II-6.16: A provision of the financial reform bill (Dodd Bill) currently being examined by the United States Congress would empower the Commodities Futures Trading Commission (CFTC) to impose speculative limits on energy futures positions.

Thursday 3 June 2010, by Marie-Anne Frison-Roche, Managing Editor and Director of the RLR

MAIN INFORMATION

Provisions of the financial reform bill (Dodd Bill) currently being examined by the United States Congress would empower the Commodities Futures Trading Commission (CFTC) to implement limits on speculation on energy futures and derivatives, as well as to impose a much stricter declaratory and supervision regime for over-the-counter trades in futures and derivatives in general.

CONTEXT AND SUMMARY

The financial reform bill introduced into the United States Senate by Senator Christopher Dodd and voted by the Senate on May 20, 2010, includes a number of provisions that would substantially overhaul the rules for derivatives and futures trading, and the way that the Commodities Futures Trading Commission (CFTC) regulates trading in energy derivatives and futures.

Some of the particularly salient points of this proposed legislation are:

- Giving the CFTC an explicit legislative mandate to impose its proposed limits on energy futures positions[1];
- Requiring over-the-counter trades made by professional dealers to be cleared by a clearing house;
- Requiring professional dealers in over-the-counter trades to register with the Financial Industry Regulatory Authority's (FINRA) Central Registration Depository (CRD), which is the United States' central licensing and registration system for the U.S. securities industry and its regulators;
- Imposing minimum capital and margin requirements for swap dealers;
- Over-the-counter trading not cleared through a clearinghouse would be subject to 'substantially higher' capital requirements, in order to minimize the risk involved in such trades.

Implementation of these rules would be assigned to the CFTC. CFTC Chairman Gary Gensler has indicated to Congress that the agency he directs would require a $45 million budget increase, and 119 new employees in order to deal with the proposed increase in its regulatory responsibilities.[2]

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[1] *Editors note : cf. Regulatory Law Review, 2010,* II-5.1
[2] *Testimony of Chairman Gary Gensler before the Senate Committee on Appropriations, Subcommittee on Financial Services and General Government,* April 28, 2010, available at http://www.cftc.gov/ucm/groups/publ...

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BRIEF COMMENTARY

The legislative propositions put forth by the Senate's version of the financial reform bill are indicative of the growing realization in the United States following the recent financial crisis that regulation—in that it provides independent and expert management of a sector, from within, by distancing political machinations from crucial issues of risk management—needs to be reformed and reinforced, both in its scope and in its independence, in order to prevent the apparition of a renewed crisis and to limit the amount of systemic risk still present on financial markets.

Just as Germany has recently taken radical action to limit uncovered short selling (Regulatory Law Review, 2010, II-6.15), the United States is realizing the necessity of subjecting financial markets to stronger capital requirements, limiting speculation, and imposing structures such as clearinghouses and registration on over-the-counter trading.

Once again, independent, strong, and effective regulation seems to be the global answer to persistent concerns of systemic risk and speculation on financial markets around the world.