



10-16-09

CFTC & SEC issue joint report on regulatory harmonization

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Merging the Commodity Futures Trading Commission (CFTC) with the Securities & Exchange Commission (SEC) was one issue raised in this week's markup of legislation to impose tough regulatory controls over the \$500-trillion OTC derivatives market. House Financial Services Committee Chair Barney Frank (D-MA) dismissed the merger proposal as "impossible politically," explaining that "it would be premature and cause difficulty with the Agriculture Committee." But he added that "I believe if we were starting from scratch, we wouldn't have two separate agencies."

To resolve the issue for the moment, the Financial Services Committee added language to the committee's derivatives bill passed on Thursday that mandates a study of the "feasibility and advisability" of a CFTC/SEC merger.

A joint CFTC/SEC report released Oct. 16th spells out clearly why at least "harmonization" of the two agencies' regulations is needed: "the rapid development of the market in complex financial instruments known as derivatives, large parts of which neither agency has had the authority to regulate, has created significant regulatory gaps." The report lists 20 action steps to close the gaps.

Among the report's recommendations which sound like steps toward an eventual merger:

- "The Report recommends that the agencies create a Joint Agency Enforcement Task Force to harness synergies from shared market surveillance data, improve market oversight, enhance enforcement, and relieve duplicative regulatory burdens."
- "The Report recommends to develop a program for the regular sharing of staff through detail assignments. . . Implementing a program where staff engages in a rotation between the two agencies will allow for greater collaboration and coordination between the two agencies."
- "The Report recommends that the agencies develop a Joint Information Technology Task Force to pursue linking information on CFTC and SEC regulated persons made available to the public and such other information as the Commissions find jointly useful and appropriate in the public interest. Linking

publicly-filed information and such other information as the Commissions jointly find useful and appropriate in the public interest residing with the two agencies would promote transparency and facilitate the use and understanding of such information by providing a comprehensive, consolidated database on persons and entities regulated by the SEC and the CFTC.”

The joint report comes in response to the White House’s White Paper on Financial Regulatory Reform issued in June which called on the CFTC and SEC to “make recommendations to Congress for changes to statutes and regulations that would harmonize regulation of futures and securities.”

“In this report, our agencies rose above the usual challenges and came together to offer meaningful recommendations to improve our oversight of the financial markets,” CFTC Chairman Gary Gensler said. “This is just one important step. Now we must continue to work together to implement these recommendations and work with Congress to secure necessary changes in statute to best protect the American public.”

“This report is another step forward in our effort to reform the regulatory landscape and ensure greater harmonization between our agencies,” SEC Chairman Mary Schapiro said. “I believe these recommendations will help to fill regulatory gaps, eliminate inconsistent oversight, and promote greater collaboration.”

Over the past several months, the CFTC and the SEC have engaged in extensive discussions, including their first-ever joint public meetings last month. The meetings solicited views from members of the investor community, academics, industry experts and market participants on the current regulatory scheme, harmonization of the agencies’ rules and recommendations for changes to statutes and regulations. The agencies also solicited written comments to further assist their deliberations.

Access the full 96-page “Joint Report of the SEC and the CFTC on Harmonization of Regulation” at:

<http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/opacftc-secfinaljointreport101.pdf>