

**HEARING FOR THE PURPOSE OF RECEIVING  
TESTIMONY FROM THE HONORABLE ROSTIN  
BEHNAM, CHAIRMAN, COMMODITY FUTURES  
TRADING COMMISSION**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON AGRICULTURE**  
**HOUSE OF REPRESENTATIVES**

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

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ROSTIN BEHNAM, CHAIRMAN, COMMODITY  
FUTURES TRADING COMMISSION**

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**WEDNESDAY, MARCH 6, 2024**

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

The Committee met, pursuant to call, at 10:02 a.m., in Room 1300 of the Longworth House Office Building, Hon. Glenn Thompson [Chairman of the Committee] presiding.

Members present: Representatives Thompson, Lucas, Austin Scott of Georgia, LaMalfa, Rouzer, Bacon, Johnson, Mann, Feenstra, Miller of Illinois, Cammack, Rose, Jackson of Texas, Langworthy, Duarte, Nunn, Alford, Miller of Ohio, David Scott of Georgia, McGovern, Adams, Hayes, Davids of Kansas, Salinas, Davis of North Carolina, Budzinski, Sorensen, Vasquez, Jackson of Illinois, Casar, Craig, and Soto.

Staff present: Paul Balzano, Wick Dudley, Nick Rockwell, Kevin Webb, John Konya, Kate Fink, Emily German, Josh Lobert, Clark Ogilvie, Ashley Smith, and Dana Sandman.

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

The CHAIRMAN. The Committee will come to order. Good morning, everyone, and thank you for joining today's hearing where we will hear from Chairman Rostin Behnam of the Commodity Futures Trading Commission. After brief opening remarks, Members will receive testimony from our witness today, and then the hearing will be open to questions.

I will take the liberty of offering my opening statement. But before I begin my opening statement actually, want to take a little bit of time and a moment to remember Mike Gill, former Chief Operating Officer and Chief of Staff at CFTC, who tragically passed away last month. Mike was a dedicated public servant, a loving father and husband, and friend to all he met, and he will be truly missed.

Chairman Behnam, thank you again for joining us today to discuss the pressing issues within the derivatives markets and the upcoming work of the Commodity Futures Trading Commission. Under your leadership, the CFTC has tackled a robust rulemaking agenda. This year, the agency's unified agenda is no exception. It remains ambitious, covering a wide range of topics, including rules

related to cybersecurity and resilience, conflicts of interest and governance, enhanced protections for customer property, and event contracts. There is no doubt the CFTC has a full rulemaking slate.

This Committee appreciates the CFTC's commitment to providing effective oversight of our derivatives markets, especially through its transparent public rulemaking and advisory committee processes. This work is deliberative and leads to better public policy outcomes. Now, I know the Commission's ongoing rulemaking will benefit from this rigorous and comprehensive public review.

Chairman Behnam, the House Agriculture Committee is closely monitoring the Basel III endgame and the GSIB proposed rule, and we are concerned that these proposals could adversely affect commodity derivatives markets and could result in increased costs and reduce hedging opportunities for commodity end-users. Ultimately, the impacts of these rules could trickle all the way down to consumers, driving up prices in agriculture and energy markets, as well as for everyday goods and services that we all rely on. I hope the Commission continues to review these proposals and urge the Prudential Regulators to rethink these flawed proposed rules.

As you are keenly aware, our Committee has been actively engaged in crafting a much-needed regulatory framework that protects consumers, investors, and fosters American leadership in the digital asset space. In July, the Committee reported out the Financial Innovation and Technology for the 21st Century Act (H.R. 4763), a significant milestone, and I want to thank you again for providing us with the Commission's expertise, knowledge, and thoughtful feedback on FIT 21. And we look forward to advancing this bill and finally bringing regulatory clarity to these novel assets.

Further, we are all aware that the CFTC has not been reauthorized since 2008. The Ranking Member and I remain committed to reauthorizing the Commission and providing the CFTC with the tools and the authorities it needs to successfully execute its responsibilities. As we do so, it is crucial that the Commission also ensure that it has the right policies and procedures in place to execute its mission.

As with many other Federal agencies, the Commission must transition back to normal operation, including by bringing the Commission staff back into the office where they can most effectively work together to protect our markets.

Again, Chairman Behnam, I appreciate you taking the time to be with us today and look forward to our conversation.

[The prepared statement of Mr. Thompson follows:]

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

Before I begin my opening statement, I would like to take a moment to remember Mike Gill, former Chief Operating Officer and Chief of Staff at the CFTC, who tragically passed away last month. Mike was a dedicated public servant, loving father and husband, and friend to all he met. He will be truly missed.

Chairman Behnam, thank you again for joining us today to discuss the pressing issues within the derivatives markets and the upcoming work of the Commodity Futures Trading Commission.

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Again, Chairman Behnam, I appreciate you making time to be with us today and look forward to our conversation.

The CHAIRMAN. With that, I would now like to welcome the distinguished Ranking Member, the gentleman from Georgia, Mr. Scott, for any opening remarks that he would like to give.

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

Mr. DAVID SCOTT of Georgia. Thank you so much, Mr. Chairman.

Chairman Behnam, welcome. And first of all, I want to thank you for your great service. And I want you to know, as the Chairman just said, we remain committed to making sure that we do more to get you all reauthorized. And we are going to make sure that we get you the proper amount of fiscal and funding that you need to do this extraordinary piece of work. And I look forward to your testimony this morning. And, as you know, I am very concerned about the reauthorization. You remember when myself and my good partner over here Austin Scott and I got together and we fought the European Union when they wanted to take over controlling you. And we said, no way we are going to let that happen. And, Austin, you remember that good fight we did. And that was one of the good bipartisan fights that we have done in this Committee. And so I look forward to your testimony on that.

I want you to also explain what kind of damage is coming. It is 10 years, and you haven't been reauthorized. And that is what caused the European Union to want to come and use that as a reason for them to authorize you.

And I want to take just a minute to say a few words about my distinguished staff. First of all, I want to thank Ms. Emily German, who will be unfortunately leaving us and going to you, Chairman, over to the CFTC to be your deputy legislative director. And I can tell you, you couldn't have a better staffer than her. Emily was instrumental in our historic bipartisan broadband bill and the CFTC reauthorization bill, on all of our good work on cryptocurrency, and our extremely important and successful work pushing back, as I mentioned, on the European Union, during their proposal and implementation of EMIR 2.2, which could have had the European Union regulating our markets right here at home. And we fought that together in a strong bipartisan way. And we will miss her dearly, but we are very happy that, Chairman, you will have such a talented and wonderful addition to your team.

And next, I want to mention one of our other staffers, Mr. Britton Burdick, and all we want to say is happy birthday to Britton, and a nice round for my staff.

And with that, Mr. Chairman, I yield back.

The CHAIRMAN. I thank the gentleman.

The chair would request that other Members submit their opening statements for the record so our witness can begin his testimony and to ensure that there is ample time for questions.

I am pleased to welcome back to the Committee our witness for today, CFTC Chairman Rostin Behnam. Mr. Chairman, thank you for joining us, and we will now proceed to your testimony. You will have 5 minutes. The timer is in front of you. It will count down to zero, and at which point your time has expired. Chairman Behnam, please begin when you are ready.

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

Mr. BEHNAM. Thanks, Mr. Chairman. A few comments, first, Ranking Member Scott, I am sorry for stealing Emily from you; but, this is what happens to great staff. And we are very pleased to have her coming over to the CFTC in the next month. I think the benefit to the Committee is, as you mentioned, she will be deputy of leg. affairs, so she will be very engaged on a future basis with this Committee, so I think you will all benefit from her expertise and her being at the CFTC.

And also, Mr. Chairman, I want to echo your comments about Mike Gill, obviously a devastating loss for family and friends, but also the CFTC community. Mike was a great Chief of Staff. He was a great man, and we certainly miss him. And it is a tragedy what happened, but we are thinking about him and his family as they work through this tragedy.

Chairman Thompson, Ranking Member Scott, and Members of the Committee, thank you for the opportunity to appear before you today to provide an update on the work of the CFTC. For over a century, derivatives markets have played a key role in the U.S. economy, contributing to financial stability and predictability of prices that impact the daily lives of all Americans, especially our farmers and ranchers. Recognizing the historical roots of our agency and the continued importance of derivatives to agricultural



stakeholders, I am very pleased to announce that the CFTC and the Center for Risk Management Education and Research at Kansas State University will be hosting the third Agricultural Commodity Futures Conference on April 11 and 12 in Overland Park, Kansas.

Today, technology is having a larger impact on CFTC jurisdictional markets than ever before. Historically, the CFTC's regulations developed over decades to oversee markets made of individual, discrete entities, each typically performing one function in a multi-step trade cycle. However, we are seeing a shift to structures driven by technology that combine or compress what have historically been unique and separate activities into a single or fewer activities. This compression raises important questions about such issues as conflicts of interest; the strength of capital, margin, and segregation requirements; the role of self-regulatory organizations; affiliate risk management; and most importantly, customer protections.

As this Committee continues to consider reauthorization of the CFTC, I believe there are several important policy questions that will benefit from broader Congressional consideration and debate. With the support of the CFTC's whistleblowers office, the Commission's exercise of its enforcement authorities to address misconduct that has a direct impact on CFTC jurisdictional markets, affects the larger economy, causes public harm, or interferes with market integrity is only just one facet of our approach to innovation and the evolution of financial markets.

Nowhere have we been more active than in the digital asset space. In Fiscal Year 2023, which ended in October of 2023, we brought 47 actions involving conduct related to digital commodities, representing more than 49 percent of all CFTC actions filed, a staggering statistic given the fact that no Federal agency retains any direct regulatory authority over the underlying or cash digital commodity market.

One very important topic that continues to challenge the derivatives industry and the CFTC is of course cyber risk. Under my direction, the Commission voted unanimously in December to issue a notice of proposed rulemaking to require futures commission merchants, swap dealers, and major swap participants to establish an operational resilience framework and adopt non-binding Commission guidance related to the management of risks stemming from third-party relationships. As I have often said, we recognize that our rules apply to covered entities that represent many different business models and may be a part of a larger corporate family subject to the concurrent supervision of multiple domestic and perhaps international regulators. We are actively working with our fellow regulators on a number of matters that impact CFTC regulated markets.

Another topic presenting challenges and opportunities for the agency is artificial intelligence. I am proud to say that, recently, the CFTC's new AI Task Force issued a request for comment on the use of AI in CFTC-regulated markets. The AI RFC is part of a greater vision I have had since my first days as Chairman, advancing analytical capabilities through building talent, leveraging the cloud, and developing a forward-looking AI culture.

In December, the Commission proposed guidance regarding the listing of voluntary carbon credit derivatives contracts. This is the first proposed guidance on standards applicable to exchanges, listing products aimed at providing tools to manage risk, promote price discovery, and help encourage integrity in these markets. All landowners, including America's farmers and ranchers, can benefit from high-integrity voluntary carbon markets.

Under my direction as Chairman, the CFTC hired its first ever Chief Diversity Officer, who oversees the agency's Office of Minority and Women Inclusion. In the near future, I plan to release the CFTC's first DEIA strategic plan, and I am eager to see the CFTC's OMWI statutorily authorized, similar to other Federal financial regulators.

The CFTC has consistently been at the forefront of identifying and addressing risks with a balanced, thoughtful, and measured approach. I strongly believe our collective goal is to keep the U.S. derivatives markets the safest, the strongest, and the most effective, and the most desirable in the world. By focusing on this goal, we can maintain America's position as the preeminent economy in the world and uphold national security for all Americans. As this Committee knows, our nation's agricultural, energy, and precious metals resources are some of our most critical assets. I believe that without robust derivatives markets, these assets cannot be optimally produced or sold.

An investment in the CFTC is an investment in America. As Chairman of the agency, you have my commitment to work with this Committee on achieving all of these goals, and I look forward to your questions today. Thank you, Mr. Chairman.

[The prepared statement of Mr. Behnam follows:]

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

Chairman Thompson, Ranking Member Scott, and Members of the Committee, thank you for the opportunity to appear before you today to provide an update on the work of the Commodity Futures Trading Commission (CFTC), our priorities, and some emerging trends in our jurisdictional space.

For over a century, derivatives markets have played a key role in the U.S. economy, contributing to financial stability and predictability of prices that impact the daily lives of all Americans, especially our nation's farmers and ranchers. Recognizing the historical roots of our agency and the continued importance of derivatives to agricultural stakeholders, I am pleased to announce that the CFTC and the Center for Risk Management Education and Research (CRMER) at Kansas State University will be hosting the third Agriculture Commodity Futures Conference on April 11th and 12th in Overland Park, Kansas.<sup>1</sup>

I know I speak for all the Commissioners when I thank CFTC staff for their commitment to the agency and its mission. My team and I are working closely with staff and their union representatives in order to find a suitable work posture, post-pandemic, that honors the importance of being present and together in the office with appropriate flexibility, and ensures our accountability as good stewards of taxpayer money. The agency's long-term health and success depend on it.

It has been over 13 years since the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>2</sup> expanded the CFTC's authority. In that time, derivatives markets have experienced massive growth: trading volumes in exchange-traded fu-

<sup>1</sup>See Press Release Number 8857-24, CFTC, *CFTC, Kansas State University Announced Featured Panels for AgCon2024* (Feb. 8, 2023), (<https://www.cftc.gov/PressRoom/PressReleases/8857-24>); Press Release Number 8832-23, CFTC, *AgCon2024 Set for April 11-12* (Dec. 8, 2023), (<https://www.cftc.gov/PressRoom/PressReleases/8832-23>).

<sup>2</sup>Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act").

tures and options have more than doubled; and the swaps market brought within our jurisdiction pursuant to the Dodd-Frank Act is now over \$350 trillion,<sup>3</sup> which is approximately ½ of the estimated \$715 trillion global market.

Today, technology is having a larger impact on CFTC jurisdictional markets than ever before. Innovators eager to meet demand for products and services are proposing traditional and nontraditional models that leverage technology in synergistic ways. At the same time, a growing number of less traditional retail participants are entering our markets, enabled by mobile phone application technology and an endless stream of information to pursue investment opportunities.

Surveying the current landscape, the CFTC's regulations have developed over decades to oversee markets made of individual, discrete entities, each typically performing one function in a multi-step trade cycle. However, we are seeing a shift to structures, driven by technology, that combine or compress what have historically been unique and separate activities into a single or fewer entities. This compression raises many important questions including those regarding conflicts of interest within vertically integrated structures, the strength of capital, margin, and segregation requirements, the role and responsibilities of self-regulatory organizations, affiliate risk management, and most importantly, customer protections.

As this Committee continues to consider reauthorization of the CFTC, I believe there are several important policy questions that will benefit from broader Congressional consideration and debate regarding market structure, permissible products, and retail participation. While our current regulatory agenda demonstrates significant agility within our jurisdictional space, we periodically bump up against the limits of what may be contemplated under existing law given the relatively rapid evolution of markets, market structure, and technology.

To provide a glaring example from the past decade, the recent technology driven increase in direct retail participation in the derivatives markets and underlying commodity markets in areas such as digital commodity assets has tested the limits of the existing regulatory framework. The CFTC's mission and duties, while providing room for some adaptation to new products and structures, are not endlessly flexible: we must be able to ensure that the products offered and available are suitable for all participants, that only appropriate persons or entities may solicit or handle customer funds, and that the disclosure information provided is material for main street customers.

As Chairman, I have stressed that new market structures and participants eager to deploy all manner of financial technology must comply with the agency's rules and regulations.<sup>4</sup> This is especially true when it comes to protecting customers, consumers, and the larger financial markets from fraud, money laundering, and other financial crimes. For example, when the use of digital assets and related enabling technologies for illicit financial purposes threatens national security and may fund acts of war and terrorism, our laws must continue to aggressively demand that all market entrants implement and comply with know-your-customer (KYC) and anti-money laundering (AML) procedures, and Customer Information Programs (CIPs).

Enforcement matters like the CFTC's globally significant BitMex<sup>5</sup> and Binance<sup>6</sup> cases amplify the urgency. I believe we could do even more to protect customers and markets if given additional authority in the KYC, AML, and CIP space and welcome the opportunity to work with Congress on solutions.

The Commission's exercise of its enforcement authorities to address misconduct that has a direct impact on CFTC jurisdictional markets, affects the larger economy, causes public harm, or interferes with market integrity is one facet of our approach to innovation and the evolution of financial markets.

Nowhere have we been more active than in the digital asset space. In FY 2023, we brought 47 actions involving conduct related to digital commodities, representing more than 49% of all CFTC actions filed during that period. A staggering statistic given the fact that no Federal agency retains any direct regulatory authority over

<sup>3</sup>CFTC, *Weekly Swaps Report, Weekly Swaps Report | CFTC* (<https://www.cftc.gov/MarketReports/SwapsReports/L1GrossExpCS.html>).

<sup>4</sup>See, e.g., Rostin Behnam, Chairman, CFTC, *Keynote of Chairman Rostin Behnam at the 2023 U.S. Treasury Market Conference* (Nov. 16, 2023), (<https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam39>).

<sup>5</sup>See Press Release Number 8412-21, CFTC, *Federal Court Orders BitMex to Pay \$100 Million for Illegally Operating a Cryptocurrency Trading Platform and Anti-Money Laundering Violations* (Aug. 10, 2021), (<https://www.cftc.gov/PressRoom/PressReleases/8412-21>).

<sup>6</sup>See Press Release Number 8680-23, CFTC, *CFTC Charges Binance and its Founder, Changpeng Zhao, with Willful Evasion of Federal Law and Operating an Illegal Digital Asset Derivatives Exchange* (Mar. 27, 2023), (<https://www.cftc.gov/PressRoom/PressReleases/8680-23>).

the underlying (or cash) digital commodity asset market. To date, FY 2024 is demonstrating a similar cadence.

The lack of legislation addressing the regulatory gap over the digital commodity asset spot market has not hindered the public's enthusiasm for digital assets, and I continue to believe Congress must act, as the 2022 FSOC report highlighted,<sup>7</sup> and as I have mentioned publicly on multiple occasions.<sup>8</sup> I am grateful to Members of this Committee for your continued leadership in recognizing these gaps, and for leading legislative efforts to provide the CFTC with the necessary authority to properly regulate digital commodity assets and protect the U.S. financial system.

A key to the effectiveness of our enforcement division is the CFTC's whistleblower program. The Dodd-Frank Act established the Customer Protection Fund<sup>9</sup> that supports our Whistleblower Program<sup>10</sup> and the Office of Customer Education and Outreach (OCEO). As of FY 2023, the Whistleblower program has issued 41 orders granting awards totaling almost \$350 million since its inception in FY 2010.<sup>11</sup> In Fiscal Year 2024, the program has, thus far, awarded \$18 million to whistleblowers. The total sanctions ordered in all whistleblower-related enforcement actions has surpassed the \$3 billion milestone. Without this important program, the CFTC would not be as successful in bringing actions against misconduct in the digital commodity asset spot market.

As this Committee knows, the overwhelming success of the Whistleblower Program has unintentionally led to the potential for disruptions in these two vital offices due to their funding mechanisms. In addition to the importance of a long-term fix to avoid depletions greater than the total balance of the fund, I believe Congress should amend the statutory provisions to clarify the permitted uses of the Customer Protection Fund by the OCEO.<sup>12</sup> This change would allow the Commission to implement a host of new investor protection programs and provide information aimed at ensuring American families have the knowledge and tools to not only protect themselves from fraud and manipulation, but to more fully engage with the Commission and the markets we oversee.

One very important topic that continues to challenge the derivatives industry and the CFTC is cyber risk. Last year at this time, we were addressing the impacts of a cyber-related incident on ION Cleared Derivatives, a third-party service provider.<sup>13</sup> The severity of the impact on each futures commission merchant's (FCM's) operations, as well as each FCM's ability to work-around impacted applications, varied based on the ION application used.<sup>14</sup> Notably, the incident impacted the timely and accurate submission of positions data to the CFTC, and therefore delayed the timely release of the Commitments of Traders (CoT) report.

Under my direction, the Commission voted unanimously in December to issue a notice of proposed rulemaking to require FCMs, swap dealers (SDs), and major swap participants (MSPs) to establish an operational resilience framework and adopt non-binding Commission guidance related to the management of risks stemming from third-party relationships.<sup>15</sup> The proposed rule would require the covered entities to

<sup>7</sup> Financial Stability Oversight Council, *Report on Digital Assets and Financial Stability Risks and Regulation* (Oct. 2022) (<https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf>).

<sup>8</sup> See, e.g., Rostin Behnam, Chairman, CFTC, *Keynote of Chairman Rostin Behnam at the ABA Business Law Section Derivatives & Futures Law Commission Winter Meeting* (Jan. 26, 2024), (<https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam41>).

<sup>9</sup> CEA §23(g), 7 U.S.C. 26(g).

<sup>10</sup> Commodity Futures Trading Commission Whistleblower Program, (<https://www.whistleblower.gov/>).

<sup>11</sup> See CFTC, *FY 2023 Whistleblower Program & Customer Education Initiatives 2023 Annual Report* (Oct. 2023), ([https://www.whistleblower.gov/sites/whistleblower/files/2023-10/FY23 Customer Protection Fund Annual Report to Congress.pdf](https://www.whistleblower.gov/sites/whistleblower/files/2023-10/FY23%20Customer%20Protection%20Fund%20Annual%20Report%20to%20Congress.pdf)).

<sup>12</sup> See CEA section 23(g)(2); 7 U.S.C. 26(g)(2).

<sup>13</sup> See CFTC, *CFTC Statement on Ion and the Impact to the Derivatives Markets* (Feb. 2, 2023), (<https://www.cftc.gov/PressRoom/SpeechesTestimony/cftcstatement020223>); see also, Press Release Number 8655-23, CFTC, *CFTC Issues Statement on the Ongoing Impact to Reporting* (Feb. 10, 2023), (<https://www.cftc.gov/PressRoom/PressReleases/8655-23>); Press Release Number 8662-23, CFTC *Announces Postponement of Commitments of Traders Reports* (Feb. 16, 2023), (<https://www.cftc.gov/PressRoom/PressReleases/8662-23>).

<sup>14</sup> See Rostin Behnam, Chairman, CFTC, *Keynote of Chairman Rostin Behnam at the FIA Boca 2023 International Futures Industry Conference, Boca Raton, Florida* (Mar. 15, 2023), (<https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam33>); Rostin Behnam, Chairman, CFTC, *Testimony of Chairman Rostin Behnam Regarding "Oversight of the Commodity Futures Trading Commission" before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry* (Mar. 8, 2023), (<https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam32>).

<sup>15</sup> *Operational Resilience Framework for Futures Commission Merchants, Swap Dealers, and Major Swap Participants*, 89 FR 4706 (Proposed Jan. 24, 2024) (to be codified at 17 CFR pts. 1 and 23), (<https://www.cftc.gov/sites/default/files/2024/01/2023-28745a.pdf>).

establish, document, implement, and maintain an Operational Resilience Framework (ORF). This proposal would require a process to identify, monitor, manage, and assess risks relating to IT security, third-party relationships, and emergencies or other significant disruptions to their operations as a CFTC registrant.<sup>16</sup> The ORF would need to include three components: an IT security program, a third-party relationship program, and a business continuity and disaster recovery (BCDR) plan.

As I have often said, we recognize that our rules apply to covered entities that represent many different business models, and may be a part of a larger corporate family subject to the concurrent supervision of multiple domestic and perhaps international regulators. CFTC staff have strong working relationships with our fellow market and prudential regulators. Whether we are working on joint rulemakings or engaging in discussions regarding policy that impacts the derivatives markets directly or indirectly, our approach is always aimed at harmonizing where we can and avoiding duplicative and unnecessarily burdensome outcomes. We are actively working with our fellow regulators on a number of matters that impact CFTC regulated markets.

Another topic presenting challenges and opportunities for the agency is artificial intelligence (AI). I am proud to say that recently the CFTC's new AI Task Force issued a request for comment (RFC) on the use of AI in CFTC-regulated markets.<sup>17</sup> The AI RFC is part of a greater vision I have had since my first days as Chairman: advancing analytical capabilities through building talent, leveraging the cloud, and developing a forward-looking AI culture. We have a process in place for exploring AI use cases to help the agency better monitor, regulate, surveil, identify pockets of stress, and enforce compliance. Further, our OCEO recently issued a Customer Advisory warning the public about AI-driven fraud and scams.<sup>18</sup>

In December, the Commission proposed guidance regarding the listing of voluntary carbon credit (VCC) derivative contracts.<sup>19</sup> Identified as one of the most important developments for the carbon industry,<sup>20</sup> this is the first proposed guidance on standards applicable to exchanges listing products aimed at providing tools to manage risk, promote price discovery, and help encourage integrity in these markets.<sup>21</sup> All landowners, including America's farmers and ranchers, can benefit from high integrity voluntary carbon markets.

Under my direction as Chairman, the CFTC hired its first ever Chief Diversity Officer (CDO) who oversees the agency's Office of Minority and Women Inclusion (OMWI). In the near future, I plan to release the CFTC's first DEIA Strategic Plan. Among other things, the Plan will aim to further develop our workforce. Current efforts through our OMWI include establishing partnerships and recruiting at minority serving institutions and rural colleges and universities, engaging urban and rural communities and related professional associations, and planning a robust mass media campaign to enhance our outreach efforts. I am eager to see the CFTC's OMWI statutorily authorized, similar to other Federal financial regulators.<sup>22</sup>

<sup>16</sup> See CFTC, *Fact Sheet and Q&A—Notice of Proposed Rulemaking to Require Futures Commission Merchants, Swap Dealers, and Major Swap Participants to Establish an Operational Resilience Framework* (Dec. 13, 2023), (<https://www.cftc.gov/PressRoom/Events/opaeventopenmeeting121323>).

<sup>17</sup> See Press Release Number 8853-24, CFTC, *CFTC Staff Releases Request for Comment on the Use of Artificial Intelligence in CFTC-Regulated Markets* (Jan. 25, 2024), (<https://www.cftc.gov/PressRoom/PressReleases/8853-24>).

<sup>18</sup> See Press Release Number 8854-24, CFTC, *CFTC Customer Advisory Cautions the Public to Beware of Artificial Intelligence Scams* (Jan. 25, 2024), (<https://www.cftc.gov/PressRoom/PressReleases/8854-24>).

<sup>19</sup> *Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts; Request for Comment*, 88 FR 89410 (Dec. 27, 2023), (<https://www.cftc.gov/sites/default/files/2023/12/2023-28532a.pdf>).

<sup>20</sup> See Vasil Valev, *COP28 Update on Day Six: The Most Important Developments for the Carbon Industry*, CARBON HERALD (Dec. 5, 2023), (<https://www.cftc.gov/Exit/index.htm?https://carbonherald.com/cop28-update-on-day-six-the-most-important-developments-for-the-carbon-industry/>).

<sup>21</sup> See Rostin Behnam, Chairman, CFTC, *Statement of Chairman Rostin Behnam on the Proposed Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts* (Dec. 4, 2023), (<https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement120423>).

<sup>22</sup> Section 342 of the Dodd-Frank Act, codified at 12 U.S.C. 5452, required the Departmental Offices of the Department of the Treasury, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), each of the Federal reserve banks, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Bureau of Consumer Financial Protection (CFPB), the Federal Housing Finance Agency (FHFA), and the Securities and Exchange Commission (SEC) to each establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters of the agen-

Under my direction, the agency also is embarking on developing its first centralized workforce succession planning program. The lack of adequate succession planning poses several risks to the agency, including disruption to processes, workflows, and protocols that can threaten core functions; the loss of mission critical knowledge and expertise; and the increased expense of retaining critical talent in urgent situations. Looking at our workforce demographics and trajectory, the inescapable conclusion is that roughly a decade of budget uncertainty is degrading our ability to effectively and consistently hire and maintain the skilled workforce necessary to keep pace with our jurisdictional markets.

As we near the 50th anniversary of President Ford signing of the Commodity Futures Trading Commission Act of 1974, we should reflect on the past 50 years of market development, evolution, and growth, while also looking forward to the next 50 years, and to the role the CFTC will play in the continued health and dominance of the U.S. financial markets and economy. We cannot simply sit back and hope that the next 50 years will replicate the success of the past 50. Technology is driving change faster than it ever has, and we collectively must keep up, both to set the guardrails that will serve as foundations for customer protections and market resiliency, and to allow for growth and innovation.

The CFTC has consistently been at the forefront of identifying and addressing risks with a balanced, thoughtful, and measured approach. I strongly believe our collective goal is to keep the U.S. derivatives markets the safest, strongest, the most effective, and the most desirable in the world. These goals are necessary to maintain America's position as the preeminent economy in the world. These goals are also necessary to maintain national security for all Americans. As this Committee knows, our nation's agricultural, energy, and precious metals resources are some of our most critical assets. I believe that without a robust derivatives market, these assets cannot be optimally utilized. An investment in the CFTC is an investment in America. As Chairman of the agency, you have my commitment to work with this Committee on achieving these goals. I look forward to your questions.

The CHAIRMAN. Well, Mr. Chairman, thank you so much for your important testimony today, and we look forward to that continue collaborative relationship.

At this time, Members will be recognized for questions in order of seniority, alternating between Majority and Minority Members and in order of arrival for those who joined us after the hearing convened. You will be recognized for 5 minutes each in order to allow us to get to as many questions as possible. I will recognize myself for 5 minutes.

Chairman Behnam, we have heard a lot about the potentially disastrous ramifications of the Prudential Regulators, Basel III Endgame, and the GSIB surcharge proposed rules, including that they may curtail banks' ability to offer crucial hedging services to clients such as farmers and ranchers and other end-users who are seeking to manage the risks associated with operating their businesses. You have stated publicly that CFTC staff are looking at two proposals to determine if the changes will harm end-users' ability to hedge risk in the commodity derivatives markets. Can you please share with the Committee any of the CFTC staff's findings on this issue?

Mr. BEHNAM. Thanks, Mr. Chairman, a very important question. And I will tell you a few things that I think should maybe level set. One, I have been personally engaged with other colleagues at the Prudential Regulators and market regulators, sharing some of the issues that we have examined and thought about and wanting to help steer potentially their thought process as they continue towards finalizing the rule.

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cy relating to diversity in management, employment, and business activities. The Act also instructed each OMWI Director to develop standards for assessing the diversity policies and practices of entities regulated by the respective agency.

I would say a few important data points that really represent some of the issues that we have identified. Going back to 2004, we had 177 registered FCMs, futures commission merchants, at the CFTC. In 2024, currently, we have just about 64, a huge reduction in the capacity to clear and execute transactions for all market participants, including end-users. Also, at the same time, we have seen an increase in customer funds from approximately \$80 billion in 2004 to about \$½ trillion, so huge growth in markets, reduction in capacity. We see concentration in the largest five clearing members, just about 60 percent or more clearing futures swaps and foreign futures as well.

So I think we have to be very careful as we think about capital. I would say this very confidently that capital is one of the benchmarks and the foundations of good financial regulation, and it is important that Prudential Regulators move forward with Basel III and the surcharge, but we have to be careful about how it is implemented. We have to create incentives for clearing. Clearing is one of the hallmarks of the financial crisis. We see the SEC recently finalized a rule for clearing Treasury markets. I think this is a clear indication that, collectively, we believe clearing works.

So we need to continue to incentivize clearing, make market participants feel comfortable that the costs will not be prohibitive, and ultimately create an avenue for clearing members to provide services to all customers. So this is not just large asset managers. This is not just large pension funds or large financial institutions and manufacturers. We have to think about all of your constituents—farmers, ranchers, small business owners—to an extent, energy producers, any commodity producer that needs to use our markets. They need to have access and it needs to be a fair price. And as we think about these rules going forward, we need to make sure that we are ensuring the integrity of the derivatives market, but also making sure it is accessible, fair, and at a reasonable price such that there will be incentives to participate in the market.

The CHAIRMAN. Mr. Chairman, an SEC-registered special purpose broker dealer Prometheum announced recently that it will custody customers' Ether beginning in March. According to the SEC's guidance, SPBDs are only allowed to custody securities. Now, you have previously stated on a number of occasions that you consider Ether to be a commodity. To that end, the CFTC has allowed CFTC-registered commodity derivatives exchanges to list Ether derivatives contracts. And in October 2023, SEC approved an Ether exchange traded fund that characterized Ether as a commodity and was based on those futures contracts, thereby tacitly accepting that Ether is a commodity. Can you please share with us your views on Prometheum's plans to custody Ether an asset that you and at least at one point the SEC considered to be a commodity?

Mr. BEHNAM. Mr. Chairman, I think the point you raise is really the critical one. We do have listed Ether futures contracts, and we have had them for a number of years, just about 4 years. And by default, this is at least in part why have I publicly stated that both Bitcoin and Ether are commodities. I have not been in communication with Prometheum. I have not discussed their decision-making, but from my understanding, essentially reading the press and talk-

ing to my staff who have reached out to the SEC, this was an independent decision by Prometheus, which is, as you mentioned, a special purpose broker dealer, to signal to the market that it is their intent to custody Ether. So, it is my understanding that this was not at all a decision by the SEC and that this was an individual decision by the entity.

How this plays out, obviously, is very critical and really goes to your point. And the issue is, if we do have any action by the SEC to essentially validate that decision, *i.e.*, constituting Ether as a security, it would then put our registrants, our exchanges who list Ether as a futures contract sort of in noncompliance of SEC rules as opposed to CFTC rules.

So I am working with Chairman Gensler. We are working with his office. We are working with the agency to ensure that whatever steps are taken are deliberate, that we are involved, and that they understand certainly what the consequences would be if there was a decision by the agency to determine that Ether was a security. As of now, we need to preserve the integrity of our markets and understand that this is a years-old decision where these markets are functioning well under the decision and the conclusion that Ether is a commodity.

The CHAIRMAN. Thank you very much.

I now recognize the distinguished gentleman from Georgia, the Ranking Member, for 5 minutes' worth of questions.

Mr. DAVID SCOTT of Georgia. Thank you, Mr. Chairman.

Chairman Behnam, I want to talk about a couple of things here. First of all, I want you to address the dangers of continuing after 10 years this whole failure for the CFTC to be reauthorized. Can you tell us why this is a terrible mistake and why we need to move on it right now?

Mr. BEHNAM. Ranking Member Scott, thanks for the question. And I think I am going to highlight something you said, which was the issue we had a few years ago and that this Committee addressed very deliberately and intentionally and successfully with the Europeans. I think it is easy for us collectively in this room to realize, yes, the agency hasn't been reauthorized for now 16 years. But the agency door is still open, we still fulfill our mission, and we do a really good job at it.

But there is an external issue in terms of folks overseas and perhaps folks not in Washington seeing that the agency is not reauthorized. And I think that sends a bad signal not only from the Committee's perspective, but from the agency's perspective that it is not viewed as important as it needs to be. So I think externally we have to reauthorize the agency to ensure that the public, the investing public, that our international partners understand that this Committee and this Congress takes the derivatives markets and the U.S.'s supremacy in derivatives markets very importantly, that we actively look at these issues, that we are actively thinking about the statute and the policy and how our markets are evolving and how we need to evolve with the marketplace and others across the globe. We have the deepest, biggest markets in the world, and I think we all want to keep it that way. And reauthorization is one step to ensure that that condition remains the same.



Mr. DAVID SCOTT of Georgia. Well, I can tell you, I have been in touch with our friends at CME and ICE clearinghouses, and they are very much concerned about this issue. And I know a number of us, both Democrats and Republicans, are very concerned about this, as we have fought this tooth and nail, and we will look to you for any recommendations you can make to us on this Committee of what we need to do to stop this failure to reauthorize the CFTC.

Now, let me also talk about this issue of inadequate funding. You are still suffering from the lack of appropriations. And even in this year, we have not been able to give you the level of funding that you need. Can you please express what this means to your agency?

Mr. BEHNAM. Thanks, Ranking Member. Certainly, as we are all feeling costs going up, this is not unique to individuals or organizations outside of Washington. So whether it is hardware or software for cyber resilience, for IT, for services from vendors and whatnot, we are seeing those costs go up, salaries and expenses related to personnel recruitment, retention, these important things that any large organization has to deal with, ensuring that we have adequate funding to make sure that we can fulfill the mission.

I can tell this Committee with confidence we continue to fulfill our mission above par without a doubt, but as we look forward to the future and the growth of the agency, as we see growth in our markets, as we see new participants, as we see new registration requirements, huge markets coming in, obviously, crypto a huge part of that, this is pulling us in a lot of different directions, requiring a lot of different areas of personnel expertise that we need to be able to fund.

So as you think about our resources—and I appreciate you being dogged about this for many, many years—I think we have to look to the future. And as I said in my statement, this is about national security. This is about us preserving the U.S. derivatives markets as the best in the world. And this is a long-term goal that we need to achieve in order to meet that goal.

Mr. DAVID SCOTT of Georgia. And let me just say, I am very appreciative and very delighted to see you move with your excellent diversity program. But in my short time I have left, you mentioned AI, and you mentioned some good things about it. Let me ask you, do you see some dangers here? As other people and other entities are mentioning, they are all not saying good things about AI unless we are careful.

Mr. BEHNAM. Ranking Member, 100 percent. What I have done—I mentioned this in my statement—we put out a request for comment. This is in my mind a deliberate, intentional way of seeking feedback from the market, from academics, from public interest groups to see how AI is being used in the marketplace right now and how it may be used in the future. And that is both risks and benefits.

I think, as a regulator, we need to be very focused on the risks of AI and what we need to do to preserve the integrity of markets, and that really is the goal. So we are in the factfinding stage right now. All things are on the table in terms of policy advisory or guidance. But it was very intentional that we sought comment and sought input from the public at first to get a better understanding of how artificial intelligence is being used so that we can eliminate

and if, at a minimum, mitigate these risks that can be caused to the financial system and our economy ultimately if AI is not used appropriately.

Mr. DAVID SCOTT of Georgia. Thank you, Mr. Chairman. And keep doing your excellent work.

The CHAIRMAN. I thank the gentleman. I now recognize the other distinguished gentleman from Georgia, Mr. Austin Scott, for 5 minutes.

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

Chairman Behnam, welcome to the House Agriculture Committee. You have a lot of respect from this Committee for personally the work you do and for your agency. I appreciate your bipartisanship and just being a fact-based regulator.

You mentioned safe, strong, effective markets. I couldn't agree with you more. I couldn't agree with you more about our financial system and our economy being a big part of our national security, just as big a part as our military and the State Department is. My concern with kind of where we have gotten here—and I heard you say already that you have personally engaged in discussions with the regulators that proposed the changes. Were you consulted prior to the rules being proposed by the bank regulators, or did they ask you to help with the analysis after they proposed the rules and how they would impact end-users, or did you have to go to them?

Mr. BEHNAM. Congressman, so we were not consulted as the rule was being crafted. I regularly see members of the Prudential Regulators at the Federal Reserve, the OCC, the FDIC. So we have talked about it, sort of, over the course—I knew this was coming because of the Basel requirements and Basel III being sort of on the horizon. But we as an agency were not consulted as the rule was being crafted, and we proactively reached out after reviewing the rule and seeing the potential impacts on derivatives markets.

Mr. AUSTIN SCOTT of Georgia. So you had to go to them?

Mr. BEHNAM. Correct.

Mr. AUSTIN SCOTT of Georgia. Okay. Thank you for that, and thank you for being proactive because it is important that our regulators work together if we are going to have those markets. Are you aware that just, for example, a mutual insurance carrier would be treated differently than a stock carrier under the rule as it is proposed?

Mr. BEHNAM. I am not aware of that specific provision. We could certainly look at it; but, I would think we would want equity in terms of how they are treated, just hearing what your issue is and how it is raised.

Mr. AUSTIN SCOTT of Georgia. That is one of my concerns is that there has to be equitable treatment of competitive companies. I mean, we don't want to benefit one and penalize the other. So I would appreciate if you would stay in touch with them on that. We don't want to put an industry, because of their structure, at a competitive disadvantage. We want the markets to be safe, strong, and effective for everybody.

I want to move on to another issue. Are you supportive of the expansion of Federal Reserve deposit accounts for all CFTC-regulated clearinghouses?

Mr. BEHNAM. Congressman, I have stated this before. I think master accounts at the Fed would provide a sense of financial stability for our CCPs, our clearinghouses. I mentioned this earlier. Since 2008, we have seen a huge growth in our markets, which ultimately means there is risk being concentrated in clearinghouses. We do have two clearinghouses that are designated as significantly important, which gives them access to the master accounts at the Fed, which provides stability and certainty for the funds that they collect from customers and other users. So I do think it would be an important policy change I have stated in the past, and I continue to advocate for it.

Mr. AUSTIN SCOTT of Georgia. Okay. So in your opening testimony I think you said that 60 percent of the trades were through the largest five. Is that correct?

Mr. BEHNAM. Sixty-two percent of customer money is in the largest five clearing members.

Mr. AUSTIN SCOTT of Georgia. Sixty-two percent?

Okay. How much is in those two?

Mr. BEHNAM. The top two?

Mr. AUSTIN SCOTT of Georgia. Right.

Mr. BEHNAM. I would have to look at the data.

Mr. AUSTIN SCOTT of Georgia. Okay. All right. I just think that is something we need to do. I mean, it should be simple. It is the safest place in the world for the money to be held, and I am a little disappointed that we haven't been able to get that done yet, as I am disappointed that we haven't yet been able to get the reauthorization done.

Just one final question as I am running down, just what are you hearing are the concerns from the end-users that you know?

Mr. BEHNAM. Well, it really does come down to access to markets. And this goes to my statistic, which I raised in response to the Chairman's question where we have seen a reduction of clearing members, of FCMs, from 177 20 years ago to about 64 right now. It is not like the largest ones are leaving the market. It is the smaller FCMs. It is the FCMs that facilitate and service smaller businesses, agricultural stakeholders, energy stakeholders. So as much as that is a key component of our constituency, as it is yours, I want to ensure that the market is fair in offering these risk management services to all participants.

And right now, we are seeing that business being concentrated in the largest banks, significantly important financial institutions, global banks. And you can imagine because of economies-of-scale and because of costs like capital and otherwise, it doesn't necessarily become a viable business model to provide a co-op from Georgia a futures servicing business. So we need to ensure that diversity of futures commission merchants so that all American businesses, small and large, can have access to derivatives markets to manage risk.

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

The CHAIRMAN. The gentleman yields back now.

I am now pleased to recognize Ms. Adams from North Carolina for 5 minutes.

Ms. ADAMS. Thank you, Mr. Chairman. And thank you, Ranking Member, for hosting the meeting today, the hearing. Chairman

Behnam, thank you for testifying today. It is good to see you again. I do want to follow up on an issue that you spoke about a bit last time when you came before the Committee. The Dodd-Frank Act added a new core principle, diversity of board of directors for future exchanges or designated contract markets. Under the core principle, a DCM, if a publicly traded company, shall endeavor to recruit individuals to serve on its board of directors and its other decision-making bodies as determined by the Commission from among them, reflecting a board and culturally diverse pool of candidates. And so as I understand it, it has been more than 10 years since this provision was implemented by the CFTC. So after all of this time, are you seeing a greater diversity in boards of directors at DMCs?

Mr. BEHNAM. Congresswoman, thanks for the question, a very important one. And as you stated, this is a priority of mine. I would say since 2010 we have seen an improvement, but there is certainly more work to be done. And I am hopeful that the work that we are doing at the agency by hiring a Chief Diversity Officer, having a DEIA strategic plan is going to further improve the diversity of boards across the industry and our stakeholders. But ultimately, that is their decision, and we are doing what we can at the CFTC to make sure that we are casting a wide net for individuals and professionals across the country.

Ms. ADAMS. Thank you. So how does diversity and leadership at DCMs compare with the leadership of other publicly traded entities regulated by the CFTC that operate under the Commodity Exchange Act core principles?

Mr. BEHNAM. Congresswoman, I would probably have to look at the specific number of DCMs, the designated contract markets, and the other participants and identify the diversity of their boards. It is not something I necessarily look at regularly, but I am happy to look at that and work with your office to get you some statistics, again, ensuring that that core principle is complied with from Dodd-Frank.

[The information referred to is located on p. 62.]

Ms. ADAMS. Right. Well, let me switch gears for a moment to climate change. I was glad to see the Commission issue its proposed guidance regarding the listing of voluntary carbon credit derivatives contracts. But critics wonder whether the CFTC should be the source of this guidance. So could you explain the justification for issuance of this guidance? And was the CFTC getting questions on standards, or were there concerns about the wide array of various standards for voluntary carbon credits?

Mr. BEHNAM. Thanks, Congresswoman. So we do have listed futures on voluntary carbon credits on our registered exchanges. So just by that fact, the reality that we have listed futures, we then have, as an agency, as a regulatory body, an interest in the health of the underlying market. Just as we would in a corn contract, we want to make sure the underlying cash market is healthy and free from fraud and manipulation.

Concerns have been raised about the voluntary carbon credit market for a number of years. There have been issues around integrity and the sort of trustworthiness and intention of some of the registries. So the intent from an agency perspective is really to ele-

vate the diligence that the DCMs, which you mentioned earlier, the exchanges use when they list CFTC-regulated futures contracts. We want to make sure those contracts listed on our exchanges are free from fraud and manipulation and fairly represent price discovery, bids and offers, and supply and demand. And that is why we think and we are hopeful that guidance will send a signal to the exchanges, the regulated exchanges, that there needs to be a little bit of diligence as they start to continue to list contracts around voluntary carbon credits.

Ms. ADAMS. Right. Okay. Well, that was the second part of my question in terms of what the expectation would be in terms of the benefits of providing it. So thank you very much. Thank you very much for being here, and thank you for your responses and for the work that you do. I appreciate it.

I yield back, Mr. Chairman.

Mr. AUSTIN SCOTT of Georgia [presiding.] Thank you, Ms. Adams.

The chair now recognizes Mr. Mann, from Kansas, for 5 minutes.

Mr. MANN. Thank you, Mr. Chairman.

And, Mr. Chairman, thank you for being here. Good to see you again.

I represent the 1st District of Kansas, which is a good bit of the western  $\frac{2}{3}$  of Kansas. We produce a lot of beef, a lot of wheat, a lot of sorghum. We are the number-three ag-producing district in the country. Our ag producers work hard every day to deliver the food that feeds all of us and people around the world. And I appreciate that you oversee the markets that help our ag producers manage risk. When I think about agriculture, such a risky business, and we can take a little bit of the risk out of it by being able to hedge some of—not all of—some of the market risk, which I appreciate that.

Early March, 4 years ago, the COVID pandemic was starting to hit. I think most people remember where they were when the NCAA basketball tournament got canceled. We have to remember that not a single ag producer in my district around the country took time off. They continued to go the fields, feed their cattle, do the work that they do to feed us. But here we are 4 years later, and we still have a lot of people at CFTC and other government agencies for that matter that still have not returned back to their offices for work. Could you comment on that, and specifically, what I should tell my ag producers who are working every day when they find out that there are folks at the CFTC that haven't even returned to their office yet? Any thoughts on that?

Mr. BEHNAM. Yes, Congressman, I would say first thing I would tell them is that the Chairman of the agency agrees with you that I think it is extremely important that we are together, we are in the office, and we are collaborating and we are discussing issues that are extremely important to the American economy and all Americans, farmers, ranchers, and others.

Just to give you a little bit of a sense of our current posture, I have about 700 full-time employees. I have about 180 managers, and the managers, by my request, are coming in 2 days a week. I call it my quasi-cabinet, the leadership team, which is about 10 to 15 individuals, are coming in 3 days a week. My direct team and myself, we are in 4 or 5 days a week. There is a large portion of

the agency approximately, 500 individuals, who are either a part of the National Treasury Employee Union, the NTEU, or not necessarily part of the union, but not managers either. And that is where we are in ongoing negotiations to determine essentially the future of our work posture at the CFTC.

My position and my strategy from day one, which I would say was probably late 2021, maybe early 2022 when folks started shifting back to work in person, is to play the long game. And I hate to use sort of a phrase there, but the impact that—the decision that is going to be made that is going to determine the work posture will be one that will likely have an impact for decades to come. So I haven't wanted to rush it.

We are negotiating with the union and its representatives in good faith. I am mindful and very much support being in the office and being together and collaborating, understanding the risks that our markets have and having to have those bits of communication, whether it is near a water cooler or by our office. But I am also mindful of the current work environment, that hybrid does work, and that we have to give some level of balance. So I am trying to strike the right balance, bring folks back, but negotiate in good faith with patience and ultimately come up with an outcome that is suitable for everyone.

Mr. MANN. Yes, and I appreciate that, appreciate your take on the issue. Feel free to let the union know as you are negotiating that there is at least one Member of the Agriculture Committee that is very concerned about this, and I know there are others as well. I would remind them that they are overseeing markets that you have people that literally lay it on the line 7 days a week, and it is hard for them to understand when folks are in the office 0 days, 1 day, 2 days a week. It just makes no sense.

With my remaining time, I would like to quickly touch on Basel III, which I know was mentioned a couple times here. Basel, Basel, bamboozle. When you name something—I know you didn't name it. When you name something Basel III Endgame, it sounds like an Avengers movie, right? I mean, it causes concern and skepticism, as it should, across Kansas and across the country. Any comments? I hear regularly from folks that are concerned that these proposals are going to drive banks to scale back or even abandon clearing services altogether. Any thoughts on what your agency is getting ready to do as this hits and how do we pick up the pieces and make sure that markets stay intact and we continue to deliver the risk management tools that our ag producers need?

Mr. BEHNAM. Congressman, thanks for the question. My intention from the start has been to put together a team of experts at the CFTC and to go work with our fellow regulators at the Fed, at the OCC, at the FDIC and to help inform them the best we can about what we are seeing in our markets, the changes that have occurred—I mentioned this to the Chairman—the concentration of participants and players, the lack of access and services for smaller participants, and the importance of the diversity of participants in this pool so that farmers and ranchers in Kansas can have access to futures markets.

You hit the nail on the head when you said the futures markets are not going to eliminate all of your risk, but it can be a part of

a larger toolbox, some of the commodity programs over at USDA, to mitigate risk and reduce it to a point where that farmer can go into planting season every March or April and feel confident they are going to come out during harvest on the right end of the season.

Ultimately, we have to make sure that banking regulators understand what we are seeing in our markets, that there is an incentive to clear, and in order to clear, we need FCMs and brokers offering these services to all constituents. So we will continue working with them as the prudential, the banking regulators have finalized a rule, and we will keep harping on the importance of derivatives markets, clearing, and making sure that we are not laying on unnecessary burdensome rules that will essentially create further concentration and ultimately increased risk in the markets.

Mr. MANN. Which will lead to higher food costs for all of us. Thank you, Mr. Chairman. And thank you for being here.

Mr. AUSTIN SCOTT of Georgia. The chair now recognizes Ms. Salinas from Oregon.

Ms. SALINAS. Thank you. Thank you to the Chairman and Ranking Member for today's hearing. And thank you to Chairman Behnam to answer the Committee's questions and really to the whole Commission and its staff. For all the hard work you are doing, I know we are in challenging times.

I want to just start off by asking about something I am particularly concerned by, the rise of political event contracts or, in simpler terms, political gambling. I understand that the legal battle surrounding the use of a no-action letter that was issued to the platform PredictIt and then subsequently withdrawn is still underway, but I don't want to address the issue of no-action letters. Instead, I want to focus on how we prevent these kinds of platforms from taking root in the first place. In my view, public elections should not be subject to the influence of betting markets.

And so to that end, how does the CFTC intend to prevent sites like PredictIt from establishing themselves in the future?

Mr. BEHNAM. Congresswoman, thanks for the question, extremely important one, as you point out. We are sort of dealing with litigation on multiple fronts, so I will be mindful of what I say. But ultimately, there is a provision in the statute, section 5, which prohibits certain types of contracts, around war, terrorism, assassination, anything that is illegal under state or Federal law, or anything that is not in the public interest, and also gaming. And that is really the tricky issue that we have been trying to navigate.

The Commission has said that political event contracts are illegal under the law, under both the state prohibition and the gaming prohibition. But obviously, there are differences of opinion. And, our decisions to prohibit these contracts have been challenged in court. So, my goal over the next couple of months—and it has been one that has taken quite some time because you can imagine producing a rule is quite complicated. But it is to further clarify the existing rules that we have to ensure that no new participant or company simply just starts listing political event contracts.

At this point, we can't stop a company from organizing and establishing an exchange. They have to comply with the law. There will be an enforcement action if they don't. But ultimately, there

has just been a bit of confusion, I would say. And because of the entity you suggested, the agency has issued no-action letter relief on two instances in the past 30 years. But it has been very, very specific in what the Commission has allowed, not-for-profit and essentially data-gathering for academic purposes. We are seeing a shift away from academic purposes and not-for-profit such that folks want to do for-profit entities that are using elections as a means to have an event contract-type product. So we are working towards a rule, clarifying what we believe needs to be clarified so we don't see these contracts in the future.

Ms. SALINAS. In your view, would additional Congressional clarification help?

Mr. BEHNAM. Always, yes.

Ms. SALINAS. Thank you. Thank you. Now shifting a little bit, another element of the ever-changing landscape at CFTC is the rise of artificial intelligence. In your testimony, you noted CFTC's Office of Customer Education recently issued a customer advisory warning about AI-driven fraud and scams. For people back home in Oregon's 6th District, could you expand on what the Commission is observing in terms of AI-driven fraud and the scale of the threat it poses?

Mr. BEHNAM. Thanks, Congresswoman. At this point, it is a bit early. And we are aware through really anecdotal conversations that artificial intelligence is being used by some of the more sophisticated, well-resourced entities. But we also know that it is growing, and it is going to grow beyond these larger financial institutions, to potentially many registrants, if not all registrants, given the sort of ubiquity that AI seems to be having in our culture and our society these days.

So my intention was to put out a request for information to get a sense of what is going on in the market, how registrants and participants are using it, what potential risks there are, and what potential benefits there are, and from that bit of information gathering, potentially use it as a tool to produce policy through a rule, through an advisory, or through guidance.

You can imagine a lot of registrants kind of keep this close to their chest. They don't necessarily want to share what they are doing or how they are using it. They view it as intellectual property, which in many senses, I understand and I agree with, but as a regulator, we need to see the whole playing field. We want to get a sense of what they are doing, making sure they know what the AI is, the artificial intelligence program is, and how it would be impacted or how it would react under different scenarios, and ultimately, make sure that we are continuing to do our job. But ultimately, we want to start right now at information gathering and then move forward at a good cadence to move quickly, but also to move cautiously so we don't get ahead of ourselves and do something that really wouldn't apply to the way the technology is being used.

Ms. SALINAS. And thank you for your comments on just balancing that investigation around risks and benefits because I do think, yes, there is both to be had there.

Mr. BEHNAM. Yes.

Ms. SALINAS. Thank you.



Mr. BEHNAM. Thanks.

Ms. SALINAS. I yield back.

Mr. AUSTIN SCOTT of Georgia. The chair now recognizes Mr. Rose, from Tennessee, for 5 minutes.

Mr. ROSE. Thank you, Mr. Chairman. I appreciate you holding this hearing, the Chairman holding this hearing, and appreciate our witness for being with us today.

Chairman Behnam, considering the potential disruptions of quantum computing in derivatives markets such as the ability to break current encryption methods or to solve complex optimization problems that could be exploited for manipulative trading strategies, how is the CFTC preparing to address these challenges?

Mr. BEHNAM. Congressman, thanks for the question. Quantum and AI are in many respects related. Quantum is going to pose a lot of issues and challenges. I think there are going to be benefits, but it is also going to disrupt markets and cyber issues and sort of protection of data. I have looked into this a bit over the past actually couple of months. And this really led to what I mentioned to the Congresswoman, the issuance of this request for information about artificial intelligence. And, if you have a chance, if you look at the document, we asked a series of questions. I think they were very well-crafted and very intentional in how we crafted them, going pretty deep in terms of technical nature, but also wanting to get a better sense of how market participants are using AI and how technology is driving their business operations and what we need to do as a regulator to address those risks or the opportunities that might arise.

In some respects, our core principles already address these issues. One could look through our core principles and think about governance and markets being free from fraud and manipulation and other core principles that really are the driving engine of our statute. But this technology is so novel, can pose so many unique risks, but also opportunities that we really have to take a very unique look at what we need to do as an agency and potentially this Committee legislatively to address the adoption, the growth of AI, and how it might impact our markets.

Mr. ROSE. Do you think the Commission has sufficient resources to stay abreast of this quickly changing environment?

Mr. BEHNAM. I would say so. Right now, I think the most important thing I will say about resources—and this has been an observation I have made over 15 years being around the agency in a policy role—is consistency and certainty are the most important things. If I have a sense as the head of the organization that we are going to have this budget for the next couple fiscal years, whether it is increasing at a small clip or a large clip or not at all, it provides me that certainty so I can allocate resources towards these types of things.

AI, cybersecurity, IT infrastructure, these are going to be the components that drive the large costs, in addition to salaries, of the agency into the future. And if we are going to move with the market, we need as much certainty around our budget going forward so that we can have that ability to recruit the best talent, to retain the best talent, and ultimately build a diverse workforce.

Mr. ROSE. Thank you. I appreciate that. I would like to briefly discuss a recent news story that detailed a case of insider trading. An individual overheard their spouse's work conversations while both were working from home and used that information to trade stocks based on a planned acquisition. The case involved the oil company British Petroleum. Considering a significant portion of the CFTC's workforce is currently working—or teleworking, that is—can you please detail the specific policies and procedures in place to safeguard sensitive data accessed by CFTC employees who are working remotely?

Mr. BEHNAM. Thanks, Congressman, important question. And, the same requirements that we have around retention of confidential information apply at home. We have sent out periodic notices to staff going back to 2020 when we went into full remote posture after COVID hit 4 years ago to ensure that your work environment is safe. And in this particular instance, which I am familiar with, that spouse, family, friends are not becoming privy to any information that is confidential.

So we work hard with it, constantly reminding staff of the importance of the information they have, that it is a violation of Federal law to provide information, either to trade on it or to leak information. I do that quite often, actually. But it is something that we continually drumbeat and ultimately drives me towards what I said to Mr. Mann is the importance of being back in the office and feeling that sort of continuity of work, office, and collegiality among colleagues.

Mr. ROSE. Sir, we don't have much time left, but are you aware of any incidents of CFTC employees accidentally disclosing or misusing confidential data while working remotely?

Mr. BEHNAM. I am not aware of any information being leaked by any staff.

Mr. ROSE. If you wouldn't mind checking with your team and getting back to us if there had been any examples of that?

Mr. BEHNAM. Of course.

Mr. ROSE. Thank you, and I yield back.

The CHAIRMAN [presiding.] The gentleman from Tennessee yields back. I am now pleased to recognize the gentlelady from Illinois, Congresswoman Budzinski, for 5 minutes.

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

Last summer when the Agriculture Committee came together to mark up the FIT for the 21st Century Act, I was glad to introduce two amendments to safeguard consumers. One of my amendments was written to close loopholes that threaten consumers' rights and to protect against market volatility. It provides bankruptcy support for companies and individuals and allows customers to access their investments in the event of a collapse, protecting the little guy, the small-time investors who would otherwise be unable to access those funds. I am very glad to say that that amendment was agreed to in Committee, and I am grateful to the Chairman and his staff for the bipartisan work we did here.

Chairman Behnam, the joint rulemaking requirement for the FIT for the 21st Century Act poses a number of implementation concerns, from differences in opinion on whether additional authorities

are needed to size and funding. should Congress move forward with a bill that addresses only the CFTC's expanded regulatory authority needs? And assuming sufficient funding is included, what would the time frame and logistics of implementation look like from your perspective?

Mr. BEHNAM. Thanks, Congresswoman. I have said this before, and I will say it certainly again, we need to fill the gap in crypto regulation. I think, as I am sure you are reading and others on the Committee, Bitcoin is again hitting all-time highs. It feels like every day I read in *The Wall Street Journal* or the *Financial Times* or *The New York Times* or *The Washington Post* that there is some storyline about crypto and that it is back from 2022. This notion of crypto going away I think is just a false narrative and potentially it wouldn't be an understatement to suggest that there is another period of irrational exuberance going on with these price swings and the volatility.

So I think this just validates the fact that we need to act, Congress needs to act to fill this gap, specifically around Bitcoin, which I think clearly is a commodity. And, as I said to the Chairman, Ether as well. These are two of the largest tokens, making up approximately 60 to 70 percent of the whole market capitalization. In terms of implementation, with funding, I am confident we could use the bill and the framework—which I am very familiar with the FIT bill at this point—and the expertise we have at the agency to implement a regulatory structure within 12 months.

Ms. BUDZINSKI. Great, thank you. And I will yield back. Thanks.

The CHAIRMAN. The gentlelady yields back now. I am now pleased to recognize the gentleman from Nebraska, Mr. Bacon, for 5 minutes.

Mr. BACON. Thank you, Mr. Chairman. I want to use this opportunity to yield to my friend from Oklahoma.

The CHAIRMAN. The gentleman from Oklahoma is recognized.

Mr. LUCAS. Thank you, Mr. Chairman, and I thank my colleague from Nebraska.

Chairman Behnam, thank you for appearing before the Agriculture Committee today. During our discussion when you were last before the Committee, the Basel Endgame proposal had not yet been proposed by the banking regulators. And since then, we have seen an overwhelming response to the negative consequences of the proposal, particularly to derivative end-users. The proposal would have significant consequences for the health of the U.S. derivatives market and would make hedging more expensive for market participants like farmers and ranchers.

I just had the chance to speak with the Federal Reserve Chairman, Mr. Powell, on this topic over at the Financial Services Committee, and Chairman Powell expressed that he was willing to give these concerns a closer look. Chairman Behnam, would you be willing to assist the Fed in taking a closer look? And has the CFTC been asked by the Fed board to offer feedback?

Mr. BEHNAM. Thanks, Congressman. Certainly, we are willing. We have been quite active, me personally with my colleagues at the board level, but also staff at the staff level, to share some of these concerns around what I have sort of determined as the shifting market structure and environment, which is fewer FCMs, clearing

brokers, less services for small ag and energy producers in Oklahoma and across the country, and making sure, as you remember well, after 2008 that we are incentivizing clearing. In order to have a healthy clearing environment, we need all the parts together, and we want to make sure that we are not creating unnecessary barriers to clearing and clearing services for end-users.

Mr. LUCAS. Congress has a long history of broad bipartisan support for not disadvantaging end-users, including in Dodd-Frank, where I served on the conference committee. Unfortunately, the Fed is proposing to undermine the work done by Congress and this Committee and to cause disruption in the U.S. derivatives market that your agency regulates.

I also had the opportunity to discuss with Chairman Powell how the proposal will disincentivize banks from offering clearing services. As you know, Chairman, in Dodd-Frank, Congress mandated central clearing as a way to reduce risk in the system. I know you have expressed concerns about the decline in the number of banks that can clear derivatives for end-users, which has made it harder for end-users to find a bank to offer the service. Chairman Powell also acknowledged this impact is something he is looking at in the Basel Endgame proposal. How do you see the proposal impacting the willingness of banks to clear derivatives for end-users? And will you commit to working with the Fed to fix this?

Mr. BEHNAM. Congressman, the clearing business has very tight margins. And with low interest rates historically, I know that has changed over the past couple years and the costs related to clearing. There have been a number of clearing members that have left the business. I stated earlier to the Chairman, 20 years ago, we had 177 FCMs. Now, we are down to 64. We have concentration in the top five clearing members, which are the largest banks, of over 60 percent of all customer money. So, as you point out from 2008 in Dodd-Frank, we need to incentivize clearing. Clearing is a risk-reducing function of the market, and I think we need to recognize that risk-reduction function to ensure that we incentivize participants on the clearing side and then end-users from using these markets.

Mr. LUCAS. Mr. Chairman, at the same time that this is happening, the Securities Exchange Commission just finalized a rule in December that will increase clearing in Treasury markets. This will have a substantial impact on market access. Chairman Behnam, with the current shortage of firms available to provide clearing services to agriculture end-users, do you see this being an additional stress on the Treasury markets?

Mr. BEHNAM. It is potentially an additional stress. We would have to see how the rollout of the SEC is implemented, a very different market, obviously, as you know, coming from the Financial Services Committee, but ultimately, we need a diverse pool of clearing members. And right now, we are seeing a concentration of clearing members in the largest banks. Historically, we have had non-bank clearing members. We have had other small FCMs servicing end-users, and we are just not seeing that population of clearing services like we did even 10 years ago, let alone 20 years ago.

Mr. LUCAS. With my remaining time, I would just like to reiterate that the futures markets play an important role in price sta-

bility for consumers and businesses. And, Chairman Behnam, could you offer any final thoughts on the importance of protections in the Dodd-Frank Act for firms that use derivatives hedging?

Mr. BEHNAM. Commercial end-users, as you noted, are very much prioritized in Dodd-Frank, creating exemptions in part to incentivize the use of markets, but ultimately to understand that commercial end-users typically do not present risk like a financial institution. And I think that treatment needs to remain the same as we think about policy going forward.

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

The CHAIRMAN. The gentleman yields back.

I am now pleased to recognize the gentleman from Illinois, Mr. Jackson, for 5 minutes of questions.

Mr. JACKSON of Illinois. Thank you so much. I was delighted once again to have you and your participation. Thank you, Mr. Chairman.

The concentration in banks, if you could further elaborate on the challenges that you can see that could be unintended that we should step in front of now to make sure there is sufficient liquidity in the market. Any thoughts, Mr. Chairman?

Mr. BEHNAM. So, Congressman, thanks. It is an extremely important question because we think about policy and the shift towards clearing and the benefits of clearing which I am a huge advocate for, and we have seen the benefits of clearing and mitigating risk and neutralizing risks. But ultimately, over the past 15 years, nearly since Dodd-Frank, we have seen concentration. We have seen a reduction in clearing members, as I mentioned to Mr. Lucas. And ultimately, that puts a higher point of pressure on just a few large banks. And as we think about policy going forward, whether it is Basel III or the capital surcharge, I think this has to be a serious, intentional point of debate is to ensure that we are stopping this trend that has been going on for the better part of 20 years.

I don't think it is a surprise that we are seeing concentration in markets. We see them across different industries. But ultimately, we have to strike the right balance where we are seeing enough participants, especially in the clearing ecosystem, so that not only that risk isn't concentrated in just a few participants because if one or more were to fail, you can imagine the consequences would be dire for the financial system.

But ultimately, it is for smaller constituents who use futures markets to manage risk. These larger institutions are not going to necessarily have an economic incentive to provide these services, these types of risk management services to smaller participants, and this is really who all of you serve and we serve. We want to make sure America's farmers, ranchers, energy producers have access to futures markets. That makes prices stable. That makes our economy strong for all consumers across the country.

Mr. JACKSON of Illinois. Once again, thank you for your candor, your consistency, and your clarity. I yield back. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman yields back.

I now recognize the gentleman from California, Mr. Duarte, for 5 minutes.

Mr. DUARTE. Thank you, Mr. Chairman. Thank you, Chairman, for being here to answer some questions.

I am mainly interested in my questioning on the regulation of cryptocurrencies in the Chicago Board of Trade, and I also have concerns of regulating them in the SEC, which I may get to later, realizing that that is not really your responsibility.

When a commodity is listed on the Chicago Board of Trade, what are the primary requirements for it to be eligible for listing?

Mr. BEHNAM. Well, above all else, it needs to be a commodity. The definition of *commodity* is quite broad. And it is essentially in some respects a non-security. There are enumerated commodities, many of which this Committee knows that are physical commodities, but other types of commodities that could be services, rights, or interests. This is just a regurgitation of the statute.

But ultimately, there has been a process that has been built over decades where the exchange—and in the case, you are using, the Chicago Board of Trade—looks at the statute, our statute and the regs, the implementing regulations of the law, and essentially complies with the requirements around listing a contract and providing specifications. And then—

Mr. DUARTE. Is there a document that underlies these qualifications like when Bitcoin or Ethereum were listed on the Chicago Board of Trade as derivatives? Were there documents that suggested what the criterion were and how they how they met those criterion?

Mr. BEHNAM. In some respects, the Bitcoin or Ether listings on the futures exchange were no different than the steps that needed to be taken or have been taken to list an agricultural or energy futures contract. It really just starts with that definitional question is whether or not the product, the underlying product is a commodity. If you can answer that question in the affirmative, everything else kind of falls into place.

Mr. DUARTE. Do you take interest in, is it a broadly held commodity, is their transparent diversity of producers? Are there transparent diversity of buyers and sellers?

Mr. BEHNAM. Yes. So from an exchange perspective, an exchange is never going to list a contract that it knows will not succeed, so they want to make sure they have a sufficient amount of buyers and sellers and that the contract will succeed in that respect.

Mr. DUARTE. Have there been commodities that failed to be qualified for listing on the exchange?

Mr. BEHNAM. I don't think we would have ever gotten to a point where it would have been listed if there was a question about the definitional structure of the underlying product. We would largely answer that question in the affirmative with confidence before the exchange self-certifies or it seeks approval from the agency to list a contract.

Mr. DUARTE. So with Bitcoin, Ethereum, these cryptocurrencies, what is it that is being sold? What is it that it meets the essence of a commodity, a physical commodity, or like an interest rate swap derivative that has a real-world business purpose? What is it at the end of the day that qualifies these things to be sold as something other than Beanie Babies, pop-tops, baseball cards?

Mr. BEHNAM. So in the cash market, in the underlying market, which is what I take your question to be really the interpretation of what it is, is less a physical commodity, which are enumerated in the statute, whether it is corn, soybeans, or a metal—gold, silver—or an energy product like natural gas or fuel. It is mostly used in the counter, the negative, it is not a security. And if it is not a security, then it is a commodity, in which case, the analysis has to take place to make a determination that it is not a security, which is frequently the Howey test, whether it is an investment contract. If you can't answer that question in the affirmative, that it is not a security, then it becomes a commodity.

Mr. DUARTE. So anything that seeks to get on the Chicago Board of Trade that can't be categorized as a security, meaning maybe it is a common stock that has dividends, earnings per share, forward-looking statements, a board, a management team book value.

Mr. BEHNAM. Yes.

Mr. DUARTE. Anything that doesn't meet the qualifications of a security can be listed on the Chicago Board of Trade simply because it is not a security?

Mr. BEHNAM. So differentiating a Beanie Baby from the company that produces Beanie Babies and has a board of directors and an executive team and *et cetera*, like that share of the company that it is used to invest or to raise capital is a security, but the actual product itself, in this case, the Beanie Baby is likely a commodity.

Mr. DUARTE. Yes.

So our current legislation to regulate cryptocurrencies begins with the cryptocurrencies being traded as commodities, but then elevates the currencies themselves, not the company, which you just elaborated very clearly, to be traded as a security. How is a cryptocurrency in your mind, realizing that you are a commodities guy, ever going to meet the standards of a security?

Mr. BEHNAM. So you can imagine that there are cryptocurrencies, and this happened certainly 4 or 5 years ago. We will see if it starts again, highly unlikely, where a group of individuals tries to raise money, and in exchange for raising fiat, capital, whether it is dollars or some non-U.S. currency, issues a token, a cryptocurrency, as opposed to a traditional share of stock, which we are accustomed to in traditional equity markets. It is in that situation where that group of individuals would raise money and use that money to develop some sort of software or protocol that you could interpret that token to be a security.

Mr. DUARTE. But it has no share issuance.

It has no board of directors. It has no management team. It has no earnings per share. It has no book value. It is simply a broadly traded issuance of crypto. It really doesn't match any of the tools available to the SEC to regulate forward-looking statements, insider trading. There are a lot of gaps, in my opinion, both on the commodities exchange, as well as the SEC, to treat cryptocurrencies as either commodities or securities. And I think we are shoehorning here to try and fit them into regulatory schemes and give them credibility that they don't deserve.

Mr. BEHNAM. Congressman, I don't disagree with you on the former part, that we are shoehorning to an extent. I think there are some points which are more clear than others. But given the

nature of the technology and what I have observed over 7 years at the CFTC, it demands legislative change. I would disagree with you in part on the second part of your comment. Legitimacy is neither here nor there from my perspective as a regulator. What I have observed is a market evolve, develop, and see extreme amounts of adoption by retail investors. And I have a responsibility to protect those investors, and I need the tools to do that.

Mr. DUARTE. Well, protecting the investors is accomplished by giving credibility in a regulatory scheme that has failed in many ways to provide investor protection.

Mr. BEHNAM. Well, I mean, we can look at the history of Bitcoin right now and where we are today, and the fact of the matter is there are investors who continue to want exposure, both institutional and retail, to Bitcoin. So for me to step back and say I don't want to legitimize it, that is an option, but ultimately, people are going to get hurt. They are going to lose money. And I feel like I need to use the tools I have—

Mr. DUARTE. Well, there is nothing “there” that is going to cause people to lose money.

The CHAIRMAN. The gentleman's time has expired.

Mr. BEHNAM. That is a subjective—

Mr. DUARTE. Thank you, Mr. Chairman. You have been very generous.

Mr. BEHNAM. Thanks.

The CHAIRMAN. The gentleman's time has expired. I now recognize the gentleman from South Dakota, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, sir. First off, Mr. Chairman, I would observe that you have exhibited great leadership over the course of the last year, as we have really been trying together on a bipartisan basis to plug these gaps that you and Mr. Duarte were talking about. We do need to plug those gaps. We do need to fill this in, so thanks for your leadership there.

Number two, I grew interested in Mr. Mann's line of questioning, and I want to make sure I understand this. Your managers are in 2 days a week in the office?

Mr. BEHNAM. The layer of management, which is about 180 people, are in 2 days a week.

Mr. JOHNSON. And so below that, not the 170 managers but the others of the 700 workers, what is the average number of days that they are physically in the office?

Mr. BEHNAM. I mean, if I were to have to take the average of about 500 people, it would probably be less than a single day across the board. Some do come in, but very few come in at all.

Mr. JOHNSON. You mentioned negotiating with the union. Presumably, the previous contract did not lay out any right to remote work days, did it?

Mr. BEHNAM. So we actually, prior to COVID, had a scheme which allowed staff, the union representatives, the union staff to work remotely 2 days per week, but they had to be in the office 3 days a week.

Mr. JOHNSON. I mean, the national health emergency is over. Why doesn't that framework apply today?



Mr. BEHNAM. So a good question, but one, when we went into full telework posture at the start of COVID, the negotiation and the contract had to essentially be rewritten such that there were certain rights afforded the union members when we went into full telework posture. In order to return to either *status quo* or something where the staff were coming in, we would again have to—we are renegotiating the existing posture.

Mr. JOHNSON. Well, Mr. Chairman, I understand your desire to move in a deliberate and long-term, focused fashion. I would just mention to the bargaining unit, they are absolutely behind the times. I mean, I observe a CNBC article that notes that 90 percent of companies say they will return to the office by the end of this year. That article outlines the negative impacts on productivity, collaboration, and employee engagement. And then the Society for Human Resource Managers on their website, they observed that 63 percent of CEOs predict a full return to in-office work. And, Mr. Chairman, I would ask unanimous consent to submit for the record both the CNBC analysis, as well as that from SHRM.

The CHAIRMAN. Without objection.

[The articles referred to are located on p. 55.]

Mr. JOHNSON. So I would just keep doing what you are doing. Let's get people back in the office. Again, the literature is becoming increasingly clear about the benefits of in-person interaction.

And then we have talked a little bit about the importance of these derivative markets to provide risk management tools and strategies for American producers, as well as other market participants. As you look out, say, 3 or 5 years, sir, what changes might evolve in the marketplace that would require additional or new efforts from you all to make sure that we are providing that market predictability and safety?

Mr. BEHNAM. Congressman, thanks for the question. What I have seen and observed—and I made this briefly—this note in my opening statement—it is interesting to look back 20 years, 30 years, and how some technological changes move traders off of floors and onto desks across the country and the globe trading electronically. And then we had different variations of trading techniques that used high-frequency trading, and now we are certainly moving towards artificial intelligence and programmable trading, which I am sure has been around for years.

But then what we are seeing also is structures changing. And I mentioned this in my statement where the traditional—the Commodity Exchange Act is built around unique structures, right, an introducing broker, associated person, a futures commission merchant, an exchange, a DCM, a clearinghouse, a DCO. And we are seeing that compressed, and we are seeing it compressed because of technology. This was an issue we had to deal with FTX a couple years ago, and we had the hearing where they wanted to do non-intermediated leveraged trading, huge amounts of risk and something we had to think about.

But ultimately, and as I have said to this Committee before, we are going to continue to see these new market structures and models be presented to the Commission. And I have said this, that the statute doesn't contemplate these things clearly, both from the benefit side and the risk side, because every time you take out one of

those layers, whether it is the FCM, the introducing broker, the associated person, the exchange itself if you have a direct clearing model, you are taking away some benefit. You are reducing friction, so you might have a quicker executed trade, but if you are taking away an FCM, you are taking away disclosures, customer segregation, other components.

So as I look to the future, and I would hope you as chair of the Subcommittee think into the future, we want to preserve our pre-eminence from a markets perspective. We are seeing changes in the market structure, and we have to be very deliberate collectively about what we want to see in the future. And I am not suggesting this is what we want. I am just suggesting that the statute doesn't contemplate it. So we are seeing a number of new applications saying we want to do it this way; CFTC, approve us. And we are being very cautious. We are being very deliberative. But there are enough gaps in the statute where it is not clear that we have to do things the old-fashioned way, so to speak.

Mr. JOHNSON. Thank you, sir. One more quick comment, Mr. Chairman. As we move toward Fiscal Year 2025 appropriations, I will have, as one of my factors for consideration for each agency, whether or not they have returned to the office in a way that best serves the American people. And I would just ask my colleagues to be willing to do the same.

With that, I yield back.

The CHAIRMAN. The gentleman yields.

I am now pleased to recognize the gentlelady from Connecticut, Congresswoman Hayes, for 5 minutes.

Mrs. HAYES. Thank you. Thank you, Chairman Behnam, for being here today. And I apologize for being in and out. I promise, it is not you, it is me. We have multiple hearings going on, so please excuse me.

The Commodity Futures Trading Commission is tasked with overseeing futures and swap markets, in addition to the emerging digital asset market. Going after fraud and penalizing bad actors is a crucial part of keeping markets stable and protecting the financial well-being of Americans. The Office of Customer Education and Outreach at the CFTC is responsible for identifying fraud trends, producing educational content, and public engagement on a range of issues. Administrative costs for the OCEO are funded by the Customer Protection Fund, which receives money from CFTC's enforcement actions. The Customer Protection Fund can only receive additional funds if its balance falls below \$100 million, and must also grant awards through the whistleblower program.

My question for you today, Chairman Behnam, is how much money from the customer protection funds goes to the whistleblower program and the OCEO respectively?

Mr. BEHNAM. Congresswoman, thank you for the question. An extremely important program, one that has been extremely successful over the years since Dodd-Frank and I think has served customers and Americans quite well. The budget is relatively small compared to the number you just stated, the \$100 million. The legislative language from 2008 unintentionally sort of crafted a little bit of a loophole, which we are trying to fix. And I know Congress has been vocal and sort of active in trying to fix it. But ultimately,

it is just a couple million dollars that we are using for a number of staff which we are growing up. We have also just appointed a new OCEO director, which we are very proud of and very excited about. So this has been a priority of mine to build out that office as much as possible, increase that budget because it does come from the Customer Protection Fund, and ultimately, provide as much education and awareness to Americans across the board.

There are some legal limitations to what we can do with the fund and how we use it. We can't give legal advice, obviously, but we want to just get as much information out about the risks of our markets and some of these scams that folks are seeing on the internet and other digital means.

Mrs. HAYES. Yes, thank you. Trust me, I am from Connecticut, and every time I run into Senator Dodd, this is the conversation. In 2020, the Government Accountability Office found that in the event the Consumer Protection Fund has insufficient funds to cover the whistleblower program or the OCEO, staff must be furloughed until it can be sufficiently replenished. This would mean that CFTC's efforts like recent advisories on online romance fraud and artificial intelligence scams would not move forward.

In your testimony, you pointed out the need for a legislative fix to address permitted uses of the Customer Protection Fund by the Office of Customer Education and Outreach. Can you tell us, how are education outreach funds limited by current law? And what specific changes would you recommend that Congress enact to improve the work of the Office of Customer Education and Outreach? And what would your agency be able to accomplish with greater flexibility over the Customer Protection Fund?

Mr. BEHNAM. Thanks, Congresswoman. Certainly, the fix, which you mentioned, is the number one priority because we have had—it is the success of the program which has been its Achilles heel, which is great to say, but also painful because we, over the past couple years, have issued such large awards to whistleblowers that it has immediately drained the fund before it could be replenished with new enforcement fees. So we would just need to make a small fix to ensure that there is always money there so, as you pointed out, no staff are furloughed, going forward.

And you also point out a very important—a second point about the limitations of who we can go out to and how we can use these funds to provide advisories, to provide guidance, and to provide information to customers. We have been working with your Committee staff to make some very discrete technical changes to the statute so that it could expand the scope of who we can talk to and how we can use the funds in a broader, more comprehensive way. I think it is going to benefit everyone.

And, as you know, as you mentioned earlier, we are just seeing so many different venues for information to get out to consumers internationally, domestically, and it is unfortunate, whether it is crypto or traditional markets, a scam is a scam, and the scammers are out there, and they continue to use digital and other means to steal money.

Mrs. HAYES. Well, thank you. And I appreciate your testimony today. And I think another important point to make is that even the most well-meaning legislation, when we find out that there are

unintended consequences of that legislation, we have a responsibility to come back to the table and work together to close those loopholes and fix those things so that we are doing the best that we can for the Americans that we represent.

So again, thank you for your testimony today, and I yield back.

The CHAIRMAN. The gentlelady yields back. I am now pleased to recognize gentleman from Missouri, Mr. Alford, for 5 minutes.

Mr. ALFORD. Thank you, Mr. Chairman. How are you doing?

Mr. BEHNAM. I am fine. Thank you.

Mr. ALFORD. You holding up all right? You are almost done.

Mr. BEHNAM. Just fine.

Mr. ALFORD. I am Mark Alford. I am from Missouri, just south of Kansas City. I hate to beat a dead horse, but I am going to talk about showing up at work. I just left—I am on Small Business as well, and we were talking with two members of the GAO there about this very issue. One of the first things I did, Mr. Chairman, when I came here—and I am new to Congress—I wanted to visit the agencies that we had oversight over, not to go in there and stir up trouble or cause trouble. I wanted to meet people. I want to see what they—I wanted to feel the dynamics of what they were doing so when they come to testify, we have a relationship, and we can work together for the American people because I feel like that is very important. I don't care what party you are from. We have to work together for the American people.

I was denied, our staff, repeatedly denied from entering the USDA, which has 2 million square feet, just a beautiful building down there. I can't get in. We were denied getting in the Small Business Administration. I have been to the Pentagon. I am on the Armed Services Committee. I have heard stories of others being denied entry to the Veterans Administration, and yet we have oversight of these agencies.

So we filed the Congressional Access and Bureaucratic Offices Act, the CABO, to force these administrators to let us in the building. After we filed that, we finally got into the Small Business Administration. It is very discouraging because I have heard some of your testimony in between running around here. I know that you want to get the workers back to work. How many days a week are you actually at the office?

Mr. BEHNAM. So I travel a bit, and I live in Baltimore, but I do come into the office, I would say, 3 to 4 days a week minimum, and then sometimes it is 5.

Mr. ALFORD. But if you are in town you are at your desk, right?

Mr. BEHNAM. Yes.

Mr. ALFORD. Why? Why? Why is it important to come in to see the people you lead or work with?

Mr. BEHNAM. Well, one, I feel a sense of responsibility to the lead and set an example. But, two, some of my team is behind me. I have about six people on my direct team. I have a leadership team of 15 people. And just a quick anecdote, 10 seconds, 15 seconds, one of my directors, we periodically chat on the phone, whatever is most convenient. But she came into my office a few weeks ago, and we had our weekly 30 minute meeting. And we talked business, we talked about issues, but we also just caught up on personal matters—

Mr. ALFORD. You can't do that over the phone——

Mr. BEHNAM. You can't do that over the phone.

Mr. ALFORD.—over Zoom——

Mr. BEHNAM. That was a different experience for me that I had felt in 4 years.

Mr. ALFORD. GSA just worked out a new lease in Kansas City for a building there in Crown Center. Have you been there? Are you familiar with that for your offices?

Mr. BEHNAM. And I am not familiar yet.

Mr. ALFORD. Okay.

Mr. BEHNAM. Yes.

Mr. ALFORD. My understanding is there is a lease that has already been worked out or being worked out for more office space in Kansas City.

Mr. BEHNAM. In Kansas City, yes——

Mr. ALFORD. Correct.

Mr. BEHNAM.—for us?

Mr. ALFORD. Yes.

Mr. BEHNAM. We have been in that space for a couple of years at this point.

Mr. ALFORD. So this is a lease renewal. Do you know how many square feet are there?

Mr. BEHNAM. In the Kansas City space? I could check, but what I do know is we have reduced our footprint by about 50 percent from our previous space. So we have been in that space——

Mr. ALFORD. Is that because people are phoning in to go to work or is that——

Mr. BEHNAM. No, there is a little bit of a history to this, but we were independent—we were leasing independently from private, commercial landowners or commercial property owners. And then over the course of the past, I would say, 10 years, there has been a transition to GSA space. And transitioning to GSA space has a number of requirements in terms of square footage per employee, and that ultimately reduced our footprint by 50 percent.

Mr. ALFORD. Right. But bottom line is, I would think you would agree, it sounds like you do, we have to get Federal workers back in the office. It is going to lead to greater productivity for the American people. You would not believe how many calls we get a day in our Congressional office from people desperate to get money back, to get services from the Federal Government, but people aren't picking up the phones. People are not helping our constituents in the 4th Congressional District.

And look, I don't mind our staff helping. We helped over 800 people so far since we have been in office and have helped return more than \$1 million that are rightfully due to taxpayers, but they shouldn't have to be coming to us. They need to be calling the agencies. And I appreciate your willingness to do something about it. Thank you for being here, sir.

Mr. BEHNAM. Thank you.

Mr. ALFORD. With that, I yield back.

The CHAIRMAN. The gentleman yields back.

I am now pleased to recognize gentleman from North Carolina, Mr. Davis, for 5 minutes.

Mr. DAVIS of North Carolina. Thank you. Mr. Chairman, thank you for being with us today and coming to share.

My first question, how is the CFTC utilizing tools and strategies to identify and prevent potential price manipulation in the futures markets and particularly concerning agricultural commodities to protect farmers and agriculture investors?

Mr. BEHNAM. Congressman, thanks for the question. It really is core to what we do at the agency. We work closely with the exchanges. We have a regulatory structure that has been built out over decades based on the statute, the law that Congress has written to ensure that contracts, whether agricultural or energy or otherwise, are free from fraud and manipulation.

We have a very well-built-out surveillance team and surveillance experts, market experts that are constantly monitoring markets and movements of markets. We are analyzing anomalous trading activity. We are looking at data that we collect. We work closely with our SRO, the National Futures Association and, like I said, the exchanges to ensure markets are functioning as intended and that supply and demand discovery is happening as it should.

Mr. DAVIS of North Carolina. And can you discuss the effects of Russian sanctions and how conflicts in the Middle East and Ukraine are having on U.S. commodity prices, especially agriculture ones?

Mr. BEHNAM. Congressman, thank you. It has been an interesting period obviously over the past couple years observing some of the changes in commodity markets. I would say first to your point about sanctions, we work closely with Treasury going back to 2022 and the initial invasion such that we were identifying any individuals or organizations that were on the sanctions list, and we took appropriate steps to ensure that their market access was eliminated prior to the sanctions coming in and as they did.

In terms of market prices, I would say the market responded to the anticipation of an invasion by Russia against Ukraine with huge price spikes across the agricultural complex and the energy complex, so natural gas, oil, and then most notably wheat, but also soybeans, and corn. Ultimately, I would say production from North America and also South America and some of the access that was permitted through the Black Sea, allowing Ukraine to export a number of commodity products, really did not have as much of an impact as we anticipated. Prices have come down pretty significantly from their highs across all complexes. And we have seen relative stability. Same with the Red Sea issues. We saw some minor bumps in prices, most notably across the energy complex, less the agricultural complex.

But I would say a statistic, which I am sure you have read, the U.S. is producing over 13 million barrels of oil a day, so a lot of the concerns that might have existed a few decades ago, not as much because the concentration and production has been spread out across the globe. And certainly the U.S. has a level of energy independence which allows these prices across the energy complex to be relatively stable. We have seen a huge dip in natural gas because the weather has been a bit warmer, and also production remains at relatively all-time highs.

Mr. DAVIS of North Carolina. And, Mr. Chairman, as a sponsor of the CFTC Agricultural Advisory Committee, which is a vehicle to get input from the agriculture community on the market issues and concerns, how can the Commission's Agricultural Advisory Committee be used as a vehicle to hear and address the concerns in particular of local rule farming communities, especially like eastern North Carolina?

Mr. BEHNAM. Congressman, thanks for the question. It is a great privilege to sponsor that Committee and one that I take very seriously, I have been engaged with for a number of years. And ultimately, it is the ability—not unlike you going back to your home district and talking to constituents, it is my ability to talk to producers, to talk to some trade organizations and representatives across the country and see what they are feeling and see what they are seeing in markets and also some of the challenges that they are facing in terms of production, whether it is livestock, or whether it is corn and soybeans, wheat, or other physical commodities.

And from those engagements, we had three meetings last year, some hybrid, some in D.C., we are going to meet again in Kansas City next month, it is the consistent engagement which allows us and me personally as sponsor to reflect on what they are seeing and what we could be doing to better regulate markets, but also to better facilitate access to markets for them and ensuring that they feel that they have fair access to markets at a cost-effective way.

I say this often, the history—we are entering the 50th anniversary of the CFTC this year and next, and we should all remember very carefully that CFTC was a part of USDA. And we were reauthorized just like the farm bill every 5 years, and we are just one toolkit in a toolbox, just like a commodity program or conservation or crop insurance. And it is one of the big responsibilities I feel to make sure that futures markets remain accessible, fairly priced, and fair and free from fraud and manipulation so farmers and ranchers can use them to manage risk.

Mr. DAVIS of North Carolina. Thank you. Mr. Chairman, I yield back.

The CHAIRMAN. I thank the gentleman. I now recognize the gentleman from New York, Mr. Langworthy, for 5 minutes.

Mr. LANGWORTHY. Thank you very much, Mr. Chairman.

Chairman Behnam, as you know, global commodity markets play a pivotal role in risk management strategies of both our agricultural and energy sectors. My district in western New York and the southern tier of New York along the Pennsylvania line produces a diverse array of agricultural products, including maple syrup, grapes, and dairy. Specifically within our dairy industry, they are reliant on the well-functioning agricultural derivative markets that the CFTC regulates to hedge the commercial risks inherent to dairy production, processing, and marketing.

As crucial as it is that the Commission focuses on emerging issues and new technologies such as digital assets and cybersecurity, I just want to emphasize the importance of your work in ensuring the integrity of the more traditional commodity markets our agricultural producers and processors rely on for risk management purposes as they form the bedrock for these economic activities.

And with that, Chairman Behnam, as you may have seen, the crypto market cap recently surpassed \$2.5 trillion. And while this milestone has been great for some, the U.S. continues to cede more jobs and leadership in this sector. And in fact, many market participants say that the lack of regulatory framework in the U.S. is driving these developers overseas. How can we reverse this trend in Congress? And what can the CFTC do alongside other agencies to ensure that the U.S. retains a high-quality workforce in this innovative and emerging sector?

Mr. BEHNAM. Thanks, Congressman. To your first point, I just want to emphasize and make sure that you understand our traditional markets are the number one priority for me and for the agency, whether it is dairy or grains or energy products. We understand these markets well. We have for a number of decades, and it continues to be a priority, despite, I think—to the second part of your question, a lot of news these days about the CFTC is more around digital assets, but we can walk and chew gum at the same time. We do quite well, and we are always happy to help you and your constituents around dairy or other commodity markets.

On the latter question, I think the number one thing that we can do—it is something I have said for a number of years, I have said it earlier today—we need to move on legislation to fill gaps. I focus very much on the regulatory side. Obviously, you have a responsibility to your constituents in the industry as it relates to innovation and moving the industry forward. I have heard anecdotally the stories that you recited around business going offshore because there is a lack of clarity in the U.S., and there is really no demand or desire to have this technology rooted here in the U.S. Regardless of my opinion on that—and I just don't think that is necessarily my responsibility as chair of the agency—I think regulation and clear regulation is a component of that.

In order to run a business, whether you are running a dairy or a startup that has VC capital, you need regulatory certainty at the state level and the Federal level. And certainly, I think there is some ambiguity and uncertainty around rules, laws, and regulations, putting aside desire, and what impact some may or may not have on how these businesses should run.

And with that, some, in fact, do go overseas because there has been a number of jurisdictions—and I can say this with certainty, having been in this role as chair for 3 years now—that when I first started this job in January of 2021, there were a number of jurisdictions in Europe and Asia, in the Middle East that really were not very necessarily far along in terms of rulemaking or policy around digital assets. That has changed. That has changed quite significantly in 3 years. And I can say, Europe, the UK, the Middle East, Asia, if they have not already finalized regulatory structures or policies, they are near that. So I do think it is important as the U.S. that we move forward on policy to ensure that certainty for market participants.

Mr. LANGWORTHY. Thank you. I understand that the CFTC is seeing a significant increase in the interest in the disintermediated clearing where a market participant no longer has to use the services of a futures commission merchant to trade on an exchange or have that trade cleared in a clearinghouse. Could you explain the



traditional brokerage exchange clearing model and alternatives being considered by the industry? And could you also share your perspectives on these novel approaches and whether the agency will address them via rulemaking?

Mr. BEHNAM. Thanks, Congressman. So traditionally—and I think this is a part and sort of a product of technology in the history of markets being physically present on a trading floor where you had a commercial end-user, say, a dairy producer in western New York who phoned in an order to the Chicago Board of Trade that had to go through a clearing broker, an executing broker, which then was transacted on an exchange and then cleared at a clearinghouse. That was sort of the trade cycle historically, and by and large, it still is the trade cycle. So much of it is technological at this point, as opposed to having floor traders.

Over the past 15 or 20 years, we have seen an emergence of a direct clearing model where you remove that broker phase. We have had a number of direct clearing models approved going back 10 or 15 years, but we have seen a little bit of a kick up in that in the past, I would say, 2 to 4 years. And I think this is really a product of technology where you can look at that trade cycle—the broker, the exchange, the clearinghouse—as points of friction where if you can remove one of the points of friction, you have more direct, quicker execution of the trade. That could be the perceived benefit. The perceived risk is that broker, that layer provides protections. It provides protections for customers. It provides disclosures for customers. It is in fact a barrier that provides market integrity.

So as we continue to see these applications for non-intermediation or direct clearing, I think it is important collectively, both as this Committee and the agency, to think very hard and deliberately about the models, whether or not, quite frankly, we want to see them emerge as a new market structure, but if in fact they continue to emerge, what are those benefits from the traditional historical model, and can we extract those in the newer models that have these fewer barriers?

There is potentially a way. I feel like when we do these models at the agency, we are very deliberate, we are very intentional, we are very cautious, but we also want to preserve all of these benefits and components that have made our markets the strongest and customer money and customer protections the most important in the world.

Mr. LANGWORTHY. Thank you very much.

The CHAIRMAN. The gentleman's time has expired.

I am now pleased to recognize gentleman from Florida, Mr. Soto, for 5 minutes.

Mr. SOTO. Thank you, Mr. Chairman.

Chairman Behnam, thank you for being here. I know it has been a long day for you, and we are very grateful for your work to help continue to have stabilization of commodities and investments.

Lowering food prices, or at least stabilizing them, is a key priority for our Committee as we go through with the farm bill. We saw during the pandemic supply chains were rattled, and then Ukraine war affected everything from wheat to fertilizer and others. How can you as CFTC Chairman and with policies that you

all work with ensure that commodity investments are helping play a role to stabilize and perhaps even grant more efficiencies to help stabilize and/or lower food prices?

Mr. BEHNAM. Congressman, thanks for the question. This goes to what I was saying earlier, that we have to collectively ensure that futures markets remain vibrant, healthy, and liquid. And that means we have to potentially lower the cost of entry, not compromising on protections and regulatory structures, but ensuring that the ecosystem is healthy. I mentioned earlier that we have seen a significant reduction in clearing members over the past 20 years. That is never good. Concentration in large banking institutions creates risk, but it also eliminates access for some small producers, energy or agricultural in Florida or across the country.

So we need that diverse pool of market participants so that the ecosystem is healthy and that farmers and ranchers can feel that futures markets are accessible, that they are fair, that they are reflective of price discovery, essentially supply and demand, and that when they enter thinking about a soybean and corn farmer, that they enter planting season just around this time of year, that they can hedge on the Chicago Board of Trade and know that that hedge will be held through the season and harvest, and whatever risks come between now and then in the cash market, whether it is weather, geopolitics, or trade, that hedge is going to protect that instability by giving them the price they need so that they can maintain their mortgage, their equipment, their seed, their feed, and everything else that goes into operating a large production facility.

Mr. SOTO. So our commodities exchange continues to allow for more stability and long-term planning for our growers, our ranchers, our farmers, very key. We welcome a continued partnership with this Committee to continue to address stability and lowering food prices where we are able to.

Turning to the FIT Act, I know we had some great discussions. I appreciate you being generous with your time meeting with me. How critical is it to your mission should the Congress pass the FIT Act and provide you all as the primary regulator of cryptocurrency for the \$120 million in funding to allow you to be able to do this job?

Mr. BEHNAM. Thanks, Congressman. It is critical in order for us to appropriately, as intended by this Committee, to implement that bill, having the resources to hire up where appropriate and where needed, but also to build the hardware and the software infrastructure that needs to essentially develop the foundation of a regulatory framework is critical.

This is a whole new market. I have mentioned this in my statement. Forty-nine percent of our enforcement docket last year was crypto-related, and I said this. It is a staggering statistic that a market we don't directly regulate is taking up half of our enforcement docket. And it is not just the Division of Enforcement resources that are consumed. We need the experts from the different divisions to build a case.

So we are continuing to see the growth of the market. We are obviously seeing a bit of a surge in price and a renewed optimism by retail investors, which can be a very cautionary tale about

crypto. And I think it really validates what work this Committee has done over the past couple of years, that we need a regulatory structure. This is not about legitimizing the technology. This is about protecting Americans and protecting investors. Whether or not they want to invest in it in the future is their choice, but the fact of the matter is the technology is here, and we need to protect investors and protect the American economy.

Mr. SOTO. Sure. In central Florida, we are seeing folks utilize cryptocurrency for remittances. It has helped stabilize certain economies when the fiat has collapsed like in Venezuela and Ukraine. And also we do a lot of international transactions because a lot of folks come to our world-class theme park. So this is something we are following closely. And, the fact that you spent—having spent almost 50 percent of your budget when the commodities market is such a more mature, larger market, tells me—it screams to Congress needing to act on this to finally establish jurisdiction and rules of the road. So we welcome that continued partnership, Chairman Behnam, and thank you for being here today.

And I yield back.

The CHAIRMAN. The gentleman yields back.

I now recognize the gentleman from North Carolina, Mr. Rouzer for 5 minutes.

Mr. ROUZER. Thank you, Mr. Chairman. Chairman Behnam, thank you so much for being here.

Based on the CFTC's January request for comment on the use of artificial intelligence in CFTC-regulated markets, the Commission recognizes the need, obviously, to proactively explore current and potential uses and risks of AI technologies. Rapid development and new platforms and technologies can expose our financial systems to vulnerability and bad actors that want to weaponize them. The U.S. is the proving ground of these new technologies, but rapid adoption could result in extreme market changes.

In the commodity space, this obviously presents a challenge to the industries that lean on the CFTC to create a regulatory environment that seeks to maintain stability and prices and market conditions. Personally, I believe it is imperative that we bring regulators and the regulated entities utilizing these technologies together to develop a sound regulatory framework going forward.

Last year, the United Kingdom's Financial Conduct Authority permanently launched the Digital Sandbox, a testing environment to allow firms to test their products on protected data assets while removing market risk.

So my question is, could the CFTC pursue something similar to develop innovative ways to combat illicit activity by partnering with the private-sector to better understand the benefits and risks of AI, protecting the market, and harnessing their experience, just your general thoughts on that?

Mr. BEHNAM. Congressman, thanks for the question, extremely important. I would say a few things. By nature of issuing the request for information, we are trying to engage, right? We are trying to collect information before we act. I personally as chair am not predetermining any conclusions about what role AI may or may not have in our markets, but it clearly is an issue we have to address

and attack aggressively so that we get ahead of it, whether it is on the risk side or the opportunity side.

We have an Office of Technology Innovation, which has been evolving over a number of years. It was first started as LabCFTC. It is now the OTI. And we staff it with individuals who are both intellectually curious, and willing to engage with the industry and learn what is happening in the sort of financial market ecosystem so that we can be better prepared from a regulatory or policy perspective.

So we are doing what we can with what we have. The sandbox issue you raise that the UK has done, something that I know my predecessors have thought about, I have thought about, there are legal limitations to us being able to provide a sandbox environment for stakeholders. So if that is a priority of yours, you might want to consider it legislatively. But we do have limitations legally to provide a sandbox where, essentially, as you know, you would be protected from certain regulatory actions. But we are seeing a lot of change because of technology, and we are doing what we can with what we have both legally and personnel-wise to make sure we are engaging as much as possible and getting ahead of this very rapidly moving curve.

Mr. ROUZER. Yes, I would love to get those legal impediments, if your team can provide that list to give us some guidance on that so we could explore.<sup>1</sup>

One other quick item, I am also interested in knowing your general view regarding the legality of election event contracts under the CEA and Commission regulations. Do you believe that all election event contracts constitute gaming and are therefore prohibited from being listed on the exchange? What is your general view on that?

Mr. BEHNAM. Thanks, Congressman. So, as you know, we have a number of litigation matters that are active right now so I want to be careful with what I say. But this is an issue that derives from section 5 of our statute where you have a prohibition on contracts that involve gaming and anything that is against state or Federal law and against the public interest, among other things. So it has been the Commission's position most recently, which I know is contrary to some in this sort of industry, that a political election contract or event contract is against both the provisions against gaming and state law specifically.

But because of this disagreement, and I think some confusion, not on my end, but just general confusion from the stakeholder community, I decided a few years ago to further define and clarify the existing rules that are derived from the law so that there is, to the extent we can provide, 100 percent certainty that political event contracts do fly sort of in the face or against the Commodity Exchange Act.

But we will continue to work with stakeholders as much as we can. I have said this before, and this is something this Committee should know, we have fraud and manipulation authority in underlying cash markets. That is corn, that is natural gas, that is oil, that is gold. In this case, if we have election contracts, if there is

<sup>1</sup> **Editor's note:** the information referred to is located on p. 62.

fraud or manipulation or allegations of fraud or manipulation that could impact a listed CFTC contract, that *de facto* makes the CFTC an election cop. And I don't think—but certainly clarify if I am wrong—that is the intent of Congress for our mission. And it certainly would pull us in a lot of different directions, given some of the integrity issues that have been raised recently around elections.

Mr. ROUZER. Thank you, Mr. Chairman. My time has expired. I yield back.

The CHAIRMAN. The gentleman yields back.

I am now pleased to recognize the gentleman from Texas, Mr. Casar, for 5 minutes of questions.

Mr. CASAR. Thank you. Chairman, thanks for joining us today.

Today, I want to ask you about the Digital Assets and Blockchain Technology Subcommittee report that came out from the CFTC's advisory committee in January. As I understand it, they were tackling the questions of DeFi and that you had a diverse group put the report together, crypto firms, venture capital firms, academics, blockchain analytic firms, other folks, so on. Do you have a general sense of that report? Does that sound like the—

Mr. BEHNAM. Yes, I have a general sense of what the report is and its findings, yes.

Mr. CASAR. Thank you, Mr. Chairman. And I appreciate you putting that report together. And that subcommittee found—and I am quoting from it—that nothing is, quote, “completely decentralized or centralized in DeFi,” that, quote, “this creates a real challenge in defining business and technology models that would make systems sufficiently decentralized.” The report found and names five different dimensions of decentralization to be considered, six different technological dimensions of decentralization. They created a matrix to try to figure out what—how to really determine that something is truly decentralized. It is a pretty complex set of findings.

But kind of the summary at the end of the day here was that there is no single dimension or technology that will serve to make a project or an enterprise decentralized and that there is a great deal still to learn about these technologies and how to determine if something's decentralized or not. Does that generally check out with you?

Mr. BEHNAM. Yes, 100 percent.

Mr. CASAR. So my concern is that around the FIT Act, which has, of course, come out of this Committee, is making its way through Congress, it doesn't directly tackle DeFi, but the whole bill hinges on the question of decentralized governance and decentralized networks. And my concern—and I am interested in which concerns you share with me, which ones you may not—is that we may be premature with passing this bill if this agency report, which I appreciate you all putting together, has these real concerns, that we may not yet be ready to define what is truly *decentralized* and not.

And so do you have concerns about the amount of work that it will take your agency to implement the FIT Act, given those challenges defining *decentralization*? Do you have concerns that these questions haven't been developed enough yet and there is still so much to learn that we might just be handing you a bill? I don't

want to be setting you up to fail, and even more importantly, I don't want to be setting up the American people to potentially suffer financially if we don't regulate this right.

Mr. BEHNAM. Yes, Congressman, thanks. It is an important question. I would say, one, on the report you are mentioning, it is an advisory committee largely made up—and you said this—of practitioners, some academics, public interest, and I am just going to get a little sort of wonky on the technical side. It was a subcommittee, so it is not technically before the Commission yet as a set of recommendations. The whole technology committee would have to approve it in order for it to officially come to the Commission. And there were a number—or at least one dissenting opinion, so I think there are some things to think about, about what were the pros and cons of the report.

Regarding the FIT bill and your point about its prematurity—and I appreciate that—the DeFi conversation is quite complex. We have brought a number of enforcement cases, which I think have raised policy concerns from folks outside of the CFTC and even some inside. We had some dissenting opinions, which is fine. But structurally, I do think regardless of the level of decentralization, there are very clear rules—and that they have been developed and mature over a number of years within the Commodity Exchange Act—about what conduct is permissible, not permissible. And if you do offer a derivatives contract to a customer, you have to register or have to comply with the rules. So it is definitely not what we have historically been used to, but I think the principles still apply, and that is what we are trying to do at the agency.

Mr. CASAR. And just when you mentioned historically, you mentioned just recently—and I want to get the number right—that about half—was it half your budget or half your enforcement budget is going to these cases now?

Mr. BEHNAM. So half of our enforcement docket, so out of 96 cases in Fiscal Year 2023, 47 cases or 49 percent of our enforcement docket was crypto-related or digital asset-related.

Mr. CASAR. And I guess just because I am short on time, just my concern is if it is already half of your docket, and then we are to hand you this whole industry to regulate potentially with fewer resources than you have asked for, in an area where this subcommittee's report is saying we are having a lot of trouble even defining what is *decentralized*, I worry that that is going to lead to lots of problems. You have an industry that in just the last 3 years has lost \$2 trillion on its market cap. That is 60 percent that it has lost. It is really volatile. And so I worry about that when we want you—we really need to be protecting farmers and ranchers and dealing with oil and wheat. And this other industry where some of these experts are saying we still can't even really define what *decentralized* is, I worry about setting the CFTC up or the American people up for failure here. That is my concern.

Mr. BEHNAM. Congressman, I appreciate that point, and I think we should always walk cautiously, whether it is legislatively or administratively. But my observations over the past 7 years and the enforcement cases we brought, I appreciate your point of view on the size of the enforcement docket being one where we are not focusing. As I said to Mr. Langworthy, our number one priority is al-

ways traditional commodity markets. But to me—and, yes, the market cap dropped from \$3 trillion in 2021 down to less than \$1 trillion a year ago, and now it is back up over \$2.5 trillion. To me, that just demonstrates there is real persistent adoption and demand from Americans to invest in this asset. It is unregulated. That has been proven across the U.S. regulatory scheme. And I think every minute that goes by is a new investor, a new retail participant who is potentially going to lose money. And I think we need to act quickly. If we need to subsequently act on DeFi or other areas, that is fine, but we need to act. It is consuming a huge amount of our resources because there is so much fraud out there in the public space.

The CHAIRMAN. The gentleman's time has expired.

I now recognize Mr. Feenstra for 5 minutes of questions.

Mr. FEENSTRA. Thank you, Mr. Chairman. Thank you for this hearing. I also want to thank Commissioner Behnam for being here today.

My district is home to some of the best soil in the world, literally. Just recently, just a few miles from my home, we had per acre sell for about \$30,000, which is very significant. On the ground, small challenges and conservation practices can result in huge carbon benefits, and you guys are a part of that. In December, the CFTC issued proposed guidance about listing the voluntary carbon credits on CFTC-regulated exchanges. You justify this authority to issue proposed guidance under CFTC's anti-fraud and anti-manipulation authority. When you start thinking about that carbon market and where it is going to go, where it is today from \$10 billion to probably \$30 billion, obviously, my farmers are very involved, and it adds value to their farmland.

So Mr. Behnam, what is CFTC doing to ensure that farmers and landowners are being protected from fraud and manipulation of this voluntary carbon credit market?

Mr. BEHNAM. Congressman, thanks for your question. And I appreciate your recognition from your constituents. I worked personally very closely, and my team did, with the ag community as we crafted this guidance, and we wanted their feedback. We wanted to see what they were observing, what they were being offered. And I think there is a bit of a hesitation right now because they don't quite feel confident that there is a level of integrity in the market where they are willing to execute on some conservation practice or change their traditional practices for farming to sort of engage in this carbon market.

We have, as I said earlier, listed futures contracts and voluntary carbon credits. As with any commodity, if we have a listed futures contract on a CFTC exchange, we have an interest in the health of the underlying market, which is to your point about the fraud and manipulation authority. So the guidance really is an effort to clarify expected diligence that the registered exchanges would use when they list these voluntary carbon credit contracts because ultimately, the listed CFTC contracts are referencing an underlying registry or some other cash market, voluntary carbon credit registry. And we want to make sure that the exchange uses appropriate diligence when it references these underlying exchanges.

And ultimately, that is going to protect your farmers and others across the country as they start to engage in this marketplace.

Mr. FEENSTRA. And that is very good information. I fully agree with where you are heading and where you are going with this. The question is, how do we get this out to our landowners and to our producers? Are you collaborating with USDA at all, or can you collaborate with USDA and try to get this information out? A lot of my producers, as you noted, are very hesitant to go down these rabbit holes, go down the path of better conservation, so forth. Can you extrapolate on that just a little bit?

Mr. BEHNAM. So I can tell you that over the course of 2 years leading up to the issuance of the guidance in December of 2023, we held two convenings at the CFTC. USDA was a participant, among other regulators. We have been in close contact with the Secretary's office, Under Secretaries around conservation and those that are engaged in the voluntary carbon credit space. I know that they have some matters and some sort of vision they have around the voluntary or the carbon market generally. And I have been working closely with Farm Bureau councils and farmer cooperatives, Corn Growers Association, and others to make sure that we are as much engaged with them and seeing what they are observing so that we can essentially, I would say, produce a guidance document that is appropriate and that is calibrated to what the marketplace is and ultimately provide that protection for them that they are demanding.

Mr. FEENSTRA. Good. Well, I thank you for that. And I just think this is such an added value for our farming community as we move forward in the next decade. I appreciate what you are doing. But again, this information that you have needs to get out.

Mr. BEHNAM. Yes.

Mr. FEENSTRA. And please continue to work with USDA on this progress. Thank you, and I yield back.

Mr. BEHNAM. Thanks.

The CHAIRMAN. The gentleman yields back.

I am now pleased to recognize the Forestry Subcommittee Chairman, Mr. LaMalfa, for 5 minutes of questions.

Mr. LAMALFA. Thank you, Mr. Chairman.

My regrets of having dueling committees here, so I missed a good portion of today's, so I hope none of my comments or questions are too duplicative. But thank you, Chairman Behnam.

Just a couple questions I wanted to ask on how CFTC is pushing for new markets and carbon credits and in rare earth minerals, but usually, a regulator waits for markets to develop before setting standards for it. That is unless the law, made by Congress, tells regulators to first set the standards. But in this case, Congress has not done so with carbon credits or rare earths. So do you think it is right for the CFTC to be getting out ahead for these new markets without Congressional approval or direction? Do you think the agency is justified in basically twisting the current law to do its own initiative?

Mr. BEHNAM. Congressman, thanks for the question. As I said to Mr. Feenstra just earlier, we do in fact on the carbon credit side—and I will address the rare earth side as well—on the carbon credit side, we do have listed futures contracts on voluntary carbon cred-



its already on several of our exchanges. And we are seeing increased demand by CFTC customers to see these contracts offer products.

Mr. LAMALFA. What is the nature of the carbon credits?

Mr. BEHNAM. Well, I can say that on at least two exchanges, we have voluntary carbon futures contracts that reference an underlying registry that issues the credits themselves. So based on the price of the credit from the underlying registry, the futures contract is using that that price reference to price itself.

Mr. LAMALFA. Understood. I just wondered what more directly—does the type of credit have to be generated in an agricultural situation, or what is the actual carbon where the rubber meets the road? Where is that credit?

Mr. BEHNAM. There are a number—so I can—I think I know for sure that one of the contracts references a weighted average of several registries, which includes nature-based credits, which would be to your point, carbon sequestration through some sort of conservation practice or forestry plan or whatnot.

Mr. LAMALFA. So soil tilling or, as mentioned, forestry, cutting trees in a particular way?

Mr. BEHNAM. Yes.

Mr. LAMALFA. All right. So what is the target goal for carbon? I mean, what number are you trying to in tons or—what is the baseline? What percent of the atmosphere is carbon dioxide to begin with?

Mr. BEHNAM. So my intent specifically with the guidance and our efforts in this space is not to set the methodology or not to set the amount of carbon that is pulled from the atmosphere. I am simply trying to put out a document that would ask the exchanges which are registered and regulated by the CFTC, who list the carbon credit derivatives contracts, to use appropriate diligence when they reference underlying registries so that in fact, just say, for example, ABC registry which issues credit, say a nature-based credit, which is used off of a conservation practice, if they are selling a credit saying we are sequestering 1,000 tons of carbon, we want to ensure that credit is credible and that it actually sequesters the amount of carbon that that registry is saying it does.

Mr. LAMALFA. Right. And that is sometimes very hard to find. I am glad you have oversight on that.

Let me shift gears here quickly with my remaining time. CFTC proposed a rule that requires certain derivatives to establish what is called an operational resilience framework, right? So you highlighted how you were working with domestic regulators to ensure that ORF requirements are not duplicative. Have you had similar conversations with foreign regulators? And then how are they approaching these types of challenges?

Mr. BEHNAM. Congressman, we are very engaged certainly in the foreign forums with other regulators across the globe. But I would say more importantly, we are very engaged with domestic regulators, both market regulators and the banking regulators. There are frequent instances where our registrants are also registered with other U.S. regulators, and you could have scenarios where there is duplication of regulations. Around cybersecurity, I certainly wouldn't want one of my swap dealers or futures commission

merchants, which is also a bank prudentially regulated by the Fed, the OCC, FDIC, to have to comply with two different sets of standards around cyber.

So our intent in this rule, which is a proposal phase, is to ensure efficiency and compliance, but also being mindful of the unique nature of derivatives markets so that if there are any holes or gaps that a banking regulator might impose on a holding company, we are filling that gap, but not creating duplicative regulations that the bank regulators might have for the holding company.

Mr. LAMALFA. Okay. All right. I have to yield back, but maybe in some further comments, is there a substituted compliance for other entities that might have a similar issue in their home? But I will yield for now. Maybe you can touch on that in a following comment. Thank you.

Mr. BEHNAM. Thanks.

The CHAIRMAN. The gentleman yields back.

Now I am now pleased to recognize the gentlelady from Florida, Congresswoman Cammack, for 5 minutes.

Mrs. CAMMACK. Thank you, Mr. Chairman. And I appreciate you being with us today. No easy discussions happening in this room.

So with that, I will just jump right into it and dispense with comments.

Chairman Behnam, decentralized finance—and I know I have heard some of my colleagues here today talk about this, and again, I don't want to get into the weeds too much, but DeFi, it is a growing component of the digital asset ecosystem, and it has been receiving a lot of attention. So can you please share with us any ongoing or planned rulemaking workstreams at the agency regarding this issue?

Mr. BEHNAM. Congresswoman, thanks for the question. We are certainly engaged with the market, the stakeholders I mentioned earlier. We have an Office of Technology Innovation. We have several advisory committees, and some of them look into this space and convene members of the technology community. And we are looking at how we can engage, we can learn, and to ensure that our rules essentially reflect where the technology is.

I would say though that DeFi presents a lot of issues. We have brought a number of enforcement cases where there have been individuals offering derivatives products, but they don't necessarily have a centralized traditional model of a broker, an exchange or a company.

Mrs. CAMMACK. Right.

Mr. BEHNAM. It is an automated sort of trading platform. The best way to think about it is you have a group of individuals who program an automated trading platform, and it just sort of self-executes on its own without any human intervention after the start, so to speak. That doesn't change the fact that this protocol or this program is offering derivatives contracts to customers, often or at least on occasion that we brought an enforcement action, people are losing money or there is fraud or manipulation or they are not registering with the CFTC as required by the law. And despite the fact that there is no centralized group or there is an individual who is the CEO or board of directors or headquarters, the fact of the matter is, as courts have determined in litigation that we have

faced, DeFi can have the same or similar characteristics as a traditional company or entity such that we could bring a case.

Mrs. CAMMACK. Right.

Mr. BEHNAM. So tricky questions, I think it requires a lot less legislative thought, but we are doing our best to work through these issues, engage. But ultimately, I would hesitate to say that we should stand back and not protect customers because the law is not crystal clear, a decades-old law, about what decentralized finance is.

Mrs. CAMMACK. And I appreciate that but I also am very wary of over-regulation and government having a heavy hand, which tends to stamp out innovation and opportunity. So I would love to see more engagement and forward-facing engagement from some of the industry partners.

But I want to shift a little bit, talking about blockchain and how that that is really a huge part of this conversation. With the evolving landscape on digital assets and DeFi, what regulatory challenges specifically do you foresee in overseeing blockchain-based financial products and services? And specifically, what steps is the Commission taking—I know we talked about this just a little bit, but I want you to talk on the blockchain element specifically to ensure investor protection.

Mr. BEHNAM. Yes, so blockchain has been really interesting to observe because I have had a number of demonstrations by large financial institutions or trade associations in town which have demonstrated how blockchain is being used by some of these traditional large financial institutions on settlement, on payments, on custody, and really just creating, in their view, a more efficient payment system from a customer perspective or from a financial wholesale perspective.

In some respects, our core principles, which we have a principles-based regulatory structure, is very helpful because you can almost fit a lot of different technologies into a principles-based regulatory structure. It is about compliance and being free from fraud and manipulation, having a proper governance structure, making sure you have system safeguards, all things that would apply if you were on a trading floor or if you had a blockchain. So we are engaging with the industry. We are trying to learn what they are doing. I don't think adoption has been so deep at this point that we necessarily have to jump ahead and write rules. I think, in part, our principles-based regulation is adequate, but there could be components of blockchain that would require policy, either a rule, advisory, or guidance, and we certainly want to see and observe what is going on in the industry so whatever we do, to your point, doesn't get ahead.

Mrs. CAMMACK. Well, and I will say, especially given the fact that we don't want enforcement to become the mechanism by which this gets rolled out we want legislative solutions so that it is actually done correctly.

Mr. BEHNAM. Yes.

Mrs. CAMMACK. But given that the derivatives market is largely overseas—and I know I am over my time, but I will just leave us with this. Given the international nature of commodity markets

and global proliferation of blockchain technologies, is there any cross-border cooperation or efforts underway on this?

Mr. BEHNAM. Yes, we work closely—so I am the Vice Chairman of IOSCO, which is a multilateral organization across all securities regulators in the globe. We participate with the Financial Stability Board. I have frequent conversations with fellow regulators in Europe, Asia, the Middle East. So we are observing what others are doing and trying, to your point, to draw comparable rules and regulations so there is a little bit of a seamless entry and exit across borders because, as you point out, we are in a global financial system, and to have different regulations and rules creates barriers. Arbitrage opportunities, which are risk, but ultimately prohibits these businesses from doing a lot of the work that they hope to do.

Mrs. CAMMACK. I appreciate you being here. Thank you. My time has expired. Mr. Chairman, I yield. Thank you.

The CHAIRMAN. The gentlelady yields back now.

I am now pleased to recognize the gentleman from Texas, Mr. Jackson, for 5 minutes.

Mr. JACKSON of Texas. Thank you, Mr. Chairman. I would like to yield my time to the chair.

The CHAIRMAN. Much appreciated. Thank you, Mr. Jackson.

Mr. Chairman, can you talk about the difference between CeFi and DeFi actors when it comes to regulation, and quite specifically, the application of FIT 21 as it is proposed?

Mr. BEHNAM. Mr. Chairman, thank you for the question. This is really the crux of the issue with CeFi *versus* DeFi. In CeFi, you have more ascertainable participants. This is what we are traditionally oriented with in a trade cycle or in a financial ecosystem. DeFi, you don't have those identifiable partners which could result in a registration, it could result in an enforcement action, or in any number of other things.

But ultimately, what we have done historically—and this is not, many years, this is just a few years—as it relates to potentially regulatory requirements or enforcement actions, is focused on the conduct and what exactly is being offered and how it is interfacing with customers and investors. And ultimately, if we see a DeFi product that is offering derivatives contracts, as I was saying earlier, we have to do what we can to identify who, if anyone, or the association itself, which is a sort of a legal term of art, is providing the derivative services outside of compliance of CFTC registration. And that is who and where we have sort of steered our attention.

In terms of the FIT bill, I do think it takes many important steps to address these issues. As Mr. Casar was saying, they are complicated. We are seeing a lot of variation in how we should address these issues. And I think it will take time. But ultimately, I am very much encouraged by what the FIT bill aspires to do and what you are trying to accomplish, Mr. Chairman, in terms of both regulating and filling these gaps, but also thinking forward about some of these new technologies and how they fit into the existing Commodity Exchange Act.

The CHAIRMAN. Well, thank you for that. I think our goal is to make sure that we provide the guidelines and tools for you to do that so digital commodities are regulated by clarity, and, quite frankly, transparency, direction, guidance, *versus* what we have

seen in the past perhaps by another agency, which is regulation by punishment.

I want to touch on, in February, the CFTC proposed a rule that would establish minimum fitness standards and conflicts-of-interest rules, among other things, for derivative exchanges. Can you elaborate on what this rule requires? And why is it necessary?

Mr. BEHNAM. Mr. Chairman, this was a rule, conflicts of interest around SEFs and DCMs. Swap execution facilities and designated contract markets essentially are exchanges. When I first started as Chairman back in 2021, I convened my division directors, my leadership team. I said, let's start identifying areas that we need to write rules. This came out of the Division of Market Oversight. It is actually about a decade-old requirement going back to Dodd-Frank around conflicts of interest to some extent, and then it just remained without a final rule.

So over the course of 2 years, as you know, rules take time to produce. They are long documents. There is legal analysis. There is economic analysis, among other things. So the timing came that we were able to produce the rule and propose it at this point last month. I would say—and there was some dissent or discussion about whether or not it went far enough, especially in the conflicts-of-interest space. I have said this publicly multiple times. Despite that initial conversation I had back in January, February of 2021, when I first took over as acting and then ultimately permanent chair, a lot has changed. We have seen the emergence of vertically integrated registrants and applications. We have seen decentralized or non-intermediated in some respects applications. And I think this raises, as I said in my opening statement, a number of very unique and novel questions around conflicts of interest.

So what I did to address that particular issue, separate from the rulemaking you address, is we put out a request for comment. We asked the public to give us feedback on conflicts of interest around affiliations so that if you have a holding company that owns the exchange, that owns the broker, that owns the clearinghouse, what potential conflicts exist if you have a single owner of all three parts of this trade cycle? We got great comments back. And as I have said publicly, we are looking towards proposing a rule on conflicts of interest around affiliations later this year.

It can be discrete and unique from what we did last month, but it doesn't necessarily undermine what we are going to do. I thought what we did last month was tremendously important. It is going to bring integrity and safety to markets, but it is only one step. We are going to take more steps. We can do multiple things at once, and we are going to address issues as they continue to evolve and present themselves to us.

The CHAIRMAN. Just a couple quick follow-ups to that. What powers does the Commission have to engage with a registered market participant regarding a transfer of ownership of a registered entity?

Mr. BEHNAM. So it is a good question, Mr. Chairman. We actually legally do not have authority to prohibit, to stop, or to influence a merger, acquisition, or any sort of combination of two entities. The authority we have is to ensure that if there is a merger or an acquisition of two entities, one of which is in compliance or

registered with the CFTC, that the new combined entity remains in compliance with the Commodity Exchange Act. So if you had entity A and B and entity B was a CFTC-registered FCM, entity A bought entity B, the new entity would have to be in compliance with CFTC rules or regulations. If it was not, that is the authority or that is where we could step in and either require compliance or deregister the entity. We cannot impose ourselves on an M&A activity or a merger/acquisition just because we have feelings about concentration or antitrust issues. Obviously, other agencies, criminal and civil, deal with those issues, but certainly something I think the Committee may want to think about going forward, not advocating for it, *per se*, but an issue that has arisen, and I just shared with you the limited powers we have around compliance.

The CHAIRMAN. And it may be the same answer, but I am curious in terms about potentially problematic vertical integration situations where there appears to be potential conflicts of interest with respect to the related operation of a registered entity and one of its affiliates, for example, FTX crypto exchange and its affiliate Alameda Research that traded on the exchange.

Mr. BEHNAM. Yes, Mr. Chairman, extremely important question, one we are dealing with actively to my point about the request for comment and this possible rule 6 months down the road. I would say, as I stated in my opening statement, these are, in some respects, very new issues because we are seeing an increase in the number of applicants and registrants who want to see these vertically integrated stacks. Another issue is we have existing entities who are registered with the CFTC who have a vertically integrated sort of structure where you have a broker, you have an exchange, and you have a clearinghouse. We have dug into the legal analysis and the legal direction that the Commodity Exchange Act might afford, and I will share with you very clearly, there is nothing in the Commodity Exchange Act which would allow us to prohibit or prevent an entity from combining all of these—an organization from combining all of these entities into a single parent. What we can do is apply our conflicts-of-interests core principle and other core principles to ensure that the affiliated entities are sufficiently walled off, whether through personnel, technology, boards of directors, leadership, financial resources, but we can't necessarily prohibit one holding company from owning multiple.

It is an interesting policy question. It is a product of technology, competition, and I think we should continue to collectively think about it because it really goes to the heart of market structure and whether or not we want to see this type of entity continue to grow and be adopted in our space because there are a number of policy, risk, and innovation questions that ultimately arise when you have these vertically integrated stacks.

The CHAIRMAN. Very good. Well, thank you.

I am now pleased to recognize for 5 minutes for questioning the gentleman from Altoona, Iowa, Mr. Nunn.

Mr. NUNN. Good Altoona is across America. Thank you, Mr. Chairman, both in Iowa and in your home state.

Chairman Behnam, thank you very much for the work that the CFTC and your team has done in this area. We are unique in the sense I get to sit on both the Agriculture Committee here, as well

as the Financial Services Committee across the way here, a lot of exciting overlap, but also, I think everyone from my farmers with a bushel of corn to my small business owners with the desire to be pioneers in the digital asset space are looking for guidance. And CFTC has been an open place for innovation and stabilization to really take root, and so I want to compliment you, first of all, on the work that you guys have done there.

I also recognize that you have a large portfolio. So we have received some feedback from a number of stakeholders regarding some downstream impacts of Basel III and its proposal on the derivative markets and ultimately the end-user. In a number of ways this has been a challenge. In fact, working with the Chairman here, we have called out some real flaws that we see and emphasize the negative impacts that this proposal would have on the agricultural community specifically. So, Chairman Thompson, what I would like to do is submit this letter for the record with the folks who have signed on with us.

The CHAIRMAN. Without objection.

[The letter referred to is located on p. 59.]

Mr. NUNN. So first, Chairman Behnam, the futures commission merchants, or FCMs, provide farmers with access to critical parts of the market. The FCM consolidation is occurring at alarming rates. I know you have seen this chart. My farmers have certainly seen this chart. Folks not just inside Iowa but across the country are facing this, which further decreases our growers' ability to access markets. Talk to us a little bit about how Basel will exacerbate this issue.

Mr. BEHNAM. Congressman, thanks. And I will just sort of caveat that this could be a significant issue. As you point out, this chart resonates very much with us. I said earlier this morning that we have seen a significant decrease in a number of FCMs over the past 20 years from 177 to just 64. And at the same time, we have seen a huge growth in customer-segregated money being held by fewer FCMs from \$88 billion to \$½ trillion over 20 years, so huge decrease in FCMs, huge growth in the amount of money being held by fewer FCMs.

Ultimately, with historically a low interest rate environment and a more competitive landscape, FCM numbers have reduced over time. Obviously, the interest rate environment is changing, but I don't necessarily think that is going to change the dynamic of new FCMs coming into place. There are huge economies-of-scales and barriers to entry, and we sort of live with what we have. My happiness or my content would be at a minimum staying in this range. I don't want to see this continued pattern of reduction of FCMs.

Ultimately, as you would imagine with any business on the sort of P&L side or balance sheet side, if there are more charges, more costs, it is going to create more impediments, possibly being passed through, through end-users, farmers, ranchers, energy producers. I think the larger policy issue, one that I have spoken with members of the Federal Board about, my staff with them as well, and other Prudential Regulators is we have to think about the balancing act of incentivizing and disincentivizing clearing. Clearing is a core component of the G20 reforms in 2009 and the Dodd-Frank Act. We

know that it mutualizes risk, it reduces risk, it is a risk-reducing feature.

Mr. NUNN. Right. I would agree.

Mr. BEHNAM. The SEC has just finalized a rule on clearing treasuries. We mandated clearing swaps, building off of clearing futures, which has been a component of the futures market for decades. Point being is we all agree clearing is a positive thing. It is a good thing for market risk, for market stability. We want to make sure any new prudential rules—I speak very confidently that capital is a core component of financial regulation and good financial regulation, but it has to be calibrated appropriately so we are incentivizing clearing and not disincentivizing because ultimately, that is going to reduce risk.

Mr. NUNN. Mr. Chairman, same page. I appreciate your leadership on it. In the sake of time you have answered a number of these things. I would just encourage you to continue to work with your partners, particularly on the Fed, to emphasize how important that is as well.

Mr. BEHNAM. Understood.

Mr. NUNN. I want to switch very quickly, I am proud to support FIT 21. We have talked a lot about that today. It is an area that continues to be just a growth opportunity. Prometheus recently announced its intention to custody Ether. I am concerned that the SEC will use this as an opportunity to circumvent Congress and even the CFTC in this space to further confuse participants who are already in the field. So I know I have asked you this before, but, given the reports, do you still believe Ether falls into that commodity area where CFTC can really allow digital assets like this to take root and be successful?

Mr. BEHNAM. Yes.

Mr. NUNN. With a follow-up then, until FIT 21 becomes law, what can the CFTC do to continue to bring clarity to this? I know I have 3 seconds left. Shoot.

Mr. BEHNAM. Well, ultimately, it goes down to the contracts that are listed on an exchange. We don't do this without analysis, legal analysis, policy analysis, so as the Bitcoin futures contracts were listed in 2017 and then the Ether futures contracts were listed in 2020, we worked closely with fellow regulators, but we also do the analysis internally about the underlying asset, whether it is a physical commodity, whether it is interest rate, currency, or credit product or a digital asset. We do the analysis under the Commodity Exchange Act. We work with the exchanges, and we ensure that what they are listing above all else is a commodity.

Mr. NUNN. Please continue that until FIT 21 becomes law, and then let's collectively work not only bipartisan on this, but with our private-sector and our agencies across the board.

Thank you, Mr. Chairman, for the grace. I yield back the remainder of my time.

The CHAIRMAN. The gentleman yields back.

As we prepare to close here, I will offer just a closing statement. Chairman Behnam, on behalf of myself, Ranking Member Scott, and quite frankly all our Members, thank you again for joining us today. And thank you for your leadership, strong leadership, collaborative leadership, and we are very appreciative.



Our discussion covered a wide range of important topics today, and thank you for your thoughts on bank capital standards and the impact that they would have to our farmers and energy producers and other end-users. It is so important that we get these right. Do not be shy about engaging with other financial regulators on the problems that you have identified. We also appreciate your commitment to the future, both in your advocacy of sound digital asset rules and the Commission's focus on emerging issues.

And finally, you heard today the Members of this Committee are serious about Federal employees across the entire Executive Branch returning to the office in person on regular schedules. In-person work fosters better communications, promotes greater accountability, and builds deeper relationships. I can attest to that with our Committee when we are in person *versus* the days that we were trying to do this virtually. There is just no comparison, that synergy that comes from that proximity. And so COVID is over, and America needs to get back to work, so please keep us apprised of the CFTC's plan for staff to return in person to the office.

You, your fellow Commissioners, and the Commission staff continue to serve a critical role protecting the public, and we look forward to working with you to ensure the Commission has the tools it needs to promote the integrity, resilience, and vibrancy of the U.S. derivatives market. So thank you so much for today.

Under the Rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive additional materials and supplementary written responses from the witness to any question posed by a Member.

This hearing of the Committee on Agriculture is adjourned.

[Whereupon, at 12:33 p.m., the Committee was adjourned.]

[Material submitted for inclusion in the record follows:]



SUBMITTED ARTICLES BY HON. DUSTY JOHNSON, A REPRESENTATIVE IN CONGRESS  
FROM SOUTH DAKOTA

## ARTICLE 1

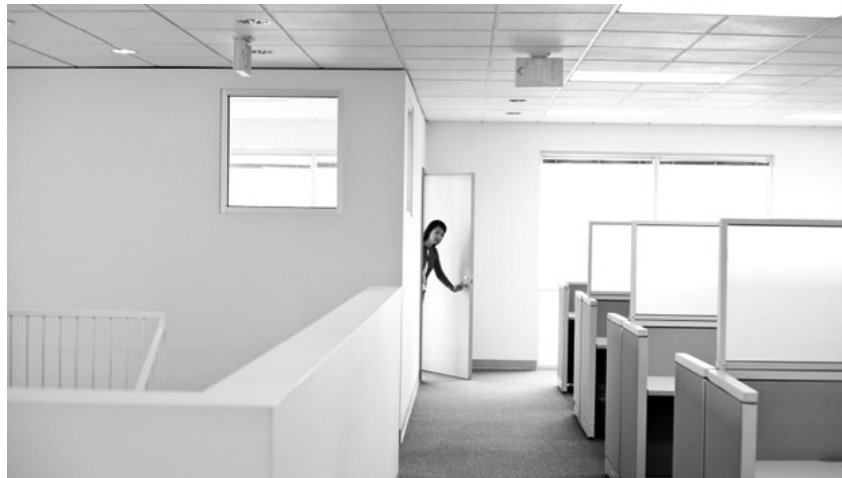
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[<https://www.cnbc.com/2023/09/11/90percent-of-companies-say-theyll-return-to-the-office-by-the-end-of-2024.html>]

**90% of companies say they'll return to the office by the end of 2024—but the 5-day commute is 'dead,' experts say**

Published Mon, Sep 11 2023 10:00 AM EDT

MORGAN SMITH @THEWORDSMITHM<sup>1</sup>



Mint Images Rf | Getty Images.

The debate over whether or not to return to the office is far from settled—and yet, the push to get employees back to the office is getting more aggressive.

*Goldman Sachs*<sup>2</sup> wants employees in 5 days a week. *Google*<sup>3</sup> is factoring employees' in-office attendance into their performance reviews.

A whopping 90% of companies plan to implement return-to-office policies by the end of 2024, according to an Aug. report from *Resume Builder*,<sup>4</sup> which surveyed 1,000 company leaders. Nearly 30% say their company will threaten to fire employees who don't comply with in-office requirements.

Only 2% of business leaders said their company never plans to require employees to work in person.

The renewed push to end remote work comes as more CEOs *openly acknowledge*<sup>5</sup> their disdain for the model, arguing that productivity, collaboration and employee engagement all suffer without the office.

"It's easier for executives to hold on to the old notion that people are really working if they can see them down the hall," says Dan Kaplan, a senior client partner at Korn Ferry. "It's almost too hard for some leaders to comprehend a world where that option doesn't exist, or to consider a radical new approach."

Even though more companies have introduced stricter in-office requirements for employees, office occupancy has remained relatively unchanged from the past year.

<sup>1</sup><https://twitter.com/thewordsmithm>.

<sup>2</sup><https://www.cnbc.com/2023/08/23/jim-cramers-top-10-things-to-watch-in-the-stock-market-wednesday.html>.

<sup>3</sup><https://www.cnbc.com/2023/06/13/google-rto-crackdown-gets-backlash-check-my-work-not-my-badge.html>.

<sup>4</sup><https://www.resumebuilder.com/90-of-companies-will-return-to-office-by-the-end-of-2024/>.

<sup>5</sup><https://www.cnbc.com/2023/03/30/more-companies-could-increase-rto-requirements-soon.html>.

During the first week of September, the average occupancy rate in offices in the top ten cities in the U.S. was 47.3% of pre-pandemic levels, compared to 44% this time last year, according to data from *Kastle Systems*.<sup>6</sup>

*Why return to the office at all?*

Companies are reluctant to give up their 9-to-5 in-person schedules for “more emotional than intellectual reasons,” says Kaplan.

“The message I hear from executives is, ‘We never intended for the world to change this dramatically and the office to just go away,’” he says. “Then, there’s the popular argument that people are less connected to their company and to their peers without the office, which is bad news for employee engagement and retention.”

In a 2022 *Korn Ferry survey*<sup>7</sup> of 15,000 global executives,  $\frac{2}{3}$  agreed that corporate culture accounts for more than 30% of their company’s market value. Many leaders, the report notes, believe that a strong culture can only be established and maintained “if everyone is—at least some of the time—occupying the same workplace.”

CEOs also justify their stance with the belief that workers are more productive in the office. Amazon’s Andy Jassy, for example, *told employees*<sup>8</sup> that “it’s easier to learn, model, practice and strengthen our culture when we’re in the office together most of the time and surrounded by colleagues.”

Yet research has failed to draw definitive conclusions about remote workers’ productivity. In the U.S., employee productivity rose by 4.4% in 2020 and 2.2% in 2021, before falling in 2022, according to the *Bureau of Labor Statistics*.<sup>9</sup> In 2023, however, labor productivity rose 3.7% during the second quarter, and is up 1.3% compared to this time last year.

“The individual free-for-all work policy doesn’t work,” says Brian Elliott, an executive advisor on flexibility and the founder of the research consortium Future Forum. “There really is some benefit to getting people together on a regular basis to drive relationship-building, mentorship and collaboration.”

Per Resume Builder, the “vast majority” of business leaders say they have seen an improvement in revenue, productivity and employee retention since returning to the office.

*Five days a week in the office is dead*

Even as large firms on Wall Street and in Silicon Valley consider a full return to in-person work, workplace experts agree that most organizations will stick with the post-pandemic norm of spending 2 to 3 days per week in the office.

“I think the concept of spending 5 days a week in the office is dead,” says Elliott. “That top-down, one-size-fits-all approach can lead to a lot of resentment among workers.”

With that kind of mandate, “organizations are risking a real break of trust with their employees,” says Susan Vroman, a lecturer in management at Bentley University.

Employees overwhelmingly prefer hybrid work: About 68% of full-time workers support a hybrid work schedule, working at least one day a week remotely and the other days in an office, a *recent Bankrate survey*<sup>10</sup> of over 2,000 adults in the U.S. found.

Whether a company is increasing its in-office requirements, or introducing them for the first time, “transparency is key,” Vroman adds. “Especially for companies who said employees could work wherever they wanted to, how do you convince them that going back to the office is the right thing to do?”

The only industries Kaplan expects to continue to push for a full return to the office are tech, financial services and retail, as leaders in those fields tend to *spend more*<sup>11</sup> on commercial real estate and are “the most adamant” that remote work can *pose security concerns*.<sup>12</sup>

Other companies, Vroman says, will opt for a more structured hybrid work arrangement, requiring employees to come in on certain days of the week rather than

<sup>6</sup> <https://www.kastle.com/safety-wellness/getting-america-back-to-work/>.

<sup>7</sup> <https://www.kornferry.com/insights/briefings-magazine/issue-59/back-to-work>.

<sup>8</sup> <https://www.aboutamazon.com/news/company-news/andy-jassy-update-on-amazon-return-to-office>.

<sup>9</sup> <https://www.bls.gov/news.release/pdf/prod2.pdf>.

<sup>10</sup> <https://www.bankrate.com/personal-finance/hybrid-remote-and-4-day-workweek-survey/#things-to-remember>.

<sup>11</sup> <https://therealdeal.com/new-york/2023/01/19/murdochs-6th-ave-deal-tops-manhattans-most-valuable-office-leases-of-2022/>.

<sup>12</sup> <https://www.cnn.com/2023/03/17/sub-listed-remote-work-as-a-business-risk-before-collapse-its-a-convenient-excuse-experts-say.html>.

allowing them to choose the number of days they work remotely, which can lead to “people being on Zoom all day surrounded by empty desks.”

Offering a flexible, hybrid model is also a smart recruiting tactic, Elliott adds. “The job market might have softened to some degree, but there’s always competition for top talent,” he says. “People still want flexibility at work, and they’re ready to walk if they don’t get it.”

## ARTICLE 2



[<https://www.shrm.org/topics-tools/news/employee-relations/ceos-predict-end-of-remote-work>]

### CEOs Predict End of Remote Work

October 17, 2023 | KYLIE ORA LOBELL



The pandemic ushered in a new era of work. Many workplaces went fully remote, with some employers giving up their office space altogether. In the post-pandemic era, a number of workplaces are hybrid and have no plans to get back to full-time, in-office work. According to the Pew Research Center, 35 percent of workers with jobs that can be done remotely are *working from home full time*,<sup>1</sup> and 41 percent of those with positions that can be remote are working a hybrid schedule.

However, now that COVID-19 is better managed, employers are attempting to bring workers back into the office, with some—like *Zoom and Meta*<sup>2</sup>—requiring in-person work at least a few days per week. Additionally, new research from KPMG’s Global CEO Outlook showed that 63 percent of CEOs predict a *full return to in-office work*<sup>3</sup> by the end of 2026, while only seven percent believe that full-time remote work will continue in the long term.

Following in the footsteps of Zoom and Meta are companies across the U.S., which are trying to bring workers back into the office at least part of the time.

Here’s what they’re doing to convince workers to come back, as well as their reasons for advocating in-office work.

<sup>1</sup> <https://www.pewresearch.org/short-reads/2023/03/30/about-a-third-of-us-workers-who-can-work-from-home-do-so-all-the-time/>.

<sup>2</sup> <https://www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/As-Summer-Ends-Workers-Head-Back-to-the-Office.aspx>.

<sup>3</sup> <https://finance.yahoo.com/news/most-bosses-think-ll-back-112925073.html>.

### *They're Encouraging In-Office Work for Gatherings*

In a time when 90 percent of office workers said *they don't wish to return to the old ways of working*<sup>4</sup>—and some are even threatening to walk away from a job if they have to go into the office full time—employers are treading lightly.

Sara Murdock, director of people and culture at architectural firm Steinberg Hart, which has offices in California, Texas and New York City, said her company allows for remote work among its 140 employees and requests in-person attendance for specific types of gatherings.

“We encourage people to be in the office for major meetings, training and group collaborations,” she said. “In other words, [we want them] to be physically present during times that we are interacting with one another or in interactive learning mode, not just working on our computers.”

### *They're Looking at the Impact on Productivity*

Amanda Webster, the chief operating officer of Fund&Grow, a U.S.-based lending program in Florida with 55 employees, said the company went remote during the pandemic but it wasn't a positive change.

“It had a negative impact on employee morale and their ability to separate work and home,” she said. “Employee morale was low due to feeling overwhelmed with work/life balance.”

Now, after seeing the effects of work from home, Webster only allows remote work if there is a medical accommodation needed or if it's approved in advance.

“Being in the office allows us to be the most efficient,” she said. “Our employees enjoy the camaraderie of being in the office, with the support of management and having the technology needed to be successful.”

At Relay Payments, a 150-employee company in Atlanta, Chief People Officer Amy Zimmerman requires employees to work in the office a few days a week because it's proven to be better for business.

“We are a rapidly growing fintech that's disrupting much larger, established businesses,” she said. “Our competitive advantage is speed, and we feel it's important to be in the office 3 days a week to collaborate, problem-solve in real time, connect, and to help onboard new team members since we're on a hiring spree.”

### *They're Offering Commuting Stipends*

Some employees who got used to working at home don't want to have to commute and pay high fuel or transportation costs to get to work again. In response to this, Steve Feiner, managing editor of Tech Jive and CEO of ABF Group in Silicon Valley, is providing commuting stipends to his 300 employees.

“[We] offer stipends for those who choose to commute, ensuring they aren't burdened by additional costs,” he said.

Since Feiner is in charge of a tech company, physical presence in the office isn't always required.

“However, for brainstorming sessions, collaborative projects and certain team-building activities, face-to-face interactions can be invaluable,” he said. “The pandemic accelerated a trend we were already observing: the rise of remote work facilitated by technology.”

### *They're Focusing on Relationship Building*

One of the biggest upsides of in-person work is the ability to cultivate relationships—something that could get lost on a Zoom call or Slack message.

Zimmerman makes days in the office special for workers, using them to focus on building bonds between employees.

“We cater lunch and host activities like our running club and taking walks together to ensure we're building relationships with one another,” she said. “On days when we're remote, we utilize our internal messaging platforms to make sure we're still honoring our culture by collaborating and engaging with each other.”

### *They're Balancing Business and Employee Needs*

Overall, companies are taking a balanced look at the situation: Even if they want employees in the office full time, they aren't demanding it. Instead, they're working hand in hand with employees to figure out the best solution moving forward.

“I'd suggest that more leaders do a deep dive into what, precisely, helps their teams do phenomenal work over time,” Murdock said. “Engage employee listening, and really get to know the ins and outs of human motivation.”

<sup>4</sup> <https://www.gallup.com/workplace/512006/office-workers-quietly-changing.aspx>.

While a majority of CEOs may believe that full-time in-person work is going to return, Feiner has a different perspective: The nature of work has changed, and companies have to change to keep up with it.

“The future of work is flexible,” he said. “With advancements in technology, especially in the realm of communication and collaboration tools, we have an opportunity to redefine traditional work structures. It’s essential to stay adaptable and prioritize both business needs and employee well-being.”

*Kylie Ora Lobell is a freelance writer based in Los Angeles.*

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SUBMITTED LETTER BY HON. ZACHARY NUNN, A REPRESENTATIVE IN CONGRESS FROM IOWA

January 19, 2024

Hon. MICHAEL S. BARR,  
*Vice Chairman for Supervision,*  
Board of Governors of the Federal Reserve System,  
Washington, D.C.;

Hon. MARTIN J. GRUENBERG,  
*Chairman,*  
Federal Deposit Insurance Corporation,  
Washington, D.C.;

Mr. MICHAEL J. HSU,  
*Acting Comptroller of the Currency,*  
Office of the Comptroller of the Currency,  
Washington, D.C.

Dear Vice Chair Barr, Chairman Gruenberg, and Acting Comptroller Hsu:

Futures and derivatives markets provide critical tools to manage risk for farmers, ranchers, grain and food processors, energy producers, and other important commercial end-users. We have concerns, however, that the GSIB Surcharge Proposal and the Basel III Endgame Proposal (the proposals) will generate disincentives for prudent risk management strategies and drive up the cost of hedging for end-users. Ultimately, consumers who are already facing elevated prices from record levels of inflation will pay the price at the grocery store and the gas station.

On the heels of inflation rates not seen in over 40 years, Americans are facing record high costs in grocery stores, at gas stations, and in their energy bills. Futures and derivatives markets play a stabilizing role for prices, helping to insulate consumers and businesses from market instability while involving minimal risk for end-users. For this reason, many nonfinancial firms that use derivatives for traditional hedging purposes were exempt from a number of regulations in the Dodd-Frank Act that would have made it more expensive for them to manage their risk. Former Senate Banking, Housing, and Urban Affairs Chairman Dodd, along with former Senate Agriculture, Nutrition, and Forestry Chairman Lincoln, highlighted the importance of preserving these tools in the Dodd-Frank Act. “Regulators, namely the Commodity Futures Trading Commission (CFTC), the Securities and Exchange Commission (SEC), and the prudential regulators, must not make hedging so costly it becomes prohibitively expensive for end-users to manage their risks.”<sup>1</sup>

As policymakers and stakeholders review the proposals, we remain concerned that the proposals ignore Congressional intent to keep critical risk management tools accessible and low-cost.

When farmers, ranchers, or other end-users enter into futures or other centrally-cleared derivatives contracts to mitigate the risk they face from fluctuating commodity prices, they generally initiate the trade through a Futures Commission Merchant (FCM) registered with the CFTC. FCMs provide market access to their clients through memberships at regulated derivatives exchanges and clearinghouses, and the vast majority of FCMs today are banks that will be subject to the proposals. Increasing regulatory capital charges for banks that provide end-users with access to these hedging markets and risk management tools is a misguided approach.

For another key hedging tool, uncleared swaps, the proposals would represent a massive increase in the cost of trading these instruments. The banking entities who facilitate these transactions as swap dealers allocate capital on a business line basis, and as a result, disproportionate capital requirements for a certain business line or

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<sup>1</sup>See letter from Senators Dodd and Lincoln to Chairman Frank and Peterson, dated June 30, 2010. <https://www.wsj.com/public/resources/documents/dodd-lincoln-letter070110.pdf>.

trading desk may cause banks to decrease their offerings of these risk-reducing tools. As a result, liquidity in these markets could decrease dramatically, and the costs of hedging for end-users would be driven even higher.

The Basel III Proposal's public listing requirement would make it more expensive for privately owned investment-grade companies to hedge against risk, despite the lack of any empirical link between a public listing and creditworthiness. In addition, the new capital requirements for "Credit Valuation Adjustment" or "CVA" Risk on derivative transactions could further penalize end-users. The new CVA requirements are most severe for derivative transactions with end-users.

The GSIB Surcharge Proposal and Basel III Endgame Proposal substantially exceed the Basel III framework and go significantly further than what is being implemented in other jurisdictions, such as Europe. This will inevitably put end-users seeking to hedge and manage risk on an uneven playing field with competitors in other jurisdictions.

In turn, we respectfully ask that you respond to the following questions by February 16, 2024.

- Have you conducted any economic analysis about these disparities? Please provide your analysis with regard to the international consistency of the U.S. proposals with other major jurisdictions, and, in particular, how the U.S. and EU jurisdictions treat end-users under the respective proposals.
- As you were developing these proposals, how was the end-user impact of increased capital charges for hedging and risk management tools factored into your decision-making? Have you produced any economic analysis about the impacts these proposals will have on end-users?
- How would increased FCM consolidation create more stability in the derivatives marketplace?

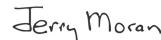
The impact of these bank capital proposals will have a direct effect on the economy and our constituents. It is vital to approach any proposal regarding increased capital requirements, particularly increased capital requirements for hedging and risk management tools, with careful consideration and input from industry as well as a comprehensive cost-benefit analysis.

With rising economic and geopolitical risks, now is not the time to increase costs for farmers' cooperatives, energy producers, and food processors seeking to responsibly hedge against instability.

Sincerely,



Hon. ZACHARY NUNN,  
Member of Congress



Hon. JERRY MORAN,  
United States Senator



Hon. ANDY BARR,  
Member of Congress



Hon. JOHN BOOZMAN,  
United States Senator



Hon. GLENN THOMPSON,<sup>2</sup>  
Member of Congress



Hon. J. FRENCH HILL,  
Member of Congress



Hon. JOHN THUNE,  
United States Senator



Hon. KEVIN CRAMER,  
United States Senator



Hon. BLAINE LUETKE-  
MEYER,  
Member of Congress



Hon. THOM TILLIS,  
United States Senator



Hon. FRANK D. LUCAS,  
Member of Congress

<sup>1</sup>Chairman, House Committee on Agriculture.



		
Hon. ROGER MARSHALL, <i>United States Senator</i>	Hon. WILEY NICKEL, <i>Member of Congress</i>	Hon. DUSTY JOHNSON, <i>Member of Congress</i>
		
Hon. AUSTIN SCOTT, <i>Member of Congress</i>	Hon. SCOTT FITZGERALD, <i>Member of Congress</i>	Hon. JOHN W. ROSE, <i>Member of Congress</i>
		
Hon. ROGER WILLIAMS, <i>Member of Congress</i>	Hon. JAMES R. BAIRD, <i>Member of Congress</i>	Hon. CYNTHIA M. LUMMIS, <i>United States Senator</i>
		
Hon. BILL HAGERTY, <i>United States Senator</i>	Hon. MIKE FLOOD, <i>Member of Congress</i>	Hon. DONALD G. DAVIS, <i>Member of Congress</i>
		
Hon. JOHN S. DUARTE, <i>Member of Congress</i>	Hon. TOMMY TUBERVILLE, <i>United States Senator</i>	Hon. MIKE BRAUN, <i>United States Senator</i>
		
Hon. BRYAN STEIL, <i>Member of Congress</i>	Hon. CINDY HYDE-SMITH, <i>United States Senator</i>	Hon. ERIN HOUCHIN, <i>Member of Congress</i>
		
Hon. MONICA DE LA CRUZ, <i>Member of Congress</i>	Hon. DANIEL MEUSER, <i>Member of Congress</i>	Hon. ALEXANDER X. MOONEY, <i>Member of Congress</i>
		

Hon. KATIE BOYD BRITT  
*United States Senator*

CC:

Federal Reserve *Board Chair* JEROME POWELL  
 Federal Reserve *Board Vice Chair* PHILLIP JEFFERSON  
 Federal Reserve *Board Governor* MICHELLE BOWMAN  
 Federal Reserve *Board Governor* CHRISTOPHER WALLER  
 Federal Reserve *Board Governor* LISA COOK  
 Federal Reserve *Board Governor* ADRIANA KUGLER  
 Commodity Futures Trading Commission *Chair* ROSTIN BEHNAM  
 Federal Deposit Insurance Corporation *Vice Chairman* TRAVIS HILL  
 Federal Deposit Insurance Corporation *Director* JONATHAN MCKERNAN  
 Federal Deposit Insurance Corporation *Director* ROHIT CHOPRA

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

**Insert 1**

Mr. BEHNAM. . . .

So we are doing what we can with what we have. The sandbox issue you raise that the UK has done, something that I know my predecessors have thought about, I have thought about, there are legal limitations to us being able to provide a sandbox environment for stakeholders. So if that is a priority of yours, you might want to consider it legislatively. But we do have limitations legally to provide a sandbox where, essentially, as you know, you would be protected from certain regulatory actions. But we are seeing a lot of change because of technology, and we are doing what we can with what we have both legally and personnel-wise to make sure we are engaging as much as possible and getting ahead of this very rapidly moving curve.

Mr. ROUZER. Yes, I would love to get those legal impediments, if your team can provide that list to give us some guidance on that so we could explore.

While my predecessors requested additional authorities related to testing new financial technology applications, I believe the agency has what it needs at this time to address the changing landscape of our markets. We have moved past the stage of digital assets as a research project. Our core policy divisions are currently working with digital asset firms that have set up legally-compliant CFTC-regulated entities, and our enforcement division has brought numerous cases against non-compliant firms. Under the Commodities Exchange Act, we cannot grant blanket exemptions to digital asset firms that do not comply with our regulatory requirements, and we are not requesting legislative authority to do so.

We continue our efforts to understand the nature of digital assets and the role that innovation can play in our markets. The agency's Office of Technology Innovation works to incorporate innovation and technology into our regulatory oversight and mission critical functions by supporting each operating division as well as the Commission's participation in domestic and international engagements. OTI's structure gives the CFTC greater flexibility to serve internal and external stakeholders in their efforts to grow expertise and address head on the challenges and opportunities presented through advancements in technology. Through the work of OTI and our operating divisions, we have developed a deep understanding of this novel market and the underlying innovations that fuel the market.

In my mind, the most important issue facing Congress related to digital assets is to ensure that there is an imposition of regulatory requirements focused on ensuring certain core principles are met to protect consumers and the broader financial system. And, I am encouraged by the bipartisan and bicameral support for legislation that acknowledges the need for additional regulation of the digital asset spot markets.

**Insert 2**

Ms. ADAMS. . . . So how does diversity and leadership at DCMs compare with the leadership of other publicly traded entities regulated by the CFTC that operate under the Commodity Exchange Act core principles?

Mr. BEHNAM. Congresswoman, I would probably have to look at the specific number of DCMs, the designated contract markets, and the other participants and identify the diversity of their boards. It is not something I necessarily look at regularly, but I am happy to look at that and work with your office to get you some statistics, again, ensuring that that core principle is complied with from Dodd-Frank.

As you noted, the Dodd-Frank Act added a new core principle for publicly-traded DCMs, Diversity of Board of Directors for futures exchanges (DCMs). Although many DCMs are subsidiaries of publicly-traded companies, none of the DCMs are themselves publicly-traded companies. For example, the four CME Group DCMs (CME, CBOT, NYMEX and COMEX) are subsidiaries of CME Group, Inc., the publicly-traded company. Since DCM Core Principle 22 does not currently apply to any DCMs, we do not collect this information.

To follow this question further—as you know, unlike our peer Federal financial regulators, CFTC's Office of Minority & Women Inclusion (OMWI) is not statutorily authorized under Section 342 of the Dodd-Frank Act. Barring that statutory authorization, the CFTC does not have the statutory authority specified under Section 342(2)(c) of the Dodd-Frank Act to collect and assess the diversity policies and practices of entities regulated by the CFTC.

Under my direction as Chairman, the CFTC hired its first ever Chief Diversity Officer (CDO) who oversees the agency's Office of Minority and Women Inclusion (OMWI). And, on April 18th the CFTC released its first DEIA Strategic Plan. Among other things, the Plan will aim to further develop our workforce. Current efforts through our OMWI include establishing partnerships and recruiting at minority serving institutions and rural colleges and universities, engaging urban and rural communities and related professional associations, and planning a robust mass media campaign to enhance our outreach efforts. I am eager to see the CFTC's OMWI statutorily authorized, similar to other Federal financial regulators.

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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.* Chairman Behnam, I know that the Commission has recently signed new leases for space in New York, Chicago, and Kansas City, and it is in the process of relocating your Washington, D.C. headquarters. How does the Commission currently determine its space needs?

*Answer.* The CFTC works with GSA on all leasing matters. As part of the leasing acquisition process GSA conducts a thorough needs assessment and applies its experience in facilities planning to determine an agency's space requirements. GSA then packages its analysis and uses it as the basis for its solicitation to prospective landlords.

*Question 1a.* I understand that many of the Commission staff are currently not coming into the office regularly and the union is fighting to make 100% telework a permanent option for all staff in the next union contract. If that is accurate, who is using the office space that the Commission is leasing and who do you expect will be using under a 100% telework model?

*Answer.* Since January 1st more than 50% of CFTC staff have entered the office. My office is in the building 3 to 5 days a week, the division directors are in the office 3 days a week, and Supervisors and Executives currently are in twice a week. The CFTC remains in negotiations with NTEU for returning all staff to the office. The CFTC's current lease for its D.C. location ends on September 30, 2025. A new location has been found and will reduce the CFTC's D.C. footprint by approximately 50%.

*Question 1b.* Mr. Chairman, as you finalize your return-to-work plans, how are you making certain that the Commission is not wasting money on unused or rarely used space, both in your existing leases and in your upcoming lease in Washington, D.C.?

*Answer.* The CFTC, through GSA, has recently identified office space in DC to relocate its headquarters to at the conclusion of the current lease that expires September 30, 2025. The new facility will reduce the CFTC's footprint by approximately 50% and will lead to a significant annual savings compared to the current headquarters lease. The regional leases are also relatively new and based on a similar needs assessment conducted by GSA that reduced our footprint. Though not expected, the CFTC is able to exit its regional leases should the future work environment shift our space needs dramatically.

*Question 2.* Chairman Behnam, as you know, the Pathways Program is designed to provide training and mentoring to students at the start of their career and to provide them with an understanding of the CFTC and its culture.

I am concerned about the ability for the Commission to provide that training and mentorship, as well as to develop an effective, high performing corporate culture, transmit institutional knowledge, and promote teamwork, in an environment where most staff does not interact in person day to day.

Do you share concerns about the sustainability of the culture and institutional knowledge at the CFTC if staff interactions are limited to Zoom calls and other scheduled interactions? How does remote work impact the participants in the Pathways Program if the overwhelming majority of staff works from home?

*Answer.* I believe that being in the office and interacting in person is an important component of building and maintaining a good culture. That said, it is also important to acknowledge that great work can be, and is being, done while teleworking. Finding the right balance is the key. Towards that effort, I have established in-office requirements for managers and executives. For employees, while I have encouraged

agency staff to be in the office, we are in currently in negotiations with the union regarding in-office requirements.

Regarding the Pathways Program, we recently expanded our early career program to include the Pathways Recent Graduates Program. For all those in the program, we designed the program to ensure that they would benefit from a hybrid workplace by including in-office requirements. Also, their in-office schedule is set up so they align to when their manager is also in the office. To help them better understand CFTC's culture and to make other connections within the agency, each participant also has been assigned a mentor. We believe these efforts as well as our revamped new employee orientation program are contributing to early career program participants understanding of CFTC's culture and being effective employees.

*Question 3.* Chairman Behnam, there have been a few recent CFTC enforcement actions against Decentralized Finance (DeFi) entities. The DeFi community has complained that those actions were taken without notice to DeFi entities that their activity (e.g., merely creating an online trading platform) could be considered a violation of the Commodity Exchange Act and Regulations. Could you please tell me whether the CFTC plans on publishing guidance regarding potential liability for DeFi activities to ensure that DeFi entities are made aware of their responsibilities?

*Answer.* Over the past few years, the Commission has brought multiple actions against DeFi platforms to enforce the legal requirements that apply to all platforms, whether centralized or decentralized, that offer derivative products to the public. The CFTC's actions did not find that DeFi technology was per se violative of the CEA or illegal but rather that DeFi platforms are not exempt from our regulations.

The legal requirements that apply to derivative platforms are established under the Commodity Exchange Act and have been in place for decades. Market participants are well aware of these rules.

The Commission has no current plans to issue guidance specific to DeFi. We will continue to work to ensure that digital asset transactions that should be conducted on regulated derivatives platforms are in fact conducted on those platforms.

*Question 4.* Chairman Behnam, last year, the Commission lost its long-serving Inspector General. It has been over 6 months without a permanent replacement. What is the process for naming a permanent IG and do you have a timeframe for when that will happen?

*Answer.* On April 10, 2024 the CFTC announced Christopher L. Skinner as the newly appointed Inspector General for the agency. *CFTC Appoints Christopher Skinner as Inspector General CFTC.*<sup>1\*</sup>

*Question 5.* Chairman Behnam, I worry that we are not utilizing our best efforts to secure our information from those that may seek to disrupt our financial markets. Could you please detail the agency's efforts to ensure that it and its systemically important market participants are employing the strongest protections available against cyber threats?

*Answer.* The CFTC is the primary market regulator for the designated contract markets ("DCMs"), swap execution facilities ("SEFs"), derivatives clearing organizations ("DCOs"), and swap data repositories ("SDRs") owned by CME Group, Inc. ("CME Group") and those owned by Intercontinental Exchange, Inc. ("ICE"). CME Group and ICE are the two largest providers of derivatives trading and clearing in the United States.

In July 2012, the Financial Stability Oversight Council ("FSOC") determined that the Chicago Mercantile Exchange, Inc. ("CME"), a subsidiary of CME Group, and ICE Clear Credit LLC ("ICC"), a subsidiary of ICE, are systemically important financial market utilities ("FMUs") under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The designations were based on FSOC's determination that failure or disruption of the FMU's operations could create or increase the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.

The CFTC has an established system safeguards and cybersecurity regulatory framework. The framework covers all subsidiaries of CME Group, and all subsidiaries of ICE that are registered with the CFTC, including a number of DCMs, SEFs, DCOs, and SDRs. At both CME Group and ICE, the DCMs, SEFs, DCOs, and SDRs share a common program of system safeguards risk analysis and oversight for their automated systems.

Based on statutory and regulatory requirements, the CFTC oversight framework requires each DCM, SEF, DCO, and SDR registered with the CFTC to have a pro-

<sup>1</sup><https://www.cftc.gov/PressRoom/PressReleases/8890-24>.†

\* **Editor's note:** references annotated with † are retained in Committee file.

gram of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems that are reliable, secure, and have adequate scalable capacity. These entities must have emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations. The entities must periodically test such procedures to ensure continuity of operations. The program of system safeguards risk analysis and oversight must follow generally accepted standards and best practices for each required element of the program. In addition, the program must address seven categories of system safeguards risk analysis and oversight, including: (1) system safeguards risk management and governance; (2) information security; (3) business continuity and disaster recovery planning and resources; (4) capacity and performance planning; (5) systems operations; (6) systems development and quality assurance; and (7) physical security and environmental controls.

CFTC regulations also require various types of system safeguards and cybersecurity testing, including (1) vulnerability testing; (2) external and internal penetration testing; (3) identification of key controls and testing of all controls; (4) development and testing of a security incident response plan; and (5) completion and annual updating of an enterprise technology risk assessment.

*Question 6.* Chairman Behnam, in February, the CFTC issued a no-action relief letter (NAL) that allows registered swap dealers to not provide otherwise required information to a swap counterparty if: (1) the counterparty agrees they don't need the information; and (2) the information is otherwise easily available to the counterparty. Could you please elaborate on the NAL and explain why this relief was given?

*Answer.* CFTC staff letter 24-02 was issued as part of the CFTC's support for the industry-wide transition from use of the LIBOR interest rate benchmark in CFTC-regulated derivatives to the risk-free-rate benchmark, SOFR, chosen by the Alternative Reference Rate Committee (ARRC) sponsored by the Federal Reserve Bank of New York.

Importantly, the no-action letter only applies to a swap dealer's disclosure of a "pre-trade mid-market mark" for certain interest rate swaps referencing SOFR, and does not apply to any other disclosure required by CFTC rules (*i.e.*, disclosure of swap risks and characteristics, disclosure of conflicts of interest, *etc.*). The no-action letter does not apply to the "daily mark" disclosure requirement, which is a requirement that a daily mid-market mark for a swap be provided by a swap dealer to a counterparty each business day after execution (or, if a cleared swap, provided by a DCO to the counterparty each business day).

The no-action letter is a replacement for an existing no-action position issued in 2012 for certain interest rate swaps referencing LIBOR. It responds to a request from the ARRC as part of the ARRC-led transition from LIBOR to SOFR. The no-action letter applies only to SOFR swaps that are required to be cleared and are thus the most widely-traded, most liquid interest rate swaps in the market. Pre-trade prices for such SOFR swaps are widely available from public sources and thus, requiring a swap dealer to also provide a pre-trade mid-market price for such swaps is redundant and only causes possible delay in execution.

*Question 6a.* Do you have any concerns that granting this relief may increase systemic risk in the marketplace or impose greater risk on the counterparties to these trades?

*Answer.* No. Again, the no-action letter applies only to a swap dealer's disclosure of a pre-trade mid-market mark and does **not** apply to any other disclosure required by CFTC rules, such as disclosure of risks and characteristics of swaps and disclosure of conflicts of interest of the swap dealer, *etc.* No-action letter 24-02 is a replacement for a letter originally issued in 2012 for LIBOR swaps. Thus, the no-action position has been in effect for the most widely traded interest rate swaps for 14 years and CFTC Staff is unaware of any increase in systemic risk or imposition of greater risk on counterparties to these trades during the last 14 years.

*Question 7.* Chairman Behnam, in December, the CFTC proposed a rule that would protect clearing member funds held by clearinghouses. Could you please elaborate on what this rule does and why it is necessary?

*Answer.* Currently clearing members and participants, including natural persons who clear directly at non-intermediated DCOs, do not receive the same protections for their funds as those provided under the CEA for the funds of customers of FCM clearing members. The Commission has attempted to provide some measure of protection in some cases through conditions to a DCO's order of registration, but given that five of the 16 DCOs now registered with the Commission provide non-inter-

mediated clearing, it was long past time for the Commission to promulgate rules to thoroughly protect participant funds held by DCOs.

As you indicated in your question, the proposed rule will provide protections for participants' funds. These protections are practically identical to those provided to FCM customer funds and include: segregation of participant funds from the DCO's own funds; requiring that participant funds be held in a depository that expressly acknowledges the funds belong to participants and must remain segregated from the DCO's own funds; limiting the ability of DCOs to invest participant funds; and requiring the DCOs to conduct daily accounting and reconciliation between the amounts held in their accounts and the amounts owed to participants.

In addition, the rule encourages the holding of customer and participant funds at central banks by proposing requirements specific to obtaining written acknowledgements from central banks holding such funds. As compared to commercial banks, central banks present lower credit and liquidity risk. The proposal allows a DCO to hold customer and participant funds at certain central banks with only a simple written acknowledgment (in contrast to the previously adopted template acknowledgment letter) the central bank was informed the funds deposited are customer or participant funds and an agreement to respond to requests from Commission staff for information about the account(s) holding the funds.

*Question 8.* Chairman Behnam, in June 2023, the CFTC finalized a rule that required clearinghouses to establish and listen to "risk management committees" made up of their clearing members. Could you please describe the relationship between a clearinghouse and its clearing members and why this rule was undertaken?

*Answer.* The clearing members of a clearinghouse (which is also called a derivative clearing organization, or "DCO") perform a variety of risk management functions to support the financial integrity of the DCO. Significantly, at most DCOs, clearing members contribute to a default fund that helps ensure that the DCO is able to meet its financial obligations to a DCO's participants even if a given clearing member were to become insolvent or otherwise default on its obligations to the DCO. In this way, default losses at a DCO may be mutualized across its clearing members, who therefore have a significant stake in the DCO's financial integrity. The CFTC's recent rule, which was based on recommendations from a subcommittee of the CFTC's Market Risk Advisory Committee that includes representatives from DCOs, clearing members, and end-users, requires DCOs to consult with risk management committees that include clearing member representation prior to making certain significant risk decisions. This helps DCOs take advantage of clearing members' risk management expertise and strong interest in the DCO's risk management, in order to promote the safety and efficiency of the DCO and the stability of the broader financial system.

*Question 9.* Chairman Behnam, in December, the CFTC proposed a rule that would require certain derivatives market intermediaries to establish Operational Resilience Frameworks (ORF).

In your testimony, you highlighted how you have highlighted how you are working with domestic regulators to ensure that the ORF requirements are not duplicative. Have you had similar conversations with foreign regulators? How are they approaching these same challenges? Will you be providing substituted compliance or other relief for entities which face similar requirements in their home jurisdiction?

*Answer.* Under my leadership, the agency has placed renewed focus on cybersecurity and related risks to identify new ways to expand and enhance our oversight in this area. To that end, in December 2023, the Commission issued a proposed rule-making that would require futures commission merchants and swap dealers, which play crucial roles as intermediaries in the derivatives markets, to develop an Operational Resilience Framework. This framework would include enhanced requirements relating to not only information and technology security but to risks posed by third-party relationships and how to keep operating in the face of emergencies or other significant disruptions affecting the continuity of operations. The draft rule also included proposed guidance relating to the management of risks stemming from third-party relationships. Staff are now busy reviewing the comments on this rule-making, and we hope to be able to finalize the rule this fall.

*Questions Submitted by Hon. Frank D. Lucas, a Representative in Congress from Oklahoma*

*Question 1.* Under the current CFTC margin rules, eligible collateral for initial margin includes government related money market funds (MMFs). These MMFs are allowed as eligible collateral under CFTC and other regulatory regimes' noncleared margin rules, but the CFTC has restrictions that could increase operational risk and jeopardize U.S. firms' competitiveness. Currently, the CFTC does not permit the use of MMFs issued in another jurisdiction without restrictions or MMFs that transfer

assets through securities lending and repurchase agreements (“repos”). The CFTC has proposed amendments—suggested by the CFTC’s Global Markets Advisory Committee—to its margin rules that would expand the use of these MMFs.

Chairman Behnam, I was pleased to see your 2023 notice of proposed rulemaking expanding the use of money market funds (MMFs) as eligible collateral. It is my understanding that MMFs are a key element of managing liquidity and collateral, particularly during times of market volatility. Can you provide a timeline for finalization of this proposal?

*Answer.* Staff is continuing to review the comments received in response to the Commission’s NPRM regarding uncleared margin. Commenters raised some operational concerns with respect to implementation of certain aspects of the proposal that require careful staff consideration. In light of this, it is challenging to provide an estimate for possible finalization at this point.

*Question 2.* Chairman Behnam, data protection issues have been a concern for many years. There has been concern from market participants about the recent MOU between the CFTC and SEC as it relates to Form PF.

What steps have been taken to ensure the best possible transfer of sensitive proprietary data between agencies, and does the CFTC’s analysis identify any risks for market participants?

*Answer.* The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 mandated that the SEC and the CFTC, in consultation with the FSOC, jointly promulgate rules governing the form and substance of reports required by investment advisers to private funds to be filed with the SEC, and with the CFTC for those that are dually-registered with both Commissions.<sup>2</sup> Form PF provides the Commissions and FSOC with important information about the basic operations and strategies of private funds and has helped establish a baseline picture of the private fund industry for use in assessing systemic risk. The Commission also expects to use Form PF data to inform its regulatory programs, including examinations, investigations and investor protection efforts.

Form PF data from both CFTC registrants and non-CFTC registrants is expected to assist the Commission in providing effective oversight of CFTC registrants and to protect the financial integrity of derivatives markets. Form PF provides information from filers reflecting creditor and counterparty exposures (including central clearing counterparties or “CCPs”), financing arrangements, and activities in cross-market transactions. Understanding counterparty exposures allows the Commission to assess who may be impacted by losses due to a reporting fund’s failure, and which reporting funds may be impacted by a counterparty’s failure. Form PF data, reported by non-CFTC registrants with such financing exposures to CFTC registrants, therefore informs the Commission of the risks to CFTC registrants such as Swap Dealers and Derivatives Clearing Organizations (DCOs).

With respect to the protection of Form PF data, the Commission respects its statutory obligations not to reveal information that would disclose the transaction, positions, or trade secrets of customers. Moreover, the MOU between the SEC and CFTC specifies minimum procedural and data security requirements for receipt of the data. Many of these guidelines are Federal requirements that the CFTC meets or exceeds in regular practice.

*Question 3.* The CFTC regulates markets with a global impact. Will you commit to allowing U.S. customer access in foreign markets when necessary?

*Answer.* Yes, I am committed to allowing U.S. customer access in foreign markets to the extent permitted by U.S. law. The Commodity Exchange Act (CEA) has long allowed U.S. customer access to foreign markets. For nearly 40 years, pursuant to the CFTC’s Part 30 rules, U.S. customers have been permitted to trade foreign futures listed on any foreign board of trade, either through an FCM registered with the Commission that has opened an omnibus account with a foreign broker or directly through a foreign broker that the Commission has exempted from registration as an FCM pursuant to CFTC rule 30.10. As outlined in Appendix A to Part 30, a foreign regulator or foreign board of trade seeking relief under rule 30.10 must demonstrate that it provides a comparable system of regulation for foreign firms engaging in the activities of an FCM with respect to U.S. persons, and enter into an information-sharing arrangement with the Commission.

In addition, pursuant to Part 48 of the CFTC’s rules, foreign boards of trade have been permitted to provide U.S. customers with direct access to their markets so long as such trades are cleared through a registered FCM or a foreign broker exempted from FCM registration pursuant CFTC rule 30.10.

<sup>2</sup>Public Law 111–203, 124 Stat. 1376 (2010).†

A list of the foreign boards of trade accessible to U.S. customers pursuant to Part 48 is available here: <https://www.cftc.gov/IndustryOversight/IndustryFilings/ForeignBoardsOfTrade>

A list of foreign markets that have obtained a 30.10 exemption is available here: <https://www.cftc.gov/IndustryOversight/IndustryFilings/ForeignPart30Exemptions>

With respect to swaps clearing, the Commission permits a foreign clearinghouse to register with the Commission as a derivative clearing organization (DCO) and clear for U.S. customers if the clearinghouse can meet the DCO core principles set forth in the CEA and the applicable CFTC rules, which are the same requirements for U.S. DCOs. Under CFTC Rule 39.51, a foreign clearinghouse may be able to comply with the DCO core principles through compliance with its home country regulatory regime, as an alternative to CFTC rules.

*Question 4.* Compliance for the new block trade and cap size reporting obligations is required beginning July 1, 2024. Commissioners Mersinger and Pham noted in a joint *release*,<sup>3</sup> more time is needed to study the market impact of these reporting obligations. Additionally, just last month, the CFTC's Global Markets Advisory Committee (GMAC) *recommended*<sup>4</sup> "extending the compliance date for the post-initial block and cap sizes for all asset classes to at least December 4, 2024," giving the Commission time to engage "with market participants in discussions and analysis to ensure the post-initial block and cap sizes are appropriately tailored." Given the upcoming deadline, could you please provide an update from the CFTC on the recommendations put forward by GMAC and the Commission's intentions moving forward on this topic?

*Answer.* Commission staff published revised post-initial appropriate minimum block sizes and extended the timeline for implementation on May 23, 2024.<sup>5</sup> The revised block sizes take into consideration the data improvements contemplated by the Commission's 2020 Swaps Data Rulemakings.<sup>6</sup> The Commission does not intend for the publication of the revised block sizes to be associated with any formal notice and public comment period.<sup>7</sup> The Commission expended significant time and resources in analyzing data and responding to public comments received during the comment period associated with the 2020 Swaps Data Rulemakings. The compliance date for the revised block sizes has been extended to October 7, 2024. The Commission plans to continue to engage with market participants informally and monitor the liquidity of its jurisdictional markets.

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

<sup>3</sup> <https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerphamstatement101823>.†

<sup>4</sup> <https://www.cftc.gov/PressRoom/PressReleases/8860-24>.†

<sup>5</sup> Staff Letter 24-06 (<https://www.cftc.gov/csl/23-15/download>).† CFTC Staff Announces Updated Part 43 Block and Cap Sizes and Further Extends No-Action Letter Regarding the Block and Cap Implementation Timeline \ CFTC (<https://www.cftc.gov/PressRoom/PressReleases/8913-24>).†

<sup>6</sup> The revised block sizes were calculated in accordance with Commission regulation 43.6(g), which requires use of a 67 percent notional amount calculation. The revised block sizes were calculated based on a 1 year window of reliable swap transaction and pricing data transmitted to Swap Data Repositories (SDRs) between December 1, 2021 and November 30, 2022. The SDR that receives the vast majority of swap transaction and pricing data reports had already implemented several key aspects of the Commission's 2020 Swaps Data Rulemakings prior to December 1, 2021.

<sup>7</sup> The Commission's regulations require the Commission to update the block sizes on its website at least once each calendar year, but modify the block swap categories and block calculation methodology through rulemaking. The Commission therefore does not intend for the publication of the revised block sizes to be associated with a formal notice and comment period, as the Commission noted its concern during the 2020 Swaps Data Rulemakings that opening the results of applying the block methodologies to data would suggest the methodologies are open to public comment annually, when opening the rules for public comment each year would be an inefficient use of Commission resources.



*Question Submitted by Hon. Dusty Johnson, a Representative in Congress from South Dakota*

*Question.* Chairman Behnam, data protection issues have been a concern for many years. I commend the CFTC for setting up the Division of Data to prioritize these issues. However, I am concerned about the recent memorandum of understanding that you entered into with the SEC granting the CFTC unrestricted access to all data submitted to the SEC by all Form PF filers, including data submitted to the SEC by non-CFTC registrants.

According to the CFTC and SEC's joint final rule for Form PF, "Form PF elicits non-public information about private funds and their trading strategies, the public disclosure of which could adversely affect the funds and their investors." It is unclear why the CFTC should be granted access to Form PF data for non-CFTC registrants. Moreover, I am concerned about the protection of sensitive Form PF data as it shared between the agencies.

Could you please tell me why the CFTC needs to access non-CFTC registrant information and what the CFTC is doing to mitigate the risks associated with sharing highly confidential information?

*Answer.* The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 mandated that the SEC and the CFTC, in consultation with the FSOC, jointly promulgate rules governing the form and substance of reports required by investment advisers to private funds to be filed with the SEC, and with the CFTC for those that are dually-registered with both Commissions.<sup>8</sup> Form PF provides the Commissions and FSOC with important information about the basic operations and strategies of private funds and has helped establish a baseline picture of the private fund industry for use in assessing systemic risk. The Commission also expects to use Form PF data to inform its regulatory programs, including examinations, investigations and investor protection efforts.

Form PF data from both CFTC registrants and non-CFTC registrants is expected to assist the Commission in providing effective oversight of CFTC registrants and to protect the financial integrity of derivatives markets. Form PF provides information from filers reflecting creditor and counterparty exposures (including central clearing counterparties or "CCPs"), financing arrangements, and activities in cross-market transactions. Understanding counterparty exposures allows the Commission to assess who may be impacted by losses due to a reporting fund's failure, and which reporting funds may be impacted by a counterparty's failure. Form PF data, reported by non-CFTC registrants with such financing exposures to CFTC registrants, therefore informs the Commission of the risks to CFTC registrants such as Swap Dealers and Derivatives Clearing Organizations (DCOs).

With respect to the protection of Form PF data, the Commission respects its statutory obligations not to reveal information that would disclose the transaction, positions, or trade secrets of customers. Moreover, the MOU between the SEC and CFTC specifies procedural and data security requirements for receipt of the data. Many of these guidelines are Federal requirements that the CFTC meets or exceeds in regular practice.

*Questions Submitted by Hon. John W. Rose, a Representative in Congress from Tennessee*

*Question 1.* Chairman Behnam, to ensure the continued security of sensitive data, I'd like to inquire about potential incidents of accidental disclosure or misuse of confidential CFTC data by employees working remotely. Can you please specify if any such incidents have occurred? If so, please list the details regarding the nature of the incidents, including the date range and type of data involved, as well as the measures taken by the CFTC to address them.

*Answer.* I cannot specify instances in which employees working remotely accidentally disclosed or misused confidential CFTC data. I can say, however, that there have been instances where media outlets have reported on confidential CFTC information. It is not clear if the source was a CFTC employee, or if it was a CFTC employee whether they were working remotely. There is no indication that the information reported was trade position or regulatory reporting data, but rather other sensitive information. To address this situation, I have sent out a number of emails reminding employees about the importance of keeping confidential information confidential. As noted in these emails, the leaking of any confidential CFTC information ultimately undermines the public's trust in us to fulfill our mission.

Also, please know that the CFTC Security Operations Center (SOC) has adequate security controls in place to allow us to monitor the CFTC network and detect ab-

<sup>8</sup>Public Law 111-203, 124 Stat. 1376 (2010).†

normal and malicious activities from inside and outside the network. For example, we monitor and get alerts on many things on the network, including but not limited to new account creation, privilege account creation, and downloading and emailing of large amounts of data. We do not allow USB thumb drives and USB drives to be connected to our devices. Additionally, we block access to social media, we monitor for CFTC emails sent to personal emails and we do not allow the creation of email forwarding rules.

*Question 2.* Chairman Behnam, if the pending bank capital proposals are implemented without major reforms this will require banks to increase the costs of client clearing services and likely reduce the clearing capacity they can provide clients. Or some banks may be forced to completely exit the client clearing business which would cut off access to certain derivatives markets for end-users. Non-bank futures commission merchants can provide access to derivatives markets as well, and may have capacity to take on some additional clients, but do they have the capacity to replace a GSIB bank that offers client clearing services?

*Answer.* It is important to emphasize that the efficient and effective operation of the cleared derivatives markets relies on FCMs to bring customers, including end-users, to the futures and cleared swaps market, and to clear transactions on behalf of customers. FCMs provide the infrastructure by which customers access the markets and they also process customer margin payments to and from derivatives clearing organizations (DCOs). DCOs and the clearing system also rely on certain market intermediaries, in particular FCMs that are clearing members, to be willing and able to participate in risk sharing arrangements, both on “sunny days,” (e.g., guaranteeing clients’ financial performance to the DCO, contributing to DCO default resource waterfalls) and on “stormy days” (e.g., porting a defaulting FCM’s customer position to a financially sound FCM.) The strength of the system depends on, but goes beyond, the strength of each participant considered individually. CFTC has been concerned the proposed capital increases attributable to client clearing could:

- Reduce the number of firms that offer client clearing (a number that has already been on a steep decline, from 100 as of January 2004 to 47 as of February 2024). There is a heavy concentration of customer funds with FCMs that are part of U.S. or foreign banking organizations. With respect to futures customers, the top five FCMs are bank FCMs and they hold 55 percent of total customer funds required to be segregated. With respect to cleared swaps transactions, only bank FCMs clear for customers and the top five FCMs hold 75 percent of total cleared swaps customer funds required to be segregated;
- Make remaining clearing firms more selective, pushing out clients other than those that generate significant revenue through high levels of trading or other activities (such as securities trading), and refusing to serve new clients who do not meet that standard;
- Reduce willingness of the remaining client-clearing firms to take on client positions of failing firms (thus making bank clearing firms *more* likely to be considered “too big to fail”); and
- Even for clients that maintain access, increase costs to an extent that would disincentivize cleared *versus* non-cleared derivatives.

This would not be a question of whether non-bank clearing firms could replace bank or bank-affiliated clearing firms, as the effects of reducing options and competition would affect the entire ecosystem. Moreover, it is possible that reduced availability of clearing services may flow downhill—that is, non-bank clearing firms, having limited capital to meet CFTC’s and DCO’s risk-margin-based minimum capital requirements, might free up the capacity to accept more profitable clients transferring from bank-affiliated clearing firms by displacing some of their existing customers, including smaller business clients. Should client clearing be reduced, the outcome could, paradoxically, be an increase in system complexity, opacity, interconnectedness and lower resilience.

*Question 3.* Chairman Behnam, could you please tell me about any conversations that have taken place between the Commission and the SEC regarding Prometheus’s plans?

*Answer.* The CFTC has ongoing discussions with the SEC about topics of mutual interest, and as part of these discussions we have talked about Prometheus’s plans and the status of Ethereum. As I have said previously, I believe Ethereum is a commodity. There have been listed futures on Ethereum on CFTC-regulated markets going back to 2020. And the CFTC has brought cases against institutions or organizations that are trading Ethereum in an illegal manner, including against Binance.

*Question 3a.* Have you had any conversations with SEC Chairman Gensler regarding whether Ether is a commodity or a security?

*Answer.* Chairman Gensler and I have spoken about the classification of Ether. I have stated clearly that I believe Ethereum is a commodity and that there have been listed futures on that digital asset on CFTC-regulated markets dating back to 2020. Our enforcement docket and the case the agency brought against Binance reinforces that decision.

*Question 4.* Chairman Behnam, the Commission has been migrating its data and analytics capabilities to the cloud. Is this process complete yet? What efficiencies or capabilities does a move to the cloud provide?

*Answer.* The Commission has now concluded a multi-year project to transition its legacy data environment to the cloud. All of the Commission's systems and data are currently in the cloud. However, the Commission continues to leverage its prior cloud investments to modernize its analytics capabilities and expand the Commission's use of advanced analytics tools, such as artificial intelligence, in the cloud environment. Transitioning the Commission's legacy data environment to the cloud provides for many efficiencies and capabilities. Primary among these efficiencies and capabilities are a reduction in administrative maintenance costs, access to more modern analytical tools, and the ability to meaningfully analyze certain market data for the first time.

The Commission collects and maintains a wide range of data to support its mission of fostering open, transparent, competitive, and financially sound markets. Over time, the expansion of electronic and automated trading in markets overseen by the Commission has led to the Commission ingesting and managing over 15 billion records per day. Some of these data sets reflecting certain market activity, such as orders submitted to designated contract markets, were so large that it was challenging to meaningfully process and analyze those data sets in the Commission's legacy on-premise data environment. For these extremely large data sets, the transition to a cloud environment enabled the Commission to access the data storage and processing capabilities necessary to more efficiently and more meaningfully analyze data representing certain market activity.

*Question 4a.* Chairman Behnam, with a move to the cloud, the CFTC is now exposed to the same sort of vendor risk that many market participants are exposed to. What steps is the Commission taking to ensure that its incredibly sensitive market data is never exposed to the public or misused internally?

*Answer.* The Commission takes its responsibility to secure data as a fundamental tenant of our operational philosophy, and has a robust program designed to address threats to our security posture. Security of the Commission's cloud environment is protected as mandated in FEDRAMP directives. The Commission has a continuous monitoring program established on the cloud environment to ensure that our environment remains compliant with the latest security requirements. We also have implemented security controls which limit connections between our main analytical data environment and the outside internet. The result of these controls is that assets on our data environment are not discoverable from the outside internet. Additionally, the Commission is actively working to implement a Data Loss Prevention program in our environment as required in EO 14028 to protect against the threat of internal misuse.

*Questions Submitted by Hon. David Scott, a Representative in Congress from Georgia*

*Question 1.* In its October 2022 Report on Digital Asset Financial Stability Risks and Regulation, the Financial Stability Oversight Council (FSOC) recommended that agencies (including the CFTC) conduct a full analysis of the impact of vertical integration on conflicts of interest, market volatility, and whether that type of market structure should be accommodated. However, the Commission moved forward with a proposed rule regarding clearing member funds at clearing houses even though the proposal promotes a type of vertical integration by facilitating a direct-to-retail clearing market structure by placing futures commission merchant (FCM) responsibilities inside the DCO.

- Has the Commission conducted this FSOC recommended analysis, and if so what were the results and why wasn't it included or referenced in the proposed rule?
- If the Commission has not conducted this analysis, why did you put this proposal before the Commission without completing the analysis first?
- Does the CFTC disagree with the FSOC's 2022 October Report's recommendation or is it just ignoring it?

*Answer.* The FSOC report recommended an assessment as to whether vertically integrated market structures can or should be accommodated under existing laws and regulations. At the time FSOC issued its report in October 2022, the CFTC had approved five DCOs for non-intermediated clearing: North American Derivatives Exchange in 2004; Natural Gas Exchange in 2008; Cantor Clearinghouse in 2010; LedgerX in 2017; and Eris Clearing in 2019. In other words, non-intermediated clearing has been permitted for 20 years and is not a new market structure.

Because participants—including natural persons who may be considered retail—at non-intermediated DCOs are not customers of FCMs, their funds do not receive the same protection provided for the funds of customers of FCM clearing members under the CEA. Thus far the Commission has attempted to provide some measure of protection through conditions to each DCO's order of registration, but given that five of the 16 DCOs now registered with the Commission provide non-intermediated clearing, it was long past time for the Commission to promulgate rules to thoroughly protect participant funds held by DCOs. It would be irresponsible for the Commission to further delay those necessary protections.

*Question 2.* The Commission moved forward with last December's proposed rule regarding clearing member funds at clearinghouses or DCOs (derivative clearing organizations) without addressing issues and questions about anti-money laundering (AML), know-your-customer (KYC) standards, and countering terrorist financing (CTF). These are important requirements which are currently applicable to futures commission merchants (FCMs) but do not yet apply to clearinghouses or DCOs (derivative clearing organizations) under the proposed rule. I know the Commission is currently reviewing its authority to apply such AML, KYC, and CTF standards on clearinghouses.

- Do you believe it is appropriate to finalize this proposed rule and expand direct clearing for retail customers without having these standards in place at DCOs.
- Will you commit to not finalize this rule unless AMC, KYC, and CTF protocols are either already in place or apply currently with the final rule?

*Answer.* I agree that AML, KYC, and CTF are important issues, and CFTC staff continues to analyze the Commission's authority to apply AML, KYC, and CTF requirements to DCOs. But AML, KYC, and CTF are separate and distinct issues from the protection of participant funds. In the case of AML requirements, the statutory framework requires the aid of FinCEN to designate DCOs as financial institutions, and staff have been in contact with FinCEN staff and have requested that aid.<sup>9</sup>

Permitting DCOs that engage in direct clearing of fully collateralized contracts (with no leverage, extension of credit, or potential for margin calls) for retail participants to pursue margined clearing (with potential for margin calls, or liquidation if those are not met) also raises important issues which staff are considering, but this issue is also distinct from the protection of participant funds held by DCOs.

*Question 3.* Currently, future commission merchants (FCMs) are required to hold customer funds at a bank, trust or a CFTC-regulated entity. That requirement is absent for member funds held by a clearinghouse and is not added in the recently proposed rule regarding clearing member funds at clearing houses. In its current form, the proposed rule would allow clearinghouses to place the funds anywhere, even an affiliate. Given the experience with FTX, do you think the rule should be amended to impose a similar requirement on clearinghouses directly holding "member" funds as FCMs have when holding customer funds? Why or why not?

*Answer.* I also agree it is important that both FCM customer funds, and direct participant funds, be held in depositories where the funds will be safe. Currently, the CEA and CFTC regulations only require that FCM customer funds be held in a bank or trust company, which I believe is insufficient in light of recent bank failures (*i.e.*, Silvergate Bank) or the potentially limited assurances of safety that certain trust companies may provide. I have directed staff to consider standards for banks and trust companies acting as depositories for FCM customer funds and direct participant funds. In the meantime, CFTC staff use DCO Core Principle F in the CEA, which requires DCOs to establish procedures to protect and ensure the safety of member and participant funds, as a means to require that DCOs use safe depositories—being a bank or trust company alone does not suffice.

<sup>9</sup> 31 U.S.C. § 5312(a)(2) defines the set of "financial institutions" that are subject to AML requirements in a manner that does not include DCOs. Paragraph (a)(2)(Y), however, allows Treasury to include, by regulation, additional businesses that perform similar functions as financial institutions.

All of these issues—protection of participant funds, AML, KYC, and CFT, as well as which depositories should be considered sufficiently safe—are important. The latter two sets of issues are complex, and resolving them will take time. I cannot, in good conscience, allow participant funds to remain insufficiently protected while these other issues are sorted out, which is why I intend to proceed with finalizing the rule.

