SPEECHES & TESTIMONY

Remarks of Commissioner Brian Quintenz at SIFMA 2018 Operations Conference & Exhibition

Cutting the Grass, Adding Integrity, and Promoting Growth

May 8, 2018

Good morning and thank you for that very kind introduction. I'm delighted to be here with you today. Before I begin, let me quickly say that the views contained in this speech are my own and do not represent the views of the Commission.

As a child, I would often do chores to earn money. In particular, I would frequently mow the front and back lawns of our house. There were some tricky parts – a small, uneven hill posed challenges to straight lines, and lots of curved flower bed borders made wheel placement critical – but I did what I thought was a pretty good and meticulous job. That was an important learning experience for me to appreciate the value of money, the effort required to purchase the things that I wanted, and learning how to spend those dollars wisely. I imagine that many of you had similar experiences. And, as much as we all wish otherwise, the importance of saving, managing, and budgeting money grows with our age and responsibilities.

Currently, our nation is facing what some might call a debt crisis. Regardless of what you call it, the fact is that our federal debt exceeds $21 trillion. Annual federal budgets with $500 billion deficits have become the rule, rather than the exception. Congress has the enormous task every year of setting the federal government's $4 trillion budget, and a priority of the current Congress and administration is to balance the budget, rather than burden American citizens with additional debt. I support efforts to reign in our burgeoning national debt, especially when it seems likely that interest rates will continue to rise. As George Washington wisely stated, "We must consult our means, rather than our wishes."

Therefore, I do not take lightly the topic of my speech today, which advocates for enhanced funding for the Commodity Futures Trading Commission (CFTC). As some of you may know, the agency's budget for 2018 was recently cut by $1 million. I understand that we do not live in a world of infinite resources. Quite the opposite – resources are scarce. Congress must wisely allocate funding among many competing, worthy programs. Today, I hope to make the case for why, under Chairman Christopher Giancarlo's leadership, the CFTC deserves additional funds.

A common perception of regulation is that it acts as a drag on private enterprise, imposing costs and distorting the market. I would never argue with the notion that regulation can be costly – I have actually tried numerous times in prior speeches to point out cases in the agency's prior rulemakings where those costs are needlessly large – but I would also point out that good regulation doesn't have to be costly. Thoughtful, appropriately calibrated regulation should, even accounting for the costs imposed on the private sector, ultimately enhance our financial markets, promote economic growth, and benefit the public. Regulation should not be, and does not have to be, a tax on the economy. Instead, smart regulation should target demonstrable problems and asymmetries in our markets, which, once addressed, increase the integrity of the marketplace, helping to attract capital and liquidity and driving economic growth. This is the kind of smart regulation that I believe the CFTC is committed to providing under Chairman Giancarlo's leadership and it is one of the reasons why I believe providing the agency with additional resources is worth the cost.

I also hope my remarks demonstrate how the CFTC of today and Chairman Giancarlo's vision for the future stand in stark contrast to the actions of recent CFTC Chairmen. I believe that the CFTC's grim budget situation today is largely attributable to the irresponsible stewardship of the prior administration. Under the leadership of Chairman Gary Gensler and Chairman Timothy Massad, years of unrealistic budget requests, fiscal mismanagement, and political gamesmanship with Capitol Hill damaged the agency's reputation and credibility with appropriators who, when now forced to pick and choose between competing priorities, remember those past affronts like yesterday.

The Beginning

When I was earning money mowing my parents' lawn, imagine what they would think, or how they might change our deal, if, for instance, I left large, unmowed strips of grass or carelessly ran over my mom's flower beds and pulverized her petunias. Ultimately, I'm willing to bet, my parents would not have paid me until I had shown them that I had done a good job and was up to the task. Unfortunately, such has been the case with the CFTC's budget requests, spending decisions, and fiscal management over the past eight years.

The CFTC's irresponsible fiscal practices began under Chairman Gensler. A prominent example of agency waste during his tenure which I would like to highlight for you today involves his negotiation of the CFTC's lease for its D.C. headquarters – what we will call the D.C. Lease. The saga of the D.C. Lease begins in 2009, when former Chairman Gensler began planning for large increases in CFTC budget and staffing in anticipation of financial reform legislation that he believed would greatly augment the responsibilities of the agency.[1] In fact, it was August 2009, almost a full year before the Dodd-Frank Act was signed into law, when Chairman Gensler renegotiated and extended the D.C. Lease, ultimately leading to the CFTC's occupancy of practically the entire office building.[2]

In early 2010, and still in advance of receiving any new oversight authorities, Chairman Gensler requested that Congress increase the CFTC's budget from $168 million to $261 million for FY 2011, a 55% increase from the prior year's appropriation.[3] The Commission sought this significant bump in funding to increase its staff from 580 to 864 employees.[4] Ultimately, Congress only appropriated $202 million to the agency. Instead of 284 additional employees, only 61 new individuals were hired.[5] Regardless of its relatively small increase in staffing, the Commission exercised a clause in the D.C. Lease to expand its D.C. office space by 67%, incurring approximately $3 million more in annual rental costs.[6]

The Commission repeated this questionable approach the following year. For FY 2012, Chairman Gensler requested $308 million, a 53% increase over the $202 million the agency had just received, and proposed to expand to 983 employees.[7] However, Congress kept the agency essentially flat funded, appropriating only $205 million. And yet, under Chairman Gensler's direction, the Commission further expanded its D.C. office space, adding approximately 18,000 square feet, and costing the agency an additional $3.3 million more in annual rental costs.[8]

The lease amendments were irresponsible in other respects as well – namely, they were negotiated without the assistance and expertise of the General Services Administration (GSA). As a result, the renegotiated D.C. Lease contained many terms that were inappropriate for a government agency.[9] For example, the D.C. Lease contains several open-ended clauses that subject the agency to uncontrolled liabilities. These clauses were the subject of a Government Accountability Office (GAO) inquiry and caused the agency to violate the Antideficiency Act.[10] In addition, the D.C. Lease is a so-called "pass-through lease," in which the tenant, rather than the landlord, is required to pay property taxes on the property in addition to rent.[11] These terms were highly unusual for a federal agency. In FY 2017 alone, this clause in the D.C. Lease has cost taxpayers nearly $1 million.

In the course of reviewing the space utilization of the D.C. office, the agency's Inspector General estimated that the CFTC will spend approximately $36.4 to $48.3 million on empty office space by the time the D.C. Lease ends in 2025.[12] Moreover, the Inspector General's Report advised the Commission that "there is a problem with obligating the expenditure of millions in taxpayer dollars on empty office space based on anticipated rather than actual staffing levels, particularly when the gap between anticipated and actual funding is that large. It wastes taxpayer money."[13] It is simply astounding – astounding – that the Inspector General would need to inform a federal agency of such basic practices.

Of course, these abuses eventually came to light, causing Congress to question the agency's fiscal responsibility and annual requests for increased funding.[14] Under Chairman Gensler's leadership, the perception of inflated CFTC budget requests that were out of line with actual agency needs began to develop.[15]

Unnecessary Furloughs in 2013

This perception was reinforced in 2013, when the agency unnecessarily furloughed its workers in an act of political gamesmanship with Capitol Hill. On October 24, 2013, in the middle of an omnibus spending bill debate on Capitol Hill, Chairman Gensler announced that the agency would need to furlough workers for up to 14 days.[16] That very same day, Congressman Aderholt, the Chairman of the Appropriations Subcommittee responsible for funding the CFTC, issued a statement making clear that the CFTC had explicit legal authority to spend amounts necessary to avoid furloughs.[17] In his press release, Chairman Aderholt made clear that he strongly disapproved of Chairman Gensler's furlough threat, stating that "budgetary games where public servants are used as political pawns [are] not admirable."[18]

Yet Chairman Gensler, fully aware that the agency had other measures at its disposal to avoid a furlough, nonetheless proceeded to furlough the agency's workers for two days. I would like to think that the importance of the CFTC's mission to the markets, and the morale and wellbeing of its employees, would trump political ploys designed to coerce additional funding from Congress. Sadly, under prior CFTC leadership, that was not always the case. To complete the analogy from earlier, if Chairman Gensler had mowed my parents' lawn, my mom's flowers would have been toast.

Union Negotiations

Unfortunately, this pattern of political gamesmanship with Congressional appropriators continued under Chairman Timothy Massad, albeit to a lesser degree. Shortly after Chairman Gensler's leadership of the Commission, CFTC employees in all offices, for the first time in the agency's history, joined a national federal employee labor union.[19] During his tenure as Chairman, Mr. Massad engaged in extensive negotiations with the labor union regarding compensation and benefits. In the fall of 2016, those negotiations stalled, with both sides feeling they were unable to make further concessions. The case was set to be decided in January 2017 by an impasse panel – which is essentially a neutral third party mediator.

The decision of the impasse panel would be final and binding on the agency. Therefore, Chairman Massad directed agency staff to brief appropriators on Capitol Hill about the possible outcomes. However, the briefing highlighted the worst case scenarios in the event the impasse panel agreed with all of the union's demands and warned appropriators that significant staff reductions and furloughs might be necessary if the Commission was not provided additional funds.

Ultimately, the impasse panel's decision allowed the CFTC to continue operations without the need to furlough, although other cuts were necessary. In the aftermath of the decision, some lawmakers felt the agency had, in keeping with the agency's reputation of engaging in political

stunts, deliberately presented them with doomsday scenarios in an effort to persuade them to provide additional funding.[20] Under Chairman Massad's leadership, this failure to present a balanced view further eroded Capitol Hill's trust in our agency.

As a result of two prior leaderships at the CFTC, it has become difficult for appropriators, and the public, to take our agency's word at face value when recent history shows a pattern of mismanaging existing resources, crying wolf, and warning of catastrophic outcomes that are almost always avoidable.

A New Kind of Leadership

Luckily, the CFTC is now under new leadership. I believe that Chairman Giancarlo has demonstrated his vision for, and commitment to, providing superior, thoughtful regulatory oversight of the derivatives markets. I wholeheartedly associate myself with that vision and that commitment. Unlike past administrations, which may have approached market regulation through a politically-focused lens, the present administration has pursued regulation that is carefully calibrated to address demonstrable issues and problems, all with an eye to enhancing the resiliency, competitiveness, and vibrancy of the derivatives markets.

I strongly believe that this fresh approach has notably carried over to the agency's finances. As one of his first acts as Chairman, Chairman Giancarlo initiated a wholesale review of the CFTC's budget. Instead of formulaically determining the agency's budget request by taking last year's number and automatically grossing up by a certain percentage, the Chairman engaged in a rigorous analysis of each of the agency's functions and expenditures. Chairman Giancarlo built the 2018 budget from the ground up based upon the real needs of the Commission that are essential to fulfilling is core missions.

During the course of that review, the Chairman identified ways that the agency could be more efficient, and he is implementing the changes necessary to realize those efficiencies. Departments are being reorganized and streamlined to increase productivity and provide long-term cost savings. The Chairman also negotiated with the Commission's Kansas City landlord to return an entire floor of vacant space back to the landlord. This will result in significant savings over the remaining life of the Kansas City lease. Going forward, he is also firmly committed to working with GSA in connection with all of the CFTC's regional office leases when the current leases expire.

But the Chairman's vision for the agency as one which adds to market integrity and promotes economic growth, as opposed to simply taxing growth, will also require some degree of investment. Chairman Giancarlo has identified three areas where a modest increase in the agency's budget could achieve that result. It starts with cultivating an economic and econometric focus at the agency. An increase in funding for the Office of Chief Economist would promote

the agency's use of sophisticated econometric and quantitative analyses necessary to model risk, conduct stress tests, and assess the impact of regulations. For example, in order to effectively monitor the derivatives markets, new forms of economic analysis that convert notional amounts into measures of actual risk are essential. Simply put, we need more quants and fewer lawyers. Chairman Giancarlo and I are committed to providing the forward-looking leadership on this topic that the world expects from the premiere derivatives regulator.

Second, market integrity around counterparty risk has increased significantly with the clearing of standardized swaps. An add-on result has been the "super-sizing" of derivative clearinghouses, which heightens the importance of robust examinations and stress-testing procedures. A few additional staffers will help ensure that each clearinghouse is regularly examined for liquidity, risk management, and cybersecurity, so that in a market stress event, clearinghouse resiliency does not become a source of panic.

And finally, the transformational challenges associated with FinTech advancements and oversight of the burgeoning cryptocurrency markets require a forward-looking regulator with in-house FinTech expertise and an ability to proactively engage with innovators. A small funding increase would build on the Chairman's highly impactful LabCFTC initiative.

After conducting this thorough, reasoned assessment, the Chairman determined that the CFTC would require $281.5 million to achieve his regulatory vision – one that can contribute to, not weigh down, economic growth. This amount, while an increase of 13% from the prior year's funding, is still a significantly smaller percentage increase than the prior administration's budget requests.

Unfortunately, additional resources were not provided to the agency for 2018 – in fact, the agency's budget for this year was reduced by $1 million. This marks the fourth consecutive year of essentially flat funding for the agency.[21] While flat funding can sometimes sound like the status quo, I'd like to provide a quick perspective on how flat funding doesn't mean flat resources. In FY 2016, under a $250 million appropriation, the agency employed 715 Full Time Equivalent (FTE) employees. However, because of built-in cost increases in our salary packages and in our poorly negotiated leases, if we do not receive additional funding by the end of 2018, the agency will need to make adjustments in anticipation of only being able to support 636 FTE employees – an FTE number which is only about 30 more than the agency had in 2010 prior to the implementation of Dodd-Frank.

For now, the CFTC is making the best use of the resources it has been given. We are already working to prudently manage our resources and cut costs wherever possible. However, without sounding alarmist, I do want to express my genuine concern that the recent budget cuts hinder the CFTC's ability to meet its core missions. Staff's ability to conduct regular risk, compliance, and cybersecurity examinations will be curtailed; enforcement efforts to police fraud and

manipulation – particularly in the cryptocurrency spot markets – will be strained. I have no doubt that the CFTC's dedicated staff will do everything in their power to overcome these challenges. But we can only expect them to do so much with the resources they have been given.

In the past, the CFTC has been accused of playing politics and engaging in political games with respect to budget requests. I would like to state this clearly – those times are over. This is a new administration, a new Chairman, and a new vision. I am hopeful that next year's appropriation will reflect that reality, and the agency will be provided with the resources it needs to provide superior oversight of our markets that can add to economic growth and enhance market integrity.

We should measure the success of the CFTC by whether the U.S. derivatives markets attract the world's capital – meaning the world recognizes them to be not only the most durable and the most vibrant, but also the most stable and the best regulated.[22] That is a high standard to which we should hold this agency – but anything less would be settling for a crookedly mowed lawn.

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[1] OFFICE OF INSPECTOR GENERAL, A REVIEW OF SPACE UTILIZATION OF THE WASHINGTON, D.C., OFFICE OF THE COMMODITY FUTURES TRADING COMMISSION 4 (April 25, 2016), https://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/oig_rdc042516.pdf(hereinafter *OIG D.C. Lease Report*). *See also* U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-434, COMMODITY FUTURES TRADING COMMISSION NEEDS BETTER LEASING GUIDANCE TO IMPROVE COST-EFFECTIVENESS 1-2 (April 2016), https://www.gao.gov/products/GAO-16-434.

[2] *OIG D.C. Lease Report*, *supra* note 1, at 14-15 (noting that "Beginning in 2009, and in each and every year since, the Commission has justified its lease payments for vacant offices not on the basis of its budget, but on the basis of the 'next' year's hoped-for appropriation…As a result, the Commission entered into, expanded, and maintained leases well beyond what is needed for staffing levels supported by appropriated funds.").

[3] *OIG D.C. Lease Report*, *supra* note 1, at 15. *See also* Testimony of Chairman Gary Gensler before the Senate Committee on Appropriations, Subcommittee on Financial Services and General Government (April 28, 2010), https://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-39.

[4] *See* Testimony of Chairman Gary Gensler before the Senate Committee on Appropriations, Subcommittee on Financial Services and General Government (April 28, 2010), https://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-39.

[5] U.S. COMMODITY FUTURES TRADING COMMISSION, SUMMARY OF PERFORMANCE AND FINANCIAL INFORMATION FY 2011 25 (Feb. 2012), https://www.cftc.gov/sites/default/files/idc/groups/public/@aboutcftc/documents/file/2011spfi.pdf.

[6] *Agric., Rural Development, Food and Drug Admin., and Related Agencies Appropriations for 2017 Hearings Before the Subcomm. on Agric., Rural Development, Food and Drug Admin.,*

and Related Agencies, 114th CONG., 58 (Feb. 10, 2016) (hereinafter *2016 House Approp. Testimony*).

[7] *OIG D.C. Lease Report*, *supra* note 1, at 15. *See also* Testimony of Chairman Gary Gensler before the Senate Committee on Appropriations, Subcommittee on Financial Services and General Government (May 4, 2011), https://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-80.

[8] *2016 House Approp. Testimony*, *supra* note 6, at 58.

[9] Some of these terms were obvious deficiencies contained in the original lease signed in 1994 that should have been remedied when the lease was renegotiated.

[10] U.S. GOV'T ACCOUNTABILITY OFF., B-328450, *Commodity Futures Trading Commission—Liabilities Outside of the Government's Control* 1-2 (March 6, 2018),https://www.gao.gov/assets/700/690487.pdf (hereinafter *March 2018 GAO Report*). In order to comply with the Antideficiency Act, the CFTC should have included a fixed, ascertainable limit in these lease clauses that was within its available budget authority. *Id*. at 7.

[11] *Id.* at 3.

[12] *OIG D.C. Lease Report*, *supra* note 1, at 8.

[13] *Id.* at 16.

[14] *2016 House Approp. Testimony*, *supra* note 6, at 2-3. During the hearing, Congressman Aderholt remarked upon the agency's fiscal irresponsibility: "Since Dodd-Frank, the agency's numbers of personnel has increased by 18 percent, while annual leasing costs have increased by a staggering 74 percent, an additional $9.3 million per year in leasing cost. These leases were negotiated based upon funding assumptions rather than on actual appropriations."

[15] *Agric., Rural Development, Food and Drug Admin., and Related Agencies Appropriations for 2015 Hearings Before the Subcomm. on Agric., Rural Development, Food and Drug Admin., and Related Agencies*, 113th CONG., 135 (March 6, 2014).

[16] *Id.* at 207.

[17] Press Release, Chairman Adherholt, Chairman Aderholt Questions CFTC Furloughs (Oct. 24, 2013), https://aderholt.house.gov/media-center/press-releases/chairman-aderholt-questions-cftc-furloughs.

[18] *Id.*

[19] Eric Katz, *Hundreds of Federal Employees Win Union Representation*, GOVERNMENT EXECUTIVE (Nov. 3, 2014), https://www.govexec.com/management/2014/11/hundreds-federal-employees-win-union-representation/98066/. The American Federation of Government Employees (AFGE) represented the New York regional office beginning in the 1970s up until 2017, when New York employees voted to join the National Treasury Employees Union along with the other CFTC offices.

[20] *Agric., Rural Development, Food and Drug Admin., and Related Agencies Appropriations for 2018 Hearings Before the Subcomm. on Agric., Rural Development, Food and Drug Admin., and Related Agencies*, 115th CONG., (June 8, 2017) (hereinafter *2017 House Approp. Testimony*) (Congressman Valadao stating, "Frankly, the previous administration handed you

[Chairman Giancarlo] an agency with a wide assortment of problems that stem from political games being played with the CFTC's budget and employees….I also know that this committee is exhausted with the rumors of furloughs at the agency. Last year during this [labor] negotiation, it was the second time in the last few years that the CFTC has said it would be forced to furlough employees unless it received more money. The first occurred in 2013. Both times, the solution was clearly attainable and furloughs were unnecessary.").

[21] U.S. COMMODITY FUTURES TRADING COMMISSION, AGENCY FINANCIAL REPORT FISCAL YEAR 2015 (Jan. 2015), https://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/2015afr.pdf. Congres s first appropriated the agency $250 million in FY 2015.

[22] *2017 House Approp. Testimony*, *supra* note 19.