Securities Regulation Daily Wrap Up, CFTC NEWS AND SPEECHES—
Giancarlo concedes user fees may be necessary to support 2019 budget increase in congressional testimony, (Mar. 7, 2018)

In testimony before the House Appropriations Subcommittee, CFTC Chairman J. Christopher Giancarlo requested $281.5 million and 716 full-time equivalents (FTE) for its FY 2019 budget request, an increase of $31.5 million and 46 FTE over the resources provided by the funding arrangements in place for 2018. While noting his opposition to transaction-based user fees, the chairman acknowledged that the agency will use any tool its appropriators and authors give it.

In addition to his written testimony, the chairman answered questions addressing a wide range of issues facing the commission, which included some contentious encounters with members of the subcommittee at times. Some of the main issues covered at the hearing included the following.

**Imposition of user fees to fund the Commission’s $31.5 budget increase.** Many of the members of the subcommittee expressed concerns that funding the agency’s budget increase with user fees would be a burden on the market, impact liquidity, and take a particular toll on the farmers and ranchers who use the market and are already suffering from low commodity prices. Chairman Giancarlo shared that sentiment, noting that transaction fees were tantamount to a tax on market users. However, he pointed out that every presidential administration since Reagan’s has advocated for some type of user fee as a funding mechanism for the Commission. The chairman also noted, with some consternation, that “if we only get $250,000 million, we will be making a lot of hard decisions at the agency.”

**Rightsizing the swap markets.** Subcommittee Chairman Robert Aderhold (R-Ala) queried Chairman Giancarlo about the Commission’s efforts to improve its metrics for measuring the notional value of the swaps markets. Giancarlo noted the aggregate notional value of the swaps market is often portrayed to be in excess of $600 trillion, but added that this amount does not adequately measure risk as it does reflect the offsetting positions of various market participants. Giancarlo explained that the Commission had recently released a study on entity netted notional (ENN) amounts. Under that measure, the aggregate value of the swaps market comes down to approximately $15 trillion. Giancarlo noted the ENN approach is still being studied and awaiting further peer review, but indicated that it may assist in guiding various policy determinations in the future.

**Sunshine Act concerns.** Subcommittee member Rep. Rosa DeLauro (D-Mass) expressed deep concerns regarding a recent gathering among leadership from the CFTC and SEC, including SEC Chairman Clayton, Chairman Giancarlo, and Commissioner Quintenz and top staff to address matters related to harmonizing rules between the agencies under Dodd-Frank. DeLauro noted that the meeting was not open to the public and did not include Democratic commissioners and, hence, may have violated the Sunshine Act. Giancarlo responded that that gathering was merely a briefing, where staff provided a one-way flow of information and, thus, was not a “meeting” under the Sunshine Act. Moreover, Giancarlo pointed that the gathering was overseen by the Office of General Counsel to assure Sunshine Act regulations were not violated.

**Virtual currencies.** As is typically the case these days when Chairman Giancarlo appears before a congressional committee, he was asked about the Commission’s involvement with the emerging cryptocurrency market. One of the subcommittee members expressed concerns that the CFTC was diverting valuable regulatory resources by devoting so much time and effort to virtual currencies. Giancarlo conceded that virtual currencies represent only a small part of the economy, but said that it is an area where scammers are taking advantage of the investing public, especially young people. Giancarlo added that Bitcoin is a “commodity” under the
Commodity Exchange Act and, therefore, the Commission has an obligation to combat fraud and manipulation when virtual currencies are involved.

**Digitization of the markets.** A significant amount of the day’s questioning centered on the Commission’s IT capabilities and abilities to keep abreast with technological change. Giancarlo noted that beefing up the agency's technological infrastructure as well as furthering the LabCFTC initiative were key drivers behind the Commission’s request for increased funding. Giancarlo noted that when the Dodd-Frank market reforms were being developed, the issues of cybersecurity and algorithmic trading were not even on the table. "We are preparing for the digitization of the markets… and we have a lot to do to keep up," the chairman observed.

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