J. Christopher Giancarlo

The Honorable J. Christopher Giancarlo served as the thirteenth Chairman of the U.S. Commodity Futures Trading Commission. Considered one of "the most influential individuals in financial regulation," he also served as a member of the U.S. Financial Stability Oversight Committee, the President's Working Group on Financial Markets, and the Executive Board of the International Organization of Securities Commissions.

Giancarlo is Senior Counsel to the international law firm, Willkie Farr & Gallagher, and co-head of Willkie Digital Works. He is also co-founder and Executive Chairman of the Digital Dollar Project (*https://digitaldollarproject.org*), and a board director, advisor and angel investor in numerous public and private technology, digital asset and financial services companies.

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Mr. Giancarlo received his J.D. in 1984 from Vanderbilt University School of Law and graduated in 1981 *Phi Beta Kappa* with a B.A. from Skidmore College. Mr. Giancarlo is a member of the bar (1985) of the State of New York.

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Truth in Testimony Disclosure Form

In accordance with Rule XI, clause 2(g)(5)* of the *Rules of the House of Representatives*, witnesses are asked to disclose the following information. Please complete this form electronically by filling in the provided blanks.

Committee: Agriculture

Subcommittee:

Hearing Date: 03/25/2025

Hearing Title:

"The CFTC at 50: Examining the Past and Future of Commodity Markets"

Witness Name: J. Christopher Giancarlo

Position/Title: Former Chairman, US Commodity Futures Trading Commission

Witness Type: ○ Governmental ● Non-governmental

Are you representing yourself or an organization? ● Self ○ Organization

If you are representing an organization, please list what entity or entities you are representing:

FOR WITNESSES APPEARING IN A NON-GOVERNMENTAL CAPACITY

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Are you a fiduciary—including, but not limited to, a director, officer, advisor, or resident agent—of any organization or entity that has an interest in the subject matter of the hearing? If so, please list the name of the organization(s) or entities.

None

Please list any federal grants or contracts (including subgrants or subcontracts) related to the hearing's subject matter that you or the organization(s) you represent have received in the past thirty-six months from the date of the hearing. Include the source and amount of each grant or contract.

None

Please list any contracts, grants, or payments originating with a foreign government and related to the hearing's subject that you or the organization(s) you represent have received in the past thirty-six months from the date of the hearing. Include the amount and country of origin of each contract or payment.

None

Please complete the following fields. If necessary, attach additional sheet(s) to provide more information.

☑ I have attached a written statement of proposed testimony.

☑ I have attached my curriculum vitae or biography.

*Rule XI, clause 2(g)(5), of the U.S. House of Representatives provides:

(5)(A) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof.

(B) In the case of a witness appearing in a non-governmental capacity, a written statement of proposed testimony shall include— (i) a curriculum vitae; (ii) a disclosure of any Federal grants or contracts, or contracts, grants, or payments originating with a foreign government, received during the past 36 months by the witness or by an entity represented by the witness and related to the subject matter of the hearing; and (iii) a disclosure of whether the witness is a fiduciary (including, but not limited to, a director, officer, advisor, or resident agent) of any organization or entity that has an interest in the subject matter of the hearing.

(C) The disclosure referred to in subdivision (B)(ii) shall include— (i) the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and (ii) the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government.

(D) Such statements, with appropriate redactions to protect the privacy or security of the witness, shall be made publicly available in electronic form 24 hours before the witness appears to the extent practicable, but not later than one day after the witness appears.

US HOUSE COMMITTEE
ON
AGRICULTURE

"The CFTC at 50: Examining the Past and Future of Commodity Markets"

March 25, 2025

Written Testimony of
Hon. J. Christopher Giancarlo[1]

Introduction

Thank you Chairman Thompson, Ranking Member Craig, Members of the committee, and other distinguished colleagues for holding this hearing to mark the 50th anniversary of the founding of the Commodity Futures Trading Commission ("CFTC"). It is indeed right to take the time to acknowledge the CFTC's remarkable record of success and the economic value it provides for the US economy and American taxpayers.

When I am asked to explain the purpose of the CFTC, I use a comparison to the better-known Securities and Exchange Commission. I explain that the SEC oversees markets for capital formation. That is, markets where those with business ideas find those with capital to fund their growth and success. That is not what the CFTC does. Rather, the CFTC oversees markets for risk transfer. That is, markets where those with business risk – risk to farmers of falling prices for crop production, risk to American manufacturers of rising energy prices and risk to home builders of fluctuating interest rates – can offset some or all of that risk with those better able to bear it. CFTC markets for risk transfer are very different than SEC markets for capital formation and

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[1] *These remarks are given in Memory of the late Michael D. Gill, Former CFTC Chief Operating Officer and Chief of Staff*

require specialized regulatory skills and understanding. Fortunately, the CFTC has that capability in spades.

<u>Derivatives Moderate the Costs of Everyday Life</u>

But let's start close to home and look at how CFTC regulation affects real American families. During almost five years on the Commission, I travelled the country and visited agriculture producers in over two dozen states from Montana, Texas, Arkansas, Louisiana and Iowa to Minnesota, Missouri, New York, Georgia, Mississippi and Oklahoma. I walked in wheat fields and harvested soybeans, tramped through rice farms and beneath pecan groves, milked dairy cows and toured feedlots, visited grain elevators and viewed cotton gins. I met with American energy producers, going 900 feet underground in a Kentucky coal mine, 90 feet in the air in an Arkansas crop duster and climbed 99 feet up a North Dakota oil rig.

And many of my fellow CFTC Commissioners continue to do the same. What other federal regulatory agency does that?

Throughout, I was moved not only by the grace and dignity of hard working Americans, but by the importance to their lives of risk hedging markets under CFTC supervision.

It is true that most Americans are not farmers and, compared to having their 401(k)s invested in the stock market, many Americans do not directly participate in markets overseen by the CFTC. Yet, thanks to these well-regulated markets all American consumers enjoy relatively stable prices in the supermarket and in all manner of consumer finance from auto loans to household purchases, to the price and availability of heating in American homes, the energy used in factories, the interest rates borrowers pay on home mortgages, and the returns workers earn on their retirement savings.

To emphasize the importance of robust and well-regulated derivative markets, let me share one of my most interesting experiences as CFTC Chairman.

In the Spring of 2018, the Vatican published a *bollettino*, or bulletin, titled "'*Oeconomicae et pecuniariae quaestiones'. Considerations for an ethical discernment regarding some aspects of the present economic-financial system*" which laid out certain ethical principles to govern economic and financial systems. While many of the points made in the document were quite interesting, the bulletin fundamentally mischaracterized the nature of derivatives as largely speculative products tantamount to gambling. As the Chairman of the CFTC and a practicing Roman Catholic I felt compelled to respond. The CFTC's Chief Economist Bruce Tuckman and I issued a response to the Holy See to set the record straight and explain that derivatives were not "ticking time bomb[s] ready sooner or later to explode."[2]

We explained that derivatives have been used for thousands of years to manage commercial and market risk.[3] Yet, today in many of the world's poorest societies the lack of functioning risk transfer markets means that the boom and bust cycle of subsistence is a source of poverty, crime and hunger. We explained that each planting season, farmers across the globe face a myriad of uncertainties from unfavorable weather patterns, equipment costs, farmhand availability, market prices, and others. Where available, derivatives serve as an essential tool to mitigate and constrain these risks in a number of ways. First, they provide reliable and fair pricing benchmarks that promote market efficiencies overall. Second, derivatives reduce price volatility in a resource-constrained world by removing the economic incentive to hoard physical supplies. Farmers can quantify and transfer the risks they want to avoid at a reasonable price to persons willing and able to hold that risk. Such risk protection reduces earnings volatility and thus price volatility, benefiting all parties, including consumers who may never get involved in derivatives markets in the first place. Finally by entering into futures contracts to sell farm production at a predetermined price, the

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[2] *'Oeconomicae et pecuniariae quaestiones'. Considerations for an ethical discernment regarding some aspects of the present economic-financial system of the Congregation for the Doctrine of the Faith and the Dicastery for Promoting Integral Human Development, May 17, 2018, available at https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2018/05/17/180517a.html*.

[3] Robert J. Shiller, Finance and the Good Society (Princeton University Press 2012) p. 76, citing Aristotle's description of the successful use of options on olive pressing by the Greek philosopher Thales in 600BCE.

farmer can secure revenue regardless of market fluctuations that may appear down the line. This provides the farmer with financial predictability and stability, enabling better planning and investment in the business.

Mr. Tuckman and I explained that it was the absence, not the presence, of functioning derivatives markets that harmed some of the world's poorest and most vulnerable populations. I am pleased to say that the CFTC's presentation better educated the Vatican and tempered its underappreciation of the role of derivatives in alleviating global hunger and malnourishment. I was subsequently invited to the Vatican to meet senior officials and discuss finance and derivatives. It was perhaps another first for the CFTC.

Derivatives Support American Consumers

Beyond agriculture, derivatives enhance other aspects of modern life. They are used by both big and small enterprises, such as commercial manufacturers, power utilities, retirement funds, banks and investment firms. More than 90% percent of Fortune 500 companies use derivatives to control costs and other risks in their worldwide business operations. Energy companies, for instance, use futures contracts to hedge against gas and electric price volatility, ensuring stable energy costs for consumers. Similarly, financial institutions use interest rate swaps to manage the costs associated with mortgage lending to make home ownership more affordable. And through the use of innovative new products like event contracts, consumers and businesses may utilize derivatives markets to hedge risks of national and global events. Overall, derivatives serve the needs of society to control commercial and other risk, essential to economic growth and job creation.

Derivatives generally fall into two broad categories: exchange-traded and over-the-counter (OTC). Both categories are primarily regulated in the United States by the CFTC. They are some of the world's fastest growing and technologically innovative markets of any kind. U.S. markets have extraordinary depth and breadth, allowing participants to execute transactions without distorting market prices. Liquidity ensures that market participants can easily enter and exit positions, which is essential for the effective mitigation of risk. These markets are also made up of an extraordinarily diverse cast of participants, who each provide essential functions to effectively facilitate efficient price discovery and risk transfer.

One area where these markets are essential to American prosperity is in the managing of risk associated with the U.S. dollar and here, the CFTC plays a crucial role. In fact, when the CFTC was reformulated out of the Department of Agriculture fifty years ago into an independent body it was quite specifically to safeguard a breakthrough in financial innovation: financial futures. These new instruments enabled the global economy to hedge the risk of moving interest and exchange rates ensuring the US Dollar's primacy as the world's reserve currency.[4] Under the CFTC's able leadership, US derivatives markets offer participants a range of instruments to hedge risk associated with the dollar, enabling businesses and governments worldwide to safely hold Dollars, the world's essential reserve currency.

The World's Best Derivatives Regulator

American derivatives markets are also some of the world's best regulated. The CFTC is globally recognized as the world's preeminent derivatives regulator with some of the most knowledgeable, skilled and committed professional staff of any market regulator in the world. The CFTC's unparallel global reputation for expertise and effectiveness, attracts both domestic and international participants to have confidence in American trading markets. This confidence fosters market growth, as participants trust that the regulatory environment in which they operate is one based on openness, innovation, the rule of law, and integrity.

And how good is CFTC regulation? First off, many of the world's market regulators send their derivatives specialists to be trained by the CFTC. As a result, many senior overseas deriviatives regulators are alumni of the CFTC's esteemed summer training program. Secondly, CFTC segregation requirements for customer funds, protect market participants from misappropriation. In fact, the only American

[4] Leo Melamed, "*Man of the Futures: The Story of Leo Malamed & the Birth of Modern Finance*" (Harriman House 2021).

piece of Sam Bankman-Fried's FTX crypto empire that didn't fail its customers was the trading platform under CFTC supervision, a testament to the strength of the CFTC's regulatory framework. Thirdly, CFTC-regulated clearinghouses are among the most robust and resilient in the world. The CFTC has been a global leader in clearinghouse supervision for decades before the 2008 financial crisis and since. Even in the face of extreme volatility, CFTC-regulated derivatives clearing firms successfully handle and manage risk, enabling valuable price risk transfer to support and stabilize the broader financial market. Under the CFTC's watch not a single CFTC-regulated clearinghouse has ever defaulted or even come close to using its mutualized default resources to cover market losses, not even during the 2008 financial crisis.

The United States is the only major country in the Organization for Economic Co-operation and Development to have a regulatory agency specifically dedicated to derivatives market regulation. It is worth asking whether having such a skilled and dedicated commodity derivatives regulator is the reason why US commodity futures markets are bigger and more globally important than many global competitors. Or, is the fact that American futures markets are more critical than many overseas competitors the reason why they require a highly skilled and dedicated regulator? Perhaps the relationship is symbiotic. The expansive and dynamic nature of the U.S.'s derivatives markets requires a regulator capable of mastering complex market structures and responding to rapid innovation. The CFTC has evolved to meet these demands by developing a regulatory framework uniquely suited to ensuring market integrity without stifling competition. Clearly, the CFTC provides an American advantage in global economic competition.

The Uniqueness of the CFTC

Considering the CFTC's prowess in overseeing and fostering markets compared to overseas peers, it is worth reflecting on exactly what sets the CFTC apart from other Federal government regulators. Three characteristics among others stand out: (1) the CFTC's principles-based regulatory approach; (2) the agency's embrace of innovation; and (3) the Commission's tradition of comity.

How a government agency regulates is just as important as what it regulates. The two most common methods of regulation are principles-based and rules-based regulation. The CFTC has a long-history as a principles-based regulator utilizing regulatory principles to achieve its objectives. Under this approach, the CFTC develops broadly-stated principles under which its registrants operate in the marketplace. Principles-based regulation accomplishes the same goals as rules-based regulation, but offers regulated entities greater flexibility and innovation in achieving regulatory objectives. When needed, however, the CFTC blends rules-based regulation into its regime, allowing for an overall regulatory system that is broadly principles-based while also offering clarifying rules when it would be helpful. This principles-based approach is significantly more encouraging to innovation and market evolution than the strict rule sets utilized by other financial and prudential regulators.

As this committee knows, the CFTC has been at the forefront of US financial market innovation since the agency's inception. During the past decades, the CFTC has deftly overseen more new financial product innovation than almost any other market regulator.[5] The CFTC promotes market and product innovation in a number of ways. First, through its self-certification process, whereby derivatives exchanges introduce new products without formal CFTC approval by certifying that the new products comply with the Commodity Exchange Act and the CFTC's regulations. This approach has enabled the rapid introduction of novel and innovative financial instruments, such as derivatives based on cryptocurrencies.

As this Committee knows, the CFTC engaged early with digital assets, finding in 2015 that Bitcoin was properly defined as a commodity under its authority. Two years later, the CFTC greenlighted the self-certification of BTC futures initiating the world's first significant, fully regulated market for digital assets. Since then, other commodity-based, digital asset products including ETH futures and very recently SOL futures have come under CFTC oversight. Today, derivatives on digital asset commodities (the

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[5] See generally, Written Testimony of Chairman J. Christopher Giancarlo before the Senate Banking Committee, Washington, D.C., (February 6, 2018) at: https://www.banking.senate.gov/imo/media/doc/Giancarlo%20Testimony%202-6-18b.pdf.

largest digital asset category by volume) trade in orderly and transparent markets under close CFTC supervision, fostering Dollar-based pricing, with healthy liquidity and high levels of open interest despite volatile current economic conditions.[6]

Markets for digital commodities futures like BTC, ETH and SOL provide the CFTC with regulatory visibility supporting robust enforcement that is second to no other market regulator in prosecuting perpetrators of digital asset fraud, abuse and market manipulation. Yet, perhaps most importantly, the CFTC's early and unhesitant engagement with digital assets (compared to other US market regulators) has ***reduced*** regulatory risk and uncertainty for responsible financial market innovation and paved the way for an important new ecosystem of retail and institutional digital asset investment generating economic activity here in the United States. It is a perfect example of how the CFTC facilitates market-driven innovation while maintaining effective oversight of regulatory compliance and market integrity.

Another way in which the CFTC encourages innovation is through the agency's Office of Technology Innovation. Established in 2017 as LabCFTC, the Office of Technology Innovation serves as the CFTC's innovation hub by providing a venue for CFTC operating divisions, market participants, startups, and technology firms to engage collaboratively on cutting-edge developments in blockchain, artificial intelligence, decentralized (DeFi) finance, and other transformative technologies with the potential to innovate derivatives markets. This collaboration ensures that the CFTC's regulatory approach can develop alongside private-sector market innovations. I understand that this Committee is considering establishing LabCFTC in an amendment to the Commodity Exchange Act. I fully endorse that legislative action.

The final key and highly unique characteristic of the CFTC is the relative lack of partisanship among the Commissioners. It is no secret that political partisanship is common to our social and governmental institutions. But one place where there is a *relative* lack of partisanship is among the five Commissioners leading the CFTC. Of

[6] CME Bitcoin Liquidity Report, September 2, 2022, at: https://www.cmegroup.com/ftp/bitcoinfutures/Bitcoin_Futures_Liquidity_Report.pdf

course, such comity is *relative* and political differences inevitably play a role in each Commissioner's approach to regulation. Yet, the CFTC has a long history of encouraging bipartisan cooperation and collaboration among its Commissioners.

It is said that organizations reflect the "tone from the top". Certainly, the CFTC's reduced partisanship mirrors the general cordiality and frequent bipartisanship of this Committee and its Senate counterpart compared to other Congressional committees of jurisdiction. That characteristic, in turn, reflects the courtesies and values of the citizens of America's heartland. Maintaining this attitude is critical for the success of the CFTC in accomplishing its mission – only through continued bipartisanship and cooperation can the CFTC truly achieve its mission of fostering open, competitive, and financially sound markets.

Looking to the next 50 years

As the 119th Congress contemplates an appropriate legal and regulatory framework for digital assets it is not surprising that attention is directed to the CFTC. This committee will address the important public interest in closing a gap in CFTC oversight. As you know, spot markets facilitate immediate physical delivery of tradable goods in contrast to markets for futures, forwards and options deliverable in the future. In spot markets, the CFTC has only limited authority over trading of digital asset commodities. As a result, there are no platform registration, operator supervision or standard investor protection measures in crypto spot markets that are common in US derivatives markets to police against fraud, manipulation and abuse. Clearly, there are elements of the digital commodity cash markets suitable for direct CFTC oversight that are distinguishable from traditional cash commodity markets. I fully support extending the CFTC's oversight to specifically (and soley) cover spot digital commodity markets.

The world is once again experiencing a fundamental new innovation in finance. Thoughtful, clear-eyed and unbiased American leadership is needed. American consumers and financial innovators alike deserve the benefit of the CFTC's decade of market supervision, expert analysis and product engagement in digital commodity markets. It is time to close the regulatory gap over spot digital commodities with the oversight of the world's most experienced and farsighted crypto regulator. I urge this committee to draw upon the CFTC's expertise and competence to meet the challenge of digital asset innovation and face the digital future of finance it portends.

Conclusion

I have enjoyed a four decade career in law and finance largely in the private sector. My work in trading markets from New York to London to Singapore and Tokyo and my government service provide me with both an inside and outside perspective on the effectiveness of many government institutions.

Yet, as a former CFTC Chairman and proud American, I readily admit my bias and affection for this remarkable agency and its skilled professionals. Today we mark the 50^{th} anniversary of the CFTC, a commemoration well recorded. For five decades, the CFTC has enhanced American markets, providing competitive pricing for the everyday cost of living. Through its well-crafted and principles approach to regulation, it has fostered effective risk hedging for American farmers and producers, while guarding the strength of the US Dollar. As a Federal institution it has leaned into innovation both in new products and market structure, often leading the way among Washington's alphabet soup of financial regulators. And, the CFTC often manages to do so without undue rancor and partisanship. With a budget and staff that is a pittance against those of its Federal regulatory peers, the CFTC is pound-for-pound the best value in Washington - especially for American farmers, producers and everyday consumers.

Mr. Chairman, fifty years after its creation, I am proud and delighted to join this committee in saying:

"Happy Birthday, CFTC! Long may you run!"

J. Christopher Giancarlo

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