

# Securities Regulation Daily Wrap Up, TOP STORY— Senator Warren presses Commissioner Giancarlo on position limits report, (Mar. 8, 2016)

By [Lene Powell, J.D.](#)

Senator Elizabeth Warren (D-Mass) asked CFTC Commissioner J. Christopher Giancarlo for information about “new and troubling revelations” relating to his actions as sponsor of the CFTC Energy and Environmental Markets Advisory Committee (EEMAC). In a [letter](#), Warren said she was concerned that Giancarlo appeared to have secretly tasked two committee members to write a critical [report](#) on proposed CFTC rules on position limits without soliciting input from other committee members. Warren asked Giancarlo to provide copies of his correspondence with committee member Dr. Craig Pirrong and give details about the report drafting process.

**Controversial position limits report.** The EEMAC advises the Commission on developments in energy and environmental derivatives markets and makes recommendations for regulatory response. At a public committee meeting on February 25, 2016, the committee released a report on its review and consideration of CFTC proposed rules that would establish position limits for 28 commodity futures and options contracts, as well as economically equivalent swaps. The report slammed the proposed rules, saying the position limits were unnecessary and would pose practical challenges and seriously threaten trading liquidity. The report recommended that the CFTC make various changes to the proposed rules, including imposing limits only in the spot month.

Eight of the nine EEMAC members approved the report, which was [supported](#) by Giancarlo and [praised](#) by House Agriculture Committee Chairman K. Michael Conaway. But in a strongly worded [dissent](#), Tyson Slocum of Public Citizen said the report relied on selective research and was not a collaborative product, having been written by just two members and submitted for review by the full committee only two weeks before a vote. The same day, Senator Warren sent a [letter](#) to Giancarlo asking him to withdraw

the report, which she said was “nothing more than a recitation of industry talking points.” Warren added that the EEMAC consists almost entirely of energy industry insiders, which she believes to be a direct violation of the Dodd-Frank provision establishing the committee.

**Request for information.** In her March 7 letter, Warren reiterated her criticism of the report and expressed concerns about Giancarlo’s choice of committee members. Warren said the membership of Dr. Pirrong, a professor at the Bauer College of Business, University of Houston, was “problematic” due to “numerous undisclosed conflicts of interest.” Warren observed that Pirrong was a consultant for the International Swaps and Derivatives Association (ISDA), which successfully sued to block the CFTC’s original position limits rules several years ago.

According to Warren, the report was a product of a “secretive process.” First, Pirrong was not listed as a full voting member of EEMAC until just one week before the report’s release. Further, Pirrong said that Giancarlo tasked him with writing the report, but apparently the other committee members were not told of a planned report, with the exception of coauthor James C. Allison. Combined with the short period allowed for review by the rest of the committee, the selection of Pirrong and drafting process raised “very serious questions” about the rationale for Giancarlo’s actions, said Warren. She requested copies of all of Giancarlo’s correspondence with Pirrong, as well as a briefing on the decision to choose Pirrong to write the report and an explanation of the drafting process.

“Your extensive involvement in the Committee and its report raises more questions about whether you have exceeded the role of the Committee’s Sponsor, as defined by EEMAC’s Charter: to handle basic committee organization, not to push the EEMAC towards a particular preordained outcome,” Warren wrote.

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