

Securities Regulation Daily Wrap Up, TOP STORY— CFTC’s Giancarlo pulls controversial position limits report, (Mar. 11, 2016)

By [Mark S. Nelson, J.D.](#)

CFTC Commissioner J. Christopher Giancarlo, sponsor of the CFTC’s Energy and Environmental Markets Advisory Committee (EEMAC), said he has decided to withdraw a controversial report on the Commission’s plans for future rules on position limits. Senator Elizabeth Warren (D-Mass), a vocal critic of the report, tweeted her [support](#) for its withdrawal and for the CFTC to move forward on new rules for position limits. Consumer group Public Citizen also had called for the report to be withdrawn.

“The report was never intended to be a distraction from the substantive policy work of the Committee and the volunteer members who give their time and expertise,” [said](#) Giancarlo. At the February EEMAC meeting, Giancarlo explained that he had directed two of the committee’s full members to draft the report as part of what he characterized as the EEMAC’s broad Dodd-Frank Act charter.

According to the majority report, prepared by EEMAC members James Allison, JCA Advisory Services LLC, and Craig Pirrong, a finance professor at the University of Houston’s Bauer College of Business, the Commission either should not adopt final position limits rules, or it should heed the report’s practical advice on a variety of matters if it does finalize a proposal. The report said there was scant evidence that the Commission’s position limits rules were needed and they might even flunk scrutiny under the Commodity Exchange Act’s necessity requirement.

Senator Warren [told](#) Giancarlo the report should be withdrawn until a properly constituted EEMAC can issue another one that complies with the law. The senator also called the report “nothing more than a recitation of industry talking points” and drew attention to what she termed “procedural and factual errors” in the report. She also said the EEMAC’s membership over-represents the swaps industry.

Senator Warren repeated these concerns in a [follow-up letter](#) earlier this month. The senator said there that she was especially concerned about new information regarding Giancarlo’s ties

to Pirrong, one of the report's authors. Senator Warren alleged that Pirrong had many conflicts of interest due to his consulting role at one of the swaps industry's leading trade associations. She also expressed worry about the timing of the report's release, which she said deprived the full EEMAC from properly considering its findings.

Tyson Slocum, the Energy Program Director at Public Citizen, Inc. and the only EEMAC member to object to the report, issued a [statement](#) praising Giancarlo's decision to withdraw it. Slocum's [dissent](#) took issue with both the majority report's conclusions and the process by which it was prepared. But Slocum's main objection was the lack of consultation, saying that Allison and Pirrong drafted the report on their own initiative, and without allowing for consultation with the wider group of associate EEMAC members.

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