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The CFTC's Role in Financial Stability from Deregulation to Reform, and a Warning for the Future

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A Legacy of Deregulation That Brought Down the Economy

As we continue to celebrate the 50th anniversary of the Commodity Futures Trading Commission (CFTC) and recognize the 15th anniversary of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), it is important to remember why strong financial regulation and the CFTC's role in particular are essential to protecting the public and ensuring economic stability. The 2008 financial crisis was no natural disaster. It was the foreseeable and preventable result of a deregulatory agenda that stripped away oversight, ignored public interest protections, and left the financial system vulnerable to collapse. A central driver of that crisis was the unregulated over-the-counter (OTC) derivatives market, a multi-trillion-dollar shadow market that operated without transparency, capital requirements, or accountability. These derivatives were not only dangerous to the firms that traded them, but also acted as a conveyor belt for hidden risks, transmitting unseen time bombs throughout the global financial system, where they accumulated silently until the entire system collapsed.

The roots of the 2008 crisis stretched back decades, but one statute in particular laid the legal foundation for the explosion. The Commodity Futures Modernization Act of 2000, or CFMA, eliminated the CFTC's ability to regulate OTC derivatives by explicitly exempting them from oversight. It also removed the long-standing requirement that financial products serve the public interest, allowing firms to create and trade speculative financial contracts without demonstrating any economic purpose or facing meaningful regulatory oversight.

Not everyone was silent in the face of this deregulatory push. A decade before the crisis, Brooksley Born, then Chair of the Commodity Futures Trading Commission, warned of the dangers posed by the unregulated over-the-counter derivatives market. She called for stronger oversight to protect the financial system from complex and opaque products that could destabilize markets. Influential policymakers repeatedly dismissed her warnings. Naysayers included Alan Greenspan, Robert Rubin, and Larry Summers, who prioritized market freedom over regulatory caution. In hindsight, Born's efforts stand as a clear and prescient warning that went unheeded. Born's marginalization reflects how institutional resistance to reform can silence those who speak up early to prevent disaster.

With no regulatory brakes in place, the CFMA cleared the way for the explosive growth of risky and complex financial products, especially credit default swaps and synthetic collateralized debt obligations. A credit default swap is like an insurance contract that protects against the default of a loan or bond. However, unlike traditional insurance, anyone could purchase the contract, including those with no ownership of the underlying asset. This structure allowed investors to bet on the failure of mortgages and other debt, creating massive exposure throughout the system. Synthetic collateralized debt obligations, or synthetic CDOs, took this a step further. Major Wall Street firms bundled together large numbers of these bets into new financial instruments, multiplying the risks tied to mortgage defaults. These products were aggressively marketed and sold throughout the financial system, often to investors who had little insight into what they were buying and no protection against the underlying risk. They were sold with little transparency, no central clearing, and no capital backing.

By exempting over-the-counter derivatives like credit default swaps from federal oversight, the CFMA created a regulatory vacuum that allowed synthetic CDOs and similar instruments to multiply unchecked. This failure to supervise the buildup of risk in hidden corners of the financial system allowed systemic threats to grow in the dark until it was too late.

Legalizing the Shadow Markets

The passage of the CFMA reflected a dramatic shift in regulatory philosophy. For decades, financial oversight was grounded in the idea that markets should serve the public interest, and that speculation should be constrained by rules designed to protect stability and fairness. The CFMA reversed that approach. It treated financial innovation as inherently beneficial and regulation as a barrier to growth.

In this new framework, complexity became a feature, not a flaw. Derivatives markets rapidly expanded outside the reach of regulators, fueled by the belief that risk could be engineered away through ever more sophisticated instruments. In reality, markets were growing more fragile and more dangerous. The more interconnected they became, the more vulnerable the system was to a cascading failure.

We are still living with the consequences of that deregulatory ideology. The same arguments once used to justify exempting credit default swaps from oversight are now being used to defend a new wave of speculative products, including event contracts, perpetual futures, and other novel instruments that blur the line between finance and gambling. As policymakers consider the future of financial regulation under the Trump Administration, it is important to recognize how deeply the CFMA reshaped the regulatory landscape and how urgent it is to reclaim the public interest as the foundation of oversight.

Dodd-Frank and the Post-Crisis Mandate

In response to the 2008 financial crash, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, granting the CFTC broad new authority to regulate the vast and

unregulated swaps market. For the first time, the CFTC was given the power to oversee the major players in the swaps market, including large financial institutions that had previously operated in the shadows. The agency could now require these firms to hold enough money to cover potential losses and follow rules that protect customers and the broader financial system. It could also enforce basic standards of conduct, making sure firms act fairly and avoid abusive practices.

In addition, many swaps were required to be traded on open, transparent platforms where prices and activity could be seen by regulators and market participants. These trades also had to go through central clearinghouses, which act like middlemen to guarantee that both sides of a deal follow through. This reduced the risk that one firm's failure could trigger a chain reaction through the rest of the system.

Finally, Dodd-Frank required detailed reporting of swaps activity so that regulators could see what was actually happening in this enormous market. That transparency was essential to spotting problems before they could grow into another crisis.

These reforms matter because the consequences of financial instability are not confined to Wall Street. When unregulated derivatives markets collapsed in 2008, it triggered a financial panic that spread rapidly across the economy. Giant firms like AIG took on enormous bets they could not afford, and when those bets went bad, taxpayers were forced to bail them out. Other institutions, such as Lehman Brothers, collapsed entirely, contributing to the worst economic downturn since the Great Depression. Millions of Americans lost their jobs, their homes, and their retirement savings, not because they took risks, but because the system failed to contain those who did.

Carrying Out the Mandate and Falling Short

Dodd-Frank was designed to prevent another financial collapse by giving regulators the tools to identify dangerous risks before they escalate and to intervene before it is too late. The CFTC's expanded role under the law is about ensuring that no firm, regardless of its size or complexity, can once again threaten the economic security of everyday Americans.

Over the last 15 years, the CFTC has taken important steps to implement the tools Congress provided. It has brought greater transparency to once-hidden markets, pursued enforcement actions against misconduct, and worked with international regulators to promote coordinated oversight. But its efforts have not always gone far enough. Under previous leadership, the agency at times hesitated to fully enforce its mandate or confront the scale of risk building in new corners of the market.

Financial stability is not a one-time achievement. It requires a sustained commitment to rigorous oversight and public accountability. The CFTC's uneven implementation of its mandate has left important gaps in the post-crisis regulatory framework, and those gaps are being tested.

Warning! Deregulation Is Creeping Back

In recent years, troubling signs have emerged that echo the conditions leading up to the 2008 financial crisis. The same deregulatory logic that justified the CFMA is being repackaged today in the language of "innovation," "access," and "flexibility." But make no mistake, the risks are the same. One example is the rise of event contracts, which are bets tied to political races, sports outcomes, and other non-financial events. Events contracts blur the line between legitimate hedging and pure gambling. These contracts are being allowed to move forward with minimal scrutiny, taking advantage of the CFTC's failure to restore the public interest test that was removed under the CFMA.

Another concern is the migration of perpetual futures into U.S. markets. These products, originally developed by offshore crypto exchanges, are designed to trade continuously without expiration and are often highly leveraged. Their entry into regulated markets under the CFTC's watch raises serious questions about volatility, manipulation, and broader systemic risk.

At the same time, Acting Chair Caroline Pham has signaled support for a broad application of the exchange self-certification process. This approach permits exchanges to list novel and potentially legally questionable products without full regulatory vetting, raising serious concerns about the CFTC's ability to determine whether such contracts comply with the law or serve a legitimate market function.

Compounding these risks is the potential appointment of Brian Quintenz as the next CFTC Chair. Quintenz has a well-documented deregulatory track record and close ties to financial firms that are actively lobbying for lighter oversight. His confirmation would signal a return to the kind of industry-driven agenda that weakened regulatory safeguards in the past.

The Stakes Are Too High to Forget the Past

The next crisis may not look exactly like the last. But the dangers that brought the global financial system to the brink in 2008 are returning in new forms. Just as in the lead-up to the 2008 crash, there is once again a blind faith in financial innovation that is building a house of cards at risk of collapsing under its own weight. Speculative products are being introduced with little scrutiny. Oversight is being sidelined in the name of speed and market access. And regulators are once again being urged to step aside and trust that the market will police itself. If the CFTC forgets the hard lessons of the last crisis and allows risk to build unchecked in the shadows, it may find itself too late, too reactive, and too powerless to stop the damage.

As the CFTC marks its 50th anniversary, the agency must not lose sight of the hard lessons that shaped its post-crisis mandate. Strong, proactive regulation is not the enemy of markets. Instead, regulation provides the foundation of market integrity, resilience, and long-term success. The CFTC's role is not to accommodate industry demands or embrace novelty for its own sake. It is to protect financial stability, serve the public interest, and prevent the conditions that led to past failures from taking root again.

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