

OVERSIGHT OF THE COMMODITY FUTURES TRADING COMMISSION

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY

UNITED STATES SENATE

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OVERSIGHT OF THE COMMODITY FUTURES TRADING COMMISSION

Wednesday, March 8, 2023

U.S. SENATE
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room 106, Dirksen Senate Office Building, Hon. Debbie Stabenow, Chairwoman of the Committee, presiding.

Present: Senators Stabenow [presiding], Brown, Klobuchar, Bennet, Gillibrand, Smith, Durbin, Booker, Warnock, Welch, Boozman, Hoeven, Ernst, Marshall, Tuberville, Braun, Grassley, and Thune.

STATEMENT OF HON. DEBBIE STABENOW, U.S. SENATOR FROM THE STATE OF MICHIGAN, CHAIRWOMAN, U.S. COM- MITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Chairwoman STABENOW. Good morning. I call this hearing of the U.S. Senate Agriculture, Nutrition, and Forestry Committee to order and welcome today's witness, Commodity Futures Trading Commission (CFTC) Chairman Russ Behnam, as we examine issues affecting our Nation's derivatives markets. Thank you for always making yourself very accessible to the Committee. You certainly are no stranger to the Committee, and we really appreciate that, and your leadership at the helm of the CFTC. This is so important for effective oversight and transparency.

The last time this Committee held a general CFTC oversight hearing, in February 2018, the agency was finalizing rules in response to the 2008 financial crisis. Today, the CFTC and our markets face new challenges. The pandemic tested the resiliency of our global food system. Labor shortages, transportation delays, and reduced consumer demand made it difficult for American farmers and ranchers to run their businesses and plan for the future. Just as the world began to recover from COVID-related supply chain disruptions, Russia invaded Ukraine, triggering global grain and fertilizer shortages and driving up prices for food and energy.

Meanwhile, we are facing the effects of the climate crisis through record-breaking storms, heatwaves, and droughts, all of which are devastating for farmers and ranchers. Extreme weather events, supply chain disruptions, and rising input prices are costing farmers more money and leading to higher prices for consumers.

This is why our derivatives markets are so important. Agricultural producers trade futures to manage risk and provide greater certainty around how much they will earn from, and pay for commodities. It is the CFTC's job to make sure these markets are

working properly and are free from abuse, particularly in times of stress when our producers need them the most.

Against this backdrop, the steady drumbeat of technology is changing the way financial markets operate, and who uses them. It is now possible to trade from almost anywhere at any time. Futures exchanges are offering more products geared toward individuals, and many people hold commodity funds in their retirement plans.

Crypto assets promise everyday Americans an easy way to speculate in financial markets, but in reality they are volatile and riddled with fraud, as we have seen. The massive customer losses caused by this misconduct highlight exactly why we need Federal oversight of the crypto industry, and I remain committed to working with my colleagues to hold crypto companies to the same rules as traditional financial firms.

As more retail investors trade futures and crypto assets, the CFTC must ensure its customer protections are suitable for this group of investors. Customers should have access to education and information about their investments, presented in a way that is appropriate for their level of experience. Financial markets must be fair for all participants, free of conflicts of interest that give the few an unfair advantage over the many.

While the digital transformation of our financial system brings efficiencies, it also exposes vulnerabilities. Cyberattacks are a prominent threat to our financial stability and our national security. The CFTC must be vigilant in protecting derivatives markets from cyber threats. I would like to hear whether additional authorities or resources are needed to meet this challenge.

Our nation's derivatives markets are fundamentally different than they were 15 years ago, in the wake of the financial crisis, yet Congress has not reauthorized the CFTC since 2008. This is long overdue. The Commission's resources have not kept pace with their ever-expanding responsibilities, including monitoring the \$350-trillion-dollar global swaps market.

We have recently heard criticism that the CFTC is too small and does not have the resources to take on additional responsibilities as commodity markets evolve. I reject this thinking. The CFTC's mission is too important.

In the 15 years since the agency was last reauthorized, the CFTC has received \$3.5 billion in appropriations. In that same time, the CFTC has imposed nearly \$20 billion in penalties. This is a remarkable return on investment for the American people, and demonstrates the agency's commitment to rigorous law enforcement. I hope we can come together to support more robust funding for the agency.

The work of the CFTC is critically important to our Nation's economy. I look forward to hearing today about how the agency is responding to new challenges, and how Congress can assist in that effort.

With that I will turn to my friend and Ranking Member, Senator Boozman.

**STATEMENT OF HON. JOHN BOOZMAN, U.S. SENATOR FROM
THE STATE OF ARKANSAS**

Senator BOOZMAN. Well, thank you, Madam Chair, for having the hearing today. It is very important. Thank you, Chairman Benham, for being here.

I was on the school board for several years and normally there were not many people at the school board meetings. That was a good thing. I drove into the parking lot and saw a bunch of cars and I thought, I hope we are honoring the band or the choir or something, or we are in trouble. Looking at the crowd it looks like things are going very well at CFTC, which is a good thing.

The CFTC is vital to our agriculture stakeholders who have used derivative markets for price discovery and risk management for over 150 years. The information from these markets underpins many of the risk management tools administered through USDA's Federal Crop Insurance Program. Futures and options contracts have been effective because the CFTC implements comprehensive rules, diligently polices the cash and derivative commodity markets, and works to protect market participants.

Through a pragmatic, principles-based approach, the CFTC has built and implemented constructive, workable, regulatory frameworks for markets to function efficiently. One needs to look no further than to the futures market, which has proven to be the gold standard and one of the most resilient markets in times of market stress, largely due to the CFTC's regulatory framework. We witnessed this during the pandemic, producers hedging their risk weathered market volatility and emerged relatively unscathed. The CFTC was the cop on the beat, monitoring the futures markets to ensure that even in times of unprecedented disruption, end users' positions were safe.

Because of the important role derivative markets play in price discovery and liquidity for agricultural risk management, it is essential the Committee exercise its oversight authority and ensure the CFTC is continuing to implement a balanced regulatory regime and reasonable enforcement approach that protects market participants against fraud and manipulation. This legacy must continue.

Regarding regulation, the CFTC must remain committed to its principle-based regulatory framework. Participants deserve clear rules and transparency in these marketplaces. The CFTC, like any regulatory agency, needs to deliver guidance in a clear and timely manner. Anything short of that creates a climate of uncertainty and additional risk for end users.

That is why I am pleased to see Chairman Benham recently committed to considering codifying certain no-action relief. I encourage the agency to do so soon where no-action letters have been repeatedly extended.

Again, timeliness is key here. If extension of relief is needed, it should be granted sooner rather than later.

When properly enacted, this framework, along with trust between regulators and participants, are leading contributors to a successful regulatory atmosphere. In order to maintain that trust, any data sharing between agencies must be limited and done with proper protections in place.

That is precisely why Congress explicitly granted the CFTC sole authority to publish specific and anonymized market participant data in Section 8 of the CEA. The only exceptions are for limited legal actions taken by the government.

No other agency has the expertise to publish this sensitive and proprietary material in a manner that safeguards registrants' data and protect their confidentiality. If this important responsibility is not handled properly, it will cause registrants to lose trust and in turn damage a vibrant market, risk eroding liquidity, and undermine price discovery.

I also believe the CFTC deserves adequate funding in order to effectively regulate, and I am committed to that goal. However, increased funding must not come from user fees. That is the discussion that we will have, and again, we are totally committed though to seeing how we can give you the resources that you need to continue to function so effectively.

User fees are passed down to agriculture end users and may cause market participants to exit markets, which reduces the liquidity necessary for farmers to hedge against pricing risk. Given the volatility of commodity markets, Congress should not impose another burden on agriculture's ability to manage risk.

Finally, the CFTC has a role in regulating digital commodity markets, and recent market events reinforce the need for greater Federal oversight of the industry. This committee has studied this emerging sector and the recent events which have caused consumers to question the safety of digital commodity markets. I am confident the CFTC is suitable for an expanded role in regulating the digital commodity spot market. I am committed to working with Chairwoman Stabenow and our colleagues to create the safeguards the market needs.

I look forward to Chairman Benham's testimony about how our derivatives and commodity markets are functioning, the work the agency is undertaking, and ideas on how to improve the agency and the marketplace in these challenging times.

With that I yield back.

Chairwoman STABENOW. Thank you very much, and just for the members, we have a vote that I understand will be starting at 10:45, and so we are going to continue the hearing. When that does start I will go vote, come right back, and then at some point Senator Boozman will do the same. We will juggle this, this morning.

Let me turn to Chairman Behnam, and welcome again.

STATEMENT OF THE HON. ROSTIN BEHNAM, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, DC

Mr. BEHNAM. Good morning, Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee. I appreciate the opportunity to discuss the state of the CFTC with you this morning.

In recognition of Women's History Month and International Women's Day I first and foremost want to acknowledge all the women in attendance, both in person and virtually and at the CFTC, and also to commend my colleagues, Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham, for their leadership and public service to this country. I would also like to recognize

and thank all CFTC staff for their continued dedication and commitment to the American public.

During the past three years, CFTC rules and regulations have ensured that the derivatives markets performed well for businesses who are able to hedge price risk under extreme pressures brought on by the pandemic, geopolitical tensions, and extreme weather. I last appeared before this Committee to address the clear absence of any regulatory standards for the digital asset commodity market. Today I would like to share some of my thoughts on how the adoption of innovation and technology is more broadly changing the nature of our markets and what statutory amendments should be considered since the CFTC's authorization lapsed in 2013.

Strengthening our rule set is a major priority for 2023. Looking at over 30 matters for consideration, themes emerge: enhancing risk management and resilience, fostering sound and responsive practices regarding cybersecurity and the use of third-party service providers, strengthening customer protections, promoting efficiency and innovation, improving reporting and data policy, and addressing any duplicative regulatory requirements and amplifying international comity and domestic coordination with both Federal and State regulators.

Last month the Commission issued its first public statement on the cyber-related incident at ION Cleared Derivatives. Current law could not have prevented the ION incident, as the direct regulation of third-party service providers is beyond CFTC jurisdiction. Recognizing the relevant risk, I have asked our Market Participants Division, which is currently developing rule proposals, to address both cybersecurity and related risk, to further identify potential weaknesses with respect to third-party service providers and vendor relationships, and identify appropriate solutions for Commission consideration.

However, even if the Commission supports a rulemaking in this area, with growing cybersecurity risk permeating all elements of our financial markets, I believe this Committee's reauthorization effort should consider what role and relationship the CFTC should have with third-party service providers and vendors of registered entities.

Extreme weather events contributed to the confluence of factors that defined commodity volatility in 2022. The Commission both domestically and in international workstreams is continuing to engage through the Climate Risk Unit. One such effort involves the voluntary carbon markets, which are jurisdictional to the CFTC in light of listed futures on registered designated contract markets. These markets require a new way of thinking, present questions requiring careful examination, and benefit from the public-private partnership that is the hallmark of the CFTC.

As I discussed in December, the CFTC does not have direct statutory authority to comprehensively regulate cash digital commodity markets. Its jurisdiction is limited to its fraud and manipulation enforcement authority. In the absence of direct authority and surveillance authority for digital commodities in an underlying cash market, our enforcement authority is by definition reactionary. We can only act after fraud or manipulation has occurred or been uncovered. Comprehensive regulation would enable us to establish

market structures and regulatory barriers, guardrails, and guidance that would prevent fraud before it happens, and fully deploy transparency and surveillance tools to see fraud when it does occur.

With the recent expansion of direct retail participation in the derivatives markets and in the underlying commodity markets such as those for digital commodity assets, the CFTC must be able to ensure that the products offered are suitable, that the barriers to entry are meaningful, and that the disclosure information provided is material to the decisionmaking. The Commission will remain vigilant with respect to our registered entities and use our existing tools and authorities to the fullest extent of the law and the authority we are given to propose stronger rules, monitor and surveil the markets, and root out misconduct wherever it lurks.

As Chairman, in January 2022, I appointed the CFTC's first-ever Chief Diversity Officer who oversees the agency's office of Minority and Women Inclusion. I am eager to see the CFTC's OMWI statutorily authorized, similar to other Federal financial regulators. This would expressly authorize us to assess the diversity policies and practices of entities regulated by the agency, submit annual reports to Congress, and allocate additional resources and staff toward outreach and engagement.

As this Committee knows, the overwhelming success of the Whistleblower Program has led to the potential for disruptions in continuity of CFTC operations for the Whistleblower Office and the Office of Customer Education and Outreach. In addition to the importance of a long-term fix to avoid one-time depletions that are greater than the total balance of the whistleblower fund, I believe amendments to the statutory provisions describing the permitted uses of the Customer Protection Fund would allow the Commission to implement a host of new investor protection programs.

More than five years ago I testified before this Committee during my nomination hearing to be a CFTC Commissioner. In my opening statement, I remarked that, quote, "as this Committee shifts focus to the 2018 Farm Bill, I commit to working with each member of this Committee to ensure the CFTC remains both a desirable and cost-effective risk management and price discovery tool for agricultural producers and the entire value chain." This commitment remains my anchor, and as this Committee now considers the 2023 Farm Bill, I remain committed to this promise.

Thank you, and I look forward to answering your questions.

[The prepared statement of Mr. Behnam can be found on page 30 in the appendix.]

Chairwoman STABENOW. Thank you very much.

Chairman Behnam, in a recent speech you said that the volume of futures trading by retail investors is about 50 percent higher today than it was before the pandemic. I am concerned that the current regulatory framework may not be sufficient to protect these individual investors. Can you talk about how the CFTC defines a retail investor and what the Commission is doing to address their increased participation in the futures markets?

Mr. BEHNAM. Thank you, Senator. Extremely important question given what you said and some of the data that we have collected and analyzed over the past few years.

The way we generally characterize a retail investor is by sort of the characteristics of the individual and the trades they are making. The amount of money they are posting for margin, what types of products they are investing in—they typically invest in micro or nano contracts, which are smaller contracts. They have short durations of trading periods as opposed to longer durations, where they leave a position open. They are typically trading for their personal account as opposed to a customer's account.

Unfortunately what we have seen in analysis is retail traders, or those that are at least defined by those characteristics, generally tend to lose money.

Other than that there is no prescriptive or statutory definition of a retail investor. We have some definitions around an eligible contract participant and what is not an eligible contract participant. As you pointed out, given the growing demand but also growing state of the retail investor I think it would be important for the Committee to consider a definition so that we could essentially create protections around that.

I would not want to question our segregation rules, our conflicts of interest rules, our disclosure rules, our relationship with intermediaries, which are our brokers, the futures commission merchants. These entities and our customer protection rules are very resilient and they are durable and they are very strong. I think given the growth of retail investors we are using every tool we have, which is mostly, as I mentioned in my opening remarks, through the Office of Customer Education and Outreach, to ensure that we are getting as much information through disclosures, through pamphlets, through in-person meetings, through various State agencies and other working groups, to make sure investors ultimately know the risks involved with leveraged derivatives markets and how they are allocating their capital.

Chairwoman STABENOW. Thank you. I encourage CFTC to continue to really look at this, to really study it, and let us know if there are issues that we need to be addressing around language, accountability, and so on.

Mr. BEHNAM. Absolutely.

Chairwoman STABENOW. Absolutely.

Let me speak a minute about the risks and impacts around the climate crisis because there are serious risks, as we know, to our financial system and our food security. No one bears the burden of increased temperatures and droughts and flooding more than our agricultural producers. Last year the CFTC requested information from the public about actions the agency can take to address climate-related financial risks.

I wonder what you can tell us about what you learned from that public engagement process and how will the CFTC respond?

Mr. BEHNAM. Thank you, Senator. I am going to start quickly, and I mentioned this in my statement as well, on the voluntary carbon markets. I would say there was a fairly unanimous consensus that the CFTC should use its enforcement authority around cash voluntary carbon markets. As you know we have a jurisdictional interest in voluntary carbon markets because we do have listed carbon offset contracts on registered CFTC exchanges. Not

unlike crypto, this creates a jurisdictional connection between us and the cash voluntary carbon market.

We will use every tool we have within the enforcement division to ensure that we are policing those markets so that they have integrity and that the futures markets are both resilient but reflective of price discovery and risk management.

Moving away from voluntary carbon markets I would point to some areas that had maybe a bigger divide between supporters and opponents with typical things around the climate space, disclosures, data management, scenario analysis or stress testing under different climate scenarios. We are collating, essentially, those comments, trying to put them together, and then drawing out a path for 2023 of what policies we can push out that would be reasonable, sensible, and have a large coalition behind them.

We certainly want to build as much of a coalition around policies but also understand, as you point out, there are certain climate risks that we are going to have to address, and if policy is able to do that we will certainly move forward in a pretty swift manner.

Chairwoman STABENOW. Thank you very much. Then finally, cybersecurity you mentioned, and companies registered with the CFTC are required to comply with the agency's cybersecurity rules, but what about third-party service providers, like ION, and what can you do to strengthen the financial markets' defenses against these increasingly sophisticated cyberattacks?

Mr. BEHNAM. Thank you, Senator. Extremely important question, and as I pointed out, we do not have jurisdiction over third-party service providers. We are in the process of updating our cyber rules, and we will accompany that cyber rule with a guidance document on third-party service providers. From the vantage point of third-party service providers, which are very heavily used by industry because of technology needs and expertise, the vendor itself has to comply with the requirements of the registrants, which we set principles and standards for.

Ultimately I think it is going to be incumbent on the Commission to think about expanded authority for the agency, for the Committee to consider expanded authority for the CFTC, and I would use, as an example, the banking supervision and the banking regulators authority over third-party service providers. They essentially have supervisory or examination authority over vendors that are providing a service to a regulated entity.

You can imagine a CFTC-regulated entity outsources a service to a vendor. In a situation or a scenario could we potentially have supervisory or examination authority over that vendor because the vendor is providing a regulated service to the regulated entity. I think that would be a step forward, provide a little bit more assurance, but as you point out, cyber risk is hugely important and we are doing everything we can to send signals to the market that this has to be a top priority for every entity that is registered with us.

Chairwoman STABENOW. Incredibly important. Thank you very much.

I will now turn to Senator Boozman.

Senator BOOZMAN. Thank you, Madam Chair. What I would like to do is go ahead and defer to Senator Marshall and then get back in the order.

Chairwoman STABENOW. All right. Senator Marshall.

Senator MARSHALL. Okay. Thank you, Madam Chair, and welcome again back to the Ag Committee, Chairman Behnam.

The first advice I got from Senator Roberts when I was helping write the farm bill five years ago was to go sit on the tongue of the wagon and listen to the farmers. I found a couple of places more comfortable than the tongue of the wagon, but we have been talking to farmers. One of their top concerns is what is going on at the CFTC, and maybe they are just looking for some certainty and some clarity.

My farmers and ranchers have noticed that the CFTC has been focusing more and more on the Administration's climate agenda. In June of last year, you had a voluntary carbon convening to discuss the carbon offsets market.

Your role is largely in the derivatives market, which my farmers and ranchers use as a risk management tool. Is it prudent for you to be pushing a carbon market agenda rather than to be focusing on your traditional responsibilities?

Mr. BEHNAM. Thank you, Senator. I would say first and foremost we are absolutely focused, as I said in my statement, on our traditional markets. This the No. 1 priority. On the sponsor of the Ag Advisory Committee we convened a good group and we are always focused on our agricultural markets above all else.

Regarding the voluntary carbon markets convening, as I pointed out earlier we have to be very cognizant of our jurisdictional markets. What I mean by jurisdictional markets is that if we have listed futures on regulated CFTC exchanges then the cash markets become important to us. Because if there is potential for fraud or manipulation in a cash market, that fraud or manipulation can be reflected in the markets that I regulate.

As we more commodity markets become retail oriented and are unregulated but are listed on derivatives platforms that are regulated by the CFTC, I think it is very incumbent that we have a look forward to what could potentially be a detriment or an issue for our markets.

Senator MARSHALL. Certainly \$350 trillion was the number you quoted in derivatives you are overseeing, so I am sure that does take up a lot of your time, most of your time.

We have also noticed that you are looking at climate-related risk to your traditional products. The conversation around ESG requirements and financing has folks worried about access to capital unless they conform to some mandated climate policy.

As you study climate-related risk is it your intention to bar risk management at the CFTC unless a person conforms to climate policies? I just have to add, farmers and ranchers were the original stewards of the land, and no one is working harder to practice sound environmental farming than our producers back home.

Mr. BEHNAM. Thank you, Senator. I could not agree with you more about that, understand that, in fact, farmers are the most important stewards of our land. I would say that thinking about the climate issues and some of the extreme weather events we are experiencing, my focus is just to ensure that our markets and the infrastructure that our markets are built on remains resilient as we

continue to face dramatic extreme weather events. This could be from the exchanges to the clearinghouses as well.

I think to your point, we will not create any policy that will force an action. It is just about ensuring robust, resilient markets that are thinking about future risks, and in this case weather events that are actually putting a lot of volatility and pressure on commodity prices, and we need to do what we can at the CFTC to ensure that these markets remain strong and resilient.

Senator MARSHALL. Thank you. The more flexibility we can give our farmers and ranchers the better the environment is going to do with their practices.

I want to talk about crypto for a second. When it comes to crypto I have consistently said that my biggest concern is addressing the criminal activity that crypto facilitates. It has recently come to my attention that the world's largest crypto exchange, Binance, has set up a U.S.-based entity that internal executive has said is a, quote, "de facto subsidiary," end quote, as a way to shield their main platform from regulations. This is the same platform where \$2.35 billion in funds that we know about were laundered through their platform. This is concerning, to say the least.

Though I am encouraged to see reports that the CFTC has multiple investigations into Binance for a number of different infractions I would love to hear more about these efforts, outside this hearing, of course, if we are able.

Both before and after the collapse of FTX there have been ongoing conversations about who should have regulatory oversight of cryptocurrencies, the SEC or the CFTC. Do you believe that CFTC has the resources and expertise necessary to bring these out-of-control crypto exchanges, the Wild West as it has been called, who seem to think that they have the right to do whatever they want, into compliance?

Mr. BEHNAM. Thank you, Senator. I have full confidence that we have the expertise and personnel to regulate the crypto markets. We also have a legacy understanding of market regulation, which I think can be implied, in many respects, in the same way over crypto markets. What we do not have is resources.

I think as this Committee considers possible regulation or statutory authority for crypto regulation I think it would be incumbent for us to have additional resources to implement and impose that regulatory system over the crypto markets.

Senator MARSHALL. I am not sure it is a fair question. On a scale of one to ten, how concerned are you about the crypto industry right now?

Mr. BEHNAM. Seven and a half.

Senator MARSHALL. Thank you. I yield back.

Chairwoman STABENOW. All right. Thank you very much.

Senator Brown.

Senator BROWN. Senator Marshall, as the Chair of the Banking and Housing Committee I am an 8.2. I just thought I would throw that in.

[Laughter.]

Senator BROWN. I actually am higher than 8.2, and I know of your work on it. I thank you for your work.

Madam Chair and Senator Boozman, thank you. Madam Chair, I so appreciate—I know this is your last farm bill—I so appreciate the serious bipartisan and bicameral way you are looking at this bill, so thank you for doing that.

Nice to see you again, Russ. Thank you for being here.

I want to sort of follow, peripherally maybe, but some of the things my colleague just said. Your new enforcement director at CFTC has extensive experience as a Federal prosecutor, bringing cases on cybercrime and complex fraud. All good signs. I think it is important as our markets become more complex, and as we have seen with crypto market participants, they are not starting with the best compliance programs.

Walk through your goals for enforcement and what are the areas that give you the most concern?

Mr. BEHNAM. Thanks, Senator. I did very intentionally bring in a former prosecutor who has experience both on the cyber side, the crypto side, but also on the commodity side. He had done a fair amount of work with the CFTC's New York office when he was working in the Southern District in New York.

When I think about the landscape of our markets and the markets that have the most impact on commercial end users, on retail, on Americans, obviously commodity markets in an environment where commodity prices are extremely volatile, because of geopolitical issues, still sort of residual COVID challenges, and of course, because of climate issues, making sure that commodity markets are reflective of supply and demand and are free from speculative activity that is pushing prices outside of that supply and-demand bandwidth is a priority.

Crypto is an unregulated market. You and I have discussed this. The Committee obviously care deeply about it. We brought over 70 crypto cases in the past seven or eight years, without authority, to police markets, other than this very small fraud and manipulation authority. It continues to be a priority so that we can protect retail customers who are trading in these markets.

Then cyber, as I mentioned, continues to be a huge risk for the agency and financial markets generally. It is a single point of risk for any one regulator and the entire financial ecosystem, so that we really all have to have all hands on deck. To the extent that we can have a strong enforcement director who is sending a clear message about stepping up the standards around cybersecurity I think that will be very effective and impactful on our markets.

Senator BROWN. Thank you.

Last year, following Russia's barbaric and illegal invasion of Ukraine, commodities markets, as you know, experienced volatility as the supply of certain agricultural commodities was jeopardized and the demand for many commodities was uncertain.

Talk about some of the lessons CFTC learned from that time, and do you have any concerns about the adequacy of margin requirements or supervision of traditional commodity markets?

Mr. BEHNAM. Thanks, Senator. We have done a fair amount of work, and I have personally myself done a fair amount of work, both domestically and within international, multilateral organizations. This question you ask about margin requirements in extreme volatile periods is a huge challenge because it is essentially a

strain on the balance sheet of a financial company that has to come up with collateral in a short period of time. That strain ends up having potentially downward effects on other parts of the balance sheet and could affect other markets that are regulated by the SEC or prudential regulators.

We are very cognizant of that, but as we have looked at the data and the periods of volatility, what we have seen that has given me some level of comfort is that the demand for collateral is directly correlated with the volatility we saw. As much as it is a strain on the balance sheets and puts pressure on the financial institutions to have to come up with this margin, it is in direct correlation with the volatility. It is just an indication of how volatile commodity markets were in both 2020 but then also after, as you point out, Russia invaded Ukraine.

We are constantly reviewing the system. We are making sure that the clearinghouses are being transparent, that they are sharing with the clearing members the margin methodologies, is the term we use, but essentially how they calculate margin, and will continue to look at that, to make sure that part of our regulated system, the clearinghouse, is the most important one, because it is systemically important in many circumstances.

Senator BROWN. Do any of those lessons that you just mentioned, does that translate to crypto markets in any way?

Mr. BEHNAM. I would say that we have to be mindful of leveraged markets. Our markets are leveraged for a reason. It creates incentives for end users to hedge risk. As we are seeing a growing demand for crypto derivatives we have to be mindful of the intent, the purpose, and the utility of crypto derivatives and making sure that margin requirements in these markets are sufficient, adequate, and essentially eliminate risk to the extent it is possible.

Senator BROWN. Thank you. Thank you, Madam Chair.

Chairwoman STABENOW. Thank you very much.

Now Senator Boozman is passing again to Senator Tuberville. I am not sure Senator Boozman wants to ask questions. He is enjoying listening.

All right. Senator Tuberville.

Senator TUBERVILLE. I think he is trying to learn something.

Chairwoman STABENOW. I think so.

Senator TUBERVILLE. Thank you, Senator Boozman. Thank you very much. Chairman, thanks for being here today. Thank you for what you are doing.

The last several months have shown that Congress has got to get its act together and regulate cryptocurrency in a way that protects consumers and encourages innovation within the United States.

When you look at the three main bills—Stabenow, Boozman, Loomis-Gillibrand and the House ag bill—do you have a view on which bill gives the best clarity of regs?

Mr. BEHNAM. Senator, you know, they all have components of it, which I think are very beneficial, and I think ultimately, when I think about the intent of the bills, it is to create transparency. It is to regulate the market. It is to shed light on those markets so that we do not run into situations like we did a few months ago.

I would say that specifically the Gillibrand-Lummis bill is very expansive, and I think that is, in part, because Senator Lummis is

on the Banking Committee and she has a larger view of the crypto markets. Having worked with this Committee on the DCCPA, which is Senators Stabenow and Boozman's bill, that is very narrowly tailored to the CFTC, what authority we have, and what is jurisdictional to our markets, which is commodity digital tokens as well.

The House bill is also very good. I think there are some challenges that I have spoken with members on the House side about making sure that we have Federal oversight to create a single market system for the crypto industry.

Chairwoman STABENOW. I would just add the correct answer is the Stabenow-Boozman bill.

[Laughter.]

Senator TUBERVILLE. He is straddling the fence, Madam Chair. He is a pretty good politician.

Can the CFTC currently block a Chinese company from buying a U.S. crypto exchange or is legislation needed to prevent that type of transaction from happening?

Mr. BEHNAM. Senator, assuming that other parts of the U.S. Government would not get in the way or make a decision that would prevent that acquisition, the CFTC alone does not have the authority to prevent an acquisition of that type.

Senator TUBERVILLE. Okay. Thank you. Do you see similarities between crypto markets and foreign currency exchange markets?

Mr. BEHNAM. Well, I actually do not because foreign currency exchange markets, you know, on the derivatives side, are very well regulated. If nothing else, there are lessons learned. This Committee took up provisions around the retail forex market about 15 years ago, and I would say lessons were learned from that exercise, because leading up to that legislation, which occurred in 2008, I believe, the retail forex market was unregulated. There was a lot of fraud, there was a lot of manipulation, and there was a lot of taking advantage of retail investors. I think there was a lot of concern about why do retail investors need to be trading forex. Ultimately as that comprehensive regulatory system was put in place what we saw was an immediate withdrawal of the fraudsters, so to speak, and a relatively healthy market.

I think that is a lesson to what are the benefits and attributes of comprehensive regulation, and putting aside the utility and what some folks think about the usefulness of crypto or not, regulation, I think, is important for customer protections.

Senator TUBERVILLE. Is there anything we can learn from foreign exchange market regulations that you can think of?

Mr. BEHNAM. In the crypto space, as I have had discussions with you, Senator, and other members of the Committee, you know, there are jurisdictions that are moving forward on crypto regulation. I am personally in contact with my counterparts in Europe and Asia to see what they are doing and how they are doing it. I still am not concerned about sort of a race to regulate because of the fear of technology necessarily moving away, but that said is we have to keep that on our mind because eventually that inflection point will occur where we do need to move forward.

I think we need to stay true to what we do in the United States, and as policymakers being deliberative, cautious, and patient, but

we, in fact, do need to make sure that we are always moving forward.

Senator TUBERVILLE. The lack of progress by the CFTC and the SEC to define which crypto tokens are commodities and which tokens are securities is an issue. It prevents more crypto futures contracts from coming to market. Are you having these conversations with the SEC, and has the SEC offered legal opinions as to what it views as a commodity and what it views as a security?

Mr. BEHNAM. Thanks, Senator. Just to answer the first part of the question, without hesitation I, myself, am working closely with my counterpart, and staff in my office and across the agency is consistently and constantly working with the agency, the SEC, to ensure that we are coordinating in a meaningful way. We do not have necessarily any legal guidance from the SEC but we are thinking about how we could work together, which we have done historically in a number of other markets, to ensure consistency, clarity, and transparency for the market.

I think as you recognize this is a very difficult issue, and in many respects we can lean on legacy precedent to define a digital asset, whether it is a commodity or a digital security. In many respects also there are characteristics of digital assets that are very unique from traditional assets, and they do need a sort of new way of thinking. I think it would be incumbent for both regulators and the executive branch to work with Congress to ensure that we establish a framework that we can all get behind.

Senator TUBERVILLE. Thank you for your hard work. Thank you, Madam Chair.

Chairwoman STABENOW. Thank you. Senator Klobuchar.

Senator KLOBUCHAR. Well, thank you very much, Madam Chair, and thank you, Senator Boozman, for hosting this hearing and calling this hearing. Thank you, Mr. Chairman. I want to followup with the last of Senator Tuberville's questions about the need and reinforce the need to coordinate with the SEC.

In your testimony you note the Commission has brought 70 enforcement actions involving digital assets. We thank your staff for your efforts. Could you just step back a little and describe, because of the Commission's limited authority, how you can only go after bad actors after the fact?

Mr. BEHNAM. Thanks, Senator. Unfortunately because we do not have comprehensive regulation and authority, which, just to use an example, in our traditional markets we have surveillance tools, we have registration authority, all different tools that essentially create a compliance environment that enables the CFTC to identify fraud or manipulation while it is happening or potentially before it is happening.

In the crypto space, which is unregulated, we have authority to police fraud and manipulation, and that is the only authority under which we can bring an enforcement case. We have to rely on tipsters, complaints, and individuals coming to us and saying, "We have identified fraud" or "We have seen manipulation" to come to us.

Unfortunately it is limited, but we are doing everything we can.

Senator KLOBUCHAR. That is why legislation enabling the CFTC to require more transparency and conduct more market surveil-

lance would help you greatly to prevent deception and consumer abuse?

Mr. BEHNAM. Tremendously, yes.

Senator KLOBUCHAR. Okay. You previously testified about your concerns with leverage, interconnected markets, and contagion risks with digital assets and the exchanges they are traded in. When FTX collapsed last year we saw the effect on the wider cryptocurrencies ecosystem, with companies like BlockFi, Inc., a crypto lending business, that had received financing from FTX, filing for bankruptcy.

How does the CFTC view the state of interconnectedness in the cryptocurrency market post FTX collapse?

Mr. BEHNAM. Thanks, Senator. Certainly we have seen valuations of the crypto market come down pretty significantly since the collapse of FTX, but we do not view that as a permanent change and we are constantly thinking about the interconnections between all parts of the crypto market. We have to anticipate a scenario where markets might increase in size and volume and then present financial stability or market resiliency risks again.

We are doing what we can with the authority we have. It is limited, as you pointed out, but we are ensuring that we are using this enforcement authority to bring bad actors to account.

Senator KLOBUCHAR. Okay. During your nomination hearing you and I spoke about the importance of including the needs of farmers, ranchers, and energy producers in the Commission's mission. You know better than anyone, farmers who rely on futures markets for hedging purposes have needs that are different from those of Wall Street traders.

What are the distinct needs of farmers as end users of futures products that deserve particular attention from this Committee?

Mr. BEHNAM. I think No. 1 is ensuring that the products remain cost-effective and efficient and are meeting the demands of the farmer as price discovery and risk management. We have seen a consolidation in the market, which I think is not unique to the derivatives space, especially since 2008, and the Dodd-Frank Act. I think that creates limitations for some of the smaller end users, like farmers and ranchers in Minnesota, to be able to use derivatives markets.

As you know and as you are working on, the farm bill will provide tools and crop insurance and commodity programs. Historically, futures markets were just another title in the farm bill and we have to make sure that futures markets remain a risk management tool, a cost-effective risk management tool for the agricultural economy.

Senator KLOBUCHAR. You know as well as anyone how the supply chain disruptions created price volatility. Senator Thune and I passed a major bill on shipping reform that I believe was helpful. We continue to have disrupted markets for agricultural inputs and commodities. Farmers are still concerned about this in my State. Could you speak to the ways that the CFTC works with farmers and ag industries to take into account the commercial risks inherent in ag production, processing, and marketing?

Mr. BEHNAM. Thank you, Senator. Personally I am engaged with the agricultural economy through advisory committees, ensuring

that we are visiting different parts of the country and seeing what issues they are facing, whether it is shipping, whether it is trade, any national security issues, and we are just constantly working and ensuring that our markets, as I pointed out earlier, are succeeding in achieving the price discovery and risk management function. I think that, in many respects, is built around our regulatory system, but as you pointed out, our enforcement authority becomes very important. We brought a number of cases against large commodity traders for position limit violations last year, and it is actions like those that I think remove bad actors and speculative activity, which drives prices outside of supply demand range.

We will continue to focus on ensuring markets are reflective of price discovery because this affects cash prices at grain elevators across the country. They are looking to our markets to price their goods as they sell them to ship overseas or domestically, and we have to ensure those prices are fair, transparent, and reflective of supply and demand.

Senator KLOBUCHAR. Thank you very much. I appreciate it.

Chairwoman STABENOW. Thank you so much. Senator Ernst.

Senator ERNST. Thank you. I am tagging in here at the end. I appreciate it. We have had a busy morning. I really appreciate you being here today, and I will keep it very brief.

I do a lot of visits across the State of Iowa and visit with farmers and stakeholders, and there is a huge interest from the public and private entities to address carbon reduction. If you could address this. Is there a role for derivative markets to facilitate carbon reduction and the risks associated for those individuals?

Mr. BEHNAM. Thank you, Senator. It is an important question because I think as we have discussed carbon markets have been emerging and growing over the past couple of years, both on the compliance side, which is more related to a cap-and-trade program, but also more importantly on the voluntary side. I think this actually creates a huge opportunity for landowners, including farmers and ranchers in Iowa, to create a new revenue stream for themselves by sequestering carbon through a number of techniques. Ultimately by sequestering carbon they are going to generate an offset and they are going to sell those offsets.

I think that is where the CFTC comes into play, because essentially what you are creating is a marketplace, and we need to ensure that marketplace has integrity, has transparency, and that the price discovery function is existing in an appropriate manner. The derivatives market plays an extremely important role on top of that cash market to enable farmers and ranchers and other producers to hedge risks associated with the volatility in those prices.

We are working with the authority we have, which is limited, but we are working with that authority to ensure those components are enshrined.

Senator ERNST. Well, I really appreciate it. We just did a roundtable on Title II conservation for the farm bill. I did that in Iowa this last weekend. And people are really, really excited about this opportunity. I appreciate your attention to it, and we look forward to working on that in the upcoming farm bill.

Thank you. Thank you, Madam Chair.

Chairwoman STABENOW. Thank you. Absolutely.

Let me turn to Senator Durbin.

Senator DURBIN. Thank you, Senator Stabenow, and Mr. Behnam, thank you for returning to the Committee. The CFTC responsibility over the futures industry of Chicago is a very important consideration, and I commend you for the work that you have done and believe that you have helped to establish the integrity of their operation, which is respected on a global basis.

Let me say that I do not believe that we have shown an adequate concern for this same issue. Since 2006, CFTC has only been funded at its requested level twice—\$304 million in Fiscal Year 2021, \$365 million in Fiscal Year 2023. Last year, CFTC estimated it needed approximately \$127 million in additional funding to effectively oversee the digital asset market. That is 33 percent of your annual budget.

For the record, in Fiscal Year 2022, the CFTC imposed more than \$2.5 billion in restitution, disgorgement, and penalties. It is not as if you are not doing your job and the Treasury is better for it. I think that is a reality.

The issue that I want to speak to is one that we have discussed before. When you were last before the Committee in December, the crypto industry was cascading in the dirt. We had just witnessed the stunning collapse of FTX, a company that was less than three years from its founding, supposedly worth \$32 billion, 1 million users, and it collapsed overnight.

Since then, CFTC, SEC, and DOJ have announced charges related to the collapse. I commend them.

The cat is out of the bag that I have been skeptical of this crypto mania from the start. At one of the committees last year I warned about the contagion and risk if crypto was more fully integrated into the broader financial market. I asked you in December how long it was going to take to unpack the FTX mess, being able to understand exactly what happened. The sooner we shine the spotlight on what happened to FTX, the full extent of the scope of the failure, the better.

How much closer, Mr. Chairman, are we to getting to the bottom of what happened with FTX?

Mr. BEHNAM. Thank you, Senator. I would unfortunately have to say that as you pointed out there is open litigation at both the civil and criminal level by the SEC, CFTC, and the Justice Department. We are working diligently. We are working as quickly as possible in trying to unpack all the facts that are coming to us.

More to come, but we are going to do it cautiously and slowly so that we can get it right, and all charges are going to be addressed appropriately.

Senator DURBIN. Well, I understand that. Despite the indictments and the legal charges that have been filed by these different Federal agencies, the crypto industry is on full steam ahead. Hard-working Americans are taking financial advice from investment advisors like Matt Damon, Larry David, and Tom Brady. Crypto firms are applying for accounts at the Federal Reserve. Trusted names in the retirement industry are offering exposure to Bitcoin in 401(k) plans.

The industry argues that the FTX collapse was an anomaly. I do not believe it. What do you think?

Mr. BEHNAM. Senator, I think it supports my argument, and many of the arguments that have been made by this Committee and members of this Committee that we need comprehensive regulation. I do not believe that the technology is going to go away. I do not believe that the trading markets—and that is the component that is most important to me, as a market regulator—are going to go away. I think that we have to think very carefully but aggressively about comprehensive regulations so that we can do the best we can to avoid another collapse.

Senator DURBIN. This horse is out of the barn.

Mr. BEHNAM. Correct.

Senator DURBIN. The crypto industry, financial regulators have highlighted a laundry list of risks associated with them: fraud, comingling of funds, lack of disclosure, high volatility, interconnect-edness in the industry, conflicts of interest, lack of basic govern-ance, practices, and risk control. It is abundantly clear when it comes to crypto we need real cops on the beat and we need them now.

There is a plea that has been made by the SEC for some author-ity and jurisdiction in this area, and I am listening to their request. I do not know that we can respond quickly enough to avert any fur-ther disasters in this industry, but I tell you, at this point those of us who were skeptical are becoming convinced: crypto is a dan-gerous investment, dangerous for everyone, and the American gov-ernment, at this point, is not doing its job in regulation.

Thank you, Mr. Chairman.

Mr. BEHNAM. Thank you, Senator.

Senator BOOZMAN. [Presiding.] Thank you, Senator Durbin. Why don't we go to Senator Gillibrand?

Senator GILLIBRAND. Thank you, Chairman Behnam. I really ap-preciate your statement that you believe it is time for comprehen-sive regulation. As you know, I have taken the time to write a bill with Senator Lummis to provide that comprehensive framework.

I would like your assessment of that draft. We are doing a new draft that will be released mid-April, but our ambition is to make sure there is a place to start a national conversation about a holis-tic approach to digital assets, to make sure that digital assets have the character of securities, are regulated by the SEC, to have the assets that have the indicia of commodities are regulated by the CFTC, to make sure stablecoins can be overseen by the OCC, to make sure that there are tax provisions for the entire industry, to make sure there are cybersecurity requirements for every part of the industry.

I would like your assessment of the direction of that bill and ways that we can continue to improve upon it. You and I have met about this, but I would like your insight for the record, because be-fore we introduce the new version of this bill I would like your thoughts. Thank you.

Mr. BEHNAM. Thanks, Senator. As you point out, and I said this, I remember, months ago at an event, what was most important to me in terms of the success of your bill with Senator Lummis, and getting it out there, is really pushing the conversation. Because naturally the bill will get amended and get pushed in different di-rections, but I thought you very carefully and thoughtfully consid-

ered all components of the market, not just something that obviously resonates with me as a market regulator on the market side, but thinking about the stablecoin issues, thinking about settlement, thinking about custody, thinking about cybersecurity risks. Comprehensive in that nature.

I think given what we experienced and what we saw with FTX, a premium on obviously segregation of assets, on customer conflicts of interest and ensuring that those conflicts are rolled off very carefully. I think there are different questions that we probably have to ask in many respects with respect to digital assets in light of cybersecurity, vendor risk, third-party service providers.

I would just emphasize those are some components that might be worth looking at or taking a second look to ensure that we do not run into another situation like we did a few months ago.

Senator GILLIBRAND. Thank you. In light of Chairman Gensler's recent suggestion that all digital assets except for Bitcoin are securities, what does that mean for a number of designated contract markets currently offering futures or swaps on Ether?

Mr. BEHNAM. Well, it would obviously raise questions about the legality of those DCMs, designated contract markets, listing these digital assets that are purported to be securities.

I have made the argument that Ether is a commodity. It has been listed on CFTC exchanges for quite some time. For that reason it creates a very direct jurisdictional hook for us to police, obviously, the derivatives market but also the underlying market as well.

Senator GILLIBRAND. As a regulator how do you respond to such a position given that the SEC interprets the Federal securities law. If there is this competition for oversight, what tools do you have to respond to that, given that you have been having oversight over Ether under the commodities market?

Mr. BEHNAM. Yes. Senator, it is an important question because the process for which an exchange or DCM, as you pointed out, will list a contract is very clear under our law. They could seek approval by the Commission or they could self-certify a product. That self-certification process is one that shifts the responsibility to both the CFTC and the market participant, and I would say serious and deep legal analysis goes into the thought process before a product is self-certified.

There is no doubt in my mind, and having known this and been at the Commission when Ether futures were listed, that both the Exchange and the Commission thought very deeply and thoughtfully about what is the product and does it fall within the regime, the commodity regime or the security regime. We would not have allowed the product, in this case the Ether futures product, to be listed on a CFTC exchange if we did not feel strongly that it was a commodity asset, because we have litigation risk, we have agency credibility risk if we do something like that without serious legal defense or defenses to sort of support our argument that that asset is a commodity.

Senator GILLIBRAND. Thank you. With regard to Chairman Gensler's position for CFTC's 2021 settlement with Tether, the undertakings of which I presume you are still monitoring, so how do you address those kinds of issues?

Mr. BEHNAM. Again, Senator, in speaking about stablecoins themselves—because there is a larger question about what direction stablecoins should go in terms regulation, and as you pointed out in the bill that you co-drafted with Senator Lummis, and I agree with this, that stablecoins are and should be prudentially regulated financial instruments—notwithstanding a regulatory framework around stablecoins, they are going to be commodities, in my view.

I know colleagues might have a different opinion, but we have done the legal analysis, and examining the circumstances around the Tether case it was clear to our enforcement team and the Commission that Tether stablecoin was a commodity and we needed to move forward and swiftly to police that market and that company.

Senator GILLIBRAND. Thank you. Thank you, Mr. Chairman.

Senator BOOZMAN. Thank you. I am going to go ahead. I have skipped out of the order so I am going to go ahead, since I have not voted, and then we will get back, if that is okay. Chairman Behnam, again, thank you for being here.

Critics, in a derogatory way, have accused the CFTC of having a, quote, “light touch” while ignoring the fact that the futures market has withstood the market shocks of the last few years better than any other markets. Why is the CFTC’s principle-based regulatory framework the gold standard in terms of fostering market resiliency, and how has the agency shown an ability to protect market participants?

Mr. BEHNAM. Thanks, Senator. Just briefly to sort of address your question, you use the word “critics” and obviously with critics comes criticism and that is natural. I accept that responsibility as chair of an agency. I signed up for it. When I think about that word, “critic” and criticism, I think about democracy. I think about sort of the friction of ideas, different ideas banging against each other. I think we all have a mutual understanding that criticism is healthy. It is good because it leads to, hopefully, better outcomes. It is what we do at the Commission, it is what this Committee does, and it is what this body does.

To your point, a lot of what has been thrown at us I would not actually give it the credit of calling it criticism. It is nonsense, quite frankly, and I think our record demonstrates why, under a principles-based approach, that has very prescriptive rules built on top of those principles. We are a very effective, a very efficient, and a very impactful agency. It is the farthest thing to suggest that the CFTC is a light-touch regulator. Our enforcement record demonstrates that, and I think some numbers have been thrown around over the past hour about our record on assessing penalties, multiple times the size of our funding levels.

In terms of market structure and what we have been through over the past couple of years, you know, historical volatility in commodity markets across agriculture, energy, metals, and financials, and the CFTC markets and CFTC clearing system has withstood that pressure admirably and, quite frankly, very successfully. I think market participants across the globe recognize that.

Last I will point, on top of that, market structure. I think you and I had this discussion in the past. If you think about 2008 and the financial crisis, the one marketplace that was essentially sal-

vageable was the cleared derivatives market, and that was used as a framework for the swaps market regulatory regime that was put in place after 2010. The flash crash that we saw and some of the issues around price bans, these were, we were implemented in different parts of the equity market as well.

I would just say, also thinking about the Treasury market, Treasury market reform is happening right now. They are looking at derivatives markets as a model.

We continue to be used as a model, and I think that is a clear signal that our markets are working well, are impactful, effective, and very resilient.

Senator BOOZMAN. Good. No, I agree, and I think, importantly, the record shows that. That is really the key.

Thank you for your insight on the regulatory work the agency is doing. The CFTC finalized its block trade reporting thresholds. Will you talk about making sure they are well calibrated to avoid unintended consequences for liquidity and increased transaction costs.

Mr. BEHNAM. Thank you, Senator. I will absolutely make that commitment to make sure that we are constantly evaluating both the block thresholds and the reporting requirements. Just very quickly to share with you, it is a delicate balance but one that we will tackle on head first, to ensure that the incentives remain for participants to trade and to create liquidity for these markets, but also to make sure that we are ensuring equal access and transparency in markets.

We will constantly look at the data on a backward-looking basis, to ensure that we are modifying and calibrating both the block threshold and the reporting requirements, as appropriate.

Senator BOOZMAN. Very quickly, swap markets are global, and I have been hearing about ongoing issues with U.S. customer access to these markets. Will you and your commissioners consider a rule-making or other regulatory solution that provides U.S. customers with greater access to non-U.S. swap markets, and can you provide maybe a little bit of a path forward?

Mr. BEHNAM. Thanks, Senator. Yes, we certainly understand that U.S. customers need the ability to hedge on a global basis, and different jurisdictions across the globe provide different products that are more suitable, depending on the business of a commercial end user or a client. We do consider it, and I will commit to you to make sure that I, myself, will talk with my fellow commissioners to make sure that we are also and always considering applications for more access for U.S. customers.

I would say, as one note of caution in the way I think about these things is to ensure fair access and U.S. customer availability to global markets it is important that bankruptcy protections are preserved. When you start allowing U.S. customers to trade on non-U.S. markets there can always be a risk of bankruptcy protections in the bankruptcy regime of the non-U.S. market. I think we care deeply about making sure U.S. customers reserve that bankruptcy protection that is so important to the U.S. market. Then reciprocity. I think it is important, as we consider access to non-U.S. markets that the jurisdictions that were allowing to offer these services to U.S. markets also allow their citizens to access U.S.

markets. Those are a few of the things that we will consider in the process.

Senator BOOZMAN. Good. Thank you.

In closing, this is not a question. I appreciate how your staff is being transparent with us regarding pausing the commitment of traders issue. I have heard about it from Arkansans, so I will have some questions for the record for that. Senator Braun.

Senator BRAUN. Thank you, Mr. Chairman. Good morning, Mr. Behnam.

I believe Congress should be smart on the entire discussion of climate, including Republicans. To this end, I co-founded the Climate Caucus, and we also got through a bill, Growing Climate Solutions Act, with the help of Senator Boozman and many others. I think that is an issue that if we are not involved with it, we will regret because many different sectors of even our supporters want us to be attentive to it.

I am concerned, though, with the SEC's decision to maybe shoe-horn climate into its materiality standard for financial risk disclosure. We have several Federal agencies who are tasked with addressing the climate, and I do not think the SEC should be one of them. I am working with Ranking Member Boozman to introduce a Protect Farmers From the SEC Act. Farmers are not privately traded companies. As hard as their jobs are, the least we can do is keep the SEC from knocking the doors down on this.

You have been involved with CFTC with studying the role derivatives may play in understanding, pricing, and addressing climate-related risk and transitioning to a low-carbon economy, all valid, I think, considerations. Congress has not given the CFTC the authority to help transition to a lower-carbon economy.

Can you commit to wait for clear congressional authorization before adding climate change to the CFTC's portfolio?

Mr. BEHNAM. Yes, sir.

Senator BRAUN. Any addition answer other than yes?

Mr. BEHNAM. Senator, of course. I live within the bounds of the Commodity Exchange Act. I know that, I respect that, and I think that is just the most important responsibility of the head of an agency.

That said, yes, I have taken a number of steps to ensure that the agency is engaging with the private market, to ensure that we are, from a market perspective, facilitating the development of new, innovative products that can help mitigate climate risk. The derivatives market, in my view, because a central focal point in the transition to a low-carbon economy, because whether it is a large Indiana manufacturer, an agricultural producer, or a global financial institution, mitigating risk through credit, through foreign currency, through rates really drives back to the CFTC's derivatives market.

Ensuring that we are thinking about how climate change is impacting markets and how derivatives products are priced off of that risk or that climate alteration, or how they can be used as a tool I think is important. Everything we do will be within the bounds of the Commodity Exchange Act, but I do think that we have to be forward thinking and aggressive in supporting market-based initiatives to support the development of our markets.

Senator BRAUN. Thank you. During your nomination hearing nearly 1 1/2 years ago we discussed the issue of reauthorization. As we discussed then, authorization for the CFTC lapsed at the end of Fiscal Year 2013, a long time ago. Since then, for a decade, your agency has operated as an unauthorized appropriation.

In addition to serving as an important step in the legislative process, congressional debates over reauthorizations also contribute to the oversight and reform processes. For example, last year you testified before this Committee three times about additional statutory authorities you believe CFTC needs to regulate digital assets. There are also CFTC priorities like we just discussed that do not have backing in a statute, climate risk, for instance. This is not CFTC's fault, of course. My colleagues and I have shirked off our responsibility, leaving agency rulemaking to fill the vacuum. While this is a dereliction of our duty as Senators, it also leads to unchecked administrative growth.

I do not really have a question here for you, but my ask, colleagues, is really to them, to think critically about the risk of giving up Congress' sacred oversight and reauthorization authorities and do our job. I am guessing you probably agree with that tool.

Mr. BEHNAM. I do, sir.

Senator BRAUN. Thank you.

Chairwoman STABENOW. [Presiding.] Thank you very much. Senator Grassley.

Senator GRASSLEY. Thank you, Madam Chairman, and thank you, Commissioner, for being with us.

I am pleased that you noted in your testimony about the Whistleblower Program being successful. Whistleblowers are essential to helping the agency root out wrongdoing in the commodity trading industry and returning billions of dollars to the taxpayers. As one of the Senators who led the original effort to establish the program in 2010, the program has accomplished much. However, in many ways it has, at times, become a victim of its own success. Due to the effects in the way that the CFTC whistleblower fund is set up, there may not always be sufficient funds to pay whistleblower awards.

Last Congress I got passed into law a short-term fix to keep it going. The law ensures that the CFTC program continues to function even when expenses exceed the program's fund balance. There should be a more permanent fix.

My question to you is, if Congress is not able to pass a longer-term solution to the Whistleblower Office it will reduce the effectiveness of the agency's enforcement efforts. Do you support a permanent extension of the CFTC Fund Management Act, and if not, why not?

Mr. BEHNAM. Senator, thank you for the question. I wholeheartedly support a permanent fix, and I thank you for your leadership in taking steps toward fixing that. As you point out, the success of the program has been its biggest weakness because we have been able to pay out huge sums of money because of whistleblowers and because of the effectiveness and the strength and the expertise of our enforcement program. I have no reason to believe that that success will not continue in the future.

Because of that continued success we run the risk of that fund being depleted quicker than it can be restored. What that really does then is put at risk both the Whistleblower Office and our Office of Customer Education and Outreach, which are two critical components of what the CFTC does to protect investors, to get information out to investors about the risks associated with our market.

A permanent fix would be extremely welcome and I think would continue the longstanding success of both the Whistleblower Program but the CFTC's enforcement program as well.

Senator GRASSLEY. I think may have answered part of my next question, but I think I am going to ask it anyway, and there might be something you can fill in. In your testimony, you mentioned that the amendments to the statutory provision described the permitted uses of the customer protection fund would allow for a new program so that Americans have the knowledge and tools to protect themselves from fraud. Can you elaborate more on the new programs you are envisioning if such amendments occur?

Mr. BEHNAM. Thank you, Senator. It is a very important question and I was very intentional in including it in my testimony because currently, and putting aside the limitations of the funding mechanism, our Office of Customer Education and Outreach is limited to using the funds for fraud or manipulation, which are extremely important because it gives us a tool to share information with the broader public about potential fraud or manipulation.

However, what we have seen over the past decade or so is that there are a lot of new and additional tools that can be focused on education and advocacy, which are not clearly defined within fraud and manipulation, that I think would benefit from an expansion in that authority through statute.

With that expansion, and to the Chairwoman's point about a growing retail participation in our market, expanding that remit from just fraud and manipulation to education and advocacy would allow us to use these funds to do more boots-on-the-ground advocacy with local groups, and I have said this in the past, with VFWs, AARP, State regulators, to just make sure folks understand the risks associated with CFTC markets.

Senator GRASSLEY. I think my last question I am going to submit for the record because I have got to get over and vote on this issue. Thank you, Mr. Commissioner.

Chairwoman STABENOW. Well, thank you very much, Senator Grassley. Senator Hoeven.

Senator HOEVEN. Thank you, Madam Chair. I appreciate it. Chairman Behnam, thanks for being here. Good to see you. I appreciate it.

Our farmers are facing just a whole myriad of challenges nowadays, including volatile markets and prices. Obviously, one of the things they do to try to manage that price risk in the market is to hedge their crop. Incredibly important to them, and it is becoming more important. It is sophisticated, it is challenging, but certainly in my State, and I think many others, there is a significant amount of hedging they do every year with their crops and a lot of times their financial institutions require them to do it.

What are you doing, what can you do to help make it easier for our farmers and ranchers to use that critically important tool?

Mr. BEHNAM. Thanks, Senator. I am going to give you a quick anecdote. I mentioned this earlier. I sponsor or run the Agricultural Advisory Committee. We had a meeting in December, and I asked the group, "What should we talk about and what should we examine?" A few things came up. One was shipping issues and issues around the Mississippi and water levels. Another issue that came up was access to brokers, essentially our FCMs, our futures commission merchants.

I mentioned this earlier to Senator Klobuchar. We have seen a fair amount of concentration in the market, and this is, I think, a product of the 2008 reforms after the financial crisis. What happens when you see concentration in any market, the smaller or mid-sized firms tend to go away and they end up being larger firms. I think that has the most impact on small and mid-sized agricultural companies and farmers and ranchers.

What we can do, I think, is constantly look at our rules and regulations to make sure that markets remain resilient and strong and cost-effective, which we do consistently, to make sure that farmers and ranchers consistently think of them as a risk management tool. Ultimately, my goal over the next few years is to have a larger conversation about what is the clearing and what is the risk management and derivatives ecosystem looking like and does a farmer in North Dakota feel like they can use the futures market as another risk management tool on top of crop insurance, on top of commodity programs that are provided by the USDA.

We will keep thinking about those things, engaging, traveling, visiting, and just listening to folks to make sure that we are doing what we should and doing what we can, the best that we can.

Senator HOEVEN. Yes, and you hit the nail on the head. That is really important. I mean, they use crop insurance, they use the countercyclical safety net, and they use your programs to really at least lock in enough to make sure that they can get from 1 year to the next, and then how profitable they may be for that year is dictated by a lot of the things, crop conditions and weather and markets, and so forth, prices.

Obviously, one of the things we will be working on in the next farm bill is how farmers can benefit from carbon capture. The Chairwoman and the Ranking Member have legislation on this. It is clearly going to be under significant discussion as part of the next farm bill. It is my opinion that that should not be a large federally funded government program, but instead USDA can play a role in setting parameters and so forth and then you have the private markets decide what they buy and how they want to interact in that area, and producers can respond to it, and hopefully there is a revenue opportunity for them there.

What role can you play in making that happen?

Mr. BEHNAM. Senator, everything you just described, in my view and from my seat as the chair of a market regulator, leads to a market developing, because we can set the program, we can incentivize the activity, and then if a North Dakota farmer is able to sequester carbon, as I mentioned earlier to Senator Ernst, you are then generating an offset because of that sequestered carbon.

In many circumstances that offset will be retired, but in many circumstances that offset will be traded. This is not unlike the RINs market, which is a byproduct of the renewable fuel standard policy.

I just think it is critically important, as this Committee and body continues to think about the benefits of a carbon market, a market-driven carbon market, to not forget that you are creating a marketplace, with buyers and sellers. As I experienced with the RFS RINs market, when you create a market you are creating a place that is susceptible to fraud and manipulation. We are a commodity market regulator. We stand ready to participate, to help, to lift the integrity of this market, and to create a venue where farmers can feel comfortable that what they are doing is generating a price that is adequate and appropriate for the work that they have done.

Senator HOEVEN. Madam Chair, I beg your indulgence for one more? That goes to the user fees. There has been a point of discussion, previous budget request, there has been a request for CFTC to implement user fees.

Now we have increased funding—and as you know I work on Ag Approp, and the Ranking Member there—we have increased the approps from about \$63 million to about \$250 million since 2002, so that is a substantial increase. My concern with user fees, again, are farmers and ranchers being able to access the markets on a cost-effective basis. I have concerns about that.

Mr. BEHNAM. Senator, I appreciate that concern, and certainly we would not—and this goes to your first question about creating incentives or disincentives to participate in our market. We would not want to create an unnecessary cost on the end user community to participate in our markets. That said, I would say over that period of time that you just identified, about 20 years, derivatives markets have changed tremendously. We have not only started regulating the OTC swaps market, which is now regulated, but we have seen exponential growth in the futures and options market, and then we are having to police crypto markets and other areas.

We had a period in the 2010's where we were largely flat funded, and I say that with a little caution because we did go up a bit. As Chairman right now, I am feeling that impact. Flat funding an organization, private or public, for a series of years, three, four, five, has long-term impacts on morale, on attrition, and on recruitment. We are trying to recover from that because Congress has been very gracious in increasing our funding over the last few years, and we hope that continues because there should be a recognition of the importance of the agency and the work that it does for Americans.

Senator HOEVEN. Yes, and I do understand that, and we are going to be resource constrained. The Chairwoman and I were just talking about the challenge of the farm bill. I get that part of it too, that you have to have the resources to do your job. That is very important.

Mr. BEHNAM. Thank you.

Chairwoman STABENOW. Thank you very much. Senator Welch.

Senator WELCH. Thank you, Madam Chair, and I understand Mr. Behnam is coming home here.

Chairwoman STABENOW. That is correct.

Senator WELCH. Well, welcome.

I wanted to ask a little bit about the carbon offsets and whether they are working. There is an enormous boom in recent years with those carbon offsets being increased to about \$1 billion in 2021, probably higher in 2022, and many of the world's largest corporations, and also the biggest carbon emitters, are allocating significant resources, as you know, toward purchasing these offsets to meet net zero goals.

It is unclear to me, and I think a lot of folks, whether they are working on the goal of reducing carbon emissions as opposed to the cosmetic appearance that an effort is being made to do that, and give a talking point or bragging point for companies that probably want to do the right things, but does this work.

Has the spike in the carbon offset market that has taken place over the past few years actually had a tangible impact on climate change mitigation, i.e., carbon reduction?

Mr. BEHNAM. Senator, you know, it is an extremely important question and something that I think about because ultimately when I think about the voluntary carbon markets and these markets that are developing—I was just speaking about this with Senator Hoeven—my role as a market regulator and observing the fact that markets are developing and that customers are participating in these markets, where the underlying asset that is being traded is a commodity. I think that directly implicates the CFTC, not only because it is a commodity asset, but as I pointed out earlier as well, on CFTC-regulated exchanges there are carbon offset futures contracts. Once you have futures contracts on CFTC markets, the market then becomes jurisdictional to us, both the derivatives market and the underlying cash market, the offsets themselves, because that fraud and manipulation is almost fungible between the cash market and the futures market.

All that to be said, your question is important because it talks about the integrity of these markets, and whether or not a carbon registry, which is arguing that we are sequestering X tons of carbon by planting 10,000 acres of trees, are you really sequestering that carbon because of new plantings? Is there—"additionality" is a term often used. I have to be very cautious and honest that we are a market regulator. We are not an environmental regulator.

Senator WELCH. That is helpful, I mean, because bottom line, these were created for the goal of carbon reduction. If we have got a market that is its own internal organ that can sustain itself but it does not actually achieve the stated goal for which it was created, we need to know that. What I am hearing you say is it is not your job, at the CFTC, to figure out whether the market is actually effective in achieving the goal.

Mr. BEHNAM. Senator, yes, absolutely. We are a market regulator. We do not have the personnel or the expertise to evaluate whether or not a project is actually sequestering X amount of carbon.

Senator WELCH. Madam Chair, that is really important to know, because we have got this fiction out there, that is unexamined, and I think all of us need to know whether this is just a market where people are moving money around and essentially speculating as opposed to some market that is actually achieving a stated goal of carbon reduction.

How do we deal with that?

Mr. BEHNAM. Senator, there are a number of private sector initiatives that are underway. The ICVCM is coming out with core carbon principles, and this is an industry-led effort to ensure a minimum set of standards and principles around the integrity of the carbon markets to ensure exactly what you are pointing out, that the advertised sequestration is actually occurring. I do think there are other roles for other agencies that have different areas of expertise.

Senator WELCH. I do not know if this is a fair question, but would it be something where you could give us a recommendation of two or three things that we would have to do in order to satisfy folks that, in fact, the market is reducing carbon emissions or it is not?

Mr. BEHNAM. Absolutely. I am happy to. I would say I want to be very clear that I do not think the CFTC should be boots on the ground in examining a project to sequester carbon, but if a carbon registry is advertising the sequestration of some amount of carbon and then selling that offset to a consumer, that in itself is sale, potentially, under some legal analysis, of a commodity asset, and then that is where the CFTC could come in because you have that relationship between a potential fraudulent sale of a carbon offset and the impact it might have on our jurisdictional markets.

Senator WELCH. Thank you very much. My time is up. I would like to followup with you. I think it is an important question for all of us. Madam Chair, I yield back, and thank you for your consideration.

Chairwoman STABENOW. Well, thank you, Senator, and let me also, just to add to this, particularly in agriculture, next week, next Thursday, we will have Secretary Vilsack with us, and I think this is an important area to discuss with him, because at the end of the year we did pass the Growing Climate Solutions Act, which gives them the authority and responsibility to develop the technical expertise to be able to measure carbon reductions in agriculture with integrity. Because you are exactly right, and we have to know its real reductions—there is integrity in the markets—and I think farmers want to know that as well.

In that piece, not energy markets and other things, but in the agriculture piece we have now given the authority to USDA to really develop that expertise to measure what is a credible carbon reduction and integrity. Thank you so much for raising that, and we need to have further discussion.

On that note I want to thank Chairman Behnam for joining us again today. We so much appreciate your leadership, the leadership of the Commission in so many ways, and I am looking forward to working with you as we move forward on the issues of the Commodity Exchange Act and the agency's funding. We want to make sure that you are keeping pace with evolving markets on both fronts. It is a very important agency for our economy and for those in the agriculture space.

Thank you for joining us. We will keep the record open for five days, and the meeting is adjourned.

[Whereupon, at 11:36 a.m., the hearing was adjourned.]

A P P E N D I X

MARCH 8, 2023

Testimony of Rostin Behnam
Chairman, Commodity Futures Trading Commission
“Oversight of the Commodity Futures Trading Commission”
U.S. Senate Committee on Agriculture, Nutrition, & Forestry
March 8, 2023

Introduction

Good morning Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee. I appreciate the opportunity to discuss the state of the Commodity Futures Trading Commission (the “CFTC” or “Agency”).

In recognition of Women’s History Month, and specifically today, which is International Women’s Day, I first and foremost want to acknowledge all the women in attendance in person and virtually, and at the CFTC, and to commend my colleagues Commissioners Johnson, Goldsmith Romero, Mersinger and Pham, for their leadership and public service to this country. I’d also like to recognize and thank all CFTC staff for their continued dedication and commitment to the American public.

The CFTC’s focused, principles-based approach to customer protection, market integrity, price discovery, transparency, competition and enforcement has proven both steady and exceptionally calibrated throughout the evolution of our markets, even in times of market stress and record volatility. During the past three years, CFTC rules and regulations have ensured that the derivatives markets performed well for businesses who were able to hedge price risk under extreme pressures brought on by the pandemic, geo-political tension, and extreme weather.

I last appeared before this committee to address the clear absence of any regulatory standards for the digital asset commodity market. Today, I would like to share some of my thoughts on how the adoption of innovation and technology is more broadly changing the nature of our markets, and what statutory amendments should be considered to address observed changes.

Products and structures are evolving not only to meet demand from a growing customer base that is diverse in terms of geography, sophistication, and objectives, but also to attract participants from the broader population whose interest is piqued by the promise of financial inclusion and prosperity made possible by technological innovation.

The dislocation between regulation and innovation has expanded. As regulators, the Commission is bound by legislative mandates that in many circumstances never really contemplated current technology and its capabilities.

As the Commission is increasingly presented with proposals that envision new models, invite new participants, and incentivize new risks, we must balance our commitment and legal obligation to engage with our primary oversight mission, which is to protect customers and ensure market integrity.

Reauthorization

Commodity Exchange Act Modernization

It has been almost 13 years since Title 7 of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹ expanded the CFTC’s authority to resolutely address the weaknesses in the global regulatory system. And it has been roughly 10 years since the CFTC’s authorization as part of the 2008 Food, Conservation, and Energy Act² lapsed.

In that time, derivatives markets have experienced massive growth: trading volumes in exchange-traded futures and options more than doubled between 2010 and 2022; the swaps market brought within our jurisdiction pursuant to the Dodd-Frank Act is now over \$350 trillion.³ This growth occurred in concert with significant market structure changes including shifts precipitated by algorithmic trading; the introduction of swap execution facilities (SEFs); growth in retail trading in both futures and options; and the emergence of several new or consolidated exchanges holding multiple designations as both central counterparties (CCPs) and/or futures commission merchants (FCMs) within the same consolidated group. Over this time period the CFTC has seen a significant number of new product filings—more than 4,000 filings by designated contract markets (DCMs) and more than 1,200 by SEFs.

Derivative markets have also seen the emergence and growth of new asset classes such as digital assets. The strides of this past decade, coupled with the events of last year—some of which we examined during my last three appearances before you⁴, and others which I will expand upon here today—more than warrant a close look at the Commodity Exchange Act (CEA) to determine whether and which additional authorities, guidelines, and resources will guarantee the CFTC remains the global standard of derivatives regulation.

In addition, key programs and offices at the CFTC need to be supported and modernized, and these too would benefit from consideration of legislative amendments.

Current Priorities

Market Resilience

Punctuated by a perfect storm of externalities directly impacting commercial end-users, including America’s farmers and ranchers, the market turmoil of 2020, 2021, and 2022 tested the resilience

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (the “Dodd-Frank Act”).

² Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 165 (2008).

³ CFTC, Weekly Swaps Report, [Weekly Swaps Report | CFTC](#).

⁴ See Rostin Behnam, Chairman, CFTC, Testimony of Chairman Rostin Behnam Regarding “Examining Digital Assets: Risks, Regulation, and Innovation” before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry (Feb. 9, 2022), [Testimony of Chairman Rostin Behnam Regarding “Examining Digital Assets: Risks, Regulation, and Innovation” | CFTC](#); Rostin Behnam, Chairman, CFTC, Testimony of Chairman Rostin Behnam Regarding the Legislative Hearing to Review S.4760, the Digital Commodities Consumer Protection Act at the U.S. Senate Committee on Agriculture, Nutrition, and Forestry (Sept. 15, 2022); [Testimony of Chairman Rostin Behnam Regarding the Legislative Hearing to Review S.4760, the Digital Commodities Consumer Protection Act at the U.S. Senate Committee on Agriculture, Nutrition, and Forestry | CFTC](#); Rostin Behnam, Chairman, CFTC, Testimony of Chairman Rostin Behnam Regarding “Why Congress Needs to Act: Lessons Learned from the FTX Collapse” at the U.S. Senate Committee on Agriculture, Nutrition, and Forestry (Dec. 1, 2022), [Testimony of Chairman Rostin Behnam Before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry | CFTC](#).

of the derivatives markets and the efficacy of post-financial crisis reforms.⁵ The CFTC remained vigilant and responsive, ensuring appropriate risk tolerances and guardrails, analyzing data and trading activity, monitoring for compliance, and ensuring open and continuous conversations across the markets and with our fellow financial regulators both domestically and abroad. Our market structures, regulations, and thoughtful yet assertive approach served the American people and markets as intended, allowing end-users to hedge their risks in this volatile period. This has remained a consistent pattern dating back to the 2008 financial crisis.

The Regulatory Agenda

Strengthening our ruleset is a major priority for 2023 and beyond. At my direction, the CFTC's Divisions are fulfilling an aggressive agenda. My goal over the next two years is for the Commission to consider and vote on at least 30 to 35 of the anticipated proposals in addition to all of the rules and orders proposed last year⁶.

Looking at the over 30 matters for consideration, certain themes emerge: (1) enhancing risk management and resilience across intermediaries, exchanges, and derivatives clearing organizations (DCOs); (2) fostering sound and responsive practices regarding cybersecurity and the use of third-party vendors across all registrants; (3) strengthening customer protections; (4) promoting efficiency and innovation; (5) improving reporting and data policy; and (6) addressing any duplicative regulatory requirements and amplifying international comity and domestic coordination with both federal and state regulators.⁷

Underlying all of these themes is the need for our ruleset to address the derivatives industry's current trajectory. Our regulations historically developed according to activities as they related to an individual registrant. However, we are continuing to observe a desire to shift to structures that combine unique activities into a single entity, raising important questions about conflicts of interest, the strength of capital, margin, and segregation requirements, the role and responsibilities of self-regulatory organizations, affiliate risk management, and of course, customer protections. Indeed, what we are seeing also raises questions as to whether certain service providers should fall within our traditional registration categories.

⁵ At a high level, the key factors impacting commodity markets in 2022 were: (1) the post-pandemic economic recovery characterized by rising commodity prices across all asset classes, contributing to overall inflation; (2) Russia's invasion of Ukraine and related U.S. and E.U. sanctions contributing to sharp price spikes in agricultural, energy, and certain metals markets; (3) monetary tightening and the policy response, with rate hikes by the FOMC totaling a 4.25% increase over the year and the U.S. dollar rising to multi-year highs before falling; (4) severe weather across the globe with heat, drought, and flooding impacting agricultural and energy markets; and (5) China's Covid-19 lockdowns, reducing demand and impacting global supply chains. *See* Rostin Behnam, Chairman, CFTC, Remarks of Chairman Rostin Behnam at the Commodity Markets Council 2023 State of the Industry Conference (Jan. 23, 2023), [Remarks of Chairman Rostin Behnam at the Commodity Markets Council 2023 State of the Industry Conference, Fort Lauderdale, Florida | CFTC](#).

⁶ For a list of proposed rulemakings and orders published in the Federal Register in 2022, *see* [Proposed Rules - CFTC](#) and [Orders and Other Announcements for 2022 - CFTC](#).

⁷ *See* Rostin Behnam, Chairman, CFTC, Keynote Address of Chairman Rostin Behnam at the ABA Business Law Section Derivatives & Futures Law Committee Winter Meeting (Feb. 3, 2023), [Keynote Address of Chairman Rostin Behnam at the ABA Business Law Section Derivatives & Futures Law Committee Winter Meeting | CFTC](#).

Recent Events

Last month, the Commission issued its first public statement on the cyber-related incident at ION Cleared Derivatives.⁸ The directly impacted FCMs represented less than 10 percent of the cleared derivatives market overseen by the CFTC based on the total customer funds held collectively by FCMs for their clients trading futures, foreign futures, and cleared swaps transactions. The incident prevented certain FCMs from submitting timely and accurate positions data to the CFTC and, as a result, CFTC's release of Commitments of Traders (CoT) Reports was delayed. CFTC has started receiving corrected historical data and resumed publication of the CoT Reports sequentially; it is expected that publication of backlogged reports will be complete in the coming weeks.⁹

Current law could not have prevented the ION incident, as the direct regulation of third-party service providers is beyond CFTC jurisdiction. Recognizing the relevant risk, I have asked our Market Participants Division (MPD), which is currently developing rule proposals to address cybersecurity and related risk, to further identify potential weaknesses with respect to third-party service providers and vendor relationships and identify appropriate solutions for Commission consideration. However, even if the Commission supports a rulemaking in this area, with growing cybersecurity risk permeating all elements of our markets, I believe this Committee's reauthorization effort should consider what role and relationship the CFTC should have with third party service providers and vendors of registered entities.

Climate

Extreme weather events contributed to the confluence of factors that defined commodity volatility in 2022. The Commission both domestically and in international workstreams is continuing to engage through the Climate Risk Unit (CRU) on the role of derivatives in understanding, pricing, and mitigating climate-related risk, and to support the orderly transition to a low-carbon economy through market-based initiatives. One such effort involves the voluntary carbon markets, which are jurisdictional to the CFTC in light of listed futures contracts on registered designated contract markets. I am proud of the Commission's efforts toward increasing U.S. participation in international efforts. These markets require a new way of thinking, present questions requiring careful examination, and benefit from the public-private partnership that is the hallmark of the CFTC's approach to examining novel matters.

Digital Commodity Markets

As I discussed in December, the CFTC does not have direct statutory authority to comprehensively regulate cash digital commodity markets. Its jurisdiction is limited to its fraud and manipulation enforcement authority.¹⁰ In the absence of direct regulatory and surveillance authority for digital commodities in an underlying cash market, our enforcement authority is by definition reactionary; we can only act after fraud or manipulation has occurred or been uncovered. Despite this

⁸CFTC, Statement on ION and the Impact to the Derivatives Markets (Feb. 2, 2023), [CFTC Statement on ION and the Impact to the Derivatives Markets | CFTC](#).

⁹ See CFTC, Commitments of Traders, Commitments of Traders Special Announcement as of March 3, 2023, <https://www.cftc.gov/MarketReports/CommitmentsofTraders/index.htm>.

¹⁰ See Behnam, *supra* note 4, Testimony of Chairman Rostin Behnam Regarding "Why Congress Needs to Act: Lessons Learned from the FTX Collapse" at the U.S. Senate Committee on Agriculture, Nutrition, and Forestry.

limitation, to date the Commission has brought 70 enforcement actions involving digital assets commodities. Such cases comprised more than 20% of the 82 actions filed last fiscal year.¹¹

I continue to believe that this limited enforcement authority is no substitute for comprehensive regulation in which trading platforms, dealers, custodians, and other critical market infrastructure participants must register and submit to direct oversight by a regulator such as the CFTC.¹² By the time the CFTC is able to exercise its enforcement authority, it is generally too late for defrauded customers and too late to isolate and contain the fallout from attendant bankruptcies, failures, and flights to liquidity. Comprehensive regulation would enable us to establish market structures and regulatory barriers, guardrails, and guidance that would prevent fraud before it happens, and fully deploy transparency and surveillance tools to see fraud when it does occur.

Enforcement

The CFTC's preeminent enforcement division continues to use every authority available to police commodity markets. In fiscal year 2022, the Commission imposed over \$2.5 billion in restitution, disgorgement, and penalties—approximately eight times our current budget. This shows how effective and successful the CFTC is at using its resources efficiently to protect market participants.

Given the breadth of issues the enforcement division is covering, from preventing excessive speculation in commodity markets, to policing digital commodity asset markets, to ensuring registrants meet their compliance duties from communications and recordkeeping to data reporting and risk management, I believe it is important for this Committee to evaluate current law to ensure penalties are appropriately calibrated to both penalize bad actors and deter fraud and manipulation in commodity derivatives markets.

Proactive Possibilities

The aggressive regulatory agenda is an admittedly bold attempt to address the expanding dislocation between regulation and innovation. However, we are limited by the four corners of the CEA, which, though agile in some areas, sometimes cannot account for today's continually evolving challenges.

With the recent expansion of direct retail participation in the derivatives markets and in underlying commodity markets such as those for digital commodity assets, the CFTC must be able to ensure that the products offered are suitable, that the barriers to entry are meaningful, and that the disclosure information provided is material to their decision making. While there are clear differences and delineations between the futures products offered by CFTC designated contract markets and cash products offered by a variety of unregistered entities, the growing participation appears to be technology driven. Technology not only makes it easier for individual customers to access markets—both regulated and unregulated— but it allows for the increased development of

¹¹ See Press Release Number 8613-22, CFTC, CFTC Releases Annual Enforcement Results (Oct. 20, 2022), [CFTC Releases Annual Enforcement Results | CFTC](#).

¹² In a similar vein, one of the major findings of all of the U.S. federal financial regulators in the Financial Stability Oversight Council's "Report on Digital Asset Financial Stability Risks and Regulation" is that "[A] regulatory gap exists in spot markets for crypto-assets that are commodities and not securities." Financial Stability Oversight Counsel, Report on Digital Asset Financial Stability Risks and Regulation at 88 (Oct. 2022), <https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf>

nano, mini, micro, and event contracts, as well as the structuring of crypto and index futures and options. As individual customers gain greater familiarity and comfort with regulated products, there is an increasing risk that they will find their way into more opaque venues. This risk is amplified where access is achieved seamlessly through vertically integrated, application enabled software available via any Wi-Fi connection.

We are doing a lot. And the Commission will remain vigilant with respect to our registered entities, and use our existing tools and authorities to the fullest extent of the law and the authority we are given to propose stronger rules, monitor and surveil the markets, and root out misconduct wherever it lurks.

Office of Minority and Women Inclusion

As Chairman, in January of 2022 I appointed the CFTC's first ever Chief Diversity Officer (CDO) who oversees the agency's Office of Minority and Women Inclusion (OMWI). The CDO's role is to provide leadership and executive direction regarding the CFTC's efforts to integrate and promote diversity, equity, and inclusion, and accessibility (DEIA) at all levels of the Agency's workforce, in our workplace, business operations, and mission critical work.

I am eager to see the CFTC's OMWI statutorily authorized, similar to other federal financial regulators.¹³ This would expressly authorize us to: 1) assess the diversity policies and practices of entities regulated by the agency; 2) submit annual reports to Congress; and 3) allocate additional resources and staff towards outreach and engagement.

I am committed to building a bench of diverse top talent at the Agency. Current efforts through our OMWI include establishing partnerships and recruiting at minority serving institutions and rural colleges and universities, engaging urban and rural communities and related professional associations, and planning a robust mass media campaign to enhance our outreach efforts.

Whistleblower Incentives and Protection

The Dodd-Frank Act established the Customer Protection Fund,¹⁴ which supports our Whistleblower Program¹⁵ and the Office of Customer Education and Outreach. As this Committee knows, the overwhelming success of the Whistleblower Program has led to the potential for disruptions in these two vital offices. In addition to the importance of a long-term fix to avoid one-time depletions greater than the total balance of the fund, I believe amendments to the statutory provisions describing the permitted uses of the Customer Protection Fund by the Office of

¹³ Section 342 of the Dodd-Frank Act, codified at 12 U.S.C. 5452, required the Departmental Offices of the Department of the Treasury, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), each of the Federal reserve banks, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Bureau of Consumer Financial Protection (CFPB), the Federal Housing Finance Agency (FHFA), and the Securities and Exchange Commission (SEC) to each establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters of the agency relating to diversity in management, employment, and business activities. The Act also instructed each OMWI Director to develop standards for assessing the diversity policies and practices of entities regulated by the respective agency.

¹⁴ CEA § 23(g), 7 U.S.C 26(g).

¹⁵ COMMODITY FUTURES TRADING COMMISSION WHISTLEBLOWER PROGRAM, [CFTC's Whistleblower Program | Whistleblower.gov](https://www.cftc.gov/whistleblower).

Customer Education and Outreach¹⁶ would allow the Commission to implement a host of new investor protection programs and systems and information aimed at ensuring American families have the knowledge and tools to not only protect themselves from fraud and manipulation, but to more fully engage with the Commission and the markets we oversee.

Conclusion

The CFTC has consistently been at the forefront of identifying and addressing risks, and our approach has been balanced, thoughtful, and measured. As Chairman, I will continue to direct staff to engage with seriousness and objectivity; this is our most important responsibility as public officials. In my view, that includes a duty to protect the public interest and ensure that our markets serve their intended purpose as a means for risk management and price discovery.

More than five years ago, I testified before this Committee during my nomination hearing to be a CFTC Commissioner. In my opening statement, I remarked that “as this Committee shifts focus to the 2018 Farm Bill, I commit...to working with each member of this Committee...to ensure the CFTC...remains both a desirable and cost-effective risk management and price discovery tool for agricultural producers and the entire value chain.”¹⁷ This commitment remains my anchor. And as this Committee now considers the 2023 Farm Bill, I remain committed to this promise, and look forward to working with each member during the reauthorization process.

Thank you and I look forward to answering your questions.

¹⁶ See CEA section 23(g)(2); 7 USC 26(g)(2).

¹⁷ Rostin Behnam, Statement Before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry (July 27, 2017), [Testimony_Behnam.pdf \(senate.gov\)](#).

QUESTIONS AND ANSWERS

MARCH 8, 2023

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Oversight of the Commodity Futures Trading Commission
 March 8, 2023
 Questions for the Record
 The Honorable Rostin Behnam

Chairwoman Debbie Stabenow

1. In *Prime Int'l Trading, Ltd. v. BP PLC*, the Second Circuit Court of Appeals blocked plaintiffs from suing for manipulation under the Commodity Exchange Act (CEA), finding that the CEA's antifraud provisions do not permit a plaintiff trading on a United States futures exchange to bring an action for fraud or manipulation where the misconduct occurred overseas. On the other hand, some courts have found that the Securities and Exchange Commission may pursue fraud or manipulation that takes place abroad where there is an effect on American securities markets or investors.

How does the Second Circuit's decision in *Prime Int'l* impact the Commodity Futures Trading Commission's (CFTC) mission to protect U.S. persons and markets from fraudulent and manipulative conduct?

Response: The CFTC believes that without congressional action, the Second Circuit's decision in *Prime Int'l* and subsequent decisions, may hinder the CFTC's mission to protect U.S. persons and markets from fraudulent and manipulative conduct.

Recently in a CFTC action, a district court held that a CFTC claim that a false and misleading statement regarding the price of a Ten-Year Swap Spread that was trading in the United States, and being affected by the defendant's manipulative acts, was "impermissibly foreign" conduct because the statement of the U.S.-based price was made in Japan to a Japanese-affiliate of a U.S.-based bank. *See, CFTC v. Gorman*, 21-cv-870, 2023 WL 2632111 (S.D.N.Y. Mar. 24, 2023). In the Department of Justice's criminal action against Sam Bankman-Fried (FTX), the defendant Bankman-Fried recently filed a motion to dismiss in part arguing that the commodities fraud charges must be dismissed because they are an impermissible extraterritorial application of the CEA. Specifically invoking the Second Circuit's "predominantly foreign" test, Bankman-Fried argued the relevant manipulative and deceptive conduct occurred outside the United States.

The SEC is not subject to the same challenging precedent. Congress amended the federal securities laws to apply extraterritoriality when the statutory conduct-and-effects test is satisfied. 15 U.S.C. § 77v(c); 15 U.S.C. § 78aa(b). Without a congressional fix, the CFTC will argue that the holding in the *Prime Int'l* case is distinguishable because it relates to a private right of action and not a government enforcement action that focuses on the interests of the public. The CFTC will also argue that the plain language of the anti-manipulation and anti-fraud authority set forth in Section 6(c)(1) of the CEA and Commission Regulation 180.1, properly construed with other provisions of the CEA,

contain clear indicia of extraterritorial application. Those provisions apply in connection with swaps, contracts of sale of any commodity in interstate commerce, and to futures contracts on or subject to the rules of any registered entity. However, it must be noted that as to swaps, Congress has explicitly provided for extraterritorial application, which, in the absence of congressional action, could result in disparate outcomes depending on the nature of the jurisdictional product at issue in a particular action.

2. **During the hearing, you testified that the CEA limits the CFTC's use of funds from the Customer Protection Fund to educating customers about fraud and other violations of the Act or CFTC rules. You explained that customers would benefit from Congress expanding the agency's authority under CEA Section 23(g)(2), permitting it to engage more broadly with consumer advocacy groups and state regulators in education and outreach.**

If Congress were to expand the CFTC's authority to conduct education and outreach under CEA Section 23(g)(2), how would you propose that the agency enhance its outreach to customers, particularly those in historically underserved communities?

Response: CEA Section §23(g)(2) limits the CFTC's Office of Customer Education and Outreach to (OCEO) to funding educational initiatives designed to help customers protect themselves against fraud or violations of the CEA and CFTC regulations. These limits prevent the office from developing material that addresses risks associated with new technologies, and users engaging with that technology. This is particularly problematic due to the increase in retail participation using phone apps and other easy to use applications. Lifting the strict limits would allow the CFTC to offer more effective education and outreach such as:

- Material that addresses new technologies, such as cryptocurrency, where education of the risks is paramount to protecting market participants before they become victims of fraud.
- Targeted education and outreach to diverse audiences and communities who have historically been shut out of traditional finance to help them understand risk.
- Research to fill research gaps pertaining to the growing number of retail traders in our markets to better inform programming and messaging.
- Material to educate producers and agricultural end-users about hedging and about market and product fundamentals and the risks involved in using the derivative markets as a risk management tool.

OCEO would also expand our outreach to community partners and organizations. Trusted local partners provide access to underserved communities where there may be limited exposure to materials about market risks and participation. Partner organizations could include, local low-income financial or housing counseling services, tribal organizations, public libraries, cooperative extension services, Annie's Project, National Black Farmers Association, Intertribal Agriculture Council, Farm Bureau, state AARP chapters, Latino Economic Development Center, Unidos US, military financial educators, veterans' organizations, other federal, state, and local government agencies.

If the strict limits were lifted, the CFTC would undertake retail customer research to get a better understanding of who is using the markets, including trading activity, sources of trading/investing information, investing experience, financial literacy, demographics, geographic concentrations, media preferences, and income and asset levels. Data as well as qualitative studies, would provide the evidence needed to hone culturally relevant messaging, develop relevant multi-lingual materials, and deliver learning equitably and effectively.

3. **Section 342 of the Dodd-Frank Act required six federal financial agencies to each establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters relating to diversity in management, employment, and business activities. Section 342(b)(2)(C) of the Dodd-Frank Act also required the OMWI Director of each agency to develop standards for assessing the diversity policies and practices of entities regulated by the agency. To implement this requirement, the six financial agencies jointly issued an interagency policy statement that established joint standards to assess the diversity policies and practices of regulated entities.**

The CFTC was not included in Section 342 of the Dodd-Frank Act as an agency statutorily required to establish an OMWI office. How has this impacted the CFTC's ability to address diversity, both within the agency and across the markets it regulates?

Response: As the only federal financial regulatory agency that was not required by the Dodd-Frank Act to establish an OMWI, the CFTC is easily a decade behind other financial regulatory agencies in our diversity and inclusion efforts. Prior to the arrival of the CFTC's first Chief Diversity Officer in January of 2022, the CFTC's OMWI was solely focused on equal employment opportunity (EEO) complaints processing and enforcement of EEO-related statutes, regulations, and executive orders, which Section 342 (a)(3) of the Dodd-Frank Act specifically states are not included in OMWI office responsibilities. The lack of this statutory authorization impacts the CFTC OMWI's ability to fill the broader mandates of Section 342 of the Dodd-Frank Act to address diversity within the CFTC's workforce, procurement and contracting activities, and regulated entities.

Section 342 articulates robust mandates for advancing and promoting diversity in the workforce, requiring each agency to take affirmative steps to seek diversity in the workforce of the agency at all levels of the agency, including recruiting at colleges and universities; sponsoring and recruiting at job fairs; engaging in mass media communications; partnering with organizations that are focused on developing opportunities for minorities and women for industry internships, summer employment, and full-time positions; and partnering with majority minority high schools to establish or enhance financial literacy programs and provide mentoring.

Furthermore, Section 342(b)(2)(C) of the Dodd Frank Act requires each OMWI Director to develop standards for assessing the diversity policies and practices of entities regulated by the agency. Following a series of roundtables and a notice and comment period in the Federal Register (78 FR 64052 and 77792), in 2015 the Department of Treasury; the

Federal Deposit Insurance Corporation (FDIC); the Federal Housing Finance Agency (FHFA); the Federal Reserve Banks; the Board of Governors of the Federal Reserve System (Board); the National Credit Union Administration (NCUA); the Office of the Comptroller of the Currency (OCC); the Securities and Exchange Commission (SEC); and the Consumer Finance Protection Bureau (CFPB) issued a [Final Interagency Policy Statement establishing Joint Standards for Assessing the Diversity Policies and Practices of the Entities they Regulate](#) ("Joint Standards") (80 FR 33016 (June 10, 2015)). Statutory authorization would enable the CFTC to similarly develop standards to assess diversity policies and practices of entities regulated by the CFTC, allowing the CFTC to monitor trends and highlight best practices.

4. **In a recent speech, CFTC Commissioner Johnson called on Congress to enhance the agency's authority to conduct due diligence on businesses that seek to purchase entities registered with the CFTC.**

What authority does the agency currently have under the CEA to review the purchase of a CFTC registrant by an unregistered entity? If there is no such authority, what risks does this present to customers and U.S. derivatives markets?

Response: Agency rules and regulations include a notification obligation involving the transfer of significant equity interest in a registered entity. In order to maintain registration with the CFTC, a DCO, DCM or SEF must at all times remain in compliance with applicable statutory core principles and CFTC regulations. This compliance obligation persists in the event of a change in ownership.

Ranking Member John Boozman

1. **The CFTC Division of Market Oversight issued a staff advisory (Advisory) in September 2021 on what triggers the requirement for a person to have to register as a swap execution facility (SEF). The Advisory has created confusion and alarm that the Commission is applying a new interpretation that goes beyond what market participants had understood from the SEF registration rules adopted in 2013, and moreover without the benefit of public rulemaking or cost-benefit analysis. Based on a common sense understanding of the CEA's SEF definition, including the "multiple-to-multiple" element, reinforced by the Commission's statements in the original SEF rulemaking and in other contexts at the time, many market participants concluded that certain common swaps brokerage services were acceptable without the involvement of a SEF. The Commission seemed to reaffirm this long-held understanding when it decided not to adopt a more expansive SEF interpretation it had proposed in 2018 in the face of strong objections, to avoid unintended consequences and market disruption. End users and other market participants are now trying to work through the consequences of an Advisory that seems to call into question traditional swaps agency brokerage services, including those provided by introducing brokers and commodity trading advisors. Market participants depend on these established services to access derivatives markets.**

- a. In light of these concerns, will the CFTC consider suspending or revoking the 2021 Advisory pending approval of a final rule that is subject to notice and public comment to better understand the costs and benefits of its new interpretation?

Response: The 2021 advisory was intended to clarify when certain activities may trigger SEF registration. Agency staff are considering whether further clarification of the SEF registration standard may be appropriate.

2. SEC Chairman Gary Gensler has repeatedly asserted that all “stable token[s] backed by securities...are subject to the securities laws and must work within our securities regime.” This designation would include all major stable coins, including USDT, USDC, and BUSD, as each are backed by at least some securities holdings. There is further evidence that the SEC views BUSD as a security, in light of the SEC’s recent Wells notice to Paxos about BUSD. Moreover, Chairman Gensler recently indicated in an interview that all digital assets, except for bitcoin, are securities. However, long before Chairman Gensler’s pronouncements and actions, the CFTC has been active in settling enforcement actions and filing law suits in court over the digital asset space. In several of these legal documents, the CFTC has asserted, without limitation, that digital assets are commodities. In particular, CFTC enforcement filings state that “stable coins such as [T]ether” and USDC are commodities and that Bitcoin, Ether, Litecoin, and Dogecoin are all commodities. It appears that the SEC disagrees with the CFTC’s long-standing views on which digital assets are commodities, particularly with respect to centrally-issued stable coins, and is willing to impose its different views on the digital asset market.

Do you currently support CFTC’s prior positions on these digital assets?

Response: Yes, I support the CFTC’s positions in the digital asset-related cases that we have brought. I also recognize that there can be difficult legal issues presented in digital asset-related cases that may implicate the jurisdiction of multiple regulators. However, in the absence of Congressional legislation, the CFTC will continue being proactive in this space when our jurisdiction is implicated. We will work with the SEC and other agencies to ensure that wrongdoers are held accountable.

3. Reports have stated that SEC Chairman Gensler, since June of last year, has implied that Ether is a security despite the fact the CFTC has already issued a number of settlements stating that Ether is a commodity.
 - a. In light of these statements, is your current view that Ether remains a commodity? Why or why not?

Response: Yes, my view is that ETH is a commodity. As multiple courts have held, digital assets generally fall within the broad definition of a commodity, and the CFTC’s jurisdiction over ETH as a commodity is both well supported by the law

and by the practical fact that CFTC-regulated platforms have been offering derivatives tied to the value of ETH for multiple years.

b. If you do believe it is still a commodity, do you think the SEC has jurisdiction over Ether if it is offered in a security product?

Response: I cannot comment on a hypothetical product, but I can confirm that the SEC generally has primary jurisdiction over a security product.

4. I appreciate the agency's Aluminum Futures Market Report issued in the Fall of 2022, but I continue to hear concerns regarding aluminum markets and pricing. Does the agency have any concerns relating to these markets or pricing?

Response: The CFTC holds primary regulatory authority over Designated Contract Markets ("DCMs") and Swap Execution Facilities ("SEF"). These markets are registered with the CFTC and are required to comply with many core principles and associated CFTC regulations that govern the operation of their facilities. All DCMs and SEFs are required to either self-certify to the Commission that new contracts comply with the CEA and CFTC regulations or submit those contracts to the CFTC for review and approval before offering them for trading. Particularly relevant here, Core Principle 3 for both DCMs and SEFs requires that these entities list only contracts that are not readily susceptible to manipulation. In addition, Appendix C to Part 38 of the CFTC's regulations provides non-binding guidance for use in determining whether a contract is readily susceptible to manipulation.

The Appendix C guidance states that when evaluating the susceptibility of a cash-settled contract, such as the COMEX Midwest Premium contract (MWP), to manipulation, the DCM should consider the size and liquidity of the underlying cash market and design the terms and conditions of the contract to avoid any impediments to convergence. 17 C.F.R. pt. 38 App. C. For cash-settled contracts, Appendix C notes that DCMs should consider the commercial acceptability and robustness of the cash price series. Also, each cash-settled contract's price series should be based on publicly available prices and should be available on a timely basis for calculating the cash settlement price at the expiration of the commodity contract.

The CFTC's Division of Enforcement furthers the CFTC's mission to protect market users and the public from fraud, manipulation, and abusive practices that are prohibited by the CEA. In addition, analysts within the Market Surveillance Unit of the Division of Enforcement work to detect potential violations, which are then referred to an investigative team within Enforcement. While the CFTC does not have direct regulatory authority over cash metals markets, it does have authority to address fraud or manipulation in those markets.

The agency will continue to use its existing authority to ensure that contracts trading on platforms regulated by the CFTC are not subject to manipulation and to action if necessary to address any misconduct.

5. In instances where CFTC staff has consecutively extended no-action relief, will you commit to codifying that relief? Also, as part of your response, do you agree that waiting until the last minute to extend no-action relief creates uncertainty and enhances market risk and will you commit to working with the appropriate staff to extend no-action relief at least 6 months before expiration?

Response: Under my leadership staff has been working to codify existing staff no-action letters and positions where appropriate. The Commission has proposed rules in the last year and staff is working on additional proposals that would, if approved by the Commission, codify several long-standing no-action position letters. Staff will endeavor to consider no-action requests in a timely fashion and will work to provide market participants with as much certainty as possible.

6. Do you agree that market participants losing trust in the ability of their regulator to safeguard data enhances market risk and/or reduces resiliency? And can you commit to finding solutions that balance the agency's enforcement mandate and the need to keep registrant data secure?

Response: I agree that if market participants lose trust in the ability of their regulator to safeguard data that could enhance market risk and/or reduce resiliency. I can also commit to finding solutions that will allow the CFTC to appropriately exercise its enforcement authority while keeping registrant data secure as well.

To that end, the CFTC has implemented numerous protections to safeguard registrant data, including market sensitive data protected under Section 8 of the Commodity Exchange Act. These include, among other things: ensuring limited access to data; the encryption of data; storing data on hardened servers; malware and antivirus protection; annual security and privacy awareness training; the use of PIV cards and multi-factor authentication; and the use of a myriad of security devices and tools to protect the network and the computer systems from hackers and unauthorized users, such as firewalls, intrusion detection systems, and data leak prevention software. Registrant data is protected in accordance and in compliance with the Federal Information Security Modernization Act (FISMA), other Federal mandates and guidelines, and industry best practices.

7. The CFTC website states that "data in the Commitment of Traders (COT) reports is from Tuesday and released Friday," and that the CFTC "receives the data from the reporting firms on Wednesday morning and then corrects and verifies the data for release by Friday afternoon." Why is there lag between when the CFTC receives the data from reporting firms (Wednesday) to when the CFTC releases the data (Friday afternoon)? Is that delay statutorily mandated? Also, please provide a detailed description of the CFTC's internal process from the time the agency receives data to when the CFTC releases the data.

Response: The Commitments of Traders Report (COT Report) provides a breakdown of each Tuesday's open interest for futures and options on futures markets in addition to

aggregated trader positions for markets in which 20 or more traders hold positions equal to or above the reporting levels established by the CFTC.

The time delay between the Commission's receipt of position data underlying the COT Reports and the publication of the COT Reports is not statutorily mandated. Rather, the current delay provides time for several processes that ensure the quality of the COT Reports. A detailed description of these processes is enumerated below.

Wednesday morning

The Commission receives large trader position data detailing positions as of close-of-business Tuesday. The Commission also receives an identification of controlling accounts from reporting firms. The data is loaded into the Commission's computer systems and made available to Commission staff.

Wednesday afternoon

Commission staff use internal tools to review the data received from reporting firms. Potentially missing or incorrect position data, as well as missing account identifications, are identified.

Commission staff send emails to individual reporting firms to request that they promptly investigate and resolve the discrepancies identified by Commission staff. Commission staff begin to receive corrected and missing data from reporting firms in response to Commission staff outreach. Since it is outside normal business hours for many of the reporting entities that are foreign firms, a significant number of firms do not provide corrected or missing data on Wednesday.

Thursday morning

Corrected and missing data continues to be received from reporting firms in response to the Commission outreach that occurred on Wednesday. In some instances, corrected and missing data continues to be received throughout Thursday and into Friday. Upon receipt of newly submitted data, Commission technical staff load the data into the Commission's computer systems and validate the data. Validated data is passed to Commission subject matter experts for further review.

Thursday afternoon

Commission subject matter experts continue to analyze the data received and, when they are satisfied that the report data is correct, approve the COT Reports for publication. The COT Reports are provided to the staff responsible for the Commission's website. In some instances, the Commission is unable to promptly receive corrected and missing data from reporting firms. In such instances, Commission staff engage in additional

outreach to specific reporting firms and these processes may continue until Friday morning.

Friday morning

CFTC staff responsible for the Commission's website prepare the COT Reports for publication. Commission subject matter experts review, and approve, the COT Reports in their final publication form.

Friday afternoon

The COT Reports are published at 3:30 pm ET.

The Commission is currently engaged in several efforts that are expected to expedite the processes detailed above. During Q1 2023, the Commission began making a scorecard accessible to each reporting firm that details the firm's compliance, or non-compliance, with the data reporting requirements that enable the COT Reports. Commission staff have been engaging with firms regarding the non-compliance detailed in these scorecards, and expect that firms will make efforts to improve their compliance with the Commission's data reporting regulations. Additionally, in June, the Commission proposed amendments to the position reporting requirements detailed in Part 17 of the Commission's regulations. (See Large Trader Reporting Requirements, 88 Fed. Reg. 41522 (proposed June 27, 2023, [2023-13459a.pdf \(cftc.gov\)](#)) Commission staff expect that this proposal, if enacted by the Commission, would modernize the position reporting process and expedite the data analysis and firm outreach detailed above. Commission staff believe that these efforts will position the Commission in the future to be able to consider whether the timing of the COT Reports should be changed.

- 8. I appreciate the Commission's desire for more transparency in the swaps market, while also working to safeguard a deep, liquid, swaps market in the United States. As you know, when the block trade rulemaking was finalized in fall 2020, there were concerns about adopting the new 67% notional threshold without taking into consideration data under the 2020 improvements to the Swaps Data Repository (SDR) and without receiving feedback from the industry on that data. Does the Commission intend to engage with and receive input from affected market participants, especially regarding potential unintended consequences to liquidity in the current economic environment?**

Response: Commission staff published revised post-initial appropriate minimum block sizes on April 13, 2023. The revised block sizes take into consideration the data improvements contemplated by the Commission's 2020 Swaps Data Rulemakings.¹ The

¹ The revised block sizes were calculated in accordance with Commission regulation 43.6(g), which requires use of a 67-percent notional amount calculation. The revised block sizes were calculated based on a one-year window of reliable swap transaction and pricing data transmitted to Swap Data Repositories (SDRs) between December 1, 2021 and November 30, 2022. The SDR that receives the vast majority of swap transaction and pricing data reports had

Commission does not intend for the publication of the revised block sizes, which are scheduled to take effect December 4, 2023, to be associated with any formal notice and public comment period.² The Commission plans to continue to engage with market participants informally and monitor the liquidity of its jurisdictional markets.

As you know, the Commodity Exchange Act (CEA) directs the Commission to provide for both real-time public swaps reporting and appropriate block sizes. The Commission concluded in both 2013 and 2020 that a 67-percent notional amount block size calculation, applied to the most liquid categories of products in certain swap asset classes, strikes an appropriate balance between the benefits of transparency and any potential costs to market participants. The Commission continues to believe that transparency will increase liquidity, improve market integrity and price discovery, while reducing information asymmetries enjoyed by market makers. The currently effective block sizes, which were calculated using a 50-percent notional amount calculation and intended as an initial step towards a phase-in of thresholds determined using a 67-percent notional amount calculation, have not changed in a decade. The Commission is cognizant that the currently effective block thresholds result in less transparency than the Commission has previously determined is appropriate to effectuate its CEA responsibilities.

Senator Cory Booker

1. **The COVID-19 pandemic, supply chain bottlenecks, and Vladimir Putin’s invasion of Ukraine has led to rising commodity prices and market volatility that has stifled the global economy. Despite the economy’s notable wage growth and employment gains, this volatility has translated into higher prices for working families when heating their homes and buying groceries, increased costs and lower margins for family farmers, and a deepening of the global hunger crisis, pushing even more families on the brink of famine around the globe. Meanwhile, a report out this week found that the commodity industry made record profits of more than \$115 billion from trading activities, up 60 percent from the year prior. In fact, the foreign banks, hedge funds, and Wall Street traders saw profits that were nearly three times higher than the pre-pandemic levels.**

already implemented several key aspects of the Commission’s 2020 Swaps Data Rulemakings prior to December 1, 2021.

² The Commission’s regulations require the Commission to update the block sizes on its website at least once each calendar year, but modify the block swap categories and block calculation methodology through rulemaking. The Commission therefore does not intend for the publication of the revised block sizes to be associated with a formal notice and comment period, as the Commission noted its concern during the 2020 Swaps Data Rulemakings that opening the results of applying the block methodologies to data would suggest the methodologies are open to public comment annually, when opening the rules for public comment each year would be an inefficient use of Commission resources. The Commission expended significant time and resources in analyzing data and responding to public comments received during the comment period associated with the 2020 Swaps Data Rulemakings.

In October, I sent you a letter, along with Senator Warren, asking the CFTC to conduct a series of studies examining whether excessive speculation in key commodities markets – including natural gas, wheat, and oil – had contributed to higher prices of household necessities. Chairman Behnam, I am grateful for your commitment to addressing the pain felt by everyday Americans as a result of market volatility. However, I remain concerned that we lack the guardrails to ensure that Americans are not paying higher prices for the benefit of wealthy traders. In your response to my letter, you wrote: “statutory limitations solidify the policy considerations that circumscribe the Commission’s ability to disclose information and analyses associated with its ongoing investigative and oversight function”.

- a. Has the CFTC conducted the requested study analyzing potential excessive price speculation in the energy and wheat sectors, and could you share that study with this Committee?
- b. If not, what statutory changes would you need to make this information publicly available?

Response: As you note, commodity markets have recently experienced a perfect storm of externalities, including persisting impacts of the Covid-19 pandemic, volatility relating to the conflict in Ukraine, and the escalating effects of climate change. Ensuring that commodity derivatives markets remain liquid, resilient and free from manipulative or disruptive conduct, so that they can effectively serve their risk management and price discovery functions, is the CFTC’s highest priority. The CFTC has remained vigilant in order to ensure that this priority continues to be met in the face of recent market stress and volatility. Our preeminent analytic, surveillance and enforcement programs have continued to closely monitor the CFTC’s regulated markets - analyzing data, conducting trading analyses for manipulative, inappropriate or disruptive conduct, and leveraging the agency’s enforcement authorities to root out bad actors. CFTC staff have also continued to actively monitor compliance by exchanges, clearinghouses and intermediaries with their regulatory obligations, to ensure that they can thoroughly and effectively perform their critical roles in our markets. And, faced with an unprecedented array of stressors, our regulatory framework and market structures have served their functions well, enabling end-users to hedge their risks during a particularly challenging period.

Heightened vigilance remains in order as we observe ongoing market impacts related to Russia’s aggression against Ukraine and other volatility drivers. I continue to support the full exercise of the Commission’s authorities to ensure – particularly in light of these ongoing market impacts – that the relationship between commodity prices and the derivatives markets reflects economic factors, and that the Commission is following Congressional mandates to address the risk of excessive speculation. I continue to support the use of all available resources and expertise to vigorously monitor the CFTC’s regulated markets – including through ongoing, commodity-specific staff analyses, under strict parameters, to examine the role of speculators and how, if at all, their participation in the market has negatively impacted price discovery.

As an agency, we are constantly assessing what information and findings from these monitoring efforts may be shared outside of the agency without compromising our oversight, surveillance and enforcement functions. We must also weigh the extent to which such information and findings may be shared in compliance with statutory duties and obligations under the Commodity Exchange Act relating to the treatment of certain sensitive information, including information that would separately disclose the business transactions or market positions of any person.

I look forward to continuing to work closely with you and other members of the Senate Agriculture Committee to ensure that the prices paid by American families when heating their homes, and buying groceries and gas, reflect true supply and demand factors. I would like to reiterate that I am unconditionally committed to transparency. I also take the CFTC's role as a price-agnostic regulator seriously, and I believe that we must exercise particular care in the treatment of our data, analyses and investigations in order avoid any impact on the integrity of the derivatives markets that we oversee, and to safeguard the implementation and effectiveness of our market surveillance tools and enforcement program.

2. **Chairman Behnam, I'm grateful for your focus on improving the gender, racial, and ethnic diversity of the financial industry, both in your testimony and in your work as Chairman of the CFTC. The 2008 financial crisis revealed critical weaknesses in our economy and in the banking industry; as the Mayor of Newark, I saw firsthand how the risks taken by wealthy Wall Street bankers and traders devastated Black and Brown working families in my city. In its response to that crisis, the Dodd-Frank Act, Congress also recognized an alarming lack of diversity in the financial sector. Thanks to Section 342, most of the financial regulators established Offices of Minority and Women Inclusion to address the staggering issue, starting at the federal government. I've been proud to build on that work by pushing federal agencies to take a look at who is managing their assets, and promoting opportunities for emerging asset managers. Unfortunately, the CFTC was not included under Section 342, which hampers the CFTC's ability to engage in this work in a more meaningful way.**

- a. **Does the CFTC currently have data on the demographics of its workforce, and can you share that information with this Committee?**

Response: Yes. A summary of the CFTC's demographic workforce data for FY 2021 and available data for FY 2022 is provided below.

Fiscal Year 2021

During Fiscal Year 2021, out of 690 total CFTC employees (permanent and temporary employees):

- 68.26% (471 employees) identified as White;
- 17.10% (118 employees) identified as African American or Black;

- 10.43% (72 employees) identified as Asian American;
- 3.62% (25 employees) identified as Hispanic;
- Less than 1% (<10 employees) identified as Native Hawaiian, Native American, or Two or More Races;
- 58.26% (402 employees) identified as male and 41.74% (288 employees) identified as female; and
- 5.80% (40 employees) identified as a person with a disability³, with less than one percent of the workforce (<10) identifying as a person with a targeted disability.⁴

Across grade levels, out of 679 permanent employees:

- Employees identifying as White made up 34.78% of permanent employees at the CT 12 and below level, 51.43% at the CT 13 level, 70.67% at the CT 14 level, 76.22% at the CT 15 level, and 77.78% at the CT 16 and above level.
- Employees identifying as minority⁵ employees made up 65.22% of permanent employees at the CT 12 and below level, 48.57% at the CT 13 level, 29.33% at the CT 14 level, 23.78% at the CT 15 level, and 22.22% at the CT 16 and above level.
- Employees identifying as male made up 32.61% of permanent employees at the CT 12 and below level, 60.00% at the CT 13 level, 58.67% at the CT 14 level, 62.94% at the CT 15 level, and 62.22% at the CT 16 and above level.
- Employees identifying as female made up 67.39% of permanent employees at the CT 12 and below level, 40.00% at the CT 13 level, 41.33% at the CT 14 level, 37.06% at the CT 15 level, and 37.78% at the CT 16 and above level.

Fiscal Year 2022

Demographic information from Fiscal Year 2022 is still being analyzed and finalized. Initial numbers indicate that out of 710 total CFTC employees (permanent and temporary):

- 67.89% (482 employees) identified as White, a decrease in percentage compared to FY 2021;
- 16.90% (120 employees) identified as African American or Black, a decrease in percentage compared to FY 2021;
- 11.27% (80 employees) identified as Asian American, an increase in percentage compared to FY 2021;

³ The Americans with Disabilities Act Amendments Act of 2008 define disability as a physical or mental impairment that substantially limits one or more major life activities.

⁴ Targeted disabilities are a subset of the larger disability category and are defined as developmental disabilities; traumatic brain injuries; deafness or serious difficulty hearing; blindness or serious difficulty seeing even when wearing glasses; missing extremities (e.g., arm, leg, hand and/or foot); significant mobility impairments, benefitting from the utilization of a wheelchair, scooter, walker, leg brace(s) and/or other supports; partial or complete paralysis (any cause); epilepsy and other seizure disorders; intellectual disabilities; significant psychiatric disorders, (e.g., bipolar disorder, schizophrenia, PTSD, or major depression); dwarfism; and significant disfigurement (e.g., disfigurements caused by burns, wounds, accidents, or congenital disorders).

⁵ For these purposes, minority is defined as any individual indicating a racial or ethnic identity other than White.

- 3.66% (26 employees) identified as Hispanic, an increase in percentage compared to FY 2021;
- Less than one percent (<10 employees) identified as Native Hawaiian, Native American, or Two or More Races, holding constant compared to FY 2021;
- 58.30% (414 employees) identified as male, an increase in percentage compared to FY 2021, and 41.69% (296 employees) identified as female, a decrease in percentage compared to FY 2022.
- 5.92% (42 employees) identified as a person with a disability, an increase in percentage compared to FY 2021, and less than one percent (<10) of the workforce identified as a person with a targeted disability, a decrease compared to FY 2021.

b. Could you speak to how the lack of authorization hampers your efforts to create a more inclusive Commission?

Response: Creating a genuinely inclusive workplace goes beyond recruitment and working to diversify an organization's workforce. An inclusive workplace is a workplace where diversity, equity, inclusion and accessibility (DEIA) are reflected in the norms and values of the agency, integrated into and across agency functions and into organizational planning documents. As articulated in the November 2021 Government-Wide Strategic Plan to Advance DEIA in the Federal Workforce, prioritizing DEIA across functions requires senior leadership involvement and commitment at all levels. To create an inclusive environment where everyone can thrive and grow requires an understanding of and recognition that not all employees experience the same workplace challenges. Focusing on the employee experience requires collecting and analyzing data and metrics that provide insight into the employee experience, identifying areas of inequities and supporting leadership teams by providing actionable insights to support culture change and to address negative behaviors. OMWI offices that are statutorily authorized are uniquely positioned with the appropriate resources and expertise to collect and analyze data, develop strategies to increase employee engagement and inclusion, upskill leaders on inclusive behaviors and practices, and create ongoing voice of the employee feedback loops to ensure employees feel that their experiences are valued, seen and considered in decisions related to policy, processes, and overall agency and organization-specific strategies.

3. Chairman, in a letter to you last October, I wrote to you about my concerns with the rapidly growing voluntary carbon offset market, which enables corporations to make claims about emission reductions while – in reality – taking little action to address the climate and environmental justice impacts of their industry. Carbon offsets, as they currently stand, are not compatible with climate justice goals, as they enable wealthy corporations to continue emitting while using fraught tactics that prioritize their bottom line over the health and well-being of vulnerable communities.

a. Does the CFTC need additional authorities in order to thoroughly investigate fraud underlying greenhouse gas emission offset claims in the futures market?

Response: The CFTC has regulatory and enforcement authority over carbon offset futures listed on designated contract markets (DCMs), which are required to comply with the Commodity Exchange Act (CEA) and the Commission's regulations thereunder. DCMs must either self-certify to the Commission that new futures contracts comply with the CEA and CFTC regulations or submit those contracts to the CFTC for review and approval before offering them for trading on their respective exchange. Particularly relevant here, Core Principle 3 for DCMs requires that these entities list only contracts that are not readily susceptible to manipulation. In addition, Appendix C to Part 38 of the CFTC's regulations provides non-binding guidance for use in determining whether a contract is readily susceptible to manipulation.

While the CFTC does not have regulatory authority over the voluntary carbon offset markets, it does have enforcement authority to bring a civil enforcement action against a person deemed to have engaged in carbon-offset derivative market or cash market fraud or manipulation. As the CFTC does not conduct ongoing surveillance of the underlying carbon markets, the CFTC agency relies on tips, complaints, or referrals submitted to the CFTC's Whistleblower Office as a catalyst to begin an anti-fraud or anti-manipulation enforcement action. The CFTC's Whistleblower Office issued an alert on June 20, 2023 to notify the public on how to identify and report potential Commodity Exchange Act (CEA) violations connected to fraud or manipulation in the carbon markets (available: <https://www.cftc.gov/PressRoom/PressReleases/8723-23>).

b. Are there additional data points or resources the CFTC needs to effectively oversee carbon offset futures contracts?

Response: The agency has not identified any additional data points that it needs to oversee the carbon offset futures trading. The agency looks forward to supporting the work of the Agriculture Committees and Congress to bring any additional, appropriate authorities to the CFTC to ensure that these underlying carbon markets have integrity and are accomplishing their intended goals.

4. Given the reports outlined in our letter, which suggest that the voluntary carbon market you think that self-certification of greenhouse gas emission offset contracts is appropriate, given the issues raised around market integrity?

Response: As mentioned above, DCMs are required to either self-certify to the Commission that new contracts comply with the CEA and CFTC regulations or submit those contracts to the CFTC for review and approval before listing them for trading. DCMs must submit a new or amended contract pursuant to the Commission's regulations in Part 40 and the contracts must be consistent with the DCM Core Principles, including DCM Core Principle 3, which requires a DCM to only list contracts that are not readily susceptible to manipulation, and the Commission regulations applicable to DCMs. Appendix C to Part 38 of the CFTC's regulations also provides non-binding guidance for

how a DCM can demonstrate compliance that a contract is readily susceptible to manipulation. A DCM may self-certify or receive approval for a new contract as long as it complies with the CEA and Commission's regulations thereunder. The Commission may not deny or revoke a product listing on grounds beyond its statutory mandate within the CEA.

Senator Ben Ray Luján

1. **In the past, the CFTC's diversity and Hispanic representation has been criticized for falling behind the relevant civilian workforce. In an evaluation conducted in the Commission's MD-715 report for FY19 concluded that the Commission had "No Commission wide D&I (Diversity and Inclusion) Strategy".**

Does the Commission currently have a strategic plan for improving equity through its mission operations, and attracting and retaining a diverse workforce?

Response: This year, the CFTC's OMWI is leading a project team that includes liaisons from all CFTC divisions and offices to develop and implement an actionable, data-driven diversity, equity, inclusion and accessibility (DEIA) strategic plan that will be the first stand-alone DEIA Strategic Plan in the history of the CFTC. The CFTC's DEIA Strategic Plan will include goals, objectives, strategies, and performance measures that align with the CFTC's overarching 2022-2026 agency strategic plan, my commitment to integrating DEIA into every aspect of the CFTC's talent and business operations, and with the administration's guidance in Executive Orders 14035 and 13985, and the Government-Wide Plan to Advance DEIA in the Federal Workforce. The plan will include metrics for measuring success and accountability and will consist of two parts. The first part is intended to strengthen the CFTC's ability to recruit, hire, develop, and retain a workforce that reflects the diversity of America. The second part is intended to advance equity and remove barriers across all of the CFTC's policies and programs, so that the CFTC can advance equity for historically underserved communities through education about derivatives markets, managing risk, and avoiding fraud. The CFTC anticipates issuing its DEIA Strategic Plan, which will be subject to Commission approval, by the end of FY 2023.

2. **In your testimony, you summarize the potential benefits from statutorily authorizing the CFTC's Office of Minority and Women Inclusion.**

Please elaborate on how establishing the Commission's OMWI office in statute will better enable the CFTC to reach its long-term goals for diversity and inclusion.

Response: Statutory authorization of the CFTC's OMWI office would: 1) place its scope of responsibility and authority on par with the CFTC's peer financial regulators; 2) allow the CFTC to seek and allocate additional resources and staffing for its OMWI to execute the broader mandates of Section 342 of the Dodd-Frank Act; 3) insulate the OMWI from any future Commission who may seek to abolish the office or narrow its scope of authority;

and 4) strengthen the CFTC's ability to advance and promote diversity and inclusion within the CFTC and the financial industry overall through: a) increased transparency and accountability through the reporting requirements to Congress; b) establishment of standards for the utilization of minority and women-owned businesses in the agency; c) enhanced ability to staff and resource the CFTC's OMWI to develop and engage in proactive partnerships, outreach and recruitment initiatives on par with peer OMWI offices; and d) development of standards to assess diversity policies and practices of entities regulated by the CFTC, allowing the CFTC to monitor trends and highlight best practices.

3. **We must ensure institutional bad actors who take advantage of consumers or participate in crimes like money laundering are held accountable for their action. Institutional bad actors too often see fines as the cost of doing business, and it's important that regulators are empowered to enact appropriate fines to deter future illegal activity.**

Are there statutory changes that would help the CFTC better hold bad actors, particularly repeat offenders and egregious violators, accountable when they break the law?

Response: We must ensure institutional bad actors who take advantage of consumers or participate in crimes like money laundering are held accountable for their action. Institutional bad actors too often see fines as the cost of doing business, and it's important that regulators are empowered to enact appropriate fines to deter future illegal activity.

Are there statutory changes that would help the CFTC better hold bad actors, particularly repeat offenders and egregious violators, accountable when they break the law?

Response: As outlined in the CFTC's Division of Enforcement's Civil Monetary Penalty Guidelines, the CFTC may consider a number of factors in setting civil monetary penalties for violation of the CEA and Commission regulations. See <https://www.cftc.gov/media/3896/EnfPenaltyGuidance052020/download>. While its current precedent and practice provide the CFTC with discretion in fashioning the appropriate relief for violations, amendment of its statutory penalty authority, and substantive and procedural CEA provisions would bolster its ability to deter future illegal activity.

- **Enhanced Penalty Provisions.** While the CFTC's general penalty amounts have been adjusted for inflation, they were last statutorily modified in 2010 when \$1 million penalties were established for manipulation violations. However, the deterrent effect of the Commission's enforcement program would be bolstered by statutory increases in the base penalty amounts with enhanced penalties for particularly harmful conduct, e.g., violations involving substantial harm, and violations affecting the conduct in markets. Further, because violators may either engage in repeated conduct in CFTC and related markets, stronger penalties for recidivists (i.e., persons or entities that have

engaged in related criminal violations or willful violations of the Commodity Exchange Act (CEA) and/or securities statutes).

- **Statute of Limitations.** The CFTC enforcement program has found its ability to address misconduct limited by a 5-year statute of limitations for civil monetary penalties. Enlarging the statute of limitations to 10 years would empower the CFTC enforcement program by denying violators financial benefit from obscuring facts sufficient to give the Commission notice that a violation has occurred.
 - **Obstruction of Justice in Commission Investigation or Enforcement Action.** Enactment of this provision will allow the Commission to charge persons who engage in any effort to prevent the execution of lawful process or the administration of justice in a civil matter under the CEA. Civil enforcement agencies face the same obstructive acts by persons of interest that criminal enforcement authorities do. With a civil obstruction provision, the CFTC may be able to more swiftly address conduct that seeks to under the CFTC's mission to ensure market integrity and protect customers by detecting and prosecuting violations of the CEA.
4. **For new technologies like digital assets, if Congress doesn't give regulators the tools to do their jobs, consumers will continue bearing the costs of fraud, scams, and reckless behavior.**

What measures has the CFTC taken to ensure it has the technological expertise and knowledge within its workforce to effectively oversee modern financial products under its jurisdiction?

Response: The CFTC has invested significant time and resources into ensuring that our workforce understands and can effectively oversee modern financial products in our jurisdiction. For over five years, we have had a dedicated office focused on technology innovation, originally called LabCFTC and now called the Office of Technology Innovation. This office conducts research and educates staff on cutting edge technical topics. Moreover, agency staff has significant experience through overseeing registrants and through enforcement investigations with understanding modern financial products. In the event that Congress decides to give the CFTC additional authority over portions of the digital asset market, we expect that we will request additional resources so that we have the means necessary to play that role.

Senator Reverend Raphael Warnock

1. **Last year, the nickel market unraveled, causing massive price swings in a market that has generally experienced low-price volatility.⁶ We later discovered that the cause of the price hike was a coordinated short squeeze against a large trader.⁷ Recently, we've seen more traders look to game financial markets for quick profits. These are not so-**

⁶ <https://www.bloomberg.com/news/articles/2022-03-14/inside-nickel-s-short-squeeze-how-price-surges-halted-lme-trading>

⁷ *Ibid.*

called “meme stocks.” Nickel is a critical mineral listed by the U.S. Geological Survey, serving an important role in America’s national security and economic development.⁸

- a. Have price shocks and extraordinary market events, as we saw in the London Metals Exchange, had a material effect on downstream domestic industries, particularly those that rely on these commodities as inputs?

Response: Commodity markets, including metals markets, have recently faced a period of heightened stress and volatility. Ensuring that derivatives markets remain liquid and resilient during such periods, so that they can effectively serve their risk management and price discovery functions, is central to the agency’s mission. One of my main priorities as Chairman of the CFTC has been to engage the agency’s historical steady hand, transparent approach, and informed decision-making to support U.S. and global market resilience. Our preeminent analytic, surveillance and enforcement staff have examined data, conducted trading analyses for manipulative, inappropriate or disruptive conduct, and leveraged the agency’s enforcement authorities to root out bad actors. CFTC staff have also continued to actively monitor compliance by exchanges, clearinghouses, and intermediaries, with their regulatory obligations, to ensure that they can thoroughly and effectively perform their critical roles in our markets. Our regulatory framework and market structures, and the CFTC’s thoughtful yet assertive approach, have served the American people and markets as intended, allowing end-users to hedge their risks during a particularly challenging period.

It is important to note that CFTC-regulated derivatives exchanges – namely, designated contract markets – are already required to incorporate several features that the London Metal Exchange is addressing in response to recommendations from its independent review of last year’s events in the nickel market. In particular, these CFTC-regulated exchanges already have in place risk controls for trading such as: price-driven market halts, daily price limits, and review of large position holders, including their cash positions, during spot periods.

- b. Have you witnessed events like this in U.S. agricultural commodities markets?

Response: As I have stated publicly, it is without question that 2022 was a challenging year across all commodity complexes, some more extreme than others. In the years to come we no doubt will recall it as a period of time that put the CFTC on highest alert.⁹

At a time when the ongoing effects of the global pandemic, monetary and fiscal policy shifts, geopolitical uncertainty, cyber threats, and technology disruptions are

⁸ <https://www.usgs.gov/news/national-news-release/us-geological-survey-releases-2022-list-critical-minerals>

⁹ See, e.g., Rostin Behnam, Chairman, CFTC, Remarks of Chairman Rostin Behnam at the Commodity Markets Council 2023 State of the Industry Conference (Jan. 23, 2023), [Remarks of Chairman Rostin Behnam at the Commodity Markets Council 2023 State of the Industry Conference, Fort Lauderdale, Florida | CFTC](#).

a mainstay in every risk scenario, it is not always possible to envision with complete clarity what could be at the end of the tail. That said the CFTC has had an opportunity in the last few years to demonstrate domestically and abroad how we tirelessly use all available resources, leverage expertise, and develop new skills to meet evolving market demands and developments – and how our core principles framework for exchanges, which contemplates the incorporation of critical risk controls for trading, helps to ensure that the derivatives markets that we regulate function with integrity and as intended.

c. How is the CFTC monitoring these events and what signals does it look for?

Response: The CFTC has remained vigilant during this recent period of market stress and volatility. As discussed above, the agency’s analytic, surveillance and enforcement staff have examined data, conducted trading analyses for manipulative, inappropriate or disruptive conduct, and have leveraged the agency’s enforcement authorities to root out bad actors. CFTC staff also have actively monitored compliance by exchanges, clearinghouses and intermediaries with their regulatory obligations, to ensure that they can thoroughly and effectively perform their critical roles in our markets.

CFTC staff are using every tool the agency has to ensure that commodity derivatives markets continue to fairly, effectively and transparently serve their intended price discovery and risk management functions.

2. I was proud to work with Senator Grassley last Congress on the Anti-Money Laundering Whistleblower Improvement Act which strengthens incentives for whistleblowers to step up and report financial crimes. Language from this bill was included in the Consolidated Appropriations Act, 2023, (Pub. L. 117-328), which President Biden signed into law on December 29, 2022.¹⁰

- a. Especially as we’ve seen increased activity in commodities markets, is the CFTC whistleblower program prepared to handle a potentially higher volume of whistleblower cases involving market manipulation or other financial crimes?**
- b. Are there more resources that the CFTC would like for Congress to provide the agency to ensure that whistleblower cases are properly handled?**

Response: I share your views that a strong whistleblower program is paramount to the agency’s success as the chief regulator of the derivatives markets.

In each of the past two calendar years Congress, working with Chairwoman Stabenow and Senator Grassley, has passed legislation that protects the agency’s Whistleblower Office

¹⁰ <https://www.congress.gov/bill/117th-congress/house-bill/2617>

(WBO) and the Office of Customer Education and Outreach (OCEO). Due to the success of the WBO and increasingly higher payouts to whistleblowers, the agency and Congress have had to rethink the original construction of the Customer Protection Fund, which provides the salaries and expenses of those offices, as well as the payouts to whistleblowers. The agency looks forward to working with the Chairwoman and Committee on a permanent solution to the challenges facing the CFTC's Customer Protection Fund.