTC oversees 14 designated contract markets (DCMs) and one exempt commercial market (ECM) that lists a contract that the Commission determined to be a significant price discovery contract (SPDC). The CFTC also oversees 13 clearinghouses, which enter the picture only after two counterparties enter into the transaction. After two parties agree to a trade, a derivatives clearing organization (DCO) takes on the risk that either counterparty to the trade may fail to meet its obligations under the contract for the duration of the contract. Centralized clearing has helped prevent systemic risks for decades in both calm markets and in the stormiest of markets, such as during the 2008 financial crisis.

The CFTC has wide-ranging transparency programs designed to provide as much information about commodity futures markets and trading to the American public as possible under current law. The agency also has broad surveillance powers to police the markets for fraud, manipulation and other abuses.

The CFTC currently oversees 66,187 registrants, including 51,921 salespersons, 1,277 commodity pool operators, 2,568 commodity trading advisors, 7,114 floor brokers, 1,447 floor traders, 166 futures commission merchants and 1,694 introducing brokers.

The total size of the markets we regulate, measured in notional value, was more than $33 trillion in 2009. The CFTC oversaw 2,051 actively traded contracts with a volume of nearly three billion contracts traded.

Existing Authorities

The Congress gave the CFTC broad authorities to oversee and police the regulated futures and options markets in the Commodity Exchange Act. These authorities were further enhanced as a result of the 2008 Farm Bill. As such, the CFTC has been aggressively utilizing existing authorities to oversee the futures and options markets.

First, the CFTC's Division of Enforcement has been actively policing the markets for fraud, manipulation and other unlawful conduct. In the last fiscal year, the agency has filed 50 enforcement actions, constituting a 25 percent increase in filings over the prior year. Commission enforcement actions resulted in more than $280 million in civil monetary penalties, restitution and disgorgement from respondents and defendants in CFTC enforcement actions. Notably, 15 of the 50 cases involved

fraud in connection with pooled investments, and 16 involved fraud against retail foreign currency customers.

The CFTC works closely with other Federal, state criminal and civil enforcement authorities. During Fiscal Year 2009, nearly 90 percent of the CFTC's civil injunctive fraud cases involved related criminal investigations and, to date, more than 45 percent of those investigations have resulted in criminal indictment. Over the same time, more than 60 percent of the CFTC's civil injunctive fraud cases involved cooperative investigations with SEC staff.

Second, the CFTC implemented new transparency efforts to give more accurate depictions of the makeup of the futures markets to the public. For the first time, we are providing the market with information about swap dealers and managed accounts on a weekly basis, as well as breaking out index investors on a regular basis. For decades, the CFTC has provided the public with weekly Commitments of Traders (COT) reports consisting of aggregated large-trader position data to shed light on the changing composition of the markets.

On September 4, 2009, the Commission began disaggregating its weekly COT reports to make the categories of traders more specific and accurate. Prior to September, the COT reports broke traders into two broad categories: commercial and noncommercial. The new disaggregated reports improved upon the previous reports by breaking the data into four categories of traders: Producer/Merchant/Processor/User; Swap Dealers; Managed Money; and Other Reportables. The CFTC is releasing disaggregated data for contracts based on physical commodities and is reviewing how to best move forward on contracts for financial futures.

In addition to disaggregating the CFTC's COT reports, the agency began periodically releasing data on index investment in the commodity futures markets. In September 2008, the CFTC published a Report on Swap Dealers and Index Traders that was based on data received from our special call authority. The CFTC continued this special call and enhanced the information disseminated in the original report. On September 4, the agency began releasing the data on a quarterly basis. The new data includes both gross long and gross short positions and updates data in the previously released report to include some additional data. The Commission will soon begin releasing this data on a monthly basis.

Third, the CFTC has proposed rules to set position limits in the four major energy futures contracts. The Commission held three hearings in late July and early August to hear from the public on whether position limits would benefit the markets. In January, the Commission held a public meeting to hear a staff recommendation to set position limits in the crude oil, natural gas, heating oil and gasoline futures markets. Interested persons may submit comments on the proposed rule to the Commission until April 26, 2010.

In addition to setting position limits in the energy markets, the proposed rulemaking would adjust how exemptions from the limits are granted. The proposed rulemaking both addresses exemptions for *bona fide* hedgers and establishes a consistent framework for certain swap dealer risk management exemptions. The Commission and the exchanges currently grant relief from agriculture and energy position limits to swap dealers on a case-by-case basis via staff no-action letters or similar methods at the exchanges. The proposed rule would bring uniformity to swap dealer exemptions, requiring swap dealers to file an exemption application meeting specific requirements and to update the application annually. Exempted swap dealers also would be required to provide monthly reports of their actual risk management needs and maintain records that demonstrate their net risk management needs. The CFTC would publicly disclose the names of swap dealers that have filed for an exemption after a 6 month delay. The proposed changes to the exemptions process builds upon earlier work of the Commission, when, under Acting Chairman Dunn, it issued a concept release on risk management exemptions. In the proposed rulemaking, the CFTC also is soliciting comments on the new exemption framework and whether it should be applied to the agriculture markets.

Further, the CFTC has announced that the agency will hold another meeting on March 25 and invite members of the public to testify on the broad issues related to the CFTC's regulation of the metals futures markets and whether position limits should be set in these markets.

Fourth, the CFTC is fulfilling its statutory obligations under the 2008 Farm Bill to regulate certain derivatives, including energy derivatives, traded on ECMs. If a contract that is traded on one of these facilities is found to perform a significant price discovery function, the contract and the facility are subject to heightened regulation and required to comply with key core principles that also apply to the trading of futures contracts.

The Commission has so far determined that the ICE Henry Financial LD1 Fixed Price Contract traded on the ICE—the largest volume natural gas swap contract

traded on an ECM—serves a significant price discovery function, and thus is subject to heightened regulation. ICE is now regulated for this contract in accordance with all of the core principles laid out in the farm bill. Following the statutory obligations of the 2008 Farm Bill, the CFTC is analyzing—and has sought public comment on—an additional 42 energy contracts, including natural gas and electricity contracts, to determine whether they meet the criteria to be regulated as SPDCs.

Fifth, as directed by the 2008 Farm Bill, the CFTC in January proposed regulations concerning off-exchange retail foreign currency transactions. Pursuant to this authority, the Commission released for public comment a comprehensive scheme that would put in place requirements for, among other things, registration, disclosure, record-keeping, financial reporting, minimum capital and other operational standards. Specifically, the proposed regulations would require the registration of counterparties offering retail foreign currency contracts as either futures commission merchants (FCMs) or retail foreign exchange dealers (RFEDs), a new category of registrant created by the farm bill. Persons who solicit orders, exercise discretionary trading authority and operate pools with respect to retail forex would also be required to register, either as introducing brokers, commodity trading advisors, commodity pool operators or as associated persons of such entities.

The proposed regulations also include financial requirements designed to ensure the financial integrity of firms engaging in retail forex transactions and robust customer protections. All retail forex counterparties and intermediaries under CFTC jurisdiction would be required to distribute forex-specific risk disclosure statements to customers, and comply with comprehensive record-keeping and reporting requirements. So far, the Commission has received more than 5,600 public comment submissions related to the forex proposal.

Further, enactment of the Farm bill enhanced the CFTC's enforcement authority over retail foreign currency. Since enactment of the bill in June 2008, the CFTC's Division of Enforcement has filed 19 fraud actions involving foreign currency transactions.

Sixth, the Commission has enhanced its market surveillance capabilities by requesting more information from foreign markets that provide direct access to American traders. Last year, the agency strengthened the conditions under which ICE Futures Europe can list for trading cash-settled contracts that settle based upon the prices of contracts traded on the New York Mercantile Exchange (NYMEX). The new conditions include requirements to provide Commission staff with trade execution and audit trail data and access to ICE staff for on-site visits to oversee compliance with the terms imposed by the CFTC. These conditions build upon the prior cooperative arrangements between the Commission and the United Kingdom's Financial Services Agency to address cross-border oversight of the U.S. and U.K. energy markets, including most notably the reporting of large trader positions in linked energy contracts.

Seventh, the Commission has been very concerned about the lack of convergence in the Chicago Board of Trade (CBOT) Soft Red Winter Wheat contract over the past couple years. From July to December of 2008, the futures price was between $1.15 and $2.00 over the Toledo cash price. By late last year, the basis had narrowed to $0.67 per bushel and is currently approximately $0.52.

Last October, Commissioner Dunn convened a meeting of the Agriculture Advisory Committee to discuss the convergence problem. The CBOT also was conducting its own reviews. From those reviews, the CBOT decided to implement a variable storage rate proposal that will take effect in July. The Commission will continue to monitor the effectiveness of variable storage rates to see if they address the convergence problem. If convergence does not improve, the Commission will consider whether additional measures are necessary.

Further, in August, to ensure that position limits were consistently applied, Commission staff revoked two no-action letters that permitted two firms using certain index-based trading strategies to exceed position limits in the wheat futures markets.

Eighth, the CFTC is working with the Securities and Exchange Commission (SEC) on an ongoing project to harmonize regulations. In October, the agencies released a joint report that contains 20 recommendations, including proposals for statutory and regulatory changes to improve protections for the American public. Eleven of the recommendations relating to the CFTC require legislation.

The House included some of our recommendations in its recently-passed financial regulatory reform package. The bill would establish similar firewalls for commodity and futures dealers that currently exist for securities dealers. Securities regulations require the establishment of firewalls between the research, investment banking and trading arms of broker-dealers. Without parallel protection in the futures markets, trading desks could use information developed by research arms before that

information is shared with the firm's clients, raising serious questions about the integrity of the firm's services to its clients and confidence in the markets. The House bill also includes language authorizing the CFTC to police the markets for disruptive trading practices and to ensure that the CFTC has the ability to enact regulations that it determines are necessary to implement the requirements of the Commodity Exchange Act.

When the House passed its financial regulatory reform bill, however, staff had not yet finished drafting legislative language for some of the changes recommended in the harmonization report. As such, we will provide language to the Senate as they consider financial regulatory reform legislation. Chief among these recommendations are reforms to fiduciary standards for investment advisors and prohibitions on using misappropriated government information to trade in the futures markets.

- Any person that offers investment advice to customers should be governed by the same fiduciary standard, regardless of whether the underlying financial instrument is regulated by the SEC or the CFTC. Currently, broker-dealers, investment advisors and commodity trading advisors are all subject to different standards, depending on the particular financial instrument that is offered, even though they perform the same function—to deliver investment advice. We have recommended that there be a uniform standard that financial advice should be solely in the interest of the customer, without regard to the advisor's own financial interests.
- We have recommended banning using misappropriated government information to trade in the commodity markets. In the movie "Trading Places," starring Eddie Murphy, the Duke brothers intended to profit from trades in frozen concentrated orange juice futures contracts using an illicitly obtained and not yet public Department of Agriculture orange crop report. Characters played by Eddie Murphy and Dan Aykroyd intercept the misappropriated report and trade on it to profit and ruin the Duke brothers. In real life, using such misappropriated government information actually is not illegal under our statute. To protect our markets, we have recommended what we call the "Eddie Murphy" rule to ban insider trading using nonpublic information misappropriated from a government source.

Over-the-Counter Derivatives Reform

In addition to implementing the authorities established in the Commodity Exchange Act, the CFTC also is working with Congress to bring comprehensive regulation to the over-the-counter derivatives marketplace.

Specifically, regulatory reform should, among other things:

- Require that swap dealers and major swap participants register and come under comprehensive regulation, including capital standards, margin requirements, business conduct standards and record-keeping and reporting requirements;
- Require the use of transparent, regulated trading facilities for standardized swaps;
- Ensure that clearable swaps are submitted to and settled through central clearinghouses; and
- Provide the CFTC with authority to impose aggregate position limits across both futures and OTC derivatives markets.

Resources

Before I close, I will briefly address the CFTC's need for additional resources. Ten years ago, the CFTC was near its peak staffing level at 567 employees, but shrunk by more than 20 percent over the subsequent 8 years before hitting a historic low of 437. Due to increased funding from Congress, the CFTC had more than 580 staff on board at the beginning of Fiscal Year 2010, which is a significant improvement. Still, merely raising our staffing levels to the same as a decade ago will not be enough to adequately fulfill the agency's statutory mandate. In the last 10 years, futures trading volume increased almost five-fold. The number of actively traded futures and options contracts increased seven-fold, and many of these have become considerably more complex in nature. We also moved from an environment with open-outcry pit trading to highly sophisticated electronic markets. What was once a group of regional domestic markets is now a global marketplace. What was once a $500 billion business has grown to a $33 trillion industry.

Despite rapid advances in technology and the increased size and number of regulated futures markets, funding for the agency has lagged behind the growth of the markets, and the CFTC has struggled to keep pace with the markets. While market

participants have the technology to automate their trading, we've yet to have the resources to employ modern technology to automate our surveillance and oversight of compliance. Further, the CFTC does not have the staffing levels or the resources to conduct regular annual examinations of exchanges and clearinghouses. Instead, we can conduct those examinations only periodically and have no choice but to leave routine examinations of intermediaries to self-regulatory organizations. The CFTC needs resources to conduct yearly examinations of the registrants we regulate.

For these reasons, it is appropriate for our staffing levels and our technology to be bolstered to meet the new financial realities of the day. As such, the CFTC's Budget and Performance Estimate for FY 2011, for existing statutory authorities, would increase the agency's funding by $47.2 million to $216 million and would augment agency staff by 95 FTE to a total of 745 FTE.

Additional funding would allow the CFTC to make much-needed improvements to our surveillance and technology programs. Further, it would allow the agency to increase staff levels to better keep up with the growing futures and options markets.

The President's budget proposes additional appropriations for the Commission contingent on the enactment of financial regulatory reform legislation. Commission staff estimated that with enactment of H.R. 4173, the Commission would require an additional 238 FTE to carry out its provisions. The budget recommends $45 million, including $27 million to provide for 119 additional FTE in FY 2011 and anticipates funding in FY 2012 for an additional 119 FTE.

Closing

In closing, I am pleased to report that the Commission has been actively utilizing existing authorities to oversee the regulated futures markets. We have managed an active agenda, ranging from implementing provisions of the 2008 Farm Bill to improving existing regulatory schemes to working with Congress on new regulatory reforms. I look forward to continuing to work with this Subcommittee on important efforts to protect the American public.

I thank you for inviting me to testify today. I will be happy to answer any questions you may have.

The CHAIRMAN. Well, thank you for your information. That was very informative, and your last comments, I think all us, we hear you. We hear you. But, I must say that we are in era, right now, with deficits where we have to do more with less, and so don't be over encouraged that there is going to be a big bump right away. But your point is well taken and you justify your need, and of course the process will go from there. I have two or three things that came up. We get a lot of visitors, as you well appreciate, and I would like to just cover about three or four items here and then maybe come back in another round. But the National Futures Association rules, which have been approved with CFTC, allow customers to buy retail foreign exchange contracts with 100:1 or 25:1 leverage.

As you know, you have approved these rules for many years as consistent with the Act. Now the CFTC is proposing a leverage requirement of 10:1, so I would like you to explain the reason for the sudden change and what analysis was conducted to justify it. NFA also has a tiered structure to its leverage limits recognizing that different currencies have different risks. For these currencies there is more risk present, the exotic currencies, if you will. Customers have a lower leverage limit, 25:1. NFA opposes or, excuse me, the NFA requires 100:1 leverage limit for less risky standard currencies. Did the CFTC consider this model and why did the Commission ultimately decide to go with one size fits all? Talk to us about that.

Mr. GENSLER. I thank you for the question, and those visitors that visit you also visit us quite regularly, as they should, and it is welcome. The Commission put out a proposed rule, and of course we are waiting to hear comments. We have already gotten 5,600

comments, and expect more. It is a very important rule to protect the public. In terms of leverage, leverage is used to help protect the investing public, and there are actually a number of regimes. We put out this 10:1 number. We looked at what the NFA is doing. We also looked at what the exchanges are doing. And on the many contracts the exchanges have, and I think there are nearly 80 foreign exchange contracts on the various futures exchanges; leverage ratios go from 10:1 all the way to 100:1, so there is a wide range depending upon the currency and the risk in those contracts.

Actually over in the securities world, there are also a leverage ratios. At FINRA, which oversees some of those, the leverage ratio is 4:1. So what we did in the rule is we put it out for comment. We want to hear from the public, see what they think. So I said, we have gotten a lot of comments on this. And then we will try to do what is best to protect the public, but we pick something really in the range. Maybe that is pretty wide range, 4:1 to 100:1, obviously. I would say that the narrower the range on the futures contracts, I believe, and I am looking at some notes, range from probably 20:1 to 40:1. That is probably the narrower range for many of the currency contracts.

The CHAIRMAN. I appreciate that. Maybe you could comment, and then I will yield. Do you agree the 10:1 leverage limit that is proposed will greatly reduce the domestic forex trading business for futures commission merchants and retail foreign exchange dealers?

Mr. GENSLER. Well, in putting out a proposed rule, we are trying to comply with the statute in the farm bill and to best protect the public. One of the things we are looking forward to is comments exactly on this point as to whether the investing public would still have access to invest in these products. However, the reason for the leverage is really to protect an individual against a rapidly changing market, or the volatility in the marketplace so that they have some cushion or margin in those contracts.

The CHAIRMAN. Thank you very much. At this time, Mr. Moran is out of the room, so I will recognize Mr. Latta for any comments or questions he might have.

Mr. LATTA. Thank you, Mr. Chairman. Thank you very much for being with us today. Kind of on those same lines right now would you agree or disagree with the proposition that the proposed leverage rule would drive retail FX business overseas? If that were to happen, do you agree that it would defeat the intent of Congress in passing a regulatory system for retail forex in the first place?

Mr. GENSLER. Well, I think as we understand it, and how we put forward the rules, is how to best protect the investing public. There are actually many places here in the U.S. as well that somebody can invest. I think that it would be good to harmonize the leverage ratio rules, whether it is the FINRA rules for securities, or our rules that you have asked us to do, or even the bank regulators on foreign exchange with the banks. I think you raise a very good point, that these transactions can move, as you say, either internationally or domestically, and that would be good to harmonize rules, and so we will be looking at that very closely. We haven't finalized a rule, and we are taking comments now and even this hearing is going to help inform us as well.

Mr. LATTA. And probably to follow up on that, what is the level of support or opposition for the rule? Have you got an inkling? Is it 50/50, or where is it coming down on?

Mr. GENSLER. Well, there are many attributes of the rule. There are: disclosures; registration; there is capital as Congress directed; there is capital for these foreign exchange dealers as well. And so with 5,600 comments staff is still going to need time to analyze them all, and there will probably be well more comments before we finish this open period. I think it is safe to say that the most comments, I am told, I haven't read them, are on this leverage issue, but I believe there is a great deal of support on many aspects of the rule, but I will see how all the comments come in. I don't want to pre-judge them. Then along with the four other Commissioners, we will sort through the comments after staff summarizes them for us.

Mr. LATTA. Just to follow up on that again, when you are doing the analysis, with the overall analysis, have you done anything that would say how much business might go overseas if these are promulgated, these rules? Do you have any idea what the cost might be if they are promulgated?

Mr. GENSLER. Well, what we are really focusing on is the cost for the retail public. I mean there has been significant fraud in forex. I think what this Committee and Congress did in the farm bill, and why they directed us to write rules is to fix the *Zelener* issue of these rolling foreign exchange contracts and protect the public from being defrauded. There has been significant cost to the public, and that is what we are trying to address in putting forward and promulgating rules consistent with the farm bill language.

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

The CHAIRMAN. Thank you. The chair recognizes Mr. Marshall.

Mr. MARSHALL. Thank you, Mr. Chairman, and pleased to have you here. I would like to explore the same thing a little bit. It seems to me that a number of the people who do forex trading are just basically gambling. They think they can out guess the market. This is their way of going about trying to make their fortune. And, my take on that is it is usually foolish and you are as likely to win as to lose. Since you have to pay a fee, the net is going to negative on average. *Zelener* is one illustration of fraud in a sense that people are suckered into doing this thinking that this is the way they are going to make their fortune, and representations are made concerning either the safety or the likelihood of success that are just not right. They are not true, and so having the authority, NFA and others having the authority to go in and specifically address that kind of fraud is important. That was the *Zelener* fix.

But I don't know that we intended to basically kill the market. The reference to protect the public, it seems to me there must be some legitimate uses of this by individuals besides just gambling. Can you describe examples of people who are legitimately, in the sense that they have some commercial interest and they are trying to protect something, some legitimate interest that people—that would cause somebody to trade forex?

Mr. GENSLER. Well, Congressman, I might separate out retail investing public from the commercial and importer or exporter certainly.

Mr. MARSHALL. Your rules only affect retail?

Mr. GENSLER. It is really retail.

Mr. MARSHALL. So in the retail setting, can you think of any examples of people that with legitimate hedging needs or——

Mr. GENSLER. Let me say the Commission promulgated proposed rules and looks forward to public comment, but it is to further what Congress wants in that this business exists, that the retail public, some want to diversify their risk. They might take a view on where 100 shares of stock trades, or where the retail public can open a futures account and take a view and even speculate on the price of oil or corn or wheat. The retail public, with certain protections, would be allowed to do that. The challenge had been, for 3 decades or more, was that foreign currency had an exemption from the original Act in 1974, and so in many ways these are like futures. They are almost futures, but they are being traded off-exchange, and so we are trying to bring some of the protections, maybe not all of them, but some of those protections to the public.

Mr. MARSHALL. What we are concerned about, and we just hear from the industry, and what they are saying sounds right, in the modern era where individuals who want to engage in this sort of trading can do it from their home computer somewhere in Europe or anywhere in the world really. You know, if our leverage rules are 10:1 and the leverage rules elsewhere are 100:1, the business is going to move elsewhere. I don't know that we have any mechanism to keep that from occurring, and the elsewhere place that the business moves to may well be a place that doesn't have the NFAs of this world trying to look out for fraudsters. And so we are concerned that not only does the United States lose some business, but there is no net good that is done as a result of the effort. We are not effectively protecting the public because the public is inclined to have 100:1 leverage as opposed to 10:1 leverage and just goes elsewhere.

In fact, it has the opposite effect because elsewhere is a place where the public is in more danger than the public would be here. So, we are a little concerned that the leveraging requirements, specifically, could be problematic.

Mr. GENSLER. You raise a very good point. Capital and risk doesn't know any geographic boundary. This is one of the issues in our efforts with Congress to reform the over-the-counter derivatives marketplace as well. But I would note that the nine leading currency futures contracts, I have this list, range from a 13:1 leverage to 45:1. I mean we were referencing NFA, which is also important, but these are currency future contracts that I am talking about: the Swiss franc, the British pound, the Australian dollar, Japanese yen, the euro. These are the major currencies on the futures exchanges.

So I mean we want to hear from the public. We want to do exactly what you said, Congressman, to make sure the public is better protected on, particularly, these rolling spot FX, which let me just say the public is charged a fee every time they roll. Every 2 days they roll, they roll, they roll, they get charged a fee. And we just want to bring some rules as Congress has directed us to, to best protect the public but still allow the public to invest if that is what they decide to do.

Mr. MARSHALL. We have a small enough group here. I guess we will have a second round?

The CHAIRMAN. Oh, yes.

Mr. MARSHALL. Okay. Thank you.

The CHAIRMAN. Thank you. The chair recognizes the gentleman from Kansas, the Ranking Member, Mr. Moran.

Mr. MORAN. Mr. Chairman, thank you very much. Chairman Gensler, thank you for joining us. Just a couple of different areas I would like to pursue. Just in a general sense, tell me how things are different at the CFTC today than they were say 2 years ago or a year ago. Are we prepared in different ways? Are we staffed in different ways? Do we have a different focus? What has happened at the CFTC with you as the Chairman, as well as the change or the recognition that dramatic things happened in our economy involving some of the products that are regulated?

Mr. GENSLER. I thank you for that question. A number of things, and let me say that it is not because I am there. I think a lot of things have changed but one is staffing. We have, as I say, about 600 people *versus* 437 just a year and a half ago. So we had basically a hiring freeze for 4 or 5 years. I mean it wasn't technically that, but that is kind of how it worked. Two, I think that we are far more engaged in our enforcement efforts policing the markets, and partly because of the farm bill, we have started to look at some markets we couldn't before. So, what is traded down on this exempt commercial market, ICE is now regulated as Congress had asked it to do. We also went forward with the contracts in the United Kingdom, ICE UK, and we entered into an agreement with the regulators there that brought greater oversight and coordination on the oil contracts that are on that market with our markets.

Last, if I just might say, I think we brought greater transparency. It is incremental, but through our Commitments of Trader's report, we for the first time are putting out data weekly on swap dealers involvement in the markets and hedge funds involvements in the markets, and now quarterly on index investors involved in some markets, and we have brought some greater transparency as well.

Mr. MORAN. Thank you for the answer. Let me ask about a specific issue, your position limit rule. You have issued a rule pursuant to Section 4a(a) of the CEA, and it appears to me that in order to issue this rule, you have to have a finding there is excessive speculation causing unwarranted changes in price of the commodity, or you must have the belief that that is going to happen, and therefore you can step in and prevent that from happening. So the CFTC is allowed to set position limits to prevent excessive speculation, but the only finding that I am aware of is the study that the CFTC did in 2008 that could not establish a link between excessive speculation and the increase in commodity prices that we in Congress were so concerned about. Has there been an additional study beyond that report? Is there something now that better ties so-called excessive speculation with the price of commodities?

Mr. GENSLER. This is a case where we put out a proposed rule to re-establish position limits in the energy markets. They, of course, existed until the summer of 2001, just 9 years ago, through the exchanges. We asked our General Counsel last summer in

hearings, do we have to have a finding that there has actually been excessive speculation that has caused a burden to interstate commerce or can it be prospective? And he studied it thoroughly and offered the opinion as General Counsel, no, it can be prospective. It doesn't have to be a historical finding.

That is really what the agency has done for decades in the agricultural space and used to do with the exchanges in the energy space. The concept for decades has been to ensure that there are a certain number of actors on the stage, that the markets are not too concentrated. The interpretation of a couple decades ago in the agricultural space was to have a certain limit that ensures that there is at least of number of speculators in the marketplace, and that is what this proposed rule actually did. It basically took the agricultural formula and put it out to comment for energy commodities, we are asking the public is this going to promote fair and orderly markets? We are looking forward to hearing from the public whether we should re-establish some form of limits consistent with the philosophies that have been done in the past.

Mr. MORAN. There is no current analysis or specific study related to this issue that is pending or that would be available to Congress as a result of CFTC action. What I am looking for, is there something that contradicts the 2008 report that couldn't find that link?

Mr. GENSLER. No. If you are looking for a link on our website, no.

Mr. MORAN. I am actually looking for a link that says that excessive speculation is causing fluctuation or increases in commodity prices.

Mr. GENSLER. It is really—and I think this is what our agency has been tasked to do for decades—how do we best promote a market that would be fair and orderly. One of the aspects of that, which Congress asked us to do, and it said, "shall set position limits," is to best protect the markets and bring diversity in the markets. That is what we have done in the agriculture markets. That is what we wanted with the exchanges help in energy, and so we are asking the public and really looking forward to hearing from the public, whether this helps promote the diversity in markets and avoiding concentrated positions or what one might call excessive positions.

Mr. MORAN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I see that the Chairman has joined us, so the chair recognizes Chairman Peterson.

Mr. PETERSON. Thank you, Mr. Chairman. Thank you and the Ranking Member for holding this hearing. Chairman Gensler, welcome.

Mr. GENSLER. Good to be with you, Mr. Chairman.

Mr. PETERSON. I am sorry I am a little late here so I don't know how much of this has been covered but on this proposed change in leverage on the forex rule, as I understand it, the NFA or you in combination have increased the capital requirements to $20 million or something, is that correct?

Mr. GENSLER. Yes. I think that is consistent with what was in the farm bill. I don't remember the exact language but the capital rule was actually addressed in the farm bill.

Mr. PETERSON. Yes, so we knocked a whole bunch of people out of this system because of that capital requirement. People that were in business aren't in business anymore because they can't meet that, I guess.

Mr. GENSLER. Well, it is to ensure that the firms, these retail foreign exchange dealers, have something behind them.

Mr. PETERSON. Yes. I don't quite understand what you are trying to get at here by changing this leverage, because as I understand how this works, the NFA, which you guys have been working with, you have this 100:1 rule. The way it works if you put in a $1,000 under a $100,000 contract the way it works in the real world is when you have $500 loss they close you out. So I don't get what we are trying to accomplish here by lowering this to 10:1. It almost seems like you are putting them at more risk. More of their money is going to be lost before they are closed out under that rule than under the current rule. Who are you trying to protect here? I don't quite get it.

Mr. GENSLER. We are only trying to protect the public. It is a proposed rule, and, of course, as you may know, we have gotten a lot of comments, 5,600 comments, to date, and there are a lot of aspects in the rules, disclosure, registration. But, on this leverage piece, on the leverage piece what we put out for comment to hear from the public is 10:1. There is actually a range. NFA is at 100:1, as you said on certain currencies.

Mr. PETERSON. Right.

Mr. GENSLER. And then on the futures markets themselves there are 79 different contracts and those contracts range from 10:1 to 100:1, but the bulk of them are in the 20:1 to 30:1. There are some at 40, I think the euro might be at 40:1. And so we are really looking forward to comment on this, but whether we end up at 10:1 or like the exchanges have other ratios, the protection, the protection is basically to have a cushion or some modest margin there.

Mr. PETERSON. Well, yes, I understand that, but in the futures market you are at a lot more risk. You can actually lose more money than you put in in the futures market.

Mr. GENSLER. Well, actually it is very similar. These spot contracts are like rolling futures, the futures market will close you out as well.

Mr. PETERSON. Well, right, or you have to make your margin call.

Mr. GENSLER. Right, so it is actually very similar to the futures.

Mr. PETERSON. Yes, but I don't think the futures market works that way. If half of your margin is used up, you are closed out. That is not what they do. They have a margin call twice a day or whatever it is and you have to either meet it or you close the contract out. It is a different situation. I guess I don't understand the forex, where these guys are operating that way. And as I understand that market, you are not at as much exposure necessarily as you are if you are in the futures market.

Mr. GENSLER. Well, one of the good things about putting out a proposed rule is we are getting a lot of comments, and this hearing is helpful as well, and it is a question of whether you have more protections on a futures exchange or less. Often you have more protections because of the transparency——

Mr. PETERSON. Well, that probably makes sense.

Mr. GENSLER. So what we will do amongst the five Commissioners, we will wait until the comment period is over. We will hear all the comments. Staff will summarize them and then we will have to address them. So, it is not only those on leverage but any other comments that we have.

Mr. PETERSON. What is the timing of this? When are you going to be making the decisions?

Mr. GENSLER. Well, we are still in the open period. I have to remember—I think March 22 is when the period closes and with 5,600 comments probably with today's hearing we will get a couple thousand more, but it will take time to try to sort through and properly review all the comments. I think this is going to probably go well into the summer if I have to guess how long it takes to review all these comments and properly have a process at the Commission.

Mr. PETERSON. All right. Well, thank you, and keep us appraised of what is——

Mr. GENSLER. I thank you and I thanked the whole Committee earlier, so I want to thank you personally in all that you have done on over-the-counter derivatives reform because we really need to do it, and the House has put forward an effort now. We are working with the other side and hopefully be back with you again.

Mr. PETERSON. Well, hopefully they act like they are going to do something so we will keep our fingers crossed.

Mr. GENSLER. Yes. We are doing a little bit more than that but yes.

Mr. PETERSON. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Chairman, and the chair now recognizes the gentleman from Texas, Mr. Conaway. Pass. We would recognize the gentleman, I believe we are lined up here, let me look here, Mr. Kissell from North Carolina.

Mr. KISSELL. Thank you, Mr. Chairman, and welcome, Chairman Gensler. Just a couple questions. We were talking about budgeting and staffing. In terms of your responsibilities for investigations and oversight, are you adequately staffed there to try to make sure that those areas are sufficiently covered?

Mr. GENSLER. I thank you for asking that. I think we are making headway. We are not quite there. We have put in, and the President has supported it in his 2011 budget, I think we need probably 200 people in our enforcement area. We are around 145, 150 right now. It is a great challenge. Maybe it is because of this crisis, maybe some of the additional responsibilities in the farm bill, but we have a lot of fraud cases that come in, but the manipulation cases take a lot of resources to pursue. Also, in terms of oversight I believe that we should go to annual reviews of exchanges and clearinghouses for what is called rule enforcement reviews. And they are very constructive. The exchanges benefit, the public benefit, I think we benefit. We have been pretty much putting them off for every 3 year reviews because of the budget problems. The 2011 budget would support us to get them to annual.

The last piece that we are trying to do is get 21st century computers and technology to do automatic flagging when there is some trade in the market that is really an illegal trade. We should flag

it electronically and see it because humans can't watch hundreds of thousands of trades, but those would be the three areas we are trying to get to.

Mr. KISSELL. And what would be the challenge in the computer systems? Is it strictly money or just developing software or what would that be?

Mr. GENSLER. It was over the years a number of things, but I think with the President's support and the 2011 budget, we will be able to take this on. But it was storage capacity and computers. We are now where we need to be on the storage capacity. Now we have to write the algorithms and so forth. We have been doing that. We are actually working with the exchanges. They have been very helpful too because they have some algorithms they use. I think it is probably going to take a little bit more and go into 2011 before we get the bulk of this done.

Mr. KISSELL. Well, that would seem to be a very important tool to have that constant monitoring in that way.

Mr. GENSLER. We agree, and we think the exchanges too need to do it. It is not just the agency but together I think it is a very important tool.

Mr. KISSELL. Just general thoughts about as we have pending legislation and financial reforms and the farm bill and just where we are in general, can you just offer general thoughts about, once again, the pending legislation's strengths, weaknesses, areas we are not addressing?

Mr. GENSLER. Well, I think that House-passed bill is very strong. As you probably know, I hoped to maybe have the same success on the other side that we covered mandating trading. That has been quite a flash point in the debate over on the other side as to whether to mandate it. The House mandated there would be trading. And then the second area that is quite a debate is this end-user exception, how wide, how narrow. I tend to be in the camp of narrow, that if we have it, it should be for commercial end-users. You know, the rural cooperatives that come in here or so forth and that are hedging their needs and not for big financial companies. I, quite frankly, don't know why a transaction between a large bank and a large hedge fund would be out of this or a large bank or a large mortgage finance company, I think. But those seem to be the two points that are the greatest debate over on the Senate side. Whether there is a trading requirement, which you did include in the House, and just how wide or narrow an end-user exception might be.

Mr. KISSELL. Thank you, Mr. Chairman. I yield back my time.

The CHAIRMAN. Thank you. Second round. We go to Mr. Marshall.

Mr. MARSHALL. I think you are almost off the hook here. I want to pick up on something that the Chairman mentioned, and that is that you have increased capital requirements. What that means are at least two things. The number of characters, potential fraudsters, that are out there is diminished. I mean if you are in this area and you don't have the right capital then I would think, *per se,* you are guilty of something. You can be stopped or you can be—maybe there is a criminal penalty that could be assessed against you. So it limits the number of people. It also makes it less

likely that they are going to commit fraud because they have a lot of capital involved in the game. They are probably going to be fairly careful.

So if the leverage rules are designed to minimize fraud, I actually think your capital requirement is many giant steps in the direction of accomplishing that. And then again there is this worry that changing the leveraging rules is going to prompt people to go play in other markets that are more dangerous, and, hence, the public sees less protection rather than more. And I guess my instinct is to say is if there is a way for you to leave the leveraging alone or leave it in charge of the NFA and let them worry about individual contracts, then you all don't have to worry about it.

That might be wise in the circumstance. I absolutely agree with what you have done where position limits are concerned. I think that we are—and the exchange between you and Mr. Moran was kind of interesting to me. It is true that the evidence produced thus far, at least the analysis done this far by staff, as I understood it, they are just not able to identify an impact on the market as a result of the stuff that we have been concerned about, the absence of position limits. But I think we are in this environment where there has just been so much smoke, so much noise, so many people saying this is absolutely a problem. The consequences of it being a problem are so dire to so many people that the Commission is saying, "Okay, the burden of proof is on those who want to have no position limits. If you can show this is safe, fine, but in the absence of a demonstration that this is safe and it is not going to have these adverse impacts on the market, we are going to take action to impose position limits like we have done in other areas."

It seems entirely reasonable to me. Where oversight and enforcement is concerned, I am worried that you all are about to get a—if our bill, that portion of our bill which gives you authority over the derivatives market becomes law, you have a massive build-up in front of you, I mean a huge organizational challenge.

I am sure we are there to try to help but it is going to be on you to figure that one out because that is really going to be a challenge, it seems to me. I don't really have a question. I just wanted to offer those observations.

Mr. GENSLER. I thank you and maybe we were too modest when we put in for another 238 people in the House-passed bill, but that is what we put in. If the President signs it and it comes a few years from now, and I am still there and we need more, I will tell you or hopefully my successor will.

Mr. PETERSON. Will the gentleman yield?

Mr. MARSHALL. Oh, absolutely.

Mr. PETERSON. I just wanted to follow up. Are the foreign markets—you have been talking to those guys about a lot of these different things and trying to get these regulations harmonized. Are they doing something similar in this forex market regarding margins?

Mr. GENSLER. You ask a very good question, and we will look at that obviously as we go through this finalizing the rule and so forth. Most of my conversations on foreign exchange with the European regulators is that they may cover foreign exchange swaps in their overall derivatives rules. That is what they are looking at,

and there is still a debate here whether foreign exchange swaps are included as the Chairman and I have talked. I think they should be, whether it is an interest rate swap or a currency swap. It helps lower the risk in the marketplace and central clearing, particularly central clearing has the same issues. It does look like the European Commission at the staff level so far, they want to cover it as well, but they are watching to see what we do in that regard. I know I talked about the institutional side rather than the retail, but I think we will take a look at the leverage ratios overseas.

Mr. PETERSON. Yes, because we have been told that if people—if we get too carried away here they are just going to go to the Bahamas. I don't know if those folks down there that are operating have any—they are probably not even in this discussion, I mean the Europeans and so forth but I mean——

Mr. GENSLER. Right.

Mr. PETERSON. So we need to keep an eye on that. We don't want people to be trading down there and actually putting consumers at more risk. With the Chairman's permission, I keep reading this—in our bill, I keep reading that somehow or another we are going to let these financial types off the hook in this regulation of these derivatives, but in our bill all of these big guys that are doing these financial trades are going to be required to put up margin and collateral because they are major swap dealers or major swap participants, so they are covered. It is just that they are not covered the way some people want, but clearly all of those folks, those big guys that are doing this financial stuff are going to have to put their money up even with the end-user exemption.

Mr. GENSLER. Well, Mr. Chairman, as you know, because I am very supportive of your efforts in this area, and I think you did a tremendous job, there is a possibility under the House-passed bill that a large financial institution that is not a swap dealer——

Mr. PETERSON. But I can't imagine who that would be.

Mr. GENSLER. Many major insurance companies, many major hedge funds, many major mortgage finance companies, leasing companies, and the like. So these large entities, I will just use Bank for International Settlements. These are worldwide statistics on this big $600 trillion market, but when they look at the market in interest rate derivatives, very common derivatives, about 34 percent is between swap dealers and swap dealers, but 57 percent is between swap dealers and other financial institutions, the insurance companies, the leasing companies, the hedge funds.

It is that—whether it is 57 percent or only 40 percent but it is that group that I know from our private conversations you would like to cover. I believe you and I are in the same place. We want to cover it. It is a possibility in the House-passed language that said end-users hedging commercial operating or balance sheet risk that these financial firms might say we are hedging a commercial risk. We are an insurance company. We are hedging a commercial risk. We are a leasing company. And so I know from our discussions we both want to cover them, but it may be that 2 years from now the clever lawyering will say they are out. And that is unintended. I think it is unintended surely. The other part of the market, there may be ten percent of the market that is the electric utilities, I think you did want to give them an end-user exception.

Mr. PETERSON. Well, not an exception. Just that they use a different kind of collateral.

Mr. GENSLER. Right. Right.

Mr. PETERSON. And that is what we are trying to get at, but I guess if you have some suggestions about how we could tighten up that language for those financial types, we would be willing to look at it because——

Mr. GENSLER. I would be delighted to share that with you.

Mr. PETERSON. In conference maybe we can address that, but we felt like most of these folks that are actually putting risk into the system are going to be covered because the dealers are participants.

Mr. GENSLER. I sense, Mr. Chairman, that you and I share the same goal to cover these financials, and we could work together to have the language to cover what I call the 57 percent, and then the other ten or so percent which is what I call the non-financial end-users. You know, if Congress deems them to be out for other reasons, they are out.

Mr. PETERSON. Okay. Thank you, Mr. Chairman.

Mr. GENSLER. Thank you very much.

The CHAIRMAN. I think we have time for—we have a new joiner. Any questions? Thank you very much. We are going to come to closure. I have one last question, and if you want to jump back in, and I will yield to Mr. Moran here in a moment. But just last, if I could, Mr. Chairman, CFTC is required to evaluate contracts at least once a year to determine whether they serve a significant price discovery function. What is the Commission's plan for this review process? How time and labor intensive is the process, if you would?

Mr. GENSLER. Well, it is very time intensive, but fortunately it is not dozens of staff but it is time intensive for a small group. We put out 43 contracts to get public comment. We will sort through that here in the next couple months, to finish that. But then the additional review, what you are referring to annually, is to just look at the whole marketplace to see if there are additional contracts to add to that list. And I think that we have a pretty darn good staff and they sort of have it nailed down. But you are right. There is a core handful of people that are spending pretty much full time on this, but it is measured in the single digits right now. It could grow of course.

The CHAIRMAN. I understand. Thank you. At this time, I think we are going to come to closure if I don't see any signals of anybody wanting to ask further questions. But before we adjourn, I would like to invite the Ranking Member to make any comments he would like to make.

Mr. MORAN. I thank the Chairman for holding the hearing and thank Mr. Peterson for his continued interest in this topic. I think it is an important one to our economy. And, Chairman Gensler, I look forward to working with you to see that we come up with the right legislative framework for you to conduct the appropriate level of supervision and regulation, and I thank you for your testimony today. Thank you, Mr. Chairman.

Mr. GENSLER. And I thank you for those warm remarks, and the Chairmen for all your efforts with the CFTC.

The CHAIRMAN. With you and the chair and all these chairs, we have lots of chairs, but in that respect I too want to join with Mr. Moran. Chairman Peterson, thank you for your leadership and your intensity to get into this. We have come out pretty good, and we all appreciate the hard work that you have done for a long, long time, and standing up and financial services and so on and so on and so on. I could make lots of comments. And I agree with the Ranking Member, Mr. Gensler. We think you are doing a good job. Just stay right on it and communicate with us, and we will do our best to work with you to be sure that we can stay viable and continue down this road that we are on. So under the rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive additional material and supplement the written response from the witness to any questions posed by Members. The hearing of the Subcommittee on General Farm Commodities and Risk Management is adjourned.

[Whereupon, at 10:28 a.m., the Subcommittee was adjourned.]

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