August 8, 2022

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

Re: Request for Information on Climate-Related Financial Risk
CFTC-2022-0029-0001

*Via*: CFTC Comments Portal ( https://comments.cftc.gov )

Dear Mr. Kirkpatrick:

I am pleased to provide these comments in response to the Request for Information on Climate-Related Financial Risk.[1] In my introductory discussion, I raise 13 issues that the Commission should consider as it considers a climate change rulemaking. Then I provide responses to the specific requests for comment made by the Commission.

***Introductory Discussion***

There are at least 13 major issues that the Commission should consider as it weighs potential regulations governing climate-related financial risk.

1. Most Climate Regulation is Beyond the Commission's Mission and its Statutory Charge. The Breadth of the Commission's Rulemaking is subject to Judicial Review.

The mission statement of the Commodity Futures Trading Commission "is to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation."[2] The Commission's statutory charge, while unusually verbose at 169 words, is primarily to "deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants."[3] There is nothing in the CFTC mission statement

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[1] "Request for Information on Climate-Related Financial Risk," Commodity Futures Trading Commission, *Federal Register*, Vol. 87, No. 110, June 8, 2022, pp. 34856-34862 https://downloads.regulations.gov/CFTC-2022-0029-0001/content.pdf.

[2] CFTC Mission Statement https://www.cftc.gov/About/AboutTheCommission.

[3] 7 U.S. Code §5

(a) Findings

or its statutory charge about curing cancer, addressing climate change or a myriad of other worthy objectives.

This poses more than a theoretical problem for the Commission as it considers this rulemaking.

In *West Virginia v. EPA,*[4] the Supreme Court held that an agency must act pursuant to clear delegation of authority from Congress. In holding an exercise of regulatory power by the EPA invalid, the court wrote:

> Extraordinary grants of regulatory authority are rarely accomplished through "modest words," "vague terms," or "subtle device[s]." Nor does Congress typically use oblique or elliptical language to empower an agency to make a "radical or fundamental change" to a statutory scheme.[5]

This is an affirmation of a line of cases that the Commission needs to keep in mind. It cannot go too far down the climate change, environmental regulation path without considering limits on its statutory authority. Otherwise, its rulemaking will be successfully challenged in court. Climate change regulation with the objective of altering the climate is not part of its remit.

In *FDA v. Brown & Williamson Tobacco Corp.*, the Supreme Court, granting *Chevron* deference to the agency, found that the Food and Drug Administration did not have authority to regulate tobacco.

> In determining whether Congress has specifically addressed the question at issue, a reviewing court should not confine itself to examining a particular statutory provision in isolation. The meaning - or ambiguity - of certain words or phrases may only become evident when placed in context. It is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." A court must therefore interpret the statute "as a symmetrical and coherent regulatory scheme," and "fit, if possible, all parts into an harmonious whole." Similarly, the meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand. In addition, we must be guided to a degree by common sense as to the manner in which Congress is likely

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The transactions subject to this chapter are entered into regularly in interstate and international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.

(b) Purpose
It is the purpose of this chapter to serve the public interests described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this chapter to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.

[4] Slip Opinion (June 30, 2022) https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf.

[5] Ibid at p. 18.

> to delegate a policy decision of such economic and political magnitude to an administrative agency.[6] (citations omitted)

If the rule ultimately proposed by the CFTC is of great "economic and political magnitude," then it is likely to be ruled invalid since there is no authority for such a climate rule in the statute.

The *FDA v. Brown & Williamson Tobacco Corp.*, the court also wrote that:

> By no means do we question the seriousness of the problem that the FDA has sought to address. The agency has amply demonstrated that tobacco use, particularly among children and adolescents, poses perhaps the single most significant threat to public health in the United States. Nonetheless, no matter how "important, conspicuous, and controversial" the issue, and regardless of how likely the public is to hold the Executive Branch politically accountable, an administrative agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress. And "[i]n our anxiety to effectuate the congressional purpose of protecting the public, we must take care not to extend the scope of the statute beyond the point where Congress indicated it would stop."[7] (citations omitted)

Thus, a court can accept the importance of climate change and even accept the much more questionable proposition that a proposed rule would have climate change mitigation or other benefits that exceed its costs and yet it still must find that the Commodity Exchange Act does not authorize the Commission to regulate in the proposed manner.

Similarly, in *NAACP v. FPC*, 425 U.S. 662 (1976) the Supreme Court held that the Federal Power Commission did not have the authority to prohibit discriminatory employment practices.

> The parties point to nothing in the Acts or their legislative histories to indicate that the elimination of employment discrimination was one of the purposes that Congress had in mind when it enacted this legislation. The use of the words "public interest" in the Gas and Power Acts is not a directive to the Commission to seek to eradicate discrimination, but, rather, is a charge to promote the orderly production of plentiful supplies of electric energy and natural gas at just and reasonable rates. … The Federal Power Commission is authorized to consider the consequences of discriminatory employment practices on the part of its regulatees only insofar as such consequences are directly related to the Commission's establishment of just and reasonable rates in the public interest."[8]

Thus, the various provisions in the commodities laws directing the Commission to regulate in the "public interest" do not confer authority it does not otherwise have.

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[6] *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-133 (2000).
[7] *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 161 (2000).
[8] *NAACP v. FPC*, 425 U.S. 662, 670-671 (1976).

In *NFIB v. OSHA*,[9] the Supreme Court granted a stay enjoining OSHA from imposing vaccine mandates on employees because OSHA does not have the authority to do so under its authorizing statute.

> Why does the major questions doctrine matter? It ensures that the national government's power to make the laws that govern us remains where Article I of the Constitution says it belongs—with the people's elected representatives. If administrative agencies seek to regulate the daily lives and liberties of millions of Americans, the doctrine says, they must at least be able to trace that power to a clear grant of authority from Congress.[10]

Similarly, the CFTC does not have the authority to impose regulations that have as their objective environmental regulation and the mitigation of climate change. The generalized instruction in the Commission's statutory charge to act in the "public interest" does not give it authority to do whatever it wants.

2. Economic Analysis of Climate-Related Financial Risk is Nearly Non-Existent

Serious economic analysis of climate-related financial risk is nearly non-existent. For example, you would think that the SEC would have included such an analysis in detail in its proposing release since it is the factual predicate for their rulemaking. There are a few citations to a few studies. But those studies are largely advocacy pieces by those with a political agenda.

Any estimate of the economic impact of climate change will have to rely on the highly uncertain and divergent climate model results. Economics models are more uncertain because of necessity they are built on top of the climate models. So if the climate models have a band of results plus or minus X percent, the economics models will have a band of results that is greater than plus or minus X percent.

In addition to the high degree of uncertainty in the climate models will be added an entirely new family of economic ambiguity and uncertainty. Any economic estimate of the impact of climate change will also have to choose a discount rate to arrive at the present discounted value of future costs and benefits[11] of climate change and to estimate the future costs and benefits of various regulatory or private initiatives. The choice of discount rate is controversial and important.[12] Estimates will need to be made of the cost of various aspects of climate change (sea level rises, the impact on agriculture, etc). Estimates will need to be made of the cost of various remediation techniques. Guesses will need to be made about the rate of technological change. Guesses will

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[9] *NFIB v. OSHA*, 595 U. S. ____ (2022) https://www.supremecourt.gov/opinions/21pdf/21a244_hgci.pdf.
[10] Op. Cit., p. 4.
[11] There are some benefits. For example, large portions of Northern areas such as Canada, Russia and Scandinavia would presumably become suitable for agriculture.
[12] See, for example, David Kreutzer, "Discounting Climate Costs," Heritage Foundation Issue Brief No. 4575, June 16, 2016 http://thf-reports.s3.amazonaws.com/2016/IB4575.pdf; Kevin Dayaratna, "An Analysis of the Obama Administration's Social Cost of Carbon," Testimony before Committee on Natural Resources, United States House of Representatives on July 23, 2015 https://www.heritage.org/testimony/analysis-the-obama-administrations-social-cost-carbon.

need to be made about the regulatory, tax and other responses of a myriad of governments.[13] Estimates will need to be made using conventional economic techniques regarding the economic impact of those changes which, in turn, will reflect a wide variety of techniques and in many cases a thin or non-existent empirical literature. Guesses will need to be made of market responses to all of these changes since market participants will not stand idly by and do nothing as markets, technology and the regulatory environment change.

The results of any given model will depend on what assumptions or guesses the modeler makes regarding these many highly uncertain issues. The SEC provides literally no guidance on these issues. Perhaps the CFTC can do better.

3. No CFTC Rule Can Have a Meaningful Impact on Climate

Any CFTC proposed rule would have somewhere between either a vanishingly small or no effect on actual greenhouse gas emissions or climate change. *Entirely eliminating* net U.S. emission would reduce global temperatures by only 0.2 Celsius by 2100. [14] Thus, as a practical matter, any CFTC rules would have no measurable impact on global warming. Period. Full stop.

Moreover, lengthy footnotes full of amorphous, legally scrubbed language based on highly doubtful climate and economics models presented on CFTC forms are not going to have a significant impact on emissions. Or, alternatively, requiring regulated firms to employ large number of accountants, economists and lawyers or hire consultants to make guesses about the impact of climate change is unlikely to materially affect either their financial health or the climate.

4. The Costs and Adverse Economic Impact on Regulated Entities, Competition and the Economy Must be Seriously Considered

The costs of any proposed rule are likely to be substantial. The costs that would be imposed by the SEC's proposed climate change rule, using their own figures, would *triple* the cost of being a public company and have a host of adverse economic effects.[15] Assuming that the SEC is not going to allow issuers to fabricate data out of whole cloth, the scope 3 requirements in the SEC

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[13] To get a sense of how daunting a task it is to keep track of the many government policy responses, see "Climate Change Laws of the World," Grantham Research Institute on Climate Change and the Environment at LSE https://climate-laws.org/. Merely keeping track of these many rules is one thing. Accurately predicting how they will change introduces an entirely new level of complexity and uncertainty.

[14] Kevin D. Dayaratna, Katie Tubb, and David Kreutzer, "The Unsustainable Costs of President Biden's Climate Agenda," Heritage Foundation Backgrounder No. 3713, June 16, 2022 https://www.heritage.org/sites/default/files/2022-06/BG3713_0.pdf ("eliminating all U.S. emissions would reduce global temperatures by less than 0.2 degrees Celsius by 2100." This result is obtained using a clone of the National Energy Model System 2021 Full Release (NEMS) used by the Energy Information Administration (EIA) in the Department of Energy.). See also Comment Letter of Benjamin Zycher, American Enterprise Institute to the Securities and Exchange Commission regarding "The Enhancement and Standardization of Climate-Related Disclosures for Investors," June 17, 2022 https://www.sec.gov/comments/s7-10-22/s71022-20132286-302818.pdf.

[15] Comment Letter of David R. Burton, Heritage Foundation to the Securities and Exchange Commission regarding "The Enhancement and Standardization of Climate-Related Disclosures for Investors," June 17, 2022 https://www.sec.gov/comments/s7-10-22/s71022-20131980-302443.pdf.

proposed rule will affect many millions of small businesses that are not issuers as well. The SEC utterly failed to consider that.[16]

The CFTC needs to seriously consider the costs it would be imposing on regulated entities and the adverse impact that these costs would have on competition. These costs will have a particularly adverse impact on smaller regulated entities because regulatory costs do not increase linearly with size.

5. <u>Virtually Any CFTC Rule Would Fail a Cost-Benefit Analysis</u>

Because the impact on climate change will be negligible (and certainly not measurable) and the costs substantial, virtually any CFTC rule is likely to fail a serious cost benefit analysis. Even zeroing out U.S. net emissions will reduce global temperatures by only 0.2 degrees Celsius over the next 80 years. And no CFTC rule is going to make a major difference. The analysis of "risk" is likely to be arbitrary and largely without factual predicate.

6. <u>The CFTC Lacks the Climate Expertise to Craft and Enforce a Climate Rule</u>

The Commission has no expertise regarding climate science. Yet the proposition that climate change represents an enormous, extraordinary and special kind of risk that justifies imposing massive costs on regulated firms is the analytical predicate for any potential rulemaking. If the risk is material and determinable, it regulated firms must already take it into account.

The Commission does not have the expertise or administrative ability to assess the veracity, or lack thereof, of any firm-specific speculation regarding climate-related risk based on highly divergent and uncertain economic models projecting the economic impact of climate change. Climate models show massive variations in projections and show wide divergence in the ability of models to account for past warming and the degree of warming that is anthropogenic. Any CFTC rule is going to have to address climate modeling issues and the Commission will have to provide guidance about how to do so.

I am no climate science expert. Nor, I suspect, is anyone at the Commission since climate science is way outside of the Commission's lane. I do know a thing or two about modeling in an economics context. Models are typically highly dependent on a few relationships specified in their equations and parameters. A small number of assumptions about relationships and parameters drive results. For example, a model examining the impact of proposed tax policy might adopt a neoclassical view where the impact of the proposed tax changes on the user cost of capital and labor response are central (as specified in the equations) and the empirical parameters (as specified in the elasticities) governing investment and labor are key.[17] Seemingly small adjustments to elasticities (even though within the bounds established in the empirical literature) result is significantly different results. A Keynesian "macroeconomic" approach focusing on aggregate demand would

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[16] Ibid.

[17] Parker Sheppard and David Burton, "How the GOP Tax Bill Will Affect the Economy," *Daily Signal*, November 17, 2017 https://www.dailysignal.com/2017/11/17/gop-tax-bill-will-affect-economy/. In this case, we used the Hall-Jorgenson user cost of capital equation, the Cobb-Douglas production function and conventional price theoretic labor market modeling.

yield dramatically different results, operate on different principles and lead to different policy recommendations. And so on.

Climate modeling is, in principle, no different. A small number of equations and empirical parameters drive results. Even the conventional governmental source -- the Intergovernmental Panel on Climate Change – shows massive variations in projections and shows the wide divergence in the ability of models to account for past warming[18] and the degree of warming that is anthropogenic.[19] The worst-case concentration pathway, for example, assumes highly unlikely projections of coal use, high population growth, low economic growth and slow technological progress.[20] Using the worst-case scenario of these emissions concentration pathways as the business-as-usual scenario will mislead the private sector, policymakers, regulators and the public on the estimated climate impacts and costs.[21]

Once you broaden your reading to include those that do not have a financial or political interest in climate change alarmism, it becomes clear that the variance and uncertainty in climate modeling is even higher than the IPCC report indicates.[22] It is clear that various models yield dramatically

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[18] See, for instance, Byron A. Steinman, Michael E. Mann and Sonya K. Miller, "Atlantic and Pacific Multidecadal Oscillations and Northern Hemisphere Temperatures," *Science*, February 27, 2015, Vol. 347, Issue 6225, pp 988-991, https://science.sciencemag.org/content/347/6225/988#aff-1 and Joseph Majkut, "Climbing the Staircase of Global Warming," Niskanen Center, July 27, 2016, https://www.niskanencenter.org/climbing-staircase-global-warming/ .

[19] *Climate Change 2014 Synthesis Report*, Intergovernmental Panel on Climate Change https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf See, for example, "The Representative Concentration Pathways," (p. 57); "Box 2.3, Models and Methods for Estimating Climate Change Risks, Vulnerability and Impacts," (pp. 58-59); "Table 2.1, Projected Change in Global Mean Surface Temperature and Global Mean Sea Level Rise for the Mid- and Late 21st Century, Relative to the 1986–2005 Period," (p. 60); "Cumulative Total Anthropogenic CO2 Emissions from 1870 (GtCO2)," (p. 63); "Table 2.2, "Cumulative Carbon Dioxide (CO2) Emission Consistent with Limiting Warming to Less than Stated Temperature Limits at Different Levels of Probability, Based on Different Lines of Evidence," (p. 64). The updated sixth version of the Synthesis Report is due for release in the Fall of 2022.

[20] Justin Ritchie and Hadi Dowlatabadi, "Why Do Climate Change Scenarios Return to Coal?" *Energy*, December 2017, Vol. 140, Part 1, pp 1276-1291, https://www.sciencedirect.com/science/article/abs/pii/S0360544217314597.

[21] Pielke, Roger and Ritchie, Justin, "Systemic Misuse of Scenarios in Climate Research and Assessment," April 21, 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3581777.

[22] Steven E. Koonin, *Unsettled: What Climate Science Tells Us, What It Doesn't, and Why It Matters*, Chapter 4, "Many Muddled Models," (Dallas, TX: BenBella Books, 2021); Bjorn Lomborg, *False Alarm: How Climate Change Panic Costs Us Trillions, Hurts the Poor, and Fails to Fix the Planet*, (New York: Basic Books, 2020); Pat Michaels and Chip Knappenberger, *Lukewarming: The New Climate Science that Changes Everything*, (Washington: Cato Institute, 2016); Benjamin Zycher, Resident Scholar, American Enterprise Institute, Statement before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Hearing on the "21st Century Economy: Protecting the Financial System from Risks Associated with Climate Change" March 18, 2021 https://www.banking.senate.gov/imo/media/doc/Zycher%20Testimony%203-18-21.pdf; Kevin Dayaratna, Ross McKitrick and David Kreutzer, "Empirically Constrained Climate Sensitivity and the Social Cost of Carbon," *Climate Change Economics*, Vol. 8, No. 2, 2017, pp. 1-12 https://econpapers.repec.org/article/wsiccexxx/v_3a08_3ay_3a2017_3ai_3a02_3an_3as2010007817500063.htm; Ross McKitrick and John Christy, "A Test of the Tropical 200- to 300-hPa Warming Rate in Climate Models," *Earth and Space Science*, September 2018, https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2018EA000401; Roger Pielke and Justin Ritchie, "How Climate Scenarios Lost Touch With Reality," *Issues in Science and Technology*, Summer 2021, https://issues.org/climate-change-scenarios-lost-touch-reality-pielke-ritchie/; Zeke Hausfather , Kate Marvel , Gavin

different results. Explaining the details is beyond the scope of this letter and my current competence. It is also beyond the ability of CFTC.

The CFTC is a relatively small agency with an FY 2022 FTE count of 666. In the areas that may end up dealing with a climate change rule, the figures are smaller:[23]

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|---|---|
| Market Oversight | 75 |
| Clearing and Risk | 79 |
| Market Participants | 62 |
| Office of the Chief Economist | 20 |

To draft and enforce a major climate change rule will of necessity require a huge percentage of the CFTC staff and endanger the ability of the CFTC to accomplish its core mission. That is most assuredly not in the public interest. The very substantial resources necessary to develop even a moderate degree of expertise on climate models and the economic and risk models based on them would be much better spent furthering the Commission's actual mission.

7. Of all Financial Regulators, the CFTC has the Least Tools to Address Climate Change

Corporations issue stock that has an indefinite term. Bonds and mortgages often have a 30-year term. Therefore, provided that "climate risk" is financially material and determinable, there is some logic in the position that the Securities and Exchange Commission or the many banking agencies should pay some attention to "climate risk" provided that (1) the analysis reflects appropriate discounting, (2) has an adequate factual predicate based in sound, not politicized, climate science and economics and (3) reasonable, determinable, factually-based bank or issuer specific analysis.[24]

The data that I have seen indicate that an overwhelming majority of commodity interests regulated by the Commission have a term or maturity of less than five years, much less than the risk horizon of virtually all climate-related risk. According to the Bank of International Settlements, only 8 percent of credit default swaps have a maturity of over five years.[25] According to OCC data, only 12 percent of interest rate, FX, and gold derivatives held by banks were over five years in maturity.[26] Thus, the CFTC regulated entities appear to face vastly less climate-related risk than securities issuers or banks extending loans. Stated differently, of all of

A. Schmidt , John W. Nielsen-Gammon and Mark Zelinka, "Climate Simulations: Recognize the 'Hot Model' Problem," *Nature* https://www.nature.com/articles/d41586-022-01192-2.

[23] U.S. Commodity Futures Trading Commission, The FY 2023 Budget Request, March 21, 2022 https://www.cftc.gov/sites/default/files/2022-03/CFTC_FY_2023_President_Budget_Report_032122.pdf.

[24] These are big "ifs." See, for example, Comment Letter of David R. Burton, Heritage Foundation to the Securities and Exchange Commission regarding "The Enhancement and Standardization of Climate-Related Disclosures for Investors," June 17, 2022 https://www.sec.gov/comments/s7-10-22/s71022-20131980-302443.pdf.

[25] Credit Default Swaps, by Remaining Maturity (2021) https://stats.bis.org/statx/srs/table/d10.3?f=pdf.

[26] Notional Amounts of Derivative Contracts by Contract Type and Maturity (Interest Rate, FX, and Gold, OCC https://www.occ.gov/publications-and-resources/publications/quarterly-report-on-bank-trading-and-derivatives-activities/files/pub-derivatives-quarterly-qtr3-2021.pdf.

the financial regulators in the Financial Stability Oversight Council (FSOC),[27] the CFTC has the least business engaging in a rulemaking related to "climate risk."

8. The CFTC should be as Skeptical of the Climate Lobby as It Would be of any Other Lobby.

Presumably, the CFTC would not appoint an advisory committee composed almost entirely of industry lobbyists and then treat the resulting report as objective, necessarily in the public interest or be impressed that the vote adopting the report was unanimous. That, however, is what the CFTC did with respect to the report entitled "Managing Climate Risk in the U.S. Financial System," Report of the Climate-Related Market Risk Subcommittee, Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission.[28] The CFTC appears to be oblivious of the massive conflict of interests on its advisory board. If you appoint a committee composed almost exclusively of people with an ideological or financial interest (to the tune of billions of dollars) in ramping up climate change regulation, you get 34-0 votes.[29]

The report, nevertheless, is remarkable in that it is full of recommendations that the CFTC should research that and study this and review that and coordinate with other regulators regarding this. It is full of steps that banking agencies and the SEC should take. But other than research, study, review and coordinate, it is devoid of any concrete regulatory steps that the CFTC should take.[30] This is because, the CFTC regulatory mission, fairly understood and stripped of politically or financially motivated spin, has almost nothing to do with climate change.

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[27] The voting member agencies of FSOC are the Treasury Department, the Federal Reserve System, the Comptroller of the Currency (OCC), the Consumer Financial Protection (CFPB), the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC), the Commodity Futures Trading Commission (CFTC), the Federal Housing Finance Agency (FHFA), the National Credit Union Administration (NCUA), and an independent member with insurance expertise who is appointed by the President and confirmed by the Senate for a six-year term. The nonvoting members the Director of the Office of Financial Research, the Director of the Federal Insurance Office, a state insurance commissioner designated by the state insurance commissioners, a state banking supervisor designated by the state banking supervisors, and a state securities commissioner designated by the state securities commissioners. FSOC, under White House direction, is applying political pressure on financial regulators to regulate "climate risk." They are almost all bending to White House pressure. See Executive Order on Tackling the Climate Crisis at Home and Abroad, January 27, 2021 https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/; "Report on Climate-Related Financial Risk, Financial Stability Oversight Council," 2021 https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf; "Fact Sheet: The Financial Stability Oversight Council and Progress in Addressing Climate-Related Financial Risk," July 28, 2022 https://home.treasury.gov/system/files/261/FSOC_20220728_Factsheet_Climate-Related_Financial_Risk.pdf.

[28] "CFTC's Climate-Related Market Risk Subcommittee Releases Report," Release Number 8234-20, September 09, 2020 https://www.cftc.gov/PressRoom/PressReleases/8234-20; "Managing Climate Risk in the U.S. Financial System," Report of the Climate-Related Market Risk Subcommittee, Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission, September 09, 2020 https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf.

[29] Ibid. The titles of those on the committee are indicative of their financial and ideological interests: Director, Sustainable Finance Programme; Vice President, Sustainability and Government Affairs, Climate Change Research Center; Chief Sustainability Officer, Director of Environmental Risk; Vice President for Climate, Head of Investment Stewardship; Etc. These jobs would not exist but for climate change regulation.

[30] Unless I missed it – it is 165 pages long.

Politics should be stripped of its romance. The climate-industrial complex is a big business. Notwithstanding its daily protestations, the climate lobby acts in its own interest not the public interest. The SEC, for example, in its proposing release, Paperwork Reduction Act Table 4, estimates that $6.4 billion annually will flow to the economists, accountants, attorneys, compliance officers, consultants, "GHG emissions attestation providers" and NGOs that will live off of the SEC's proposed rule.[31] That is a lot of money, particularly from one rule. Once the rules being considered by other financial regulators are considered, including the CFTC, it will be a multiple of that amount. European Union rules are a source of still more money. These actors, well-represented on the CFTC Climate-Related Market Risk Subcommittee, are a potent lobby for adopting climate-related rules because they profit to the tune of billions of dollars from the adoption of these rules. The Commission should be under no illusion about what is going on here. Financial regulation is a profit center for the climate lobby.

9. Any CFTC Rule Should Limit the Need for Litigation

Any complex rule is going to lead to litigation. A poorly drafted, ambiguous rule full of requirements but devoid of actual guidance, like the SEC proposed rule, will enrich lawyers and hurt regulated firms and the public. The CFTC needs to either abstain from drafting a rule or, at least, write a clear rule that will not lead to countless enforcement actions and lawsuits.

10. Commodities Laws are a Poor Mechanism to Address Externalities

The economic justification for climate change regulations is that they are designed to address a negative externality. An externality is (1) a cost that is imposed on (negative externality) or (2) a benefit accorded to (positive externality) someone that is not a party to a transaction or not engaged in an action. There are countless positive and negative externalities all around us. Air pollution is a typical example of a negative externality.

There are many ways to address negative externalities. Improved property rights,[32] tort law,[33] regulation,[34] or a tax equal to the cost involuntarily imposed by the economic actor creating the externality on those "external" to the transaction.[35] A tax subsidy for politically favored interests with strong lobbies would be fairly far down the list of efficacious means of addressing the problem of negative externalities but there are many provisions in the Internal Revenue Code with this purpose. To achieve the desired effect, the policy designed to address the externality must be calibrated to accurately internalize the actual cost of the externality. This requires estimating the

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[31] See PRA Table 4 at p. 21461 of "The Enhancement and Standardization of Climate-Related Disclosures for Investors," Securities and Exchange Commission, Proposed Rule, Federal Register, Vol. 87, No. 69, April 11, 2022, pp. 21334-21473 https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-06342.pdf.

[32] In the case of air and water that are usually unowned resources, this is problematic. In other cases, this can be the solution, although transactions costs can impede a private solution. See Ronald H.Coase, "The Problem of Social Cost," *Journal of Law and Economics*, Vol. 3, October, 1960, pp. 1–44.

[33] The common law of nuisance and various more modern environmental torts.

[34] Most notably by the Environmental Protection Agency and state analogs.

[35] This is commonly known as a Pigouvian tax. See Arthur Cecil Pigou, *The Economics of Welfare* (1920 and various later editions); "Pigouvian Taxes," *The Economist*, August 19, 2017 https://www.economist.com/news/economics-brief/21726709-what-do-when-interests-individuals-and-society-do-not-coincide-fourth.

costs imposed by the externality and imposing costs in an equal and off-setting amount on the economic actor in question. Detailed scientific, cost and market information must be obtained to get this even close to right.[36]

Trying to achieve this result through the Commodity Exchange Act is comparable to trying to score in basketball by bouncing the ball off the floor and then the backboard. It is theoretically possible, but there is a vanishingly small chance that it will achieve the desired result. And any team that tried that on a regular basis would lose. Similarly, commodities laws are not the place to do environmental regulation.

The United States does have an Environmental Protection Agency. Its mission is to police externalities. It already requires GHG emissions reporting.[37] The EPA estimates that the required reporting under their rule covers 85–90% of all GHG emissions from over 8,000 facilities in the United States.[38] Policing externalities directly using an agency that has actual expertise on the subject matter is much more efficacious than the securities disclosure bank shot approach.

11. <u>Compelled Speech</u>

The Supreme Court has applied strict scrutiny to content-based laws. Compelled speech is generally unconstitutional.[39] While businesses, thankfully,[40] have First Amendment rights,[41] they are more limited than those of natural persons.

The Supreme Court noted in *National Institute of Family and Life Advocates v. Becerra* (2018)[42] that it

> … has afforded less protection for professional speech in two circumstances—neither of which turned on the fact that professionals were speaking. First, our precedents have applied more deferential review to some laws that require professionals to disclose ***factual, noncontroversial information*** in their "commercial speech. Second, under our precedents, States may regulate

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[36] See David R. Burton, "Post Tax Reform Evaluation of Recently Expired Tax Provisions," Testimony before The Committee on Ways and Means, Subcommittee on Tax Policy, United States House of Representatives, March 14, 2018 https://www.heritage.org/testimony/post-tax-reform-evaluation-recently-expired-tax-provisions.

[37] Greenhouse Gas Reporting Program (GHGRP) https://www.epa.gov/ghgreporting/ghgrp-reported-data.

[38] Proposing release at p. 21414.

[39] *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us. We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power, and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.") 319 U. S. 624, 642 (1943).

[40] Since most of media are corporately owned, holding otherwise would eviscerate the First Amendment.

[41] See, e.g., *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010) ("The Court has recognized that First Amendment protection extends to corporations."). See also the many cases cited therein.

[42] *National Institute of Family and Life Advocates v. Becerra*, 585 U.S. ___ (2018), 138 S. Ct. 2361; 201 L. Ed. 2d 835. See slip opinion at pp. 8-9 https://www.supremecourt.gov/opinions/17pdf/16-1140_5368.pdf.

> professional conduct, even though that conduct incidentally involves speech. (emphasis added) (citations omitted) [43]

The court continued:

> Outside of the two contexts discussed above — disclosures under Zauderer and professional conduct — this Court's precedents have long protected the First Amendment rights of professionals. … Professionals might have a host of good-faith disagreements, both with each other and with the government, on many topics in their respective fields.[44]

For example, the DC Court of Appeals recently explicated what the term "controversial" means in the context of ruling the SEC conflict minerals rule unconstitutional. That analysis is on point and, in fact, directly mentions the question of global warming disclosures.

> One clue is that "uncontroversial," as a legal test, must mean something different than "purely factual." Hence, the statement in AMI we just quoted, describing "controversial in the sense that [the compelled speech] communicates a message that is controversial for some reason other than [a] dispute about simple factual accuracy." AMI, 760 F.3d at 27. Perhaps the distinction is between fact and opinion. But that line is often blurred, and it is far from clear that all opinions are controversial. Is Einstein's General Theory of Relativity fact or opinion, and should it be regarded as controversial? If the government required labels on all internal combustion engines stating that "USE OF THIS PRODUCT CONTRIBUTES TO GLOBAL WARMING" would that be fact or opinion? It is easy to convert many statements of opinion into assertions of fact simply by removing the words "in my opinion" or removing "in the opinion of many scientists" or removing "in the opinion of many experts."[45] (Capital letter emphasis in original)

> It [the conflict minerals rule] requires an issuer to tell consumers that its products are ethically tainted, even if they only indirectly finance armed groups. An issuer, including an issuer who condemns the atrocities of the Congo war in the strongest terms, may disagree with that assessment of its moral responsibility. And it may convey that `message' through `silence.' See Hurley, 515 U.S. at 573, 115 S.Ct. 2338. By compelling an issuer to confess blood on its hands, the statute interferes with that exercise of the freedom of speech under the First Amendment.[46]

The CFTC must avoid imposing requirements that constitute impermissible compelled speech.

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[43] Citations omitted to *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U. S. 626, 651 (1985); *Milavetz, Gallop & Milavetz, P. A. v. United States*, 559 U. S. 229, 250 (2010); *Ohralik v. Ohio State Bar Assn*., 436 U. S. 447, 455–456 (1978), *id*., at 456; *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833, 884 (1992) (opinion of O'Connor, KENNEDY, and Souter, JJ.)."

[44] *National Institute of Family and Life Advocates v. Becerra*, 585 U.S. ___ (2018). See slip opinion at pp. 11-12, 13 https://www.supremecourt.gov/opinions/17pdf/16-1140_5368.pdf.

[45] *National Association of Manufacturers v. S.E.C*., 800 F.3d 518, 528 (D.C. Cir., 2015).

[46] Ibid. at p. 529.

12. Energy Independence

The Biden administration has taken a series of steps to impede conventional fuel production in the United States. We should be removing regulatory impediments to energy independence not creating them. To the extent that CFTC rules may make domestic energy production and distribution unattractive, they would be contrary to the interests of the American people.

13. The Social Costs of ESG

The broader social costs associated with ESG requirements (including climate change disclosure requirements) can, in principle, be quantified. This section provides an analytical framework that may be useful in analyzing the social welfare costs of ESG requirements.

To the extent ESG objectives are not pursued by businesses for the purpose of making a profit, $R > R_{ESG/CSR}$, where R is the rate of return on investment in the absence of ESG, CSR, sustainability requirements, diversity requirements, or stakeholder theory implementation, and $R_{ESG/CSR}$ is the rate of return after implementation of those requirements. The difference, $R - R_{ESG/CSR}$, is economically analogous to a tax. It is a reduction in return due to the pursuit of ESG objectives. Thus, $R - R_{ESG/CSR} = Tax_{ESG/CSR}$. This means that various techniques used in public finance to analyze the social welfare impact of taxes may be used to quantitatively analyze the social welfare cost of these provisions (i.e., $Tax_{ESG/CSR}$).

A tax has an excess burden or deadweight loss that can be calculated.[47] By introducing a wedge ($Tax_{ESG/CSR}$) between, in this case, the gross return and the net return, ESG/CSR reduces the size of the capital market and therefore output and employment. In a well-functioning market, the price of a capital asset should be equal to the present value of the expected future income stream generated by the asset net of taxes and depreciation.[48] Introducing a new tax (in this case $Tax_{ESG/CSR}$) would reduce the expected future income stream, and therefore, the price of the asset. It would also cause investment to flow out of the affected sector or jurisdiction.

Who bears the actual economic burden of the corporate income tax is an open question.[49] The analysis of who bears the burden of $Tax_{ESG/CSR}$ would be the same. One thing is certain: It cannot be corporations. A corporation is a legal fiction, and legal fictions do not pay taxes—people pay

[47] Arnold C. Harberger, "The Incidence of the Corporation Income Tax," *Journal of Political Economy* (June 1962), pp. 215–240; Alan J. Auerbach and James R. Hines, "Taxation and Economic Efficiency," in Martin Feldstein and A. J. Auerbach, eds., *Handbook of Public Economics* (Amsterdam: North Holland, 2002); and John Creedy, "The Excess Burden of Taxation and Why It (Approximately) Quadruples When the Tax Rate Doubles," New Zealand Treasury *Working Paper* No. 03/29, December 2003, https://treasury.govt.nz/sites/default/files/2007-10/twp03-29.pdf. See also, for example, N. Gregory Mankiw, *Principles of Economics*, 4th ed. (Boston: Cengage Learning, 2006), chapter 8 (or many other textbooks on price theory, microeconomics, or principles of economics).

[48] See Robert E. Hall and Dale Jorgenson, "Tax Policy and Investment Behavior," *American Economic Review*, Vol. 57, No. 3 (June 1967), pp. 391–414. This section covers the basic user cost of capital analysis with taxes. See also Dale W. Jorgenson, *Investment: Capital Theory and Investment Behavior* (Cambridge, MA: MIT Press, 1996), and John Creedy and Norman Gemmell, "Taxation and the User Cost of Capital: An Introduction," New Zealand Treasury *Working Paper* No. 04/2015, March 2015, https://www.wgtn.ac.nz/cpf/publications/pdfs/2015-pubs/WP04_2015_Taxation-and-User-Cost.pdf.

[49] In the economics literature, this question is usually phrased as, "What is the incidence of the corporate income tax?"

taxes. The corporate tax could be borne by corporate shareholders in the form of lower returns;[50] owners of all capital (again in the form of lower returns);[51] corporate customers in the form of higher prices;[52] or employees (in the form of lower wages).[53] It is, almost certainly, some combination of these.[54] The economics profession has changed its thinking on this issue several times over the past four decades, but the latest —and highly plausible —consensus is that workers probably bear *more than half* of the burden of the corporate income tax because capital is highly mobile.[55] Labor's share of the corporate tax burden is potentially as high as three-quarters.[56]

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[50]Government estimators are among the few who cling to the view that shareholders bear most of the burden. Joint Committee on Taxation, "Modeling the Distribution of Taxes on Business Income," JCX–14–13, October 16, 2013, https://www.jct.gov/publications.html?func=download&id=4528&chk=4528&no_html=1 (25 percent labor), and Julie Anne Cronin et al., "Distributing the Corporate Income Tax: Revised U.S. Treasury Methodology," *National Tax Journal*, March 2013, https://www.ntanet.org/NTJ/66/1/ntj-v66n01p239-62-distributing-corporate-income-tax.pdf (18 percent labor).

[51]The non-corporate sector can be affected because competition will eventually cause wages, prices, and after-tax returns in the corporate *and* non-corporate sectors to be the same. For a more detailed explanation, see Arnold C. Harberger, "The Incidence of the Corporation Income Tax," *Journal of Political Economy*, Vol. 70, No. 3 (June 1962), pp. 215–240.

[52]The focus of the economics profession to date has been almost exclusively the impact on capital and labor rather than customers.

[53]Arnold C. Harberger, "The ABCs of Corporation Tax Incidence: Insights into the Open-Economy Case," in *Tax Policy and Economic Growth* (Washington, DC: American Council for Capital Formation, 1995); Arnold C. Harberger, "The Incidence of the Corporation Income Tax Revisited," *National Tax Journal*, Vol. 61, No. 2 (June 2008), pp. 303–312, http://www.ntanet.org/NTJ/61/2/ntj-v61n02p303-12-incidence-corporation-income-tax.pdf; Matthew H. Jensen and Aparna Mathur, "Corporate Tax Burden on Labor: Theory and Empirical Evidence," *Tax Notes*, June 6, 2011, https://www.aei.org/wp-content/uploads/2011/06/Tax-Notes-Mathur-Jensen-June-2011.pdf; Kevin A. Hassett and Aparna Mathur, "A Spatial Model of Corporate Tax Incidence," American Enterprise Institute, December 1, 2010, https://www.aei.org/wp-content/uploads/2011/10/-a-spatial-model-of-corporate-tax-incidence_105326418078.pdf; Robert Carroll, "The Corporate Income Tax and Workers' Wages: New Evidence from the 50 States," Tax Foundation *Special Report* No. 169, August 3, 2009, https://taxfoundation.org/corporate-income-tax-and-workers-wages-new-evidence-50-states/; Desai Mihir, Fritz Foley, and James Hines, "Labor and Capital Shares of the Corporate Tax Burden: International Evidence," December 2007, http://piketty.pse.ens.fr/files/Desaietal2007.pdf; and "Why Do Workers Bear a Significant Share of the Corporate Income Tax?" in Jason J. Fichtner and Jacob M. Feldman, "The Hidden Cost of Federal Tax Policy," 2015, https://www.mercatus.org/system/files/Fichtner-Hidden-Cost-ch4-web.pdf. For a contrary view, see Kimberly A. Clausing, "In Search of Corporate Tax Incidence," *Tax Law Review*, Vol. 65, No. 3 (2012), pp. 433–472, http://ssrn.com/abstract=1974217.

[54]It requires extreme, implausible assumptions about elasticities of demand for, or supply of, factors for this not to be the case. Alan J. Auerbach, "Who Bears the Corporate Tax? A Review of What We Know," National Bureau of Economic Research *Working Paper* No. 11686, October 2005, http://www.nber.org/papers/w11686.pdf; William M. Gentry, "A Review of the Evidence on the Incidence of the Corporate Income Tax," Department of the Treasury, Office of Tax Analysis, *OTA Paper* No. 101, December 2007, https://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/WP-101.pdf; and Stephen J. Entin, "Tax Incidence, Tax Burden, and Tax Shifting: Who Really Pays The Tax?" Heritage Foundation *Center for Data Analysis Report* No. 04–12, November 5, 2004, http://s3.amazonaws.com/thf_media/2004/pdf/cda04-12.pdf.

[55]In a competitive market, capital will flow from jurisdictions with a relatively low expected after-tax return to jurisdictions with a relatively high expected after-tax return until the expected after-tax returns are equal. Social and legal barriers reduce labor mobility relative to capital mobility. Gentry, "A Review of the Evidence on the Incidence of the Corporate Income Tax"; William C. Randolph, "International Burdens of the Corporate Income Tax," Congressional Budget Office *Working Paper* 2006–09, August 2006, https://cbo.gov/sites/default/files/cbofiles/ftpdocs/75xx/doc7503/2006-09.pdf; and R. Alison Felix, "Passing the Burden: Corporate Tax Incidence in Open Economies," Federal Reserve Bank of Kansas City, October 2007, https://www.kansascityfed.org/Publicat/RegionalRWP/RRWP07-01.pdf.

[56]Ibid.

Shareholders (investors) probably bear most of the remainder.[57] Initially (i.e., in the short run), the impact on shareholder returns would be greater. Adjustments take time. In the long run, ESG requirements ($Tax_{ESG/CSR}$) would have a disproportionately negative impact on labor due to capital factor mobility.

***Responses to Specific Requests for Comment***

Q1. What types of data would help the Commission evaluate the climate-related financial risk exposures of registered entities, registrants, and other participants in the derivative markets that the Commission oversees? Are there data sources that registered entities, registrants, and/or other market participants currently use to understand and/or assess climate-related financial risk? What steps should the Commission consider in order to have better access to consistent and reliable data to assess climate-related financial risks?

R1. I know of now actual data sources that enable market participants to assess climate-related financial risk. There are climate models. There are very back of the envelop economic models. That is about it.

Q2. Would it help the Commission, registered entities, registrants, market participants and/or the public to understand and/or to manage climate-related financial risk if Commission reporting requirements included information about climate-related aspects of listed derivatives products, reported transactions, and/or open positions? Are there data standards or definitions that the Commission should consider incorporating into any such reporting?

R2. Unless the Commission gets past amorphous reporting requirements that in effect require regulated entities to 'guess on the record,' you will have accomplished nothing.

3. What steps should the Commission consider to better inform the public of its efforts to assess and address climate- related financial risks? What information could the Commission publish that would be useful in this regard? What steps should the Commission consider to make climate-related data more available to registrants, registered entities, other market participants, and/or the public (as appropriate and subject to any applicable data confidentiality requirements) in order to help understand and/or manage climate-related financial risk?
Scenario Analysis and Stress Testing

Q5. Are there any common scenarios, in addition to the scenarios developed by the Network for Greening the Financial System and/or the Financial Stability Board, that the Commission should consider incorporating into its oversight, and/or consider for registered entities and/or registrants?

R5. These "scenarios" are effectively 'guess on the record' initiatives. Actually reading them, they are full of amorphous requirements that the firms consider this and evaluate that. There is no there there.

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[57] As opposed to non-corporate capital and customers.

Q6. Is a long-term ( *e.g.*, 30-year or 50-year) stress testing scenario relevant for derivatives markets subject to CFTC oversight? Is there a more relevant set of forward-looking climate relevant scenarios? Should these scenarios account for geographical stress? Should these scenarios try to target certain asset types? Can scenarios be customized to be more relevant for certain types of derivatives markets or registered entities?

R6. Doing a 30 year or 50 year stress test is delusional. Estimates will need to be made of the cost of various aspects of climate change (sea level rises, the impact on agriculture, etc). Estimates will need to be made of the cost of various remediation techniques. Guesses will need to be made about the rate of technological change. Guesses will need to be made about the regulatory, tax and other responses of a myriad of governments. Estimates will need to be made using conventional economic techniques regarding the economic impact of those changes which, in turn, will reflect a wide variety of techniques and in many cases a thin or non-existent empirical literature. Guesses will need to be made of market responses to all of these changes since market participants will not stand idly by and do nothing as markets, technology and the regulatory environment change. It is simply not possible to predict these things accurately and quantitatively 50 years in advance.

Moreover, using a 10 percent discount rate, a dollar of cost 50 years from know is less than a penny. Even using an extremely low discount rate of three percent, a dollar of cost 50 years from now is 23 cents.

Q7. Should registered entities and registrants be required to incorporate climate stress tests into their risk management processes? Do registered entities and registrants have the capability currently to conduct climate-related stress tests? If not, what would be needed in order to achieve this capability and on what timeline?

R7. How is this going to be done. The CFTC should not follow the SEC’s lead and impose such

Q10. Could the Commission's existing regulations and guidance better clarify expectations regarding management of climate risks, taking into account a registered entity's or registrant's size, complexity, risk profile, and existing enterprise risk management processes? Would it be helpful for the Commission to promulgate regulations or issue guidance for registrants and/or registered entities regarding the implementation of policies and procedures to measure, track, and account for physical and transition risk?

R10. The Commission could make it clear that these risks should be considered if material and determinable and that should NOT be considered if they are not material and determinable.

Q 14. A goal of climate-related financial disclosure is to offer meaningful information about climate-related financial risks, and to foster increased transparency into those risks. In connection with any assessment of whether updated requirements are needed, what specific disclosures, building on the Task Force on Climate-Related Financial Disclosures' (“TCFD”) four core elements of governance, strategy, risk management, and metrics and targets, would be most helpful for the Commission to consider?

R 14. Farming this disclosure out to the climate lobby would be an abdication of CFTC to responsibly regulate and provide actual guidance to regulated entities. If the CFTC can't write rules, then it should not be imposing requirements. The TCFD requirements are highly amorphous and generally just impose generalized requirement to consider some factor without any meaningful guidance as to how that should be done. In practice, firms buy insurance by employing consultants.

Q17. FSOC Report Recommendation 3.4 suggests that FSOC members issuing requirements for climate-related disclosures consider whether such disclosures should include GHG emissions, as appropriate and practicable, to help determine exposure to material climate-related financial risks. Should registered entities and registrants be required to disclose information relating to GHG emissions?

R17. Most CFTC registrants are going to be required to do this under the SEC rules. If scope 3 survives, that would include non-issuers in the supply chain or customer base of issuers. The CFTC should not impose duplicate requirements.

Q25. 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?

R25. Digital assets impose no higher (or lower) climate risks than other assets.

Q29. Are there experts with whom it would be useful for Commission staff to collaborate to identify climate forecasts, scenarios, and other tools necessary to better understand the exposure of registered entities and registrants to climate-related financial risks and how those risks translate into economic and financial impacts?

R29. I would strongly urge the Commission to consult with modelers that do not have a strong financial interest in climate regulation being adopted because they are part of a consulting firm selling service to regulated entities or an NGO that makes money by establishing 'standards.' The Heritage Foundation Center for Data Analysis is one example of a modeling shop that has no financial interest in climate regulation being implemented.

Sincerely,

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