

STATE OF THE CFTC

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

MARCH 31, 2022

Serial No. 117-31



Printed for the use of the Committee on Agriculture
agriculture.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

49-768 PDF

WASHINGTON : 2022

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STATE OF THE CFTC

THURSDAY, MARCH 31, 2022

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Committee met, pursuant to call, at 10:03 a.m., in Room 1300 of the Longworth House Office Building, Hon. David Scott of Georgia [Chairman of the Committee] presiding.

Members present: Representatives David Scott of Georgia, Costa, McGovern, Adams, Hayes, Delgado, Brown, Rush, Sablan, Kuster, Maloney, O'Halleran, Carbajal, Lawson, Craig, Axne, Schrier, Pannetta, Thompson, Austin Scott of Georgia, Crawford, LaMalfa, Davis, Allen, Rouzer, Kelly, Bacon, Johnson, Balderson, Cloud, Mann, Feenstra, Miller, Moore, Cammack, and Letlow.

Staff present: Lyron Blum-Evitts, Emily German, Josh Lobert, Victoria Maloch, Ashley Smith, Paul Balzano, Caleb Crosswhite, Kevin Webb, and Dana Sandman.

OPENING STATEMENT OF HON. DAVID SCOTT, A REPRESENTATIVE IN CONGRESS FROM GEORGIA

The CHAIRMAN. Welcome, and thank you all for joining us today at our hearing, which is entitled, *The State of the CFTC*. And after opening remarks, Members will receive testimony from our witness today, and then the hearing will be open for questions.

So I want to say to you, Chairman Rostin Behnam, congratulations on your appointment to this great, important, and powerful position as Chairman of our CFTC. Good to have you here.

And for those watching at home, I would like to kind of share with you the important role of the CFTC and for all that it is doing, as well as historically. It was first brought in a bill to us and then it became its own independent entity. First, of course, you were with the USDA, and now we have done that. And it is so good to have you here. After brief opening remarks, as I said, our witness will begin.

And for those of you who are watching on TV, I would like to provide you with a little bit of background, as I said, and let you know what a great moment this is for us. I do want to say this, that I want to come into this meeting with you understanding me as Chairman of our Agriculture Committee. I want you to know that, first of all, I am a graduate of our prestigious Wharton School of Finance where I got my MBA. And I am saying this to you because since I have been in Congress, I have been, shall we say, the protector of our great financial system. I also served on the executive

board of directors of the Wharton School of Finance for a number of years.

And also, in coming here, in the 20 years that I have been here, one of my foremost protective missions was for the CFTC. And I hope you understand what I am saying because I have such a great love and affection for our great financial system. And nowhere was that manifested when I had to stand up against the European Union when they wanted to take away the CFTC's right to regulate our cross-border clearinghouses. It was I and Ranking Member—I think it was Mike Conaway and Austin Scott. We all got together, and we told the European Union, hell no. You are not going to come and regulate any of our financial institutions.

And so this is why this is important to me. I served on the House Agriculture Committee for 20 years, 10 of those as Chairman of the subcommittee on commodities, and the exchanges and futures, as well as energy and credit. Again, that gives me that credential. And even at the Wharton School, I was the one that premiered and put together the major thesis talking points on the great Alexander Hamilton.

So I am just sharing that with you because I want you to understand my concern that I have with this cryptocurrency situation. I will be getting into that during our question-and-answer period, but I wanted you to know my background and my love and affection for our great financial system. We have the greatest financial system in the world and, as I said, brought to us by none other than Alexander Hamilton. And I am sure you know the story.

[The prepared statement of Mr. David Scott follows:]

PREPARED STATEMENT OF HON. DAVID SCOTT, A REPRESENTATIVE IN CONGRESS FROM
GEORGIA

Good morning and welcome to today's hearing as we get an important update on the state of the Commodity Futures Trading Commission from Chairman Rostin Behnam.

For those of you watching at home, I'd like to provide some background on the important work of the CFTC. The CFTC's mission is to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation.

Prior to the 1970s, USDA helped administer the Commodity Exchange Act, however, the Commodity Futures Trading Commission Act of 1974 established the CFTC as an independent agency outside of the Department of Agriculture with greater powers.

Chairman Behnam, I would like to extend a warm welcome to your first hearing with us in your tenure as Chairman.

As you know I take a close personal interest in this area. Before I became Chairman of the Agriculture Committee, I was Subcommittee Chairman of the Commodity Exchanges, Energy, and Credit since its inception. Our Committee weighed in mightily during the exit of Britain from the European Union to ensure that American markets were not harmed or put at a disadvantage during the implementation of EMIR 2.2. I stand ready to do so again if the need arises.

I would like to congratulate you on the emphasis you have been able to place on the risk that climate change has presented to our markets with recent establishment of the Climate Risk Unit.

CFTC was at the tip of the spear with the draft report issued by the Climate-Related Market Risk Subcommittee of the Market Risk Advisory Committee, *Managing Climate Risk in the U.S. Financial System*. I share your concern about climate change and extreme weather and look forward to working together with you.

In a 2019 Subcommittee hearing, I highlighted a letter you sent to the CFTC's Office of Minority and Women Inclusion detailing the diversity and representation profile of the senior and executive staff at the Commission.

I said it then and I will say it again: diversity is a strength. I am glad that you are now the Chairman of the CFTC and can guide this important agency with an

eye toward making sure that your staff and the markets that they oversee are working for everyone.

In recent years we have seen an explosion of new markets and an ongoing shift in the role that digital assets and cryptocurrencies play in our financial institutions.

I look forward to hearing updates on CFTC's oversight in these areas, as well as areas that we on the Committee should be shedding more light on.

The CHAIRMAN. With that, Ranking Member, I will turn it over to you for any comments you have, sir.

**OPENING STATEMENT OF HON. GLENN THOMPSON, A
REPRESENTATIVE IN CONGRESS FROM PENNSYLVANIA**

Mr. THOMPSON. Thank you, Mr. Chairman, much appreciated.

Chairman Behnam, welcome. It is a pleasure to see you again and to have you before our Committee today to discuss the current state of the CFTC and your plans for the coming year. I want to begin by congratulating you on your unanimous confirmation, well done, which was a significant vote of confidence in you and for the Commission's work.

You have important responsibilities before you, and we look forward to working with you and ensuring you have the tools to carry out the mandates that we have vested with the Commission.

I would also like to congratulate you on the four nominees to the Commission, Ms. Christy Goldsmith-Romero, Ms. Kristin Johnson, Ms. Summer Mersinger, and Ms. Caroline Pham, who were officially confirmed earlier this week and will be joining you soon. The Commission works best when there is a full slate of Commissioners, and I am pleased that that is where we are at, and I am looking forward to that certainly in the coming weeks.

Finally, I want to offer a heartfelt thanks to Commissioner Dawn Stump as she departs the Commission. Throughout her time in this role, I have always appreciated her engagement and her thoughtful approach to the issues. Our nation is better for her service.

Chairman Behnam, you could not be appearing before the Committee at a more consequential time. There is so much to discuss. Two issues stand out for me: First, the war in Ukraine, which has brought misery to the Ukrainian people, but its effects are not isolated to Central Europe. Putin's reckless crimes have roiled commodity markets, impacting agricultural, energy, metal, and credit markets throughout the world. The efficient and effective operation of our commodity derivatives markets under the watchful eye of the CFTC plays a pivotal role in helping end-users navigate these turbulent times.

Second, I am heartened by your calls to expand the CFTC's oversight of the digital commodity markets. As you know, I have been hard at work on the Digital Commodity Exchange Act (H.R. 7614), legislation which provides the CFTC with jurisdiction over the digital commodity spot markets. And as we consider further regulations to protect consumers engaged with crypto-trading venues, it is essential we do so in a manner that promotes innovation. The CFTC is well-poised to play a leading role in this effort.

I also want to touch very briefly on the Commission's recent request for comment on FTX's proposal to amend its derivatives clearing organization registration order. And thank you for putting this out for public comment, in a very transparent way. This request presents a number of novel questions to the Commission to

consider. It holds the promise of lowering-cost for market participants and reducing end-user risk through the clearing system but also raises significant issues regarding market structures and risk mitigation that should be explored frankly and publicly, and I commend you for seeking input of market professionals and the public as a part of your consideration of the request.

One key characteristic of the Commodity Exchange Act is the flexibility it provides under its core principles for businesses to experiment and to innovate new ways to meet longstanding regulatory goals. It is through the consistent application of these core principles that our markets and financial markets have become leaders in innovation across the globe.

Now, this proposal, like all proposals that come before the Commission, should be measured against those core principles that the CFTC has actually become well known for. And I look forward to a meaningful, substantial, and, importantly, public debate about both safety and innovation in our markets so American derivatives markets will remain the most liquid, most efficient, and most productive markets in the world.

Chairman Behnam, I really look forward to your comments today, and thank you for joining us. And thank you, Mr. Chairman, for this opportunity today. And with that, I yield back.

The CHAIRMAN. The chair would request that other Members submit their opening statements for the record so Chairman Behnam may begin his testimony and to ensure that there is ample time for questions.

Our witness today is the Chairman of the Commodity Futures Trading Commission, Mr. Rostin Behnam. Chairman Behnam, we welcome you to the House Agriculture Committee. And Chairman Behnam, please begin when you are ready.

**STATEMENT OF HON. ROSTIN BEHNAM, CHAIRMAN,
COMMODITY FUTURES TRADING COMMISSION,
WASHINGTON, D.C.**

Mr. BEHNAM. Thank you, Chairman Scott and Ranking Member, for those comments. Before I begin, Mr. Chairman, I appreciate your comments earlier. And quite frankly, we are lucky to have you in the role you are in right now and given the experience you have, so we appreciate that wholeheartedly from the CFTC's perspective and look forward to working with you in your role as Chairman.

Good morning, Chairman Scott, Ranking Member Thompson, and Members of the Committee. I appreciate the opportunity to discuss the state of the CFTC and provide an overview of current priorities. Before I begin, I would like to acknowledge my colleague and friend Commissioner Dawn Stump for her tireless service and dedication to the agency. I also want to thank agency staff. And finally, I do want to congratulate and welcome Christy Goldsmith Romero, Kristin Johnson, Summer Mersinger, and Caroline Pham, who, as Ranking Member Thompson noted, were recently confirmed earlier this week.

As the agency continues transitioning away from and considering life after the pandemic, we are witnessing transformative change throughout our industry and in the markets that we oversee. During this time of transition, I am committed to collaboration and

careful deliberation among our core of new Commissioners, with stakeholders, and with our regulatory peers as we address new and emerging risks and opportunities. Under my leadership, the CFTC will exercise utmost care, patience, and diligence as we move forward on critical decision points.

However, this ongoing transformation will not distract the CFTC from staying true to its historic responsibilities and ensuring America's farmers, ranchers, manufacturers, and other commercial end-users continue to have cost-effective access to CFTC-regulated markets in order to manage risk. The derivatives industry's population is shifting, having increasingly emerged from the technology sector rather than traditional finance. We are also seeing an influx of retail participants empowered by information and technology. As a core purpose of the Commodity Exchange Act is the promotion of responsible innovation and fair competition, the agency will continue to provide a steady hand as we make decisions that will impact our markets and the larger economy in the years ahead.

Before I move to our agency priorities, I would like to take a moment to provide a high-level overview of the CFTC's response to, and our observations regarding, the ongoing conflict in the Ukraine. The CFTC is on heightened alert with respect to market functionality and resilience, and in fortifying the agency against cyber attacks. Prior to the invasion in anticipation of the possible implementation of sanctions, I worked directly with the Treasury Department to ensure that general licenses would be available where appropriate and CFTC staff are in routine contact with exchanges as its sanctions and related volatility may alter affected index, currency, and physical commodity settlements.

As the invasion became a reality, the ongoing tragedy in Ukraine has sparked extreme volatility with key markets exhibiting 20 percent higher volatility as compared to that observed prior to the invasion. By and large, the U.S. futures markets have remained orderly through periods of high prices and extreme volatility, consistently demonstrating strong correlation between futures and cash prices and good convergence towards contract expiration.

To date, the CFTC has observed a relative balance in buying and selling, indicating that trading has not been panic-driven. And despite episodic spikes in trading volume by as much as two times normal level, markets have been able to clear the volumes without significant market disruption.

CFTC surveillance staff are closely examining trading activity for manipulative, inappropriate, or disruptive conduct. Commission staff in the Divisions of Market Oversight, Clearing and Risk, and Market Participants are actively monitoring compliance by exchanges, self-regulatory organizations, and intermediaries for trade processing, execution, and clearing. CFTC staff are using every tool the agency has to ensure that commodity markets continue to fairly and transparently serve the intended price discovery and risk management function, and this includes monitoring for excessive speculation.

With the benefit of hindsight and real-time market experience, a top priority of my chairmanship will be the active review of the agency's Dodd-Frank rulemakings, ensuring they remain fit for purpose as Congress intended. The market turmoil related to the

global pandemic tested the resiliency of the derivatives markets and post-crisis reforms. In fact, volatility in the global financial markets during March and April of 2020 and the current volatility linked to geopolitical issues continue to raise challenges related to liquidity and margin requirements. This fuels active debate on the need for additional tools and resources to manage risks, including collateral management. Through all these events, U.S. central counterparties remain strong and among the strongest in the world.

Nonetheless, given the role of central clearing as a critical tool in mitigating systemic risk and global financial markets, the Commission expects to grow its stress-testing program to help ensure resilience in absorbing both market and systemic shocks in the future. The Commission will continue working with our international counterparts. We will advance thoughtful policy, encourage a collaborative approach that supports strong and transparent regulation and preserves the primacy of home country jurisdiction while discouraging the appeal of racing to the regulatory bottom.

The effectiveness of the CFTC's Division of Enforcement in holding individuals and institutions accountable promotes confidence in U.S. derivatives markets. DOE will prioritize the use of cutting-edge investigative and analytical techniques and assert the CFTC's fraud and manipulation jurisdiction where doing so preserves market integrity and protects the public. A part of the enforcement program's success is rooted in its Whistleblower Program. I am grateful to this Committee's long-standing support of the Whistleblower Program and continue to stand ready to ensure its long-term success.

The CFTC's enforcement program is only as good as the tools we have to identify bad actors. To further support DOE's efforts, I have directed our Division of Data to transform the agency's analytics toolkit to leverage the cloud architecture with advancements in artificial intelligence, machine learning, and data analytics.

Recent market events highlights the increasing concerns for potential cyber attacks against American critical infrastructure, including U.S. financial markets. To that end, I have directed staff in the Market Participants Division to develop policy to address system safeguards for futures commission merchants, swap dealers, and major swap participants, further fortifying CFTC markets from an attack by adding to the suite of system safeguards that are currently in place.

As the CFTC and the derivatives and larger financial industry accelerate towards migration to cloud technologies, we are also mindful of the potential risks as we look forward to exploring those benefits. President Biden's Executive Order on Ensuring Responsible Development of Digital Assets acknowledges that the growth and widespread adoption of digital assets presents novel issues for all regulators. The CFTC will continue its proactive approach in using our existing enforcement authority in the digital asset commodity space to protect customers and markets from fraud and manipulation. I look forward to coordinating with fellow agencies, as outlined in the Executive Order, and with Members of this Committee on these important issues.

Turning to another area of increasing coordination, just over a year ago I announced the creation of the Climate Risk Unit to focus on the role of derivatives and understanding pricing and mitigating climate-related risk and supporting the orderly transition to a low-carbon economy through market-based initiatives.

And finally, as one of my first official actions as Chairman, I announced the hiring of the agency's first Chief Diversity Officer to provide leadership and executive direction on the Commission's efforts to integrate DEIA into every aspect of our talent and business operations. Despite uncertain times and great market volatility, I am optimistic and confident that the CFTC will be able to meet the demands of the public and the markets that we serve.

In closing, I wish to thank the Committee for its continued support. We will always be judicious with our resources, grateful for the privilege we have to serve, and request additional funds when needed to meet the growing demands of the agency and its markets. Thank you, Mr. Chairman, and I look forward to answering your questions.

[The prepared statement of Mr. Behnam follows:]

PREPARED STATEMENT OF HON. ROSTIN BEHNAME, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Introduction

Good morning, Chairman Scott, Ranking Member Thompson, and Members of the Committee. I appreciate the opportunity to discuss the state of the Commodity Futures Trading Commission (the "CFTC" or "Agency") and provide an overview of current priorities.

Before I begin, I would like to acknowledge my colleague and friend, Commissioner Dawn Stump for her tireless service and dedication to the CFTC and the markets we oversee. I also want to thank Agency staff; their dedication and expertise ensures our greatest success towards achieving our mission.

And finally, I wish to congratulate and welcome Christy Goldsmith Romero, Kristin Johnson, Summer Mersinger, and Caroline Pham whose nominations were confirmed by the Senate on Monday.

As the Agency continues transitioning away from and considering life after the pandemic, we are witnessing transformative change throughout our industry and the markets we oversee. During this time of transition, I am committed to collaboration and careful deliberation among our corps of new Commissioners, with stakeholders and our regulatory peers as we address new and emerging risks and opportunities. Under my leadership, the CFTC will exercise utmost care, patience, and diligence as we move forward on critical decision points.

However, this ongoing transformation will not distract the CFTC from staying true to its historic responsibilities, and ensuring America's farmers, ranchers, manufacturers, and other commercial end-users continue to have cost-effective access to CFTC regulated markets to manage risk. To that end, I wish to acknowledge the key role that the National Futures Association, our designated registered futures association, and other industry self-regulatory organizations play in safeguarding the integrity of the derivatives markets by, among other things, ensuring that their members understand and meet their regulatory responsibilities.

The derivatives industry's population is shifting, having increasingly emerged from the technology sector rather than traditional finance. We are also seeing an influx of retail participants empowered by information and technology. As a core purpose of the Commodity Exchange Act is the promotion of "responsible innovation and fair competition among boards of trade, other markets and market participants,"¹ the Agency will continue to provide a steady hand as we make decisions that will impact our markets and the larger economy in the years and decades to come.

Right now, a confluence of unique externalities is having consequential effects on markets and informing our most immediate decision-making. In all that we do, the

¹ 7 U.S.C. § 5(b).

CFTC will, as it always has, prioritize identifying, assessing, and evaluating risk. We will continue to establish appropriate tolerances and guardrails within our regulatory space to minimize disruption, maintain a level playing field, and adhere to the letter and spirit of our mission and purpose under the Commodity Exchange Act.

Recent Events

Before I move on to our key Agency priorities, I would like to take a moment to provide a high-level overview of the CFTC's response to and observations regarding the ongoing conflict in Ukraine. The CFTC is on heightened alert with respect to market functionality and resilience, and fortifying the agency against cyberattacks.

Prior to the invasion, and in anticipation of the possible implementation of sanctions, I worked with the Treasury Department to ensure that General Licenses would be available, where appropriate, and ready to be used to manage and address exposures to affected market participants. CFTC staff are in routine contact with exchanges as sanctions and related volatility may alter affected index, currency, and physical commodity settlements.

As the invasion became a reality, the ongoing tragedy in Ukraine has sparked extreme volatility, with key markets exhibiting 20% higher volatility as compared to that observed prior to the invasion. By and large, the U.S. futures markets have remained orderly through periods of high prices and extreme volatility, consistently demonstrating strong correlation between futures and cash prices, and good convergence towards contract expiration. To date, CFTC staff have observed a relative balance in buying and selling, indicating that trading has not been panic driven, and despite episodic spikes in trading volume by as much as two times normal levels, markets have been able to clear the volumes without significant market disruption.

CFTC surveillance staff are closely examining trading activity for manipulative, inappropriate or disruptive conduct. Commission staff in the divisions of Market Oversight (DMO), Clearing and Risk (DCR), and Market Participants (MPD) are actively monitoring compliance by exchanges, self-regulatory organizations, and intermediaries for trade processing, execution, and clearing.

CFTC staff are using every tool the agency has to ensure that commodity markets continue to fairly and transparently serve the intended price discovery and risk management function, and this includes monitoring for excessive speculation.

Current Agency Priorities

With the benefit of hindsight and real-time market experience, a top priority of my Chairmanship will be the active review of the agency's Dodd-Frank rulemakings, ensuring they remain fit for purpose and as Congress intended.

The market turmoil related to the global pandemic tested the resilience of the derivatives markets and post-financial crisis reforms. In fact, volatility in the global financial markets during March and April 2020, and the current volatility linked to geopolitical issues, continue to raise challenges related to liquidity and margin requirements. This fuels active debate on the need for additional tools and resources to manage risks, including collateral management. Through all of these events, U.S. central counterparties (CCPs) remain among the strongest in the world.

Nonetheless, given the role of central clearing as a critical tool in mitigating systemic risk in global financial markets, the Commission expects to grow its stress testing program to help ensure resilience in absorbing both market and systemic shocks.

The interconnectedness of global financial markets requires persistent engagement towards maintaining resiliency and protecting the financial system and U.S. economy from future crises and addressing any duplicative cross-border regulation. To that end, the Commission will continue working with our international counterparts, and participating in international standard setting bodies and bilateral and multi-lateral discussions. We will advance thoughtful policy, encourage a collaborative approach towards a cohesive cross-border regulatory framework that supports strong and transparent regulation, and preserves the primacy of home-country jurisdiction, while discouraging the appeal of racing to the regulatory bottom in individual jurisdictions.

As we have demonstrated these last several years with the LIBOR transition, safeguarding the stability of the U.S. and global financial system requires ongoing international coordination and collaboration. And while we can build consensus and identify and effectuate solutions, as with LIBOR, we must resist the pull of complacency and continue to remain responsive and vigilant to new risks as they emerge.

The effectiveness of the CFTC's Division of Enforcement (DOE) in holding individuals and institutions accountable promotes confidence in U.S. derivatives markets. DOE will prioritize the use of cutting edge investigative and analytical techniques,

and assert the CFTC's fraud and manipulation jurisdiction where doing so preserves market integrity and protects the public.

A part of the enforcement program's success is rooted in its Whistleblower Program. I am grateful to this Committee's longstanding support of the Whistleblower Program, and continue to stand ready to ensure its long-term success.

The CFTC's enforcement program is only as good as the tools we have to identify bad actors. To further support DOE's efforts, I have directed our Division of Data to transform the agency's analytics toolkit to leverage the cloud architecture with advancements in AI, machine learning, and data analytics. This will provide our robust surveillance and monitoring capabilities with automated systems, helping to ensure our markets have the utmost integrity and transparency.

Recent market events highlight the increasing concerns for potential cyberattacks against American critical infrastructure, including U.S. financial markets. To that end, I have directed staff in the MPD to develop policy to address system safeguards for futures commission merchants (FCMs), swap dealers, and major swap participants, further fortifying CFTC markets from an attack. These policies, if enacted, would complement the suite of system safeguards currently in place for CFTC registered central counterparties (derivatives clearing organizations or "DCOs"), designated contract markets (DCMs), swap execution facilities (SEFs), and swap data repositories (SDRs).

The CFTC, along with the derivatives and larger financial industry, is accelerating our migration to cloud technologies to store, analyze, and ingest this data more cost-effectively and efficiently. We are also mindful of the potential risks as we look forward to exploring the benefits. We will continue to be vigilant in our own progress and ensure that our registrants instill and employ a high level of oversight and due diligence with respect to related resilience planning and operational risk management.

New & Emerging Risks

President Biden's recent Executive Order on Ensuring Responsible Development of Digital Assets acknowledges that the growth and widespread adoption of digital assets presents novel issues for all regulators. Against this backdrop, the CFTC has actively used our existing statutory authority to deter fraud and manipulation in these emerging markets. The CFTC will continue its proactive approach in using our existing enforcement authority in the digital asset commodity space to protect customers and markets from fraud and manipulation. I look forward to coordinating with fellow agencies as outlined in the Executive Order. Concurrently, I look forward to working with Members of this Committee on these important issues.

Turning to another area of increasing coordination, just over a year ago, I announced the creation of the Climate Risk Unit (CRU) 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. The CRU is primarily responsible for accelerating early CFTC engagement in support of market-driven processes in the climate space, and building resiliency from the effects of climate change.

Finally, I spent the last several years at the CFTC raising concerns regarding the lack of diversity, equity, inclusion and accessibility (DEIA). Earlier this year, as one of my first official actions as Chairman, I announced the hiring of the agency's first Chief Diversity Officer (CDO), to provide leadership and executive direction on the Commission's efforts to integrate DEIA into every aspect of our talent and business operations.

Conclusion

Despite uncertain times and great market volatility, I am optimistic and confident that the CFTC will be able to meet the demands of the public and markets we serve, as we build our resources and staffing in critical areas to address new and emerging risks, cautiously shepherd innovation, and remain true to our core purpose in providing a means of managing and assuming price risks, discovering prices, and disseminating pricing information through trading in liquid, fair and transparent markets.

In closing, I wish to thank the Committee for its continued support of the CFTC. This year, as the Agency stands on the precipice of transformative change alongside our markets, we will inevitably face new challenges requiring new and perhaps novel solutions. We will always be judicious with resources, grateful for the privilege we have to serve, and request additional funds when needed to meet the growing demands of the Agency.

Thank you and I look forward to answering your questions.

The CHAIRMAN. Chairman Behnam, thank you. Thank you very much for your important and very significant and timely testimony.

At this time, Members will be recognized for questions in order of seniority, alternating between Majority and Minority Members. You will be recognized for 5 minutes each in order to allow us to get to as many questions as possible. And, as always, please, keep your microphones muted until you are recognized in order to minimize any background noise.

Chairman Behnam, I recognize myself for the first 5 minutes. And as I mentioned to you, my deep love and affection for our financial system, I believe I am in this place at the right time to do good work. And I call to your attention immediately just to give you an example, I referred to what the leadership on this Committee, both Democrats and Republicans, have done. But let me just give you an example going back to our derivatives, our cross-border, our clearinghouses. It was—that's not that. But when Great Britain finally got their Brexit, you know what they wanted to do to us because we were Great Britain's equivalency partner, they said, "Well, hey, let's put the United States in third country." I hated that right there. We are if nothing more than a first country. And I found out what third country was.

But here is the point I am making. The reason that they went around in Europe and to others and said we need to do that is because this Congress has failed to reauthorize the CFTC for almost 12 years now. That is a weakness. We need to change that. And we are going to move to change it, to reauthorize it because people will say, "Well, hey, if they have not been reauthorized by the Congress to be the regulatory agencies for our clearinghouses and for this, well, the European Union will stick in." So there are little things like that that we have to be careful of and watch.

But let's get to this specific issue that concerns me greatly, and that is with our cryptocurrency business. Now, I understand that there is a proposal pending at the CFTC by a cryptocurrency exchange that is seeking approval to operate a new and untested exchange, that is seeking approval to operate in a new and untested system of clearing derivative trades. And I am very concerned about this, very much concerned about this proposal and the broad implications it poses, just like the other things that we have had to protect our financial system from and the implications across our markets and our intermediaries within this market.

And it is not just impacting cryptocurrency. We are dealing with it all over. I am also on the Financial Services Committee in the House. We are dealing with it there. There is so much unknown about this.

And so, as I said to you before, ever since the financial crisis, we have been moving to make sure that the CFTC's regulatory safeguards governing derivatives markets are the strongest that the world will have, and that the world will have full confidence in these critical markets. So I am very concerned that approval of this proposal, without due and proper consideration, will put all of that hard work at risk by allowing an untested, an unproven system that could very well make our derivatives regulatory system riskier and our customer protections much weaker. Your thoughts, Mr. Chairman?

Mr. BEHNAM. Thank you, Chairman Scott. It is a very important question and a very important issue, and I would just assure you and this Committee that, as we are considering and contemplating the FTX proposal, we are doing it cautiously, we are doing it very deliberately, and we will be very patient as we consider the proposals and how they intersect and interact with the Commodity Exchange Act and, more importantly, the core principles.

At this point, we have done a number of months of review within the Division of Clearing and Risk with FTX. At a point about a month or 2 ago I decided that, given the novelty of the issue and exactly what you pointed out, the unknown risks and the novelty of the market structure, that it was important for us to put out the proposal for public comment. I initially put out for 30 days. I extended that to 60 days, and we are in the middle of the public comment period to get ideas from all market participants, from academics and public interests, to see what their thoughts are on the market structure itself and the risk.

I would say more generally two important things. Despite the novelty, as Chairman, I feel I have the responsibility to give every stakeholder, every market participant an opportunity to share their views and to present ideas that they have for the market. I think that is the responsibility of the agency and the U.S. Government.

The second part is within the Commodity Exchange Act, specifically Section 3 [7 U.S.C. Section 5], we are mandated to support responsible innovation. And in many respects this proposal could be a turning point or an inflection point for market structure. I don't know that. I don't believe that right now, necessarily, but I do think I have to consider the proposal in case there is a possibility for a new market structure that could provide innovation, provide more efficient markets, better pricing, and better hedging tools.

I would just use a quick example going back 30 years when electronic trading—underscoring electronic trading was starting to manifest itself. You probably had a lot of individuals on the iconic trading floors in Chicago and New York who were hesitant to think about electronic trading taking over our markets. But now here we are in 2022, electronic trading is fully embraced, and it is a technology that supports the innovation concept.

The CHAIRMAN. My time is rapidly approaching, in a little bit it has gone over, but this needs far more review. It needs more oversight. This is a situation that I think that, based upon the concerns that I have heard, that this proposal thoroughly considers all of the potential impacts that it could have on this and particularly many of our clearinghouses and those people that we have always had to come in to help. So what I am asking is that we really put some good oversight to this, make sure questions are answered, and I also want to hear from the other side of this.

And so I want everybody to know that I am going to put together a hearing on Tuesday, May 17th, and I am inviting to get their thoughts on this so we make sure that all sides are answered and have their concerns, so I am going to extend invitations to the CEOs of CME and ICE, the Intercontinental Exchange and Chicago Mercantile Exchange folks. We need to hear from everybody on

this. You need to hear from them. We all do, just like we have had to do in previous occasions.

As I said before, I take great pride in being the number one protector of our great nation's financial system here, serving both on our Financial Services Committee and here as Chairman. And so I appreciate this, and I appreciate your deep consideration. I am very concerned about this. Ranking Member, I will turn it over to you.

Mr. THOMPSON. All right, Mr. Chairman, thank you. Chairman Behnam, I want to continue in the digital commodity space. I published a draft discussion of my Digital Commodity Exchange Act in November, and I am in the process of putting the finishing touches on that bill after receiving input on the draft from stakeholders. The discussion draft was grounded in five principles: number one, foster innovation, number two is to protect the market participants, number three is reduce complexity, four is to promote principle-based regulation, and five is to complement existing authorities where appropriate.

Chairman Behnam, do you think that those are the appropriate principles that we should be considering as we explore regulating cash digital commodity markets?

Mr. BEHNAM. Thanks, Ranking Member Thompson. I do. I think at its core many of the responsibilities that a potential digital asset marketplace or market structure would need are the same that we utilize and enforce and implement within the derivatives space. Obviously, the underlying asset is very different, but in terms of market structure and the principles that you just outlined, those are certainly a great starting point and something to build off of.

Mr. THOMPSON. Excellent. If the CFTC were granted authority over the cash digital commodities market, would you adopt these same foundational principles in your associated rulemakings?

Mr. BEHNAM. Yes.

Mr. THOMPSON. Very good. Well, I certainly encourage all my colleagues, on both sides of the aisle to join me in this effort. We haven't introduced a bill yet. We would love to have a unified original cosponsor. We tend to do best when we speak with one voice in the Agriculture Committee.

I want to revisit what the Chairman was talking about. You recently requested comment on a proposal by FTX that would allow it to provide direct clearing of margin trades by customers without the use of a futures commission merchant intermediary as it is traditionally done by clearinghouses. Chairman Behnam, I want to thank you for requesting public comment on this unique approach once again, and thank you for extending the comment period to ensure stakeholders have sufficient time to comment on this novel request or proposal. I appreciate your efforts to ensure that the Commission gives the proposal and the comments their full consideration, that the review process is transparent.

But I would like to understand a little better the review process for an application like this and what steps beyond public comment periods will the Commission take to understand the impacts of the proposed changes requested in this application or any application? We are really looking at what are the structures within the Commission for these types of proposals.

Mr. BEHNAM. Thanks, Ranking Member Thompson. There actually isn't a formal legal requirement about a process, *per se*. As I pointed out to the Chairman, we have been working with FTX for a number of months now in advance of releasing the public comment, and there is no prohibition or requirement that the current market structure be in place for existing market participants. So as of now, the FTX proposal, albeit novel, is neither prohibited nor in violation of the CEA. So we have gone through those first steps.

We are going through this comment period right now, which will last to about the beginning of or mid-May. And then my intention, and my intention all along, was to conduct a staff roundtable towards the end of May and have a larger conversation about non-intermediation, not about FTX specifically, but just generally about non-intermediation. And the reason I think that is important is because this proposal from FTX is not the first proposal the CFTC has received on non-intermediation, and I assure you, regardless of what happens with FTX, approval or rejection, there will be more in the future. This is just a product of technology and the ability to create efficiencies potentially in market structures, so I think it is important as an agency, collectively with your input, that we start to dig into these questions, identify risks, identify opportunities, and hear all viewpoints so that we move in a more informed way and move towards a decision that is comprehensive, that is patient, and, as I said, deliberate so that we know all the facts about the proposal.

Mr. THOMPSON. And thank you for that. And once the Commission has completed its review and is satisfied with its understanding of the application initially, what does the rest of the process look like? For example of some questions if you are able to answer them, is the Commission able to modify the proposal?

Mr. BEHNAM. So the Commission could modify the proposal, but it would be really up to the registrant, in this case, FTX, if they were comfortable with the required modifications. This certainly happens a lot as we intersect or have conversations with market participants. There are some things they may want originally in a proposal, and we say, "Look, this doesn't work because of our core principles or regulations. You need to tweak it here, tweak it there." And often registrants are comfortable with that. But depending on the modifications, it would really be up to FTX.

Mr. THOMPSON. Yes, and just real quick and I know I am over, I apologize, Mr. Chairman, but I think it is helpful for us to understand the process.

The CHAIRMAN. Yes.

Mr. THOMPSON. Does the approval of this type of application require a majority Commission vote?

Mr. BEHNAM. It does.

Mr. THOMPSON. Okay. And this one may be asking for a crystal ball for you, and I understand that, but do you have any idea when will the Commission be in a position to vote on the application?

Mr. BEHNAM. Ranking Member Thompson, only when we, and specifically myself as Chairman, feel that we are very comfortable with the proposal, we have checked all our boxes, we have looked at the structure and I feel like the Commission could make a vote

that is well-informed after debate and consideration and hearing from all constituents.

Mr. THOMPSON. Well, I don't think I am overreaching when I say I think both the Chairman and I appreciate that response when you are ready to make that decision. Thank you, Mr. Chairman. Thank you, both Chairmen.

The CHAIRMAN. Thank you. And now I recognize the gentlewoman from North Carolina, Ms. Adams, who is also the Vice Chair of the Committee on Agriculture. You are recognized for 5 minutes.

Ms. ADAMS. Thank you, Mr. Chairman. Thank you, Ranking Member Thompson, for hosting today's hearing. And to Chairman Behnam for testifying, thank you for being here today.

Moreover, even though they are not here today, I do want to take a moment to congratulate our new Commissioners on their confirmations. Congratulations to Commissioners Christy Romero, Kristin Johnson, Summer Mersinger, and Caroline Pham.

So Commissioner Behnam, as you may know, I sit on both the Agriculture and Financial Services Committee, where I oversee our financial system and agricultural markets. I understand that the CFTC has a request for comment out on FTX's registration order. I am not looking for you to comment on an ongoing process. Having said that, would you please speak to the implications of eliminating the current regime for intermediaries in the decentralized finance space?

Mr. BEHNAM. Congresswoman, thanks for the question. As I said earlier, it really is an ongoing deliberation of what benefits and risks this proposal may present. As you point out, rightfully so, this is a novel concept about non-intermediation between end-user or retail investor and the exchange in the clearinghouse, but as we have been digging into the proposal, much of my thought has been focused on what our responsibility is as the CFTC is to engage with stakeholders, to hear and listen to their presentations and to view them in light of possibilities as much as risk. So I would certainly never be comfortable with allowing a proposal to be put into a market if we didn't think certainly it met our core principles and our regulations but that if customer protections were at high risk.

However, as I pointed out earlier, it is very clear in the statute that we as the CFTC have a responsibility to support responsible innovation. And there is a possibility that within this market structure, given technology, given the ability to break down some of the segments between retail participation and trade execution, that this proposal could end up leading to more efficient trade execution and less risk in the system.

Ms. ADAMS. So let me move on. Okay. Thank you so much, and I want to get to a couple of other questions. So let me move to another topic. I commend your stated efforts on improving diversity and inclusion at the CFTC, along with your work to create the agency's first Chief Diversity Officer. The need for a CDO is important. And according to the CFTC, the employee breakdown of management is woefully homogenous with only 14 African Americans, ten Asian Americans, five Hispanic Americans at the grade level 15, and only 33 percent of your senior level employees are women. Number one, first of all, I do find that troubling. So what is your

strategy to increase racial, ethnic, and gender diversity at the CFTC? And will the Commission plan to include recruitment from historically Black colleges and universities and minority-serving institutions?

Mr. BEHNAM. Thank you, Congresswoman. To answer your second question first, yes, absolutely, and that is a part of the strategy with the Chief Diversity Officer, which I appreciate your recognition. I think this is a huge step for the agency. We are going to break down a lot of the silos and barriers that I think have restricted the agency in the past so that we can essentially be casting a wider net for recruitment and to support retention at the entry level all the way up to the senior level. I am optimistic about the future. It is going to take time, but I think with the inclusion of the Chief Diversity Officer and a real momentum towards expanding our scope and our invitation to potential employees, we have a real opportunity to diversify the agency.

Ms. ADAMS. Well, certainly, and we look forward to that. And whatever help my office can give, I do chair the bipartisan HBCU Caucus, and we have the connections with our Partnership Challenge, and we will be happy to offer assistance to you. Thank you, sir. Mr. Chairman, I am going to yield back.

The CHAIRMAN. The gentleman from Georgia, Mr. Austin Scott, is now recognized for 5 minutes.

Mr. AUSTIN SCOTT of Georgia. Thank you, Chairman Scott.

And Chairman Behnam, in your testimony you highlight the fact that these are uncertain times and there is currently a lot of volatility in the markets. I think you used the term *systemic shock*. If you read any of the financial news, you see the terms *weaker fundamentals*, *yield inversion*, the word *recession* is being used increasingly, housing bubble. All of those things are very concerning to me, and especially at the point that the world is facing what it is with the Russian invasion of Ukraine and the potential food shortages in Africa and Asia and the lower-income parts of the world.

That being said, how important would you say it is for us in Congress to figure out a way to allow our derivative clearing organizations and other clearing agencies to access the Federal Reserve to secure their cash?

Mr. BEHNAM. Thanks, Congressman. I want to be clear as I respond to this question, that notion and the idea that you are proposing is not within the CFTC's jurisdiction. This would be a decision by the Federal Reserve.

Mr. AUSTIN SCOTT of Georgia. That is right.

Mr. BEHNAM. But speaking on behalf of the CFTC and the regulated clearinghouses that we oversee and the conversations I have been having with them, I do think, given the volatility we have seen in the market, given what feels like a more frequent period of shocks to the system, right, whether it was COVID 2 years ago and now the Ukraine crisis, that the collateral movement and the size of the CCPs and the volatility that we are seeing, it is extremely important to consider this proposal and this idea of having Fed accounts for CCPs.

Mr. AUSTIN SCOTT of Georgia. Well, I look forward to working with you to help make that happen. And this should not be that

hard to do. And it would benefit everybody I think to have the cash secured at the Federal Reserve. There is no safer place for the system than to have that cash at the Federal Reserve.

One other thing I want to mention, I currently have a bill, the Commodity Futures Trading Commission Research and Development Modernization Act (H.R. 4337). It would grant you, the CFTC, the authority to interact with fintech innovators for research, development, and innovation purposes. Now, research and innovation that helps with risk management is good. If it leads to excessive speculation, then I think it is bad. And I want to share my concerns about FTX that were expressed earlier. But with the world changing as rapidly as it is, can you speak to the importance in how we bridge the gap to the CFTC and the fintech industry so that you as a regulator better understand the emerging technologies and how to regulate the markets?

Mr. BEHNAM. Thanks, Congressman. And I do appreciate your leadership on that bill. We did recognize that the CFTC had a number of barriers that we had to engage with entrepreneurs and innovators. And I think it is important. We have always been a leading agency in innovation and technology. Markets, especially in the derivatives space, tend to begin with trading in our markets, and this is best exemplified with the listing of the Bitcoin futures contracts back in 2017, which seems like years ago. But it is important that we have that authority and the ability to engage with fintech and entrepreneurs because it gives us a better sense of risks in the market, how our markets can support innovation, price discovery, and risk management because, as we know in all sectors of industry, whether it is ag or manufacturing, having financial markets to be able to lay off risk and mitigate risk supports innovation and growth, that supports research and development and every other thing that large companies need to support their growth over time. So, we continue to support your efforts here in whatever we can do to break those barriers down so that we can have more communications with entrepreneurs.

Mr. AUSTIN SCOTT of Georgia. Mr. Chairman, briefly, I will tell you I do think that with the volatility in commodity prices and the input prices in agriculture, I do think that we are going to need to make sure that our farmers and others are able to hedge their risk in the most efficient manner as possible, and I appreciate your work to help make that happen.

And with that, Mr. Chairman, I will yield back the remaining 20 seconds.

The CHAIRMAN. Thank you, Mr. Scott.

And now the gentlewoman from Connecticut, Mrs. Hayes, who is also the Chairwoman of the Subcommittee on Nutrition, Oversight, and Department Operations is recognized for 5 minutes.

Mrs. HAYES. Thank you, Mr. Chairman, and thank you, Chairman Behnam, for being here today. My questions for you today are going to focus on the Commodity Futures Trading Commission's Whistleblower Programs. Since the program was established in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203), the Commodity Futures Trading Commission has relied on whistleblower disclosures to identify cases of fraud and other illegal activities and to collect fines on behalf of

the American people. The CFTC's Customer Protection Fund established by Congress in 2010 is funded through those fines and used to reward whistleblowers for their disclosures.

Since issuing its first award in 2014, the CFTC has granted whistleblower awards amounting to approximately \$300 million. The information provided by these whistleblowers is crucial and ensures that we are able to properly enforce the Commodity Exchange Act.

First, Chairman Behnam, in 2020 the CFTC reached out to Congress with concerns that, as a result of several large whistleblower awards they expected to pay, there would be a shortfall in the fund used to pay whistleblower awards and fund administration of the Office of Consumer Education and the Whistleblower Office. As a result, Congress passed a short-term legislative fix which will expire at the end of this fiscal year. My question is have those large awards since been issued? And looking ahead to the expiration later this year, do you expect that there will again be a shortfall at the CFTC?

Mr. BEHNAM. Congresswoman, thank you for the question. It is extremely important. The short answer to your question about those awards being rewarded is, yes, they have been rewarded. And to your second question, I cannot say with certainty whether or not we will have a shortfall. So much of this is unknown, and I think if you go back to Dodd-Frank, you couldn't have contemplated some of the rewards that we distributed in the recent past. They are very, very significant, and they are products of the LIBOR fraud cases from a few years ago.

But to your point and to support what you just said, this is more evidence of the importance of the Whistleblower Program and how we are able to root out fraud and manipulation with the support of whistleblowers. So I can't say for certain whether or not we are going to run out, but it sounds like you would support what I am about to say is that I think we should err on the side of it is possible and we need to have the program fixed as soon as possible so that we can have the staff in place, that the Consumer Education Fund can be funded appropriately, and that we could have the funds to provide whistleblowers when those cases are filed.

Mrs. HAYES. You are absolutely right. I think that the Whistleblower Program is extremely important. And we saw that it reached record highs in 2020. What do you believe this was a result of? Was it increased violations, better enforcement, or just an atmosphere where people feel that there is a process for expressing their concerns about fraud?

Mr. BEHNAM. I think it is a combination of all of those things. I certainly think over time since 2010 when Dodd-Frank was passed and this provision was put into law that more individuals within the financial system are aware of the benefits of the Whistleblower Program and that they could come to the agency, feel protected, that what they are about to do is not going to come back to them and that they will be rewarded for their service to the government and to the American people and the American financial system.

But more notably I did mention this and you probably recall that we had some very, very significant cases filed and settled in the

past 5 to 10 years regarding the LIBOR fraud and manipulation. And those were hundreds if not billions of dollar cases that ended up resulting in some of these significant fines. Will we see them again in the future? Again, I can't predict, but I would prefer to err on the side of caution and say we need a very resilient and strong Whistleblower Program with a very strong and resilient fund so that we can continue this program in support of American financial markets.

Mrs. HAYES. Well, thank you so much for your time and for your testimony today. And I am mindful of the time, but I cannot end my testimony without just saying how proud I am to be from Connecticut where Senator Chris Dodd, this was so incredibly important to him, and he worked so hard for this legislation to be passed. And I encourage you, Chairman Behnam, that if problems that are uncovered that require Congressional action, that they are brought to our attention immediately because this is something that I think is critical to ensuring that our financial markets and all of our actors are playing by the same set of rules.

With that, Mr. Chairman, I yield back.

The CHAIRMAN. Thank you very much. And now the gentleman from Arkansas, Mr. Crawford, is now recognized for 5 minutes.

Mr. CRAWFORD. Thank you, Mr. Chairman. And thank you, Chairman Behnam, for being here today.

And I guess there has been a lot of talk about crypto, so I am going to go crypto just real quick. I guess it is safe to say that crypto is here to stay. Would you agree?

Mr. BEHNAM. Yes, sir.

Mr. CRAWFORD. Yes. So having said that, I think most people would agree with that statement. I know you supported legislation that would expand CFTC's jurisdiction over digital commodities markets. Can you talk about that a little bit, why you think that is a good choice?

Mr. BEHNAM. Well, I think in order to—on two sides of the equation is, one, there are risks inherent in the market right now. It is a largely unregulated market. We have some state transmitter licenses that are really directing the regulatory space. And there are benefits to that, but it is not enough, quite frankly. And what we are seeing in terms of the growth and the scale of the market, it is a very retail-oriented market. It is highly speculative, and we have seen that with price movements in some of the larger digital assets. I think it is incumbent on Congress and regulators to work together to have a structured regulatory regime around markets. It will both protect customers, reduce market stability issues, create market resiliency, which is extremely important, ultimately protect customers, and then possibly have the benefit of supporting innovation if there are outcomes that we are going to see beneficial in the future.

Mr. CRAWFORD. Do you think we need statutory language that defines *digital commodities* and *digital securities*?

Mr. BEHNAM. Yes, it would be extremely important to do that.

Mr. CRAWFORD. Thank you. I appreciate that. I want to shift gears a little bit with you. My colleague Mr. Scott mentioned this, and you and I had a conversation earlier this week alluding to this, and that is the growing need I think for farmers to be adequately

hedged using these tools that are regulated by the CFTC. And so what we discussed the potential for CFTC being a lead agency in extension outreach to educate end-users, primarily agriculture producers on how they can benefit. Can you talk a little bit about how that might look?

Mr. BEHNAM. Sure. Thank you for the question, and I really enjoyed speaking with you about this. We have a very well-built-out Customer Education Office within the agency. I pointed out to you and this Committee knows well we are rooted in agriculture. We were once part of USDA. And, as I said in my statement, I think it is a priority of mine to ensure that American producers understand our markets and feel that they have a cost-effective risk management tool in American futures and options markets.

And there are many challenges, there are many risks, there are obviously other programs that USDA provides which are critically important, but CFTC markets should just be another tool in the toolbox for American farmers and ranchers to hedge extreme volatility, extreme price risk, which we continue to see over the years. So I would certainly welcome to work with you, with folks back in Arkansas, use the extension program across the country, and utilize our education office to inform folks about markets to answer questions if necessary and to do whatever we can to support at the producer level, at the elevator level, and everyone in between so that they know CFTC markets are available and an effective risk management tool.

Mr. CRAWFORD. Well, I appreciate that, and we will definitely look forward to working with you on that front.

One thing I have to mention and I would be remiss if I didn't, and that is the impact that China has on our commodities markets. And I am just curious what tools are available to you—and I am not even sure if this is the best venue to address this question, but what tools are available to identify or to identify red flags as it applies to China and the potential for them to manipulate markets? Do you have any of those tools available? And what actions can be taken to prevent that?

Mr. BEHNAM. Well, certainly for domestic markets we have the tools we need from a surveillance perspective and a market oversight perspective. We definitely have international participants in our markets and we observed that with the crisis in Ukraine identifying folks who are on the sanctions list. So we are able to see participants, identify where they are from, and if there were a case of fraud or manipulation from individuals in China, we would be able to root that out.

We are seeing that market grow pretty extensively over the past couple years. There are a number of futures markets in China. I think on the one hand we are going to need to work with those individuals and those institutions. China obviously, as this Committee knows, is a huge purchaser of American agricultural products. But I feel very strongly that we need to ensure our commodity markets remain the strongest in the world. They benchmark major commodities across the ag complex, energy complex, and the metals complex, and those are the types of things I will be thinking about and looking forward to working with you to ensure that resiliency

and primacy of American agriculture in our markets over the decades to come.

Mr. CRAWFORD. Thanks so much. I yield back. Thank you.

The CHAIRMAN. Thank you. And now the gentlewoman from Ohio, Ms. BROWN, is recognized for 5 minutes.

Ms. BROWN. Thank you, Mr. Chairman, Chairman Scott and Ranking Member Thompson, for holding this hearing today, and thank you to Chairman Behnam for being here.

The CFTC has long been under-funded. Since your confirmation as chair in January, have you been able to evaluate whether the CFTC has adequate staffing and resources to effectively carry out its responsibilities?

Mr. BEHNAM. Thank you, Congresswoman. That is certainly something I do on a regular basis working with our CFO and our folks in the budget office, working with appropriators as well. I would say that what I have observed even in the past few years, let alone nearly 5 that I have been at the Commission as both a Commissioner and chair is that our markets continue to grow, we continue to see a larger pool of participants and registrants, and with that comes a larger responsibility for us to interact with the agency constituency and also new participants. So I do think we will need an increased budget to deal with all of these issues in the digital asset space, obviously in our core markets, but it is increasingly becoming a challenge to deal with these issues and protect markets.

Ms. BROWN. Okay. So you touched on a few things. What more can Congress do to support the agency?

Mr. BEHNAM. Well, I think from an authorities' perspective we do have the authority we need over our traditional markets. I have publicly stated and I know Ranking Member Thompson has talked about digital asset authority, and I fully support that. But in terms of my direct engagement with Congress and ask is to continue to think about our funding levels. We fell a little bit short this past fiscal year, but looking forward, we will be asking for a little bit more. And that is a direct result of the interaction we are having with an increasingly large pool of market participants and increasingly large responsibility we have over growing markets.

Ms. BROWN. Thank you for that. In your testimony, you highlighted the agency's commitment to responsible innovation and fair competition among market participants. With the rapid growth of digital assets over the last several years, many of the barriers to entry to the finance industry have been reduced. How is CFTC responding to a more diverse market participation?

Mr. BEHNAM. Thanks, Congresswoman. It is a great question, we are in fact seeing that in our markets. Barriers are being eliminated because of technology, and there is more retail participation in our markets, which I think is overall a positive thing, but it does come with a great responsibility. And that responsibility as a regulator is to ensure customer protections are in place, to ensure disclosures and information flow is fair and equitable across all income levels and investor education levels. And we are currently working within our groups, most notably, the Market Participants Division and the Office of Customer Education to do extensive outreach, inclusive outreach, and really, as I was saying earlier, to

touch parts of our country and our market that we historically have not touched. And I think it is really important because, as we all use our phone and download apps and have access to any number of things much easier than we did even a few years ago, the same is the case for financial markets. And we need to assume that will only increase over time. But with that comes a great responsibility, so that will be a priority of ours to work with communities that we historically have not touched or engaged with and make sure they know about the risks and opportunities of new technology so that they can make the most informed decisions for their wallet and their household.

Ms. BROWN. All right, thank you. And thank you, Mr. Chairman. With that, I yield back.

The CHAIRMAN. Thank you. And now the gentleman from California, Mr. LaMalfa, is recognized for 5 minutes.

Mr. LAMALFA. Well, thank you, Mr. Chairman. I just wanted to weigh in a little bit more on the issue with how the futures would be affected with what we are really looking at with the Ukrainian market for as much crops as they grow and how much they are a part of the world markets in exports and tying that back into derivatives. So how can derivative markets help to address the imbalances that we are going to see with so much in certainty in that portion of the market, as well as my home state where water is being cut off to farms? I think a number we don't know quite yet, but we could see 70 percent of irrigated acres in California cut off from water partly because of drought but a lot of it is because of manmade drought with mismanagement of water and it being devoted towards environmental purposes and fish habitat, things like that. So what kind of disruptions do we expect for these commodities, and how do derivatives help to balance that out?

Mr. BEHNAM. Thanks, Congressman. And I know you know this, but just to be clear, we are price-agnostic. We do not set prices on markets. They serve two main purposes, risk management and price discovery. So in response to your question, the two purposes and the two benefits of our markets as we are dealing with these crises both internationally and, as you say, domestically as a result of any number of issues is to help producers, to help users, utilities, anyone who has to have commodities as a part of their business or their operations is to see both price discovery and anticipate risks, challenges, and costs that may come in the future but then ultimately risk management. And that is to be able to hedge risks going out if not months, years so that they can have steady, stable prices and know what they are going to have to be able to pay for costs—inputs on the input side but also charge customers.

So this has been the purpose and the use of derivatives for decades. It will continue to be that. I think from a CFTC perspective our main goal is to ensure that markets are fair, transparent, orderly, and free from fraud and manipulation and are properly reflecting the dynamics of supply and demand. Obviously, those dynamics change significantly with weather, with geopolitical issues, with socioeconomic issues, but we just need to make sure that all of those factors are at their core being treated fairly and that we don't have fraud and manipulation influencing prices at all.

Mr. LAMALFA. So bottom line, do derivatives markets help to balance and cushion some of that uncertainty?

Mr. BEHNAM. Absolutely.

Mr. LAMALFA. Yes, okay, thank you. Also, Chairman Behnam, is there—on the CFTC, this question may have been asked. I couldn't hear it earlier. How is CFTC being staffed out at this point in return to work? Are we going to be able to expect normal service and operations are underway or soon underway so good work can be done, an expectation basically for the customers after the last 2 years?

Mr. BEHNAM. Thank you, Congressman. We are in the process of transitioning back to the office. I myself and my staff around me have been back in the office since last fall. And I think my goal is to just make the process orderly and be cautious, understanding that folks have both gotten accustomed but returning to work will take time, but my goal is to get folks back into the office as soon as possible. There are a number of issues that we are going to need to deal with in terms of negotiations and getting folks comfortable, but hopefully as soon as possible we will be back at the office with an understanding that things have changed and that by and large we were able to accomplish our short-term goals and mission while we were remote, but there are also important longer-term issues that we have to deal with as an agency, the culture of the agency, and the health of the agency in the years ahead, and those are things that I think about as we think about a post-pandemic work environment to ensure that the agency is healthy, we are recruiting, we are retaining, and that there is a long-term, successful story for the CFTC to tell and ultimately, as you pointed out, we are doing our job serving the customers we have and also the American taxpayers who are hard at work and we owe it to them to make sure markets are fair, resilient, transparent, and not causing risks that should not be happening.

Mr. LAMALFA. And open, yes, it is high time we get back rolling again, as we are suffering economically. And so I appreciate it. Well, my time is up. I will yield back.

The CHAIRMAN. The gentleman from Illinois, Mr. Rush, is recognized for 5 minutes.

Mr. RUSH. Well, I want to thank you, Mr. Chairman, for this outstanding hearing. My question is directed to Chairman Behnam. Chairman Behnam, in your testimony you briefly mentioned new and existing policies to fortify the CFTC's markets against cyber attacks. Can you provide a brief orientation on the existing policies, as well as the new proposals that you would recommend to fully protect our markets from cyber attacks?

Mr. BEHNAM. Thank you, Congressman. It is an extremely important question. Right now, we have a policy within our core principles that relates to systems safeguards. And within systems safeguards, our examiners, most notably with clearinghouses, do annual examinations for the systemically important clearinghouses and *ad hoc* examinations for the non-systemically important clearinghouses. But within those systems safeguards, we analyze cybersecurity issues, information security issues, and business resiliency issues, among others. Those are the core responsibilities we have with an examinations process.

As we have seen an increase in cyber attacks as a result of the Ukraine crisis but just generally across the globe, I think it is extremely important, as you point out, that we increase our resiliency, that we increase the questions we are asking, the intersection and the engagement that we have with our market participants, going beyond the clearinghouses, talking to the FCMs, the futures commissions merchants, the swap dealers. Any market participant that could be a point of access for a cyber attack and have a cascading effect across our markets and potentially all financial markets. So we are currently in the process of thinking how we can examine that existing suite of examinations that we have right now that are in statute and certainly look forward to working with you if you have any ideas that we can consider. But it is an extremely important issue, that puts our markets at risk, and something that we all have to collectively think about very hard.

Mr. RUSH. Is there any role that you would ask the Congress to play in terms of helping you to fully engage and fully develop protections for our markets?

Mr. BEHNAM. Congressman, I think in terms of authority, we have the authority we need. I would say there is one point I will mention, and it has to do with vendor risk or third-party service providers. This is something that market regulators typically do not have. So you can imagine we have direct intersection and a relationship with our registrants, but often, the registrants are outsourcing or dealing with vendors on the backside of their relationship with us. We certainly trust our registrants and know that they are doing what is in the best interest of their own business, but I think there may be something to consider there in terms of our relationship with vendors and third-party service providers.

The other thing I will mention very quickly is funding. This is becoming more complex, more costly in terms of both personnel and the expertise they have for cyber issues, for digital asset issues. The cost of these techniques, the technology of both the hardware and the software is growing. It is becoming more complex. And as I look at some of our private-sector registrants, the amount of resources that they are piling into technology relative to their other business segments is just growing. And that I think has to be the same case for us.

We are, in my view, a value-add to the American taxpayer. We brought in over \$1 billion in Fiscal Year 2021, nearly \$1 billion in 2022. We are a value-add, and I think we should be viewed as that and hopefully properly funded so that we can build these infrastructure points on technology and protect American markets.

Mr. RUSH. Well, thank you. I have an additional question in my remaining seconds. I am very much interested as the Chairman of the Energy Subcommittee on the Energy and Commerce Committee. I am interested in your Climate Risk Unit and your recommendations related in the Climate-Related Market Risk Subcommittee's report that was promised in September of 2020. Can you please give me some indication of an update on these efforts, and can you provide us with an update from the Climate Risk Unit activities since they were created a year ago?

Mr. BEHNAM. Yes, thank you, Congressman. I created the Climate Risk Unit in March of 2021. Currently, it is staffed by about

15 to 20 staff across different divisions, and they are in the process of coming up with a strategy. In my mind it is a bit of a binary approach that we are going to think about what we can do from a regulatory standpoint to create more resilience in our markets, what we can do to support innovation and resiliency and combat physical risk related to climate change.

The other element is transition risk, which we all know is a huge risk as we transition hopefully in an orderly manner to a net-zero economy. What we can do at the CFTC engaging with private market participants to come up with innovative ideas to support financial markets, especially derivatives, to help mitigate physical risk and to manage price risk. There are so many opportunities, and we are seeing this grow exponentially within our markets from market participants, and, from my view, the Climate Risk Unit will do what it can to engage to understand the price risk, but to set out an initiative and a plan for supporting these strategies within the market. The time standpoint we are going to look forward to the end of the year in terms of coming out with some proposals.

The CHAIRMAN. The gentleman from Georgia, Mr. Allen, is recognized for 5 minutes.

Mr. ALLEN. Thank you, Mr. Chairman. And, Mr. Chairman, thank you for your comments regarding FTX and also Ranking Member and also Mr. Scott and all that we have heard here today. I would like to, rather than continue to comment on that, associate my comments with their comments and my concern for this.

I do have one question on that. And of course we have the Chicago Mercantile Exchange and the Intercontinental Exchange, which is the method we are currently using for clearinghouse, okay, which are heavily regulated, I might add. Now, you have FTX, which is not regulated. So I just want to make sure that when all this comes to be, that it is a fair playing field for everybody. In other words, I am sure that CME and ICE are both innovating and doing what they can to do more with less people and to provide the greatest return but under the current regulatory environment. But can you comment on the fact that, hey, we are going to have a fair playing field here for everybody at the end of the day?

Mr. BEHNAM. Congressman, 100 percent. I am legally obligated and I think it is fair that everyone get a fair shake and that everyone play from the same field. It is extremely important. It is something I have stood by as long as I have been at the Commission, and especially within this particular instance that you raise, FTX, we will make sure that the rules apply fairly and equitably to every stakeholder.

Mr. ALLEN. Good. And I appreciate that. Thank you very much. Now going back to your role in—we have already talked about it extensively—your role as far as the economy. And, frankly, the dashboard is a little scary right now. Inflation, government debt, the Fed basically has no tools in the box. I mean, it is either shut the economy down into a recession like we saw in the 1970s and interest rates like we saw in the 1970s or continue putting money into this money supply, which is causing—I mean, you got the perfect recipe for inflation out here right now.

And it is all driven by this war on fossil fuel. Fossil fuel is in everything. I mean, right now there is a huge shortage. The big problem in Ukraine and Europe is the shortage of diesel fuel. Farmers aren't going to be able to plant. We are going to have famine in this world. And we can't help them because we are at 50 percent of production that we were just 3 years ago. We can't sustain this.

So what role is your organization playing in this whole economic situation to get this dashboard back in the way it should look as far as reasonable inflation, reducing government debt, reducing government spending, everything that is contributing to this economic downfall?

Mr. BEHNAM. Thanks, Congressman. Obviously, an extremely important question given all that we are dealing with in the markets today both domestically and internationally. As you know, we are at the agency price-agnostic. We don't set prices whether it is on treasuries or corn and soybeans or oil and natural gas. But from my perspective our number one responsibility is to ensure that our markets are operating fairly, in an orderly fashion, and free from fraud and manipulation. If they are in fact doing that—and I am confident they are—then our market participants, whether it is within the government official sector or private market participants, are able to use our markets for price discovery and hedging. And those become extremely important tools for our farmers—

Mr. ALLEN. But you have an obligation to investors, okay, or to those agencies, the clearinghouses. And it is subject to economic dashboard indicators. Certainly, what would be your advice to this Administration right now to deal with the risk of what we are running here? I mean, we don't want to go back to 2008 where we had the mortgage-backed securities issue. We know we have bubbles out there, but you are part of the team. You have an area, territory to protect. I mean, what are you doing to look at the big picture and say, hey, we can't sustain this?

Mr. BEHNAM. Congressman, I participate within the Financial Stability Oversight Council. I frequently talk with my colleagues across the government and other regulators. I would say this, that what we have faced in the past 2 years is unprecedented, right, with the once-in-a-century pandemic and the economic response to that where we had a supply shock, a demand shock, and then the recovery over several months, followed by now the crisis in Ukraine and given the importance from a commodity perspective of both Russia and Ukraine in ag and energy.

So I do think collectively we are doing everything we can the best we can, understanding the dynamics of the American consumer, under the dynamics of supply restraints, and understanding the very quick pivot towards a return to normal in terms of demand but a much slower supply because of labor issues and supply issues.

Mr. ALLEN. Okay.

Mr. BEHNAM. So it is a challenging issue. We are looking into it. We look at the data, and we try to be data-driven, but it is a process and it is going to take time. And I am hopeful of the path that we are on—

Mr. ALLEN. We don't have a lot of time. This thing is getting serious. Thank you, and I yield back.

The CHAIRMAN. The gentlewoman from New Hampshire, Ms. Kuster, is now recognized for 5 minutes.

Ms. KUSTER. Thank you, Chairman Scott, and welcome to the Agriculture Committee, Chairman Behnam. We appreciate you being here, and I would agree with you these are unprecedented times, so I appreciate your leadership.

In the nearly half-century since Congress established the Commodity Futures Trading Commission, it has evolved to tackle a wide swath of financial commodities beyond just its roots in agriculture. As CFTC's mission continues to grow alongside new markets, including digital and crypto assets, it is imperative for this Committee to understand what you will need from Congress to be successful.

So speaking of digital assets, Mr. Chairman, I know you have noted previously the digital asset market is unique in that it is largely a retail market. What are some of the core customer protections that would be needed in a regulatory framework for the digital asset market, and are there core principles in the Commodity Exchange Act that can be applied here to protect consumers?

Mr. BEHNAM. Thank you, Congresswoman. It is a very important question and in many respects—and I have said this in the past—market structure can be very similar despite assets that are traded on those markets being different. So what I mean whether it is an equity security or fixed income product or a derivative. And our core principles obviously are driven from the derivatives standpoint, mostly commodities, obviously anything from financials and agriculture and energy commodities. But as we think about digital assets and the potential regulatory structure being built around digital assets, I think it is important to use many of the market structure principles and the core principles as you know as the building blocks for what might become a regulatory market structure.

From a customer protections standpoint, it is all about segregation of assets, which becomes very, very difficult within digital assets. It is something we are working on very hard because it is so unique from traditional assets. Execution and settlement, these are core elements of a trade from order to settlement that we have to be thinking about collectively with your help and support so that we can ensure customers know what they are doing as they are trying to execute trades or get exposure to digital assets but also feel comfortable both from an intermediary standpoint potentially or an exchanges standpoint and the regulator's standpoint that we are doing everything we can and fulfilling our responsibility to know that their assets are being protected and that if something happens, that there will be individuals that are held accountable.

Ms. KUSTER. Great. That is reassuring. So I know there have also been significant discussion about FTX's recent proposal to amend the registration as a derivatives clearing organization and that the Commission presently put that proposal out for public comment. Mr. Chairman, the Treasury Department has been tasked with the leadership role in the development of a digital

asset regulatory regime. I wonder if you have consulted with Secretary Yellen on this proposal?

Mr. BEHNAM. Thank you, Congresswoman. I have not directly spoken with Secretary Yellen about it. I know my staff has spoken with a number of the other agencies about the proposal. There is a distinction between some of the efforts started by President Biden in the Executive Order and what the FTX order is currently proposing. The FTX order, there are listed derivatives, contracts on Bitcoin and Ether on an FTX exchange currently that are trading and have been trading for a number of years. What the proposal is doing is it is requesting to amend the existing order that contemplates those derivatives, those futures contracts, and changing the market structure. So as much as there is some relationship between what is going on within the U.S. Government and President Biden's Executive Order, there is a separation that I think is certainly unique to the CFTC because it is explicitly focused on derivatives and futures and not anything else.

Ms. KUSTER. Okay. Great. I have limited time, but just briefly, switching gears, I am also interested, as my colleague Mr. Rush addressed, climate change and trying to minimize climate-related risk to our financial system. And you have talked about the Climate Risk Unit and the Climate-Related Market Risk Subcommittee. Is there anything that you would want to add to elaborate on your vision for the Climate Risk Unit during your tenure and how they can identify sensible reforms within the Commission's regulatory framework? And I have 10 seconds left.

Mr. BEHNAM. Thank you, Congresswoman.

Yes, they are in the process of working on exactly what you said, and I am hopeful by the year's end we are going to come out with some thoughtful proposals that the Commission can consider to build more resilient markets against climate change.

Ms. KUSTER. Great. Well, we would love to hear about it on our Committee. And with that, I will yield back, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you. And now the gentleman from Illinois, Mr. Davis, you are recognized for 5 minutes.

Mr. DAVIS. Thank you, Chairman Scott, Ranking Member Thompson, for holding this hearing to discuss the state of the CFTC and how we as Members of Congress can support its core principles.

Along with many of my colleagues here today, I am concerned about the state of our economy due to the Biden pro-spending, pro-inflation agenda that only looks to be gearing up to get worse for our constituents under the President's new "build back broke" budget. The impact that the new CFTC rules and regulations may have on market participants and ultimately our farmers, our ranchers, and our constituents who rely on the commodities and contracts that are being traded is something I am very concerned about and I hope the Commission is carefully reviewing.

The CFTC's risk management requirements embedded in its core principles provide market participants with several layers of safeguards to ensure that risk is properly managed, customers are protected, and the markets that are so critical to our food and our energy supply, they remain stable. I am very concerned about this as

we look at the challenges these markets have faced over the last few years and are likely to continue to face as global events drive commodity price volatility, which I am sure that many of my colleagues in front of me have addressed with you.

But my question for you, Chairman Behnam, regarding the idea of a direct-to-customer non-intermediated derivatives clearing model, how would this work with the CFTC's risk management standards that are built around an intermediated clearing model?

Mr. BEHNAM. Thanks, Congressman. You are right that the standards in some respect are built around an intermediated model, but they don't require an intermediated model. And I think given technological advancements in our ability to access markets—and I mentioned this earlier thinking back decades when farmers and producers had to call up an associated person, an introducing broker, and then get an order out to the Chicago Board of Trade, those lines can all be reduced now because of technology. And I think what the proposal is trying to do in a non-intermediated model is to take advantage of technology so that we can break down some of these silos and have more direct access.

I am not supporting it at all. I think what my responsibility is, is to look at the proposal. I said this earlier. Section 5 [7 U.S.C.] requires me to support responsible innovation. And there is a possibility that this idea, if responsible and if it meets our core principles, can be a next step in market structure.

Mr. DAVIS. Do these standards need to be formally updated to account for the differences in these models, and do you guys at the CFTC intend to do this?

Mr. BEHNAM. I don't think standards need to change. We are a principles-based regulator, as you point out, so when you think about principles-based, we largely look at outcomes and not necessarily a check-the-box routine of how we get to the outcome. And that in fact gives us the flexibility we need to support innovation in the market. So as long as we are looking at risk assessments, margin methodologies, and how market structure functions, if the math is done—I often use that phrase—and we feel comfortable within the sort of sphere of what the proposal is, I don't think we necessarily need to change any rules.

Mr. DAVIS. Okay. But should this model be allowed to go forward before the Commission decides what rules or standards should be in place? Shouldn't there be clear rules of the road?

Mr. BEHNAM. So we have not allowed the model to be rolled out. We are in the process of having a public comment period. I said earlier my intention is to have a staff roundtable on non-intermediated market structure. We are going to be deliberate, we are going to be cautious, we are going to engage with you and others to make sure that we are thinking about the risks and opportunities before we approve or disapprove anything. I think it is my responsibility to engage fair and equitably with all stakeholders and ensure that we are doing what our job is as the CFTC.

Mr. DAVIS. Well, Chairman, I do want to ask if, in your exchange with Mr. Crawford, you noted the value of having a statutory definition of *digital commodity*. One additional challenge with that is who gets to interpret that definition. Today, the SEC has the first crack at determining what assets are securities. If we define *digital*

commodities and provide the CFTC jurisdiction over these assets, should the CFTC be in a similar position of having first crack at what defining a *digital commodity* is?

Mr. BEHNAM. Yes.

Mr. DAVIS. Thank you. I yield back.

The CHAIRMAN. Thank you. And now the gentleman from Arizona, Mr. O'Halleran, you are recognized for 5 minutes.

Mr. O'HALLERAN. Thank you, Chairman Scott and Ranking Member Thompson, for organizing this important hearing today. I also want to thank Chairman Behnam for working with us to advance the CFTC's mission of promoting integrity and resilience in the derivatives markets.

Mr. Chairman, I listened to your opening remarks today, and it brought me back to a little bit of my memory of history. While you were working on those issues, I was, too. I was on the Board of Trade's board of directors for a number of years back when those European issues were being brought up first. And I am thankful that you were on that process also.

But right now, climate change poses a systemic thread to our financial system. The challenges we face right now are undeniably real and urgent and right now we do not exactly have the tools to work on those in the way we need to.

Climate change-related risks can be sudden and physical like wildfires and flooding, which cause acute shocks to the system and sharp increases in economic damages, more and more so it seems with each year. Those of us in northern and eastern Arizona are certainly aware of these challenges, as we have seen increasingly deadly wildfires coupled with post-fire flooding. The risk can also be chaotic and subtle like rising temperatures and persistent drought.

Economically, these gradual changes can affect insurance and mortgage markets, loans, crop yields, and home values. We are seeing these impacts right now in Pinal County, Arizona, where farmers are forced to let farmland lay fallow due to water use restrictions.

I guess the main piece here for me is that this is a connected environment on the business side of the environment, it is on the family side of the environment, the economic side of the entire country and the world, and we need to be able to have the tools necessary to address those both in the marketplace and in the field.

Additionally, there is economic risk in transitioning too quickly to net-zero, which could harm smaller companies that don't have the resources to adapt as easily as their larger competitors or counterparts.

Now, Chairman, I was pleased to see you established the Climate Risk Unit last year to strategically address the climate risk in the derivatives markets. Now, can you please provide an update on how the Climate Risk Unit has spent the past year and what you see as the unit's next step in addressing the climate threat? How will the Climate Risk Unit help farmers, ranchers, and constituents in Arizona manage the increasing risk climate change poses to their livelihoods?

Mr. BEHNAM. Thanks, Congressman, I appreciate the question. And, as you noted, I formed the Climate Risk Unit in March of

2021 with the intent of essentially collecting certain experts within the agency across divisions so that we could collectively think about what the agency could do from a regulatory standpoint to both engage with stakeholders, including agricultural stakeholders, and essentially supporting innovation in our markets to tackle both physical risk associated with climate change and, as you point out, the transition risk associated with climate change.

Derivatives markets are inherently risk management agencies, so I think this is natural to us. But as you point out, the increasing risks of climate change that we are seeing across the country and the globe are going to affect farmers, ranchers, manufacturers, and we need to address those issues as soon as possible. So my hope is by the end of this calendar year we are going to have as a first step a proposal of ideas, regulatory, to bring before the Commission, and certainly welcome sharing them with you so that you can give us your input if you would like.

Mr. O'HALLERAN. I remember a time when we were trading grains in Chicago and when it rained on South Street, there was no drought in America because all of a sudden people would trade a little bit differently because all the sudden rain is coming down. That is not true anymore. That wasn't true then. But now, the reality is we have to be much more aware of what is going on throughout the world in climate. It is having a profound impact.

And while I have a couple of seconds left here, I just want to say my concerns for the CFTC are the same today as they were before. I do not feel that you have enough personnel or budget to be able to address the many issues that you are facing and will be facing, and that includes the Bitcoin and all the other factors that go into that. And I will look forward to talking with you on those issues. Thank you.

The CHAIRMAN. And thank you, Mr. O'Halleran. And now the gentleman from South Dakota, Mr. Johnson, is now recognized for 5 minutes.

Mr. JOHNSON. Thank you very much, sir. And, Mr. Chairman, I would be remiss if I didn't start by talking about my friend Summer Mersinger. She and I grew up just 30 miles away from one another, and I have known her for a long time. And I am sure you would agree with me, sir, that she is exceptionally well-qualified to serve with you on the CFTC, incredible integrity, incredible prudence. She is going to be very much a value add as you altogether pursue your risk management and price discovery missions. So please greet her warmly for me when you see her next, sir, if you would.

Mr. BEHNAM. Absolutely. And I agree with you wholeheartedly.

Mr. JOHNSON. Yes. And when I want to be famous in D.C., I tell people I know Summer. That is what a big deal she is in this town.

So, anyway, I want to talk with you a little bit about equivalency, sir. In the immediate aftermath of Brexit we spoke a lot with your predecessor about clearinghouse equivalency, European Union, cross-border access. I mean, talk to me a little about where we are at today on those issues.

Mr. BEHNAM. Thanks, Congressman, it is an extremely important question. And I would say from an EU perspective we are in good position. We had obviously a number of challenges, but

thanks to you and this Committee, as the Chairman pointed out, and a number of the Members, given your incredibly strong input over the past few years, we are in a good place with the European Union. We have a well-established relationship under an MOU, and we have preserved the primacy as the CFTC as the home country regulator for our registrants, including CCPs.

That said, there are always more issues out there. Brexit was not a one-incident event. We continue to see repercussions because of Brexit, and they will exist for a number of years, going forward. So we are currently in communication with a number of regulators, including those of the UK, as they contemplate their life post-Brexit and ensuring that we build off of that strong, long-lasting relationship between the United States and the UK and ultimately, as I point out and I know you believe, preserving the primacy of the U.S. regulator, specifically here the CFTC, over our domestic CCPs.

And, as Chairman, I will continue to make those arguments strongly to ensure folks understand the well-established rules and regulations we have and the great financial markets that we steward and certainly welcome your support but also we will keep you up-to-date as those developments and discussions go along.

Mr. JOHNSON. So it sounds to me, Mr. Chairman, that things have gone about as well as they could have. And obviously, your team at CFTC deserves a lot of credit for that. There was tremendous uncertainty a couple of years ago about whether or not we would end up in this spot. And of course, you are right, it is an ongoing challenge. There is still work to be done, but we are sitting about as well as could be expected. Is that right?

Mr. BEHNAM. I think that is fair to say, but I would never rest on my laurels because I do think there are a number of issues out there that I am trying to catch them early so they don't become an issue, that they don't raise to the level of this Committee and we continue to have staff-level conversations, I continue to have conversations with my counterparts over in the UK and other jurisdictions to ensure that what happened in the EU a few years ago does not happen again and that no one gets ideas about what they can or think they should do because of some regulatory shift or some market shift. So we are going to keep sending that message very clearly across the globe, and I will do my part as best I can, and I am hopeful that I will be successful. But if things change, I will certainly report back to you.

Mr. JOHNSON. So how about from the perspective of the United Kingdom? Of course, that is not your job nor mine, but have they also been able to secure a good landing spot in the wake of Brexit?

Mr. BEHNAM. It is a good question, and you are right because it wasn't just the EU who suffered or who had an outcome as a result of Brexit. It was the UK of course as well. And as the EU was starting to think about what they were going to do from a regulatory perspective, perhaps the UK was just a little bit behind. But we are having those conversations right now. I am confident that we are having conversations that are heading in the right direction. And what I mean by that is preserving U.S. primacy, preserving primacy of the CFTC as the home country regulator, leaning on the existing relationship between the CFTC and my counterpart agency, and, above all else, using the foundational relationship

between the United States of America and the United Kingdom, allowing them to trust us and the regulations we have and the institutions that we have and supervise as much as we need to trust them and the supervision that they conduct over their institutions. So I am going to lean on those principles and ensure they are successful.

Mr. JOHNSON. Let me [inaudible]—probably more valuable than the question I was asking. And I am out of time, so if your team can follow up afterward.

Mr. BEHNAM. Thank you.

Mr. JOHNSON. I guess I was asking more about whether or not the European Union and their regulatory agreements with the United Kingdom is going to allow the United Kingdom the flexibility they need to also maintain how they operate because I just think there could be a broader impact on global markets if there are disruptions in that relationship. But thank you very much. And sir, I yield back.

The CHAIRMAN. And Chairman Behnam, feel free to respond in writing to Mr. Johnson's questions.

[The information referred to is located on p. 47.]

Mr. BEHNAM. Sure. I apologize, Congressman, for not directly answering the question. But—

The CHAIRMAN. He is one of our very strong, bright Members, and you can respond in writing. We want to get to as many Members.

The gentleman from California, Mr. Carbajal, is now recognized for 5 minutes.

Mr. CARBAJAL. Thank you, Mr. Chairman. Chairman Behnam, thank you for testifying before us today.

California knows the effects of climate change well. We consistently experience severe drought and intense wildfires that threaten the future of all crops, not just commodity crops. I think you are right that the CFTC has a role to play in addressing climate change. I applaud you for the creation of the Climate Risk Unit to focus on mitigating climate-related risks. Climate change is not a new and emerging risk. Climate change has been here, but we have been late to act on it.

Chairman Behnam, can you walk me through what role the CFTC can play in helping foster investments to promote a smooth transition to renewable energy sources? And what are some challenges you see with renewable energies competing against oil and gas futures?

Mr. BEHNAM. Thanks, Congressman. It is extremely important to have risk-management markets and price discovery markets, and I think we have seen that. Our markets date back over 150 years and in many respects have been a building block and a foundation for the success of the American economy for decades. And I don't think that is any different now as we think about transition to a net-zero economy.

So as Chairman, and as you pointed out, forming the Climate Risk Unit, my goals are going to be to engage with market participants, with stakeholders, with innovators so that our markets can continue to serve that purpose, that we can see innovation in a product development space so that folks, as they are transitioning

to renewables or transitioning their companies to a net-zero environment, they can lean on our markets to manage the risks that are going to come along that way because, as you point out, there will be many risks, it will be difficult, but we need to continue to push forward in that transition in an orderly way to ensure resilience against climate change.

There are certainly many issues, and we are dealing with them now in terms of the Ukraine crisis, but I do think it is incumbent to be balanced, to be fair, and to move the transition forward but understanding that transition risk is real and that we are going to have to in many respects think about issues and challenges on a daily basis and understand that we are going to need to lean on fossil fuels for a number of years, hopefully in a downward trajectory. But in order to power America as we transition to renewables, we are going to need to lean on those existing energy sources to get to where we need to get in 2030, 2040, and 2050. So I am hopeful that our markets will continue to manage and support a transition in an orderly way and allow producers, manufacturers to use our market to eliminate that price risk and eliminate those externalities which we will all face as we deal with climate change and those risks in the years ahead.

Mr. CARBAJAL. Thank you. In the CFTC report, *Managing Climate Risks in the U.S. Financial Systems*, one of the recommendations made is requiring credit-rating agencies to disclose the extent to which their ratings take into account climate risk. Can you elaborate on what you think this system might look like and do you think this approach will encourage climate-friendly business practices?

Mr. BEHNAM. Thank you, Congressman. I do want to just clarify that report, which I am very proud of, but it was an advisory committee so it was not a product of the Commission, *per se*. I did convene a number of market participants to put together the report and make recommendations, which were exhaustive in scope and very helpful and I think a steppingstone for what we are seeing in the Biden Administration.

With respect to that particular recommendation, when I think about that recommendation, it makes me think about the financial crisis and the important role of credit-rating agencies and ensuring that they are transparent, that they are fair, and that they are transmitting information as clearly as possible to end-users. And in this case this is often investors, whether it is local governments, pension funds, or individual investors.

So as we start to see the growing risks related to climate change, whether it is flood or fire or any number of other issues, these are going to impact local communities, these are going to impact states and ultimately the United States. And I think as the investing community needs to know, we need to know what these risks are so that we can allocate capital efficiently, appropriately, and as best informed as possible.

Mr. CARBAJAL. Thank you. Mr. Chairman, I yield back.

The CHAIRMAN. Now the gentleman from Ohio, Mr. Balderson, is now recognized for 5 minutes.

Mr. BALDERSON. Thank you, Mr. Chairman, both Chairmen. Thank you, Mr. Chairman, for testifying today. And you discussed

in your testimony the importance of cybersecurity at the CFTC. As I am sure you know, a 2020 audit by the Office of the Inspector General spelled out recommendations for the CFTC to follow in order to mitigate cybersecurity risk for registrants. What progress have the Divisions of Market Oversight and Clearing and Risk made on implementing the Inspector General's recommendations?

Mr. BEHNAM. Congressman, thanks for the question. It was a very serious and important recommendation. We obviously take those very seriously across the board but particularly within the context of cybersecurity, as I pointed out. And you certainly recognized we are on heightened alert across the board given what we are dealing with, with the Ukraine crisis. But cybersecurity becomes an even more critical issue to address.

So with those recommendations, we are currently in the process of making possible changes so that we can improve our systems, become more resilient across the agency, and ultimately send a message to our constituents and our market participants that we are as fortified as possible in protecting the markets that we are asked to serve and do.

Mr. BALDERSON. All right, thank you. But following up on that, Mr. Chairman, what resources do the CFTC require from Congress to fully implement the Inspector General's recommendations and to further alleviate any additional cybersecurity risk?

Mr. BEHNAM. From an authorization standpoint, I don't think we need additional authority. I have said this before and I will repeat it. Given the risks associated with cybersecurity, given the resource challenges both on the personnel side, on the technology hardware side and the technology software side, I am just seeing an increased need for resources to hire the right individuals, retain the right individuals, and further improve our resiliency from a cybersecurity standpoint.

We can never keep pace with the private-sector, I understand that. We have a duty to be careful with the privilege we have to serve and the resources we get from the American taxpayer, but I do think net-net we are a value-add given the penalties we impose and the protections that we bring to market. And because of that, I think it is important that we continue to invest in the CFTC, especially on the technology side so we can build this resilience and not leave American financial markets vulnerable to cyber attacks.

Mr. BALDERSON. All right. Thank you. And we will stick with cybersecurity. As we move forward—and I may run out of time, but I will ask this question and you can report back to our office. Obviously, your staff can follow up. But are you aware when an individual buys a digital asset, an asset secured by whichever platform they used to make the purchase, this means that different platforms can be more secure than others and could be vulnerable to cyber attacks. Would it be beneficial to create some sort of framework to ensure that digital assets are secure across whichever platform consumers choose to use? And the follow-up on that, is this something that is being discussed at the CFTC or within inter-agency working groups?

Mr. BEHNAM. Cybersecurity is a significant portion and discussion point among the larger effort of the relevant financial regulators in the Treasury Department. We understand and I under-

stand very clearly that within the context of digital assets as we are approaching and understanding and learning about the technology that is the foundation of a digital asset ecosystem, that cyber becomes a significant risk. And we are seeing that even I think a few days ago there was another cyber attack, which led to about \$600 million of stolen digital assets.

This will continue, and this in my mind is just another argument for a strong, thoughtful, very proactive regulatory structure around the digital asset space and for me personally, as Chairman of the CFTC, ensuring we have the right tools, that we are thinking about cyber risks specific to the digital asset space as it may be distinguishable from traditional finance, learning and understanding those new elements of it, and addressing them as best that we can.

Mr. BALDERSON. Mr. Chairman, well done. Thank you very much for those answers. And Mr. Chairman of the Committee, I yield back my remaining time.

The CHAIRMAN. Thank you. And now the gentlewoman from Washington, Ms. Schrier, is recognized for 5 minutes.

Ms. SCHRIER. Thank you, Mr. Chairman. And welcome, Chairman Behnam. I would like to focus on the many uncertainties that our farmers are facing and how the CFTC can help.

Supply chain dysfunction made worse by the pandemic was first brought to my attention by hay and wheat growers in my district back in early 2020. And since then, I have been in frequent communication with growers and exporters around Washington's Eighth District about the issues that they are facing.

Costs and the availability of transportation for both domestic and export markets continue to be a big challenge for wheat, cherry, apple, pear, and hay growers in my district. For example, some growers have said that the cost for a truck to the East Coast has more than doubled in the last year. Others say that the cost to move fruit to the port to be loaded for export costs as much as the entire trip to the destination country did in previous years.

And, as you know, Chairman Behnam, we are experiencing unprecedented market volatility with severe weather events, trade disagreements, a pandemic, and supply chain issues disrupting normal operations. I have been hearing from growers in my district about the challenges of getting their crops to overseas markets due to supply chain disruption and also due to really exploitative practices of foreign-owned shipping companies. And now in recent months I am hearing about supply chain on the other side with the rising cost of inputs like fertilizer as a result of similar struggles.

And so I am concerned about what that means for our farms who have utilized the derivatives market to control price risk. So if I could take wheat, for example, Washington State produces close to $\frac{1}{2}$ of the nation's soft white wheat, and I would like to know what mechanisms are in place to protect these wheat growers participating in these markets to help them hedge and manage their risk.

Mr. BEHNAM. Thank you, Congresswoman. I often say about the CFTC, and I think I may have said earlier, we were once part of USDA. We were once a part of the farm bill, our reauthorization. And, as the Chairman noted, we were spun off in 1975, but that should not dismiss the fact that our core responsibility and job I

think in many respects should be continually focused on America's farmers and ranchers.

And with that, I think about all of the tools in the toolbox that USDA provides whether it is crop insurance or the commodity title programs and then the futures market. And this is what historically it has been and it needs to continue to be, especially under my chairmanship.

So I think in terms of what we can do to address some of the wheat growers in Washington is ensure that we are utilizing the tools we have within the agency, whether it is consumer education and outreach, and I would be happy to come to Washington and speak to some of your constituents to ensure that they know that the U.S. futures markets remain a viable, cost-effective risk management tool, a credible and fraud-free price discovery mechanism so that, as we see these volatile times and whether the externality is a pandemic, a financial crisis, and now what we are dealing with in terms of a geopolitical crisis, that they can confidently rely on America's futures markets and the CFTC as its primary regulator so that they can hedge and manage that price risk in these difficult times.

Ms. SCHRIER. I really appreciate your attention to that, and I know that the wheat farmers in my district would love to have you come and hear their stories, in particular as we look at fires, climate, and now more volatility in the wheat market due to the ongoing conflict in Ukraine. So I look forward to staying in touch. I would love to host you in my district. My wheat growers would love to meet you. And I want to thank you and thank you, Mr. Chairman, for putting this hearing together. I yield back.

The CHAIRMAN. Thank you. And now the gentleman from Texas, Mr. Cloud, is now recognized for 5 minutes. Is Mr. Cloud on? You may need to un-mute. There you go.

Mr. CLOUD. Can you hear me, Mr. Chairman?

The CHAIRMAN. Yes, I hear you now. Go right ahead.

Mr. CLOUD. Okay. I can hear you as well. The CFTC has five advisory committees that were created to foster discussion and provide recommendations to the agency. The leadership and membership of these are drawn from industry. In 2020 the subcommittee of the CFTC Market Risk Advisory Committee released a draft report with proposed recommendations to financial regulators on steps they can take to address climate-related market risks. Because advisory committees and their subcommittees are industry-led entities, reports that they adopt are not agency or official government work product. Only if they are adopted by the full committee can they become formal recommendations for public stakeholders of the Commission.

In the case of the MRAC, its charter requires that full MRAC membership vote to adopt any report drafted in its name, yet despite having two meetings after publication of the committee report, the MRAC leadership never called for a vote to adopt the committee report, and now the subcommittee is inactive, according to the CFTC website. Do you know why the MRAC membership never adopted the draft report prepared by the subcommittee?

Mr. BEHNAM. Thanks, Congressman. I was the sponsor of the MRAC. I continue to be the sponsor of the MRAC. And my sus-

pcion is now that we have new Commissioners, I will probably give way to one of the new Commissioners that sponsorship.

That report, as you pointed out, was published in September of 2020. I mentioned earlier to one of your colleagues on the Committee very clearly that that was not a CFTC report. That was a product of the advisory committee only.

In terms of the vote for the final report, it was just a sequence of events that happened that was coincidental, quite frankly. But the report was finalized in September of 2020. The next meeting that we had on the calendar was, I believe, February of 2021. And by that time I had become acting Chairman of the CFTC and decided not to raise that report up for a full committee vote.

Mr. CLOUD. Okay. Thank you. I yield back.

The CHAIRMAN. Thank you. And now we will have the gentleman from New York, Mr. Maloney is recognized for 5 minutes. Mr. Maloney, you may want to check your microphone.

Mr. MALONEY. Thank you, Mr. Chairman.

The CHAIRMAN. Yes.

Mr. MALONEY. I apologize for the difficulty.

The CHAIRMAN. No problem.

Mr. MALONEY. And I thank our witness today.

I just have a couple quick questions about digital assets. I am particularly interested in the Chairman's view of how the principle-based regulations that CFTC imposed would work in this context. And what similarities exist between, say, the way CFTC is regulating in general, and the current set up of digital asset exchanges that are not regulated currently? If you could just talk to us about that for a minute, I would be interested.

Mr. BEHNAM. Thanks, Congressman. I have said this before I think a number of times in the past, but market structure within the context of digital assets and the unregulated platforms, they are regulated at the state level, which you know certainly from a New York perspective, pre-trade transparency and having equal, fair information flow between exchanges and users. The exchange itself, ideally you have a CLOB, which is a central limit order book, essentially an orderly platform where we receive bids and asks and then post-trade reporting, ensuring settlement, and then ultimately custody. These are core elements and principles of any market, whether it is an equity market or futures market. And I personally and strongly believe that there shouldn't be anything necessarily different in the context of digital assets. Obviously, the custody and settlement becomes a bit more complicated and new and novel because of the assets themselves, but we are looking towards some of those issues and thinking about it.

To address your first point quickly on the principles-based regulations has been at the CFTC for about 22 years. By and large market participants have been very supportive of it because it allows for innovation and development that is not too restricted by a more check-the-box exercise. I would emphasize to you that it doesn't mean that we don't have areas of more prescriptive rule-making and prescriptive oversight whether it is around data or cyber or some core requirements. But there is a nice balance that principles-based regulation allows markets and market participants to be flexible within how they conduct their businesses knowing

that they have to achieve similar outcomes but also allowing for that flexibility to support innovation, growth, and moving and evolving with markets, as we know, evolve very quickly because of any number of externalities.

Mr. MALONEY. Yes, thank you for that. And if you could say a word also about one of the things that I am interested in is the equitable component in these markets. There is a Harris Poll that suggests that 23 percent of African Americans and 17 percent of Hispanic Americans compared to only 11 percent of White Americans own cryptocurrency. And so as we approach the kind of consumer regulations and protections, how do we balance the concern about those protections without suffocating the emerging technologies and the opportunities they provide for communities of color that have in some ways been more interested in this market segment than the majority community?

Mr. BEHNAM. A great question, Congressman, and something that I think it is important that we peel back the onion so to speak, right, because I think the data suggests some very positive things, potentially low-income communities and individuals who are either historically under-banked or don't have access to banking services, and I think we can all agree or at least some of us can agree that this particular technology may allow for easier access to banking services and the transfer of assets, and that is a very positive and good thing, especially for low-income and historically underprivileged communities.

But I would also say that we have to be very cautious. And you note this out, rightfully so, that as we see these markets evolve, I can generally say that they are highly speculative and highly retail-oriented, so we need to make sure that folks are using at this point where the market is largely unregulated, these services for the right reasons. And if they are not and if they are more focused on the speculation side and just, potentially, making money on a short-term basis, I have a responsibility, other regulators have a responsibility to do exhaustive and extensive outreach to individuals and communities that we don't historically reach out to.

And I have said this earlier, but it is important that we utilize the leverage and the tools that we have at the CFTC to make sure people are aware of the risks, aware of the opportunities, but protecting themselves and their livelihoods from fraud, manipulation, and what has historically been the same type of fraudulent schemes we have seen throughout history, Ponzi schemes, pump-and-dumps. The asset might be different, but the fraud is largely the same. And we need to use that experience and that expertise to make sure we are rooting out those bad actors and protecting these communities.

The CHAIRMAN. Thank you very much.

Mr. MALONEY. Well, my time has expired. I thank the gentleman and thank you for all your good work and for your testimony today. I yield back, Mr. Chairman.

The CHAIRMAN. Thank you. And now the gentleman from Iowa, Mr. Feenstra, is now recognized for his 5 minutes.

Mr. FEENSTRA. Thank you, Chairman Scott and Ranking Member Thompson.

The cattle industry is very important to my district and my state and even to my family. Iowa ranks among the highest producers of cattle in the country, which has given me plenty of opportunity to sit down and talk about the issues that cattle producers feel are important. Every time I meet with them, they always ask for true price discovery that will allow cattle producers sufficient leverage in cash negotiations.

You mentioned in your testimony that the core purpose of the Commodity Exchange Act is the promotion of fair competition among Board of Trade and other markets and market participation. What steps is the CFTC taking to monitor transparency in the cattle cash markets to ensure fair and correct pricing?

Mr. BEHNAM. Thanks, Congressman, an extremely important question and I can say one that I have been focused on even as a Commissioner, but I also do want to give credit to my predecessors. There have been many challenges I think in the evolution of technology in our markets and other components that have contributed to some of the issues and concerns that are being raised by livestock producers. We are very engaged with constituencies both at the national level and the local level. We continue to obviously utilize our authorities from an enforcement perspective to ensure that markets are fair, free, and transparent and free from fraud and manipulation.

Obviously, the underlying market plays a key, key role in any futures market, so ensuring that the cash market on the livestock side is also transparent, open, and those data feeds that are coming into the Boards of Trade are readily available and that those prices are reflecting what is happening in the cash market.

So I am happy to work with you and your constituents to ensure this. We understand how important the issue is. We did form a livestock task force a few years ago, and I would be certainly welcome to doing something similar in the future if you have continuous concerns.

Mr. FEENSTRA. Yes. And I really appreciate that. And that is my next question, if you have any recommendations. And you sort of noted one. Do you have any other recommendations? I mean, this in the Midwest is a very critical issue.

Mr. BEHNAM. I think a few things is, one, I can get back to the folks who are on that task force and see if there is anything we can do to either resurrect it or start thinking about those issues and see if we are seeing any patterns. Two, the Agriculture Advisory Committee is one of the advisory committees, so perhaps we can use that advisory committee as a venue or vehicle to convene folks and start to talk about these issues.

Mr. FEENSTRA. Yes. Well, I greatly appreciate that, and I look forward to working with you on this.

Mr. BEHNAM. Thank you.

Mr. FEENSTRA. Also in your testimony you mentioned how COVID-19 pandemic tested the resilience of the derivatives markets and the post-financial crisis reforms. Obviously, we saw the Russia invasion has created a crisis surrounding wheat production. There are other events that are shocking the agricultural market, especially the cost of inputs, inflation that are really hitting my producers in my district. Can you please elaborate on how deriva-

tives markets will help address the market disruptions in the turbulent environment that we have?

Mr. BEHNAM. Thanks, Congressman. I think as long as I feel like I am doing my job and the agency is doing its job, markets will remain free from fraud and manipulation, which means they are properly reflecting supply-demand dynamics. But what that allows producers in Iowa to hedge risk out of curve, which can go years out and stabilize those prices and eliminate those fluctuations that we are seeing in the short-term. So this was the intentional purpose of the markets. This is what they have served. I have a responsibility to make sure that they are serving those core requirements and purposes.

And as I mentioned to some of your colleagues, I certainly welcome the opportunity to do some outreach to your constituents to help them feel more confident and comfortable with our markets as another tool in the risk management toolbox.

Mr. FEENSTRA. Good. Thank you. Just one final question. We talked so much about digital currency. It looks like it is going to cost about \$100 million in your budget. That is about $\frac{1}{3}$ of your budget. How do you square that up? I mean, that is a big deal.

Mr. BEHNAM. Yes, look, it is not insignificant, and I take my responsibility as a steward of taxpayer resources very seriously. And that number that I came up with, I used an example from the financial crisis and where our budget was before the financial crisis and where it was after, most notably in light of the fact that we had a huge increase in authority over derivatives. That said, I can tell you just in the past year we have brought in over \$100 million I believe in penalties from fraud and manipulation, so I do look at our agency's purpose and mission in that context. If we are doing our job, we are making sure markets are free and fair and rooting out bad actors and making them accountable. And we are earning our paycheck in some respects and will continue to do that. But that is why I think there is a value potentially for us to have this authority and protect markets and market participants.

Mr. FEENSTRA. Thank you so much. Thank you, Mr. Chairman, and I yield back.

The CHAIRMAN. Thank you. And now the gentleman from Florida, Mr. Lawson, is recognized for 5 minutes.

Mr. LAWSON. Thank you, Mr. Chairman, and thanks for having this hearing.

Commissioner, I believe you are aware of the concerns aluminum end-users have with aluminum prices, particularly the application of the Midwest premium, which has increased 415 percent since implementation of the 232 cap in 2018. Can you confirm whether your agency or any other regulatory agency has jurisdiction authorizing statutes over spot markets? And if not, can you share any thoughts on what the solution is to this regulatory gap, whether my bill H.R. 2698, the APEX Act, might be—is the right approach?

Mr. BEHNAM. Thanks, Congressman. We have jurisdiction over cash markets across commodities when there is fraud and manipulation involved. That is a statutory-authorized authority we have. But outside of fraud and manipulation, we do not have authority to police cash markets. We utilize that authority. We have utilized it in digital assets and other commodities over the years, and you

can imagine the relationship between cash and futures and the importance of having cash markets that are free from fraud and manipulation.

In regard to the APEX Act, thank you for your support. Thank you for your interest in this issue. Obviously, aluminum prices have gone up very significantly in the past few years, and a lot of inputs and externalities related to that, given the crisis in Ukraine, some supply-chain constraints, a shoot-up in demand and less supply, so obviously there are a number of things driving that price.

But in terms of the APEX Act, I would say that that would be a pretty unique authority for us to have. We don't traditionally—and the way I view it is potentially register or have oversight over a price-setting benchmarking agency or entity. As we think about it, and I am happy to take a steer or input from you—those services are voluntary, so I think we would need to ensure that whatever authority Congress decides to provide to the CFTC in context of benchmark providers is that we retain that service because if it is a voluntary service and then a regulator comes into the scheme, that voluntary service could easily go away and then where are we left? Potentially without a benchmark provider.

So I look forward to certainly talking to you about it more. I think it is a very positive step. But, it would be a unique authority for us to have, and we would have to think really hard from a CFTC perspective what would the regulatory outcomes be? What rulemakings would be needed to implement your law?

Mr. LAWSON. Okay, thank you. And I look forward to working with you on that. And I want to know that in Fiscal Year 2021, Consolidated Appropriations Act (Pub. L. 116–260) passed in December 2020 included language directing your agency to release a public record on aluminum pricing. Commissioner, are you able to provide an update on how the report is progressing and when you expect to release it?

Mr. BEHNAM. Thank you. We are in the process of working on a document that we could share that obviously reserves and preserves any confidentiality issues but understand that request in the Appropriations Act and we will get that up to you as soon as possible. I will have my staff reach out to yours shortly after the hearing so that you can get a tighter timeline and date on when that report will be provided to Congress.

Mr. LAWSON. Thank you very much, Commissioner, for being here. And with that, Mr. Chairman, I yield back.

The CHAIRMAN. Thank you. And now the gentlelady from Florida, Mrs. Cammack, is now recognized for 5 minutes.

Mrs. CAMMACK. Well, thank you, Mr. Chairman, and thank you to Chairman Behnam for being here in front of the Committee today. So many important topics that we want to make sure we cover, so I am just going to jump right in.

Chairman Behnam, in your testimony to the Senate Agriculture, Nutrition, and Forestry Committee you stated that there is, “a thin line that the CFTC and the SEC must navigate when determining which agency has jurisdictional authority over the digital asset space.” Additionally, you clarified that 60 percent of the digital asset space marketplace falls under the jurisdictional authority of

the CFTC and that the CFTC is prepared to assume the role of the primary regulator for cryptocurrency and blockchain technology.

So this is a very important issue to me as the millennial representing in Congress. This is something very important to my peer group and a very complicated issue. I am curious as to what your thoughts are on Congress doing legislatively to ensure that the CFTC has spot market jurisdiction of the digital asset marketplace and doesn't fall into the purview of an overreaching SEC?

Mr. BEHNAM. Thanks, Congresswoman. You point out all the things that I have said in the past and echo what you said about the importance of a regulatory structure. Right now, there is a lot of uncertainty in the market. From a CFTC perspective, our authority is very limited to police those markets. And as I said earlier, it is limited to fraud and manipulation in the commodity space. And as you point out, I think I mentioned 60 percent, and that number has stayed relatively the same. I think the market capitalization of digital assets tends to swing day by day. But in terms of the value of two core digital assets, Bitcoin and Ether, that is roughly in the 55 to 60 percent range of the total digital asset market capitalization. And at least Bitcoin has been determined to be a commodity by a Federal court. I think Ether has not, but when you look at the asset itself, it looks like and tends to be more of a commodity than a security.

I use that phrase *thin line* because this is really a balancing act and something that we need, I think, to collectively support and guidance from Congress on as to how we are going to regulate the space, how are we going to protect customers, how are we going to ensure market resiliency, how are we going to prevent financial stability risks if the market continues to grow and scale at the clip that it is.

But ultimately, and to speak to your support of the technology, whatever outcome may exist in 10 or 20 or 30 years with this technology, I am a firm believer that American financial markets, both equity markets, security markets, and derivatives market, are the best, deepest, and strongest in the world because of our regulatory structure, because there are clear rules of the road and bad actors are held accountable. And I think that same logic can be applied to the digital asset space.

I can't predict what is going to happen. I think as a regulator we want to assume it is going to continue to grow, and I have to protect customers in those core items about resiliency and stability. But in terms of innovation and development and growth in the marketplace, I do think a regulatory structure would be helpful in supporting the growth of the market in the years to come regardless of what may come from it from a technology perspective.

Mrs. CAMMACK. Well, I appreciate your feedback, and at some point because I certainly cannot in a minute and 40 seconds dive into the decentralized nature of what could be, so I am going to just pivot here and hopefully we can have a time to sit down and discuss further on this and I will have my office reach out to yours.

But I do want to jump to a market stability question. Given recent events in Ukraine, I come from a heavily ag district. Farmers, ranchers, other commercial entities obviously rely on futures markets to hedge risk. And the Russian invasion of Ukraine has re-

sulted, as you know, in extreme market volatility and record trading volume on global markets. Obviously, we are seeing fertilizer reach somewhere in the ballpark of 700 percent on some certain ones, particularly potash. Now, I want to know, how is CFTC approaching this from a surveillance standpoint?

Mr. BEHNAM. Congresswoman, we are on heightened alert. We are making sure that we are understanding and identifying risks in the marketplace. We are looking at the cash market and seeing what we are seeing from a transportation standpoint, from a supply chain standpoint, and ensuring those supply-demand dynamics in the cash space are being properly reflected in the futures space.

As I pointed out, our core responsibility is obviously on derivatives markets. We have fraud and manipulation in the cash markets, but if we can assure that markets are fair, operating orderly, they are transparent, and that they are free from fraud and manipulation, that means they are reflecting cash supply-demand dynamics, and that means your constituents and other producers can hedge those risks and eliminate some of those extreme up and downs and continue to do their business as intended.

Mrs. CAMMACK. Well, and I know my time is about to expire. One last question, Mr. Chairman, if you would allow me to submit for the record so I may get a written response, I would be very much appreciative.

The CHAIRMAN. Thank you. And now we will hear from the gentlelady from Illinois, Mrs. Miller, and she is recognized for 5 minutes. This will be our final Member for today. Mrs. Miller, you are now recognized.

Mrs. MILLER. Thank you. Chairman Behnam, I know that addressing climate-related market risk has been a priority for you during your tenure at the Commission. But what role does CFTC or derivatives products have in directly addressing climate change?

Mr. BEHNAM. Congresswoman, inherently I think our markets are risk-management markets. Our markets have been thinking about data points related to climate for decades. That is really at the core of what our markets do, whether it is a tornado, a rainstorm, or a fire. And I think right now my goal is to utilize the economists and the experts in the CFTC to engage with the private market to support innovation so that we can see new products and new development in this space that would help mitigate some of the impacts of physical climate change and also help support an orderly transition to a net-zero economy.

Mrs. MILLER. Thank you, and I yield back.

The CHAIRMAN. Thank you very much.

And now, before we adjourn, I want to invite our Ranking Member to share his closing remarks, and then I will come and give my closing remarks.

Mr. THOMPSON. All right, Mr. Chairman, thank you very much. This was a great hearing. It was great to have Chairman Behnam before us. And, I appreciate his comments, his overview, his leadership of the Commodity Futures Trading Commission, which, quite frankly, we have jurisdiction over and functions based on principles.

I will take a moment to kind of shameless plug to encourage my colleagues to join me with the Digital Commodities Exchange Act.

I think, as you heard from the exchange today, that proposal, soon-to-be-introduced piece of legislation, I think it provides the tools the CFTC needs, the clarity, the definitions, the principles to be able to deal with this ever-increasing digital commodity market. The United States has always been a leader with the first generation of internet, which is the internet of knowledge. The second generation, which is the internet of things that we are kind of living through right now. And, quite frankly, the third generation of technology is the internet of value, which allows these digital commodities to flourish. America has been a true leader, not a follower, for the first and second version, and we need to continue that for the internet 3.0, and this piece of legislation will provide us the tools to do that.

So, Chairman Behnam, thank you to you, to your leadership. We are excited to have you in this role. We are excited to have your new colleagues that will be joining you. We need to make sure that you have the resources that you need to be able to do the job you have, and I think that includes obviously with this expanding digital commodity market, additional resources for the staff with expertise to make sure that America remains a leader. So thank you. And, Mr. Chairman, I yield back.

The CHAIRMAN. Well, thank you, Ranking Member.

And Chairman Behnam, all I can say is thank you for your articulate presentation, your knowledgeable presentation. We are very fortunate to have you as our new CFTC Chairman. And I think I speak for our entire Committee that we are very fortunate to have you here, and we look forward to helping you in any way that we can be helpful to your forward progress.

I do want to leave you with this caveat, however. As you recall, I mentioned at the very beginning how I enlightened myself during my early days in the knowledge of one Alexander Hamilton. And the reason I want to mention that, our great first Treasury Secretary, was where would we be without the national banking system that he put together? The New York Stock Exchange foundation, even our Federal Reserve. And George Washington thought so much of him that he not only made him his *aide-de-camp* but his first, his youngest Cabinet member as Treasury Secretary. Where would we be if we did not take care and flourish those frameworks of our great financial system in this country?

That is why I am registering with you the importance of doing the same care and tenderness that we have given to those other institutions that have helped us through the Revolutionary War, the national banking system did, all the way up through the New York Stock Exchange, even paying our bills out of the Revolutionary War, the Civil War, the depressions, all the way through.

So now we are here with this other movement, cryptocurrency. It is new. So were derivatives and swaps. But these are the anchors. CME and ICE, they got us through that and manifested that in the same pattern as Alexander Hamilton's vision.

So what I am saying to you is—and you heard it from both Democrats and Republicans, we want to not risk losing the wealth of contribution and continuation of our great financial system, of the intermediaries in this. We have to keep ICE and CME strong the way we have kept all of the other institutions historically that

have kept our financial system as the greatest in the world. That is all we say. Take care of the bridge that has brought us through. And certainly ICE and CME have done that so much.

So with that, I am now going to adjourn with these final comments. Under the Rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive additional material and supplementary written responses from the witness to any questions by any Member.

And now, before I adjourn, I want to thank our wonderful staff headed up by Anne Simmons and Ashley Smith and Catherine. I call her Catherine the Great, my chief of staff. We all work together. Thank you all for this wonderful and very informative hearing. This hearing is now adjourned.

[Whereupon, at 12:30 p.m., the Committee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUPPLEMENTARY MATERIAL SUBMITTED BY HON. ROSTIN BEHNAM, CHAIRMAN,
COMMODITY FUTURES TRADING COMMISSION

Insert

Mr. JOHNSON. So how about from the perspective of the United Kingdom? Of course, that is not your job nor mine, but have they also been able to secure a good landing spot in the wake of Brexit?

Mr. BEHNAM. It is a good question, and you are right because it wasn't just the EU who suffered or who had an outcome as a result of Brexit. It was the UK of course as well. And as the EU was starting to think about what they were going to do from a regulatory perspective, perhaps the UK was just a little bit behind. But we are having those conversations right now. I am confident that we are having conversations that are heading in the right direction. And what I mean by that is preserving U.S. primacy, preserving primacy of the CFTC as the home country regulator, leaning on the existing relationship between the CFTC and my counterpart agency, and, above all else, using the foundational relationship between the United States of America and the United Kingdom, allowing them to trust us and the regulations we have and the institutions that we have and supervise as much as we need to trust them and the supervision that they conduct over their institutions. So I am going to lean on those principles and ensure they are successful.

Mr. JOHNSON. Let me [inaudible]—probably more valuable than the question I was asking. And I am out of time, so if your team can follow up afterward.

Mr. BEHNAM. Thank you.

Mr. JOHNSON. I guess I was asking more about whether or not the European Union and their regulatory agreements with the United Kingdom is going to allow the United Kingdom the flexibility they need to also maintain how they operate because I just think there could be a broader impact on global markets if there are disruptions in that relationship. But thank you very much. And sir, I yield back.

The CHAIRMAN. And Chairman Behnam, feel free to respond in writing to Mr. Johnson's questions.

As the United Kingdom and European Union proceed with their ongoing negotiations, we continue to monitor the developments and potential effects on other markets, including that of the U.S. With a shared interest in global financial stability, minimizing market fragmentation, supporting vibrant, liquid derivatives markets, and appropriate application of rules and supervisory oversight, we continue to collaborate with our European and British counterparts.

SUBMITTED QUESTIONS

Response from Hon. Rostin Behnam, Chairman, Commodity Futures Trading Commission

Questions Submitted by Hon. Glenn Thompson, a Representative in Congress from Pennsylvania

Question 1. Dodd-Frank divided jurisdiction of the swaps markets between the CFTC and the SEC. However, the actual hedging products themselves are often inter-linked and part of the same market ecosystem. Therefore, SEC regulations that impact liquidity in the SEC's subset of the swaps markets can impact liquidity and the costs of transactions in the CFTC's regulated swap markets.

Are you aware of proposals the SEC is currently considering that many market participants are concerned could reduce liquidity in security based swaps? And have you given consideration to whether there may be unintended consequences for liquidity in the CFTC swaps markets that are closely linked to the SEC markets?

Answer. The SEC proposed rules for Security-Based Swaps largely track those previously promulgated by CFTC. The CFTC will continue to evaluate, and consult as appropriate, with the SEC concerning their rule making proposals as they proceed through public comment and final determination.

Question 2. Asset managers, pension funds and other investors and end-users use a diverse array of products to manage risk that span both SEC and CFTC jurisdiction. Do you agree the CFTC should prioritize coordinating with the SEC to allow market participants to allow for cross-margining in a single portfolio along with securities, facilitating the efficiencies and risk mitigation this would create?

Answer. The CFTC supports portfolio margining and recognizes the capital efficiencies that market participants may obtain in the form of lower initial margin requirements by appropriately recognizing diverse positions with offsetting risk char-

acteristics in a single portfolio margin account. In this regard, the CFTC has issued orders to facilitate the portfolio margining of customer cleared credit default swaps and cleared credit default security-based swaps held in a cleared swaps account by a dually-registered futures commission merchant and securities broker-dealer.¹ The CFTC and SEC have also issued a joint Request for Comment soliciting public input on potential ways to implement portfolio margining of uncleared swaps and non-cleared security-based swaps.² The CFTC looks forward continuing its work with the SEC to further explore potential portfolio margining benefits for market participants.

Question 3. It is critical for companies in the U.S. to be able to hedge their risks in the most liquid markets available. For some risks, especially foreign currency risks, those markets are overseas, in the home country of the currency. For the past decade, the Committee has been committed to a robust substituted compliance regime for cross-border transactions, in which the CFTC defers to home country regulators when their rules are on par with, but not identical to, U.S. requirements.

In making substituted compliance determinations, the Commission should look to replicate the regulatory outcomes of U.S. rules, not the specific rules themselves. This outcomes-based-comparison ensures that U.S. market participants are able to access the foreign markets which are best suited to their hedging needs, when those markets are appropriately supervised by their home country regulators, under rules which make sense for that foreign market.

In some cases, it appears that the Commission's substituted compliance determinations for the trading and clearing of OTC swaps denominated in non-USD currencies do not adhere to this standard. Would you commit to examining these determinations to ensure that like outcomes are granted comparable substituted compliance treatment, so that U.S. customers can continue to hedge and manage their business risks around the world?

Answer. The CFTC works to approach comparability determinations using a holistic evaluation of the foreign jurisdiction's statutory and regulatory regime, rather than a line by line comparison. Determinations have been issued where the outcomes are determined to be comparable. In the cross-border guidance from 2013, the Commission articulated a holistic, outcomes-based evaluation and we have been operating consistent with that guidance. Staff is not aware of any specific cases of concern but is happy to review if there are any additional details that can be provided.

ATTACHMENT 1

United States of America
Before the
Commodity Futures Trading Commission

**Treatment of Funds Held in Connection with
Clearing by ICE Clear Credit of Credit Default Swaps**

Order

ICE Clear Credit LLC ("ICE Clear Credit"), a derivatives clearing organization ("DCO") registered under Section 5b of the Commodity Exchange Act ("Act") and a securities clearing agency registered under Section 17A of the Securities Exchange Act of 1934 ("Exchange Act"), has submitted a request that the Commodity Futures Trading Commission ("Commission") issue an Order permitting ICE Clear Credit and its clearing members that are broker-dealers registered under Section 15(b) of the Exchange Act and are also futures commission merchants registered under Section 4f(a)(1) of the Act ("Participants") (i) to hold in a cleared swaps account, subject to Section 4d(f) of the Act, customer money, securities, and property (collectively, "customer property") used to margin, guarantee, or secure both cleared swaps and

¹ Order, *Treatment of Funds Held in Connection with Clearing by ICE Clear Credit of Credit Default Swaps* (Jan. 13, 2013), available at: www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/icecreditclearorder011413.pdf; Order, *Treatment of Funds Held in Connection with Clearing by ICE Clear Europe of Credit Default Swaps* (Apr. 9, 2013), available at: www.cftc.gov/sites/default/files/stellent/groups/public/@requestsandactions/documents/ifdocs/iceclearurope4dfcds040913.pdf.

² Request for Comment, *Portfolio Margining of Uncleared Swaps and Non-Cleared Security-Based Swaps* (Nov. 5, 2020), available at: www.cftc.gov/sites/default/files/2020/11/2020-23928a.pdf.

cleared security-based swaps; and (ii) to provide for portfolio margining of such cleared swaps and cleared security-based swaps.

The request was posted on the Commission's website for a 30 day public comment period which ended on December 22, 2011. Seven substantive comment letters were received during the comment period, all of which supplied the Commission's issuance of an Order pursuant to Section 4d(f) of the Act.

The Commission has reviewed the request and supplemental information provided by ICE Clear Credit ("Submission"), and finds that ICE Clear Credit has demonstrated that it can continue to comply with the requirements under the Act and the Commission's regulations thereunder applicable to it, including in connection with the Submission. Therefore,

It Is Ordered, pursuant to Section 4d(f) of the Act, 7 U.S.C. § 6d(f), that, subject to the terms and conditions below, ICE Clear Credit and its Participants that are acting pursuant to this Order may hold customer property used to margin, guarantee, or secure positions in cleared security-based swaps with other customer property used to margin, guarantee, or secure positions in cleared swaps, in a cleared swaps account or accounts maintained in accordance with Section 4d(f) of the Act (including any applicable orders issued pursuant to Section 4d(f) of the Act) and the regulations thereunder, and provide for portfolio margining of such cleared swaps and cleared security-based swaps, subject to the requirements of Commission Regulation 39.13(g)(4). All such customer property shall be accounted for and treated and dealt with as belonging to the cleared swaps customers of the Participant consistent with Section 4d(f) of the Act and the regulations thereunder.

It Is Further Ordered, that:

- (1) Customer property used to margin, guarantee, or secure positions in credit default swaps ("CDS") that are narrow-based index CDS or single-name CDS (together, "Security-Based CDS") that are currently, or will in the future be, cleared through ICE Clear Credit, may be commingled and portfolio margined with broad-based index CDS that are currently, or will in the future be, cleared through ICE Clear Credit, in accounts subject to Section 4d(f) of the Act.
- (2) Each Participant acting pursuant to this Order shall take appropriate measures to identify, measure, and monitor financial risk associated with carrying the Security-Based CDS in a cleared swaps account and implement risk management procedures to address those financial risks.
- (3) Each Participant acting pursuant to this Order shall provide notice to its customers that customer property used to margin, guarantee, or secure Security-Based CDS will not receive customer protection treatment under the Exchange Act or Securities Investor Protection Act of 1970, and will instead receive customer protection treatment under Subchapter IV of Chapter 7 of Title 11 of the United States Code and the rules and regulations thereunder.
- (4) ICE Clear Credit shall apply appropriate risk management oversight procedures with respect to positions in the Security-Based CDS. ICE Clear Credit shall conduct oversight sufficient to assure that each Participant acting pursuant to this Order has the operational capabilities necessary to manage defaults in such positions.
- (5) ICE Clear Credit shall require Participants to collect customer initial margin, as defined in Commission Regulation 1.3(bbb), from their customers at a minimum level determined by ICE Clear Credit.
- (6) ICE Clear Credit shall conduct financial surveillance and oversight with respect to the Security-Based CDS carried by each Participant acting pursuant to this Order.
- (7) ICE Clear Credit and each Participant acting pursuant to this Order shall take all other steps appropriate to manage risk related to clearing the Security-Based CDS.
- (8) ICE Clear Credit and each Participant acting pursuant to this Order shall hold all customer property deposited with ICE Clear Credit and such Participant, respectively, to margin, guarantee, or secure Security-Based CDS in accordance with the requirements of section 4d(f) of the Act and the Commission's regulations thereunder.
- (9) ICE Clear Credit shall at all times fulfill all representations made in the Submission.

This Order is issued pursuant to Section 4d(f) of the Act based upon the representations made and supporting material provided to the Commission by ICE Clear Credit in its Submission. Any changes or omissions in the material facts and cir-

cumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the relief set forth herein is appropriate. Further, in its discretion, the Commission may condition, modify, suspend, terminate, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion.

Issued in Washington, D.C., this 14[t]h day of January, 2013.

By the Commission



MELISSA JURGENS,
Secretary of the Commission.

ATTACHMENT 2

United States of America
Before the
Commodity Futures Trading Commission

**Treatment of Funds Held in Connection with
Clearing by ICE Clear Europe of Credit Default Swaps**

Order

ICE Clear Europe Limited (“ICE Clear Europe”), a derivatives clearing organization (“DCO”) registered under Section 5b of the Commodity Exchange Act (“Act”) and a securities clearing agency registered under Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”), has submitted a request that the Commodity Futures Trading Commission (“Commission”) issue an Order permitting ICE Clear Europe and its clearing members that are broker-dealers registered under Section 15(b) of the Exchange Act and are also futures commission merchants registered under Section 4f(a)(1) of the Act (“Participants”) (i) to hold in a cleared swaps account, subject to Section 4d(f) of the Act, customer money, securities, and property (collectively, “customer property”) used to margin, guarantee, or secure both cleared swaps and cleared security-based swaps; and (ii) to provide for portfolio margining of such cleared swaps and cleared security-based swaps.

The request was posted on the Commission’s website for a 30 day public comment period which ended on December 14, 2012. One comment letter was received during the comment period, which supported the Commission’s issuance of an Order pursuant to Section 4d(f) of the Act.

The Commission has reviewed the request and supplemental information provided by ICE Clear Europe (“Submission”), and finds that ICE Clear Europe has demonstrated that it can continue to comply with the requirements under the Act and the Commission’s regulations thereunder applicable to it, including in connection with the Submission. Therefore,

It Is Ordered, pursuant to Section 4d(f) of the Act, 7 U.S.C. § 6d(f), that, subject to the terms and conditions below, ICE Clear Europe and its Participants that are acting pursuant to this Order may hold customer property used to margin, guarantee, or secure positions in cleared security-based swaps with other customer property used to margin, guarantee, or secure positions in cleared swaps, in a cleared swaps account or accounts maintained in accordance with Section 4d(f) of the Act (including any applicable orders issued pursuant to Section 4d(f) of the Act) and the regulations thereunder, and provide for portfolio margining of such cleared swaps and cleared security-based swaps, subject to the requirements of Commission Regulation 39.13(g)(4). All such customer property shall be accounted for and treated and dealt with as belonging to the cleared swaps customers of the Participant consistent with Section 4d(f) of the Act and the regulations thereunder.

It Is Further Ordered, that:

- (1) Customer property used to margin, guarantee, or secure positions in credit default swaps (“CDS”) that are narrow-based index CDS or single-name CDS (together, “Security-Based CDS”) that are currently, or will in the future be, cleared through ICE Clear Europe, may be commingled and portfolio margined with broad-based index CDS that are currently, or will in the future be, cleared through ICE Clear Europe, in accounts subject to Section 4d(f) of the Act.

- (2) Each Participant acting pursuant to this Order shall take appropriate measures to identify, measure, and monitor financial risk associated with carrying the Security-Based CDS in a cleared swaps account and implement risk management procedures to address those financial risks.
- (3) Each Participant acting pursuant to this Order shall provide notice to its customers that customer property used to margin, guarantee, or secure Security-Based CDS will not receive customer protection treatment under the Exchange Act or Securities Investor Protection Act of 1970, and will instead receive customer protection treatment under Subchapter IV of Chapter 7 of Title 11 of the United States Code and the rules and regulations thereunder.
- (4) ICE Clear Europe shall apply appropriate risk management oversight procedures with respect to positions in the Security-Based CDS. ICE Clear Europe shall conduct oversight sufficient to assure that each Participant acting pursuant to this Order has the operational capabilities necessary to manage defaults in such positions.
- (5) ICE Clear Europe shall require Participants to collect customer initial margin, as defined in Commission Regulation 1.3(bbb), from their customers at a minimum level determined by ICE Clear Europe.
- (6) ICE Clear Europe shall conduct financial surveillance and oversight with respect to the Security-Based CDS carried by each Participant acting pursuant to this Order.
- (7) ICE Clear Europe and each Participant acting pursuant to this Order shall take all other steps appropriate to manage risk related to clearing the Security-Based CDS.
- (8) ICE Clear Europe and each Participant acting pursuant to this Order shall hold all customer property deposited with ICE Clear Europe and such Participant, respectively, to margin, guarantee, or secure Security-Based CDS in accordance with the requirements of section 4d(f) of the Act and the Commission's regulations thereunder.
- (9) ICE Clear Europe shall at all times fulfill all representations made in the Submission.

This Order is issued pursuant to Section 4d(f) of the Act based upon the representations made and supporting material provided to the Commission by ICE Clear Europe in its Submission. Any changes or omissions in the material facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the relief set forth herein is appropriate. Further, in its discretion, the Commission may condition, modify, suspend, terminate, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion.

Issued in Washington, D.C., this 9th day of April, 2013.

By the Commission



MELISSA JURGENS,
Secretary of the Commission.

ATTACHMENT 3

Federal Register / Vol. 85, No. 215 / Thursday, November 5, 2020 / Proposed Rules
Commodity Futures Trading Commission

17 CFR Part 23
RIN 3038-AF07

Securities and Exchange Commission

17 CFR Part 240
[Release No. 34-90246; File No. S7-15-20]
RIN 3235-AM64

Portfolio Margining of Uncleared Swaps and Non-Cleared Security-Based Swaps

AGENCY: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Commodity Futures Trading Commission (“CFTC”) and the Securities and Exchange Commission (“SEC”) (collectively, the “Commissions”) seek public comment on potential ways to implement portfolio margining of uncleared swaps and non-cleared security-based swaps.

DATES: Comments should be received on or before December 7, 2020.

ADDRESSES: Comments should be sent to both agencies at the addresses listed below.

CFTC: You may submit comments, identified by RIN 3038–AF07, by any of the following methods: CFTC website: <https://comments.cftc.gov>. Follow the instructions for submitting comments through the website.

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish for the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in CFTC Rule 145.9, 17 CFR 145.9.

The CFTC reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse, or remove any or all of your submission from <https://www.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 comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

SEC: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the SEC’s internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. S7–15–20 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–15–20. This file number should be included on the subject line if email is used. To help the SEC process and review your comments more efficiently, please use only one method of submission. The SEC will post all comments on the SEC’s website (<http://www.sec.gov>). Comments are also available for website viewing and printing in the SEC’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

CFTC: Thomas J. Smith, Deputy Director, at (202) 418–5495, tsmith@cftc.gov or Joshua Beale, Associate Director, at (202) 418–5446, jbeale@cftc.gov, Division of Swap Dealer and Intermediary Oversight; Robert B. Wasserman, Chief Counsel and Senior Advisor, at (202) 418–5092, rwasserman@cftc.gov, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SEC: Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Associate Director, at (202) 551–5521; Randall W. Roy, Deputy Associate Director, at (202) 551–5522; Raymond Lombardo, Assistant Director, at 202–551–5755; or Sheila Dombal Swartz, Senior Special Counsel, at (202) 551–5545, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

Supplementary Information:

I. Introduction

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Title VII”) established a new regulatory framework for the U.S. over-the-counter (“OTC”) derivatives markets.¹ The Dodd-Frank Act assigns responsibility for certain aspects of the U.S. OTC derivatives markets to the CFTC and the SEC. In particular, the CFTC has oversight authority with respect to swaps, and the SEC has oversight authority with respect to security-based swaps.² The CFTC has adopted final margin rules for uncleared swaps applicable to nonbank swap dealers and nonbank major swap participants.³ The SEC has adopted final margin requirements for non-cleared security-based swaps applicable to nonbank security-based swap dealers (“SBSDs”) and nonbank major security-based swap participants (“MSBSPs”).⁴ Bank regulators have adopted capital and margin requirements for bank swap dealers and bank major swap participants and for bank SBSDs and bank MSBSPs pursuant to Title VII.⁵ The SEC and CFTC also have issued exemptive orders to facilitate the portfolio margining of cleared swaps and security-based swaps that are credit default swaps (“CDS”) held in a swap account.⁶

In implementing Title VII, the Commissions are committed to working together to ensure that each agency’s respective regulations are effective, consistent, mutually reinforcing, and efficient. In certain cases, the Commissions believe that these objectives may be served better by harmonizing requirements. Portfolio margining is one area where the Commissions believe it is appropriate to explore whether increased harmonization would better serve the purposes of Title VII.

Portfolio margining generally refers to the cross margining of related positions in a single account, allowing netting of appropriate offsetting exposures. Portfolio margining of uncleared swaps, non-cleared security-based swaps, and related positions can offer benefits to customers and the markets, including promoting greater effi-

¹See Public Law 111–203, 771 through 774 (“Dodd-Frank Act”).

²The CFTC has oversight authority with respect to a “swap” as defined in Section 1(a)(47) of the Commodity Exchange Act (“CEA”) (7 U.S.C. 1(a)(47)), including to implement a registration and oversight program for a “swap dealer” as defined in Section 1(a)(49) of the CEA (7 U.S.C. 1(a)(49)) and a “major swap participant” as defined in Section 1(a)(33) of the CEA (7 U.S.C. 1(a)(33)). The SEC has oversight authority with respect to a “security-based swap” as defined in Section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)), including to implement a registration and oversight program for a “security-based swap dealer” as defined in Section 3(a)(71) of the Exchange Act (15 U.S.C. 78c(a)(71)) and a “major security-based swap participant” as defined in Section 3(a)(67) of the Exchange Act (15 U.S.C. 78c(a)(67)). The SEC and the CFTC jointly have adopted rules to further define those terms. See *Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps: Security-Based Swap Agreement Recordkeeping*, Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48208 (Aug. 13, 2012); *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,”* Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012).

³CFTC, *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 81 FR 636 (Jan. 6, 2016) (“CFTC Final Margin Release”). The Commissions use the terms “uncleared swaps” and “non-cleared security-based swaps” throughout this request for comment because those are the defined terms adopted in their respective final margin rules.

⁴SEC, *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers* (“SEC Final Capital, Margin and Segregation Release”), Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872, 43956–43957 (Aug. 22, 2019). The compliance date for the SEC’s margin rules is October 6, 2021. Covered counterparties under the CFTC’s uncleared swap margin rules already post and collect variation margin. CFTC initial margin requirements are being implemented under a phase-in schedule through September 1, 2022. See *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 85 FR 41463 (Jul. 10, 2020); see also CFTC, Press Release Number 8287–20, *CFTC Finalizes Position Limits Rule at October 15 Open Meeting, Commission Also Approves Final Rules on Margin Requirements for Uncleared Swaps and Registration Exemptions for Foreign Commodity Pools* (Oct. 15, 2020).

⁵See *Margin and Capital Requirements for Covered Swap Entities*, 80 FR 74840 (Nov. 30, 2015). These margin requirements for bank entities were adopted by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, or the Federal Housing Finance Agency (collectively, these organizations are known as the “prudential regulators”).

⁶*Order Granting Conditional Exemptions under the Securities Exchange Act of 1934 in Connection with Portfolio Margining of Swaps and Security-based Swaps*, Exchange Act Release No. 68433 (Dec. 12, 2012) 77 FR 75211 (Dec. 19, 2012); CFTC, *Order, Treatment of Funds Held in Connection with Clearing by ICE Clear Credit of Credit Default Swaps* (Jan. 13, 2013), available at: <https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/iceclearorder011413.pdf>; CFTC, *Order, Treatment of Funds Held in Connection with Clearing by ICE Clear Europe of Credit Default Swaps* (Apr. 9, 2013), available at: <https://www.cftc.gov/sites/default/files/stellent/groups/public/@requestsandactions/documents/iftdocs/iceclearurope4dfcds040913.pdf>.

ciencies in margin calculations with respect to offsetting positions. This can align margining and other costs more closely with overall risks presented by a customer's portfolio. This alignment can reduce the aggregate amount of collateral required to meet margin requirements, facilitating the availability of excess collateral that can be deployed for other purposes. The netting of exposures allowed by portfolio margining may also help to improve efficiencies in collateral management, alleviate excessive margin calls, improve cash flows and liquidity, and reduce volatility.

At the same time, facilitating portfolio margining for uncleared swaps, noncleared security-based swaps, and related positions requires careful consideration to ensure that any customer protection, financial stability and other applicable regulatory objectives and potential impacts are appropriately considered and addressed. These considerations include, among other things, potential impacts on margin requirements, the segregation and bankruptcy treatment of uncleared swaps and noncleared security-based swaps in different account types and entities, and the potential impact on regulatory capital requirements.

The implementation of portfolio margining of uncleared swaps and noncleared security-based swaps also requires careful consideration of the differences in the capital, margin, and segregation requirements of the CFTC and SEC applicable to uncleared swaps and non-cleared security-based swaps, respectively. These differences reflect the policy objectives of, and choices made by, each agency and reflect each agency's assessment of potential costs and benefits of alternative approaches and the impact on the markets for swaps and security-based swaps. The differences between the CFTC and SEC requirements is a result of these differing policy objectives and related assessments.

For example, the CFTC's margin rule for uncleared swaps requires swap dealers to collect and post initial margin to certain counterparties, subject to exceptions.⁷ When adopting this requirement, the CFTC stated that "the posting requirement under the final rule is one way in which the Commission seeks to reduce overall risk to the financial system, by providing initial margin to non-dealer swap market counterparties that are interconnected participants in the financial markets (*i.e.*, financial end-users that have material swap exposure)."⁸ The CFTC further noted that commenters stated that requiring swap dealers to post initial margin "not only would better protect financial end-users from concerns about the failure of [the swap dealer], but would also act as a discipline on [swap dealers] by requiring them to post margin reflecting the risk of their swaps business."⁹

The SEC's margin rule for non-cleared swaps does not require nonbank SBSDs to post initial margin.¹⁰ The SEC stated when adopting the margin rule that "[r]equiring nonbank SBSDs to deliver initial margin could impact the liquidity of these firms" and that "[d]elivering initial margin would prevent this capital of the nonbank SBSD from being immediately available to the firm to meet liquidity needs."¹¹ The SEC further stated that, "[i]f the delivering SBSD is undergoing financial stress or the markets more generally are in a period of financial turmoil, a nonbank SBSD may need to liquidate assets to raise funds and reduce its leverage" and that "[a]ssets in the control of a counterparty would not be available for this purpose."¹²

In addition, the CFTC's margin rule requires that initial margin posted to or by the swap dealer must be held by a third-party custodian and does not permit the initial margin to be re-hypothecated.¹³ When adopting the margin rule, the CFTC stated "that the ultimate purpose of the custody agreement is twofold: (1) That the initial margin be available to a counterparty when its counterparty defaults and a loss is realized that exceeds the amount of variation margin that has been collected as of the time of default; and (2) initial margin be returned to the posting party after its swap obligations have been fully discharged."¹⁴

The SEC margin rule for non-cleared swaps does not require that initial margin posted to the nonbank SBSD be held at a third-party custodian.¹⁵ The SEC stated that this difference from the CFTC's margin rule reflects its "judgment of how to 'help ensure the safety and soundness' of nonbank SBSDs . . . as required by Section 15F(e)(3)(i) of the Exchange Act."¹⁶

⁷ See 17 CFR 23.152.

⁸ See *CFTC Final Margin Release*, 81 FR at 649.

⁹ *Id.*

¹⁰ See 17 CFR 240.18a-3.

¹¹ See *SEC Final Capital, Margin and Segregation Release*, 84 FR at 43918.

¹² *Id.*

¹³ See 17 CFR 23.157.

¹⁴ See *CFTC Final Margin Release*, 81 FR at 670.

¹⁵ See 17 CFR 240.18a-3.

¹⁶ See *SEC Final Capital, Margin and Segregation Release*, 84 FR at 43909.

Moreover, there are differences in the segregation schemes for swaps and security-based swaps. As discussed above, the CFTC's margin rule requires initial margin received from customers with respect to uncleared swaps to be held by an independent third-party custodian.

With respect to the SEC's rules for non-cleared security-based swaps, Section 3E(f) of the Exchange Act establishes a program by which a counterparty to an SBSB can elect to have an independent third-party custodian hold the initial margin it posts to the SBSB.¹⁷ Section 3E(f)(4) provides that if the counterparty does not choose to require segregation of funds or other property (*i.e.*, waives segregation), the SBSB shall send a report to the counterparty on a quarterly basis stating that the firm's back office procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.¹⁸ Security-based swap customers of a broker-dealer (other than an OTC derivatives dealer), including a broker-dealer registered as an SBSB, that are not affiliates of the firm cannot waive segregation. The SEC explained that this prohibition against waiving the segregation requirement in the case of a non-affiliated customer of the broker-dealer is a consequence of the broker-dealer segregation rule—Rule 15c3-3—being promulgated under Section 15(c)(3) of the Exchange Act, which does not have an analogous provision to Section 3E(f) of the Exchange Act.¹⁹ More specifically, Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder do not contain provisions pursuant to which a customer can waive segregation.²⁰ The SEC further explained that the prohibition will protect customers and the safety and soundness of broker-dealers.²¹

In addition to these two statutory options, the SEC adopted segregation rules permitting broker-dealers and SBSBs to hold and commingle initial margin received from security-based swap customers. These rules restrict how initial margin can be used by a broker-dealer or SBSB and require that it be held in a manner that is designed to facilitate its prompt return to the customers ("omnibus segregation rules").²² The omnibus segregation rules are mandatory requirements with respect to cleared security-based swaps and the default requirements with respect to non-cleared security-based swaps if a customer of an SBSB does not choose one of the two statutory options: (1) Having initial margin held by an independent third-party custodian or (2) waiving segregation, if permitted.

The omnibus segregation rules permit broker-dealers and SBSBs to re-hypothecate initial margin received with respect to non-cleared swaps under limited circumstances. In the case of a broker-dealer (other than an OTC derivatives dealer), including a broker-dealer registered as an SBSB, the ability to re-hypothecate initial margin is limited. For example, if the broker-dealer enters into a non-cleared security-based swap with a customer and hedges that transaction with a second broker-dealer, the first broker-dealer can use the initial margin collected from its customer to meet a regulatory margin requirement arising from a transaction with a second SBSB to hedge the transaction with the customer.²³ The SEC stated that it "designed the hedging exception for non-cleared security-based swap collateral to accommodate dealers in OTC derivatives maintaining 'matched books' of transactions."²⁴

Similarly, an SBSB that is registered as an OTC derivatives dealer or not registered as a broker-dealer (both types of SBSBs hereinafter a "Stand-Alone SBSB"²⁵) that enters into a non-cleared, security-based swap with a customer and hedges that transaction with another SBSB also may use the initial margin collected from its customer to meet a regulatory margin requirement arising from the hedging transaction with the other SBSB.²⁶ This provision applies if the Stand-Alone SBSB is required to comply with the omnibus segregation requirements of Rule 18a-4 or offers omnibus segregation to its customers.²⁶ However, pursuant to Section 3E(f) of the Exchange Act, customers of a Stand-Alone SBSB also may waive their right to have initial margin for non-cleared security-based swaps segregated, and a Stand-Alone SBSB can operate under an exemption from the omnibus segregation requirements

¹⁷ See 15 U.S.C. 78c-5(f).

¹⁸ See 15 U.S.C. 78c-5(f)(4)[.].

¹⁹ See *SEC Final Capital, Margin and Segregation Release*, 84 FR at 43931. See also 17 CFR 240.15c3-3; 15 U.S.C. 78o(c)(3); 15 U.S.C. 78c-5(f)(4).

²⁰ See *SEC Final Capital, Margin and Segregation Release*, 84 FR at 43931.

²¹ *Id.* at 43931.

²² See 17 CFR 240.15c3-3(p); 17 CFR 240.18a-4. See also *SEC Final Capital, Margin and Segregation Release*, 84 FR at 43930-43.

²³ See 17 CFR 240.15c3-3(p)(1)(ii)(B) and (p)(2).

²⁴ See *SEC Final Capital, Margin and Segregation Release*, 84 FR at 43937 (footnote omitted).

²⁵ See 17 CFR 240.18a-4(a)(2)(ii) and (b).

²⁶ See 17 CFR 240.18a-4.

of Rule 18a-4, subject to certain conditions.²⁷ If the customer waives segregation or the Stand-Alone SBSB operates under the exemption from Rule 18a-4, the Stand-Alone SBSB may re-hypothecate the initial margin without restriction. Pursuant to Section 3E(f) of the Exchange Act, customers of this Stand-Alone SBSB can elect to have the initial margin they post to the SBSB held by a third-party custodian rather than waiving the right to segregation.²⁸ The SEC explained that permitting customers to elect to either have their initial margin held by a third-party custodian or waive their right to segregation reflected the provisions of Section 3E(f) of the Exchange Act, providing customers with these two options.²⁹

Finally, the implementation of portfolio margining of uncleared swaps and non-cleared security-based swaps also requires careful consideration of the potential impact on competition, including how it might influence customer behavior in selecting to do business with certain types of registrants (*e.g.*, firms with multiple registrations that permit them to engage in a broader range of activities).

Given the scope, importance and interrelationships among the matters to consider, the Commissions believe it would be helpful to gather further information and comment from interested persons regarding portfolio margining of uncleared swaps and noncleared security-based swaps. In section III below, the Commissions request comment generally on portfolio margining these instruments and on portfolio margining these positions in different account types.

II. Regulatory Background

The specific requests for comment below take into account: (1) The types of registrations (broker-dealer, OTC derivatives dealer, SBSB, futures commission merchant (“FCM”), and swap dealer) an entity may need in order to engage in portfolio margining of uncleared swaps, non-cleared security-based swaps, and related positions; (2) the account types (securities account, security-based swap account, and swap account) these registrants can maintain; and (3) the margin and segregation requirements that apply to products carried in these account types. In particular, a broker or dealer in securities must be registered with the SEC. A broker-dealer that limits securities dealing to OTC equity options and other OTC derivatives can operate as a special purpose broker-dealer known as an OTC derivatives dealer. An entity that deals in security-based swaps above a *de minimis* notional threshold will need to register with the SEC as an SBSB. An entity that solicits and accepts funds from customers to margin, secure, or guarantee futures, options on futures, or cleared swap transactions must register with the CFTC as an FCM. And, an entity that deals in swaps above a *de minimis* notional threshold must register with the CFTC as a swap dealer.

A. Broker-Dealers

A broker-dealer is subject to initial margin requirements promulgated by the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) in Regulation T.³⁰ A broker-dealer also is subject to maintenance margin requirements promulgated by self-regulatory organizations (“SROs”).³¹ The initial margin requirements of Regulation T generally govern the amount of credit that can be extended by a broker-dealer to finance a position in a margin account. The maintenance margin requirements of the SROs govern the amount of equity that must be maintained in the margin account on an ongoing basis. Regulation T has an exception from its initial margin requirements for accounts that are margined pursuant to an SRO portfolio margin rule.³² SROs have adopted portfolio margin rules subject to this exception and, therefore, a broker-dealer must collect initial and maintenance margin in a portfolio margin account in accordance with the SRO portfolio margin rules. Margin calculations under the SRO portfolio margin rules are based on the method in Appendix A to Rule 15c3-1 (“Appendix A Methodology”).³³ With respect to options, initial and maintenance margin requirements are generally set by the SROs.³⁴

A broker-dealer also is subject to margin rules for security futures promulgated jointly by the Commissions.³⁵ Security futures margined in an SRO portfolio margin

²⁷ See 15 U.S.C. 78c-5(f)(4); 17 CFR 18a-4(f).

²⁸ See 15 U.S.C. 78c-5(f)(4).

²⁹ See *SEC Final Capital, Margin and Segregation Release*, 84 FR at 43877-78, 43930, 43937.

³⁰ 12 CFR 220.1, et seq.

³¹ See, *e.g.*, *FINRA Rules* 4210-4240. Customers of broker-dealers are also subject to specific margin rules for security futures, jointly regulated by the CFTC and the SEC.

³² 12 CFR 220.1(b)(3)(i).

³³ See, *e.g.*, *FINRA Rule* 4210(g).

³⁴ 12 CFR 220.12(f).

³⁵ See 17 CFR 41.42-41.49 (CFTC regulations); 17 CFR 242.400-242.406 (SEC regulations).

account are not subject to the Commissions' rules and, therefore, are margined according to the SRO portfolio margin rules.³⁶

A broker-dealer that operates as an OTC derivatives dealer is exempt from the requirements of Regulation T, provided that the firm complies with Regulation U of the Federal Reserve Board.³⁷ While an OTC derivative dealer is subject to Regulation U, this rule generally does not prescribe margin requirements for OTC derivatives such as OTC equity options. The firm also is exempt from membership in an SRO and, therefore, not subject to SRO margin rules.³⁸

A broker-dealer that is also registered as an SBSB will be subject to the margin requirements of Rule 18a-3 for noncleared security-based swaps on the compliance date for that rule.³⁹ A broker-dealer SBSB may apply to the SEC for authorization to use a model (including an industry standard model) to calculate initial margin for noncleared security-based swaps. However, broker-dealer SBSBs (other than OTC derivatives dealers registered as SBSBs ("OTCDD/SBSBs")) must use standardized haircuts prescribed in Rule 15c3-1 (which includes the option to use the Appendix A Methodology) to compute initial margin for non-cleared equity security-based swaps (even if the firm is approved to use a model to calculate initial margin for other types of positions).⁴⁰ Moreover, as discussed above, Rule 18a-3 does not require a nonbank SBSB to post initial margin to any counterparties.

A broker-dealer that holds customer securities and cash (including securities and cash being used as initial margin) is subject to Rule 15c3-3.⁴¹ The SEC amended Rule 15c3-3 to adopt the omnibus segregation requirements for security-based swaps applicable to a broker-dealer and a broker-dealer (other than an OTC derivatives dealer) also registered as a SBSB.⁴² A customer of a broker-dealer that is also registered as an SBSB can elect to have initial margin held by a third-party custodian pursuant to Section 3E(f) of the Exchange Act or held by the SBSB subject to the omnibus segregation requirements of Rule 15c3-3. Customers that are not affiliates of the broker-dealer cannot waive segregation, whereas affiliates can waive segregation.

As discussed above, the broker-dealer can re-hypothecate initial margin received from a customer for the limited purpose of entering into a transaction with another SBSB that hedges the transaction with the customer.⁴³ Cash and securities held in a securities account at a broker-dealer (other than an OTC derivatives dealer)⁴⁴ is protected under the Securities Investor Protection Act ("SIPA"), subject to certain exceptions. An OTC derivatives dealer is not subject to Rule 15c3-3 and is not a member of the Security Investor Protection Corporation.⁴⁵ Consequently, cash and securities held in a securities account at an OTC derivatives dealer are not protected by SIPA.

B. Nonbank Stand-Alone SBSBs

A Stand-Alone SBSB that is not a bank ("Nonbank Stand-Alone SBSB") will be subject to the margin requirements of Rule 18a-3 for noncleared security-based swaps on the compliance date for that rule.⁴⁶ A Nonbank Stand-Alone SBSB may apply to the SEC for authorization to use a model (including an industry standard model) to calculate initial margin for non-cleared security-based swaps. Moreover, unlike a broker-dealer (other than an OTCDD/SBSB) registered as an SBSB, a Nonbank Stand-Alone SBSB may use a model to calculate initial margin for non-cleared equity security-based swaps, provided the account of the counterparty does not hold equity security positions other than equity security-based swaps and equity swaps. Initial margin requirements also may be calculated by applying the standardized haircuts prescribed in Rule 18a-1, the net capital rule for Stand-Alone

³⁶ See 17 CFR 242.400(c)(2).

³⁷ 17 CFR 240.36a1-1.

³⁸ 17 CFR 240.15b9-2.

³⁹ See 17 CFR 240.18a-3.

⁴⁰ 17 CFR 240.15c3-1.

⁴¹ 17 CFR 240.15c3-3. For a discussion of Rule 15c3-3, see *SEC, Capital, Margin, and Segregation Proposing Release*, 77 FR at 70276-70277. Regulation T and portfolio margin accounts are combined when calculating segregation requirements under Exchange Act Rule 15c3-3.

⁴² See 17 CFR 240.15c3-3(p).

⁴³ See 17 CFR 240.15c3-3(p)(1)(ii)(B) and (p)(2).

⁴⁴ See section ILA (describing regulatory requirements for OTC derivatives dealers).

⁴⁵ 17 CFR 240.15c3-3(a)(1) (defining the term customer to exclude a counterparty to an OTC derivatives transaction with an OTC derivatives dealer if certain conditions are met) and 17 CFR 240.36a1-2 (Exemption from SIPA for OTC derivatives dealers).

⁴⁶ 17 CFR 240.18a-3.

SBSDs.⁴⁷ As discussed above, Rule 18a–3 does not require a Nonbank Stand-Alone SBSB to post initial margin to its counterparties.

Pursuant to Section 3E(f) of the Exchange Act, a customer of a Nonbank Stand-Alone SBSB can elect to have initial margin posted to the firm held by a third-party custodian or waive segregation with respect to the initial margin.⁴⁸ In addition, a Nonbank Stand-Alone SBSB will be subject to the omnibus segregation requirements of Rule 18a–4 with respect to non-cleared security-based swaps.⁴⁹ The omnibus segregation requirements are the default requirement if the counterparty does not elect to have initial margin held by a third-party custodian or waive segregation.

A Nonbank Stand-Alone SBSB, however, will be exempt from the requirements of Rule 18a–4 if the firm meets certain conditions, including that the firm: (1) Does not clear security-based swap transactions for other persons; (2) provides notice to the counterparty regarding the right to segregate initial margin at an independent third-party custodian; (3) discloses to the counterparty in writing that any collateral received by the Nonbank Stand-Alone SBSB will not be subject to a segregation requirement; and (4) discloses to the counterparty how a claim of the counterparty for the collateral would be treated in a bankruptcy or other formal liquidation proceeding of the Nonbank Stand-Alone SBSB.⁵⁰

C. Swap Dealers

The CFTC’s margin rules impose initial and variation margin requirements on covered swap dealers and covered major swap participants for swap transactions (“covered swap entities”) that are not cleared by a registered derivatives clearing organization.⁵¹ The CFTC’s initial margin rules require a covered swap dealer to both collect and post initial margin on uncleared swap transactions entered into with other swap dealers and with financial end-users with material swaps exposure.⁵² CFTC margin rules require that initial margin be calculated using a standardized table-based method or a model (including an industry standard model).⁵³ The initial margin model must be approved by the CFTC or a registered futures association (*i.e.*, National Futures Association).

The CFTC’s uncleared swap margin rules also establish minimum standards for the safekeeping of collateral. The rules generally require that initial margin collateral received or posted by the covered swap entity must be held by one or more unaffiliated third-party custodians.⁵⁴ The rules also require the custodian to act pursuant to a custodial agreement that is legal, valid, binding, and enforceable under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or similar proceedings.⁵⁵ The custodial agreement must prohibit the custodian from re-hypothecating, re-pledging, reusing, or otherwise transferring (through securities lending, repurchase agreement, reverse repurchase agreement, or other means) the funds or other property held by the custodian.⁵⁶

III. Request for Comment

A. General Request for Comment

The Commissions request comment on all aspects of the portfolio margining of uncleared swaps and non-cleared security-based swaps, including on the merits, benefits, and risks of portfolio margining these types of positions, and on any regulatory and operational issues associated with portfolio margining them. The Commissions seek comment on these matters generally and commenters are encouraged to address matters related to portfolio margining not specifically identified in the requests for comment below.

In responding to this general request for comment and on the specific requests for comment below, the Commissions encourage commenters to provide empirical

⁴⁷ 17 CFR 240.18a–1.

⁴⁸ See 15 U.S.C. 78c–5(f).

⁴⁹ 17 CFR 240.18a–4.

⁵⁰ 17 CFR 240.18a–4(f). Rule 18a–4 also has exceptions pursuant to which a foreign stand-alone SBSB need not comply with the segregation requirements (including the omnibus segregation requirements) for certain transactions. 17 CFR 240.18a–4(e).

⁵¹ The CFTC’s uncleared swap margin rules are codified in part 23 of the CFTC’s regulations (17 CFR 23.150–23.161).

⁵² 17 CFR 23.152. The term “material swaps exposure” for an entity means that the entity and its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July and August of the previous calendar year that exceeds \$8 billion, where such amount is calculated only for business days.

⁵³ 17 CFR 23.154.

⁵⁴ 17 CFR 23.157(a)–(b).

⁵⁵ 17 CFR 23.157(c).

⁵⁶ *Id.*

support for their arguments and analyses. Comments are of the greatest assistance to the Commissions when accompanied by supporting data and analysis.

B. Specific Requests for Comment

1. Securities Account

The Commissions request comment on whether uncleared swaps, noncleared security-based swaps, cash market securities positions, listed securities options, OTC securities options, futures, options on futures, and security futures should be permitted to be portfolio margined in the following account types: (1) A securities account that is subject to SRO portfolio margin rules; and (2) a securities account that is subject to the initial margin requirements of Regulation T and maintenance margin requirements of the SRO margin rules (*i.e.*, a securities account that is not subject to the SRO portfolio margin rules). Commenters are asked to address the following matters.

- Identify and describe the relative benefits of portfolio margining in each of these securities account types, and describe how the benefits compare to the benefits of other account types discussed in this request for comment.
- Identify and describe the risks of portfolio margining in each of these securities account types, and describe how those risks compare to the risks of other account types discussed in this request for comment, as well as how the risks compare to margining under the existing framework.
- Identify and describe what models might be appropriate for portfolio margining positions in each of these securities account types, as well as the process for approving and reviewing such models.
- Identify and describe any regulatory issues associated with portfolio margining in each of these securities account types, including issues relating to (1) differences in the statutes governing futures, options on futures, uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps, (2) differences in the regulatory requirements of the CFTC, SEC, and SROs applicable to futures, options on futures, uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps (including differences in margin and segregation requirements), and (3) differences in the bankruptcy treatment of futures, options on futures, uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps.
- As discussed above, the CFTC's rules prohibit the re-hypothecation of initial margin collateral. The SEC's rules permit limited re-hypothecation of initial margin collateral received from customers or counterparties. Discuss the potential implications of the differences in the Commissions' approaches to the re-hypothecation of initial margin collateral relevant to a portfolio margin scheme.
- Section 16 of SIPA defines the terms "customer," "customer property," and "net equity" to include securities, futures, and options on futures, but not swaps or security-based swaps.⁵⁷ The Commissions request comment on steps broker-dealers (including broker-dealers that are SBSDs) can take to ensure the protections afforded by SIPA will apply to all positions held in a securities account. Comment also is sought on the types of disclosures broker-dealers and SBSDs can make to their portfolio margin account-holders about positions in a securities account that are not within the SIPA definitions of "customer," "customer property," and "net equity." Comment also is sought on the expectations of market participants as to whether the initial margin and accrued gains associated with uncleared swaps and non-cleared security-based swaps held in a portfolio margin account that is a securities account is subject to SIPA protection in the event of the insolvency of the broker-dealer.
- As noted above, the CFTC margin rules require swap dealers to post initial margin for uncleared swaps entered into with other swap dealers or with financial end-users with material swaps exposure. The SEC's margin rules permit, but do not require, an SBSD to post initial margin for non-cleared security-based swaps entered into with other broker-dealers, SBSDs, swap dealers, or financial end-users. How should the Commissions address the differences in the

⁵⁷Section 983 of the Dodd-Frank Act amended Section 16 of SIPA to define the term "customer" to include a person that has a claim for futures and options on futures, and to define the term "customer property" to include futures and options on futures, in each case where they are held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the SEC. Section 3(a)(10) of the Exchange Act defines the term "security" to include a security-based swap for purposes of the Exchange Act. 15 U.S.C.[.] 78c(a)(10).

initial margin posting requirements in a portfolio margin account? If portfolio margining resulted in the transfer of significant swap trading relationships to SBSBs, which would operate under a “collect only” regime, would that increase the potential for counterparty risk, including liquidity mismatches between counterparties? Alternatively, would it lower systemic risk by promoting the liquidity of SBSBs? Discuss the potential impact on the markets and market participants if entities registered as broker-dealers and swap dealers or as broker-dealers, SBSBs, and swap dealers are not required to post initial margin to counterparties for uncleared swaps held in a portfolio margin account while stand-alone swap dealers are required to post initial margin to counterparties for uncleared swap transactions. Should the Commissions require entities registered as broker-dealers and swap dealers or as broker-dealers, SBSBs, and swap dealers to post margin for uncleared swaps held in a portfolio margin account with covered counterparties? How should such margin be computed? Would requiring these entities to post margin undermine the benefits of portfolio margining? Would it increase costs to customers to compensate these entities for having to use their capital to meet margin requirements? In addition, would requiring these entities to post initial margin create a barrier to entry for smaller firms that do not have the resources to post initial margin?

- If portfolio margining resulted in the transfer of significant swap trading relationships to broker-dealer SBSBs, which would operate under a “collect only” regime, how would this impact the risks customers face in the event of an SBSB’s default? How should the Commissions balance the relative concerns related to trying to enhance liquidity of SBSBs while ensuring customer protection? Are there any lessons to be learned from events impacting swap markets during the recent COVID market volatility?
- Identify and describe any operational issues associated with portfolio margining in each of these securities account types.
- SIPA defines the term “customer” to include a person that has a claim for futures and options on futures, and defines the term “customer property” to include futures and options on futures, in each case where they are held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the SEC. The Commissions request specific comment on any legal and operational issues associated with holding futures and options on futures in a portfolio margin account that is a securities account.
- As discussed above, an entity that effects transactions in securities must be registered with the SEC as a broker-dealer. A broker-dealer that limits securities dealing to OTC equity options and other OTC derivatives can operate as a special purpose broker-dealer known as OTC derivatives dealer. An entity that deals in security-based swaps above a *de minimis* notional threshold will need to register with the SEC as an SBSB. An entity that deals in swaps above a *de minimis* notional threshold must register with the CFTC as a swap dealer. And, an entity that clears futures, or options on futures, or swaps for customers must register as an FCM. Please discuss any regulatory or operational issues raised by portfolio margining in each securities account type in light of these and any other relevant registration requirements.
- Discuss how the Commissions could implement portfolio margin requirements for each securities account type, including potential relief the Commissions could provide to address regulatory and operational issues associated with portfolio margining in each securities account type.
- Identify and describe any conditions the Commissions should consider with respect to portfolio margining in each securities account type to mitigate risk and address regulatory and operational issues.
- Identify the categories of futures, options on futures, uncleared swaps, non-cleared security-based swaps, and securities (other than security-based swaps) that should be permitted to be portfolio margined in each securities account type and discuss why they should be included and, if applicable, why other categories of these instruments should be excluded.
- Discuss whether market participants would be likely to use either of these securities account types to portfolio margin futures, options on futures, uncleared swaps, non-cleared security-based swaps, cash market securities positions, listed securities options, and OTC securities options, and explain why they would or would not use the securities account type.
- Identify and describe the potential costs and benefits, as well as the competitive impact—either positive or negative—of permitting market participants to portfolio margin futures, options on futures, uncleared swaps, non-cleared security-

based swaps, cash market securities positions, listed securities options, OTC securities options, and security futures in either of these securities account types. Please quantify, including by way of example, these potential costs, benefits and impacts to the extent practicable.

2. Security-Based Swap Account

The Commissions request comment on whether non-cleared security-based swaps, uncleared swaps, and OTC securities options (if the firm is registered as an OTCCD/SBSD) should be permitted to be portfolio margined in a security-based swap account. Commenters are asked to address the following matters.

- Identify and describe the relative benefits of portfolio margining in a security-based swap account, and describe how the benefits compare to the benefits of other account types discussed in this request for comment, as well as how the risks compare to margining under the existing framework.
- Identify and describe the risks of portfolio margining in a security-based swap account, and describe how those risks compare to the risks of other account types discussed in this request for comment.
- Identify and describe what models might be appropriate for portfolio margining positions in a security-based swap account, as well as the process for approving and reviewing such models.
- Identify and describe any regulatory issues associated with portfolio margining in a security-based swap account, including issues relating to (1) differences in the statutes governing uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps, (2) differences in the regulatory requirements of the CFTC, SEC, and SROs applicable to uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps (including differences in margin and segregation requirements), and (3) differences in the bankruptcy treatment of uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps.
- The Dodd-Frank Act amended section 3E(g) of the Exchange Act to provide that a *security-based swap* shall be considered a “security” as the term is used in a stockbroker liquidation under Subchapter III of title 11 of the U.S. bankruptcy code (11 U.S.C. 741–753). Section 3E(g) was not amended to provide that a *swap* shall be considered a “security” as the term is used in a stockbroker liquidation under Subchapter III of title 11 of the U.S. bankruptcy code. Section 3E(g) of the Securities Exchange Act also provides that the term “customer” as defined in section §741 of title 11 of the U.S. bankruptcy code, excludes any person to the extent that such person has a claim based on a non-cleared option or non-cleared security-based swap except to the extent of margin delivered to or by the customer with respect to which there is a customer protection requirement under Section 15(c)(3) of the Exchange Act or a segregation requirement. The Commissions request specific comment on steps SBSDs can take to ensure the protections afforded by the stockbroker liquidation provisions will apply to positions held in a security-based swap account, including swaps and accrued gains on open options and non-cleared security-based swaps. What are the implications for customer protection? Can those implications be mitigated? If so, how?
- Comment also is sought on the types of disclosures SBSDs can make to their portfolio margin account-holders about positions in a security-based swap account that are not within the definitions of “customer,” “customer property,” and “net equity” in the stockbroker liquidation provisions of the U.S. bankruptcy code. Comment also is sought on the expectations of market participants as to the extent to which customer claims in a stockbroker liquidation under the U.S. bankruptcy code include property held to margin swaps or accruing to the customer as a result of swap transactions in a portfolio margining account held in a security-based swap account.
- As noted above, the CFTC margin rules require swap dealers to post initial margin for uncleared swaps entered into with other swap dealers or with financial end-users with material swaps exposure. The SEC’s margin rules permit, but do not require, an SBSD to post initial margin for non-cleared security-based swaps entered into with other broker-dealers, SBSDs, swap dealers, or with financial end-users. How should the Commissions address the differences in the initial margin posting requirements in a portfolio margin account? If portfolio margining resulted in the transfer of significant swap trading relationships to SBSDs, which would operate under a “collect only” regime, would that increase the potential for risk and liquidity mismatches between counterparties?

Alternatively, would it lower systemic risk by promoting the liquidity of SBSBs? Discuss the potential impact on the markets and market participants if entities registered as SBSBs and swap dealers are not required to post initial margin to counterparties for uncleared swaps held in a portfolio margin account while stand-alone swap dealers are required to post initial margin to counterparties for uncleared swap transactions. Should the Commissions require entities registered as SBSBs and swap dealers to post margin for uncleared swaps held in a portfolio margin account with covered counterparties? How should such margin be computed? Alternatively, would requiring these entities to post margin undermine the benefits of portfolio margining? Would it increase costs to customers to compensate these entities for having to use their capital to meet margin requirements? In addition, would requiring these entities to post initial margin create a barrier to entry for smaller firms that do not have the resources to post initial margin?

- If portfolio margining resulted in the transfer of significant swap trading relationships to Nonbank Stand-Alone SBSBs, which would operate under a “collect only” regime, how would this impact the risks customers face in the event of an SBSB’s default? How should the Commissions balance the relative concerns related to trying to enhance liquidity of SBSBs while ensuring customer protection? Are there any lessons to be learned from events impacting swap markets during the recent COVID market volatility?
- Identify and describe any operational issues associated with portfolio margining in a security-based swap account.
- As discussed above, an entity that effects transactions in securities must be registered with the SEC as a broker-dealer. A broker-dealer that limits securities dealing to OTC equity options and other OTC derivatives can operate as special purpose broker-dealer known as OTC derivatives dealer. An entity that deals in security-based swaps above a *de minimis* notional threshold will need to register with the SEC as an SBSB. And, an entity that deals in swaps above a *de minimis* notional threshold must register with the CFTC as a swap dealer. Please discuss any regulatory or operational issues raised by portfolio margining in a security-based swap account in light of these and any other relevant registration requirements.
- Discuss how the Commissions could implement portfolio margin requirements for a security-based swap account, including potential relief the Commissions could provide to address regulatory and operational issues associated with portfolio margining in a security-based swap account.
- Identify and describe any conditions the Commissions should consider with respect to portfolio margining in a security-based swap account to mitigate risk and address regulatory and operational issues.
- Identify the categories of uncleared swaps, non-cleared security-based swaps, and OTC securities options (if the firm is registered as an OTC derivatives dealer) that should be permitted to be portfolio margined in the security-based swap account and discuss why they should be included and, if applicable, why other categories of these instruments should be excluded.
- Discuss whether market participants would use a security-based swap account to portfolio margin uncleared swaps, non-cleared security-based swaps, and OTC securities options (if the firm is registered as an OTCDD/SBSB) and explain why they would or would not use this account type for this purpose.
- Identify and describe the potential costs and benefits, as well as the competitive impact—either positive or negative—of permitting market participants to portfolio margin noncleared security-based swaps, uncleared swaps, and OTC securities options (if the firm is registered as an OTCDD/SBSB) in a security-based swap account. Please quantify, including by way of example, these potential costs, benefits and impacts to the extent practicable.

3. Swap Account

The Commissions request comment on whether uncleared swaps and noncleared security-based swaps should be permitted to be portfolio margined in a swap account. Commenters are asked to address the following matters.

- Identify and describe the relative benefits of portfolio margining in a swap account, and describe how the benefits compare to the benefits of other account types discussed in this request for comment.
- Identify and describe the risks of portfolio margining in a swap account, and describe how those risks compare to the risks of other account types discussed

in this request for comment, as well as how the risks compare to margining under the existing framework.

- Identify and describe what models might be appropriate for portfolio margining positions in a swap account, as well as the process for approving and reviewing such models.
- Identify and describe any regulatory issues associated with portfolio margining in a swap account, including issues relating to (a) differences in the statutes governing uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps, (b) differences in the regulatory requirements of the CFTC, SEC, and SROs applicable to uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps (including differences in margin and segregation requirements), and (c) differences in the bankruptcy treatment of uncleared swaps, non-cleared security-based swaps, and securities other than security-based swaps.
- As noted above, the CFTC margin rules require swap dealers to post initial margin for uncleared swaps entered into with other swap dealers or with financial end-users with material swaps exposure. The SEC's margin rules permit, but do not require, an SBSB to post initial margin for non-cleared security-based swaps entered into with other broker-dealers, SBSBs, swap dealers, or with financial end-users. How should the Commissions address the differences in the initial margin posting requirements in a portfolio margin account? If portfolio margining resulted in the transfer of significant swap trading relationships to SBSBs, which would operate under a "collect only" regime, would that increase the potential for risk and liquidity mismatches between counterparties? How do commenters view any systemic risk implications of SBSBs not posting initial margin? Would it lower systemic risk by promoting the liquidity of SBSBs? Discuss the potential impact on the markets and market participants if entities registered as broker-dealers and swap dealers or as broker-dealers, SBSBs, and swap dealers or as SBSBs and swap dealers are not required to post initial margin to counterparties for uncleared swaps held in a portfolio margin account while stand-alone swap dealers are required to post initial margin to counterparties for uncleared swap transactions. Would such a portfolio margining approach provide a disincentive for customers to trade with stand-alone swap dealers and what would be the potential market impact of such a disincentive? Should the Commissions require entities registered as broker-dealers and swap dealers or as broker-dealers, SBSBs, and swap dealers or as SBSBs and swap dealers to post margin for uncleared swaps held in a portfolio margin account with covered counterparties? How should such margin be computed? Alternatively, would requiring these entities to post margin undermine the benefits of portfolio margining? Would it increase costs to customers to compensate these entities for having to use their capital to meet margin requirements? In addition, would requiring these entities to post initial margin create a barrier to entry for smaller firms that do not have the resources to post initial margin?
- As discussed above, an entity that effects transactions in securities must be registered with the SEC as a broker-dealer. A broker-dealer that limits securities dealing to OTC equity options and other OTC derivatives can operate as special purpose broker-dealer known as OTC derivatives dealer. An entity that deals in security-based swaps above a *de minimis* notional threshold will need to register with the SEC as an SBSB. And, an entity that deals in swaps above a *de minimis* notional threshold must register with the CFTC as a swap dealer. And, an entity that clears futures, options on futures, or swaps for customers must register as an FCM. Please discuss any regulatory or operational issues raised by portfolio margining in a swap account in light of these and any other relevant registration requirements.
- Identify and describe any operational issues associated with portfolio margining in a swap account.
- Discuss how the Commissions could implement portfolio margin requirements for a swap account, including potential relief the Commissions could provide to address regulatory and operational issues associated with portfolio margining in a swap account.
- Identify and describe any conditions the Commissions should consider with respect to portfolio margining in a swap account to mitigate risk and address regulatory and operational issues.
- Identify the categories of swaps and security-based swaps that should be permitted to be portfolio margined in the swap account and discuss why they

should be included and, if applicable, why other categories of these instruments should be excluded.

- Discuss whether market participants would use a swap account to portfolio margin uncleared swaps and non-cleared security-based swaps, and explain why they would or would not use this account type for this purpose.
- Identify and describe the potential costs and benefits, as well as the competitive impact—either positive or negative—of permitting market participants to portfolio margin uncleared swaps and non-cleared security-based swaps in a swap account. Please quantify, including by way of example, these potential costs, benefits and impacts to the extent practicable.

4. Other Potential Portfolio Margin Scenarios

In addition to the requests for comment on the specific account types discussed above, the Commissions request comment on whether there are any other potential portfolio margin scenarios with regard to uncleared swaps, non-cleared security-based swaps, and other related positions that the Commissions should consider at this time. Commenters should identify and describe the specific products and account type involved in any other potential portfolio margin alternatives. Commenters also are asked to address any potential regulatory or operational issues involving a particular portfolio margin scenario. Finally, commenters should address any potential costs and benefits and competitive impact the Commissions should consider in evaluating a particular portfolio margin scenario.

By the Securities and Exchange Commission.

Dated: October 22, 2020.

VANESSA A. COUNTRYMAN,
Secretary.

Issued in Washington, DC, on October 23, 2020, by the Commodity Futures Trading Commission.

CHRISTOPHER KIRKPATRICK,
Secretary of the Commission.

Note: The following appendices will not appear in the *Code of Federal Regulations*.

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—CFTC Voting Summary and Commissioner’s Statement

Appendix 1—CFTC Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Supporting Statement of CFTC Commissioner Brian Quintenz

I am proud to support today’s request for comment, which marks the beginning of the agencies’ consideration of ways to implement a portfolio margining regime for uncleared swaps and non-cleared security-based swaps. Portfolio margining can lead to efficiencies in margin calculation by appropriately accounting for the impact offsetting positions have on a portfolio’s actual risk profile. This, in turn, gives firms and customers additional capital that can be deployed elsewhere. However, given the differences between the regulatory regimes for swaps and security-based swaps, it also implicates incredibly important legal and policy considerations. This request for comment solicits critical feedback from market participants on how portfolio margining could impact the safety and soundness of firms, result in competitive advantages for certain types of registrants, and raise questions about how collateral would be treated in the event of bankruptcy. In order to make an informed decision about if, and how, portfolio margining should be implemented for uncleared swaps and noncleared security-based swaps, we need thoughtful feedback on these complex questions. I encourage all interested parties to provide written comments, including data wherever possible, in order to further the agencies’ understanding of the various options presented in the request for comment.

[FR Doc. 2020–23928 Filed 11–4–20; 8:45 a.m.]

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