



### **GENSLER TELLS DERIVATIVES LAWYERS THAT EXCHANGE-TRADED DERIVATIVES WILL LOWER TRANSACTION COSTS**

In a speech to the American Bar Association’s Committee on Derivatives and Futures Law in Florida, last week, Commodity Futures Trading Commission (CFTC) Chairman Gary Gensler said that exchange-traded derivatives will lower transaction costs to commercial entities:

“The more transparent a marketplace is, the more liquid it is. The more transparent a marketplace is, the more competitive it is. And the more transparent a marketplace is, the lower the costs for hedgers, borrowers and, ultimately, their customers. The best way to bring transparency is through regulated trading facilities and exchanges. Such centralized trading venues not only bring greater transparency, but increase competition in the markets by encouraging market-making and the provision of liquidity by a greater number of participants. A greater number of market makers brings better pricing and lowers risk to the system.”

Gensler took issue with the arguments put forth by many in his audience that additional regulation would hurt Wall Street as well as the public. Strongly disagreeing, Gensler noted that :

“Wall Street’s interests do not necessarily reflect the broader interests of the American public. In maximizing their profits, banks are fulfilling their fiduciary duty to shareholders, but they do not owe a similar duty to taxpayers. Many of these banks have opposed essential components of reform. Now, I know that some of these banks may be represented by some of the lawyers in this room. On their behalf, some of you may have argued that particular regulations would hurt not just Wall Street, but the American public. I’ve heard many of these arguments, both over the last year and during earlier debates. While they are often well-articulated, I, for one, come to different conclusions. What’s good for Wall Street is often not what’s good for the American public. Thus, as we vigorously advocate for transparency and regulation in the derivatives markets, these positions may be at odds with what some of you advocate on behalf of your clients. But, as the saying goes, where we stand on a matter is often influenced by where we sit.”

Gensler said statistics released in December by the International Bank for Settlements strengthened the administration’s argument that derivative transactions involving end-users should not be exempt from trading and clearing requirements. He also said, “One

Wall Street CEO testified to the Financial Crisis Inquiry Commission ... that he believed that 75-80 percent of transactions are standardized enough to be cleared. I have heard other estimates that two-thirds to three-quarters of the markets are standard. Whatever the proportion of the market, we must bring all standardized products into trading platforms and regulated clearinghouses.”

The administration will continue to fight to bring derivatives into regulated trading facilities and exchanges to increase transparency, Gensler added. “I understand that such a transparency requirement is one of the things that Wall Street likes the least. It is only dealers that benefit from keeping standardized trades off of transparent trading venues because dealers can internalize the transaction information,” he said. “The banks and dealers profit from access to trading information while businesses, municipalities, consumers and others pay the costs.”

Gensler said that if Congress determines that commercial end-users should be exempt from a clearing requirement, the exemptions should apply only to non-financial entities hedging their risks and not include an exemption from transparency.

To answer the concerns of commercial end-users have complained that clearing would require them to tie up capital to fulfill margin requirements, Gensler said the trading requirement can be separated from the clearing requirement and that modern technology can make this separation easier.

### **PETERSON BELIVES PRESIDENT OBAMA’S PROPOSED THREE YEAR BUDGET FREEZE WOULD HAVE NO EFFECT ON AGRICULTURE**

House Agriculture Committee Chairman Collin Peterson (D-MN) noted that he did not believe that the three-year Budget freeze, President Obama is expected to include in his Budget proposal, would have any effect on agricultural commodity programs. “We expected this,” said Peterson. “At one time, they were talking about taking a 5 percent cut” at the USDA. “A freeze is better than that,” he said.

The president’s proposed freeze is expected to be a major feature of the budget he’ll send to Congress this week and is meant to demonstrate his commitment to cutting deficits. “It only affects discretionary spending,” Peterson said, explaining why news of the possible freeze didn’t overly alarm him. “The farm bill is mandatory spending, driven by a formula, not by appropriation. What’s put in the law drives what the spending is, and direct payments, for example, are pretty much fixed,” Peterson said.

## **REFERENDUM APPROVES ESTABLISHING KANSAS, VIRGINIA, & FLORIDA AS COTTON PRODUCING STATES**

The U.S. Department of Agriculture announced the passage of a Cotton Research and Promotion Program referendum conducted October 13 - November 10, 2009.

The two amendments, approved by a 91 percent margin, would:

- Revise the definition of “cotton-producing state.”
- Revise the definition of “cotton-producing region” to conform with the change of "cotton-producing state."

### **Background**

The Agricultural Marketing Service (AMS) proposed to amend the Order to implement section 14202 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) that amended the Cotton Research and Promotion Act (Act). The 2008 Farm Bill provided that the states of Kansas, Virginia, and Florida be separate states in the definition of “cotton-producing state.” According to the Act, a referendum among cotton producers and importers was required to implement, amend, continue, or when appropriate, to suspend, or terminate the Order or any of its provisions. In order to be eligible to vote, a producer or importer must have produced or imported Upland cotton during the representative period of January 1 through December 31, 2008.

Larkin Martin, an Alabama producer and Chairman of the Cotton Board said:

“One of the steps implementing the results of the referendum is for the USDA to certify any interested organizations as certified producer organizations (CPOs) from each of the new cotton-producing states. Once those new CPOs are in place, they will then nominate members and alternates to the Cotton Board to represent those newly recognized states. Those nominees will go through the same process for nomination and approval by the Secretary of Agriculture as all other Cotton Board members and alternates.”

Overall board representation on the Cotton Board is reviewed and determined annually by the USDA. To make that determination, the USDA uses volume thresholds for categories of assessed goods. The prior five-year average domestic production by state, as determined by NASS, is used to determine the producer representation for a cotton-producing state. Importer representation is determined by the prior five-year average collections on all qualifying U.S. imports and converted to cotton-bale equivalents. Volume thresholds for representation were established in the enabling legislation.

A notice of the results of the referendum will soon be published in the Federal Register. The amendments will become effective after a final rule is issued in the Federal Register. For more information, contact Shethir M. Riva, Chief, Research and Promotion Staff,

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## **JOHANN'S GATHERS SUPPORT FOR PRESIDENT'S TRADE PLEDGE**

Former Secretary of Agriculture, Senator Mike Johanns (R-NE), forged a bipartisan effort in support of pending trade agreements. Keying off President Obama's call for increased trade made in his State of the Union address, Johanns and 17 cosigners, including Senate Agriculture Committee Chairwoman Blanche Lincoln (D-AR), sent a letter to President Obama expressing their commitment to help him meet his goals of doubling American exports over the next five years and ratifying pending trade agreements with Colombia, Panama, and South Korea.

"I was very pleased to hear President Obama state his support for increasing exports and expanding trade during the State of the Union address," Johanns said. "With unemployment at 10 percent, we should be pursuing every possible avenue to promote good opportunities for job growth and business investment. Our businesses, farmers, and ranchers produce the highest quality products in the world and deserve an opportunity to compete on a level playing field."

- **Colombia:** The United States has spent more than \$2.5 billion in tariffs since the agreement was signed on November 22, 2006 that otherwise would have been eliminated with a Colombian trade agreement. (Latin American Trade Coalition, 1/29/10)
  - A study by the U.S. International Trade Commission (USITC) estimates a Colombian trade agreement would increase U.S. exports by \$1.1 billion annually.
  - More than 90 percent of Colombia's exports to the U.S. enter duty-free, while U.S. exports to Colombia face tariffs as high as 35 percent.
- **South Korea:** USITC projects reducing Korean tariffs would increase U.S. exports to Korea by \$10 billion annually.
  - Nearly two-thirds of U.S. agricultural exports to Korea would become duty-free.
- **Panama:** More than 60 percent of U.S. agricultural exports would become duty-free.
  - The U.S.-Panama agreement would resolve regulatory and trade barriers and give U.S. companies increased access to Panamanian markets.