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Statement by
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Thank you, Chairman Harris, Ranking Member Bishop, and members of this Subcommittee. I appreciate the opportunity to testify on the President's fiscal year 2024 budget request for the Commodity Futures Trading Commission (CFTC or Commission). Thank you for your historical support of the CFTC and its funding needs.

Our fiscal year 2024 request focuses on the essential resources and tools the agency needs to advance our workforce planning into the new era of digital finance, to continue building out our increasingly data-centric infrastructure and expertise as we too innovate and increasingly rely on high tech analytical and surveillance approaches, and to support our enforcement efforts that have expanded due to the surge in digital asset investing.

The CFTC is the primary regulator of the U.S. derivatives markets in which commodity futures, swaps and options are traded. For over a century, the derivatives markets have played an integral role in the U.S. economy, facilitating risk management and price discovery, and contributing to financial stability and predictability of prices that impact the daily lives of all Americans, especially our nation's farmers and ranchers. Through the Commodity Exchange Act (CEA), Congress both mandates and empowers the CFTC to implement rules and regulations aimed at fostering open, transparent, competitive, and financially sound markets; to prevent and deter misconduct and market disruptions; and to protect all market participants from fraud, manipulation, and abusive practices.

Over the past three years, the world has experienced economic pressures from a global pandemic, the Russian invasion of Ukraine, and extreme weather conditions, all of which led to record volatility for essential commodities, such as food and fuel. This perfect storm of externalities directly impacted commercial end-users and ultimately consumers, and tested the resilience of the derivatives markets and the efficacy of post-financial crisis reforms.[1] During this time, the CFTC stayed focused on using its regulatory flexibility to be responsive to the needs of market participants, while keeping in mind appropriate risk tolerances and guardrails. Our market structures, regulations, and thoughtful yet assertive approach to oversight have served the American people and markets as intended. Farmers and ranchers continue to be able to manage price risk during planting season by locking in a price to protect against price fluctuations between planting and harvest that result from weather-related conditions, geopolitics and other factors beyond their control. Large manufacturers, pension funds, and other commercial end-users needing to manage for currency and interest rate risk, among others, as they sell American-made goods across the globe are also able to rely on the derivatives markets to provide business certainty.

Today, dedicated CFTC staff use every tool the agency has to ensure that commodity markets continue to fairly and transparently serve their intended price discovery and risk management functions. I know that I speak for all the Commissioners when I thank the staff for their commitment to the agency and its mission. I also want to thank each of my fellow Commissioners for their focused efforts and work on behalf of the agency.

Market Resilience - Meeting the Challenges of the Day

It has been almost 13 years since Title 7 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[2] expanded the CFTC's authority. And it has been roughly 10 years since the CFTC's authorization as part of the 2008 Food, Conservation, and Energy Act[3] lapsed. In that time, derivatives markets have experienced massive growth: trading volumes in exchange-traded futures 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,[4] which is more than half of the estimated $600 trillion global market.

In addition, we have seen the industry's population shifting from being firmly rooted in the financial markets, to being significantly influenced by the technology sector, creating new

[1] At a high level, the key factors impacting commodity markets in 2022 were: (1) the post-pandemic economic recovery characterized by rising commodity prices across all asset classes, contributing to overall inflation; (2) Russia's invasion of Ukraine and related U.S. and E.U sanctions contributing to sharp price spikes in agricultural, energy, and certain metals markets; (3) monetary tightening and the policy response, with rate hikes by the FOMC totaling a 4.25% increase over the year and the U.S. dollar rising to multi-year highs before falling; (4) severe weather across the globe with heat, drought, and flooding impacting agricultural and energy markets; and (5) China's Covid-19 lockdowns, reducing demand and impacting global supply chains. *See* Rostin Behnam, Chairman, CFTC, Remarks of Chairman Rostin Behnam at the Commodity Markets Council 2023 State of the Industry Conference (Jan. 23, 2023), Remarks of Chairman Rostin Behnam at the Commodity Markets Council 2023 State of the Industry Conference, Fort Lauderdale, Florida | CFTC.

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

[3] Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 165 (2008).

[4] CFTC, Weekly Swaps Report, Weekly Swaps Report | CFTC.

challenges for regulators. We are witnessing a growing number of retail participants entering the markets, who are enabled by mobile phone application technology and an endless stream of information to pursue opportunities the moment any barrier to entry recedes. We are seeing the emergence and growth of new asset classes such as digital assets. And, exchanges, intermediaries, and innovators who are eager to meet demand for products and services are proposing increasingly nontraditional models that may give us pause, but demand thorough, transparent engagement to consider new possibilities for innovation as required by the CEA. Lastly, and perhaps most critically, cyber risk has emerged as a top risk to the agency, the persons and entities we regulate, and the third-party service providers who support all aspects of the derivatives ecosystems. Attacks are increasing daily, growing in speed and sophistication, and requiring increased vigilance against threats to our financial system.

The Regulatory Agenda

It is with these developments in mind that I have outlined my priorities for the CFTC for 2023 and beyond. Specifically, I anticipate that over the next two years the Commission will consider and vote on matters for consideration that will: (1) enhance risk management and resilience across intermediaries, exchanges, and derivatives clearing organizations (DCOs); (2) foster sound and responsive practices regarding cybersecurity and the use of third-party vendors across all registrants; (3) strengthen customer protections; (4) promote efficiency and innovation; (5) improve reporting and data policy; and (6) address duplicative regulatory requirements and amplify international comity and domestic coordination with both federal and state regulators.[5] Underlying all of these regulatory themes is the need to address the derivatives industry's current trajectory while fortifying the safety, soundness and competitiveness of the U.S. derivatives markets. The CFTC's fiscal year 2024 budget request reflects investments supportive of these goals and objectives.

Cybersecurity

The Commission's adoption and implementation of new tools, swap data reforms, and digital reporting strengthen the CFTC's market oversight activities. While we are accelerating our migration to cloud technologies to store, analyze, and ingest data more cost-effectively and efficiently, we are mindful of the potential risks. As reflected in our budget, cybersecurity measures extend across the CFTC and are a primary focus for the programmatic divisions

[5] *See* Rostin Behnam, Chairman, CFTC, Keynote Address of Chairman Rostin Behnam at the ABA Business Law Section Derivatives & Futures Law Committee Winter Meeting (Feb. 3, 2023), Keynote Address of Chairman Rostin Behnam at the ABA Business Law Section Derivatives & Futures Law Committee Winter Meeting | CFTC.

responsible for ensuring appropriate risk management across registered exchanges, clearinghouses, and intermediaries.

Recent events highlight the increasing concerns for potential cyber breaches whether they are from advanced threats or government actors. To achieve consistent and scalable protections for the Commission's information and information systems against evolving threats, vulnerabilities, and risks, the CFTC will continue to integrate security into all layers of the architecture. The development of a standards-based security architecture is a key component to achieving this goal.

The Commission's strategy to deploy a multifaceted cybersecurity program requires a one-time budget increase for various unfunded contract activities that also allows us to focus on continuing to hire a highly skilled contract cyber workforce capable of leveraging state-of-the-art technologies. The increase allows the CFTC to address the challenges of an evolving threat landscape by enhancing the cybersecurity program's ability to protect and secure Commission enterprise technology infrastructure and industry data.

The CFTC's Budget Request for Fiscal Year 2024

The Commission requests a total of $411 million and 764 FTE for FY 2024. This is a 12.6 percent increase above the FY 2023 enacted budget of $365 million, and is scaled to permit the Commission to maintain and enhance its oversight and enforcement function over the U.S. derivatives markets at a time of historic volatility, demonstrable resilience, rapid growth, and transformative innovation. The increase of $46 million provides for general increases to meet cost increases across the agency. It also funds new initiatives and fully funds and accelerates existing projects.

Safe Markets with Integrity – Division of Enforcement

The Commission requests $70.6 million and 172 FTE for the Division of Enforcement (DOE) to protect the public and preserve market integrity by detecting, investigating and prosecuting violations of the CEA and CFTC regulations.

DOE works to ensure that U.S. derivatives markets operate free from fraud, manipulation, and other trading abuses to maintain public and market participant confidence (including retail participants), who depend on the futures and swaps marketplace. As part of those efforts DOE's Market Surveillance Unit develops and utilizes sophisticated systems to analyze trade data to help identify trading or positions that warrant further inquiry. The Forensic Economists Unit performs complex data analysis to develop evidence for investigations regarding the nature and scope of the trading or activity at issue and to further inform the determination to bring an enforcement action.

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 just one facet of our approach to innovation and the evolution of financial markets. Its effectiveness in holding individuals and institutions accountable promotes confidence in U.S. derivatives markets, which continue to be the premier mechanism for global price discovery and risk management.

I have always believed, and continue to believe, that regulation should not be enforcement driven. However, where preservation of market integrity and protecting the public relies on deterrence, we must ensure that every matter we file, and public action we take, brings about greater compliance and makes the next violation less likely to occur. Demonstrating our continued commitment to protecting customers and ensuring market integrity, in FY 2022 the CFTC obtained orders imposing over $2.5 billion in restitution, disgorgement and civil monetary penalties either through settlement or litigation, nearly eight times the total of our FY22 appropriation.[6]

Digital Assets:

The CFTC has risen to the challenges brought on by the burgeoning digital asset market by ensuring that the markets and market participants acting within its jurisdiction comply with their statutory and regulatory requirements. The CFTC does not have direct statutory authority to comprehensively regulate cash digital commodity markets. Its jurisdiction is limited to its fraud and manipulation enforcement authority.[7] In the absence of direct regulatory and surveillance authority for digital commodities in an underlying cash market, our enforcement authority is by definition reactionary; we can only act after fraud or manipulation has occurred or been uncovered. Despite this limitation, to date the Commission has brought 70 enforcement actions involving digital assets commodities. Such cases comprised more than 20% of the 82 actions filed last fiscal year.[8]

Manipulative and Deceptive Conduct and Spoofing:

DOE is the CFTC's most effective tool in rooting out fraud, manipulation, and disruptive trading practices, including the examination and investigation of the role of speculators in our jurisdictional markets. During FY 2022, in its largest benchmark manipulation case to date, which directly impacts American consumers, the CFTC found that an energy and commodities trading

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[6] *See* Press Release Number 8613-22, CFTC, CFTC Releases Annual Enforcement Results (Oct. 20, 2022), CFTC Releases Annual Enforcement Results | CFTC.
[7] *See* Rostin Behnam, Chairman, CFTC, Testimony of Chairman Rostin Behnam Regarding "Why Congress Needs to Act: Lessons Learned from the FTX Collapse" at the U.S. Senate Committee on Agriculture, Nutrition, and Forestry (Dec. 1, 2022), Testimony of Chairman Rostin Behnam Before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry | CFTC.
[8] *See* CFTC, *supra* note 6.

firm engaged in manipulation and foreign corruption in the U.S. and global oil markets, including manipulation or attempted manipulation of four U.S. based S&P Global Platts physical oil benchmarks and related futures and swaps.[9] The CFTC ordered the firm to pay $1.186 billion, which consists of the highest civil monetary penalty ($865,630,784) and highest disgorgement amount ($320,715,066) in any CFTC case.[10] The Commission anticipates this focus will continue in FY 2023 and FY 2024.

Smart Regulation and Innovation – Division of Market Oversight

The Commission requests $36.1 million and 93 FTE for the Division of Market Oversight (DMO) to continue its commitment to maintaining the integrity of the markets.

DMO is responsible for the regulation and oversight of derivatives marketplaces. Futures, options on futures, and swaps markets are highly innovative and global in scope. DMO anticipates that it will continue receiving, analyzing, designating, and registering new traditional trading platforms, as well as additional entities focused on offering innovative products, including derivatives products related to digital assets and economic events, which may raise unique issues and challenges requiring further resources.

DMO will continue to be involved in reviewing new digital asset derivatives listed for trading on registered platforms and contracts relating to economic events. Digital asset derivatives and the underlying cash markets present many unique risks and challenges, such as price volatility, market dislocations due to flash rallies, crashes, and other technology issues. In addition, digital asset derivatives require novel exchange rules that DMO reviews for compliance with the CEA and Commission regulations.

With the recent expansion of direct retail participation in the derivatives markets and in underlying commodity markets, such as those for digital commodity assets, the CFTC must be able to ensure that the products offered are suitable, that the barriers to entry are meaningful, and that the disclosure information provided is material to their decision making. While there are clear differences and delineations between the futures products offered by CFTC designated contract markets (DCMs) and cash products offered by a variety of unregistered entities, the growing participation appears to be technology driven. Technology not only makes it easier for individual customers to access markets—both regulated and unregulated— but it allows for the increased

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[9] Press Release Number 8534-22, CFTC, CFTC Orders Glencore to Pay $1.186 Billion for Manipulation and Corruption (May 24, 2022), [CFTC Orders Glencore to Pay $1.186 Billion for Manipulation and Corruption | CFTC.]
[10] The Commission also brought charges against defendants engaged in cross-market and single market spoofing involving CBOT soybean futures and options on soybean futures, and brought several actions finding spoofing in a number of different markets, including gold and silver futures, CME Natural Gas (NG) and Reformulated Blendstock for Oxygenate Blending Gasoline futures, and Treasury futures. *See* CFTC, *supra* note 6.

development of nano, mini, micro, and event contracts, as well as the structuring of crypto and index futures and options. As individual customers gain greater familiarity and comfort with regulated products, there is an increasing risk that they will find their way into more opaque venues. This risk is amplified where access is achieved seamlessly through vertically integrated, application enabled software available via any Wi-Fi connection.

In the face of extensive change and cyber-attacks on the markets, the Commission's resources for system safeguard oversight are increasingly crucial to the stability of the economy and are a critical element of these examinations. Effective cybersecurity protection of regulated entities requires increased vigilance for the scope of system safeguard examinations conducted each year.

Risk Management - Division of Clearing and Risk

The Commission requests $35 million and 91 FTE for the Division of Clearing and Risk (DCR) to maintain current capabilities and expand examination activities designed to reduce market risk and support the safety and soundness of DCOs. DCR is focused on promoting the strength and resilience of DCOs through regular examinations, stress testing, capital requirements, financial reporting obligations, and ongoing risk monitoring, among many other supervisory tools.

As I mentioned, cybersecurity is among the greatest threats to the financial system. The automated systems of DCOs play a critical role in today's clearing environment, as do their corresponding business continuity and disaster recovery plans. The importance of the CFTC's system safeguards oversight is critical given the unacceptable risks to the U.S. financial system and the world economy should certain DCOs become inoperative—even for a relatively short period of time. We anticipate activity in 2023 will continue to reflect a dramatic increase in the number of cyber-security and threat incidents launched against the financial services sector, which includes the DCO community.

Examinations of DCOs' compliance with the CEA and implementing regulations necessitates the use of new automated tools, especially in evaluating compliance in the areas of liquidity, default, back testing, and stress testing. These new tools will aid examiners in identifying potential areas of risk and should significantly improve the effectiveness of the examination process.

The Commission performs quantitative risk analysis of DCOs' margin models, which includes reviewing and analyzing changes to those models as well as related risk management practices. As DCO margin models and associated methodologies grow in sophistication, it is critically important for the CFTC to be appropriately staffed with risk analysts with state-of-the-art training and expertise in advanced quantitative risk and financial engineering.

Enhancing financial analysis tools is critical, as the CFTC is the only financial regulator, regardless of jurisdiction, that is able to aggregate and evaluate risk across all DCOs. Though each DCO has a full view of risk resulting from market participants clearing at that particular organization, many market participants, especially the largest market participants, will have positions at multiple clearinghouses and in more than one asset class. Much of the most recent tool development work has been focused on ensuring a full, and accurate understanding of participant risk across these dimensions.

In the area of market-wide, systemic risk oversight, the Commission has been a thought leader in the area of supervisory stress tests (SSTs) of DCOs, having now published three exercises. However, the ability to expand this program, and to easily incorporate SST tools into daily monitoring efforts, is often constrained by the available tools and related resources. Additional investment in tool development and access will aid in these needed enhancements, re-emphasized by the volatile market events in the recent past.

Registration and Compliance – Market Participants Division

The Commission requests $28.4 million and 73 FTE for the Market Participants Division (MPD) to maintain effective oversight of registered market participants. The CFTC's thousands of registered market participants play a vital role in the nation's financial system by connecting customers to global derivatives markets. As such, the Commission directs its registration and compliance resources through MPD to provide critical policy and regulatory guidance to market participants, both directly and in coordination with self-regulatory organizations (SROs) including the Chicago Mercantile Exchange (CME) and the National Futures Association (NFA), our designated registered futures association. The Commission also uses these resources to ensure that registration rules, standards, and reporting requirements keep pace with the needs of the evolving marketplace.

In the last several years we have seen increased retail participation in our jurisdictional and related markets along with my commitment to ensuring that the rise of retail participation and the exchanges, intermediaries and innovators who are eager to meet demand for products and services are appropriately brought into the regulatory fold.[11] In addition to directing MPD to analyze risks and consider what additional protections are needed for retail market participants, I have directed staff to begin putting forward proposals that will have immediate and direct impacts for retail customers in our markets.

[11] *See, e.g.*, Rostin Behnam, Chairman, CFTC, Testimony of Chairman Rostin Behnam Regarding "The State of the CFTC," U.S. House of Representatives, Committee on Agriculture (Mar. 31, 2022), Testimony of Chairman Rostin Behnam Regarding the "State of the CFTC" | CFTC.

Additionally, with growing cyber risk permeating all elements of our markets, and recent events further highlighting the operational risks associated with the use of third-party service providers, in addition to related rulemakings, MPD is actively reviewing potential weaknesses with respect to third-party service providers and vendor relationships and will identify appropriate solutions for Commission consideration. The goal of any upcoming proposals on cybersecurity will be the fostering of sound and responsive cybersecurity practices among our registrants; elevating existing standards that will ultimately improve operational resilience across the financial sector and better protect customer assets.

Data Acquisition – Division of Data (DOD)

The Commission will continue to leverage cloud and other new technology to enhance and transform its ability to collect, analyze, and draw informed conclusions from market and industry data to conduct and support effective enforcement actions, oversee rapidly evolving markets and formulate sound regulatory policy. The FY 2024 budget outlined for the Division of Data (DOD) includes right-sizing the budget for conversion of contracts from time and materials to firm-fixed price in addition to continuing the efforts of adoption of cloud technology. As technology continues to reshape the 21st century markets, CFTC staff will require additional tools and capabilities to help make the large and complex data the Commission now receives more actionable and improve the agency's ability to detect, assess, and respond to market trends, threats, vulnerabilities, and other issues. As such, the FY 2024 request includes additional funds to acquire, develop and support foundational tools, such as metadata tools and more advanced data visualization tools to expand the CFTC's ability to keep pace with mission requirements and provide users with the means to more optimally perform important regulatory and enforcement work.

Office of Minority and Women Inclusion (OMWI)

As Chairman, in January of 2022, I appointed the CFTC's first Chief Diversity Officer (CDO) who oversees the agency's Office of Minority and Women Inclusion (OMWI). The CDO's role is to provide leadership and executive direction regarding the CFTC's efforts to integrate and promote diversity, equity, and inclusion, and accessibility (DEIA) at all levels of the Agency's workforce, in our workplace, business operations, and mission critical work.

I am committed to building a bench of diverse top talent at all levels of the Agency. 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.

In addition, I am eager to see the CFTC's OMWI statutorily authorized, similar to other federal financial regulators.[12]

Whistleblower Incentives and Protection

The Dodd-Frank Act established the Customer Protection Fund (Fund),[13] which supports our Whistleblower Program[14] and the Office of Customer Education and Outreach. As this Committee knows, the overwhelming success of the Whistleblower Program has led to the potential for disruptions in these two vital offices. In addition to the importance of a long-term fix to avoid one-time depletions greater than the total balance of the Fund, I believe amendments to the statutory provisions describing the permitted uses of the Customer Protection Fund by the Office of Customer Education and Outreach[15] would allow the Commission to implement a host of new investor protection programs and systems and 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.

Extreme Weather Events

Extreme weather events contributed to the confluence of factors that defined commodity volatility in 2022. The Commission both domestically and in international workstreams is continuing to engage through the Climate Risk Unit (CRU) on the role of derivatives in understanding, pricing, and mitigating climate-related risk, and to support the orderly transition to a low-carbon economy through market-based initiatives. One such effort involves the voluntary carbon markets, which are jurisdictional to the CFTC in light of listed futures contracts on registered designated contract markets. These markets and the agency's next steps benefit from the public-private partnership that is the hallmark of the CFTC's approach to examining novel matters.

Conclusion

In conclusion, I believe that the $411 million requested for Fiscal Year 2024 supports important investments for the agency, our markets, our economy, and national security. It is my goal as Chairman to use these resources to address critical needs of the agency that are commensurate to the growth, complexity and threats to the derivatives markets, and to ensure that the U.S. derivatives markets continue to remain the preeminent risk management and price discovery financial markets in the world. I look forward to answering any questions you may have.

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[12] *See* Dodd-Frank Act, Pub. L. No. 111-203, §342, 124 Stat. 1376, 1541-1544 (2010), codified at 12 U.S.C. 5452.
[13] CEA § 23(g), 7 U.S.C 26(g).
[14] COMMODITY FUTURES TRADING COMMISSION WHISTLEBLOWER PROGRAM, CFTC's Whistleblower Program | Whistleblower.gov.
[15] *See* CEA section 23(g)(2); 7 USC 26(g)(2).