AFR Americans for Financial Reform

November 7, 2019

Dear Representative:

We are writing on behalf of Americans for Financial Reform (AFR) concerning the reauthorization bill for the Commodity Futures Trading Commission (CFTC) that was passed last week by the House Agriculture Committee.[1] We are disappointed that this legislation does not sufficiently address critical ongoing issues at the CFTC and that the bill contains provisions that could make the CFTC more vulnerable to industry lawsuits. We understand that very little time was provided for members to review this long and complex piece of legislation, and hope that it can be improved on the House floor.

With the passage of the Dodd-Frank Act in 2010, the CFTC moved from being a regulator of classic commodity derivatives in agriculture and energy markets to being one of the most important financial regulators in the world. The agency was given new jurisdiction over critical derivatives markets dominated by the largest Wall Street banks, markets that played a central role in the 2008 economic collapse. At the same time, the agency's traditional commodity derivatives markets were growing rapidly as speculative interest in these markets increased. Since prior to the financial crisis, the notional size of CFTC-regulated markets has increased by roughly fifteen times, and the number of transactions in CFTC-regulated markets has grown from less than 2.5 billion to over 17 billion annually.

The new prominence of the CFTC as a financial regulator has led to challenges for the agency. Derivatives regulations have been the target of fierce lobbying and the agency has been sued multiple times in attempts to overturn its rules. Agency funding, while it has increased moderately in recent years, remains below $300 million annually, a level that is not adequate to fully implement or enforce new rules or provide needed market surveillance. The fact that the CFTC is the only financial regulator in the U.S. government with no power to raise funding from the entities or markets it regulates has rendered it especially vulnerable to political pressure.

In light of the central role of CFTC-regulated derivatives markets to financial stability and consumer well-being, the nature of the CFTC reauthorization bill passed by the Agriculture Committee is very disappointing. The legislation does contain a few positive elements, such as mandating an Office of Minority and Women Inclusion at the CFTC and precautionary measures

[1] Americans for Financial Reform is a coalition of more than 200 national, state, and local groups who have come together to advocate for reform of the financial industry. Members of AFR include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups. A list of coalition members is available at: http://ourfinancialsecurity.org/about/our-coalition/

regarding several legal decisions. However, it makes no progress on improving chronic underfunding at the CFTC. It does not improve the ability of the agency to regulate derivatives markets. It does nothing to address significant loopholes in derivatives regulation that have been created through industry lobbying and recent deregulatory actions by the Trump Administration. It also does nothing to advance position limits requirements to protect consumers from speculative price increases in commodity markets, despite the fact that these limits were mandated a decade ago but have not yet been implemented.

The bill also includes elements that would weaken the CFTC's powers. For example, Section 106 of the bill modifies the cost-benefit provisions of the Commodity Exchange Act to give the agency's chief economist statutory powers in determining whether regulation satisfies cost-benefit considerations, and also modifies statutory factors for cost-benefit consideration in ways that will strengthen industry's ability to sue in court. Section 112 of the bill, while it takes a positive step by affirming the power of the CFTC to prosecute market manipulation cases originating from outside the U.S., contains a statutory restriction that limits the CFTC's authority to cases of fraud and market manipulation that have a "substantial" effect on the U.S. economy – an ambiguous proviso that could be used to deny the CFTC jurisdiction even in cases where U.S. citizens were grievously harmed. We are continuing to examine other aspects of the bill.

Despite the technical nature of the issues here, this bill was rushed through the Agriculture Committee last week, at the same time as the House was engaged with a major impeachment vote. It is also vital to understand that this bill will could easily be made worse in the Senate, since the legislation provides no leverage for supporters of effective financial regulation to resist additional deregulatory steps.

For these reasons, we urge the House to amend this bill during or prior to floor consideration, and believe that the legislation is not appropriate for consideration under suspension of the rules. The CFTC's role as the chief regulator of U.S. derivatives markets makes it a critical protector of economic stability. The agency's reauthorization deserves full and careful consideration, and should include measures to resist and reverse loopholes in derivatives regulation won by big banks in the past and being proposed by the Trump Administration today.

Sincerely,

Americans for Financial Reform