



Today, the Senate Ag Committee met off of the Senate floor to vote on the nominations of Christopher Brummer and Brian Quintenz to become CFTC Commissioners. Both nominees were reported favorably by the Committee (unanimous voice vote) and will be placed on the Senate Executive Calendar for consideration by the full Senate, the timing of which is still unclear.

Background: The vote follows the September 15 Senate Ag Committee hearing on these nominees (for your convenience, the Delta Strategy Group summary of the hearing is provided below). The two were nominated in March, 2016 to fill the two vacant Commissioner positions at the CFTC. Brummer is currently a Georgetown law professor who was nominated to fill the Democratic seat, which remains vacant since the departure of Mark Wetjen. Quintenz is currently a hedge fund manager who was nominated to fill the Republican seat previously held by Scott O'Malia.

Note: The nominees must be confirmed by the full Senate prior to being officially in office. The Senate plans to adjourn mid-day tomorrow until after the elections. There is a limited chance the full Senate confirms the nominees by unanimous consent prior to adjournment, otherwise the only remaining possibility for confirmation this Congress will be in the "lame duck" session beginning after the election (currently scheduled to begin on November 14).

Please let us know if you have any questions.

Best,

Kwon Y. Park



SENATE AG COMMITTEE HEARING

OVERVIEW

For questions please contact [Daniel Austin](#) at (202) 547-3035.

Today, the Senate Ag Committee held a [hearing](#) to consider pending CFTC Commissioner Nominations of Dr. Christopher Brummer (D) and Brian Quintenz (R).

Key Takeaways

- Both nominees expressed concern about and agreed that the CFTC should work closely with agricultural end users to address their hedging needs.

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- Several Democratic Senators posed questions about the CFTC's current funding and whether it was sufficient to address agency priorities.
- When questioned about the CFTC's acquisition of a firm's source code without a subpoena (with respect to Regulation Automated Trading), the nominees agreed that due process and confidentiality should be not be violated.
- The nominees agreed that while cross-border rulemaking is important for markets, they have to appreciate that other jurisdictions may have different rulemaking processes and incentives.
- **Note:** The Committee is expected to vote as soon as next week to favorably discharge the nominees, setting up the possibility of confirmation by the full Senate.

SUMMARY

Opening Statement and Testimony

Committee Chairman Pat Roberts (R-KS)

- It is essential that the CFTC have individuals who take the Commission's mission to heart. Farmer and ranchers, the parties that the Commission was originally designed to protect, are still hurting after the financial crisis and are now feeling the heavy hand of over regulation in the age of Dodd-Frank.
- The CFTC should look through the lens of regulatory practicality, and it is important that the CFTC limit its jurisdiction and not intrude on areas where no systemic risk exists.
- CFTC Chairman Massad's recommendation to delay the *de minimis* rule (related to swap dealer registration) is a wise decision.

Committee Ranking Member Debbie Stabenow (D-MI)

- Despite signs of strength and economic growth, millions of Americans are still trying to recover from the 2008 financial crisis. The OTC swap market played a significant role in the financial crisis, but as a result of recent reforms, the market is more open and transparent and well-regulated.
- The CFTC has more responsibility today than it ever had, but with limited resources. The Commission must work to harmonize cross-border rules while appreciating how other countries approach financial regulation.

Christopher James Brummer, to be a Commissioner of the CFTC

- The CFTC has an important and significant daily impact on Americans. Since the financial crisis, my work has focused on cross-border rulemaking and coordination that will help level the playing field for American companies competing abroad.
- The threats to market integrity are real and must be addressed swiftly. The Commission's mission should be to complete Dodd-Frank rulemaking and anticipate new threats to the market.

Brian D. Quintenz, to be a Commissioner of the CFTC

- I am familiar with CFTC rules on recordkeeping and reporting requirements because of my work in the private sector. After the financial crisis, I performed detailed valuations on financial institutions and relied on data and transparency to do this work.

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- My career began in public policy, and I developed a strong appreciation for America's farmers and ranchers and the risks they face in their businesses. The financial crisis revealed deep flaws in our markets; however, regulation should not spill over to harm businesses' normal activities.

Discussion

Position Limits

Klobuchar (D-MN): How would you evaluate the differences and similarities between regulations for financial markets and ag end users? Are you willing to work with those who trade physical commodities to ensure that the exemptions to the position limit rule would allow for normal business practices? How are commercial end user transactions different from the kind financial institutions enter into and what are your views on speculation? *Quintenz:* Commodity markets need to work for those who use and are exposed to commodity risks. End users should be able to hedge *bona fide* risks. The Commission should be focused on all factors that could artificially impact a market. There has been a regulatory structure in place for a long time to address position limits; *Brummer:* Farmers and ranchers did not cause the financial crisis and derivatives markets exist for a reason. The origins of the derivatives markets are in the ag sector, but others need the derivatives market for similar activities. I am willing to work with those who trade physical commodities to ensure normal practices can be maintained. Speculators have a role in derivatives markets and are there to make sure trades are completed when end users are absent - they help make market work.

Donnelly (D-IN): If confirmed will you work to help finalize a strong position limit rule in a timely manner? *Quintenz:* The problems with position limit rule may not be a result of effort, but of perspective. We must ensure that the concerns of end users are met and that they can engage in *bona fide* hedging practices; *Brummer:* The position limits rule helps police markets and limits systemic risk, but we cannot create loopholes.

Regulation Automated Trading (Source Code)

Tillis (R-NC): What are your thoughts on the CFTC not obtaining a subpoena to access firms' source code? *Quintenz:* Source code does not just represent historical trading files. It represents an immense amount of time, work, and future trading strategies. There is nothing wrong, risky, or inconvenient about maintaining the current subpoena process; *Brummer:* I understand the importance of due process and will ensure that due process and confidentiality are maintained.

Swap Dealer *De Minimis* Threshold

Roberts: Discuss how you would address the *de minimis* threshold? *Quintenz:* The *de minimis* threshold is important, but they run the risk of exceeding the scope of the activity being targeted. If we get the *de minimis* threshold wrong, we risk driving certain swaps providers out of the market; *Brummer:* Any delay in rulemaking should be used wisely. Technical expertise is needed to implement the correct rule. It is essential that rulemakings have sound Congressional oversight because CFTC Commissioners are non-elected officials.

Clearinghouse Risk

Stabenow: How would you balance the need to move forward with financial reform with the challenges communities and regulators face? *Quintenz:* It is crucial to ensure clearinghouses meet their obligations, and that there is a process in place if a clearinghouse fails and protected if their largest members

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fail; *Brummer*: Clearinghouse reforms are important and constitute a core aspect of recent reforms, but there are risks to concentrating transactions within one entity. The CFTC should ensure clearinghouses function properly, supervise them closely, and examine what contributions members are making to the clearinghouse.

Margin Requirements for Uncleared Swaps

Tillis: In regard to the margin requirements for uncleared swaps, is it wise or unwise for the U.S. to move forward when other countries have delayed their margin rules? *Quintenz*: Regulatory arbitrage always hurts someone. We need to be aware of how that impacts our markets, imposes costs, and disadvantages our economy; *Brummer*: It is important for countries to work in concert with each other on regulatory positions. If the U.S. wants to promote its rules, it should lead by example.

Cybersecurity

Stabenow: In regard to cyber security, is a “best practices” approach enough or do we need to be looking at more specific cyber security regimes? What actions are required to address cyber threats? *Quintenz*: Cyber security is an important and difficult question. We need to allow for flexibility and innovation and allow firms with large budgets to spend those funds on cyber security; *Brummer*: Cyber security is important to the health and security of our markets. It is critical that the CFTC remain ahead of the technological curve. We must ensure that best practices are being met and that they are high quality.

International Coordination

Stabenow: Given the global nature of the swaps market, what is your view on the U.S. role among international regulators? *Quintenz*: Cross-border rulemakings come down to communication and trust so that our regulatory efforts are fulfilled; *Brummer*: International coordination is deceptively difficult because of different political and economic cycles. This coordination requires commitment, work, and leading by example. The U.S. should commit to the highest standards and find those who are likeminded in implementing a cross-border regulatory environment.

Brown (D-OH): Are there risks or unattended consequences to implementation delay because of slow-moving countries? *Brummer*: If you want to push high-quality standards, the CFTC should lead by example in the international community; however, it should appreciate and understand how countries develop their rules. The strategy should be to find likeminded countries with a similar commitment to rules and work collaboratively.

Boozman (R-AR): How would you approach decisions like the CFTC’s recent Japanese comparability determination and ensure that American farmers are able to compete with their international counterparts who may have a competitive advantage? *Quintenz*: It comes down to relationships and open lines of communication; *Brummer*: Harmonization is important. We should leverage international forums and relationships to lead by example and appreciate different regulatory systems.

Gillibrand (D-NY): What are additional risks you anticipate with non-U.S. counterparties, specifically risks related to uncleared swaps? Are there other regulatory inconsistencies between the U.S. and other countries that the CFTC should address? *Quintenz*: Uncleared swaps can provide risk mitigating features for certain companies, but it is crucial to make sure that large exposures do not come back to hurt our markets from jurisdictions with different rules. SEF rules need work because liquidity is shrinking; *Brummer*: Clearing is essential to CFTC rulemaking because it helps standardize and assess risk. When assessing cross-border risk, it is important to

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understand that parts of the world may be lagging behind us, and they may lack incentive to implement certain rules. Margin rules are critical components to financial security and safety.

CFTC Rulemaking Process

Roberts: From the point of view of an ag end user, has the CFTC done an adequate job of balancing risk versus costs in rules required by Dodd-Frank? *Quintenz:* In all aspects of rulemaking, the CFTC should do a thorough job disclosing the costs associated with rulemaking and the risks being mitigated by those costs - otherwise the Commission encroaches into areas outside its purview; *Brummer:* It is critical that the CFTC remember its roots and the importance of ag end users to the economy. Data driven rules are important.

Commission Resources

Brown: How would you ensure that a variety of viewpoints are represented on CFTC advisory Committees? Is the CFTC's funding keeping pace with cyber security threats? *Quintenz:* It is crucial that Committees are transparent. As a former Hill staffer and market analyst, I believe that hearing all sides of an issue are vital. Unsure if the CFTC is underfunded; *Brummer:* It is important to have people with different vantage points informing our lawmakers. Cyber threats have expanded, so you need human capital and other tools in place to promote sound decisions that will protect the economy. The agency's funding has not kept up with its growing role.

Boozman: If confirmed, how you do plan to engage with ag groups as well as other end users? *Quintenz:* Visiting with farmers and ranchers; *Brummer:* It is an honor and privilege to talk to farmers and ranchers about their concerns.

Gillibrand: Given the CFTC's limited appropriation, what budgetary challenges do you anticipate to encounter? *Quintenz:* It is difficult to address budgetary issues without being at the agency and understanding exactly how resources are spent; *Brummer:* The CFTC's responsibilities have expanded dramatically, and I look forward to providing input on ways to increase its budget.

Donnelly: Can you commit to spend time on the road and visit those farmers and ranchers who are impacted by CFTC rules? *Quintenz:* Yes; *Brummer:* Yes.