
HENDERSON & LYMAN

FINANCIAL SERVICES PRACTICE GROUP CLIENT UPDATE

February 24, 2011

Obama's Proposed CFTC User Fees

On February 14, 2011, President Obama unveiled his intention to begin increased funding of the CFTC, in part, through the implementation of user fees. This Client Update will summarize key aspects of Obama's funding proposal.

Since President Obama signed the Dodd-Frank Act into law, regulators such as the CFTC have been calling for steep funding increases. In response to the CFTC's requests, the Obama administration has stated that, as part of the fiscal year 2012 budget, it intends to impose \$117 million in user fees to fund the CFTC's non-enforcement related activities. The \$117 million in user fees would be just a fraction of the \$308 million funding increase for the CFTC that the Obama administration has requested. This intended allocation represents an 82% increase over the CFTC's actual budget for fiscal 2010. With the proposed budget increase, Obama proposes to add 316 people to the CFTC, representing a staff increase of more than 60%.

Obama's budget, however, has been proposed in the context of huge national budget deficits and an empowered Republican majority in the U.S. House of Representatives calling for deep spending cuts. According to House Ways and Means Chairman Hal Rogers, R-Ky., "The president's budget appears to be long on rhetoric and lean on spending cuts." In fact, even Republican CFTC Commissioner Scott O'Malia called the user fee proposal an "unauthorized and uncollectable tax to offset \$117 million in new spending." Futures Industry Association President John M. Damgard added that, "The imposition of user fees would significantly reduce the efficiency of the regulated futures market and greatly increase the cost of hedging financial and commodity price risk." Finally, CME Group Inc. Executive Chairman Terry Duffy said a plan to allow U.S. futures regulators to charge user fees would harm U.S. exchanges trying to compete globally. Duffy remarked that the proposal "could put us at the biggest disadvantage we've ever seen."

In light of increasing governmental interest in user fee financing across various regulated industries, the U.S. Government Accountability Office ("GAO") has developed a framework for examining user fee design characteristics that may influence the effectiveness of user fees. According to various industry reports generated by the GAO, such as reviewing the user fee program implemented by the U.S. Citizenship and Immigration Services, the results of agency user fee programs are often mixed. As a result, with respect to Obama's proposed user fees on the commodities and forex industry, much examination needs to be conducted by both the CFTC and the industry at large to determine whether the user fee proposal will actually accomplish the goals that it seeks and create a net benefit for the industry as a whole.

We look forward to keeping you apprised of any further or related developments.

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