

**NOMINATION OF MARK P. WETJEN,  
OF NEVADA, TO BE A COMMISSIONER  
OF THE COMMODITY FUTURES TRADING  
COMMISSION**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON AGRICULTURE,  
NUTRITION AND FORESTRY**  
**UNITED STATES SENATE**

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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JULY 21, 2011  
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**NOMINATION OF MARK P. WETJEN,  
OF NEVADA, TO BE A COMMISSIONER  
OF THE COMMODITY FUTURES TRADING  
COMMISSION**

Thursday, July 21, 2011

UNITED STATES SENATE,  
COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY,  
*Washington, DC*

The committee met, pursuant to notice, at 10:08 a.m., in Room G-50, Dirksen Senate Office Building, Hon. Debbie Stabenow, Chairwoman of the committee, presiding.

Present or submitting a statement: Senators Stabenow, Nelson, Klobuchar, Roberts, Lugar, Boozman, and Thune.

**STATEMENT OF HON. DEBBIE STABENOW, U.S. SENATOR  
FROM THE STATE OF MICHIGAN, CHAIRWOMAN, COM-  
MITTEE ON AGRICULTURE, NUTRITION AND FORESTRY**

Chairwoman STABENOW. Well, good morning and thank you for being here today. The Senate Committee on Agriculture, Nutrition, and Forestry will come to order.

Today, the committee will consider the nomination of Mark Wetjen to serve a five-term member, Commissioner, of the Commodity Futures Trading Commission. Mr. Wetjen, we are very glad to have you. Congratulations on your nomination. We extend a warm welcome to you and your family and friends that are here today, particularly your wife, Nicole, your son, Cullen, mother, Sheila, and brother, Sean. So welcome to all of you. We are very glad to have you here and I am sure you are very proud of Mark.

I also want to take a moment to give a special welcome and thank you to Commissioner Mike Dunn, who is here with us today. Commissioner Dunn, we want to thank you for your service and your commitment to the agency and to the markets in the country. You have done very, very important work, and so we are very grateful. We appreciate your willingness to stay with the CFTC a little while longer as the Senate works through the nomination process, and again, we thank you for your service.

In the same vein, I would like to thank Commissioner Jill Sommers for coming today. She is also doing very important work at the Commission, helping us to be able to get the rules right. In particular, I would like to highlight her strong work on international issues, which certainly has come up in our oversight hearings and is certainly a priority for me. So we want to thank you for all of your work.

I know that Senator Reid will be joining us shortly, and when he does, I will yield to him, but let me proceed at this point to indicate that Mr. Wetjen's nomination comes at a crucial moment for our economy and our financial markets as the CFTC continues to both implement important regulatory reforms and monitor our commodity markets for manipulation, fraud, and abuse.

The public's awareness of the CFTC has only grown in the past year, with both the passage of the Dodd-Frank Act and the increased volatility in our commodity markets. People have realized just how much we need someone watching over these markets and the CFTC is there to protect both market participants and the integrity of the markets, making certain that they are competitive, open, and financially sound.

I see that our Senate leader has joined us. Welcome, Senator Reid. I am going to stop at this moment and turn it over to you to introduce Mr. Wetjen. We appreciate always your leadership and hard work and your willingness to join us today. Senator Reid.

**INTRODUCTION OF MARK P. WETJEN, OF NEVADA, NOMINATED TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION, BY HON. HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA**

Senator REID. Chairwoman, on the way over here, my staff said, here is something, that the speech has been prepared for you. I said, if I need a speech to introduce Mark Wetjen, I am in bad shape.

I want to be able to convey to you how fortunate we are that people like Mark Wetjen decide they want to do public service. Mark Wetjen was an attorney in the largest law firm in Nevada. I received a call from one of my sons who said he knows a man by the name of Mark Wetjen who wants to come to Washington and work in the Federal Government. I said, well, what does he do with the law firm? I thought maybe he was a—I did not know what he was, but he was a lawyer doing extremely well, very productive, making good money. But Mark Wetjen has always wanted to be in some form of public service. He came back and has worked for me for five or six years. How long has it been, Mark?

Mr. WETJEN. Almost seven.

Senator REID. Almost seven. The reason his name was sent forward is not because I went out and hustled a job for Mark Wetjen. It came about as a result of everyone, Democrats and Republicans who work on Capitol Hill, realizing how good he is. He is an expert on housing and all kinds of financing. He is just a fine young man who will render as good of service to our country in his new capacity as he has working in the Senate. I think it is fair to say that he is one of the most popular staff members on Capitol Hill. He is always available, to Democrats and Republicans. And I am very, very fortunate that he has worked for me for these years.

I care a great deal about Mark. He is one of those people that you deal with that you really feel like he is one of your sons.

Chairwoman STABENOW. Thank you very much.

Senator REID. I hope none of you are going to ask me any hard questions.

[Laughter.]

Chairwoman STABENOW. We have some questions about credit default swaps we would like to ask you.

Senator REID. Could I be excused?

[Laughter.]

Chairwoman STABENOW. Thank you very much, Leader Reid. We very much appreciate—we know you have much to do, but this is important for you to be here, so thank you very, very much.

Let me just remind us that in 1974, Congress created the CFTC as an independent agency to regulate commodity futures and options, but over the years, that role has expanded to complex financial products, and most recently to swaps, overseeing most of a \$300 trillion notional domestic market. While the CFTC is an agency that few Americans really think about, it is an agency that is so important to the daily lives of Americans. Whether it is paying for gas at the pump or paying for food to feed our families, when these markets do not work, consumers feel the pain. The CFTC's role in overseeing our financial markets has significant implications for businesses around the world, as well, and the ability for companies to grow and create jobs.

Commissioners play an important role in protecting these markets, writing regulations, investigating market abuses. Stepping into the agency in the middle of a complicated rulemaking is a heavy responsibility. As I told the White House, I expect a smart, thoughtful, independent voice at the Commission in this position, and I believe Mr. Wetjen will be such a voice.

I would like to submit letters of recommendation for Mr. Wetjen from the U.S. Chamber of Commerce, and Senator Mary Landrieu has sent one, as well. If there are no objections, these letters will be inserted into the record.

[The following information can be found on pages 30 and 31 in the appendix.]

Chairwoman STABENOW. Seeing none, I now turn this over to my good friend, Senator Roberts, for his opening remarks.

**STATEMENT OF HON. PAT ROBERTS, U.S. SENATOR FROM THE STATE OF KANSAS**

Senator ROBERTS. Thank you, Madam Chairwoman, and I appreciate your calling this hearing today as we review the nomination of Mr. Mark Wetjen, and I welcomed the appearance of the Majority Leader to the sometimes powerful Senate Agriculture Committee. I had hoped he would stay around so we could talk to him about our budget responsibilities and specific numbers, but perhaps we can do that at a later time.

Commissioner Dunn, let me associate myself with the remarks of the Chairwoman in regards to your service on the Commission. You, sir, have been an independent voice and I appreciate that very much. And to Commissioner Sommers, the same in regards to what the Chairwoman has indicated. In my view, you have been a voice of reason and I am looking forward to your continued service.

I met with Mr. Wetjen. He obviously is a very bright and capable young man. I had sort of hoped that—Cullen started to try and testify. It was obviously—I do not know if it was by the committee's recommendation or whether it was his parents, but I could hear

him in the background indicating his support for your nomination and offering several recommendations.

At any rate, being very bright and capable, however, Mr. Wetjen, when confirmed, will have a very difficult job ahead of him. One year ago today, the President signed the Dodd-Frank Act into law. Mr. Wetjen was intricately involved in that in terms of the process, and it involves a labyrinth of new requirements impacting not just Wall Street and Main Street, but every rural route throughout the countryside.

This committee has held two hearings on the general implementation of this new law. I hope we will have more. We have heard from folks up and down the industry chain, from end users to dealers to clearinghouses to self-regulating entities, all with varying degrees of concern about how the CFTC plans to regulate futures and swaps.

I and many of my colleagues have expressed some concern over the CFTC's proposals and I point out that that effort has been bipartisan. For instance, I understand in May, members of the New York delegation, of which this committee is very fortunate to have Senator Gillibrand as a member, sent a letter to the CFTC, FDIC, the Fed, and the Office of Comptroller of the Currency on the issue of CFTC's attempt to regulate trades occurring overseas between non-U.S. participants. Now, I share their concern, but tell Mr. Wetjen that if you want an Honorary Marshal of Dodge City to sign a similar letter next time, just let me know.

I did not vote for Dodd-Frank for several reasons, but one central concern was that the rules outlined in the legislation would have the effect of driving business overseas. I am very worried about that, moving liquidity from the United States to our competitors. The New Yorkers' letter expressed this concern, but we have also heard from our competitors themselves. I included a letter from Japan into the record at our last hearing. Following up on that theme, recently, a Deutsche Bank executive was quoted as describing CFTC's proposals as a terrific opportunity for European countries at the expense of the United States. Let me repeat that, a terrific opportunity for European countries at the expense of our country.

I mention this today to highlight the importance for the job for which Mr. Wetjen is nominated. I sincerely hope it was not the intent of Dodd-Frank and those who wrote the law to create a mass exodus of capital from the United States. I know that was not the intent when they wrote it. But the law of unintended effects seems to carry the day around here when we pass such far-reaching legislation. That is why we need Commissioners who will adhere to the law, act in accordance with Congressional intent, and be an independent voice.

Thorough cost-benefit analysis must be completed on these proposals so the Commissioners, Congress, and the public have a full understanding of their consequences. By the time Mr. Wetjen may arrive at the CFTC, there will probably be more than 40—40—final rules to consider, many of them the most complex and controversial. The Chairman, Chairman Gensler, has indicated that he plans to hold meetings to finalize these rules every few weeks for the remainder of the year. That is a tough schedule.



Now, this is not intended as a criticism of you, Mr. Wetjen, by any means, but I wonder, and we talked about it when you took the courtesy to come by and visit with me, how can anyone be expected to absorb the huge amount—thousands and thousands of pages of information—that has been collected on each one of these rules without having the benefit of meeting with affected parties and being involved in the entire process? So I am going to be interested in hearing how the nominee plans to climb this mountain of information before he is asked to vote on a rule. I am sure he can respond very well.

Again, thank you, Madam Chairwoman, for calling this hearing, and thank you to Majority Leader Reid for joining us today. And again, I thank Mr. Wetjen and his very lovely family for being in attendance.

Chairwoman STABENOW. Thank you very much.

And now I have two things that I need to do, Mr. Wetjen. First is to administer an oath that we have for all nominees. I would ask you to stand and raise your right hand.

Do you swear or affirm that the testimony you are about to present is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WETJEN. I do.

Chairwoman STABENOW. Thank you very much.

And secondly, Mr. Wetjen, do you agree that, if confirmed, you will appear before any duly constituted committee of Congress if asked to appear?

Mr. WETJEN. I will.

Chairwoman STABENOW. Great. Thank you very much.

At this point, I would like you to proceed with your testimony, and welcome again.

**TESTIMONY OF MARK P. WETJEN, OF NEVADA, NOMINATED TO  
BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING  
COMMISSION**

Mr. WETJEN. Thank you, Chairwoman. Chairwoman Stabenow, Ranking Member Roberts, and members of the committee, thank you for the opportunity to be here today. I am honored to be President Obama's nominee to be a Commissioner on the Commodity Futures Trading Commission.

I want to thank Senator Reid for his support for my nomination. I also want to thank him for the opportunity to work for him and serve our country here in the Senate. I will always admire his decency, his honor, and his devotion to public service.

I want to thank my family, especially my wife, Nicole. I am grateful to her for supporting my pursuit of public service in Washington, DC, and agreeing to move our family here almost seven years ago.

I want to recognize our little boy, Cullen Michael, as well as my mother, Sheila, and brother, Sean, who are here with us today. My mother was able to travel here from my home town of Dubuque, Iowa.

I would also like to thank Commissioner Mike Dunn, who shares Iowa roots and whom I would replace, if confirmed. And I also want to thank Commissioner Sommers for being here today. I com-

mend Commissioner Dunn for his many years of service to our country.

Growing up, I gained an early appreciation for agriculture while spending countless days and weekends on the Wetjen family farm near Williamsburg, Iowa. Much of the time was spent helping my grandfather as he did daily chores, and it was there in my grandmother's kitchen where we listened to the morning market report on WMT Radio, hearing the latest prices for the corn, soybeans, and hogs my family produced. I also learned from my family there the values of hard work, listening to and respecting different points of view, and serving others, which I tried to bring to all of my pursuits, including my position with Senator Reid.

During my tenure working for the Senate, our nation and the Congress have encountered multiple challenges that at times demanded policy responses. Many of these related specifically to financial markets, an area where I have advised Senator Reid for nearly seven years. From the housing crisis to the financial crisis, the problems and the policy responses were equally complex.

By helping Senator Reid and the Congress work through a range of these challenges, I was asked to perform multiple tasks, but not the least of which was to work toward consensus, either within the Democratic Caucus, with the Republican Conference, or in many cases both. Indeed, this goal of achieving consensus has always been central to my responsibilities as a Senate staffer.

I believe the experience of having worked for the Congress these last few years while we faced a sequence of extraordinary economic challenges and my role of helping craft solutions through consensus should prove useful if I am given the privilege to serve as a Commissioner at the CFTC. The Commission is now at an important period of history as it implements reforms to the swaps and futures markets, which for decades have served as useful tools for managing risk. The Commission is also in a key moment in the Dodd-Frank rulemaking process, having just begun finalizing some of its rules.

With respect to swaps, the goals of Dodd-Frank are to mitigate systemic risk in the financial system, increase transparency in the derivatives markets, and combat fraud and manipulation in the derivatives markets. I believe these goals are nearly universally shared by market participants and policy makers alike and that building the new framework for regulating derivatives should be both nonpartisan and consensus-driven.

Crafting rules that properly achieve these goals is, indeed, more challenging. The final rules will have an impact not only on ag producers in the heartland, but all market participants and the economy as a whole. Consequently, it is critical that the Commission continues its work in a careful, measured, and thoughtful way, and that the CFTC works to get these rules right.

Likewise, it is critical that the Commission hews closely to the intent of Congress when finalizing its rules. That means, for instance, that the final rule should avoid imposing unnecessary cost burdens on commercial firms that use swaps. It also means that the final rule should seek to minimize unintended consequences that could impair U.S. competitiveness or the liquidity of our markets.

If, with your support and the support of your Senate colleagues, I am given the opportunity to serve on the Commission, I pledge to bring to the job an independent and open mind and a balanced approach to the rulemaking process and to the work of the Commission.

In closing, I would like to thank the committee for holding this hearing. I am happy to answer questions.

[The prepared statement of Mr. Wetjen can be found on page 24 in the appendix.]

Chairwoman STABENOW. Thank you very much.

Mr. Wetjen, as you discussed in your testimony, when Congress passed the Dodd-Frank Act, we gave the regulators a lot of new, powerful authority, but we also put in place guidance in the statute, restrictions around those authorities, as well, to try to create a balance. We directed regulators to target system risk, as you talked about, and not inadvertently pull in commercial end users who are using derivatives to legitimately hedge and manage their risk, and we did that, in part, through a commercial end user clearing exemption and protections for captive financing affiliates as well as protections for smaller institutions as well as—such as community banks, Farm Credit, and Farmer and Rural Electric Co-Ops.

So as a Commissioner, how would you respond to Congressional concerns and inquiries and how do you interpret Congressional intent when it comes to the application of margin on end user transactions or capital finance affiliates when it comes to the definition of a swap dealer?

Mr. WETJEN. Thank you, Madam Chairwoman, for that question. This issue is one where I think it is quite clear in the statute, Congress did not intend to include captive finance companies or commercial firms in the vast majority of the regulatory regime authorized under Title VII. The goal has to be kept in mind, that the purpose of Dodd-Frank is to mitigate systemic risk, as you said, but that can be done in a way without placing unnecessary burdens on end users, commercial end users and captive finance companies.

And so I think the statute is quite clear in that, and that includes with respect to when the—well, when the Commission is developing its rule on margin, it needs to acknowledge that intent and I have every intention of, if given the honor to serve, of working with the Commission, listening to all market participants in approaching this problem, but staying as true to Congressional intent as I can.

Chairwoman STABENOW. Thank you. That is something that I know you are aware is of interest and concern on a bipartisan basis, both in the House and the Senate, addressing what we need to do in terms of systemic risk and following through on Dodd-Frank, but also balancing what are legitimate uses of the markets in terms of hedging risk, managing risk, and the importance of that to those who use the markets for its intended purposes. So that is something that we will continue to be in dialogue with the CFTC about.

I wonder if you might talk a little bit more from the perspective of being an independent voice. That is something that you and I talked about when we met. As a new Commissioner coming in in

the middle, really, of intense rulemaking debates and rulemaking period, how would you balance your duties to both review and consider and in some cases even ask for changes to new rules before they become final without unnecessarily slowing down the process, because you are coming in at really a unique time.

Mr. WETJEN. Thank you, Madam Chairwoman, for that question. I have given this question a lot of thought, and the best approach to maintain independence is, I believe, the approach I have tried to take working here in the Senate, and that is listen to all viewpoints. Do not come at a problem with a predetermined decision or outcome. Learn first. Listen to all viewpoints. Gather the information. That includes engaging with fellow Commissioners. That includes engaging with, as I said, market participants who are going to be impacted by these rules. That means continuing a dialogue with Congress. And I think by following that process and coming to a good, well-informed, reasoned decision, I am going to be able to maintain the independence that I think this committee expects.

Chairwoman STABENOW. Thank you.

I will turn now to Senator Roberts.

Senator ROBERTS. Mark, some of my questions are going to be duplicative, but I think they are important because I think it underscores what a lot of people are concerned about, not about you particularly, but about the job. I appreciate your just emphasizing learning first, listening to stakeholders, listening to the Commissioners, doing the best job you can to become independent, but you are going to be voting on final rules, about 40 of them. The Chairman has a fast-track schedule. And the other Commissioners have had months to listen to stakeholders. You have heard me talk about this before, in my earlier comments. So you have been parachuted in. I recognize that you are young, bright, and very capable, but right in the middle of voting without having the opportunity to collect this information before you, unless you have been spending the wee hours of the night not with Cullen, but with studying all this information.

How are you going to make an informed decision, and is it appropriate—and I am not asking you to do so, but would it be appropriate for you to recuse yourself for a brief period of time to get up to speed? Is that necessary, or do you feel like you can hit the ground running with all of these attributes that you have mentioned?

Mr. WETJEN. Thank you, Senator Roberts. I have been monitoring the work of the Commission for quite some time now, but I think the more important point I would like to make, Senator, is that the process I laid out in response to Chairwoman Stabenow's question is the process that I am always going to stick to, so that is making sure I have the requisite information to come to a well-reasoned decision. I am going to insist on taking whatever time I need in order to do that. So I am going to want to listen to all viewpoints. I am going to want to listen to each person who wants to bring information to me who might be impacted by any given rule. And I am going to follow that process.

My focus will be on getting the rule right. I think the more quickly the Commission can act, the better, because it is going to provide some certainty to market participants and I know the mar-

ket prefers that or would like that. But I think more important to them is making sure the rules are right. And so that would be my primary goal.

Senator ROBERTS. I appreciate that. The Chairman seems to think the United States should set its regulatory policy as tight as possible and our foreign counterparts will simply follow our lead. But as I have indicated in conversation with you before, Japan and the EU have delivered a very different message. The chief Japanese financial regulator has said that because of the extraterritorial reach of proposed U.S. regulations, Japanese institutions might have to avoid trading with U.S. institutions. That is a pretty strong statement, to say the least.

Are you concerned that what I would describe as regulatory arbitrage could develop and participants may take their business overseas if our rules are too prescriptive?

Mr. WETJEN. Senator Roberts, I think this is a very legitimate concern, and I know it is one shared by a number of folks here in Congress. The goal of Dodd-Frank is to protect the U.S. financial system. It is not to disadvantage U.S. firms that are operating overseas. The Commission needs to recognize, as the Congress did, that there is quite a bit of interconnectivity among global markets, and we saw that firsthand from the crisis of 2008. But notwithstanding that, I think this rule on margin will come out in the right place if the Commission remains mindful that, again, the goal is to protect the U.S. financial system and not disadvantage U.S. firms, and I think both of those objectives can be met.

Senator ROBERTS. You are replacing Commissioner Dunn. I would not say replacing is the right word. He is obviously irreplaceable. But when the position limits rule was proposed, the Commissioner, in his usual independent voice, expressed his concern, quote, "at best, position limits are a cure for a disease that does not exist, or at worst, a placebo for one that does." I am also concerned that there is no reliable analysis proving that position limits to curb excessive speculation in the swaps market would have any favorable impact on commodity prices.

So do you believe it is important to have sufficient data about the swaps market and reliable economic analysis before adopting any position limits proposal? Obviously, the answer is yes, but go ahead.

[Laughter.]

Mr. WETJEN. Thank you, Senator Roberts. Congress through Dodd-Frank did give this tool to the agency to try and combat manipulation, and that is the tool of being able to impose position limits, as appropriate. In doing that, or in the agency's effort to craft this rule, it needs to be very, very mindful of the impact on liquidity in these derivatives markets. These markets will not function well as a tool for commercial firms if liquidity dries up. So if I were given the honor to serve, I would want to consider market data. Again, I go back to some of my earlier responses. I want to make sure that every decision I make is as well informed a decision that I can make, and that includes considering all the requisite data.

Senator ROBERTS. Madam Chairwoman, my time has expired. I do have about four or five more questions for the witnesses, but I yield at this time.

Chairwoman STABENOW. Thank you very much.  
 Senator Nelson.

Senator NELSON. Thank you, Chairman Stabenow, and thank you, Mr. Wetjen, for serving, and thank you to your family for supporting you in this service. As Creighton alums, I know you will bring a great deal of wonderful education to this position.

Given your background, having grown up around agriculture, I know you can appreciate the impact that volatility of the market has on farmers. Their reliance on inputs such as fuel, fertilizer, and the income they earn off the grains are really contingent on the price of the market. This spring reminded us of the volatility in the marketplace, and I think we all agree on the necessity of implementing Dodd-Frank, and as you have said, in a sound and reasonable time frame and in a sound and reasonable way to deal with reckless speculation.

But many of my State's producers who are not really financial end users are concerned that, somehow, a one-size-fits-all approach will be put in place and will put regulations on market participants hedging for legitimate purposes, tying up capital from productive uses that would otherwise be available. Now, Dodd-Frank contained critical protections to ensure that non-financial end users who use futures contracts in a legitimate manner to hedge against higher prices would not be hampered by unnecessary regulations.

So specifically when it comes to CFTC's implementation of rules relating to the definition of a swap dealer, the end user, and exception limits, what are your thoughts when it comes to CFTC following Congressional intent when it comes to protecting commercial end users so they are not adversely impacted by Dodd-Frank's regulatory framework? How are you going to protect against what I call the regulatory structure that seems to be, "and while we are at it, let us do this, too," exceeding the direction of Congress by legislation but a well intentioned effort to, let us get that taken care of, as well, rather than just focusing strictly on what Congress has directed? What are your thoughts about that?

Mr. WETJEN. Thank you, Senator Nelson. I think you raise a very important point, and as I said earlier in my statement, I think there are few things more important to a Commissioner than to follow closely, as closely as possible, Congressional intent. I think if I were given the privilege to serve, one area that I might like to look at would be to see, or to make sure any proposal or proposed final rule is very closely linked to specific authority in the statute.

There might be times when you might not find the specificity that you need in order to solve a particular problem, but I think, generally speaking, you want to make sure that the authority is express, and so that is the approach I would intend to take.

Senator NELSON. Well, I have always looked at a developing bureaucracy from the standpoint of having been a Governor dealing with bureaucracy and dealing with bureaucracy back here, describing bureaucracy as "we-be's. We be here when you come. We be here when you go. And I hope that you will be able to corral that particular approach in your position, if confirmed, and I believe you will be.

I guess I am speaking to the other Commissioners here in the room, as well, and those who are not in the room, to understand that Congressional intent, in my mind, is something short of sacred, but it is extremely important and I hope that that can be remembered, because while there has been a significant delegation of responsibility to alphabet agencies within this community, what flows from that delegation has to be totally consistent with what was intended by Congress in passing the legislation. It was not the beginning, and now it is up to the alphabet agencies to take it and run with it. It is to implement it consistent, and I appreciate your answer and I hope that you can hold firm to that with a lot of pressures to be, perhaps, extra-territorial in the approach, because we have seen an awful lot of that in Washington, and I hope you can hold back that process and participate in that manner.

Thank you, Madam Chair.

Chairwoman STABENOW. Thank you very much.

Senator LUGAR.

Senator LUGAR. Thank you, Madam Chairman.

Mr. Wetjen, although the Commission was founded in 1974, not much had happened by the time I got into the Senate in the 1976 election. Herman Talmadge, who was then the Chairman of the committee, was not deeply interested in CFTC. Senator Leahy and I were sitting at the end of a long table in the Ag room about 300 yards from the Chairman, and as a result, were assigned oversight, and no one else really paid any attention. So we have sort of grown with the process over the years. Most recently, Walt Lukken, who was one of my valued staff members, headed the Commission, and I appreciated from his standpoint the difficulties that were faced.

So a part of my questioning today really comes with regard to the success of the Commission. The debates in the press as well as with Gary Gensler and others have been over the fact that inadequate staff has been available for some time, just simply to go through the enforcement of what was on the books, quite apart from the interpretation of Dodd-Frank and recently, in the Wall Street Journal—yesterday, for example—the dispute over a 15 percent cut in the budget on top of that. While in our hearings on this, we are hearing about the prodigious effort to understand the rules, to get the rules going, and this does not offer a great deal of confidence to the American people who are outside of this, either as commercial users or as other persons, for fear that something may be occurring even while we are still writing the rules and with inadequate staff even looking at what we have.

Do you have any observations of this, as you have looked at it from your current position as a valued staff member of Leader Reid, likewise, as you have studied this? What is going to be required in terms of the staffing of CFTC to get the job done, first of all, and getting rules out, which we understand, dealing with the international implications, the commercial users versus others, and finally, at least, bringing some confidence to the public?

Mr. WETJEN. Thank you, Senator Lugar. As you point out in your question, while the Commission currently has responsibilities to implement Title VII, it has other missions, too, and one of those is through its Division of Enforcement. And so that includes moni-

toring these markets and making sure that there is not manipulation and fraud. So that is a very important mission, obviously.

I think, given the size of the mission that is now the overall mission that now stands before the Commission that comes from Title VII, I think it would be hard to dispute that the agency needs resources. It probably needs more resources. If you just look at the size of the swaps markets, which are exponentially larger than the futures markets that the agency has been overseeing up until now, I think you would reasonably come to that conclusion.

I recognize we are in difficult times here and so I think the use of resources by the agency needs to be carefully considered and needs to be carefully allocated, and so, Senator, what I would want to do if given the honor to serve is speak with my fellow Commissioners, talk to the Chairman, get a handle on where these resources need to be allocated first, and help try and get those resources to the extent I can contribute.

One other thing I might add is that I know Commissioner O'Malia has been a leader on this. Again, given the nature of how these markets have evolved, it is also important to ramp up the technology, the use of technology at the agency. So I think that is another area where I would be interested in trying to contribute.

Senator LUGAR. Well, I hope as a Commissioner that you will help to inform us of what is going on so that we can best interpret and bring a sense of confidence to all this.

I just have, and this may be a gross oversimplification, but there are brilliant people in America thinking about how to game the system. I am not one ever to diminish free private enterprise and the desire to make money on behalf of financial institutions or anybody else. I just want to make certain that it is a reasonably even competition among those who count upon you and count upon us for a system that brings confidence, transparency, the lack of systemic risk, all of the above, because at least the testimony we heard three years ago before this committee, as things were unfolding at that point, it appeared that we had been outgamed. We had lost the contest intellectually.

And so I appreciate your mention of the technology that may be involved, but likewise, the ability to have the staff to at least keep track of all the elements that are involved in this, and I thank you very much for your testimony.

Mr. WETJEN. Thank you, Senator.

Chairwoman STABENOW. Thank you very much.

I am going to turn to Senator Klobuchar, and I also am going to, at this point, Mr. Wetjen, excuse myself for an Energy markup where they are telling me I need to be casting votes in another part of the building. And so I am going to at this point turn things over to the capable hands of Senator Klobuchar as well as Senator Roberts to continue the hearing.

Let me just also indicate to my colleagues that while we will not be voting today on the nomination, we will be polling the members of the committee and looking for a time to hold the vote in the near future.

So, again, welcome and congratulations. I look forward to moving forward and working with you, and at this point, I am going to turn it over to Senator Klobuchar.



Mr. WETJEN. Thank you, Chairwoman.

Senator KLOBUCHAR. [Presiding.] Thank you very much. Hello, Mr. Wetjen.

Mr. WETJEN. Hello, Senator.

Senator KLOBUCHAR. I have to tell you, I was out and coming back in from another hearing and saw your son out there. How old is he?

Mr. WETJEN. Sixteen months.

Senator KLOBUCHAR. He was reading Congressional Quarterly. [Laughter.]

Senator KLOBUCHAR. Senator Thune saw it, as well. He can be my witness. He literally had it in front of him. Anyway, I was quite impressed, so I do not even know if I need to ask you any questions, but—

[Laughter.]

Senator KLOBUCHAR. I think you know that your nominations comes during a critical period in the history of the Commodity Futures Trading Commission—all the new responsibilities under Dodd-Frank, the risk taking that led up to the financial crisis, the realization that we have to do things differently so that it does not happen again.

So my questions are, first of all, pertaining to my State. Our State boasts the largest number of agricultural co-ops in the country and there has been a concern that they would be classified as a swap dealer under the new rules. Senator Thune and I Co-Chair the Congressional Farmer Co-Op Caucus and I believe that we must maintain the ability of farmers to band together to market their products and manage their risk in some very difficult market times.

So, Mr. Wetjen, do you believe that this legislation should be implemented in such a manner to protect these types of risk management tools utilized in rural America? I am talking here about the Dodd-Frank law.

Mr. WETJEN. Yes, Senator, I do.

Senator KLOBUCHAR. That is good. That would be all right, do you think, Senator Thune?

Senator THUNE. Let us go home.

[Laughter.]

Senator KLOBUCHAR. Okay.

Mr. WETJEN. No, if I can add to that, Senator, I mentioned in the opening statement that one of the goals, as you know, of Dodd-Frank is to try and mitigate systemic risk. I think it is fair to say that cooperatives do not strike most people as the sorts of entities that are going to pose that type of risk on the financial system. So again, I think if the Commission hews closely to Congressional intent and does so when trying to define some of these entities, including swap dealers, I think it is going to come out with the right result.

Senator KLOBUCHAR. Very good. I was also pleased to see that the Chamber of Commerce praised your work with the business community over the last seven years while you served as an aide to Senator Reid. In their comments, they also pointed to the years of practical legal experience you gained in the financial services

sector prior to coming to work in the Senate. Could you talk about this experience and how you think it will help you at the CFTC.

Mr. WETJEN. Yes, Senator. When I was an attorney, I practiced in a number of different areas, including financial services, as you said, and I think probably the main benefit that experience has for me is I understand how legislation, and I think I understand or would be quickly able to understand at the agency, if I am able to serve there, how the rules impact the private sector and impact business.

And so as an attorney representing companies who are grappling with compliance, you could see the challenges that came with that. And so I think it gives me a practical background that I think could serve me well if I were to serve on the CFTC, because I have an understanding of what these rules mean and, in fact, how they can change how businesses operate. And so I would be sensitive to that.

Senator KLOBUCHAR. Thank you. Obviously, I care a lot about that. We have a lot of end users that fall under exceptions to the rule that operate in our State. We have worked very hard to make sure that we differentiate some of the speculation issues from legitimate end users and those that may be playing more of a speculative role. I want to make clear, while I care about the exception, I also care a lot about the excessive speculation in the energy market. I am sure you are aware that the CFTC was required by law to implement position limits back in January. It has not happened yet. The recent run-up in gas prices, while they may have fallen off somewhat, have had a significant impact on our economic recovery. I know that in my State right now, we are struggling. Five mid-size cities are having their airline service reduced or eliminated by Delta and the reason given was the oil prices.

So I think the evidence is pretty clear that excessive speculation can contribute to volatility in the market. I will not ask you to comment on the ongoing work the CFTC is doing to implement Dodd-Frank in this area, but I am hoping you would share your views on this part of the legislation and position limits.

Mr. WETJEN. Thank you, Senator. In Dodd-Frank, the legislation provided the CFTC with an additional tool to try and combat manipulation. Position limits have been in place, as you know, in the futures space, but they had not been in place for the swaps markets. So that is the goal behind the position limits rule generally, is to give the agency an additional tool.

As I said earlier, I think it is very important, however, that in crafting this rule that the Commission remains mindful of the impact the rule could have on liquidity in the swaps markets. If liquidity dries up, there are no swaps markets, and so these very markets that some of the co-ops and other end users in your State rely on for risk management would be diminished and that is not a desirable outcome, either. So some way, the Commission needs to balance these two interests, and that is what I would try to do if I were given the honor to serve.

Senator KLOBUCHAR. Thank you very much.

With that, Senator Thune, the Co-Chair of the Congressional Farmer Co-Op Caucus. Senator Thune.

Senator THUNE. Thank you, Madam Chairwoman, and I would echo the issues and concerns that you have raised about cooperatives and how they might be impacted by this, and Mr. Wetjen, thank you for appearing here today and responding to some of those concerns.

I am, in particular, concerned about the limited definition the CFTC is looking to instate for the de minimis exception when defining swap dealers. Elevators and local co-ops provide important risk management opportunities for producers and they are hardly the large systemically important entities that Congress intended to be regulated by this law. And so including them in the definition of swap dealers will only raise prices for producers and limit their chances to engage in bona fide hedging.

So I appreciate the remarks that you have already made with regard to that issue, but I would simply say that the reason some of this stuff is so important, if you look at the de minimis exception in the proposed rule, if you limit the number of swaps and options, which under options is 20 and counterparties 15, only those that are registered and regulated as swap dealers would be in a position to offer hedging projects to the ag sector. And in addition to the \$100 threshold—in addition, that \$100 million threshold would significantly limit the volume of hedges that could be offered by any entity besides registered swap dealers.

Now, just to put that into context, for example, in today's environment, it will only take about eight million bushels of soybeans and around 15 million bushels of corn to exceed that threshold. And just by way of comparison, the U.S. produced last year 12.4 billion bushels of corn and 3.3 billion bushels of soybeans.

So that is why getting this right is really important, and the only thing I would ask is that you, as you have already indicated, provide us an assurance that when you look at these things, and I know there is a large amount of information to absorb given the complexity of the rules and the broad impacts that they are going to have, but I hope that you will take time to understand these issues and the implications that they have for agriculture and the needs of these commercial end users.

So I hope we can count on you to give great consideration to those impacts and making sure that agricultural producers have the tools that they need to manage risk in what is an increasingly sort of volatile commodity market, and I think it is going to be even more important that they have those tools available to them. If you could, I guess, reassure us that that is certainly something that you are going to give particular attention to, I know I would certainly appreciate it, as would some of my colleagues on the panel.

Mr. WETJEN. Thank you, Senator Thune. Well, first of all, you have my pledge to take the time I need to make sure that I have the information I need to make a good decision, if I were given the honor to serve on the Commission.

Again, the goal of Dodd-Frank is to—one of the goals is to mitigate systemic risk, and to the extent there are companies that do not contribute to systemic risk or do not cause it, they should not unnecessarily be wrapped up in the implementation of Title VII. So that is my belief and that is something that I would—that is a belief I would carry to the Commission.

Senator THUNE. Let me ask you just a couple of things about factors that you think the Commission ought to consider when making new capital and margin requirements. Obviously, it seems like you would concur that you ought to consider whether an institution is systemically important. Would you—I guess, would it be your view that users who are not systemically important be allowed to front less capital?

Mr. WETJEN. I think that, with respect to both the margin and the capital rule, the approach of the agency so far has been to focus on the swap dealers and major swap participants and I think that is the right direction to go in this. I agree with you, Senator Thune, that we should not be unnecessarily adding to the cost burdens that end users have already. We need to make sure that these swap markets and derivatives markets continue to be made available and that is a function to some degree, at least, a function of how profitable and how well these end users are doing, which is a function of how much capital they need to put up for regulatory compliance. So that is an issue I would always take very seriously.

Senator THUNE. Should the Commission consider the economic cost of tying up capital in margin requirements, the economic costs?

Mr. WETJEN. Well, I think the law requires the agency to carefully go through a cost-benefit analysis of every rule that it promulgates, and to the extent that that includes what you just mentioned, of course, I would be supportive of that.

Senator THUNE. Should end users who are hedging financial risk be given an exemption?

Mr. WETJEN. I am sorry. Could you repeat that, Senator?

Senator THUNE. Should end users who are hedging financial risk be given an exemption? I guess what I am getting at is if the answer is no, will it not make it more expensive for these users to hedge their risk and, in turn, make the financial system more unstable?

Mr. WETJEN. I agree, it could have that outcome. I think in determining these exemptions, again, I think if the agency stays closely to what the statute is trying to accomplish, which is mitigate systemic risk, I think this issue, like the rest, will be properly resolved by the Commission.

Senator THUNE. Okay. My time has expired, Madam Chair. Thank you.

Senator KLOBUCHAR. Thank you very much, Senator Thune.

I know Senator Roberts has a few more questions.

Senator ROBERTS. Thank you, Madam Chairwoman.

The President issued an Executive Order January 18 in regards to a cost-benefit analysis that should be provided prior to any rule-making or promulgating of rules. At first, the independent agencies thought they were exempt, but the President came back and said, no, you are under the scope. Commissioner Summers has been the champion of trying to take a look and make sure that the cost-benefit analysis is accurate and there is enough time to do it. I think that prior to the IG's intervention, that there was a concern that the cost-benefit analysis on these rules—and there are so many of them, as I have indicated—40—was superficial and that we need enough time and that the recommendation was to bring an econo-

mist in, hopefully one with one arm so he could not say, “on the other hand—”

[Laughter.]

Senator ROBERTS. At any rate, an economist in along with the Office of General Counsel and it was not just a superficial look. So now you have got a team, and I know that you have indicated to me that you think that this is a requirement. After all, the President did indicate an Executive Order.

So if you find out that the Commission’s own analysis is flawed as determined by this cost-benefit analysis, what are you going to do to correct it? Are you going to join with Commissioner Summers and say, hey, this is not going to work out very well until we find out. Make sure that this analysis is a substantial one and is a correct one.

Mr. WETJEN. Well, Senator Roberts, I do agree that the cost-benefit analysis has to comply with the requirements of statute, so it has to be sufficiently rigorous, and I would look forward to working with Commissioner Summers on this and every other issue before the Commission.

Senator ROBERTS. I appreciate that. I posed to the Chairman during our last hearing a Kansas county elevator expects in the near future to enter into forward contracts with the area wheat farmers at a fixed price with delivery at a later date. So to hedge this risk, the elevator goes short on wheat futures, and I asked the Chairman, is that a bona fide hedge? The question has since been asked of the CFTC General Counsel and of career staff. We now have three different answers—three. Would you like to weigh in? What is your view? Is that a bona fide hedge?

Mr. WETJEN. Senator, I would like to weigh in by saying that the grain elevator that you describe should be able to do that transaction and should be able to do it without unnecessary costs or regulatory burdens.

Senator ROBERTS. Well, that is a very good short answer and I appreciate that.

I do not know why we are into a “he said, she said” or whatever debate or back and forth with Europe, but I go back to the senior Deutsche Bank executive who recently said that Europe has a relative pragmatic approach to reforming derivatives and it offers a terrific opportunity at the expense of the United States, which risks scoring one of the biggest own goals in financial market history. That was in Reuters back in June.

A senior British regulator recently said that to suggest that the U.S. sets a gold standard that other markets should follow is nonsense, as in the Financial Times, June 8.

Now, we have those statements, and then you have the Japanese letter that was on your website, and we had to refer it to you to figure out, even though it was on your own website—not yours, but the CFTC’s, where the Japanese said, whoa. Wait a minute. We might not even do trade with the United States.

And then we have Secretary Geithner’s statement of the same time that European regulations are tragic, and that the U.S. is going to bring the rest of the world with us.

And I do not understand why we have to get into an international shouting match here. I do not get it, why we have to be

saying things like that, stirring up dust over there and then they stir up dust over here. Lord knows, we have enough problem with trade than doing something like this. So I think the CFTC ought to stick to their business, and maybe—you never get hurt by what you do not say. Any comments?

Mr. WETJEN. Well, I wish I could take your advice, but I will give you an answer, Senator Roberts. I think that, again, the goal of Dodd-Frank with respect to Title VII and the goal of the agency, the goal of the CFTC, is to protect the U.S. financial system, to try and mitigate systemic risk but to protect the U.S. financial system. It is not to try and make U.S. firms operating overseas less competitive.

I do think there has to be some way to meet both of these objectives. I am confident there is a way to meet both objectives. I recognize, again, that there is interconnectivity between these derivatives markets globally, and so that has to be taken into account. We have seen some of the risks of contagion from one market to another, even here in the last number of months with respect to the European debt crisis. So that always has to be borne in mind. But, as I said, I think there is a way to do this, protect the U.S. financial system but not unnecessarily harm our U.S. firms that are operating overseas.

Senator ROBERTS. Why do we not adopt a policy, instead of taking a Brillo pad to the issue verbally, and simply smother our friends with the milk of human kindness and reason and maybe we would not get into some of these issues that make the press and make our job a lot more difficult. With that, I am way over time, and I see the distinguished Chairwoman is coming back to make me behave.

[Laughter.]

Chairwoman STABENOW. [Presiding.] Well, I apologize for ping-ponging back and forth this morning, but I know you understand, Mr. Wetjen.

Mr. WETJEN. I do.

Chairwoman STABENOW. You have been here and certainly understand our efforts in the Senate of trying to be two places at once.

I did want to ask a couple of other questions, though, and I apologize to my colleagues if, in fact, these have been asked, but I did want to just reinforce a couple things that we have been talking about.

One is regarding position limits. When we talk about the excessive volatility in the commodity markets, especially when it comes to oil prices and grain trading, and certainly that is being debated in the Energy Committee, as well, there is an ongoing debate about what forces impact that volatility. I wonder if you might tell us what you think the role of speculation is in moving markets and are position limits an effective tool to curb volatility.

Mr. WETJEN. Thank you, Madam Chairwoman. I would like to respond by making a couple of observations, if I may. The first is that there have been a number of reports here recently, both from the CFTC and from other financial institutions, that there does appear to be more speculative activity in some of these commodity markets. Meanwhile, in the last several years, I think it is fair to

say we have seen a fair amount of volatility in the crude oil market and some others, as well. Congress has decided to give this new authority to the CFTC to apply position limits, if deemed appropriate, and I understand that the goal behind that was to add another weapon in the CFTC's arsenal to try and combat manipulation and unreasonable price fluctuations.

So I think in deciding how to craft this tool and deciding how to use it, the Commission needs to be very careful and deliberative and they need to consider closely all market data that is available to it and ensure that any rule is not going to dry up liquidity in these markets, but I think that that objective, or those two objectives, can be met.

Chairwoman STABENOW. Thank you. I know colleagues, as well, have talked about the international harmonization, and we have talked about that at other oversight hearings and a very important piece of going forward in a global economy. I wonder if you might just speak a little bit more about how far you believe the CFTC's jurisdiction reaches into other countries and territories. How do you see the relationship with the CFTC and international regulators working right now, and how would you work to strengthen the coordination between, and particularly when we see Europe certainly going at a solar pace, certainly a different timetable than we are and certainly in Asia a very different situation.

Mr. WETJEN. Thank you, Madam Chairwoman. As Senator Roberts has pointed out a couple of pieces of correspondence from regulators overseas, and I think it might be fair to say that there could be better coordination between U.S. regulators and their counterparts abroad, and if given the privilege to serve, I would like to help the Commission on that score.

Generally, I think the CFTC's mission is to protect the U.S. financial system first and foremost. There is, again, interconnection between our markets and markets abroad. But the way the statute was drafted is to basically make sure the focus of the agency's work is here in the United States, is focused on transactions that are here in the United States, and then just with few exceptions is it to drift off the shores. And I think it is only permitted—the agency would only be permitted to do that if absolutely necessary. But, again, I think there is a way to do that, meet that objective while at the same time ensuring that our U.S. firms operating overseas are not unnecessarily disadvantaged.

Chairwoman STABENOW. Thank you. And then, finally, we are hearing a lot of discussion and a lot of important work about sequencing and phasing in the reforms, and I wonder how you might respond to the tension between those who say the CFTC is moving too slowly and those who would say the CFTC should delay implementation.

Mr. WETJEN. Thank you, Madam Chairwoman. The market participants are in search of clarity and they are in search of certainty, and I think it is the agency's duty to provide both as quickly as possible.

I think there are a number of different tools that the agency can use to provide that, and so I would be interested in working with the other Commissioners, working with the staff in trying to figure

out the best way to provide that clarity, to provide that certainty, with respect to how these rules are phased in.

And so at this moment, I do not have the best judgment about the way to go about doing that, but I think that always has to be the goal, and if that remains the goal, the agency will end up with a proposal that makes sense for the markets.

Chairwoman STABENOW. Thank you.

Senator Roberts, did you have any other questions?

Senator ROBERTS. I am going to submit the questions for the record, but I have just one here. The Commission acted on July 14 to issue an order to provide some relief from some of the requirements that proved rather nettlesome, and after urging by several members of this committee, I might add. Some observers believe that the relief was not as clear-cut as they had hoped, but did appreciate very much that the CFTC took action to provide legal certainty. We did not want a swap purgatory. Many of us are concerned, however, that this relief expires on December 31. It is hard to figure out what is appropriate in terms of the time frame here, but I would like to ask you to monitor this situation and work with the other Commissioners to ensure that meaningful relief that provides legal certainty would continue beyond December 31 if the regulations to implement Dodd-Frank are not complete.

Mr. WETJEN. Senator, you have my pledge to do so.

Senator ROBERTS. I appreciate all of your answers and wish you well.

Mr. WETJEN. Thank you.

Chairwoman STABENOW. Thank you very much.

I want to thank everyone again today. Mr. Wetjen, thank you. I thank your family, the Commissioners that are with us, and particularly Commissioner Dunn, thank you for your service. We appreciate your candid responses, Mr. Wetjen. I believe you have proven to be a thoughtful and independent candidate. I think this position is extremely important. It really cannot be overstated. And the fact that CFTC Commissioners are currently voting on rules and regulations that will fundamentally change our financial markets and impact our economy for years to come certainly means that this is a very, very important time. So we wish you well. We look forward to working with you.

As I indicated earlier, we will be looking for a time— working with Senator Roberts, we will find the time to be able to have a vote in the committee in the near future. I congratulate you again on your nomination.

A quick note to Senators that questions for the record are due to the Committee Clerk by 5:00 p.m. on Monday, July 25.

The meeting is adjourned.

[Whereupon, at 11:17 a.m., the committee was adjourned.]



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**A P P E N D I X**

JUNE 21, 2011

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**Opening Statement**  
**Senator Saxby Chambliss**  
**Senate Committee on Agriculture, Nutrition & Forestry**  
**Nomination Hearing for Mark Wetjen**  
**July 21, 2011**

Madam Chairwoman and Senator Roberts, thank you for providing this Committee with the opportunity to consider the administration's nomination of Mr. Mark Wetjen to be a Commissioner on the Commodity Futures Trading Commission. I would also like to thank Mr. Wetjen for appearing before us today. Commissioner Dunn who will be retiring should also be commended for his service to the CFTC.

The work of the CFTC through its regulatory oversight of our futures markets touches the livelihood of every American. The underlying values of the food, fiber, and fuel are determined through market forces of supply and demand and it is incumbent upon the CFTC to ensure that manipulation of prices does not occur. As well, they should take care to give market forces the flexibility to appropriately self correct, in keeping with the principles of capitalism.

As it happens, Mr. Wetjen is being nominated following one of the most substantive and overarching changes to the operations of the Commission since its inception in 1974. The nominee before us will be asked to make decisions about implementing rules that were included in the Dodd-Frank legislation. In fact, over

300 new rules need to be written according to published reports. I have said many times before that the new authorities within Dodd -Frank must not result in overly burdensome regulations being applied to already regulated exchanges.

Mr. Wetjen is familiar with many of the provisions of the Dodd-Frank legislation from his time as Counsel to Majority Leader Harry Reid. It will be important for him to understand that the provisions of the bill that are currently being interpreted by the Commission through the rulemaking process will have lasting implications on our financial markets. We ask the Commission to make these decisions independent of political considerations.

It is my hope that Mr. Wetjen would be able to approach his decision making in an informed manner and with no contrived opinions about the task before the Commission.

I am interested in hearing Mr. Wetjen's views about financial regulation, his understanding of the role of the CFTC, and his interpretation of the goals of the Dodd-Frank legislation.

Again, I would like to thank the Chairwoman and the ranking Member for holding this hearing and I look forward to the testimony of Mr. Wetjen.

**Opening Statement of Mark P. Wetjen  
Nominee to the U.S. Commodity Futures Trading Commission  
Before the United States Senate  
Committee on Agriculture, Nutrition and Forestry  
July 21, 2011**

Chairwoman Stabenow, Ranking Member Roberts, and members of the committee, thank you for the opportunity to be here today. I am honored to be President Obama's nominee to be a commissioner on the Commodity Futures Trading Commission.

I want to thank Senator Reid for his support for my nomination. I also want to thank him for the opportunity to work for him and serve our country here in the Senate. I will always admire his decency, his honor and his devotion to public service.

I want to thank my family, especially my wife, Nicole. I am grateful to her for supporting my pursuit of public service in Washington, DC, and agreeing to move our family here almost seven years ago.

I want to recognize our little boy, Cullen Michael, as well as my mother, Sheila, and brother, Sean, who are here with us today. My mother was able to travel here from my hometown of Dubuque, Iowa.

I would also like to thank Commissioner Mike Dunn, who shares Iowa roots and whom I would replace if confirmed. I commend Commissioner Dunn for his many years of service to our country.

Growing up I gained an early appreciation for agriculture while spending countless days and weekends on the Wetjen family farm near Williamsburg, Iowa. Much of the time was spent helping my grandfather as he did daily chores. And it was there, in my grandmother's kitchen, where we listened to the morning market report on WMT radio, hearing the latest prices for the corn, soybeans and hogs my family produced.

I also learned from my family there the values of hard work, listening to and respecting different points of view, and serving others, which I've tried to bring to all of my pursuits, including my position with Senator Reid.

During my tenure working for the Senate, our nation and the Congress have encountered multiple challenges that at times demanded policy responses. Many of these related specifically to financial markets, an area where I have advised Senator Reid for nearly seven years.

From the housing crisis to the financial crisis, the problems and policy responses were equally complex. By helping Senator Reid and the Congress work through a range of these challenges, I was asked to perform multiple tasks, but not the least of which was to work toward consensus, either within the Democratic caucus, with the Republican conference, or in many cases both. Indeed, this goal of achieving consensus has always been central to my responsibilities as a Senate staffer.

I believe the experience of having worked for the Congress these last few years, while we faced a sequence of extraordinary economic challenges, and my role of helping craft solutions through consensus, should prove useful if I am given the privilege to serve as a commissioner at the CFTC.

The commission is now at an important period of history as it implements reforms to the swaps and futures markets, which for decades have served as useful tools for managing risk. The commission is also in a key moment in the Dodd-Frank rulemaking process, having just begun finalizing some of its rules.

With respect to swaps, the goals of Dodd-Frank are to:

- \* mitigate systemic risk in the financial system;
- \* increase transparency in the derivatives markets; and
- \* combat fraud and manipulation in the derivatives markets.

I believe these goals are nearly universally shared by market participants and policymakers alike, and that building the new framework for regulating derivatives should be both nonpartisan and consensus driven.

Crafting rules that properly achieve these goals is indeed more challenging. The final rules will have an impact not only on ag producers in the heartland, but all market participants and the economy as a whole. Consequently, it is critical that the commission continues its work in a careful, measured and thoughtful way, and that the CFTC works to get these rules right.

Likewise, it is critical that the commission hews closely to the intent of Congress when finalizing its rules. That means, for instance, that the final rules should avoid imposing unnecessary cost burdens on commercial firms that use swaps. It also means that the final rules should seek to minimize unintended consequences that could impair U.S. competitiveness or the liquidity of our markets.

If with your support and the support of your Senate colleagues I am given the opportunity to serve on the commission, I pledge to bring to the job an independent and open mind, and a balanced approach to the rulemaking process and to the work of the commission.

In closing, I would like to thank the committee for holding this hearing and considering my nomination. I am happy to answer any questions.





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**DOCUMENTS SUBMITTED FOR THE RECORD**

JUNE 21, 2011

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MARY L. LANDRIEU  
LOUISIANA

United States Senate  
WASHINGTON, DC 20510-1904

July 18, 2011

The Honorable Debbie Stabenow  
Chair, U.S. Senate Committee on Agriculture,  
Nutrition and Forestry  
328A Russell Senate Office Building  
Washington, DC 20510

The Honorable Pat Roberts  
Ranking Member, U.S. Senate Committee on Agriculture,  
Nutrition and Forestry  
109 Hart Senate Office Building  
Washington, DC 20510

Dear Chair Stabenow and Ranking Member Roberts:

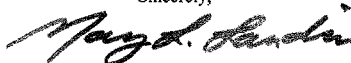
I write in support of President Obama's nomination of Mark Wetjen, of Nevada, as a Commissioner to the Commodity Futures Trading Commission (CFTC). It is my understanding that his nomination will be considered by the U.S. Senate Committee on Agriculture, Nutrition and Forestry (the "Agriculture Committee") later this week.

During my tenure as Chair of the U.S. Senate Committee on Small Business and Entrepreneurship (SBC), my staff and I have had the opportunity to work closely with Mark in connection with his role as Counsel and Senior Policy Advisor to Majority Leader Reid on passing the Small Business Jobs Creation Act of 2010 as well as the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Mark's counsel to me and my staff during Senate Floor debate on these bills was invaluable. Given his extensive experience advising Majority Leader Reid and other Committee Chairs and staffs on each of these bills, I have no doubt that Mark is qualified to serve as a CFTC Commissioner.

Therefore, I respectfully ask that his nomination be given every consideration within the appropriate guidelines. Thank you in advance for your time, and for your leadership on the Agriculture Committee. I look forward to hearing of the final decision on Mark's nomination. If any additional information is needed regarding this correspondence, please feel free to contact me through my SBC staff (4-5175).

With warm regards, I am

Sincerely,



Mary L. Landrieu  
United States Senator

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

R. BRUCE JOSTEN  
EXECUTIVE VICE PRESIDENT  
GOVERNMENT AFFAIRS

1615 H STREET, N.W.  
WASHINGTON, D.C. 20062-2000  
202/463-5310

May 19, 2011

The Honorable Harry Reid  
Majority Leader  
United States Senate  
Washington, DC 20510

Dear Leader Reid:

On behalf of the U.S. Chamber of Commerce, I would like to strongly support the nomination of Mark Wetjen to the U.S. Commodity Futures Trading Commission. At this critical juncture in the regulatory process for the CFTC and the entire financial regulatory enterprise, it is particularly important that we have capable, knowledgeable individuals who are called to the service of their country. I believe Mark to be such a person.

Mark had a varied legal career before becoming a Senate staffer. He gained years of practical legal experience in the financial services arena with Lionel Sawyer & Collins. Prior to that, he worked in the realm of municipal finance with Sherman & Howard. This experience is certain to prove beneficial as he undertakes the complex regulatory jurisdiction of the CFTC.

For the last seven years, Mark has served as your capable aide in the areas of banking and finance, amongst others. In that capacity, he has always provided the business community a fair hearing and thoughtful feedback.

We do not expect any policymaker to share our perspective on every issue. All that we can ask is that they bring an even hand, listen to the arguments and ask good questions when dealing with the complex issues surrounding federal law. We are confident that Mark will exercise that sort of probing, and judicious, intellect at the CFTC.

I congratulate Mark on his nomination. The Chamber looks forward to his speedy confirmation by the Senate.

Sincerely,



R. Bruce Josten

cc: The Honorable Mitch McConnell



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**QUESTIONS AND ANSWERS**

JUNE 21, 2011

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SENATE COMMITTEE ON AGRICULTURE, NUTRITION & FORESTRY  
FULL COMMITTEE HEARING

PENDING NOMINATION OF MARK P. WETJEN, NEVADA TO BE COMMISSIONER OF COMMODITY  
FUTURES TRADING COMMISSION

Thursday, July 21, 2011 — 10:00 am  
G50 Dirksen Senate Office Building

Senator John Thune

QUESTIONS FOR MR. MARK WETJEN

1. Mr. Wetjen, regarding the Commission's proposal on the "de minimis exception" for swap dealers. I have concerns that the current definition could affect farmer coops in my state which many farmers use to hedge risk. Would you support extending the de minimis exception to these entities?

**It is important to protect farmers' ability to hedge their commercial risks without unnecessary additional costs. If confirmed, I would look forward to consulting with the co-ops and other interested stakeholders regarding the commission's rule on swap dealers. I understand that co-ops are generally managing the risk of their members, and I don't think that is the type of activity Congress intended to capture when trying to mitigate systemic risk.**

2. While they are certainly important to my state and the lives of many farmers, do farm cooperatives pose a systemic risk to our economy? Should they be regulated like they are?

**I am not familiar with all the farm co-ops that exist, but I am not aware that anyone has suggested they pose systemic risks. These co-ops should be regulated accordingly.**

3. I would like to ask you about the factors you think the Commission should consider when making new capital and margin requirements.
  - a. Should the Commission consider whether or not an institution is systemically important? Will users who are not systemically important be allowed to front less capital?

**Congress was clear that it intended non-financial end users to be exempt from the clearing mandate and exempt from margin requirements. If confirmed, I would take care to act consistently with Congress's intent.**

- b. Should the Commission consider the economic cost of tying up capital in margin requirements?

**The law requires that the commission consider the costs and benefits of all of its rules. That includes costs associated with the impacts of capital and margin requirements.**

- c. Should the Commission consider the benefits of price discovery that comes from having many investors in a liquid market?

**Price discovery is one of the essential functions of derivative markets. A key role of the commission is to protect that price-discovery function. The commission's rules should take care not to undermine this function by unnecessarily drying up liquidity.**

- d. Should end users who are hedging financial risk be given an exemption? If not, won't this make it more expensive for these users to hedge their risk and in turn make the financial system more unstable?

**Congress was clear that non-financial end users should be exempt from the clearing mandate if hedging commercial risk. Commercial risk includes not only commodity price risk, but currency-rate risks and interest-rate risks. The exemption for non-financial end users extends to these products as well.**

- 4. Given the importance that agriculture plays in the U.S. economy, and specifically in South Dakota, I'm concerned about how some of the rules being written to implement Dodd-Frank could negatively affect that industry. With the increased volatility in the commodity markets, agriculture more than ever needs access to important risk management tools to hedge production, processing and marketing risks. However, the approach the Commission has taken in drafting the rules has been overly broad in many areas. For example, the draft definitions rule provides for such low thresholds in the "de minimis exception," that it provides no commercially meaningful exception from being classified as a swap dealer.

I know it will be quite the challenge to absorb the large amount of information given the complexity of these rules, and the broad impacts they will have. But, I hope you will take the time to understand the issues and implications they will have for agriculture and the needs of commercial end-users. So what I would like your assurances of, is that you will take into account the comments and letters, and be thoughtful and deliberate, when it comes time to vote on these rules.

**You have my pledge that I will review all information and consider all different viewpoints brought to bear on the commission's rulemaking – including those conveyed by comment letters – before voting on a final rule. I would always be especially mindful of the views of end users, the commercial firms whom the derivatives markets are designed to benefit.**

**Background on the de minimis exception in the proposed rule**

By limiting the number of swaps and options (20) and counterparties (15), only those that registered and regulated as swap dealers would be in a position to offer hedging products to agriculture sector. In addition, the \$100 million threshold would significantly limit the volume of hedges that could be offered by any entity besides registered swap dealers. For example, in today's environment it would only take about eight million bushels of soybeans or around 15 million bushels of corn to exceed that threshold. To put that into perspective, the U.S. produced 12.4 billion bushels of corn and 3.3 billion bushels of soybeans in 2010.



Senate Committee on Agriculture, Nutrition & Forestry  
Hearing Title – Nomination Hearing: Mark Wetjen  
Questions for the record  
Mark Wetjen  
Hearing Date: July 21, 2011

Date: July 25, 2011

Senator Charles E. Grassley

Question for Witness Mark Wetjen:

- 1) During his June 16, 2011 testimony before the House Committee on Financial Services, CFTC Chairman Gary Gensler stated, “With notional values of approximately \$300 trillion in the United States – that’s more than \$20 of swaps for every dollar of goods and services produced in the U.S. economy – and approximately \$600 trillion worldwide, derivatives markets must work for the benefit of the public.” Because of the risks of fraud and manipulation inherent in market trading, it is vitally important for the CFTC Office of Inspector General (OIG) to maintain due diligence in its oversight responsibilities.

I am extremely concerned that the CFTC OIG recently received a failing grade on a peer review of its quality control system conducted by the Federal Election Commission Office of Inspector General (FEC OIG). Upon reviewing this report, it appears that the FEC OIG found the CFTC OIG’s office was grossly unprepared to meet the challenges it will likely face in the future as commodities markets grow in size and complexity.

As a commissioner, what would you do to help ensure the CFTC OIG conducts effective oversight of the CFTC?

**If given the honor to serve as a CFTC commissioner, there are two things I could do to help. First, I could give the office of the OIG my full cooperation while it conducts any of its reports, inquiries or investigations. While there needs to be the requisite independence of the OIG, it also serves an important function of helping the commission achieve its mission and therefore deserves the assistance of commissioners and CFTC staff. Second, I could work with the chairman and my fellow commissioners to understand the problems that led to the failing grade and to work to remedy those problems.**

Senate Committee on Agriculture, Nutrition & Forestry  
Mark P. Wetjen of Nevada, to be a Commissioner of the Commodity Futures Trading  
Commission  
Questions for the record  
Mark P. Wetjen  
July 21, 2011

Senator Ben Nelson

**1) CFTC Regulation of Rural Electric Cooperatives.**

Mr. Wetjen, there appears to be a belief that rural electric cooperatives may be considered to be "swap dealers" under Dodd-Frank.

As far as I am aware, cooperatives, which are nonfinancial end user, hedge for commercial risk to protect its members from energy price volatility and operate on a not-for-profit basis.

Given the nature of how electric cooperatives operate would you expect them to be considered "swap dealers" under the Congress's intent of Dodd-Frank?

**It is important to protect electric cooperatives' ability to hedge their commercial risks without unnecessary additional costs. If confirmed, I would look forward to consulting with these co-ops and other interested stakeholders regarding the commission's rule on swap dealers. I understand that electric co-ops are generally managing the risk of their members, and I don't think that is the type of activity Congress intended to capture when trying to mitigate systemic risk.**

This issue is of significant interest given Nebraska is the only 100 percent public power state and many of smaller communities rely on rural electric utilities and cooperatives for their power, so avoiding unnecessary costs is essential.

**2) Coordination between Agencies**

Mr. Wetjen, as you know, Dodd-Frank calls for over 300 rulemakings and studies. Dodd-Frank also calls for a significant level of interagency coordination with 46 joint rulemakings. The CFTC is tasked with coordinating rulemaking efforts with the the Federal Reserve, the FDIC, the OCC, and the SEC, among others.

I believe regulators need to coordinate in order to give adequate consideration to each rule and to prevent inconsistent, incompatible or duplicative regulations. Can you assure me that as Commissioner you will maximize coordination and consultation with other agencies to in an effort to create harmony, consistency and efficiency in the regulatory process?

**Market participants in the derivatives markets need clarity about what their regulatory obligations are. They also do not need duplicative or needlessly overlapping regulatory burdens created by multiple agencies that oversee their derivatives activities. This type of overlap can be confusing and unnecessarily costly for firms using derivatives to manage their commercial risks. You have my commitment that I would work immediately to consult and coordinate with my counterparts at other regulatory agencies if confirmed in an effort to streamline regulatory burdens created by the CFTC and other agencies.**

**3) Recordkeeping and Reporting**

As you know, commercial end-users will be able to except their swaps from the new clearing and exchange-trading requirements under Dodd-Frank if they are using the swaps to hedge “commercial risk.”

Unfortunately, the CFTC may be proposing to move beyond the reporting requirements in the Dodd-Frank Act to also require utilities to report a significant volume of information for those end-user transactions that Congress exempted from Dodd-Frank’s central clearing requirements.

One concern I have heard from the rural electric utilities in my state is they would like to continue their commercial risk management and public service activities with the fewest possible changes to the way they’ve done business safely and reliably for more than 70 years.

If end-users are merely using swaps to hedge risk, what are your thoughts on not subjecting them to more than the minimum necessary CFTC jurisdiction – such as once-a-year filings or “CFTC-lite” regulations for non-financial entities like the coops?

**With respect to end users like electric cooperatives, the reporting and recordkeeping requirements under the CFTC’s proposed rules do not impose any additional such requirements unless the cooperative’s counterparty in a swap transaction is another end user. In these types of transactions, I am very much interested in working with the end user communities – including electric cooperatives – to construct a way to meet the transparency requirements of Dodd-Frank with the minimum amount of regulatory burdens as possible.**

**4) User Fees**

Mr. Wetjen as you know, Dodd-Frank greatly expanded the responsibilities of the CFTC, particularly with regard to oversight of previously unregulated derivatives markets.

I believe strengthening regulation of over-the-counter derivatives is a key step in bringing the “shadow markets” that helped crash the economy under sensible regulation. In order to enable the CFTC to carry out these new responsibilities effectively, the President’s 2012 budget request would increase CFTC funding to \$308 million.

The President has also recommended that this increase be funded in a deficit-neutral manner by imposing a diminutive fee on users of CFTC-regulated derivatives markets. Do you support this proposal to offset CFTC funding through user fees?

**I do believe that in order for the CFTC to responsibly accomplish its mission it needs resources. Given the fact that its mission has expanded greatly as you point out, it's only logical to suggest that it needs more resources than it has had in recent years when its regulatory mission was significantly smaller. I would be interested in exploring all ideas on how to ensure the commission has adequate resources, but determining the best way to secure those resources must involve dialogue with and sufficient support from stakeholders, including Congress and market participants.**

**ADDITIONAL QUESTIONS FOR THE RECORD**

As a follow-up to the Senate Agriculture, Nutrition & Forestry Committee's July 21, 2011 hearing – Mark Wetjen Nomination for Commissioner of the Commodity Futures Trading Commission.

Submitted to Mark Wetjen on July 21, 2011 by  
Ranking Member Roberts

1. In recent years, the Commission's regulatory philosophy was based upon principles that could adapt as markets evolved rather than a prescriptive set of specific regulations that attempted to account for every eventuality. In the post Dodd-Frank era, the CFTC seems to be rewriting the regulatory rulebook in a very prescriptive, rules-based manner. One example is the proposed rule requiring a minimum number of participants to receive or respond to a specific number of quote requests. The proposed rules regarding the governance of Derivatives Clearing Organizations (DCOs) are another example. Some have described it as micro-management of the risk management function of clearinghouses.

What value do you see in a "principles-based" structure and what, if any, concerns do you have with a prescriptive approach?

**A principles-based approach to regulation has the advantage of greater flexibility, which can potentially facilitate more evolution and permit more innovations in the markets. In some cases, a principles-based approach can be less costly for market participants. It can also more easily allow for market-driven solutions to challenges market participants face in hedging risks. To be sure, there can be drawbacks as well, just as there can be drawbacks to a prescriptive approach to regulation. But at times clear, specific regulations can be necessary to achieve the goals of mitigating systemic risk in the financial system, increasing transparency, and combating fraud and manipulation in the derivatives markets. I must also point out that if given the honor to serve at the commission, I would be compelled to follow the law – in Dodd-Frank, Congress decided to set out core principles for the regulation of DCOs, SEFs, DCMs, and SDRs, for example. I would also be interested in continuing a dialogue with Congress on how best to improve or fine tune the commission's authority for overseeing the derivatives markets.**

2. Many believe that CFTC's proposed swap dealer definition is entirely too broad and sweeps in far too many Main Street businesses who will now have to register as swap dealers. The

proposed rule effectively ignores an exception for persons who enter into swaps “but not as part of a regular business.” And, it sets the level for the de minimis exception so low that encompasses very few entities.

Do you agree that the swap dealer designation ought to be limited to the 15 to 20 very large, global financial organizations that Chairman Gensler described in his 2009 confirmation hearing and that CFTC’s swap dealer regulations should give practical meaning to the exceptions contained in Dodd-Frank?

**It is important to protect end users’ ability to hedge their commercial risks without unnecessary additional costs. If confirmed, I would look forward to consulting with end users and other interested stakeholders regarding the commission’s rule on swap dealers. I cannot comment on the correct number of swap dealers before having the benefit of all information and expertise that would become available to a confirmed commissioner; but I do agree that the commission should consider the practical application and implication of its rules before issuing final ones.**

3. Many participants in the swaps market applaud the increased transparency that will result from regular reporting of swaps transactions. However, market participants that engage in transactions in illiquid markets, for example a natural gas producer that hedges its production 5 or 6 years in the future, fear that reporting its swap within 15 minutes may lead the market to move against the producer, as the market learns that a major producer is selling. Moreover the counterparty to the swap may not be able to offset its position in illiquid contracts in 15 minutes, leading the counterparty to either increase its credit charges or exit the illiquid market altogether.

In order to allow producers to hedge their production for the long term, do you think CFTC should consider alternative reporting rules for illiquid markets?

**I believe the commission should resist adopting a rule that unnecessarily dries up liquidity in any market currently useful to market participants, and should consider alternatives if**

**there is an unacceptable risk of that outcome. The commission should consider the nature of the market and the degree of standardization that exists in it when creating its reporting rules and recognize the existing market structure so as not to undermine needed liquidity.**

4. Pension plans are extremely nervous about the “business conduct standards” proposed by CFTC. We are being told that swaps transactions involving swaps dealers and retirement plans would become illegal should the proposed rules be adopted because the dealers would somehow become the “fiduciaries” of the plans. This doesn’t make sense.

How can CFTC better communicate with sister agencies like Department of Labor in this case to remedy the effects of their regulations?

How can the CFTC, in its own regulations and not relying on the Department of Labor to act, make it clear that the fear of illegal swaps is unfounded?

**The CFTC commissioners should be communicating as often as practicable with their counterparts at other relevant regulatory bodies to work toward consensus on related issues, to close regulatory gaps and to ensure that the interaction between different agencies’ rulemakings do not have unintended consequences. Division heads at the CFTC should also be communicating regularly with their counterparts. Perhaps most importantly, the agencies should speak uniformly on all issues where there is overlapping jurisdiction in an effort to maximize clarity for market participants. The commission should also make these interactions clear and transparent to market participants so that they know that the agencies are consulting with one another. Ideally, this would result in the form of final rules that work together seamlessly for market participants so that there is maximum efficiency in efforts to comply.**

