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**BEFORE THE SUBCOMMITTEE ON COMMODITY MARKETS, DIGITAL ASSETS,
AND RURAL DEVELOPMENT
COMMITTEE ON AGRICULTURE
UNITED STATES HOUSE OF REPRESENTATIVES**

Reauthorizing the CFTC: Stakeholder Perspectives

July 25, 2024

Chair Johnson, Ranking Member Caraveo and members of the Subcommittee, thank you for the opportunity to testify at this hearing on the important topic of the Commodity Futures Trading Commission's (CFTC or Commission) reauthorization. My name is Thomas Sexton, and I am the President and Chief Executive Officer of National Futures Association (NFA), the industrywide independent self-regulatory organization (SRO) for the derivatives industry.

Before turning to my substantive remarks, please let me provide some background information about NFA. NFA is a registered futures association (RFA) pursuant to Section 17 of the Commodity Exchange Act (CEA). Our global membership includes CFTC registered futures commission merchants (FCMs), swap dealers (SDs), commodity pool operators (CPOs), commodity trading advisors (CTAs), introducing brokers (IBs), retail foreign exchange dealers (RFEDs) and associated persons of these entities. The CFTC requires these registered firms to be NFA Members. We currently have approximately 2,900 NFA Member firms and 38,000 individual Associate Members.

NFA is solely a regulatory body. We do not operate a market, and we are not an industry trade association. Our overriding objective is to partner with and help the CFTC regulate the derivatives markets and, in doing so, we are a resolute customer protection organization. NFA's responsibilities include registering all firms and industry professionals on behalf of the CFTC, passing rules to ensure fair dealing with customers and counterparties, monitoring Members for compliance with those rules and taking enforcement actions against those Members that violate our rules. Every aspect of our regulatory authority is closely overseen by the CFTC.

As Congress expanded the CFTC's jurisdiction over the years beyond exchange-traded derivatives to include the retail forex rolling spot and swaps markets, Congress and the CFTC also entrusted NFA with additional regulatory oversight responsibilities for these markets.¹ NFA coordinates with the CFTC on a regular basis and worked very closely with the CFTC to develop rules and regulatory programs to effectively oversee these additional areas of regulatory jurisdiction. In addition, the CFTC has delegated numerous responsibilities to NFA including the industry's registration process and the review of CPO and CTA disclosure documents, CPO annual financial filings and SD swap valuation disputes. Our coordination efforts over the years have built a strong track record of protecting retail customers and prosecuting retail trading abuses and fraud. Today, customer complaints and single-event customer arbitrations filed at NFA, as well as CFTC's reparations cases, remain near all-time lows.

The Commission's responsibilities are enormous, and we will continue to help it in any way we can. At this time, I certainly want to recognize Chair Behnam for his leadership at the CFTC and thank him and the CFTC's other Commissioners for their support of NFA and self-regulation and for their willingness to work with us to resolve the industry's regulatory issues. Under Chair Behnam, the CFTC has led efforts among financial regulators to protect customers by tackling fraudulent schemes associated with retail digital asset commodities' (DACs) activities. The CFTC's last formal reauthorization expired over ten years ago. Since then, NFA, the CFTC and the derivatives industry have established a comprehensive swap dealer regulatory oversight program² and navigated a worldwide pandemic. In doing so, we worked collectively to protect customers and counterparties, market integrity and confidence in the derivatives markets.

CFTC Reauthorization

NFA has always recognized the importance of Congress reauthorizing the CFTC and ensuring that the CFTC continues to have the tools it needs to properly regulate the derivatives industry. As this Subcommittee is aware, on May 22, 2024, the House of Representatives passed the bipartisan *Financial Innovation and Technology for the 21st Century Act* (FIT Act). This legislation calls upon the Commission to regulate a new area once again — the DAC market. In the past, Congress has used momentous changes to the CFTC's responsibilities to also reauthorize it.³ In light of the CFTC's potential new responsibilities in the DAC area, NFA strongly believes that now is an appropriate time for Congress to reauthorize the CFTC.

¹ Congress originally gave the CFTC anti-fraud jurisdiction over the retail forex markets and expanded its jurisdiction to include regulatory oversight in 2008. Congress gave the CFTC jurisdiction over the swaps markets (except for security-based swaps) after the enactment of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010.

² Swap Dealers became registered with the CFTC in early 2013.

³ For example, the *Commodity Futures Modernization Act of 2000* and *Food, Conservation, and Energy Act of 2008* each made momentous changes to the CFTC's regulatory oversight and/or jurisdiction and reauthorized the CFTC.

Reauthorization is always an important process for the industry as a whole and for NFA in particular. Today, I would like to cover one significant reauthorization topic—strengthening FCM bankruptcy customer protections. I would also like to take this time to reaffirm NFA's willingness to assist the CFTC to the extent requested in regulating the spot DAC market if Congress moves forward with legislation in this area.

Strengthening Customer Protections in FCM Bankruptcy Proceedings

NFA firmly believes that customer protection issues should be front and center as Congress works to reauthorize the CFTC. The 2019 reauthorization bill voted out of the House Agriculture Committee included a key customer protection provision that clarifies the Commission's authority to adopt rules that provide customers with priority in the event of an FCM bankruptcy. NFA fully supports this provision, and we believe there is broad-based industry support for this approach. We urge this Subcommittee to include this key statutory change in any future reauthorization bill.

Over 40 years ago, the CFTC adopted rules regarding FCM bankruptcies. Importantly, those rules provide that in the event of a shortfall in customer segregated funds, the term "customer funds" would include all assets of the FCM until customers are made whole. Over 20 years ago, a United States district court bankruptcy decision cast doubt on the validity of the CFTC's rule. Although that decision was subsequently vacated after the parties in the matter settled, a cloud of doubt continues to linger over the validity of the CFTC's rule.

NFA strongly encourages Congress to remove that doubt and ensure that customers have a priority in an FCM's bankruptcy if there is a shortfall in segregated funds. In our view, this important customer protection can be provided by amending Section 20 of the CEA, which gives the CFTC authority to adopt regulations regarding commodity brokers that are debtors under Chapter 7 of Title 11 of the United States Code. We recommend that Congress amend Section 20 to clarify that the CFTC has the authority to adopt the rule that it did.

NFA's Willingness to Assist the Commission in Regulating Digital Asset Commodities

At the outset, we applaud this Subcommittee's and under Chairman Thompson's leadership, the House Committee on Agriculture's collaborative work with the House Financial Services Committee to pass legislation governing spot digital assets, including those that are commodities. As this Subcommittee is aware, the FIT Act includes a significant role for an RFA in regulating the DAC market. Among other provisions, the bill requires digital commodity brokers and digital commodity dealers, as well as digital commodity exchanges that accept customer funds, to be Members of an RFA. The bill also provides that any person that files notice with the Commission of its intent to register as a digital commodity broker, digital commodity dealer or digital commodity exchange to be a member of an RFA and comply with the RFA's rules. As a result, the

RFA will be solely responsible for oversight of these entities during the period between filing the notice of intent to register and actually becoming CFTC registered.

NFA fully supports providing a role for an RFA to partner with the Commission in developing an appropriate regulatory regime for the DAC market. A cornerstone of effective self-regulation is mandatory membership, and the provisions in the FIT Act that mandate membership in an RFA are essential for ensuring that an RFA can act effectively, and discipline and when appropriate bar Members that do not abide by the RFA's rules. Without mandatory membership, registrants would be able to relinquish their RFA membership if they did not want to follow a rule or were being investigated or disciplined for failing to follow a rule.⁴

NFA looks forward to assisting the CFTC in regulating the DAC market and is fully capable of performing the responsibilities of an RFA as outlined in the FIT Act. The fact is our Member firms have been engaging in spot DAC activities for over five years, and we have already taken steps to regulate these Members' activities to ensure that appropriate customer protections are in place. For example, in 2018, we adopted DAC disclosure requirements for our Members because we wanted to make sure that investors fully understood the nature of DACs and DAC derivatives.

Last year, we extended our jurisdiction over Members' spot DAC activities to ensure that NFA could take action if a Member firm committed fraud or similar misconduct with respect to these activities. Detecting and combating fraud is central to our mission. Therefore, our current compliance rules impose anti-fraud, just and equitable principles of trade and supervision requirements on NFA Members and Associates engaged in spot DAC activities. Although we have not observed any significant issues with our Members engaging in spot DAC activities, we will continue to take a proactive regulatory approach with regard to our Members' spot DAC activities.

In conclusion, thank you again for the opportunity to appear before you today and highlight one important provision that NFA believes should be included in any future CFTC reauthorization bill. We also appreciate the opportunity to highlight NFA's willingness to assist the Commission in regulating DACs. We firmly believe our successful regulatory partnership with the CFTC is an effective structure for regulating the derivatives markets and the rolling spot retail forex and spot DAC markets. We look forward to working closely with this Subcommittee to reauthorize the CFTC. I would be happy to answer any questions.

⁴ Effective government oversight is also essential to self-regulation. As set forth in Section 17 of the CEA, this oversight should cover all aspects of the SRO's regulatory activity. Today, while we may partner with the CFTC to regulate our Members, the CFTC closely reviews and monitors our activities to ensure that we fulfill our regulatory responsibilities.