

January 26, 2009

The Honorable Carl Levin  
United States Senator  
269 Russell Office Building  
Washington, DC 20510

Dear Senator Levin,

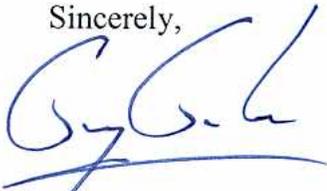
I am writing to respond to your series of questions regarding my nomination to be Chairman the Commodity Futures Trading Commission. Please find my responses attached.

I appreciated the opportunity to meet with you on January 14, 2009 to discuss the clear needs to strengthen the role of the CFTC. In addition I would like to thank you for your questions to further clarify my views on these important issues. I believe we are at a transformational time that requires bold leadership to strengthen our regulatory system.

As Chairman of the Permanent Subcommittee on Investigations of the Senate Committee on Homeland Security and Government Affairs, I look forward to working with you should I be confirmed by the United States Senate.

Should you have further questions, please do not hesitate to contact me.

Sincerely,



Gary Gensler

**Questions for CFTC Chairman-Designee Gary Gensler  
From Senator Carl Levin (D-MI)  
January 26, 2009**

- 1. Do you believe that speculation in commodity futures markets -- trading or investing in commodities by persons who do not produce or use the commodity in order to profit from commodity price changes -- can affect the price of commodity futures? Can speculation in futures markets affect the actual cash price of a commodity?**

I believe that speculative trading or investing by persons who do not produce or use a commodity in order to profit from commodity price changes can affect prices for commodity futures as well as for the underlying commodities. I think we have seen this demonstrated in the commodity futures markets during the past several years.

If confirmed by the Senate, I look forward to working with Congress and my fellow CFTC Commissioners to take a fresh look at the role of speculation in commodity futures markets.

- 2. Section 4a of the Commodity Exchange Act states: “Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets or derivatives transaction execution facilities causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. . . .” Section 4a directs the CFTC to establish position limits to prevent such burdens. Do you believe that excessive speculation in commodity futures traded on CFTC-regulated exchanges can cause “sudden or unreasonable fluctuations or unwarranted changes” in commodity prices?**

I believe that excessive speculation in commodity futures can cause sudden or unreasonable fluctuations or unwarranted changes in commodity prices. If confirmed by the Senate, I will ensure that the CFTC fulfills its statutory mission to guard against excessive speculation.

- 3. The CFTC has used the authority under section 4a to establish position limits to prevent traders from acquiring large positions that could be used to manipulate the price of commodities traded on futures exchanges and to prevent price distortions at contract expiration. It has generally not used this authority to establish position limits to prevent levels of speculation that, absent proof of manipulation, may nonetheless significantly affect commodity prices. Do you believe that the CFTC should establish position limits to ensure that excessive levels of speculation, even in the absence of manipulation, are not causing**

**“sudden or unreasonable fluctuations or unwarranted changes” in the prices of commodities?**

Guarding against excessive speculation and market manipulation are two core functions of the CFTC’s oversight responsibility. I believe that the CFTC may exercise its authority at its discretion to establish position limits over all physical commodities, including agricultural, metals and energy commodities. If confirmed by the Senate, I will ensure that all available resources and authorities are deployed to protect investors in the commodities markets.

For example, I believe there is a need to analyze all outstanding exemptions to position limits that have been granted previously to non-commercial hedgers (‘hedge exemptions’). If confirmed by the Senate, I will ask the CFTC staff to undertake a review of all outstanding hedge exemptions, to consider the appropriateness of those exemptions, and to evaluate potential practices for instituting regular review and increased reporting by exemption-holders

**4. Do you believe that trading in commodity markets not regulated by the CFTC, such as over-the-counter (OTC) markets or foreign exchanges, can affect the prices of commodities in markets or exchanges regulated by the CFTC?**

I believe that trading in over-the-counter derivatives markets or on foreign futures exchanges can and does affect the cash prices of commodities in the spot markets and the prices of commodity futures traded on regulated exchanges.

If confirmed by the Senate, I look forward to working with Congress and my fellow Commissioners in considering greater oversight and consistent regulation, where appropriate, for all markets relating to commodities.

**5. Do you support amending the Commodity Exchange Act to provide the CFTC with sufficient authority to regulate commodity swaps and other instruments traded in OTC markets to ensure the integrity and transparency of the price of commodities traded in markets currently regulated by the CFTC?**

I believe that both our financial system and our regulatory structure have failed the American people. To achieve the regulatory reform required by our citizens and the overall system, I believe we must work to ensure for a far more stable and resilient financial system, to better protect market integrity and the price discovery function, and to provide increased protection for consumers, borrowers, and investors. If confirmed by the Senate, I look forward to working with Congress, the Administration and other regulators to create a transparent, open and accountable regulatory oversight structure for the over-the-counter derivatives market.

I believe that we need to bring standardized products into mandated centralized clearinghouses and onto exchanges, establish a regulatory framework for derivatives dealers and formulate appropriate oversight for credit default swaps.

Bringing standardized derivatives products into mandated centralized clearinghouses would ensure the discipline of daily valuation of transactions through mark to market accounting. This measure would enhance the safety and soundness of the system by requiring timely posting of collateral. Clearinghouses also would give regulators a direct window into dealers' total aggregate trading positions by underlying commodities. Likewise, bringing standardized derivatives products onto exchanges would promote transparency, increase market integrity, and enhance the price discovery function.

If confirmed by the Senate, I look forward to working with Congress as well to consider appropriate regulations for customized bilateral over-the-counter derivatives.

One of the significant lessons of the financial crisis is that unregulated derivative dealers, many of which were affiliates of insurance companies or broker dealers, threatened and in some cases destroyed their parent or affiliate, causing global shockwaves. This was the case in AIG's failure, for example.

While serving at the Treasury Department as the Under Secretary for Domestic Finance in the late 1990's, I advocated for regulation of the then unregulated derivatives dealers affiliated with brokerage houses. I feel even more strongly that this is the right course of action today. If confirmed by the Senate, I look forward to working with Congress, my fellow Commissioners and other regulators to consider appropriate capital requirements, business conduct standards, and other rules for derivatives dealers.

Finally, if confirmed by the Senate, I look forward to working with Congress on considering possible further regulation of credit default swaps. Given the unique nature and close relationship of credit default swaps to corporate bonds and other securities, the CFTC, the SEC and other regulators, working in tandem, need to consider possible additional regulations to protect the integrity of the markets and investors.

**6. Do you support providing the CFTC with authority to require the reporting of large trades in OTC markets in order to prevent manipulation, price distortion, or excessive speculation in CFTC-regulated futures markets?**

As I stated in question 4, I believe trading and pricing in over-the-counter derivatives markets can and does have a direct effect on regulated futures markets. The initiatives I have set forth in question 5 would give the CFTC greater visibility into the over-the-counter derivatives markets if enacted. Furthermore, if confirmed by the Senate, I look forward to working with Congress to consider both the appropriateness and the potential means of extending position limits to certain of these markets.

**7. The 2008 Farm Bill provided the CFTC with authority and directed the CFTC to promulgate rules to regulate commodity contracts traded on electronic trading facilities that the CFTC finds perform a significant price discovery function.**

**a) Do you believe that the trading of commodity contracts on electronic trading facilities like the Intercontinental Exchange (ICE) can affect the price of similar contracts traded on CFTC-regulate futures exchanges?**

I believe that trading of “look-alike” contracts on electronic-trading facilities can and does affect the prices of similar contracts traded on regulated futures exchanges.

**b) What priority would you place, if confirmed, on issuing the regulations called for in the Farm Bill for contracts that perform a significant price discovery function?**

If confirmed, I would place a high priority on closing the “Enron Loophole” and promoting uniform standards for contracts that have the same practical pricing effects, as called for in the Farm Bill.

**c) Do you agree that under the 2008 Farm Bill the CFTC has unilateral authority to determine which contracts perform a significant price discovery function and that a formal hearing or rulemaking is not required to make this determination?**

The statute as enacted is clear that the CFTC has unilateral authority to determine whether an agreement, contract, or transaction performs a significant price discovery function.

**8. What is your view on whether and how the growth of commodity index funds over the last 5 years has affected commodity prices?**

I believe that rapid growth in commodity index funds was a contributing factor to a bubble in commodities prices that peaked in mid-2008. The expanding number of hedge funds and other investors who were increasing asset allocations to commodities within their portfolios also put upward pressure on prices. Notably, though, no reliable data about the size or effect of these two influential investor groups has been readily accessible to market participants.

If confirmed by the Senate, I look forward to working with my fellow Commissioners and the Congress to increase transparency around these commodity index funds and investors. The CFTC currently provides weekly “Commitments of Traders” reports (COT’s), which show large position interests in certain commodities subject to CFTC oversight. These published reports are segmented into “commercial” and “non-commercial” positions and in some cases, nearly 90% of reported open interests are held by non-commercial traders. I believe we could promote greater transparency and market integrity by providing a further breakdown of non-commercial open interests.

**9. If confirmed, would you seek to improve the CFTC's data and public reporting of data to improve the understanding of how commodity index funds affect commodity markets? What improvements in data would you like to see?**

As I have stated above in my answer to question 8, if confirmed by the Senate, I plan to reevaluate the CFTC's data collection and production capacity, particularly as it relates to the effect of commodity index funds and non-commercial traders on the broader commodities markets. The CFTC is likely to require further resources and additional technology to accomplish this goal.

**10. If confirmed, how would you strengthen and improve the CFTC's market surveillance and oversight?**

Providing market surveillance and oversight is one of the CFTC's core functions. As outlined in questions 5 and 6, if confirmed by the Senate, I look forward to working with Congress to address the regulation of over-the-counter derivatives and excessive speculation in commodities markets. I believe the CFTC will require increased resources to carry out these new initiatives, which will promote market integrity and increase transparency, thereby improving the surveillance and oversight functions. If confirmed by the Senate, I look forward to working with the Congress to secure the much-needed additional resources to undertake these reforms and strengthen this area.

**11. What is your view of the CFTC's enforcement capabilities? How would you strengthen and improve the CFTC's enforcement capabilities and activities?**

A highly functioning enforcement capability is critical to an effective CFTC. The CFTC's enforcement division has brought some notable recent actions with limited current resources. If confirmed by the Senate, I will request more attorneys and investigators to detect and prosecute fraud and manipulation in these markets and to enforce possible new regulations regarding over-the-counter derivatives and excessive speculation in the commodities markets.

**12. Do you agree that the CFTC's budgetary and staff resources have not kept pace with the growth in commodity markets over the past decade? Do you agree that the CFTC is currently underfunded? If confirmed, how would you seek to improve the CFTC's budgetary and staff resources?**

The CFTC is underfunded in terms of both budget and staff. Today, the staff numbers approximately 490, a decline of nearly 20% from earlier in the decade. During this time, markets have grown exponentially, and the issues the CFTC faces have increased in complexity. I am also concerned that the CFTC lacks the necessary technology to monitor today's markets effectively.

If Congress acts to expand the CFTC's mission and authority to better regulate over-the-counter derivatives markets, address excessive speculation, and increase investor protection, significant additional resources will be required.

**13. For many years, the President's budget has recommended that Congress impose a user fee on commodity market participants to fund part of the CFTC's activities. The CFTC is currently the only major U.S. financial regulator that is not at least partially funded through user fees. Do you support the imposition of user fees to fund CFTC activities?**

I believe the critical issue is to find adequate resources to support the important work that lies ahead for this Commission. The CFTC is significantly underfunded to simply meet its current mandates. While I have not made an independent determination about user funding, I intend to work with Congress and the Office of Management and Budget to find the most effective ways to secure the resources necessary for the CFTC to function fully.

**14. Currently, the CFTC permits certain foreign exchanges, such as ICE Futures and the Dubai Mercantile Exchange, to install trading terminals in the United States so as to permit traders located in the United States to trade various U.S. energy commodities on these foreign exchanges as well as on U.S. exchanges. In 2008, the CFTC determined that in order for ICE Futures to continue to operate its trading terminals in the United States it would require ICE Futures to impose comparable position limits to those of the NYMEX for commodities traded on both exchanges. ICE Futures and the U.K. Financial Services Authority have agreed to these conditions.**

**a) Do you support the CFTC's actions in 2008 to ensure that foreign exchanges that are operating in the United States impose position limits that are comparable to those of the U.S. exchanges that trade the same commodities?**

I support the CFTC's 2008 actions to close the "London Loophole" and ensure that foreign futures exchanges with permanent trading terminals in the U.S. comply with the position limitations applied to U.S. exchanges.

**b) If confirmed, would you impose similar conditions on the Dubai Mercantile Exchange and its regulatory authority, if it has not already agreed to them?**

I believe any foreign futures exchanges that have terminals in the United States to which our investors have access and whose contracts are based on the same underlying commodities should have consistent regulation applied, including position limits.

**c) Would you support legislation to codify the CFTC's authority to require such comparable position limits and reporting requirements in order to ensure that all foreign exchanges that seek to operate in the United States and trade U.S. commodities are subject to comparable requirements?**

If confirmed by the Senate, I look forward to working with Congress on legislation to codify the CFTC's authority to promulgate regulations regarding look-alike contracts trading on foreign futures exchanges that affect U.S. investors.

- d) Do you believe the CFTC currently has enforcement authority over traders in the United States who are trading on a foreign exchange through foreign terminals located in the United States if those trades affect the prices of commodities in the United States?**

I believe that the CFTC has enforcement authority over traders in the U.S. who are trading on a foreign exchange through foreign terminals located in the U.S. when and if those trades affect the prices of U.S. commodities. If confirmed by the Senate, I would work aggressively with the CFTC's legal staff to ensure that U.S. interests are protected, and I would not hesitate to come back to Congress and ask for further enforcement authorization if necessary.

**15. It has been reported in the press that during the Clinton Administration you supported efforts to restrict the CFTC's jurisdiction over various types of swaps and other derivatives. In 2000, Congress enacted the Commodity Futures Modernization Act (CFMA) which restricted both the CFTC's and SEC's authority to regulate commodity and financial derivatives.**

- a) What were your job titles and positions from 1998-2000?**

I was Assistant Secretary of Financial Markets at the Treasury Department from September of 1997 through April 1999; thereafter through the end of the administration I was Under Secretary for Domestic Finance.

- b) Please describe your role, if any, in the efforts by the SEC, Department of Treasury, and Federal Reserve to oppose the CFTC's potential assertion of regulatory authority over swaps and derivatives in 1998.**

I was not involved in these matters, which occurred primarily during the spring and summer of 1998. This was during my first year at the Treasury Department and I had been advised by Treasury Department Counsel that I was recused from these particular matters since they might relate directly to my former employer.

- c) Please describe your role during the negotiations over the CFMA, including over provisions in the CFMA to limit SEC and CFTC authority to regulate swaps, including interest rate, currency, equity, credit default, and commodity swaps. Please also include any role you played during the negotiation to limit state authority to regulate these swaps.**

The drafting and passing of the CFMA legislation was a lengthy and complex process, involving at least four government agencies including the Federal Reserve, the SEC, the CFTC and the Treasury Department, as well as hearings in front of at least five Congressional Committees. As I was no longer subject to the restrictions of recusal in

2000, I was a member of a team that worked with and advised then-Treasury Secretary Lawrence Summers on Treasury's positions. I do not recall participating in any negotiations over state regulatory authority.

**16. In 1998, former SEC Chairman Arthur Levitt, Treasury Secretary Lawrence Summers, and Federal Reserve Chairman Alan Greenspan all opposed the CFTC's attempts to examine the OTC swaps market, and then supported the 2000 statutory restrictions on the SEC's and CFTC's authority over swaps in the CFMA. Former Chairman Levitt recently stated that he now regrets the position he took during those years: "The market was too large, too explosive in growth to merely allow pure market forces to suffice as self-regulatory mechanisms. I have some regrets about it, clearly." In October 2008, Mr. Levitt wrote: "Our nation's financial markets are in the midst of their darkest hour in 76 years. We are in this situation because of an adherence to a deregulatory approach to the explosive growth and expansion of America's major financial institutions. Our regulatory system failed to adapt to important, dynamic and potentially lethal new financial instruments as the storm clouds gathered."**

- a) Do you agree with former Chairman Levitt's statement that our regulatory system has failed to adapt to the development of new financial instruments and that the positions taken in 1998-2000 to deregulate these markets was, in retrospect, a mistake? If so, how would you correct this deficiency?**
- b) Would you support repealing the statutory prohibitions in the CFMA on federal regulation of swaps? If so, should these swaps be regulated as commodities or securities?**

Response to a) and b):

I believe that both our financial system and our regulatory structure failed the American people. There were many elements that contributed to these failures. Certainly one of these was regulators' inability to adapt to new financial instruments and technologies.

It is important now to move swiftly and intelligently to repair the system. If confirmed by the Senate, I look forward to bringing my experience in the Executive Branch, in the Legislative Branch as a senior advisor to Senator Sarbanes, in the private sector, and as an investor advocate, to help bring about far-reaching regulatory reform.

While I believe markets are central to innovation and growth, I have always advocated for sensible regulation. Well-designed financial rules with strong enforcement mechanisms are critical to protecting homeowners, investors, farmers and the integrity of our markets and economy. I believe we must create a more stable and resilient financial system, ensure market integrity by promoting transparency and accountability, and increase protection for consumers, borrowers, and investors.

As outlined in questions 5 and 6, if confirmed by the Senate, I look forward to working with Congress to address the regulation of over-the-counter derivatives and excessive

speculation in commodities markets. With respect to over-the-counter derivatives, I look forward to working to bring standardized products into mandatory centralized clearinghouses and onto exchanges, establish a regulatory framework for derivatives dealers, and consider possible further regulation for credit default swaps.

**17. Former Federal Reserve Chairman Alan Greenspan testified in October that he, too, now believes that the conceptual framework underlying the deregulation of swaps in the CFMA was a mistake. Mr. Greenspan testified: “I made a mistake in presuming that the self-interests of organizations, specifically banks and others, were such as that they were best capable of protecting their own shareholders and their equity in the firms. . . . So the problem here is something which looked to be a very solid edifice and, indeed, a critical pillar to market competition and free markets did break down.”**

- a) Do you agree with Mr. Greenspan’s recent statements that the financial collapse of 2008 has demonstrated the errors in the assumptions underlying the deregulatory approach in the CFMA? Can we rely on commodity market participants and unfettered free market forces to prevent systemic risks and unreasonable price fluctuations in U.S. commodity markets?**
  
- b) Do you support stronger regulation of U.S. commodity markets to protect market participants and prevent systemic risks and unreasonable price fluctuations, and, if so, how?**

Response to a) and b):

I believe that the American public and our economy benefit from a regulated market system. The recent crisis revealed that market participants have failed at their own risk management and in their obligation to protect their customers, their investors’ money, their shareholders and even their franchises in many cases.

Our regulatory system also failed to protect investors, savers, borrowers, farmers and homeowners. As I mentioned in my previous answer, I believe that we must have additional safeguards in place to protect markets and investors against the risks we have witnessed in the past year. If confirmed by the Senate, I look forward to working with Congress and the Administration to meet the responsibilities that lie before us. To reform the financial system, we must establish a regulatory framework that ensures a strong and stable financial infrastructure, promotes market integrity and the price discovery function, and provides increased protection for consumers, borrowers, and investors.

As I have stated in my previous answers, I support stronger regulation of U.S. commodity markets. If confirmed by the Senate, I look forward to working to bring over-the-counter derivatives into mandatory central clearinghouses and onto exchanges, establish a regulatory structure for derivatives dealers, and consider possible additional regulation for credit default swaps.

**18. What is your view of the proposal to merge the SEC and the CFTC? Would you support or oppose such a merger, prefer to retain the CFTC as a separate independent agency, or prefer some other approach?**

If confirmed by the Senate, my principal goal will be to help reform our regulatory system, which failed to keep so many Americans out of harm's way. I have a longstanding commitment to advocating for investor protection and for progressive reforms. To revitalize our financial system, I believe we must tackle a robust agenda including modifying regulation of mortgage origination and securitization, credit rating agencies, hedge funds, over-the-counter derivatives markets, and capital rules and counterparty risk standards. Additionally, we must improve systemic regulation, increase transparency, and put new protections in place for consumers, borrowers, and investors.

I believe accomplishing these objectives must be the primary consideration in any proposed regulatory reforms. The CFTC performs vital functions and it is critical that all of its mandates are preserved, even as the demands on our regulatory agencies expand. A merger makes sense only if it enhances our ability to carry out the important tasks with which the CFTC is entrusted. Thus, I would not consider a merger simply for merger's sake.

**19. In 2004, Congress enacted legislation imposing a one-year cooling-off period before federal bank examiners could take a job with a bank they oversaw. If confirmed, would you support a similar cooling-off period for commodity regulators?**

If confirmed by the Senate, I would support a similar cooling-off period for commodity regulators.