



# Legislative Oversight of the CFTC: A Primer

*Presented by:*  
**Step toe**  
STEPTOE & JOHNSON LLP

*May 18, 2017*



# Administrative Items

The webinar will be recorded and posted to the FIA website following the conclusion of the live webinar.

A question and answer period will conclude the presentation.

- Please use the “question” function on your webinar control panel to ask a question to the moderator or speakers. Questions will be answered at the conclusion of the webinar.

# Upcoming L&C Webinars and Events



## **10th Annual International Derivatives Expo**

5-7 June 2017 | The Brewery | London, England



## **Customer Collateral Protections for Listed Derivatives in the US and UK**

8 June 2017 | 10:00 AM – 11:00 AM EDT | Webinar

Learn more and register at [FIA.org/lc](https://www.fia.org/lc)



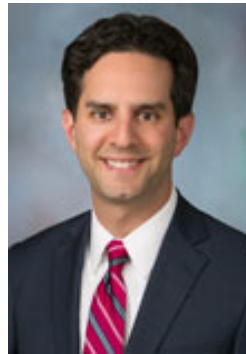
# Today's Speakers



**Michael Dunn**  
Senior Policy Advisor  
Former CFTC Acting Chairman



**Micah Green**  
Partner



**Matthew Kulkin**  
Partner



**Darryl Nirenberg**  
Partner



## Agenda

- Review of existing/proposed legislation
- Legislative oversight authority
- “Personnel is Policy”
- Appropriations & budgets



But first...we cannot ignore:

- Legislative environment
- Agency discretion in policymaking
- General timelines for 2017

# Part I: Legislation

## Commodity Exchange Act (“CEA”)

- 7 U.S.C. §1 (P.L. 74-675)
- Enacted in 1936, amends Grain Futures Act of 1922
- Commodity Futures Trading Commission Act of 1974 (P.L. 93-463) created the CFTC
- Governing framework for the regulation of the trading of commodity futures and swaps by the CFTC
- Corresponding regulations promulgated in Title 17 Chapter I of the Code of Federal Regulations (“CFR”)

# Legislation (cont'd)

- Notable recent amendments to CEA:
  - Commodity Futures Modernization Act of 2000 (“CFMA”)
  - Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)
- 23 bills in the 114th Congress sought to amend CEA



# Commodity Futures Modernization Act of 2000 (“CFMA”)

- Enacted December 2000
- Public Law 106-554
- Significant reforms to the CEA with respect to issues related to over-the-counter (“OTC”) derivatives, futures exchange regulation, contracts, prohibited transactions, and boards of trade
  - For example, excluded from regulation certain swaps and other OTC derivatives

## Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)

- Public Law 111 – 203
- Enacted in July 2010 in response to the 2008 financial crisis
- Comprehensive financial services reform legislation
- Title VII: Guiding regulatory principles with respect to the swap market –
  - (1) reporting of swaps
  - (2) regulated trading of swaps
  - (3) centralized clearing of swaps

# Proposals Related to the CEA in this Congress

## H.R. 238 – *Commodity End-User Relief Act*

- Introduced by House Ag Committee Chairman Michael Conaway (R-TX)
- Reauthorizes CFTC through FY 2021
- Amends the CEA:
  - exempts certain entities from certain clearing requirements
  - revises certain swap dealer registration requirements
  - certain CFTC cost-benefit considerations
  - CFTC internal structural organization/workflow provisions
  - futures commission merchant procedural and reporting requirements
  - source code for algorithmic trading
  - position limits
- Passed by US House of Representatives 239 - 182 on January 12, 2017

## Proposals Related to the CEA in this Congress

### *HR 10 – The Financial CHOICE Act*

- Introduced by House Financial Services Committee Chairman Jeb Hensarling (R-TX)
- Primarily focused on consumer finance, systemic risk, securities and capital markets (and SEC regulation),
- Impacts the CFTC's
  - ability to set financial standards as a part of any foreign or multinational entity
  - treatment of affiliate swaps
  - economic cost-benefit analysis, regulatory impact analysis and other measures to reduce regulatory burdens
- Passed by the House Financial Services Committee 34 – 26 on May 4, 2017. Joint referral to House Agriculture Committee.

## Discussion: Congressional action vs CFTC action

- Congress: power to legislate
- CFTC: power to interpret
  - Regulations
  - No-action letters
  - Interpretive guidance
  - Enforcement

# 2017 Policy Agenda

- Swap execution facilities
  - Algorithmic trading
  - Swap data standards
    - CCP risk
    - Position limits
    - Cybersecurity
- Distributed ledger/cryptocurrency
  - Capital, leverage
  - Uncleared swap margin
    - Volcker Rule
- Swap dealer business conduct standards

## Part II: Oversight

Congress conducts oversight of the CFTC primarily through the following mechanisms:

- Hearings
- Letters
- Reports

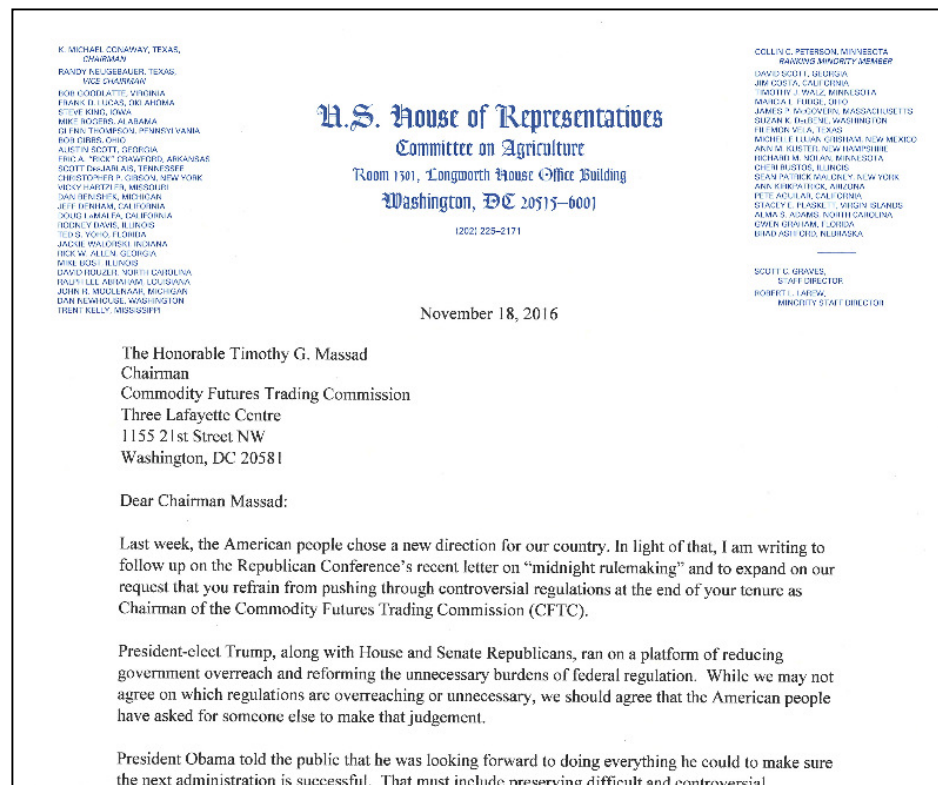
# Hearings

- *Oversight* – Congressional review of an agency’s activities
  - *e.g.*, House Agriculture Committee: “CFTC Reauthorization” (Mar. 24, 2015)
- *Subject specific* – related to an event or initiative
  - *e.g.*, House Agriculture Committee: “To review the G-20 swap data reporting goals” (Feb. 25, 2016)
- *Precede legislation* – used to gather information and perspectives from potentially impacted groups
  - *e.g.*, House Financial Services Committee: “Making a Financial Choice: More Capital or More Government Control?” (July 12, 2016)



# Letters

- Oversight
- Subject specific
- Precede legislation



# Reports

- *Keep legislators apprised of progress*
- *Deterrent to agency overaction*
- *Two primary methods*
  - *Prospective/analytical (please evaluate the impact of X and report back finding)*
  - *Progress/update (please inform the committee, on an annual basis, of the threat of Y impacting the financial system)*
- *Difference between reports to Congress and reports by Congress*

## Part III: Nominations

### Article II, Section 2 of the Constitution:

*“He shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law”*

## Part III: Nominations

- *Typical process:*
  - *Vetting*
  - *White House nomination*
    - *Consultation with minority party's Senate leadership*
  - *Committee confirmation hearing*
  - *Committee discharges nomination*
  - *Senate confirmation*

# Nominations (cont'd)

Trump Administration nominations (*as of May 16*):

- Of the 557 key positions requiring Senate confirmation:
  - 29 confirmed
  - 49 nominated
  - 24 awaiting nomination
  - 455 vacant

Source: Washington Post

## Part IV: Appropriations

- “Regular Order v. Continuing Resolution”
- President Trump’s FY 2018 Proposal
- CEA Reauthorization Level Funding at \$250 million
  - H.R. 239 Commodity End-User Relief Act

# Appropriations (cont'd)

- Understanding the May 2017 Federal budget agreement
- What happens in September?
- Budget reconciliation

# Appropriations (cont'd)

- CFTC Chairman Giancarlo Remarks before the Annual International Futures Industry Conference (Mar. 15, 2017):
  - “A few weeks ago, I launched a comprehensive budget and spending review as a first step prior to engaging with the White House and Congressional appropriators over future agency funding . . . Our budget review has already identified several areas in which the agency can run more efficiently. We are looking for more. Our message is a willingness to do more with what we have. The tighter we run the ship, the greater will be the trust placed in the CFTC by our Congressional overseers and US taxpayers, who are our ultimate shareholders.”



# Questions?

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