U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

October 6, 2022

Mr. Christopher Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Request for Information, Commodity Futures Trading Commission; Climate-Related Financial Risk (87 Fed. Reg. 34,856-34,862, June 8, 2022)

Dear Mr. Kirkpatrick:

The U.S. Chamber of Commerce's (the Chamber) Center for Capital Markets Competitiveness submits these comments in response to the Commodity Future Trading Commission's (CFTC) Request for Information on Climate-Related Financial Risk (Request). The Request seeks to inform the CFTC's "understanding and oversight of climate-related financial risk as pertinent to the derivatives markets and underlying commodities markets."

The Chamber believes that practical, flexible, predictable, and durable market-based solutions and mechanisms are at the core of efforts to address climate risk and are reflected in the actions of the Chamber's members. Promoting private sector innovation across industry sectors will be central to solving climate change.

Climate-related financial services policy should also be informed by the best science and observations available and a rigorous assessment of available alternatives, outcomes, and cost-benefit tradeoffs to ensure that the optimal policies are implemented. We must consider the significant progress that the private sector has spurred by committing billions of dollars to research and development that have led to the creation and implementation of innovations that help manage climate risk and accelerate emissions reductions.

The Chamber offers the following observations and recommendations regarding the Request:

I. **The CFTC's authority to address climate-related issues is limited by statute;**

II. **The CFTC should avoid changing minimum capital and liquidity requirements as a means to recognize climate-related risks;**

III. **The CFTC should not mandate the incorporation of climate change-related risks into stress testing;**

IV. **Any requirement for registered entities to disclose greenhouse gas emissions will create enormous compliance costs, particularly for small entities and those that are subsidiaries of public companies;**

V. **Voluntary carbon markets initiatives should be broad in scope and allow flexibility for participants to meet requirements; and**

VI. **Digital asset mining is not incompatible with a low-carbon economy and should have a future role in the U.S. digital assets sector.**

These observations and recommendations are discussed in further detail below.

I. The CFTC's authority to address climate-related issues is limited by statute.

The Chamber notes that Congress has passed no law designating the CFTC as a regulator of climate change policy, and Congress has not directed the CFTC to issue any rulemaking that has the purpose of addressing climate change. The CFTC's authority to regulate is primarily confined to its jurisdiction under the Commodity Exchange Act (CEA) and the CFTC's mission to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation. Any efforts by the CFTC that relate in any way to climate change must be constrained by these boundaries.

In her statement regarding the request, Commissioner Summer Mersinger noted that many of the questions in the Request "[cause] confusion as to the role that Congress has tasked the CFTC to perform in our governing statute, the CEA. Clarity about our statutory jurisdiction is foundational to our ability to successfully achieve the mission that Congress has set for the CFTC in the CEA."[1]

Commissioner Mersinger also highlighted a number of questions that raise particular concerns the CFTC may be going beyond its authority. These include questions relating to the CFTC's regulation of "underlying commodities markets," which the CFTC does not have authority to regulate, as well as potential efforts to "make climate-related data more available to registrants." The Chamber echoes these concerns and urges the CFTC not to exceed its well-understood statutory jurisdiction in any future efforts related to climate change.

II. The CFTC should avoid changing minimum capital and liquidity requirements as a means to recognize climate-related risks.

Question 12 of the Request asks whether the Commission should "consider amending its minimum capital and liquidity requirements to better recognize climate-related risks." Given the fact-finding nature of the request and the above-referenced legal limitations for the CFTC,

[1] https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement060222

any consideration of amending capital and liquidity requirements is at best premature and at worst could result in a costly compliance exercise based upon incomplete or flawed assessments of climate risks.

Moreover, any indication that the CFTC is considering amending capital and liquidity requirements is at odds with Secretary Yellen's declaration earlier this year that it would be "premature" to mandate higher capital requirements to address climate risk.[2] Secretary Yellen stated that regulators must "do the groundwork that's necessary" to evaluate risks to specific entities. Accordingly, the CFTC should withhold any consideration of higher capital and liquidity requirements until it has fully assessed both its legal authority to do so along with a robust economic analysis for how such increases would affect the derivatives markets and end-users.

III. The CFTC should not mandate the incorporation of climate change-related risks into stress testing.

Imposing climate change stress tests would be a stark departure from existing risk assessments that currently apply to CFTC-regulated entities. There is a lack of historical data that could be used to model risk associated with the derivatives market, making it extremely difficult to create plausible stress scenarios. Additionally, climate stress testing attempts to measure outcomes over a much longer time horizon—30 to 50 years – which would lead to unreliable and subjective projections. Climate stress tests would also likely assume that market participants currently do not take any climate-related risks into account. As with other areas discussed within the RFI, it is also unclear whether the CFTC has existing statutory authority to impose climate stress tests on regulated entities. Accordingly, and absent a specific directive from Congress, we urge the CFTC to avoid mandated stress tests related to climate change risks.

IV. Any requirement for registered entities to disclose greenhouse gas emissions will create enormous compliance costs, particularly for small entities and those that are subsidiaries of public companies.

Question 17 notes that the October 2021 Financial Stability Oversight Council (FSOC) report suggested FSOC members should consider requiring disclosure of greenhouse gas (GHG) emissions for entities under their respective jurisdiction. The Request seeks input as to whether the CFTC should require entities under its jurisdiction to disclose emissions information. While reduction of GHG emissions is a laudable goal, since CFTC registrants include firms and individuals that trade in commodity futures, commodity pools, options, foreign exchange, and other derivatives, we question whether disclosure of GHG emissions by such entities are of interest to market participants.

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[2] https://www.bloomberg.com/news/articles/2022-02-02/yellen-says-higher-bank-capital-rules-for-climate-premature

Further, the Request does not consider whether and how other agencies are also making similar requests and the downstream costs and burdens that would result from entities having to report such information. The CFTC should not enact climate-related policies that impose costs on entities not directly regulated by the CFTC. Registrants may ultimately have to rely on third parties – including private firms not regulated by the CFTC – to provide data to support disclosure requirements. Should the CFTC not heed these warnings and consider disclosure requirements, it should be careful to consult closely with the Environmental Protection Agency (EPA) and other entities with proposed or final disclosure regulations to avoid redundancy before putting forward any proposed rules of its own. The Chamber expects the CFTC would demonstrate how it consulted with other agencies in these efforts, as well as advance a robust cost-benefit analysis related to disclosure.

V. Voluntary carbon markets initiatives should be broad in scope and allow flexibility for participants to meet requirements.

Questions 22-24 of the Request concern the potential for a CFTC role in regulating voluntary carbon markets. At its June 2, 2022 Voluntary Carbon Markets Convening, the CFTC made clear its belief that it has a large role to play in climate risk management.

- *Are there way [sic] in which the Commission could enhance the integrity of voluntary carbon markets and foster transparency, fairness, and liquidity in those markets?*
- *Are there aspects of the voluntary carbon markets that are susceptible to fraud and manipulation and/or merit enhanced Commission oversight?*
- *Should the Commission consider creating some form of registration framework for any market participants within the voluntary carbon markets to enhance the integrity of the voluntary carbon markets? If so, what would a registration framework entail?*

Voluntary carbon markets and associated projects should be additive, verifiable, transparent, and credible and can play a role in helping a variety of stakeholders to meet their emission reduction targets. However, the Chamber echoes concerns raised by Commissioner Mersinger that the CFTC does not have statutory authority regarding the creation of a registration framework for market participants within voluntary carbon markets unless they engage in activities related to derivatives.

There are already several entities who are focused on improving voluntary carbon markets to bring integrity and transparency to the marketplace. Congress is also taking certain steps, currently specific to farmers and land managers, to target GHGs and create a framework for voluntary carbon markets through a U.S. Department of Agriculture program, which the Chamber supports.[3]

To the extent that the CFTC determines it has authority under the CEA to adopt measures that enhance the integrity or transparency of voluntary carbon markets or to create a registration

[3] S. 1251, the "Growing Climate Solutions Act of 2021.

framework for those who engage in activities relating to derivatives, the Chamber outlines below several principles we believe should be considered as part of any effort to create credible, voluntary, robust, and liquid carbon offset markets.

- **Be inclusive in allowing broader participation of industrial sectors.** The oil and gas, cement, steel, and other hard-to-abate industrial sectors should have a seat at the table in considering any framework for voluntary carbon markets. Achieving net zero as a country and across the globe is not possible without their participation.

- **Create additional approaches to meet emissions and disclosure requirements.** There is a wide variation in the maturity of emissions reporting capabilities and reduction solutions. A potential on-ramp as companies gain expertise and experience is needed.

- **Provide the most flexibility possible in allowing pathways to net zero.** Companies will require innovation that does not yet exist at scale in critical elements of the energy transition, climate, and sustainability continuum to get beyond 80% of net zero. Companies will need all possible emerging solutions, including energy efficiency, carbon capture, utilization, and storage, and nature-based approaches.

VI. Digital asset mining is not incompatible with a low-carbon economy and should have a future role in the U.S. digital assets sector.

Question 25 of the Request asks:

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

As the Chamber noted in recent letter to the Department of Commerce[4], digital assets mining should have a future role in the U.S. digital assets sector. Question 12 of the Department of Commerce RFI incorrectly implies that digital assets mining is incompatible with a low-carbon economy. We encourage policymakers in the U.S., and abroad, to reject bans on digital asset mining or other policies that explicitly favor one technology over another. Our economy is full of financial institutions, networks, and technology providers that also consume electricity to process transactions. Why would we use environmental policy to determine that one technology is more useful, or beneficial, to our economy than another? That is a question that should be determined by markets.

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[4] http://www.centerforcapitalmarkets.com/wp-content/uploads/2022/07/U.S.-Chamber-Comments_DigitalAssets_InternationalTradeAdministration-1.pdf?

The environmental concerns referenced appear to implicate digital assets protocols that require mining such as Proof of Work (POW). We recognize there are various studies that criticize the environmental impact of POW, but more research must be conducted before depending on these conclusions to make policy determinations. New research was recently published offering a very different perspective and conclusions than some of the other research to date: "We demonstrate that Bitcoin consumes 56 times less energy than the classical system, and that even at the single transaction level, a PoW transaction proves to be 1 to 5 times more energy efficient.”[5] The wide variations in the findings of different researchers is evidence in and of itself that more analysis would be helpful to informing the public.

Further, the Chamber again echoes concerns raised by Commissioner Mersinger that the CFTC has no authority to register digital assets or distributed ledger technologies, only derivatives that are tied to such assets or technologies.

<u>Conclusion</u>

While the Chamber appreciates this opportunity to comment on the Request, as described throughout this letter we urge the CFTC to be cautious when considering climate change-related rulemakings given its defined statutory jurisdiction, and the potential for such rules to create more costs than benefits to derivates markets and the broader economy. The Chamber looks forward to serving as a resource for CFTC Commissioners and staff on this important issue.

Sincerely,

Tom Quaadman
Executive Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

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[5] Khazzaka, M. (2022, June 16). Bitcoin: Cryptopayments Energy Efficiency. Retrieved June 27, 2022, from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4125499