

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ENERGY AND NATURAL RESOURCES
SPECIAL COMMITTEE ON AGING

United States Senate

March 7, 2016

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The Honorable J. Christopher Giancarlo
Commissioner
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Commissioner Giancarlo:

I am writing regarding new and troubling revelations about your role as the sponsor of the CFTC's Energy and Environmental Markets Advisory Committee (EEMAC). On February 25, 2016, the EEMAC released a report that is critical of the CFTC's proposed rule on position limits for commodities futures and swaps.¹ I wrote to you the same day asking that you withdraw the report because of significant legal, procedural, and substantive flaws. Specifically:

The Committee consists almost entirely of energy industry insiders, which appears to be a direct violation of section 751 of the Dodd-Frank Act; the record of the Committee's work reflects significant procedural irregularities that resulted in major flaws and mischaracterizations in the report; and the report's conclusions were not supported by the record before the Committee, and the report was adopted without any public discussion of its findings and conclusions and with no public vote.²

But the public proceedings of the EEMAC's February 25, 2016 meeting, which included a discussion of the report, raised even more concerns about the scope of your influence over this Committee and its recommendations.³ During the meeting, Dr. Craig Pirrong informed the Committee that you contacted him to write the report, and that he submitted the report to you alone. This appears to have been done secretly, without informing the public or the rest of the committee members (with the exception of Dr. James Alison, who was listed as the report coauthor). Your extensive involvement in the Committee and its report raises more questions about whether you have exceeded the role of the Committee's Sponsor, as defined by EEMAC's

¹ CFTC Energy and Environmental Markets Advisory Committee (EEMAC), Report on EEMAC's 2015 Review and Consideration of the CFTC's Proposed Rule on Position Limits, Feb. 25, 2016, *available at* http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/eemac022516_eemareport.pdf.

² Letter from Elizabeth Warren, U.S. Senator, to the Honorable J. Christopher Giancarlo, Commissioner, Commodity Futures Trading Commission (Feb. 25, 2016), *available at* http://www.warren.senate.gov/?p=press_release&id=1069.

³ Liz Moyer, *Lawmakers Urge Commodities Agency to Keep Plan to Limit Futures Contracts*, N.Y. TIMES, Feb. 25, 2016, *available at* http://www.nytimes.com/2016/02/26/business/dealbook/lawmakers-urge-commodities-agency-to-keep-plan-to-limit-futures-contracts.html?_r=0.

Charter: to handle basic committee organization, not to push the EEMAC towards a particular preordained outcome.⁴

As I noted in my letter to you, Dr. Pirrong's conflicts of interest, especially his service as a consultant for the International Swaps and Derivatives Association – a lead plaintiff suing to block the very rule he was asked to provide his views on for the EEMAC – made him a particularly problematic member of the committee to begin with.⁵ But your decision to secretly task Dr. Pirrong with writing the committee report raises even more questions – especially since Dr. Pirrong's views on the issue of CFTC position limits were well known and settled long before he wrote the report. That Dr. Pirrong produced a report that is little more than a list of talking points for an industry that hopes to escape meaningful regulation is not surprising. But the secretive process by which Dr. Pirrong came to write the report is deeply troubling.

According to public information, on January 26, 2015, you, as the sponsor of the EEMAC, announced the members of the Committee.⁶ As of January 26, 2015, Dr. Pirrong was not listed as a member of the EEMAC, though he was listed as a non-voting, associate member.⁷ On February 26, 2015 and July 29, 2015, the EEMAC held public meetings at which Dr. Pirrong testified as a witness.⁸ It was not until February 17, 2016 – just over one week before the EEMAC's report was released – that Dr. Pirrong was listed as a voting member of the Committee.⁹ According to Dr. Pirrong's statement at the EEMAC's February 25, 2016 public

⁴ Charter of the Energy and Environmental Markets Advisory Committee, Commodity Futures Trading Commission, available at <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/charter021308.pdf> (“The Sponsor’s role for this non-FACA committee shall be, among other things, to: (1) approve all meeting agendas; (2) approve or call all EEMAC or subcommittee meetings; (3) attend all EEMAC or subcommittee meetings; (4) adjourn any meeting when he or she determines it to be in the public interest; (5) ensure that recommendations and advice made by Members are provided to the Commission; (6) ensure that the Commission provides the necessary staff and other support for the EEMAC; (7) assist the Commission with identifying Members, Associate Members, and subcommittee members; and (8) otherwise assist the Commission with carrying out its responsibilities regarding the EEMAC.”).

⁵ David Kocieniewski, *Academics Who Defend Wall St. Reap Reward*, N.Y. TIMES, Dec. 27, 2013, available at http://www.nytimes.com/2013/12/28/business/academics-who-defend-wall-st-reap-reward.html?_r=0.

⁶ Press Release, Commodity Futures Trading Commission, CFTC Announces Membership of the Energy and Environmental Markets Advisory Committee (Jan. 26, 2015), available at <http://www.cftc.gov/PressRoom/PressReleases/pr7113-15>.

⁷ The Energy and Environmental Markets Advisory Committee Membership List as of January 26, 2015, available at https://web.archive.org/web/20150202093416/http://www.cftc.gov/About/CFTCCcommittees/EnergyEnvironmentalMarketsAdvisory/emac_members.

⁸ CFTC Energy and Environmental Markets Advisory Committee, Agenda for February 26, 2015 Meeting, available at http://www.cftc.gov/About/CFTCCcommittees/EnergyEnvironmentalMarketsAdvisory/eemac_022615agenda; CFTC Energy and Environmental Markets Advisory Committee, Agenda for July 29, 2015 Meeting, available at http://www.cftc.gov/About/CFTCCcommittees/EnergyEnvironmentalMarketsAdvisory/eemac_072915agenda.

⁹ Members of EEMAC as of February 17, 2016, available at http://www.cftc.gov/About/CFTCCcommittees/EnergyEnvironmentalMarketsAdvisory/emac_members.

meeting, you contacted him to ask him to write the report. Some time later, he and his co-author sent you and you alone a draft of the report. Some time later, you shared the draft with the full committee and gave the committee members a limited period of time either to approve the report or to provide a written dissent.

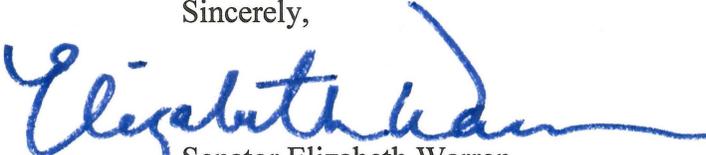
This is an alarming timeline. Dr. Pirrong had numerous undisclosed conflicts of interest, yet simultaneously served as both an associate member of the committee and a witness before the committee (one of only two individuals to serve in those dual capacities); he was secretly tasked to write the report despite the fact that he was not a full committee member; and he was then named as a voting member of the full committee just in time to vote for his own report - which my staff analysis revealed had significant flaws. During this entire time, you were the sponsor of the Committee and had the primary responsibility for choosing witnesses and panel members, and determining their responsibilities.

This set of circumstances raises very serious questions about your rationale for choosing Dr. Pirrong to be a witness before the committee, an associate and then full voting committee member, and the author of the committee report. I am therefore asking that you provide me with additional information to help me understand the workings of the EEMAC and your leadership of this Committee.

I ask that you provide my office with copies of all of your correspondence with Dr. Pirrong related to the EEMAC, including all correspondence related to the report that the EEMAC released last month. I also ask that you provide a briefing to my staff on the decision to choose Dr. Pirrong to write the committee report, and the process by which the report was drafted and approved.

I appreciate your attention to this issue and ask that you provide me with this information by March 21, 2016. Please feel free to contact Brian Cohen or Julie Babayan of my staff if you have any questions about this request.

Sincerely,



Senator Elizabeth Warren
Ranking Minority Member
Subcommittee on Economic Policy

cc: Chairman Timothy Massad
Commissioner Sharon Bowen