

MARIA CANTWELL
WASHINGTON



United States Senate
WASHINGTON, DC 20510-4705

January 16, 2009

Gary Gensler
Obama-Biden Transition Project
Washington, DC 20270

Dear Mr. Gensler:

Thank you for meeting with me yesterday to discuss your nomination to Chair the Commodities Futures Trading Commission (CFTC). The financial market collapse and extreme price volatility in energy futures markets in 2008 make this a critical time in our history to ensure effective and robust oversight of our nation's financial markets.

Washington state, and the nation, are enduring the legacy of Enron and the reckless trading schemes that contributed to volatility in our energy markets. So it is with good reason and experience that I have concerns about federal regulators protecting consumers. I believe that the CFTC's poor response to the dysfunctional futures market in 2008 contributed to hundreds of billions of unnecessary costs to consumers and the financial market crisis we are in today. Because of this, I blocked the confirmations of three CFTC nominees in the last Congress.

I look forward to your clear and specific answers to the following questions so I may have them to consider when your nomination comes up for a vote in the United States Senate.

Sincerely,

A handwritten signature in blue ink that reads "Maria Cantwell".

U.S. Senator Maria Cantwell

Please Explain your work at the Treasury Department

1. In your capacity as an Undersecretary at the Treasury Department, you worked on the November 1999 Report of the President's Working Group on Financial Markets report on *Over-the-Counter Derivative Markets and the Commodity Exchange Act*. What specific part, if any, of this report do you disagree with today?
2. As an Assistant Secretary and Under Secretary of Treasury in 1998-2001, did you oppose the regulation of over the counter swaps and derivatives by the CFTC? What specific actions did you take in this regard?
3. In your capacity as an Undersecretary at the Treasury Department, did you work to enact the Commodity Futures Modernization Act of 2000 (CFMA) which specifically exempted swaps from CFTC regulation? Did you intend to exempt credit default swaps from regulation as part of the CFMA?
4. Do you still support the policy to exempt swaps from regulation by the CFTC? Has your opinion changed?
5. To what extent do you believe the enactment of the CFMA contributed to the current financial sector crisis?
6. To what extent is unregulated trading in credit default swaps responsible for the current financial crisis?
7. Do you believe all credit default swaps should be subject to mandatory clearing on a prospective basis? Or do you prefer a policy of voluntary clearing?
8. Should existing credit default swaps be subject to mandatory clearing?
9. Which agency should Congress designate as the regulator of organizations which will clear credit default swaps: the CFTC, the Securities and Exchange Commission (SEC) or the Federal Reserve?
10. Should credit default swaps be regulated as insurance? If so, should this be state based regulation or federal regulation?
11. What is the social benefit from naked credit default swaps (e.g, the entity does not own the property that is covered by the swap but is simply speculating on the failure of an institution or governmental unit)? Should "naked" credit default swaps be outlawed altogether? If not, why not?

Please explain oil prices and the CFTC's regulatory response in 2008

12. What is your explanation for why oil prices increased from about \$90 per barrel in December 2007 to about \$150 per barrel in July 2008, to fall to less than \$40 today? To

what extent was speculation by large banks and index investors in swaps or futures responsible for a portion of the run up?

13. How would you have used the regulatory tools available to the CFTC differently than the CFTC did this year to address the unprecedented spike in oil prices?

The Commodities Futures Modernization Act of 2000

14. Do you agree it was prudent to provide “legal certainty” as part of the CFMA to exempt swaps from CFTC regulation?
15. Would you support a complete repeal of the CFMA?
16. If not, what specific part of the CFMA would you repeal?
17. What part of the economy is better today because of the CFMA?

Do you support strong regulatory authority and closing ALL loopholes? Please answer the following question yes or no.

Will you actively support legislation that would:

18. *Eliminating exemptions and exclusions:* Eliminate the over the counter market exemptions by requiring all futures transactions, including credit default swaps, to not only be subject to clearing, but to be conducted on fully regulated exchanges?
19. *London Loophole:* Require all Foreign Boards of Trade that solicit or accept more than a certain level of their business volume from the U.S. to register as a fully regulated domestic exchange and thus be ineligible for “no action” letters?
20. *Enron Loophole:* Eliminate Exempt Commercial Markets as an eligible registration class and require existing Exempt Commercial Markets to register as fully regulated exchanges like a Designated Contract Market or a Designated Transaction Execution Facility?
21. *Aggregate Speculation Limits:* Set aggregate speculative position limits on energy and agriculture futures across all contract markets at the control or ownership level?
22. *Manipulation standard:* Strengthen the Commission’s anti-manipulation authority from a “specific intent” burden to a “recklessness” burden bringing the CFTC more in line with the SEC, Federal Energy Regulatory Commission (FERC), and the Federal Trade Commission (FTC)?

Increased Resources for the Commission

23. *User-fee model:* Adopt a futures transaction-fee model, that FERC uses and that the SEC has used since its inception, to increase available resources to the CFTC?

FERC and FTC anti-manipulation authority – please answer the following question yes or no

24. Congress specifically modeled the FERC's and FTC's anti-manipulation authority to allow the agencies to pursue manipulative activity in the futures markets that impact transactions in the cash markets. On the basis of the CEA's "exclusive jurisdiction" provision, the CFTC has resisted FERC's utilization of this authority when pursuing manipulative activity which originated in the futures market and impacted their jurisdictional cash markets, and has strongly opposed the FTC's rulemaking that would allow it to bring actions which span the physical and financial markets. Will you support dropping this opposition to the FERC's authority in court, and work cooperatively with both the FERC and FTC on allowing them to exercise their authorities to pursue manipulative conduct which spans the physical and financial markets? If not, why not?

Sharing answers

25. May I share your answers with interested colleagues?