

**JOINT CFTC-SEC ADVISORY COMMITTEE  
ON EMERGING REGULATORY ISSUES**

**Minutes of February 18, 2011 Meeting**

The Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues (“Advisory Committee”) convened its fourth meeting at 9:39 a.m. on Friday, February 18, 2011 in the DC Conference Center at the Headquarters of the Commodity Futures Trading Commission (“CFTC”), located at Three Lafayette Centre, 1155 21st Street NW, Washington, D.C. The meeting, which was open to the public, was held to provide the Advisory Committee an opportunity to discuss matters relating to its recommendations regarding the market events of May 6, 2010 and other matters relating to the on-going work of the Advisory Committee. The agenda for the meeting included: (i) presentation of the Advisory Committee report and recommendations regarding regulatory responses to the market events of May 6<sup>th</sup>; and (ii) a vote by the Advisory Committee to adopt and submit their recommendations to the CFTC and the Securities and Exchange Commission (“SEC,” and together with the CFTC, collectively, the “Commissions”). The meeting concluded at approximately 11:41 a.m.

**Advisory Committee Members:**

CFTC Chairman Gary Gensler, Advisory Committee Co-Chair; SEC Chairman Mary Schapiro, Advisory Committee Co-Chair; Brooksley Born; Jack Brennan; Robert Engle; Rick Ketchum; Maureen O’Hara; Susan Phillips; David Ruder; Joseph Stiglitz\*

\* Present by telephone

**Co-Designated Federal Officers:**

Timothy Karpoff, Counsel to CFTC Chairman Gensler; James Burns, Counsel to SEC Chairman Schapiro

**Commissioners of the CFTC and SEC in attendance:**

From the CFTC: Commissioner Michael Dunn, Commissioner Jill E. Sommers, Commissioner Bart Chilton,\* Commissioner Scott D. O’Malia

From the SEC: Commissioner Elisse B. Walter\*

\* Present by telephone

**CFTC and SEC Staff in Attendance:**

From the CFTC: Andrei Kirilenko, Senior Financial Economist, Office of the Chief Economist; Steve Sherrod, Acting Director of Market Surveillance, Division of Market Oversight

From the SEC: Robert Cook, Director, Division of Trading and Markets; Gregg Berman, Senior Advisor to the Director, Division of Trading and Markets; David Shillman, Associate Director, Division of Trading and Markets; Dan Gray, Senior Special Counsel, Division of Trading and Markets; David Hsu, Assistant Director, Division of Trading and Markets; Ronesha Butler, Special Counsel, Division of Trading and Markets; Michael Coe, Counsel, Commissioner Aguilar; Gena Lai, Counsel, Commissioner Paredes

## **I. OPENING REMARKS**

Chairman Gensler called the meeting to order and introduced the members of the Advisory Committee. Chairman Schapiro presented opening remarks in which she noted both agencies' efforts to analyze, understand and respond to the market events of May 6<sup>th</sup>. She expressed her interest in hearing the Advisory Committee's views on the effectiveness of the measures put in place since May 6<sup>th</sup> and their perspective on any additional measures that would address the risk of reoccurrence. Chairman Gensler presented opening remarks discussing the manner in which communication and technology will continue to advance and impact the markets and stressing the importance of regulation evolving with the marketplace as it becomes increasingly more electronic. Chairman Gensler noted that he was particularly interested in several topics addressed by the Advisory Committee, including cross-market circuit breakers, pre-trade risk safeguards, and effective testing of risk management controls and supervisory requirements regarding algorithmic trading.

Chairman Gensler thanked the members of the Advisory Committee, the Commissions, and staff for their work related to the events of May 6<sup>th</sup>. CFTC Commissioners Dunn, O'Hara, and Sommers echoed this thanks to the Advisory Committee. Chairman Schapiro offered special thanks to Advisory Committee members Jack Brennan and Rick Ketchum for serving as chairs of the Advisory Committee's two subcommittees. Following opening remarks, Chairman Gensler turned the meeting over to Rick Ketchum and Jack Brennan to present recommendations and the report of the Advisory Committee, "Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010" (the "Report").

## **II. ADVISORY COMMITTEE PRESENTATION OF THE REPORT**

Mr. Ketchum provided an overview of the Report. After which, Mr. Brennan stated that he would provide the recommendations of the Advisory Committee and then there would be general discussion about the issues raised by the Report among the members of the Advisory Committee and Commissioners. Mr. Brennan clarified that the recommendations reflect topical areas of consensus and therefore did not address every issue raised by the work of the Advisory Committee.

### **A. Market Fragility and Volatility Issues**

Mr. Brennan summarized the recommendations of the Advisory Committee to the Commissions in the areas of market fragility and volatility. Mr. Brennan's presentation was followed by a general discussion of the recommendations by Advisory Committee members and members of the Commissions. The ensuing discussion covered issues regarding the challenges of addressing

market uncertainty during volatile periods, coordination between spot and derivatives markets with respect to pause rules, circuit-breakers, and limit up/limit down processes, as well as coordination between the Commissions, consideration of different market participants and how best to apply regulations across markets, the extent to which the pause rules should apply across securities, and questions relating to circuit-breaker thresholds, and the maintenance of liquidity levels on the buy-side to stabilize the markets when the prices move too far.

#### **B. Restrictions on Co-location and Direct Access Issues**

Mr. Brennan summarized the recommendations of the Advisory Committee to the Commissions regarding co-location and direct access. Mr. Brennan's presentation on co-location and direct access was followed by a general discussion of the recommendations by Advisory Committee members and members of the Commissions. The ensuing discussion covered issues regarding specifically defining "disruptive trading activities," accountability regarding "disruptive trading activities," and considerations on possible consequences relating to access.

#### **C. Liquidity Enhancement Issues**

Mr. Brennan summarized the recommendations of the Advisory Committee to the Commissions on ways to incentivize market participants to provide liquidity. Mr. Brennan's presentation on liquidity enhancement issues was followed by a general discussion of the recommendations by Advisory Committee members and members of the Commissions. The ensuing discussion covered issues regarding "trade at" rules, evaluating whether to focus on definitions or incentives to maintain liquidity levels, order cancellations and associated fees, obligations to providing liquidity, and a need to draw a line to define "disruptive trading activities."

Mr. Brennan provided additional recommendations of the Advisory Committee to the Commissions regarding the adoption of information provisions by the Commissions. Mr. Brennan's presentation on information provisions was followed by a general discussion of the recommendations by Advisory Committee members and members of the Commissions. The ensuing discussion covered issues regarding data-gathering, possible mandatory markers on orders based on market behavior, and coordination of audit trails between the Commissions and marketplaces.

#### **D. Additional Comments and Questions**

Chairman Gensler then opened the meeting up for questions from the staffs of both the CFTC and the SEC. Robert Cook, Director of the SEC Division of Trading and Markets, and Andrei Kirilenko, Senior Financial Economist of the CFTC Office of the Chief Economist, asked the Advisory Committee to expound upon and provide examples of the types of information that the Advisory Committee would require as part of their recommendation that the Commission consider creating reporting requirements for measures of liquidity and market imbalance for large market venues. The ensuing discussion covered issues regarding the types of information and data that regulators could gather and release to the market that would increase market transparency and efficiency.

### **III. CLOSING DISCUSSION**

Chairman Schapiro called for a vote of the Advisory Committee to submit the Report to the Commissions. Chairman Schapiro noted that she and Chairman Gensler serve as administrative co-chairs of the Advisory Committee and therefore did not participate in the meetings and the drafting of the Report. Chairman Schapiro stated that both she and Chairman Gensler would abstain from voting.

The Advisory Committee unanimously voted to submit the Report to the Commissions. Following approval of the submission of the Report, Chairman Gensler stated that the Report was publicly available on the websites of the CFTC and SEC and welcomed public comment on the Report or any related Dodd-Frank proposals. The meeting was adjourned at 11:41 p.m.

**CO-CHAIR CERTIFICATION**

I hereby certify the accuracy of this record of the proceedings of the Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues.

Mary L. Schapiro  
Mary L. Schapiro, SEC Chairman  
Advisory Committee Co-Chair

May 17, 2011  
Date

**CO-CHAIR CERTIFICATION**

I hereby certify the accuracy of this record of the proceedings of the Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues.



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Gary Gensler, CFTC Chairman  
Advisory Committee Co-Chair

May 19, 2011  
Date