6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Request for Information on Climate-Related Financial Risk

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for information.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is seeking public responses to this Request for Information to better inform its understanding and oversight of climate-related financial risk as pertinent to the derivatives markets and underlying commodities markets. Public responses to this request will help to inform the Commission's next steps in furtherance of its purpose to, among other things, promote responsible innovation, ensure the financial integrity of all transactions subject to the Commodity Exchange Act, and avoid systemic risk. The information received will also inform the Commission's response to the recommendations of the Financial Stability Oversight Council 2021 Report on Climate-Related Financial Risk and inform the ongoing work of the Commission's Climate Risk Unit. The Commission may use this information to inform potential future actions including, but not limited to, issuing new or amended guidance, interpretations, policy statements, regulations, or other potential Commission action within its authority under the Commodity Exchange Act as well as its participation in any domestic or international fora.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by the name of the release, "Climate-Related Financial Risk RFI", by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov*. Select the "Submit Comments" link for this release and follow the instructions on the Public Comment Form.

- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act ("FOIA"), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain

[1] 17 CFR 145.9.

responses to the Request for Information will be retained in the public comment file and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Abigail S. Knauff, (202) 418-5123, *aknauff@cftc.gov*, Deputy, Climate Risk Unit; Brigitte C. Weyls, (312) 596-0547, *bweyls@cftc.gov*, Assistant Chief Counsel, Division of Market Oversight; Andrew Ruggiero, (202) 379-8919, *aruggiero@cftc.gov*, Attorney Advisor, Market Participants Division; Richard Haynes, (202) 418-5063, *rhaynes@cftc.gov*, Deputy Director, Division of Clearing and Risk; Diana Dietrich, (202) 418-6767, *ddietrich@cftc.gov*, Senior Assistant General Counsel; or Mark Fajfar, (202) 418-6636, *mfajfar@cftc.gov*, Senior Assistant General Counsel, Legal Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Climate-Related Financial Risks

The effects of climate change and the transition to a low-carbon economy present emerging climate-related financial risks, which fall into two broad categories: physical risks and transition risks.[2] Physical risks generally are characterized by harm caused by acute, climate-related events such as hurricanes, wildfires, floods, and heatwaves; and chronic shifts in precipitation patterns, sea level rise, and ocean acidification.[3] These

[2] E.g., Financial Stability Oversight Council ("FSOC"), "Report on Climate-Related Financial Risk 2021" (Oct. 21, 2021), available at *https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf* ("FSOC Report"), at 12.

[3] See Financial Stability Board ("FSB"), "The Implications of Climate Change for Financial Stability (Nov. 2020)," available at *https://www.fsb.org/2020/11/the-implications-of-climate-change-for-financial-stability/*, at 6 ("Increased physical risks could result in both market and credit risks to the financial system. Market risks—that is, the risk of reductions in the value of financial assets—could result in losses for

extreme weather events and natural disasters, especially as they increase in frequency and/or intensity, can damage assets, disrupt operations, and increase costs.[4] Transition risks generally are characterized by stresses to certain financial institutions or sectors that result from shifts in policy, regulations, customer and business preferences, technology, credit or insurance availability, or other market or social forces that can affect business operations.[5]

Climate-related financial risk may directly or indirectly impact Commission registered entities,[6] registrants,[7] and other market participants as well as the derivatives markets and the underlying commodities markets themselves. Effects may include, but are not limited to, heightened market volatility, disruptions of historical price correlations, and challenges to existing risk management assumptions. The Commission

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banks, asset owners, and other financial institutions. Market risks might also emerge due to abrupt increases in risk premia due to uncertainty concerning financial assets' future payoffs. Physical risks can also give rise to credit losses due to reductions in the income—or reductions in the profitability—of borrowers.").

[4] See FSOC Report at 101-02 (discussing climate change physical-risk implications for financial sector operations; regarding the potential impact of rising sea levels and increased flood risk in the northeastern United States, notes "the concentration of sector critical infrastructure in the New York City metro area, … home to five of the current seven U.S.-based global systemically important banks and five of the current eight FSOC-designated financial market utilities").

[5] Id. at 12-13. For example, economic measures that raise implicit carbon prices to reduce greenhouse gas ("GHG") emissions could raise transition risk for suppliers and users of GHG-intensive production processes, products, or services. The FSOC Report notes that "the financial sector may experience credit and market risks associated with loss of income, defaults and changes in the values of assets, liquidity risks associated with changing demand for liquidity, operational risks associated with disruptions to infrastructure or other channels, or legal risks." Id. at 13-14.

[6] As relevant here, a "Registered Entity" as defined in the Commodity Exchange Act ("CEA") includes designated contract market ("DCM"); derivatives clearing organization ("DCO"); swap execution facility ("SEF"); and swap data repository ("SDR"). CEA sec. 1a(40), 7 U.S.C. 1a(40).

[7] "Registrant" means a commodity pool operator ("CPO"); commodity trading advisor ("CTA"); futures commission merchant ("FCM"); introducing broker ("IB"); leverage transaction merchant; floor broker; floor trader; major swap participant ("MSP"); retail foreign exchange dealer; or swap dealer ("SD") that is subject to the Commission's regulations; or an associated person of any of the foregoing other than an associated person of a SD or MSP. 17 CFR 1.3 (2021).

is seeking comment on all applicable aspects of its existing regulatory framework and market oversight, as they may be affected by climate-related financial risk.

B. Executive Order 14030

On May, 20, 2021, President Biden signed Executive Order 14030 on Climate-Related Financial Risk ("Executive Order 14030"), which outlines a whole-of-government strategy to mitigating climate-related financial risk. Executive Order 14030 recognizes that the failure of financial institutions to appropriately and adequately account for and measure physical and transition risks threatens the competitiveness of U.S. companies and markets.[8] Executive Order 14030 articulates a policy to advance the disclosure of climate-related financial risk and act to mitigate that risk and its drivers while achieving a net-zero emissions economy by 2050.[9]

Section 3 of Executive Order 14030 directs the FSOC, of which the Chairman of the Commission is a voting member, to consider "assessing, in a detailed and comprehensive manner, the climate-related financial risk, including both physical and transition risks, to the financial stability of the Federal Government and the stability of the U.S. financial system."[10] Executive Order 14030 directs the FSOC to issue a report

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[8] FSOC Report at section 1.

[9] EO 14030, 87 FR 27967 (May 20, 2021) (Climate-Related Financial Risk), at *https://www.federalregister.gov/documents/2021/05/25/2021-11168/climate-related-financial-risk*; see also EO 14008, 86 FR 7619 (January 27, 2021) (Tackling the Climate Crisis at Home and Abroad), at *https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad*; EO 13990, 86 FR 7037 (January 20, 2021) (Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis), at *https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis*.

[10] Executive Order 14030, 87 FR 27968.

to the President identifying FSOC members' efforts "to integrate consideration of financial risk in their policies and programs."[11]

C. FSOC Climate-Related Financial Risk Report Recommendations

In response to Executive Order 14030, the FSOC issued the Climate-Related Financial Risk Report in October 2021 with thirty-five recommendations for the FSOC and its member agencies to: (1) build capacity and expand efforts to address climate-related financial risks; (2) fill climate-related data and methodological gaps; (3) enhance public climate-related disclosures; and (4) assess and mitigate climate-related risks that could threaten the stability of the financial system.[12] A key recommendation is that member agencies, consistent with their legal authority, "expand their respective capacities to define, identify, measure, monitor, assess, and report on climate-related financial risks and their effects on financial stability."[13] The Commission is seeking information and feedback on how, consistent with its statutory authority, it may responsibly act on the FSOC Report's recommendations. The Commission is also seeking information to better inform any actions it may undertake in the future to address climate-related financial risk.

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[11] Id. More specifically, Executive Order 14030 directs the FSOC Report to include a discussion of: (A) the necessity of any actions to enhance climate-related disclosures by regulated entities to mitigate climate-related financial risk to the financial system or assets and a recommended implementation plan for taking those actions; (B) any current approaches to incorporating the consideration of climate-related financial risk into their respective regulatory and supervisory activities and any impediments they faced in adopting those approaches; (C) recommended processes to identify climate-related financial risk to the financial stability of the United States; and (D) any other recommendations on how identified climate-related financial risk can be mitigated, including through new or revised regulatory standards as appropriate.

[12] FSOC Report at 5-9.

[13] Id. at 5 (Recommendation 1.3).

D. Commodity Exchange Act and Commission Regulations

The derivatives markets that the Commission oversees pursuant to the CEA are "affected with a national public interest" because they facilitate risk management and price discovery "through trading in liquid, fair and financially secure trading facilities."[14] The purpose of the CEA is to serve this public interest through "a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission."[15] The Commission's purpose also includes deterring disruptions to market integrity, ensuring the financial integrity of transactions, avoiding systemic risk, and promoting responsible innovation and fair competition.[16] In its oversight of these derivatives markets, the Commission establishes appropriate tolerances and guardrails to minimize market disruptions and promote a level playing field.

The Commission's regulations apply to various derivatives market participants, including, but not limited to, DCMs,[17] SEFs,[18] SDRs,[19] DCOs,[20] FCMs,[21] IBs,[22] SDs,[23] MSPs,[24] CPOs,[25] and CTAs.[26] The Commission is seeking comment to consider how

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[14] CEA sec. 3(a), 7 U.S.C. 5(a).

[15] CEA sec. 3(b), 7 U.S.C. 5(b).

[16] Id.

[17] CEA sec. 5, 7 U.S.C. 7; 17 CFR part 38.

[18] CEA secs. 1a(50), 5h, 7 U.S.C. 1a(50), 7b-3; 17 CFR part 37.

[19] CEA secs. 1a(48), 21, 7 U.S.C. 1a(48), 24a; 17 CFR part 49.

[20] CEA secs. 1a(15), 5b, 7 U.S.C. 1a(15), 7a-1; 17 CFR part 39.

[21] CEA secs. 1a(28), 4f, 7 U.S.C. 1a(28), 6f; 17 CFR 3.10.

[22] CEA secs. 1a(31); 17 CFR part 1.

[23] CEA secs.1a(49), 4s, 7 U.S.C. 1a(49), 6s; 17 CFR 3.10, part 23.

[24] CEA secs. 1a(33), 4s, 7 U.S.C. 1a(33), 6s; 17 CFR 3.10, part 23.

[25] CEA secs. 1a(11), 4k, 7 U.S.C. 1a(11), 6k; 17 CFR 3.10, part 4.

climate-related financial risk may affect any of its registered entities, registrants, or other market participants, and the soundness of the derivatives markets. This includes assessing how registrants and registered entities may need to adapt their risk management frameworks—including, but not limited to, margin models, scenario analysis, stress-testing, collateral haircuts, portfolio management strategies, counterparty and third-party service provider risk assessments, and enterprise risk management programs—as well as how market participants may need to adapt their dealing, trading, and advisory businesses in the derivatives markets. The Commission is also seeking comment to understand how market participants use the derivative markets to hedge and speculate on various aspects of physical and transition risk, as they exist today and as they may evolve in the future.[27] The Commission aims to consider how it may need to adapt its oversight of the derivatives markets, including any new or amended derivative products created to hedge climate-related financial risk.

The Commission is considering climate-related financial risk through various workstreams in addition to its FSOC participation. Commission staff members participate on the FSOC's Climate-Related Financial Risk Committee, including its scenario analysis and risk assessment working groups. Commission staff members also participate on Treasury's Financial Literacy and Education Commission Study on Climate Change and the Financial Resilience of American Households and Communities. Chairman Rostin Behnam serves as co-chair of the Carbon Markets Workstream within

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[26] CEA secs. 1a(12), 4k, 7 U.S.C. 1a(12), 6k; 17 CFR 3.10, part 4.

[27] See Rostin Behnam, Chairman, CFTC, Keynote Address at the FIA Boca 2022 International Futures Industry Conference, Boca Raton, Florida (Mar. 16, 2022), at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam21*.

the International Organization of Securities Commissions' Sustainable Finance Task Force.[28] Agency participation in these initiatives is largely staffed from the Commission's Climate Risk Unit, an interdivisional staff group led by the Office of the Chairman that was formed "to focus on the role of derivatives in understanding, pricing, and mitigating climate-related risk, and supporting the orderly transition to a low-carbon economy through market-based initiatives."[29]

II. Request for Information

The Commission is seeking public feedback on all aspects of climate-related financial risk as it may pertain to the derivatives markets, underlying commodities markets, registered entities, registrants, and other related market participants. In addition to any general input, the Commission is interested in responses to the questions posed below. The Commission may use this information to inform potential future actions including, but not limited to, the issuance of new or amended guidance, interpretations, policy statements, or regulations, or other potential Commission action. The Commission welcomes any relevant comments, including on related topics that may not be specifically mentioned but that a commenter believes should be considered.

Data

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[28] Press Release, International Organization of Securities Commissions, IOSCO's 2022 Sustainable Finance work plan strengthens the organization's commitment to increasing transparency and mitigating greenwashing (Mar. 14, 2022), at *https://www.iosco.org/news/pdf/IOSCONEWS635.pdf*.

[29] Rostin Behnam, Chairman, CFTC, State of the CFTC, Testimony Before the H. Comm. on Agric, 117 Cong. (Mar. 31, 2022), at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam22*; see also Press Release Number 8368-21, CFTC, "CFTC Acting Chairman Behnam Creates New Climate Risk Unit" (Mar. 17, 2021), at *https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf*.

1. What types of data would help the Commission evaluate the climate-related financial risk exposures of registered entities, registrants, and other participants in the derivative markets that the Commission oversees? Are there data sources that registered entities, registrants, and/or other market participants currently use to understand and/or assess climate-related financial risk? What steps should the Commission consider in order to have better access to consistent and reliable data to assess climate-related financial risks?

2. Would it help the Commission, registered entities, registrants, market participants and/or the public to understand and/or to manage climate-related financial risk if Commission reporting requirements included information about climate-related aspects of listed derivatives products, reported transactions, and/or open positions? Are there data standards or definitions that the Commission should consider incorporating into any such reporting?

3. What steps should the Commission consider to better inform the public of its efforts to assess and address climate-related financial risks? What information could the Commission publish that would be useful in this regard? What steps should the Commission consider to make climate-related data more available to registrants, registered entities, other market participants, and/or the public (as appropriate and subject to any applicable data confidentiality requirements) in order to help understand and/or manage climate-related financial risk?

Scenario Analysis and Stress Testing

4. Are there any climate forecasts, scenarios, or other data tools that would be useful to the Commission, registered entities, and/or registrants to better understand the

exposure of any registered entities or registrants to climate-related financial risk and how those risks translate to economic and financial impacts?

5. Are there any common scenarios, in addition to the scenarios developed by the Network for Greening the Financial System[30] and/or the Financial Stability Board,[31] that the Commission should consider incorporating into its oversight, and/or consider for registered entities and/or registrants?

6. Is a long-term (e.g., 30-year or 50-year) stress testing scenario relevant for derivatives markets subject to CFTC oversight? Is there a more relevant set of forward-looking climate relevant scenarios? Should these scenarios account for geographical stress? Should these scenarios try to target certain asset types? Can scenarios be customized to be more relevant for certain types of derivatives markets or registered entities?

7. Should registered entities and registrants be required to incorporate climate stress tests into their risk management processes? Do registered entities and registrants have the capability currently to conduct climate-related stress tests? If not, what would be needed in order to achieve this capability and on what timeline?

Risk Management

8. How might registered entities and/or registrants need to adapt their risk management frameworks – including, but not limited to, margin models, scenario analysis, stress-testing, collateral haircuts, portfolio management strategies, counterparty

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[30] Network for Greening the Financial System, "NGFS Climate Scenarios for Central Banks and Supervisors" (June 2020), available at *https://www.ngfs.net/sites/default/files/medias/documents/820184_ngfs_scenarios_final_version_v6.pdf*.

[31] See generally Financial Stability Board, "Supervisory and Regulatory Approaches to Climate-Related Risks Interim Report" (Apr. 29, 2022), *https://www.fsb.org/wp-content/uploads/P290422.pdf*.

and third-party service provider risk assessments, and/or enterprise risk management programs – to address climate-related financial risk?

9. Are there ways in which the Commission's existing regulations and/or guidance could better address climate-related financial risk, including credit risks, market risks, counterparty risks, and other financial and operational risks? Are there ways in which the Commission's regulations and/or guidance relating to risk management, system safeguards, business continuity, governance, recordkeeping, and/or internal audit could better address such risk?

10. Could the Commission's existing regulations and guidance better clarify expectations regarding management of climate risks, taking into account a registered entity's or registrant's size, complexity, risk profile, and existing enterprise risk management processes? Would it be helpful for the Commission to promulgate regulations or issue guidance for registrants and/or registered entities regarding the implementation of policies and procedures to measure, track, and account for physical and transition risk?

11. DCOs' risk management frameworks focus on market risk aspects with add-ons for liquidity, concentration, wrong way risk, settlement risk as well other asset class appropriate risks. Should these risk management frameworks directly incorporate climate-related risk specific to clearing member firms, or their clients' climate-related risks, and, if so, how?

12. Should the Commission consider amending its minimum capital and liquidity requirements to better recognize climate-related risks?

Disclosure

13. The Commission staff is evaluating the Commission's public disclosure, including public information, requirements to assess whether existing requirements need to be updated to effectively provide decision-useful, consistent, and comparable information on climate-related risks. Are there ways in which updated disclosure requirements could aid market participants in better assessing climate-related risks?

14. A goal of climate-related financial disclosure is to offer meaningful information about climate-related financial risks, and to foster increased transparency into those risks. In connection with any assessment of whether updated requirements are needed, what specific disclosures, building on the Task Force on Climate-Related Financial Disclosures' ("TCFD") four core elements of governance, strategy, risk management, and metrics and targets,[32] would be most helpful for the Commission to consider?

15. Should the Commission, consistent with its statutory mandate and regulatory authority, consider the establishment by registrant category (e.g., CPOs, CTAs, FCMs, IBs, and SDs) of climate-related risk disclosure requirements based on the TCFD's four core elements?

16. Are there any standardized data formats, such as structured data, that the Commission should consider for public climate-related data disclosures? Would the use of complementary protocols, where applicable, be helpful for comparability across other regulatory agencies?

[32] Task Force on Climate-Related Financial Disclosures, *https://www.fsb-tcfd.org/* (last visited May 13, 2022).

17. FSOC Report Recommendation 3.4[33] suggests that FSOC members issuing requirements for climate-related disclosures consider whether such disclosures should include GHG emissions, as appropriate and practicable, to help determine exposure to material climate-related financial risks. Should registered entities and registrants be required to disclose information relating to GHG emissions?

Product Innovation

18. What derivatives products are currently used to manage climate-related financial risk, facilitate price discovery for climate-related financial risk, and/or allocate capital to climate-benefiting projects? Please explain how these products are used, negotiated, and traded. What, if any, conditions, including market practices and/or regulatory requirements, may constrain or promote their expanded use or development to address climate-related financial risk? Are there ways in which Commission regulations or guidance could better address particular considerations relating to the listing of these types of products for trading?

19. Are there customer protections or other guardrails that the Commission could consider to promote market integrity in climate-related derivatives products?

20. Are there any potential innovations in climate-risk-related technology that could shape derivatives product innovation or are otherwise likely to impact the derivatives markets overseen by the Commission?

21. Are the pricing and terms of climate-related derivatives products affected by or related to the pricing and terms of other products? Are climate-related derivatives products effective hedges for a portion of the risks related to transactions in commodities

[33] FSOC Report at 7.

other than the commodities underlying the derivative products? Are there any climate-risk factors that will specifically affect derivatives products and their respective underlying commodities that should be addressed within the Commission's regulations, guidance, or oversight of these markets?

Voluntary Carbon Markets

22. Are there way in which the Commission could enhance the integrity of voluntary carbon markets and foster transparency, fairness, and liquidity in those markets?

23. Are there aspects of the voluntary carbon markets that are susceptible to fraud and manipulation and/or merit enhanced Commission oversight?

24. Should the Commission consider creating some form of registration framework for any market participants within the voluntary carbon markets to enhance the integrity of the voluntary carbon markets? If so, what would a registration framework entail?

Digital Assets

25. Are digital asset markets creating climate-related financial risk for CFTC registrants, registered entities, other derivatives market participants, or derivatives markets? Are there any aspects of climate-related financial risk related to digital assets that the Commission should address within its statutory authority? Do digital assets and/or distributed ledger technology offer climate-related financial risk mitigating benefits?

Financially Vulnerable Communities

26. Consistent with the CFTC's statutory mandate and regulatory authority, what factors are important, when the Commission analyzes climate-related financial risks, to better understand the impacts on households and communities?

27. Consistent with the CFTC's statutory mandate and regulatory authority, are there any climate-related financial impacts or potential policy solutions addressed to climate-related financial impact that the Commission should consider as it pertains to financially vulnerable populations in particular? Are there any steps that the Commission should consider when assessing how the impact of climate change on the derivatives markets and/or underlying commodities markets, or proposed policy solutions to address such impact, may affect financially vulnerable populations?

Public-Private Partnerships/Engagement

28. What mechanism(s), if any, would be useful for the Commission to employ to foster public-private partnerships to address climate-related financial risk within the derivatives markets?

29. Are there experts with whom it would be useful for Commission staff to collaborate to identify climate forecasts, scenarios, and other tools necessary to better understand the exposure of registered entities and registrants to climate-related financial risks and how those risks translate into economic and financial impacts?

30. What specific literature and research should the Commission review and consult related to climate risks as applicable to the derivative markets, underlying commodities markets, registrants, registered entities, or other derivatives market participants?

31. During the IBOR transition, the Alternative Reference Rate Committee was formed, in part, to identify best practices for robustness of inter-bank offered rates. Would the formation of a similar standard-setting committee be useful in the development of climate-related indices designed for mitigation of the long-term risks of climate change, such as temperature and sea level rise or carbon concentration within the atmosphere, or the development of other standards or best practices?

32. Assuming a standard setting committee or other body could generate information to improve the hedging utility of long-dated climate risk derivative products, what sort of impact might that have on liquidity in those products, what benefits might be realized by market participants, and could one expect a material improvement in price discovery for long-term climate risk, in general?

Capacity and Coordination

33. What steps should the Commission consider in order to expand its capacity to define, identify, measure, monitor, assess, and report on climate-related financial risks and their effects on financial stability? For example, what factors should the Commission consider when it looks to prioritize staffing, training and expertise on climate-related issues? Which analytic, data modeling, and monitoring methodologies would be helpful to the Commission in this regard?

34. How should the Commission coordinate its efforts with international groups and other regulatory bodies and supervisors? Are there standards, definitions, or metrics that could facilitate the sharing of relevant climate-related information amongst regulatory bodies and supervisors, and/or their analyses and aggregation of climate-

related data? Are there specific steps that could be taken to enhance global coordination and regulatory comity?

Issued in Washington, DC, on June 2, 2022, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Appendices to Request for Information on Climate-Related Financial Risk – Commission Voting Summary and Commissioners' Statements

Appendix 1 – Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson and Goldsmith Romero voted in the affirmative. Commissioners Mersinger and Pham concurred. No Commissioner noted in the negative.

Appendix 2 – Statement of Support of Commissioner Kristin N. Johnson

According to data gathered by the National Oceanic and Atmospheric Administration's (NOAA's) National Centers for Environmental Information, since 1980, the United States has sustained more than three hundred weather and climate disasters, including droughts, floods, severe storms, cyclones, wildfires, and winter storm events that, in the aggregate, led to costs or damage exceeding more than $1 billion.[1] Notwithstanding our long history of navigating severe-weather related events, the increasing frequency, severity, and intensity as well as the rising costs of these events raise important questions and remarkable concerns.

[1] NOAA, "Billion-Dollar Weather and Climate Disasters: Overview," available at *https://www.ncdc.noaa.gov/billions/*.

In May of 2021, President Biden issued an Executive Order on Climate-Related Financial Risk[2] directing the Secretary of the Treasury to engage with Financial Stability Oversight Council (FSOC) members to consider issuing a report on member agencies' efforts to consider climate-related financial risk. In response to the Executive Order, the FSOC issued the *Report on Climate-Related Financial Risk* (Report).[3] The Report contains thirty-five recommendations aimed to:

(1) Build capacity and expand efforts to address climate-related financial risks;
(2) Fill climate-related data and methodological gaps;
(3) Enhance public climate-related disclosures; and
(4) Assess and mitigate climate-related risks that could threaten the stability of the financial system.

Today's Request for Information on Climate-Related Financial Risk (RFI) reflects the CFTC's established leadership in response to requests to better understand the role of voluntary carbon markets as well as the agency's commitment to ensuring a comprehensive effort to understand how our markets, market participants, including large and small agricultural and energy sector commercial and end users may be impacted by physical risks or acute climate-related events and transition risks or the stresses that result from shifts in policies, regulations, customer preferences, and technology. Consistent with the CFTC's mandate to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation, the RFI seeks comments on how climate-

[2] Executive Order 14030 of May 20, 2021, Climate-Related Financial Risk, 86 FR 27967 (May 25, 2021).

[3] Financial Stability Oversight Council, "Report on Climate-Related Financial Risk 2021" (Oct. 21, 2021), available at
https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf.

related financial risk may affect "registered entities, registrants, or other market participants, and the soundness of the derivatives markets," including an assessment of "how registrants and registered entities may need to adapt their risk management frameworks—including, but not limited to, margin models, scenario analysis, stress-testing, collateral haircuts, portfolio management strategies, counterparty and third-party service provider risk assessments, and enterprise risk management programs—as well as how market participants may need to adapt their dealing, trading, and advisory businesses in the derivatives markets."

These inquiries are well within the ambit of the CFTC's statutory authority and continue a long-established tradition of engaging in thoughtful dialogue with our market participants and diverse stakeholders in order to understand their concerns related to emerging and evolving risk management oversight. Among many complimentary and comprehensive efforts, careful evaluation of carbon markets may reveal a useful path for mitigating climate-related financial risk. This RFI is an important step toward learning from our market participants how these markets may help them to hedge and efficiently manage existing and evolving climate-related risk. Consequently, I support the Commission's RFI on Climate-Related Financial Risk and I look forward to the public responses.

Appendix 3 – Statement of Support of Commissioner Christy Goldsmith Romero

As expressed in President Biden's Executive Order on Climate-Related Financial Risk, a whole-of-government approach will lead to greater understanding of the financial risks that climate change poses, and to the development of effective strategies to mitigate those risks. The CFTC should be at the forefront of financial regulatory efforts to understand, and identify actions to mitigate, climate-related financial risks that impact CFTC-regulated markets. This Request for Information reflects the Financial Stability Oversight Council's recommendations for U.S. financial regulators, seeks climate-related data, and asks questions about the appropriate role of the CFTC in this emerging space.[1]

I support the Commission's Request for Information because it seeks public input on both physical risks and transition risks related to climate issues that impact our markets. First, the Commission can benefit significantly in understanding physical climate risk directly from those in our markets who bear the risk. Second, the United States has an opportunity to be a leader in emerging voluntary carbon/sustainability markets, and public input can help realize that opportunity.

As a market regulator, the CFTC's mission is to promote the resilience, vibrancy and integrity of our derivatives markets. Commodities markets have been impacted by significant climate disasters such as wildfires, hurricanes, flooding, and other disaster events that have caused devastating financial losses to farmers, ranchers, and producers – losses that impact our derivatives markets. In determining how to promote the resilience and vibrancy of these markets, it is appropriate for the Commission to seek data and input on climate-related physical risk from those in our markets who bear the brunt of that risk as well as the public. The Commission should be thoughtful and deliberate in any future action, and consider potential consequences on farmers, ranchers, and producers.

Additionally, the Commission's role extends to promoting responsible innovation, which includes the evolution of climate/sustainability products in our markets. There is a

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[1] Financial Stability Oversight Council, "Report on Climate-Related Financial Risk 2021" (Oct. 21, 2021), available at *https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf*.

growing global market demand for derivatives products that could serve as a hedge against both physical risks of climate change as well as transition risks as companies move toward a net zero environment. With a growing number of companies making net zero pledges, there is notable interest in carbon offset or sustainability products. However, concerns about transparency, credibility, and greenwashing may hamper the integrity and growth of these markets. I look forward to public input on whether there are customer protections, guardrails or standards that the Commission should consider as part of its mission to promote market integrity and transparency and to keep our markets free of fraud and manipulation. The Commission has a critical role to play to ensure that our markets remain the strongest and safest in the world.

Appendix 4 – Concurring Statement of Commissioner Summer K. Mersinger

For the purpose of engaging the public through this Request for Information ("RFI"), I concur because I will always support efforts to engage market participants, industry, and the general public in the policy-making process at the Commodity Futures Trading Commission ("CFTC" or "Commission"). While other agencies may take liberties with process in order to impose a "government-knows-best" approach, traditionally, the CFTC has not been that agency.

However, I do not want my concurrence to be mistaken for support of the substance of this RFI or all the questions being asked. I have strong concerns with the discussion and several of the questions included in the RFI that extend beyond the scope of our statutory jurisdiction. Asking these questions causes confusion as to the role that Congress has tasked the CFTC to perform in our governing statute, the Commodity Exchange Act ("CEA"). Clarity about our statutory jurisdiction is foundational to our ability to successfully achieve the mission that Congress has set for the CFTC in the CEA.

Reading the RFI, I was struck by the lack of concern or interest in legacy agriculture contracts and futures markets. Growing up, I watched drought, flooding, and violent weather destroy our livelihood in a matter of hours. I remember many mornings riding in my Dad's truck, surveying what was left of our corn fields after a hail storm, or seeing the burnt spikes of the wheat that turned too soon because of extreme heat and lack of rain. The financial risk of climate and extreme weather is and has always been real, and our farmers and ranchers have been using legacy agriculture contracts and the futures markets to hedge those risks since the inception of those markets.

With this in mind, where are the questions in this RFI about financial risk due to climate change on our legacy agriculture contracts and futures markets? What is not asked in this RFI is just as important as what is asked. Not one question focuses on the agricultural sector. Is this an unintentional oversight or a strategic decision to cut agriculture from this conversation? Unfortunately, the RFI gives no reason for leaving agriculture out of the discussion when our agency's roots and history are embedded in the agriculture community.

With respect to what is asked in the RFI, information is only useful if it can further our efforts to achieve our mission, which is why I find it concerning that we are requesting information that we cannot use and not asking questions on well-functioning markets where climate risk is already hedged. I can only conclude that the RFI reflects either inadvertent "mission creep" at best, or a power grab to expand the CFTC's authority at worst.

Specific instances in which the RFI extends beyond the CFTC's jurisdictional boundaries under the CEA include, but are not limited to, the following:

- The first sentence of Section II (which sets out the requests for information) states that the Commission "is seeking public feedback on all aspects of climate-related financial risk as it may pertain to the derivatives markets, *underlying commodities markets,* registered entities, registrants, and other related market participants."[1] Let me be crystal clear: The CFTC does not regulate commodities markets. The CEA provides the CFTC with statutory authority to regulate only derivatives markets, not commodities markets. Requesting feedback on all aspects of climate-related financial risk as it may pertain to underlying commodities markets covers a huge expanse of territory that is far outside the CFTC's statutory authority over derivatives markets under the CEA.
- Request no. 3 asks what steps the Commission should consider, in addition to publishing information in its possession, "*to make climate-related data more available to* registrants, registered entities, other market participants, and/or the public (as appropriate and subject to any applicable data confidentiality requirements) in order to help understand and/or manage climate-related financial risk?" This suggests that the CFTC has statutory authority under the CEA to order, as it deems appropriate, any individual or entity to make data available for the benefit of registrants, registered entities, other market participants, and/or the public. It does not.

[1] All italics in quotations from the RFI are added, unless otherwise noted.

- Request no. 18 asks what derivatives products "are currently used to manage climate-related financial risk, facilitate price discovery for climate-related financial risk, *and/or allocate capital to climate-benefiting projects?*" In Section 3(a) of the CEA, Congress found that the derivatives transactions regulated by the CFTC provide "a means for managing and assuming price risks [and] discovering prices . . ." In Section 3(b) of the CEA, Congress then identified the CEA's purposes as including deterring and preventing manipulation or other market disruptions; ensuring the financial integrity of transactions; avoiding systemic risk; protecting market participants from fraud, abusive sales practices, and misuses of customer assets; and promoting responsible innovation and fair competition.[2] Nowhere in the CEA did Congress suggest that it is a purpose of the CEA, or the mission of the CFTC, to allocate capital – whether to climate-benefiting projects or otherwise.
- Request no. 24 asks whether the Commission should consider "creating some form of *registration framework* for any market participants within the *voluntary carbon markets* to enhance the integrity of the voluntary carbon markets?" The CFTC does not have statutory authority under the CEA to create a registration framework for market participants within voluntary carbon markets unless they engage in activities relating to derivatives.
- Request no. 25 asks whether "*digital assets and/or distributed ledger technology* offer climate-related financial risk mitigating benefits?" The CFTC does not have

[2] CEA sections 3(a), 3(b), 7 U.S.C. 5(a), 5(b).

statutory authority under the CEA to regulate digital assets or distributed ledger technology except to the extent they involve derivatives.

- Request no. 27 asks whether there are "any steps that the Commission should consider when assessing how the impact of climate change on the derivatives markets *and/or underlying commodities markets,* or proposed policy solutions to address such impact, may affect financially vulnerable populations?" The CFTC does not have authority under the CEA to take any regulatory steps with respect to underlying commodities markets, regardless of whether they affect financially vulnerable populations.
- Request no. 30 asks what literature and research the Commission should consult "related to climate risks as applicable to the derivatives markets, *underlying commodities markets,* registrants, registered entities, or other derivatives market participants?" As noted above, Congress has not provided the CFTC with regulatory authority in the CEA with respect to climate risks applicable to underlying commodities markets.

I have no opposition to requesting the information we need to consider the implications of climate-related financial risk in fulfilling our mission under the CEA. But I am concerned that requesting information on matters over which the CFTC has no statutory authority and ignoring opportunities to ask questions of market participants already using our markets to hedge their climate exposure will not further the purported goal of this RFI.

Appendix 5 – Concurring Statement of Commissioner Caroline D. Pham

I respectfully concur with the publication of the Request for Information (RFI) on Climate-Related Financial Risk in the *Federal Register* because it is imperative that the public has an opportunity to provide input and share expertise.

In our work in this area, however, we must be mindful of our statutory mandate: oversight of the commodity derivatives markets.[1] In particular, as the RFI recognizes, our markets are "affected with a national public interest" because they facilitate risk management and price discovery "through trading in liquid, fair and financially secure trading facilities."[2] Further, as the RFI also recognizes, the Commodity Exchange Act mandates that the Commission serve this public interest through our oversight of "a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals," and by deterring and preventing price manipulation and other disruptions to market integrity, ensuring the financial integrity of transactions in our markets, avoiding systemic risk, protecting market participants from "fraudulent or other abusive sales practices and misuses of customer assets," and promoting "responsible innovation and fair competition."[3] This statutory mandate bears repeating because it makes clear that the Commission is a market regulator over our markets and products, market infrastructure, market integrity, market conduct, market participants, and market professionals.

We are not, for instance, a prudential banking regulator like the Fed, OCC, or FDIC, nor are we a primarily disclosures-based market regulator like the SEC. Keeping our focus on our markets, products, and purpose—keeping our eyes on the ball—will

[1] Commodity Exchange Act ("CEA") section 2(a)(1)(A), 7 U.S.C. 2(a)(1)(A).

[2] CEA section 3(a), 7 U.S.C. 5(a).

[3] CEA section 3(b), 7 U.S.C. 5(b).

help us avoid the risk of diluting our limited resources and potentially straying from our core expertise and responsibilities into areas already tasked to others.

As we do our work on climate-related financial risks within our statutory authority—such as by fostering the development of new products and markets to manage physical risk and transition risk—we also should be thoughtful when considering the steps we take. Any actions that may impose new obligations and costs on our market participants, especially end-users that rely upon our markets for hedging, must be balanced and carefully considered.

For registrants that have other regulators and are already subject to climate risk management frameworks, we should seek to harmonize from the start with existing prudential and other regulatory regimes in order to be efficient and avoid imposing duplicative or unnecessarily burdensome and complex requirements.

And most importantly, I caution that for any potential future Commission action, we must take care to consider the impact on small entities and evaluate alternatives that would accomplish the objectives of any potential rule without unduly burdening the substantial numbers of growers, producers, and other end-users who depend on our markets for risk management and price discovery.[4] That is, after all, the original purpose of our markets and the Commission.

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[4] *See* Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Pub. L. No. 104-121, 110 Stat. 857 (codified at 5 U.S.C. 601 et seq.).