



SENATE AG SUBCOMMITTEE MARKUP

OVERVIEW

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Today, the Senate Ag Committee held a business meeting to [markup legislation](#) reauthorizing the Commodity Futures Trading Commission (CFTC).

Key Takeaways

- The [Commodity End-User Relief Act](#) passed out of the Senate Agriculture Committee along a party line vote of 11 to 9.
- The Chairman’s mark contained the following three managers amendments that are thus incorporated into the bill language:
 - An amendment striking section 204 of the bill which would have prohibited the Commission from compelled disclosure of certain proprietary information of a CTA or CPO (offered by *Grassley (R-IA)* and *Leahy (D-VT)*);
 - An amendment clarifying an exemption from private rights of action in the context of other CFTC exemptions (*Boozman R-AK*);
 - An amendment to clarify that revenue derived from hedging activity is not “financial activity” for purposes of determining if an entity is “predominately engaged” in financial activity. (Perdue R-GA).
- Senator Stabenow offered an [amendment](#) that would assess a fee for service that would apply to large market users such as exchanges and banks, but not small farmers, ranchers, and end-users. The stated purpose of the amendment was to insure the CFTC has resources needed to execute on the responsibility Congress has given it. Senator Stabenow’s amendment was voted down 10 to 9 along party lines.

Opening Statement and Testimony

[Committee Chairman Pat Roberts \(R-KS\)](#)

- The last time the Committee held a mark up was over 10 years ago and CFTC authority expired 3 years ago. It is time to act to reauthorize the CFTC.
- We must examine who we are and who we need to help—end-users and market participants such as farmers, ranchers, and producers. Providing them with more options for managing risk is a good thing. Producers and farmers must be able to engage in anticipatory hedges to manage risk.
- What brought us here today with the 2008 financial crisis affected everyone including end-users. Yet Dodd-Frank Act (DFA) related regulations came down on the backs of end-users and nothing has been done by the Committee to help them. The Commodity End-User Relief Act helps these people.

[Committee Ranking Member Debbie Stabenow \(D-MI\)](#)

- DFA resulted from the financial crisis. We must insure that the American people do not have to bail out banks and others participating in dark, unregulated markets. Part of DFA requires CFTC to monitor new markets including credit default swap market. This is a market that was previously unregulated and is worth \$300 trillion. So when I hear people rolling back common sense reforms that benefit taxpayers, I have concerns.
- We have two jobs: 1) to protect end users and tax payers; and 2) to make sure the agency has enough resources to handle all the new, important responsibilities. To that end I will offer a fee for service amendment that will not apply to end-users and farmers, but to the big banks and Wall Street. Markets cannot be served in an efficient and timely matter unless the CFTC is properly funded.
- I also believe that bill language that deals with active, technical rule changes at the CFTC is not the right approach. We should let the CFTC do its job with continued congressional oversight and support, and not intervene.

Senator Brown (D-OH)

- I plan to vote no. This bill is about helping Wall Street traders, big energy companies and the like, under the guise of helping farmers. I will support Senator Stabenow's amendment because funding is important.
- I have filed four amendments to address the rollbacks of important Wall Street reforms (*NB*: these amendments were ultimately withdrawn and no vote was taken on them).
- We should be focusing our efforts to protect consumers and true end-users. Also, the CFTC Energy and Environmental Market Advisory Committee should protect true end-users, not Wall Street. I appreciate the effort in the bill, but I will not support it.

Discussion

Roberts: Chairman Roberts offered his "Chairman's Mark" (i.e. the bill) for a vote and then opened the floor for debate on Senator Stabenow's user fee amendment.

Stabenow: My user fee amendment amendment would assess a fee for things like registration and examination. This is similar to what other regulators assess. Market users, not taxpayers, should foot the CFTC's budget.

Boozman (R-AR): I very much oppose Stabenow amendment as I oppose anything that decreases the accountability of the agency to Congress. Furthermore, recent comparisons between the CFTC's budget and its collection through enforcement actions is misguided as it creates a perverse incentive and a bounty mentality. Given the importance of these markets to the greater economy, it is appropriate that taxpayer dollars fund the CFTC and that Congress exercise oversight through the Agriculture Committee and *via* the appropriations process.

Roberts: I must oppose the amendment. While I will fight along side any member to make sure the CFTC is appropriately funded, it is the duty of the Appropriations Committee, not the Agriculture Committee to fund the agency. Furthermore, I have concerns about how the CFTC has handled its lease accounting. User fees, no matter how dressed up, will ultimately roll down to end-users and consumers. Moreover they will cause a liquidity flight to other jurisdictions.

Stabenow: This does not remove Appropriations Committee oversight, it just makes sure we have the opportunity to fully fund the agency. If we are not successful with this amendment, I would urge the appropriators to take another look at funding.

A vote was taken on the Stabenow amendment. It failed along party lines with 9 yes votes and 10 no votes.

Brown: [Offers and withdraws an amendment](#) to strike Section 304 (Swap Dealer *De Minimis*). This provision does not help farmers, it helps big oil and the Koch brothers. This amendment closes the “Koch Brothers loophole.”

Mr. Roberts adjourned the hearing because of a vote on the Senate floor. The Committee reconvened in the Capitol for a vote and the bill passed out of Committee along a party line vote of 11 to 9.