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CFTC & SEC heads discuss possible merger & seek more funds to fight market fraud

By Jon H. Harsch

In a two hour Senate Appropriations subcommittee hearing Tuesday, the heads of the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) left open the possibility that the two federal financial regulatory agencies could be merged. Answering Senators' questions, SEC Chair Mary Schapiro was more open to the idea than CFTC Chair Gary Gensler.

Schapiro said "My personal view is that there is a logic and an efficiency that can be achieved through the merger of the two agencies. But short of that, I also think that the two agencies can do a better job of working together to ensure the protection of investors." Clearly aware of reports that the White House will outline its plans for financial regulatory reforms next week, Gensler told senators that "A merger for merger's sake is not a good idea. . . If the president wanted to merge these agencies, we would have to make sure the CFTC's root mission is protected." He may have more to say when he's questioned in a Senate Agriculture Committee hearing Thursday on "Regulatory Reform and the Derivatives Markets."

With or without a merger, Gensler and Schapiro confirmed that they already have taken steps to work together on regulating the largely unregulated over-the-counter derivatives markets. Gensler commented that he supports proposed legislation that would regulate these markets which have been widely blamed for triggering the current global recession.

Supporting the administration's May 13th proposal to require most derivatives to be traded through regulated clearinghouses, Gensler said that "A standard product must go through a central clearinghouse and we need to improve transparency by promoting regulated exchanges for derivatives."

In his testimony, Gensler noted that he has "only served as CFTC Chairman for six calendar days" but already has "full knowledge of the failures of our financial regulatory system, failures that affected all Americans and failures that we must ensure never occur again."

Gensler promised that he will "use every tool and authority available to protect the American people from fraud, manipulation and excessive speculation." But he then listed the many market supervision and enforcement actions that the CFTC has been unable to carry out due to CFTC staffing down from its peak of 567 employees ten years ago to just some 500 currently, with only 122 employees in enforcement today, the lowest level since 1984.

Gensler warned that "The regulations we enact to protect the American people are meaningless if we do not have the resources to enforce them. . . Insufficient resources in the enforcement division force it to be too selective in the matters it investigates." Calling the CFTC "an underfunded agency," he said the President's budget proposal would increase CFTC funding from $146 million for FY 2009 to $160.6 million for FY 2010, enabling him to hire another 38 employees. He urged the Appropriations Committee to authorize another $17.1 million to bring the FY 2010 level to $177.7 million. He said additional funding is needed to provide for "broad regulatory reform." Specifically, he said that "we must urgently move to regulate the over-the-counter derivatives market and address excessive speculation through aggregated position limits."

SEC Chair Schapiro also requested more money, to increase funding from $960 million for FY 2009 to $1 billion for FY 2010. She explained the extra funding "would permit the SEC to fully fund an additional 50 staff positions over 2008 levels, enhance our ability to uncover and prosecute fraud, and begin to build desperately needed technology."

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