

**THE STATE OF THE COMMODITY FUTURES
TRADING COMMISSION**

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMODITY EXCHANGES,
ENERGY, AND CREDIT

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

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THE STATE OF THE COMMODITY FUTURES TRADING COMMISSION

WEDNESDAY, MAY 1, 2019

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMODITY EXCHANGES, ENERGY, AND
CREDIT,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:12 a.m., in Room 1300 of the Longworth House Office Building, Hon. David Scott of Georgia [Chairman of the Subcommittee] presiding.

Members present: Representatives David Scott of Georgia; Van Drew, Vela, Plaskett, Spanberger, Delgado, Craig, Maloney, Kirkpatrick, Axne, Peterson (*ex officio*), Austin Scott of Georgia, Crawford, Bost, Rouzer, Marshall, Dunn, Johnson, Baird, and Conway (*ex officio*).

Staff present: Lyron Blum-Evitts, Carlton Bridgeforth, Emily German, Matt MacKenzie, Troy Phillips, Isabel Rosa, Ashley Smith, Paul Balzano, Rachel Millard, Patricia Straughn, Justina Graff, Dana Sandman, and Jennifer Yezak.

OPENING STATEMENT OF HON. DAVID SCOTT, A REPRESENTATIVE IN CONGRESS FROM GEORGIA

The CHAIRMAN. [Audio malfunction in hearing room] First, I want to thank you for joining us here today to receive this report on the state of affairs at the Commodity Futures Trading Commission. We are happy to have Chairman Giancarlo with us today. Thank you, Mr. Chairman, for being here. And as this is our first Subcommittee hearing, I look forward to a productive Congress alongside the distinguished Ranking Member and my fellow Georgian, Mr. Austin Scott.

But before we start, I want to take just a second to reflect on the loss of Mr. Bart Chilton this past weekend. He was a good man, a great man, and those of us who have been on the Committee for some time knew Bart from a career that spans the USDA, Farm Credit Administration, the Farmers Union, and both the House and the Senate; but everyone knows his contributions as a Commissioner at the CFTC. He was a strong advocate for transparency and common sense in regulation, and we will miss him very, very much.

Now, the CFTC was established as an independent agency outside of the Department of Agriculture through the Commodity Futures Trading Commission Act of 1974. The Commission states that its mission: “is to foster open, transparent, competitive, and finan-

cially sound markets.” Dodd-Frank was passed as a result of the financial crisis and expanded the CFTC at that time to regulate swaps.

Title VII of Dodd-Frank added safety and soundness to the markets by including market transparency and required clearing.

Challenges facing the CFTC today are final implementation of Dodd-Frank, cross-border issues, and new technologies such as automated trading and cryptocurrency.

For 2019, the CFTC is funded at \$268 million. In Fiscal Year 2020, the Commission is requesting a total of \$315 million. This budget request consists of two separate requests: the annual Commission operational funding of \$284 million, and a new request to support the relocation of three regional offices at \$31 million.

It is also worth noting the purview of the CFTC in real terms: the total nominal value of the U.S. swaps is \$282 trillion and U.S. futures are at \$27 trillion. That is real money and it conveys real weight to what we have to do here.

And for years, I have tried to draw attention to the very large job the CFTC has, and I have been a long-time supporter of increased funding for the CFTC, and I hope our Subcommittee and the full Committee, and the entire Congress will see the growing responsibilities of the CFTC, and that it is important that we give them adequate funding.

Now, there is another issue I want to raise though, and it is an important one. Yesterday, CFTC Commissioner Rostin Behnam sent a letter to the CFTC’s Office of Minority and Women Inclusion detailing the diversity and representation profile of the senior and executive staff at the Commission. He lays out some troubling numbers and asks some very pointed questions, and they are things that we are going to look into on this Subcommittee. But let me say this, it is important. Diversity is our strength, and it has been our strength from the very first foundation of this country. It will make the agency, the CFTC, stronger, not only by the varied viewpoints and backgrounds that women, LGBTQ employees, and employees of color bring, but also through the credibility that the agency will gain by accurately reflecting the diversity of our great country.

Mr. Chairman, it is my hope that you will take your colleague’s thoughts and concerns to heart and move forward in a constructive manner on this very important issue of diversity.

In closing, I want to recognize the work of our Chairman, Chairman Giancarlo, and all that he has done, and the openness with which he has approached his interactions with me and with the Committee. It is certainly a roadmap for a productive relationship that I hope subsequent Chairmen will follow.

[The prepared statement of Mr. Scott follows:]

PREPARED STATEMENT OF HON. DAVID SCOTT, A REPRESENTATIVE IN CONGRESS FROM
GEORGIA

Thank you for joining us here today to receive this report on the state of affairs at the Commodity Futures Trading Commission. We’re happy to have Chairman Giancarlo with us today, and as this is our first Subcommittee hearing, I look forward to a productive Congress alongside the distinguished Ranking Member and my fellow Georgian, Mr. Scott.

Before we start, I want to take a second to reflect on the loss of Bart Chilton this past weekend. Those of us who have been on the Committee for some time know Bart from a career that spans USDA, Farm Credit Administration, Farmers Union, and both the House and the Senate; but everyone knows his contributions as a Commissioner at CFTC. He was a strong advocate for transparency and common sense in regulation, and we will miss him very much.

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In closing I want to recognize the work that Chairman Giancarlo has done, and the openness with which he has approached his interactions with me and the Committee. It is certainly a roadmap for a productive relationship that I hope subsequent Chairmen will follow.

With that I would like to recognize my Ranking Member, the other distinguished Mr. Scott from Georgia, for 5 minutes.

The CHAIRMAN. Now with that, I would like to recognize my Ranking Member, the other distinguished Mr. Scott from Georgia, for 5 minutes.

OPENING STATEMENT OF HON. AUSTIN SCOTT, A REPRESENTATIVE IN CONGRESS FROM GEORGIA

Mr. AUSTIN SCOTT of Georgia. Thank you, Mr. Chairman.

I want to congratulate you on the Chairmanship, and we have had a great relationship for 25+ years, and I look forward to continuing that. Some of the best discussions we have are in the Delta 10C and 10D seat, which is a good opportunity for us to speak about things that matter on the way home to our state.

I also want to welcome the new Members to the Committee, and of course, Chairman Giancarlo. I know your wife is here with us today, so I want to say a special thank you to her for her service as well as yours, and ma'am, welcome to the hearing.

It is good to have you back here one last time before you and your family head back to New Jersey. Your service at the Commission has been honorable, and I want to thank you for that. I appre-

ciate the opportunity to work with you over the last couple of years.

We have some unfinished business, reauthorizing the CFTC. This Committee and the House of Representatives has moved in a very bipartisan manner three times in the last 6 years to send a bill to the United States Senate. Chairman Scott and I have worked together on that, as well as the other Committee Members, and here we are. We are going to do it again, and maybe the fourth time will be the charm.

As you know, last year Darren Soto and I introduced the CFTC Research and Development Modernization Act. The legislation would modernize the CFTC research and information programs and provide the Commission with new tools to engage with developers and learn about technology. This bill was developed in response to testimony that you gave, Chairman, about the difficulty in engaging with the private-sector, and I look forward to hearing more about the work you are doing to engage on FinTech so that we as a Committee can get a better understanding of the needs of this bill as we work to refine it.

Mr. Chairman, over the last 5 years, you have been a consistent voice for reason regarding some of the most complex work this Committee engages in, and again, I appreciate your steady hand in the negotiations over how to regulate cross-border derivative transactions and other complex issues. And while halting progress and moving goalposts have been frustrating for me to watch, it has been comforting to know that you have been our man in the room, and we look forward to your testimony on where we stand and what work your successor has left to do.

For 9 years, we have been promising end-users they would be held harmless as we imposed new regulations to protect financial markets from opaque risk, and how we complete these international negotiations are key to that promise.

That is one of the most important facts this Committee cannot forget. The markets must work for the people who need to manage risk.

Chairman Giancarlo, in closing, I want to say thank you again. Today's hearing might be a little more like an exit interview than a typical hearing, but I think it is a good place to start this new Congress with all of our new Members on this Subcommittee. I look forward to your wisdom, and leaving us with a bigger picture of the importance of these markets and the regulatory structure in getting it right.

Thank you again. Ma'am, thank you for being here. Mr. Chairman, I turn it back over to you.

The CHAIRMAN. All right. Thank you very much. Now I recognize our distinguished Ranking Member, our distinguished former Chairman, and my friend, Michael Conaway, for any opening statements that he would like to make.

**OPENING STATEMENT OF HON. K. MICHAEL CONAWAY, A
REPRESENTATIVE IN CONGRESS FROM TEXAS**

Mr. CONAWAY. Well thank you, Mr. Chairman. I would not normally say much at this juncture, given the good work that this Subcommittee needs to do, but congratulations on you becoming

the Chairman of the Subcommittee. You and I worked in a similar role when I was Chairman of the Subcommittee and you were Ranking Member, so congratulations on that. I appreciate your indulgence for letting me say a couple of words about my friend, the distinguished Chairman of the CFTC.

First off, Chris, thank you. Thank you for your service. Thank you for your diligence, thoughtfulness, and candor, and thank you for your relentless curiosity. And most of all, thank you for your bottomless reservoir of optimism.

Everyone on this dais knows how hard it is to hold a position of public trust, but you never once have shown that burden. Rather, I have seen a man engrossed in understanding the burden of others and consumed with understanding how his work might ease their difficulties. I saw it firsthand when you came to San Angelo. Your speech lit up a room of oilmen by connecting challenges found in the oilfields of Texas to financial markets in New York and around the world. And then you graciously talked to every person and shook every hand in the hour it took you to get out of the room.

I also saw in the letter that you wrote to the congregation for the Doctrine of Faith at the Vatican. It is strange to think of a letter about derivatives as moving, but your careful explanation of why derivatives are important to the most vulnerable among us was a moving reminder about why these markets matter and why this Committee should be diligent in its work in this area.

I also want to thank your family. Your wife, Regina, your children, Henry, Luke, and Emma, and recognize their role in your success. For the last 5 years, they have had to patiently share your time and attention with strangers. No doubt, well, there may be no doubt they are looking forward to having your undivided attention as you move into this next chapter.

Let me close by saying that first off, you closed your own testimony noting that you tried to do what your parents taught you, and that is to leave places that you visit better than you found them. Let me close by saying that you learned that really well. The CFTC is a better place because of your tenure as Chairman. I suspect that this Committee is also a better place because of your service. You worked hard to break down the ideological divisions and positions supported by evidence and experience that were not rooted in the pitched battles of the past.

I have greatly appreciated the opportunity to work with you and to learn from you these past 5 years. As you return to New Jersey, I don't suspect you will be retiring in any of the traditional senses. I have no doubt that you will continue to put your intellect, passion, and values to work on behalf of the public. And as you pick that next path, I wish you your well-earned happiness, and God-speed.

Before I yield back, Mr. Chairman, I too want to add my condolences on the passing of Commissioner Bart Chilton. I did not know Commission Chilton as well as some of you in the audience, but I knew him well enough to know that he cared deeply about his work. In a career that ran from Capitol Hill to the Whitten Building to his farm in Arkansas, his unwavering focus was on how the government can protect the most vulnerable. I appreciate the opportunities I had to work with him, and know that he

will be missed. His family and friends are in my prayers and thoughts with these difficult days ahead.

With that, Mr. Chairman, I yield back. Thank you.

The CHAIRMAN. Thank you very much, Ranking Member.

Now, I recognize our distinguished Committee Chairman, Mr. Peterson, for any opening statement he would like to make.

**OPENING STATEMENT OF HON. COLLIN C. PETERSON, A
REPRESENTATIVE IN CONGRESS FROM MINNESOTA**

Mr. PETERSON. Thank you, Mr. Chairman, and I want to associate myself with the remarks of the Ranking Member about Mr. Chilton. He was a great public servant, and somebody I worked with a lot in a number of different capacities, and it is a shock to all of us what happened there. And so, our thoughts and prayers are with his family.

And Mr. Chairman, welcome back to the Committee. I think the last time you were in this room, we were playing guitars together, right? That is probably more fun than this.

But anyway, we appreciate you coming back to the Committee, and we appreciate the job that you have done over at the CFTC. I think you have done an outstanding job, and you have been very good to work with and very transparent. I am not happy to see you leave, but, it is part of the way it works, so thank you so much for your service, and good luck with whatever you are going to do, going forward. We look forward to your testimony. Thanks for being here.

Thank you. I yield back.

The CHAIRMAN. All right, thank you, Mr. Chairman.

The chair would now request that other Members submit their opening statements for the record so the witness may begin his testimony, and to ensure that there is ample time for questions.

And certainly, Chairman Giancarlo, I welcome you as our witness, and I share the parting remarks that our Ranking Member and our Chairman made. I hate to see you go. We have had a great and long and very beneficial partnership and relationship with you and with the CFTC.

And so now, I would like to open it up to you, welcome you, and thank you for being here. And we will now proceed to hearing your testimony, Mr. Chairman, and so you will have 5 minutes to give your prepared remarks.

**STATEMENT OF HON. J. CHRISTOPHER GIANCARLO,
CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION,
WASHINGTON, D.C.**

Mr. GIANCARLO. Thank you, Chairman Scott, and Ranking Member Scott, thank you, Committee Ranking Member Conaway and Committee Chairman Peterson, thank you all for that, and thank you for those kind remarks.

Before I begin, I would also like to add my note on the recent passing of former CFTC Commissioner Bart Chilton. On behalf of the CFTC, I want to say all of us are deeply saddened by his passing.

I came today and I am wearing my CFTC pin. I don't normally wear it on Committee appearances in deference to the oversight of

this Committee over our agency. But I wore this pin today because this one was actually given to me by Bart Chilton, and when he gave it to me, he said, "Wear this pin with pride because you are working for the finest agency in all of Washington." And I wear that today in memory of Bart. I understand today would have been his 59th birthday. He was a very fine public servant, and I just want to add my note of condolences to him and his family. We will miss him very much.

Two years ago, as I took up the gavel as Chairman of the Commission, I promised to transition the CFTC from a rearview focus on the last financial crisis to a forward vision of derivative markets as essential to economic growth and broad-based prosperity, and I set out a three-part agenda: to foster economic growth, to enhance U.S. derivative markets, and to right size our regulatory footprint.

First, we announced Project KISS to make existing rules simpler, less burdensome, and less costly. We created the Market Intelligence Branch to better understand the rapidly changing markets that we oversee, and we hired a world-renowned Chief Economist to make us a smarter, more quantitative data-based regulator. We also launched LabCFTC, one of the first and most influential FinTech innovation initiatives by a U.S. market regulator.

To enhance financial markets, we worked with other U.S. and overseas financial regulators to support bank capital requirements and leverage ratios that better balance systemic risk concerns with healthy economic growth. And we proposed a better regulatory framework for swaps trading and execution.

We championed cross-border regulatory deference to competent overseas regulators while resisting global regulatory overreach. And importantly, we refocused our attention on agricultural commodity markets, the agency's traditional foundation.

This year in Kansas, we held the CFTC's second annual Ag Futures Conference, along with K State University. And we also hosted the first ever CFTC Ag Advisory Committee meeting held outside of Washington with all five Commissioners in attendance.

On behalf of the CFTC, I have been fortunate to visit agriculture producers in over two dozen states, from South Dakota, Texas, Arkansas, Indiana, and Iowa, to Minnesota, Missouri, New York, Georgia, Mississippi, and Illinois. And have walked in wheat fields and harvested soybeans. I have tramped through rice farms and beneath pecan groves. I have milked dairy cows and toured feedlots, and I have visited grain elevators and viewed cotton gins. And throughout, I have been moved by America's hardworking families, producing food and staples from this abundant land. And it is for them that we have reset our regulatory footprint by conducting agency affairs with regular order and procedure with thorough econometric analysis, and a reduced docket of new rules and regulations to be absorbed by market participants.

But at the same time, we have been resolute in holding market participants to the highest standards of conduct. In fact, by any measure, enforcement has been among the most vigorous in the history of the CFTC, including more enforcement actions, more penalties, more large-scale matters, more accountability, more partnering with criminal law enforcement, and more whistleblower

awards than in any prior year, in fact, the entire history of our whistleblower program.

By almost any measure, we have been enforcing the law with determination and with gusto. Our goal has been to run a professional operation keenly responsible to the American taxpayer, who are our ultimate shareholders. Looking back, I feel we have stayed true to this agenda.

Now looking forward, before I leave the Commission, I intend to maintain a steady but brisk course advancing policy proposals on cross-border regulation and position limits, to progress rule harmonization with the SEC, to stay focused on initial margin implementation, and to move away from LIBOR (London Interbank Offered Rate), and to defend our markets against threats, whether those threats are cyber-maliciousness, or a result of geopolitical events such as Brexit.

If I have been consistent in anything in my almost 5 years at the CFTC, it is in voicing the value proposition of derivative trading markets as foundational to U.S. economic health and broad-based prosperity. Robust markets for commodity and financial derivatives make it possible for Americans to find plenty of food at stable prices in our grocery stores, affordable energy to warm homes and drive cars, and steady rates to pay home mortgages and invest their retirement savings.

As I end 5 years on the Commission, I remain a champion and defender of free market capitalism, the disciplined and independent financial regulation that safeguards it, and the outstanding work of the CFTC. I greatly appreciate the thoughtful oversight of this Committee and the Subcommittee, and I am grateful to my wife and my family for their love and support. And I thank God for the blessings of having led the fine men and women of the CFTC, and having served this wonderful country.

Thank you very much.

[The prepared statement of Mr. Giancarlo follows:]

PREPARED STATEMENT OF HON. J. CHRISTOPHER GIANCARLO, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Introduction

Thank you, Chairman Scott, Ranking Member Scott, and Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss issues before the Commission.

Before I begin, I would like to note the recent passing of a former CFTC Commissioner, Bart Chilton. All of us at the agency, from the staff to the five Commissioners, are saddened by this sudden loss. With his trademark flair and enthusiasm, Bart was an unceasing advocate for American's farmers and ranchers, acting as their voice in Washington. In the aftermath of the financial crisis, Bart used panache and humor to draw attention to pressing issues for the agency and the markets at large. With his passing, the commodities world has lost some unique sparkle and luster. There will never be another quite like Bart Chilton.

As you know, the Commodity Futures Trading Commission (CFTC) oversees the futures, options and swaps markets. While most Americans do not directly participate in these markets, businesses of all sizes use derivatives markets to manage commercial and market risk. These markets are one reason why American consumers enjoy stable prices, not only in the supermarket, but in all manner of consumer finance from auto loans to household purchases.

Derivatives markets influence the price and availability of heating in American homes, the energy used in factories, the interest rates borrowers pay on home mortgages, and the returns workers earn on their retirement savings.

Today, American derivatives markets are the world's largest, most developed, and most influential. They are relatively unmatched in their depth and breadth, providing deep pools of trading liquidity, low transaction costs and friction and participation by a diverse array of global counterparties. They are also some of the world's fastest growing and technologically innovative.

American derivatives markets are also the world's best regulated. The United States is the only major country in the Organisation for Economic Co-operation and Development to have a regulatory agency specifically dedicated to derivatives market regulation: the CFTC.

There is a connection between having the world's most competitive derivatives markets and independent Federal regulation. For over forty years, the CFTC has been recognized for its principles-based regulatory framework and econometrically-driven analysis. The CFTC is respected around the world for its depth of expertise and breadth of capability.

The combination of regulatory expertise and competency is one of the reasons why U.S. derivatives markets continue to serve the global need to hedge price and supply risk safely and efficiently. It is why well-regulated U.S. derivatives markets, by allowing low-cost and effective hedging, are of great benefit to American producers and consumers and to the rest of the world.

In short, America's well-regulated derivatives markets are a national advantage in global economic competition. However, we must not take this advantage for granted. In order for U.S. derivatives markets to remain the world's best, U.S. markets must remain the world's best regulated.

It was 5 years ago this spring that I first testified before the Senate Agriculture Committee concerning my nomination to serve on the Commission. I knew that if confirmed, I would bridge the last years of the Obama Administration and the early years of a new Administration. In 2017, as Chairman of the Commission, I set out my agenda for moving the Agency forward. I pledged to make sure that our derivatives markets performed their essential role moderating price, supply and other commercial risks—shifting risk to those who can best bear it from those who cannot. I said that our markets should be neither the least nor the most prescriptively regulated—but the **Best** regulated—balancing market oversight, health and vitality. To do that, we would follow a three-part agenda: completing unfinished business of the past, improving current operations, and preparing for the future, what I call becoming a 21st Century digital regulator.

Agricultural Commodity Futures

Under my leadership at the Commission, we have refocused our attention on agricultural commodity futures, the agency's traditional foundation.

During almost 5 years on the Commission, I have traveled the country and visited agriculture producers in over two dozen states from Montana, Texas, Arkansas, Louisiana and Iowa to Minnesota, Missouri, New York, Georgia, Mississippi and Oklahoma. I have walked in wheat fields and harvested soybeans, tramped through rice farms and beneath pecan groves, milked dairy cows and toured feedlots, visited grain elevators and viewed cotton gins. I have also met with our energy producers, going 900' underground in a Kentucky coal mine and 90' in the air on a North Dakota oil rig. Throughout, I have been moved by the diverse beauty of this country. I have come to love its hard-working families producing food and energy from this abundant land. These visits have been a great privilege for me.

This year in Kansas, we held the CFTC's second annual agricultural futures conference along with Kansas State University.¹ Panelists discussed current macro-economic trends and issues affecting our markets, such as market speculation, algorithmic trading, trade data transparency, novel hedging practices and market manipulation. Our common purpose was to hear from end-users who use our markets to hedge risk and consider and address issues of emerging market structure and trading practices.

We also hosted a CFTC Agricultural Advisory Committee meeting in Kansas where panelists discussed the future of Futures Commission Merchants (FCM) and cash market innovations, as well as the evolution of electronic trading in agricultural markets, both very timely and important topics. I believe this was the first ever CFTC advisory committee meeting held outside of Washington with all five Commissioners in attendance.

¹2nd Annual Agriculture Commodity Futures Conference, April 11–12, 2019, at: <https://www.k-state.edu/riskmanagement/conference1.html>.

21st Century Regulator

I have frequently talked about transforming the CFTC into a 21st Century regulator amidst today's increasingly digital and algorithmic markets. I recently identified several factors that are challenging the work of regulators: the extraordinary pace of exponential technological change, the disintermediation of traditional actors and business models, and the need for technological literacy and big data capability.

I said that the CFTC's response to rapidly changing markets and technological developments, including blockchain technology and cryptocurrencies, is built upon the following four cornerstones:

- adopting an "exponential growth mindset" that anticipates the rapid pace of technological innovation and the need for appropriate regulatory response;
- becoming a "quantitative regulator" able to conduct independent market data analysis across different data sources, including decentralized blockchains and networks, without being reliant on self-regulatory organizations and market intermediaries;
- embracing "market-based solutions" to determine the value of technological innovations, as we witnessed with the launch of crypto-asset-based futures products; and
- establishing an internal FinTech Stakeholder to address the opportunities and challenges that FinTech presents and manage the ever-present tension between innovation and regulation.

For us, that stakeholder is LabCFTC, which was launched under my chairmanship almost 2 years ago. In that time, it has had over 250 separate interactions with innovators big and small. It has offices in New York City. It conducts "lab hours" in places where innovators work: from Silicon Valley, California to Silicon Hills, Texas and from the South Bank of London to Singapore Center. LabCFTC is not a "sandbox." It does not try to pick winners from losers, nor does it exempt firms from CFTC rules.

Instead, LabCFTC provides us both an internal and external technological focus. Internally, it means explaining technology innovation to agency staff and other regulators and advocating for technology adoption. Externally, that means reaching out and learning about technological change and market evolution, while providing a dedicated liaison to innovators. It has entered into FinTech cooperation agreements with regulators in London, Singapore and Australia. It has published well-regarded technology primers and requests for comments. I am proud to say that LabCFTC has become a category leader. Every U.S. Federal financial regulator has either created or is creating a program similar to LabCFTC.

The work of LabCFTC has highlighted an important issue that U.S. regulators face. We have certain limitations in the ability to test, demo, and generate proof of concepts around these complex emerging technologies and systems. Specifically, the CFTC lacks the legal authority to partner and collaborate with outside entities engaging directly with FinTech and innovation within a research and testing environment, including when the CFTC receives something of value absent a formal procurement. The general rule is that without such authority, the CFTC must forego the increasing number of opportunities to engage in research that may benefit the derivatives markets that the agency oversees, as well as the CFTC's own activities.

The Commission would like the ability to partner, collaborate, or engage in a cooperative agreement regarding emerging financial and compliance technologies with persons or entities; Federal, state, or local agencies or instrumentalities; or foreign governments or international organizations. Legislation introduced last Congress by Representative Austin Scott provides such authority and would greatly enhance the Commission's ability to keep pace with emerging technology, explore its potential, and facilitate its adoption.

Enforcement

Two years ago, I issued a warning to those who may seek to cheat or manipulate our markets that they would face aggressive and assertive enforcement action by the CFTC. I pledged there would be no pause, let up or reduction in our enforcement of the law and punishment of wrongdoing.

During my watch, the CFTC has been resolute in holding market participants to the highest standards of behavior. In fact, by any measure, enforcement has been among the most vigorous in the history of the CFTC, including more enforcement actions, more penalties, more large-scale matters, more accountability, more

partnering with criminal law enforcement at home and abroad and more whistleblower awards than in prior years.²

The Commission has strengthened its rules and procedures to better protect whistleblowers, brought new impactful enforcement cases, and successfully resolved other important enforcement cases. In addition, enforcement resources have been enhanced through the internal realignment of the Market Surveillance Branch in 2017 to report directly to the Director of Enforcement. This is one of several actions the Commission has taken to better utilize resources across the Commission.

At the same time, I have strived to make sure CFTC enforcement staff is committed to providing incentives for companies and individuals to engage in ethical corporate behavior—to develop a true culture of compliance, to do the right thing. The cooperation and self-reporting policies issued by the Division make clear that companies and individuals could receive a recommendation for a Commission reduction in penalty if they fully cooperate with enforcement investigations, timely remediate, and, most importantly, self-report the misconduct before the Commission learns about it.

In further implementation of providing incentives for self-reporting and cooperation, the Division recently issued an advisory on cooperation and self-reporting concerning foreign corrupt practices. As noted in remarks accompanying the advisory, James McDonald, the Commission’s enforcement director, made clear that if a company or individual not registered (or required to be registered) with the CFTC timely self-reports a violation of the CEA involving foreign corrupt practices, fully cooperates, and appropriately remediates, the Division will apply a presumption, absent aggravating circumstances, that it will not recommend a civil monetary penalty.

Economic Modeling and Econometric Capabilities

One of the most important jobs of the CFTC now and in the coming years is to boost the agency’s ability to monitor systemic risk in the derivatives markets by increasing both its analytical expertise and its capacity to process and study the voluminous data provided by market participants since the passage of the Dodd-Frank Act. This resulting work will further enhance the Commission’s understanding of market risk or systemic risk and derivatives market structure and participants, including end-users, intermediaries, and traders, and connections between futures, cleared swaps, and uncleared swaps.

Improved economic and econometric analysis will benefit the analytical and empirical foundations of the Commission’s policies and rules and better inform its cost-benefit considerations. It will also further enable the Commission to provide more of its analysis to the public.

Dodd-Frank Rulemaking

The CFTC has been a consistent leader among regulators of the world’s major swaps and derivatives markets in enacting effective regulation and oversight. By 2014, it was the first regulatory agency to implement most of the internationally agreed swaps reforms. As result, we now have more than 4 years of U.S. experience with the current CFTC regulatory framework with its varied strengths and deficiencies. Four years provides a significant sample size, if not a long period of history, to evaluate the effects of these reforms and their implementation. Based on a careful analysis of that data and experience, we are in position to recognize success, address flaws, recalibrate imprecision and optimize measures in the CFTC’s initial implementation of swaps market reform.

I have long been a public supporter of the swaps market reforms passed by Congress in the Dodd-Frank Act.³ I believe that market regulators have a duty to apply the law in ways that enhance trading markets and their underlying vibrancy, diversity and resilience. That duty includes continuously reviewing past policy applications to confirm that they remain optimized for the purposes intended. It means adopting a forward-looking approach that considers the impact of technological innovation and anticipates changing market dynamics.

The Commission has continued to make progress on completion of Dodd-Frank Act rulemaking. On November 5, 2018, a five-Member Commission voted unani-

²See, generally, “Regulatory Enforcement & Healthy Markets: Perfect Together!”, Remarks of Chairman J. Christopher Giancarlo at Economic Club of Minnesota, October 2, 2018, Minneapolis, Minnesota, at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo56>.

³Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, §§ 721–774, 124 Stat. 1641, 1641–1807.

mously on the threshold for swap dealer *de minimis* to provide the market with certainty that the threshold will not fall from \$8 billion to \$3 billion.⁴

In addition, all five Commissioners have committed to Congress to move forward with a final position limits rule. I believe the final rule must be responsive to the public comments and ensure that regulatory barriers do not stand in the way of long-standing hedging practices of American farmers, ranchers, producers and manufacturers, who depend on our markets. I intend to put forth such a position limits rule proposal before the end of the second quarter of this year.

SEF Reforms

The CFTC's particular implementation of its swaps trading rules has long been a concern of mine. I believe the current framework is inconsistent with the Dodd-Frank Act by being too prescriptive, too burdensome and too modeled on futures markets. The framework is also highly subjective and overly reliant on a series of no-action letters, staff interpretations and temporary regulatory forbearance that may change at anytime.

That is why, last November, the Commission issued a proposed rule to amend the SEF regulations and the trade execution requirement and a request for comment on the practice of "post-trade name give-up."⁵ I believe there are two crucial reasons to improve the SEF rules: risk and opportunity. The impermanence of the current SEF rule framework poses risk for market participants. At any time staff may well change or withdraw the numerous interpretations, guidance and compliance expectations that underpin the current framework. Moreover, the current restrictions on methods of execution may turn out to be, by themselves, a source of trading risk during a liquidity crisis—when swaps counterparties need to be found through less prescriptive and more flexible means of execution.

On the other hand, improving the SEF rules presents opportunity—opportunity for service innovation by existing and new market entrants that has waned under the current framework. It is the opportunity to boldly create a regulatory framework that actually fosters innovation, entrepreneurship, competition and increased market vibrancy rather than stifle it. Improving the SEF rules also increases the chance that the SEC will draw on the new framework in whole or in part for their security-based SEF regime. It would create a common U.S. regulatory approach for all swaps products, reducing operational and compliance costs and risks.

I do not support merely tinkering with the current SEF rules to fix their most glaring shortcomings or perpetuating the many no-action letters and staff guidance on which they rely. Such a step would be unworthy of the regulator of the world's most vital derivatives markets. Instead, the agency must be unafraid to build a better and more durable regulatory framework for swaps execution that supports vibrant markets and broad-based prosperity for a generation or more.

Increased Examinations of Clearinghouses

The agency's work to conduct regular examinations, in concert with the Commission's surveillance and other functions, is a highly effective method to maintain market integrity so that American businesses can rely on these markets. The Commission leverages resources by conducting joint examinations across Commission divisions and through coordinated examinations with the Federal Reserve and the SEC, where possible. This effort allows the Commission to be more efficient with its limited resources and at the same time, reduce burdens for dual registrants.

In addition, examinations of clearinghouses help the Commission identify issues that may affect a clearinghouse's ability to control and monitor its risks. These are among the most important examinations that the Commission conducts, as clearinghouses have become critical single points of risk in the global financial system. Furthermore, the number of clearinghouses, the scope and complexity of the examination issues and the importance of these examinations to overall financial stability are all increasing.

In addition to U.S. clearinghouses, the Commission has six registered clearinghouses located overseas and exempted four foreign clearinghouses. The Commission anticipates new applications for clearinghouse registration resulting from the explosion of interest in cryptocurrencies; an area in which protection of the cryptocurrencies will be one of the highest risks.

The Commission has an active, data-driven, daily risk surveillance function, and expects to continue investing additional resources on human capital, data, and tech-

⁴"Commission Approves Final Rule on Swap Dealer Registration *De Minimis* Exception", November 5, 2018, at: <https://www.cftc.gov/PressRoom/Events/opaeventstaffmeeting110518>.

⁵*Federal Register*, November 30, 2018, at: <https://www.federalregister.gov/documents/2018/11/30/2018-24643/post-trade-name-give-up-on-swap-execution-facilities>.

nology to improve our current analytical capabilities to keep up with growth in both the scale and complexity of risk transmission in the derivatives markets. Given the emphasis of G20 and Dodd-Frank reform efforts on central clearing as a critical tool to help mitigate systemic risk in the global financial markets, the Commission expects to grow our stress testing program to help ensure that the clearing ecosystem continues to be resilient to absorb both market and systemic shocks.

Effective International Engagement

Recently, the CFTC along with the Bank of England and the Financial Conduct Authority (FCA), with support from Her Majesty's Treasury, issued a joint statement providing assurances to market participants on the continuity of derivatives trading and clearing activities between the UK and U.S. regardless of the outcome of the UK's withdrawal from the EU.⁶ Together, the four authorities are taking measures to avoid regulatory uncertainty about the continuation of derivatives market activity between the UK and U.S. These measures should give confidence to market participants about their ability to trade and manage risk across the Atlantic. It is a great credit to the decades-long cooperation between the CFTC and the Bank of England, FCA, and HM Treasury, that we are able to work together to take these steps.

It is critical that the CFTC continues to work positively with its overseas regulatory counterparts, not just in the UK, but in all financial centers. I am a firm believer that by working together with my regulatory counterparts across the globe, in a cooperative spirit, we can strengthen our economies while keeping our financial system resilient and stable.

That is why the afternoon after the CFTC-UK announcement, I traveled to Brussels to meet with European Commission Vice President Valdis Dombrovskis and Director-General Olivier Guersent to discuss how to broaden cooperation between the CFTC and the EC.

In addition, I am proud to report that we achieved a significant milestone on March 13 as the CFTC and the Monetary Authority of Singapore announced the mutual recognition of swaps trading venues in our respective jurisdictions.⁷ In this regard, the CFTC exempted certain Singapore trading venues from the SEF registration requirements. This exemption reduces the burdens associated with duplicative and overlapping regulations, mitigates market fragmentation, enables U.S. market participants to access Singaporean markets to manage risks effectively, and enhances cross-border business opportunities for both U.S. and Singaporean firms.

Recently, EU co-legislators reached a political agreement on the new amendments to the European Market Infrastructure Regulation (EMIR 2.2) pertaining to the regulation and supervision of central counterparties (CCPs). To mark this occasion, I issued two statements: a joint statement with Valdis Dombrovskis (Dombrovskis), the Vice President of the European Commission (EC), and a separate statement as Chair of the CFTC. The statements publicly affirm that the CFTC's concerns regarding the potential adverse impact EMIR 2.2 on U.S. CCPs and the broader U.S. financial markets remain a significant issue for the U.S. and it is our expectation, that EU authorities will address our concerns during the EMIR 2.2 legislative process.

The joint statement with Dombrovskis asserted that the CFTC will continue to engage with EU authorities on EMIR 2.2 through the next phase of the legislative process, the drafting of the implementation regulations (the Level 2 process), and that the EC will consider the CFTC's concerns during this Level 2 process. It also states that it is the expectation of the EC and the CFTC that the implementation of EMIR 2.2, along with the CFTC's on-going review of its cross-border regime, will result in a future transatlantic relationship between the EU and the CFTC, which will be based on greater deference than there is now.

In my separate statement, I reaffirmed my understanding that although the application of EMIR 2.2 to U.S. CCPs is not likely to occur until the end of 2020 or beyond, EU authorities, including the EC and the European Securities and Markets Authority (ESMA), will work with the CFTC to address U.S. concerns during the legislative process. Further, I state that the starting point for any future recognition assessment of U.S. CCPs must be the current 2016 Equivalence Decision.

⁶“Joint Statement by UK and U.S. Authorities on Continuity of Derivatives Trading and Clearing Post-Brexit”, February 25, 2019, at <https://www.cftc.gov/PressRoom/PressReleases/7876-19>.

⁷“Joint Statement of the CFTC and the Monetary Authority of Singapore Regarding the Mutual Recognition of Certain Derivatives Trading Venues in the United States and Singapore”, March 13, 2019, at <https://www.cftc.gov/PressRoom/PressReleases/7887-19>.

These statements taken together are meant to provide market participants who transact in both U.S. and EU markets assurances that the CFTC and the EC will continue to work on through our differences to mitigate the impact of unnecessary regulatory and supervisory burdens, and to foster economic growth and stability for our global CCPs.

Six months ago, I released a White Paper on cross-border swaps regulation that proposed updating the agency's current cross-border application of its swaps regime with a rule-based framework based on regulatory deference to third-country regulatory jurisdictions that have adopted the G20 swaps reforms.⁸ As our regulatory counterparts continue to implement swaps reforms in their markets, it is critical that we make sure our rules do not conflict and fragment the global marketplace. That is why I believe the CFTC should move to a flexible, outcomes-based approach for cross-border equivalence and substituted compliance and operate on the basis of comity, not uniformity, with overseas regulators.

Before I leave my post, I intend to put before the Commission a rule proposal to address the registration of non-U.S. CCPs clearing swaps for U.S. persons. I also intend to put forth a rule proposal addressing the registration and regulation of non-U.S. swap dealers and major swap participants. In particular, the proposal will address the risk that non-U.S. swap dealing activity poses to the United States, but do so in a way that does not apply the swap dealer rules extraterritorially without sufficient consideration of whether the activity truly poses a "direct and significant" risk to the U.S. financial system, as Congress intended.

Cybersecurity

As market leaders and regulators, we must continue to take every step possible to thwart cyber-attacks that have become a continuous threat to U.S. financial markets. In the coming year, the Commission plans to strength cybersecurity and network defenses, support the LabCFTC 2.0 initiative, and invest in the agency's multi-year cloud strategy.

The Commission has requested from Congress new IT security resources to continue progress towards achieving compliance with Federal Information Security Management Act (FISMA) and related Office of Management and Budget (OMB) security mandates and ensuring the protection of sensitive market participant data.

The same vulnerabilities hold true in the case of futures commission merchants where customer accounts hold records and information that requires protection. We as an agency will work hard to ensure that regulated entities live up to their responsibility to ensure their IT systems are adequately protected from attacks and customers are protected.

Agency Reform and Project KISS

Two years ago, I announced the launch of Project KISS. It stands for "Keep It Simple Stupid." It is an agency-wide review of CFTC rules, regulations and practices to make them simpler, less burdensome and less costly. It has resulted in a range of rule and process improvements that are reducing regulatory costs and burdens.⁹ Many KISS initiatives were recommended by market participants, but many were also initiated by our own agency staff that saw ways to reduce undue obligations on registrants and market participants. There are still more Project KISS initiatives in the pipeline. It is my belief that this effort should continue upon my departure and be a regular part of the agency's mission.

Conclusion

Looking to the past, I will be pleased that I have furthered and confirmed much of the Dodd-Frank mandate for swaps. Where I have identified flaws in implementation, I have proposed comprehensive solutions. In my view, now is the time to create better frameworks that are more flexible, more durable and more supportive of deep and liquid markets, in good times and in bad.

As for the present, I have tried to do what my parents taught me—to leave any place I visit in a better condition than I found it: better run, better funded, more transparent, more accountable and more efficient in its vital mission overseeing American markets.

As for the future, I will be satisfied that I have raised the profile and reputation of the CFTC and set it on a course for the digital Twenty-First Century. So much is changing, and changing rapidly in our commodity derivatives markets. As market

⁸"Chairman Giancarlo Releases Cross-Border White Paper", October 1, 2018 at: <https://www.cftc.gov/PressRoom/PressReleases/7817-18>.

⁹Michael Gill, Chief of Staff, U.S. Comm. Fut. Trading Comm'n, Remarks at the National Press Club, CFTC KISS Policy Forum, Washington, D.C. (Feb. 12, 2018), available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagill2>.

regulators, we must be ready to listen, and work to understand. The greater the pace of change, the greater must be our capacity to keep pace, understand and harness it.

The CFTC is well along the course of that new direction set 2 years ago—a course that is sustainable and true.

Thank you for a privilege to speak to you today.

It has been my honor to serve you, our dynamic markets and the American people.

The CHAIRMAN. And thank you, Chairman, for that very informative and, indeed, touching presentation. It is evident of why many of us hate to see you leave. You have great experience.

I would like to start and I will start with this question. I have long been concerned and worked with you, as you know, through the years, on our cross-border. Right now, our derivatives swaps, that area is valued at over \$820 trillion piece of the world's economy. But we need to get our arms around this issue with Brexit.

Mr. GIANCARLO. Yes.

The CHAIRMAN. It is presenting some very troubling winds that I think we need to look at.

And I have done some background on it, but I would like to get your perspective on this whole issue and the impact on our markets and our market participants. This Brexit thing keeps worrying me.

My understanding that, of course, the United Kingdom is in the middle of what I call a drawn out, bitterly difficult divorce from the European Union, and Prime Minister May has negotiated a withdrawal agreement with the EU last year. But Parliament has voted it down three times, even though a UK exit without an agreement promises nothing but chaos.

The EU gave the UK an extra 6 months to come up with a way to leave on negotiated terms, but so far, there is no deal, much less any consensus on how to move forward.

Mr. Chairman, during your negotiations with the Europeans on swap trading venue equivalence, you have been closer than anyone here to the process of the UK leaving the European Union. It seems that there is a desire in Europe to make it pretty hard on the UK for deciding to leave the Union. Have you seen any of those attitudes bleeding into your discussions on equivalence?

Mr. GIANCARLO. Thank you for the question. It is a very complicated subject, as you have outlined in your remarks.

It is appropriate for the United States, as a public official of the United States, to make clear to our European friends on either side of the English Channel that we take no view as to what is entirely a European decision about Britain's staying or going, and what that means politically for Europe.

But economically, it has a tremendous impact on us in the United States. There are two sides to our derivatives markets. There are our listed markets, our futures markets that trade on exchange, which in many ways may be considered an export business, an important export business for the United States. The global swaps markets, which are not traded on exchange, are traded over-the-counter, of which U.S. banks and financial institutions make up as much as perhaps $\frac{2}{3}$ of the liquidity provision in those markets. And yet, that entire swaps market is centered in London. London has emerged over the last several decades as the servicing

center of this global swaps market that in your remarks you referred to in the hundreds of trillions of dollars in gross size, and that marketplace for historical reasons has become centered in London.

As the regulator of both our domestic export futures business and of the swaps—the U.S. involvement in the swaps markets, we have been keenly focused on the impact of Brexit on these markets that we are charged to oversee.

The CHAIRMAN. I am also very concerned, and I want to be cognizant with our time here.

Mr. GIANCARLO. Yes.

The CHAIRMAN. But I am deeply concerned about something else, and that is there is this new EU law that is bubbling up, and it is called EMIR 2.2.

Mr. GIANCARLO. Yes.

The CHAIRMAN. Which could have major effects on our United States clearinghouses, potentially setting up the EU as a primary regulator over our own United States clearinghouses. This is a problem, and our U.S. clearinghouses, in addition to that, may even be required to fund ESMA, the EU regulator of all EU finance, through surcharges.

Mr. GIANCARLO. Yes.

The CHAIRMAN. Just for the privilege of their regulating us. I am hoping that you will tell me that I have it all wrong. I am hoping. I know you are deeply engaged in the implementation phase of EMIR 2.2. Should we have hope that these dramatic outcomes can be avoided?

Mr. GIANCARLO. Well, I wish I could tell you that you have it wrong, but you have it right, and to some degree, you don't even know how right you have it.

This new law, EMIR 2.2, which has passed the European Parliament, is now going to a process where they write the technical rules, but the law has been passed. It assigns to a European body based in Paris, called ESMA that you referenced, oversight over non-European clearinghouses, including potentially American ones, but deems them to be unqualified to regulate European ones. They have the capacity not to regulate European clearinghouses, but to regulate non-European ones. It is completely unprecedented. In the geopolitical realm, I know of no other body that has such powers, nor does it have experience in doing this because it has never regulated clearinghouses before. Unlike the CFTC, which in your opening remarks, you noted for 40 years, we have been doing it as an independent agency, for another 30 years before that as part of the Department of Agriculture. We have 70, 80 years of experience regulating clearinghouses, and suddenly now, under this EMIR 2.2, we face the prospect of having to share oversight of our domestic American clearinghouses with a foreign regulator that is not competent to regulate its own clearinghouses, but is competent somehow to regulate American ones.

I have said publicly, Mr. Chairman, that at least under my watch, and I know my pending successor, Heath Tarbert, has said the same thing. This will not happen. U.S. markets will stay under U.S. regulation under the oversight of its respective committees in

Congress. That is our constitutional system. That is our duty, and that is the way it will remain.

The CHAIRMAN. Very quickly, yes or no. In your view, is there something at work here where the EU is trying to wrestle the clearing business in particular and the financial services business in a general way from London?

Mr. GIANCARLO. I believe so.

The CHAIRMAN. Okay, thank you.

Now I will yield 5 minutes to our distinguished Ranking Member, Mr. Scott.

Mr. AUSTIN SCOTT of Georgia. Thank you, Mr. Chairman.

Chairman Giancarlo, with regard to CFTC R&D Modernization Act, you discussed that in your testimony. You obviously helped us with that legislation. I hope that we are able to include it in CFTC reauthorization this year.

My question for you is while the focus on this legislation has been on the expanded transaction and gift authority, it also reorients the Commission's statutory research and development purpose. Can you talk about the importance of having a focused plan for research and development activities?

Mr. GIANCARLO. Absolutely. When I meet with farmers and ranchers around the country, they often will say to me what is going on in the markets? These markets are driven by algorithms and high frequency traders, and we feel like we are being run over in the markets.

Well, they are right. The markets are changing dramatically. They are moving from human markets to computer-driven markets. And if we are going to provide the function that Congress requires us to do to oversee these markets, we need to keep pace with those changes in the markets.

Some of our overseas regulators, such as the UK, are actively participating in new technological advancements to see whether they can both help the regulator to keep pace, but to better understand the markets. In many cases, we found we are prohibited from participating in new technological innovations because if we were to participate in what they call proofs of concept or beta tests of technology, it would be considered a gift to the agency. And we couldn't accept a gift. We would have to go through a procurement process.

And as I understand the legislation, the legislation would allow us to participate in some of these technological innovations in a way that would benefit the agency to do its job so we can make sure these markets stay safe and sound and able to be used by our American agricultural and commodity producers.

Mr. AUSTIN SCOTT of Georgia. I am going to come back to that word *gift* in a second, but I want to talk about FinTech and 21st century regulating. Can you talk more about LabCFTC with regard to the R&D Modernization Act, and how it can help the agency explore new tools that will help improve the regulatory and oversight activities?

Mr. GIANCARLO. Absolutely. As I say, things are rapidly changing. Just as in every element of our lives today, going from analog to digital, so are our markets. And there is a lot of innovation going on right now, and innovation will come to the agency and often be

faced with regulators who are familiar with the rule book, but not necessarily familiar with their technological innovation. And LabCFTC allows us to have a dedicated team within the agency that are familiar with some of these technological innovations that can help translate the language of innovators to language we are traditionally used to in our markets.

It provides a stakeholder within the agency who is focused on technology change and can help us understand it, adapt to it, evolve with it.

Mr. AUSTIN SCOTT of Georgia. One of the issues is how fast things are changing, as you have said. And we have the Gift Acceptance Authority.

Mr. GIANCARLO. Yes.

Mr. AUSTIN SCOTT of Georgia. And I think that those three words perhaps give a false impression of what is actually happening when somebody shares something with the Commission. Can you talk about what a gift is in the context of the Commission's budget, and what sort of a gift the Commission is seeking to accept to further its research and development mission?

Mr. GIANCARLO. Sure. I will give you an example that we are facing right now. There is this new innovation called the blockchain. The blockchain potentially could have enormous transformational advantages for us, as an agency, to be able to actually see trading in the market in real-time and to see the counterparty exposure of one large financial institution to another in real-time. Right now, we do that the old-fashioned way. We get data from the market and then we try to piece it together, and hopefully we can understand. But if we could participate in the blockchain, we could see it in real-time.

We have been offered the opportunity by many innovators to actually participate in blockchain experiments, but I have been advised by our General Counsel's office that if we were to participate, it would be considered a gift, which we couldn't accept. And so, we are missing out on participating in innovations that are going on right now, which ultimately, we have a role to play in. We should be a part of these innovations. And as I understand the legislation, it would allow us to participate and not deem our participation as a gift, under the law, which we could not accept.

Mr. AUSTIN SCOTT of Georgia. I think that is an accurate portrayal of what we are trying to accomplish, and whatever the language is, if we need to make minor language changes, I want my Chairman to know that we simply need to get you the authority to be able to participate in these so that we as the regulators understand better what is happening in those fields.

And so, again, I will yield the 24 seconds that I don't have back, but I want to thank you for your service. And ma'am, thank you for your service as well.

The CHAIRMAN. And now I will recognize Ms. Spanberger, for 5 minutes.

Ms. SPANBERGER. Thank you very much, Mr. Chairman, for being here today.

Thank you to the Chairman. I spent most of my career as a CIA case officer, and as someone who has been deeply involved in counterterrorism efforts, I know how vital it is to follow the money,

and how these efforts can illuminate and track down terrorist groups and prevent future attacks.

A recent RAND report concluded that if a future cryptocurrency provided better anonymity than bitcoin and became widely adopted, it could be particularly useful for terrorist organizations and therefore, make it much more challenging for our intelligence and law enforcement agencies to counter.

The current U.S. regulatory approach to cryptocurrency is a patchwork and involves a SEC, IRS, DOJ, Treasury Department, as well as the CFTC. What would you say is the biggest gap in cryptocurrency regulation right now, and do you think new regulatory authorities are needed to address the security concerns surrounding cryptocurrency?

Mr. GIANCARLO. The gap right now are spot cryptocurrency platforms for spot markets, not derivative market cryptocurrencies, non-ICOs. That is the gap between ourselves and the SEC that exists.

Now, FinCEN (Financial Crimes Enforcement Network) examines them for money laundering purposes. There are state regulation that are partial, not comprehensive. But we do not regulate non-derivative trading platforms. We don't have the requirement that they register with us, nor are they subject to our oversight and supervision. That is the gap that exists.

Ms. SPANBERGER. Okay. Would you make any broad-brush generalizations of recommendations of where we could close that gap and how, from Congress' perspective, we could anticipate any future concerns, be able to address those gaps?

Mr. GIANCARLO. Yes. If it is on the derivative side, as it is with bitcoin futures, we have it, and it fits within our traditional capabilities. If it is like a security, then the SEC has it. We work very closely with the SEC. We have an *ad hoc* working group on cryptocurrencies, and I could see how that *ad hoc* working group could be further developed into something that could be more routine. If it were adequately funded by Congress, and could, with some extension of jurisdiction, legal jurisdiction, it could take a more active role on those spot exchanges. Right now, we don't have the legal authority and we don't have the resources. But with resources and authority, that is something that could be developed.

Ms. SPANBERGER. Thank you very much.

My second question, switching gears, is talking about LIBOR. With the transition from LIBOR to SOFR (Secured Overnight Financing Rate) as the new recommended benchmark being voluntary, I am particularly concerned about farmers in my district in central Virginia who have loans based on LIBOR, as well as other constituents who have business loans, mortgages, and student loans that are currently based on LIBOR and could be affected by this transition. I know that the CFTC's Market Risk Advisory Committee has been working on this transition, and based on the current state of their work, what is the plan to make sure that these transitions happen smoothly to communicate these transitions and to provide stability for farmers, homeowners, and others who might have loans based on LIBOR?

Mr. GIANCARLO. Yes, thank you for that. It is something we have been very focused on, and the work of the Market Risk Advisory

Subcommittee on LIBOR has been doing some great work in this area, as has a number of work streams, both domestically and internationally.

If I could just take a moment, because your constituents are probably wondering why we need to move away from LIBOR? Well, LIBOR was something that was started 30, 40 years ago when banks actually financed themselves by lending to each other in overnight markets. Over the last several decades, that has dwindled down to less than a dozen trades a day, and less than \$1 billion worth of trades a day of banks lending to each other. Banks simply don't finance their operations with overnight lending anymore. They use repo markets and other longer-dated instruments. There is virtually no LIBOR market left, and yet, we have trillions of dollars of loans—some to your constituents—that are based on a market that doesn't really exist anymore. It is like a house that only has one stone left as its foundation and could collapse at any time. And that is why in an act of great responsibility, world financial regulators have said let's not wait until the crisis happens. Let's take steps in advance of the crisis to move to another rate. And the rate that has been selected through a combination of regulators and industry is called SOFR, the Secured Overnight Financing Rate, which is based upon how banks actually do their overnight funding or their dated funding, their lending funding, their repo funding. It is a much more stable rate. It has now been tested.

And now to answer your question, there has been a lot of development on it. Our exchanges at the CME and ICE have launched a future based on this, so there will be some pricing point references for the new rate, and they had great success in the development of that. An organization called ISDA, the International Swaps and Derivatives Association, is working on protocols that the marketplace will use for how the transition works. And there is a timeline. We are in a very critical phase, but I must say, every milestone that has been set has either been reached on time or early so far. The public-private partnership to move away from LIBOR is working very well. There are more mountains to cross, but we have crossed many so far, and I am optimistic we will get there within the next several years.

Ms. SPANBERGER. Thank you very much. I yield back.

The CHAIRMAN. Thank you. Now, I will recognize Mr. Crawford, for 5 minutes.

Mr. CRAWFORD. Thank you, Mr. Chairman, and Mr. Giancarlo, Chairman, thank you for being here.

I am going to frustrate my staff a little bit and go off script. I had some questions I was going to ask you, but something is on my mind. We have had this conversation before, and I probably wouldn't have asked it this way 2 or 3 years ago. But being that you are starting a new phase in your life, I am going to ask you to speculate, which I wouldn't ordinarily ask.

But you mentioned this before that you visited farmers and ranchers. You have walked rice fields and you have been out there. And one of the things that I hear from my farmers back home is just really a fear in participating in the market. And so, to me, what we have lost, and the irony of the fact that this is the Agriculture Committee and this is the kind of thing that we are sup-

posed to be talking about, to provide a level of support to our farmers and ranchers who provide the very food and fiber that we rely on. But we have blocked them, in effect, from participating in what is the quintessential capital market and the free market tool that they should be using to secure their production.

And so, when I suggest to farmers, you really need to rely on a hedge instrument, primarily I suggest options because the fixed cost and nature of options and you don't have to make margin calls and there is a level of security there. And they are just afraid. And what that contributes to is greater volatility. And what it points to, and you mentioned this before, we have algorithms, we have hedge funds, and we have all those other things that keep farmers from participating and being a part of price discovery, which they relied on up to really just not that long ago. But they are afraid to get in it.

And I wonder if you could offer some suggestions or some reinsurance on how we get farmers back in the market, creating that liquidity, and stabilizing the market basket?

Mr. GIANCARLO. Thank you for that, and let me free think on this, because it is the essential question. You put it very well. These markets serve two purposes for our commodity producers, to hedge their price risk, for the most part, and to provide a stable price point so even if they are not engaged in the markets, when they go to the grain elevator, when they sell their production, they are looking at a price point that comes out of the exchanges, and that is where they are negotiating price on, and they want to know it is a reliable price. They want to know these markets are not manipulated. Whether they have been manipulated by old-fashioned bad guys, or whether they have been manipulated by algorithmic trading or other new technologies in the markets. And that is what keeps us up at night at the agency is thinking about how are our markets changing, and are they changing in a way that is distorting either that price discovery point or the ability to hedge production? And they are changing rapidly, just like everything else in our lives, whether the way we hail a taxi today or book a hotel room. Our markets are going through that same digital transformation. And it is a force much bigger than any of us. It is not like we are going to get out there and say, "Stop, these markets have to stay analog," because we will get run over. We can't stop it. What we have to do is understand it. And we have to stay in pace with it, and then see if there are distortions, where they are, and take steps to address it. Which is why we need this new authority so we can be involved in all these technologies.

But farmers and ranchers are smart people. I mean, they know things are changing. They can sense it all around them. Sometimes when I talk to them, I feel like I am talking to somebody who could be a car driver driving a Ford Pinto down a 2019 highway, and getting passed by by much faster vehicles, vehicles that can turn on a dime, can stop on a dime. And that's what these algos allow their users to do. It is not just about high frequency trading. It is about the sheer ability of them to change and morph and use artificial intelligence to learn from what else is going on in the market. I mean, it is a really dynamically rapidly changing market, and the challenge is us keeping pace, which is why we have brought in a

world-ranked Chief Economist. It is why we have created a market intelligence unit. We really need to focus on understanding the evolution of these markets and coming up with some answers to whether there is manipulation, whether there is still a fair deal for the individual user of these markets. And options are a way that I have seen a number of ag hedgers use and use successfully. But, the old-fashioned futures product is still a good product as well.

I stated for you a lot of concerns, but in spite of those concerns, I fundamentally believe our markets remain sound. In fact, the use of our markets has only grown, not diminished. They have become global markets, just as our ag products are global export products. Our futures markets are used by users year-round. Argentinean wheat growers use the price out of Chicago. Brazilian cattle farmers use the live cattle product. I mean, our markets have only grown in global stature, despite all these changes.

It is a complex area. It has been my great pleasure to focus on it for the last 5 years, but these challenges are not going away. They will remain, and they will grow. Challenges and opportunities, I should say.

Mr. CRAWFORD. Let me thank you for your years of service, and to you and your family, I wish you all the best in the future.

Mr. GIANCARLO. Thank you, Mr. Crawford.

The CHAIRMAN. I now recognize the gentleman from New York, Mr. Maloney, for 5 minutes.

Mr. MALONEY. Thank you, Mr. Chairman. Nice to see you again, Chairman Giancarlo.

Last year, we heard from the former Chairman, Chairman Gensler, and your Chief Innovation Officer. We heard from you a couple weeks later on the subject of cryptocurrencies, and you touched on this with my colleague from Georgia. But I wanted to invite you to say another word on this subject. There is a lot about it I don't understand, but I am very interested in it, and I am interested in the issues that it poses for capital formation and risk transfer. I am interested in the impact that it has on the capital and derivative markets.

Like you, I believe it is transformational and presents an enormous opportunity, but it comes with some opportunities to screw it up as well. I am hoping you could say a word: there was broad agreement last year that the CFTC has a greater role to play here, and that is going to require some changes to the Commodity Exchange Act. Can you say a word about that, and what changes we should be considering to the CEA?

Mr. GIANCARLO. There could be some changes in terms of jurisdiction, as mentioned before. Our existing tools, though, allow us to oversee areas of cryptocurrency derivatives. As you know, we have cash settled cryptocurrency derivatives that have come through our process and have worked quite well. In fact, the San Francisco Fed did a study that said that more than anything else, it was the launch of CME's bitcoin future that popped the bitcoin bubble. And I take great satisfaction in that, because the knock on regulators coming out of the last financial crisis is that they didn't see the bubble building, and they did nothing. Well, in the first post-crisis bubble that we saw in 2017 in bitcoin futures, it was actually a market-based product overseen by our agency that did

more than anything to perhaps correct that bubble. And so, I think that is an area of some satisfaction.

We do find the issue of physically settled bitcoin more of a challenge, because it comes down to where are those bitcoins housed in a physically settled bitcoin. And the way our statute works is that while we have oversight over clearinghouses, when it comes to actual custody, it is usually done through state-based organizations, banks or trusts. And so, physically settled presents more novel challenges for us which we are working through, through a number of applications right now.

I am not sure we need new legislation in that area, but it is something that if we did, we would certainly come to—

Mr. MALONEY. Just because I have limited time, you wouldn't make any changes to the CEA?

Mr. GIANCARLO. I do think we do need to think about the spot-based exchanges, but for derivatives, I don't have any recommendations to make at this time.

Mr. MALONEY. And what about the potential for a race to the bottom, if the U.S. doesn't lead in this and we see international markets regulating in an inferior way? And could you also say a word about how we can assure people that this is something that is good for them, for their families? There is a tremendous lack of understanding about the nature of cryptocurrencies. Some of the press around it has been quite scary in terms of its ability to kind of facilitate wrongdoing, the old silk road website, the rest.

Now, can you say a word about sort of concerns about a race to the bottom, number one, and number two, about just how we assure people that this is something that is good, not bad?

Mr. GIANCARLO. Yes. We have the challenge of both a race to the bottom with some jurisdictions. We also have a race to the top with some jurisdictions. France, for example, has just put forward a very forward-looking new law, the PACTE Act (Plan d'Action pour la Croissance et la Transformation des Entreprises), on encouraging coin offerings to take place under French law. And there are a number of other jurisdictions. Germany is looking at one right now. I think both are challenges to the United States, in that this may develop offshore in a way that would be hard for us to control and our citizens could be taken advantage of in a race to the bottom with jurisdictions. But, there is also a challenge that other jurisdictions will come up with some really good protocol, legal protocols, that will attract business that we will then miss out for the United States.

The reason why I think cryptocurrencies, crypto-assets are here to stay is because a good portion of the globe, maybe $\frac{1}{3}$ or more, does not have a functioning currency. And you are already seeing new payment systems outside of our bank-based payment systems take place in places like southeast Asia and others, and I can see how crypto-assets could be perceived in many parts of the world as far more stable than the nominal currency used by their governments.

If you visit parts of the developing world, their local currency may be sufficient to buy vegetables in the local market. But if you want to buy a Toyota, they won't accept the local currency. They are going to require a hard currency like the dollar or the euro.

And yet, I could see where those jurisdictions could go to a crypto-asset based currency.

We are in a dollar-based jurisdiction. We don't often think about challenges to the dollar. But, long-term, there are many parts of the globe that are searching for something that is electronic, that is stable, that is mobile telephone-based, and I can see where you could see crypto-assets taking off in many parts of the globe.

Mr. MALONEY. Thank you. I yield back, Mr. Chairman.

The CHAIRMAN. Now I recognize the lady from the Virgin Islands, Ms. Plaskett, oh, I am sorry, Mr. Rouzer.

Mr. ROUZER. That is all right, Mr. Chairman. Thank you much.

Mr. Chairman, let me add my voice to those who have thanked you for your service. It has been very, very commendable, and I really appreciate you being here today.

Late last year, you proposed a significant overhaul of the swaps trading rules. I know this is an area you feel very strongly about and have worked very hard to be thoughtful and deliberate in your approach.

I am interested in two particular aspects of your testimony, the reliance on staff interpretations and guidance, and the potential impacts to liquidity during a crisis.

First question, can you elaborate on which parts and how much of the SEF trading rules are dependent on staff interpretations and guidance, and then why should we be concerned about that?

Mr. GIANCARLO. Thank you very much. Broadly, whenever regulators operate through no-action relief or staff guidance, that makes it easy for large institutional players in the markets to hire the lawyers necessary to parse through that no-action relief and know what they can do and what they can't do. But it makes it very hard for new entrants in the market that may not have those types of big law firm resources to go and know where the law is. And that it is always better to have our rules clear and easily understandable.

Our SEF regime right now is held up in a whole range of key areas by a series of no-action relief, by a series of staff guidance, and in many cases, by simply staff forbearance of enforcing some of the rules. And so, my SEF proposal would be to incorporate all those into the proper text of the rule and to make it clear. But it also would make our system, as I believe Congress intended it to be, much more flexible in approach. The current rule-set really flies in the face of the clear instruction of Congress. For flexibility, it is very prescriptive, and it is overly based upon the listed futures market.

But, more broadly, our markets compete on a global basis day in and day out with foreign markets. Why shouldn't we have the best regime? I have always said the goal is not to have either the most regulation or the least regulation. That is a false argument. We should have the best regulation. We should have regulation that attracts new entrants, new business models.

Since our rules went into effect, we have had no new entrants come into this space. We have had no new trading protocols. We have had no innovation. As Americans, to have no innovation just goes against our nature. It goes against who we are. And I would like to bring innovation back to this area of the market.

Mr. ROUZER. There are some market participants, obviously, that suggest proposed changes would impose significant cost on them. What are your views on rather than having a major overhaul, having more of a targeted approach?

Mr. GIANCARLO. Yes. There are those who believe we can take around the edges and just take some of that no-action relief and codify it. But we are still left with a regime that is overly prescriptive, a regime that is based upon the wrong model, which is a listed exchange model, and a regime that would really squelch innovation as the current regime has done.

Mr. ROUZER. Moving on, I have a couple other topics I want to hit real quick. Last week, the CFTC's Energy and Environmental Markets Advisory Committee meeting included a discussion about the SA-CCR (Standardized Approach to Counterparty Credit Risk) proposal, its impact on energy derivatives. I am a little bit concerned about that because many of the advisory committee participants indicated that if the proposal was not changed, it would reduce the ability of energy companies to hedge their risk, and the resulting volatility would be passed on to rate payers. Can you explain what these energy firms are concerned about, and share your thoughts on the matter?

Mr. GIANCARLO. I am really glad you asked that question, because it is a very important matter and it is one that is right before us right now, and the time to fix this is now.

Global standards emerged in the wake of the financial crisis on dealer capital, and we are a great supporter of those. I believe in those reforms. But in some cases, U.S. regulators have gold-plated those international standards, and added additional requirements on top of them. In the case of what is called the supplementary leverage ratio, our U.S. Prudential Regulators at the Fed, the FDIC, have gold-plated those standards, and the OCC have gold-plated those standards by adding an additional 40 percent capital requirement on energy. And not just the more volatile energy products, but also in some relatively stable price points like natural gas. And this gold-plating is not borne out by any type of data that shows it is necessary. What is increasingly clear is that it is going to have a cost all the way down the energy food chain and impact consumers, institutional and residential consumers of energy with additional costs that are really not borne out by systemic risk concerns.

It is an area that our Energy and Environment Markets Committee explored. We looked at some very good data, and my fellow Commissioners and I, on a bipartisan basis, Republicans and Democrats, have written to our fellow regulators asking them to reconsider this gold plating so that we don't impact our U.S. energy consumers and energy users.

Mr. ROUZER. Thank you very much. My time has expired.

The CHAIRMAN. Thank you very much. I now recognize the gentlelady from Iowa, Mrs. Axne.

Mrs. AXNE. Thank you, Mr. Chairman, and thank you, Mr. Giancarlo, for being here. It is a pleasure to meet you on what appears to be some of your last days in this position, so it is a pleasure to meet you.

You just heard I am from Iowa. My apologies, I just came from another event with some folks from Iowa downstairs, with a lot of them in agriculture.

I want to express that I am concerned, and of course, Iowans are concerned about agriculture and where we are at, and certainly our farmers are concerned. And the recent *Ag Economy Barometer Report* in March was, I am sure you know, at 133, down from 136 in February. And when farmers were asked if they were less optimistic about the future, 52 percent agreed that they were.

I understand why they feel this way, of course. They are facing uncertain trade markets and in China in particular, of course, they are looking at a lot of alternative trading partners. We are losing those businesses. And of course, we are waiting for those tariffs to stop and for trade negotiations to conclude.

I want to ask you in thinking about these things about our futures, and would you agree that the uncertainty over tariffs and trade agreements brings volatility into the commodity prices and our futures markets?

Mr. GIANCARLO. Yes.

Mrs. AXNE. And the longer the trade agreements linger unresolved, will it have a negative impact on the stability of our markets?

Mr. GIANCARLO. It certainly impacts volatility in the markets.

Mrs. AXNE. I appreciate that. And of course we have seen a devastating increase in small refinery exemption waivers from the Renewable Fuel Standard, and that absolutely affects our ethanol supply in Iowa. And are you seeing impacts from that in the futures market?

Mr. GIANCARLO. We certainly are seeing the impacts in ethanol from the recent flooding that has been devastating for the area. And, transportation costs have had an increased impact.

One of the things we do at the Commission is we look at our commodity prices daily, and we do a weekly recap every Friday. And we look at all the impacts that are triggering volatility, whether they be tariff issues, whether they be political risks, whether they be weather-related risk, and it is not ours to determine whether the price is right, but we are always searching to see what are the shocks are to the marketplace, and how is the market processing those inputs to make sure that the price establishment is fair, so that producers can rely on the price signals that come out of our markets and trust that they are accurately reflective of all the externalities that are impacting those markets.

Mrs. AXNE. I appreciate that. Thank you.

Moving forward, while prices for resilient biofuel, for example, have increased by 19 percent, ethanol futures were down for June by about one percent for 2019. And as we know in Iowa, we just talked about where ethanol goes, that is where corn goes.

Mr. GIANCARLO. Yes.

Mrs. AXNE. And as of, I believe, April 23, speculators held a net short position of 322,215 futures and options, which is the U.S. Commodity Futures Trading Commission data that they reported. And this figure, obviously, measures the difference between bets on a price increase and wagers on a decline, and that has been the most negative, as I know you are aware, since 2006.

Are you concerned about the impact that U.S. trade and policy decisions are having on the markets you oversee?

Mr. GIANCARLO. Yes. Let me distinguish, again, part of our discipline is not to determine whether a given price is a good price or a bad price for producers. I know prices affect producers, right? But as a markets overseer, what we are looking to see is whether that price discovery mechanism is accurate. It may be accurately setting a low price, which may be disappointing to many, but if it is an accurate price determination, then we have done our job.

And so, we are always looking at the range of externalities. We are looking at factors, and analyzing whether the market is doing the right job of establishment, including the different roles of different participants in markets, whether they be speculators, whether they be natural hedgers, whether they be large merchandisers. We are always looking at the different roles of different participants, and I am confident that the market is providing its essential function of working through all those inputs to come out with an accurate price point. Now, we know that prices have been falling in many commodity markets for American producers for the last several years, and in some cases, may be almost reaching an economic crisis point for many. But our job is to make sure whatever the price is, it is fairly arrived at and our markets are doing their job pricing it.

Mrs. AXNE. I appreciate that. I have lots of questions I would love to ask you, but let me just close. Obviously, we also have ag land that is declining in prices, so I look at all these variables as creating volatility for our futures. And I would ask you, as I go back this weekend again and talk to the farmers in my district, what should I tell them about their confidence in the markets right now?

Mr. GIANCARLO. Well, you can tell them they should have confidence in the markets. Now, they may not like the price signal coming from the market. I understand that. My experience with meeting America's farmers and ranchers is an enormous amount of respect and sympathy for the challenges they face. I think they have some of the most challenging jobs in our country. But I believe our markets are sound and operating effectively.

Mrs. AXNE. I will let them know. Thank you.

The CHAIRMAN. Thank you, and now I recognize the gentleman from Florida, Mr. Dunn.

Mr. DUNN. Thank you very much, Mr. Chairman, and thank you, Mr. Giancarlo, for your time and effort here, not just today, but also in your agency.

You have written extensively about the importance of derivative markets and how it protects consumers from price fluctuations in every day items. I believe you have found a balance between smart regulation and over-regulation, over-burdensome regulation, and our country is better for that attitude. It is not just bankers who suffer, it is actually the farmers and ranchers who depend on the stability of those derivatives to make a living.

And I know that you have worked with SEC, Chairman, to prioritize to the coordination and harmonization of the rules that you share, swaps and hedges. And I wonder if you could describe

for us the to-do list you have worked on, what you have checked off, and also what you are facing now, going forward?

Mr. GIANCARLO. Yes. When I came into the chairmanship 2 years ago, one of the true disappointments I had was that there was no harmonization effort ongoing between our two agencies. And yet, there are so many places where our agencies have either overlapping or very close jurisdiction that require almost a continuous process.

And so, Chairman Clayton and I, in one of our very first meetings, we sat down together and said, "Let's create an ongoing harmonization process, both in our policy areas, but also in things like our enforcement areas," things like our response to new emerging technologies like cryptocurrencies. And so, we have a number of *ad hoc* working groups. One is to look at policy harmonization, rule harmonization, and for that we have each nominated members of our Commission. In the case of our agency, it is Commissioner Brian Quintenz, and at the SEC it is Hester Peirce, who lead this process of looking at policy harmonization.

Our heads of enforcement have a regular ongoing meeting to talk about enforcement cases, and we have done more partnering with the SEC on enforcement matters in the last 2 years than has been done in the history of our two agencies.

And then also in the area of new emerging things like cryptocurrencies, we have coordinated virtually every step we have made. We just last week put out an advisory to retail participants in cryptocurrencies to warn them about some of the risks in this area, and it was coordinated between our two agencies.

We have an unprecedented level of cooperation.

Now, in terms of actual policies, there are several challenges. One is in areas where our rules are set and their rules are set, and they may have different approaches. How do we bring them closer together? We are working on that in a number of areas that would require us to make some changes, for them to make some changes, and I am hoping that we are on the verge of doing that very soon.

The other area is in new policy matters. For example, the SEC right now is working on some capital rules and margin segregation rules. And we have already put our rules in place. We have been working with them to bring their rule-set closer to where ours is, so that when they go final with it, it is much more harmonious. And you will also see some action on that with any bit of luck even before I leave the Commission, but certainly sometime this summer I would imagine those would be finalized.

Mr. DUNN. Thank you very much for that. I also want to thank you for the improved economic analysis that you have made a cornerstone of your time as Chairman. I think good data can solve a lot of disagreements.

Regarding that, as we contemplate the reauthorization of the CFTC, are there any statutory changes that would help support you with this high-quality research and analytic work on economics at the Commission?

Mr. GIANCARLO. Yes. No statutory changes, but I think that the future for the agency is to become what I call a quantitative regulator. We have to be able to do data analysis on par with the most sophisticated firms operating out of Silicon Valley in California,

whether they be Facebook or Google. We have to be able to do data analysis on billions and billions of data sets and on trillions of dollars of markets to truly take our place as the foremost global regulator of derivatives. And that is the future for us, and that is something that involves a long-term conversation with Congress, both in terms of funding, and how do we get there? But if we are going to do our job in these markets, we have to move ourselves from an analog approach to data to a highly digital, highly sophisticated, highly data automated process. The type of work that Facebook and eBay and Amazon do every day, we need to be able to that same type of analysis of data in our marketplaces.

Mr. DUNN. Well, thank you for your commitment to that, and we look forward to working with your Commission to make that happen.

Mr. Chairman, I yield back. Thank you.

The CHAIRMAN. All right, thank you. Now I will recognize the gentlelady from the Virgin Islands, Ms. Plaskett.

Ms. PLASKETT. Thank you very much, Mr. Chairman, and thank you, sir, for being here this morning.

I wanted to ask you about something that was alluded to earlier, blockchain, but in the context of automated trading, which is growing and has contributed to some of the market disruptions and some automated trades aren't reflective of the true value of companies, but are actually related to the speed at which those transactions occur.

Since probably more than half of the trading in agriculture futures is automated, what is the status of regulated automated trading, and when can we expect to see or should there be any action from the Commission in this area? That is the first part.

And then the second part would be how blockchain may affect this automated trading, and is that a mechanism by which you can be more reflective and monitor what is happening in this area?

Mr. GIANCARLO. Right. My predecessor, Chairman Massad, under his watch put forward a proposal called Regulation AT, which stands for automated trading. By some estimates, that proposal would have required over 2,000 automated trading firms to register with the CFTC. It also would have given the CFTC the authority to take control of their source code behind their trading mechanisms without a subpoena. I did not support that regulation. I thought it was overly broad. I didn't think we had the resources to take on 2,000 new registrants, and quite frankly, I thought that taking the source code without a subpoena was, frankly, unconstitutional. I didn't support that, and I have been clear that I don't support it today.

What I do support, though, is what Chairman Massad was trying to get at in that regulation, which was better insight and understanding of the role of automated trading. Whether it be that subset that is high frequency, or generally the use of automated trading mechanisms in our market. I believe that is the right thing to do, and that is why we have created our Market Intelligence Branch. And our Market Intelligence Branch just released a study on the role of automated trading in our markets. And that study found that they don't materially contribute to volatility in the market. I think that was an important piece of work.

But we have much more analysis to do on the role of automated trading in the markets, and I know our Technology Advisory Committee is going to take up what should be the path forward for the agency with regard to automated trading.

Ms. PLASKETT. And what are your thoughts on that?

Mr. GIANCARLO. Well, I don't believe in a registration scheme. What I do believe in is market intelligence. I don't believe you can hold back technology, but what we need to know is where those technology changes—if they are manipulating the market, if they are distorting the market, where they are. And that is where the search has to be. But we don't yet have evidence that they are either distorting or manipulating.

Ms. PLASKETT. And do you believe the blockchain is a mechanism by which that can be monitored or reviewed?

Mr. GIANCARLO. Yes. I have said this many times. I think blockchain could be for regulators a quantum leap forward in how we understand markets, how we digest information. And so, I am a big supporter of the use of and the development of blockchain in the regulatory process.

Ms. PLASKETT. In utilizing blockchain it is often attached in discussions to cryptocurrency and bitcoins. Outside of cryptocurrencies, are there any new other asset classes that have come into the market since Dodd-Frank has been put in place, and what are those and how should we in this Committee be looking at those?

Mr. GIANCARLO. Our markets have a great track record of new innovation. Some of it is in new versions of old fashioned, different commodity products. Some are launched and don't gain traction and disappear. There recently was an attempt at a new cotton contract. It is a very old staple, but it was a new contract. It didn't gain the traction that its promoters wanted, but it is an example of some of the new products that we see.

We continue to see new types of crypto-assets coming to the market. I am not familiar, though, with any technological innovation is similar to those that have come about in the last 2 years, but it won't surprise me if there is something right around the bend that we haven't seen.

Ms. PLASKETT. Before my time runs out, there was an exchange I had this morning regarding aluminum, a disruption that may be perceived in the aluminum market, which are not entirely related to the tariffs that the President has put on.

I know the Secretary, Wilbur Ross, acknowledged that there may be antisocial, as he put it, behavior in the marketplace related to Midwest premium and aluminum. Can you elaborate on that?

Mr. GIANCARLO. Yes. We monitor that very carefully for areas of manipulation, and we have been looking at aluminum for years. There have been concerns about that, but we have not found manipulation in the market. There are concerns about the way the index—used by some of the index providers—is constructed, but not from the point of view of manipulation, but from the point of view of the way it is constructed and whether it leads to the most accurate pricing point.

That is an area that is actually outside of our jurisdiction. We do not regulate the formulation of benchmarks. We only oversee

where there may be manipulation that it would affect one of our derivative markets.

Ms. PLASKETT. Thank you, and I yield back. Thank you, sir.

The CHAIRMAN. I now recognize the gentleman from South Dakota, Mr. Johnson, 5 minutes.

Mr. JOHNSON. Thank you, sir. I do want to save a couple of minutes for us to talk about the SA-CCR method, Mr. Giancarlo, but I want to give you an opportunity for 1 minute or 2 to talk a little bit more about Brexit. In the interest of time, the Chairman had to cut you off, to round out your answer a little bit and end with any sense of whether or not the end-users could be impacted by Brexit.

Mr. GIANCARLO. Well, I think that if London is substantially destabilized as the global processing center for over-the-counter swap derivatives, which is an enormous market, whether measured in notional or even net terms. There is something like 17 to 20 net notional of derivatives cleared in London. That is something that would work its way all the way into the real economy. It would affect interest rates. It would affect everything in the real economy. We are very concerned and very focused, and we have taken a bit of a leadership role on this area at the Financial Stability Oversight Council of alerting them to concerns we have as to the destabilization of London. If that business were to leave London, it is a question of where it would migrate to and how that would be done.

We view the dollar and dollar-based instruments as a global currency and global instruments. We believe our markets are export markets, so we don't seek to dictate where the market servicing reside. If the dollar is truly a reserve currency, then clearing of dollar-based instruments can take place in London. But if London is displaced in that role, then we do have a concern as to where that goes.

Mr. JOHNSON. Is there speculation about the two or three most likely homes?

Mr. GIANCARLO. Well, as the Chairman noted, there certainly have been efforts out of Europe to force relocation of some of that to the continent. London is unique in its skills, in its historic and in its common law-based regime and in its ability to innovate. I am not sure there is any place else in Europe that quite matches it, and we will have a concern as to the migration of that business because American financial institutions play such an outsized role in those markets.

We are also concerned about efforts by our colleagues in Brussels to expand their jurisdiction over institutions outside the EU. As I say, we have a long history of successful oversight of our domestic clearinghouses. Our domestic clearinghouses did not fail during the financial crisis, and some of that was due to strong oversight by the Commission that I have the honor to serve.

We would be very concerned about a new regulator without a track record of regulating these markets suddenly asserting their jurisdiction here in the United States.

Mr. JOHNSON. Yes, I think that is well said.

I do want to shift back to the SA-CCR proposal, and I was impressed by the letter that you and your colleagues sent. I share

your concerns with regard to the proposed rule and its impact on the supplementary leverage ratio.

I was just mystified that you had to send it at all. To me, it is as clear as day that the proposed rule, if not changed, the real negative impact won't be to the big banks or the big boys and big girls that sometimes are made out to be bogeymen, but rather to low volume traders, manufacturers, community banks, producers.

I know you have had some conversations with Vice Chair Quarles. Do you get the sense we are making any progress?

Mr. GIANCARLO. It is not for me to criticize any other agencies. I know how challenging it is to run an agency. But in my conversations with the head of those agencies, they understand the issue. The challenge is in moving a rule change through and the bureaucracy and the challenge of doing that. I can sympathize with that. I know it is. But as I said earlier, the time is now. We have to get this right now. And no other important economy outside the United States has done this gold plating the way we have. There is no need to do it.

Mr. JOHNSON. Very well said. Thank you for your time today, sir.

Mr. Chairman, I yield back.

The CHAIRMAN. Thank you very much, and now I recognize the gentleman from Indiana, Mr. Baird.

Mr. BAIRD. Thank you, Mr. Chairman, and Chairman Giancarlo, we really appreciate you being here today, and appreciate your testimony.

I understand that your tenure with the CFTC is ending in the next few months, so what I want you to know is very important to Hoosiers, and I can assure you that farmers and small business owners greatly appreciate all that you and everyone else at the CFTC has done to ensure that a robust derivatives market is available to Indiana business owners and farmers who want to really manage their risk.

I have heard the statistics about reductions in the FCMs, or future commission merchants, including that nearly half have left the business in the last 2 decades. And so, I am concerned about the lack of FCMs, particularly those that have previously served our small end-users, especially those rural communities and agricultural producers.

So, my question is really two questions here maybe. What role does an FCM play in this derivatives ecosystem, and then what is the impact of fewer FCMs on market participants, especially our farmers and ranchers?

Mr. GIANCARLO. Well, the short answer to your question, FCMs play a vital role in connecting end-users to our marketplaces. They are the gateway from the farmer in his cab who is looking to hedge his harvest time price risk to that futures market. They play a vital role.

And the impact of lessening FCMs is not being felt by large firms, by large manufacturers. DuPont doesn't have a problem getting Goldman Sachs FCM to serve their business. It is the very farmers and ranchers that you are talking about where the diminishment of the FCM business is really playing out.

Ten years ago there were several dozen smaller FCMs that were focused on agriculture customers, serving their needs. Now that

business is increasingly being concentrated in Wall Street banks, and quite frankly, they don't have the skills, they don't have the reach, they don't have the interest in serving those smaller agriculture and commodity producers that need to hedge risks.

You have your finger on a concern that has been a great concern. It has been a bipartisan concern. I mean, I have spoken to Commissioner Berkovitz and Commissioner Behnam, my two Democratic colleagues, as well as Commissioners Stump and Quintenz on this very subject, and it is something we are all very concerned with at the CFTC.

Now, there has been a number of reasons for that. Some of that has been the low interest rate environment. I mean, shame on some of those FCMs that built their business model on a bit of the carry trade on higher interest rates. We have had a prolonged interest rate burn, and that has hurt their business model. Some of it was sheer fraud and manipulation. I am thinking of Revco, I am thinking of Peregrine Financial, and I am thinking of MF Global, for mishandling of their business model that are no longer in business.

But some of it simply is that we are in an age where consolidation and cost mitigates the bigger firms to have the economies-of-scale to operate in this market, and it is very hard for the smaller FCMs to work. And that is one of the reasons why we have created something called Project KISS, to simply look at our rules and see if we can make them more straightforward, less costly, less burdensome, so that smaller players continue to operate these markets and make a reasonable profit to make it worthwhile to continue to compete in the business.

Mr. BAIRD. Thank you. You really have great insight, because you answered my third question as well.

But I might move on to another point. I thought I would give you an opportunity. I know you have made a real effort to get out to know the rural community and the farmers and the ranchers, and so would you want to just make a comment or two about the topics and the agenda that was at the Agriculture Commodity Futures Conference in Kansas, just to give us a feel?

Mr. GIANCARLO. Yes. One of the things we looked at was the dwindling number of FCMs and whether we could do our part to perhaps lessen some of the burden for them.

We also heard from our large agriculture chains at CME that talked a little bit about how their algorithm works, and that is of great concern to a lot of producers, to understand better the markets they participate in.

And then we also talked about the role of these markets in setting price for spot markets. It is interesting and it is something folks don't readily understand. It is actually the derivative markets that set the price that takes place in the cash or the spot market, and that is why the job we do is so vital to make sure our markets serve in a way that is free of manipulation that they provide accurate prices. When a farmer takes his production to the elevator or wherever the point of sale is, he knows the price he is getting is a fair price.

Mr. BAIRD. Thank you very much, and I yield back.

The CHAIRMAN. Thank you, and now I will recognize the gentleman from Kansas, Mr. Marshall.

Mr. MARSHALL. Yes, good morning, Chairman, and if I ask you a question that you have already answered, you will have to forgive me. This has been the typical morning, running back and forth to another committee hearing.

First question: Could you just maybe provide a little bit more information, specific examples of how you are committed at the CFTC to focus on the agriculture sector? Just to communicate a little bit more with my folks back home.

Mr. GIANCARLO. Well, so I will start with our very recent Ag Commodity Futures Conference, which took place in Kansas City, but not just any Kansas City, but Overland Park, Kansas.

Mr. MARSHALL. And the K of that K State was Kansas State.

Mr. GIANCARLO. And the K in that K State—

Mr. MARSHALL. Just in case anyone would think it was Kentucky or some other state that started with a K.

Mr. GIANCARLO. Indeed, it was Kansas State. And we held the first, as far as I understand, we have done a little bit of research, the first time ever we held any CFTC advisory committee meeting outside of Washington with all five Commissioners also in that same K State, Kansas, in Overland Park last month.

But that is just two very formal things. What we tried to do is really readjust the tone at the top. It is understandable that in the wake of the financial crisis and when Dodd-Frank charged the CFTC to implement a lot of reforms of the global swaps market, that the agency's attention went to these big institutional financial markets, based in Wall Street and London. But what I have tried to do is take us back to our roots in agriculture, with, as I say, tone at the top.

The reason I talk about the 27 states that I have now visited, is because as Chairman, it is important to let people know that it is worthwhile for the Chairman. It is worthwhile for other Commissioners. It is worthwhile for all of us at the Commission to keep our focus on agriculture, to understand these issues and how it affects America's commodity producers. And so, it is tone at the top. It is—the tone that comes from a phone call from me down to one of our analysts that is looking at the live cattle contract to say when was the last time the exchange looked at that? What questions are you answering, because I just came back from a meeting—it may have been South Dakota, it may have been in Kansas—with ranchers, and they are concerned about the delivery point. They are worried about other features of the contract. What are we doing? Can I get—can you meet with me next week?

And it is that type of constant asking questions, letting the entire agency know that agriculture remains front of mind for all of us, from the top of the agency all the way down to the bottom.

Mr. MARSHALL. To me, it kind of reminds me of fundamentals in sports. We talk about blocking or tackling, and agriculture is still the blocking, the tackling, the fundamentals of what you all do, and it is so important to my providers back home, my producers, as well you guys as a management tool to almost like an insurance product, in many cases.

Mr. GIANCARLO. Congressman, can I just say one quick thing?

Mr. MARSHALL. Absolutely.

Mr. GIANCARLO. In our seal, you see in the center of our seal a plow, and in our Kansas office, we have in our lobby area that exact same plow which was purchased in a sale on a Kansas farm that was owned by one of our Kansas City employees. And when people come in our office, they have no doubt about the fact that agriculture is front of mind for us, because there is that plow right in the center of our lobby area.

Mr. MARSHALL. That is a great story. It reminds me of a story. My brother has the tractor that my grandfather traded in a team of mules for back in the 1950s, so it is a great part of our history.

Let's go back to the big event at Kansas State University, CFTC event in Kansas City. My producers were asking me about spoofing, and I have to be honest. I wasn't aware at what spoofing was, and maybe you can elaborate what it is, and is it prevalent? How it is impacting the market? Maybe just give me a little insight on spoofing.

Mr. GIANCARLO. Yes. Spoofing is one of a dozen or so practices that have been present in markets since the beginning of markets, and have always been considered to be inappropriate behavior. In some markets, they are banned. In other markets, they are shunned. But spoofing is the practice of a market participant posting a series of buy orders or sell orders that they have no intention of ever fulfilling in. It is just to attract other market participants to move in a certain way, and then as soon as they do, those bids and offers disappear.

Dodd-Frank made them illegal in our markets, and we have pursued that authority with gusto by the agency. I prosecuted a number of spoofers, and take our new authority quite seriously.

Mr. MARSHALL. How common is it?

Mr. GIANCARLO. The more successful we are at prosecuting them, I am hoping it becomes less and less common.

Mr. MARSHALL. Thank you so much. Mr. Chairman, I yield back.

The CHAIRMAN. I thank the Member. Now I will recognize Mr. Bost, for 5 minutes.

Mr. BOST. Thank you, Mr. Chairman.

Mr. Chairman, as we have talked about in length today with you, this Committee has voiced its growing concerns over the European Union's proposed legislation which would attempt to apply the EU law to U.S.-based clearinghouses, which are already very competently supervised by your agency.

I wanted to start by saying thank you, first, for all your work in that area, and this was a concern of mine though back in 2015, and I appreciate your efforts to forge a new consensus on these difficult cross-border issues. But can you share with us more detail about what you understand the joint statement that you signed with the EU on March 13 to mean, and what, if any, action the CFTC or the European Commission agreed to furtherance of this statement?

Mr. GIANCARLO. That statement was done after the European Union adopted its law, and I met with our colleagues in Brussels, and they said, "Well, our law is passed." And I said, "Well, where do we go from here?" And they now have what is called their Level 2 text where they negotiate the technical details. And I said we would like to participate in that process, but we will only partici-

pate on the basis that the starting point for discussions is our 2016 agreement, which we reached with the European Union. It was a notable accomplishment by my predecessor, Tim Massad, and it was one that we believed should stand the test of time. We never expected 18 months later we might be in a position to renegotiate it. And as I told my European colleagues, where I come from, a deal is a deal and you don't get to renegotiate it 18 months later.

But we will participate in those discussions on the basis that the starting point is the 2016 agreement, and that is really what was reflected in the statement that we put out with the Europeans. And it was important to send a signal to our colleagues back at home, our exchanges and our clearinghouses, that while we are good corporate citizens on a global stage, we will always negotiate in good faith. We are clear as to where we think the starting point of the next phase is.

Mr. BOST. Well, one idea that I have long supported is reciprocal recognition of rule-sets, so the market participants on both sides of the regulatory border are afforded similar relief. Do you think that reciprocal recognition of equivalent rules is important to the cross-border regulation framework?

Mr. GIANCARLO. I do, and I believe actually that is what was implicit in the 2009 Pittsburgh Accords where global authorities of the G20 agreed to adopt certain agreed reforms, but to do so in a way that was appropriate for their local jurisdictions, but a way that was comparable with one another. And I believe that where a jurisdiction, be that Europe, Britain, Singapore, Hong Kong, *et cetera*, have adopted the core reforms, done so in a way that is suitable for their market, but provided they reach the same outcomes as our reforms, then we should defer to them for supervision of their markets, and they should defer to us for supervision of our markets. And I extend that to our approach to clearinghouses as well, clearinghouse supervision.

Mr. BOST. Thank you, and thank you for giving testimony today. With that, I yield back.

Mr. GIANCARLO. Thank you.

The CHAIRMAN. Thank you very much, Mr. Bost.

I want to thank you, Chairman, for your excellent, excellent testimony here this morning, and it is a testament to your brilliance, your intellect, your experience. And I want you to know that particularly our Subcommittee may want to have you on call. I am very serious about that, because we are faced with some very, very serious issues, and you have a wealth of experience that will be sorely missed. We are going straight ahead into some very serious issues. We are going to try to get light inside of some of the darkness, so that we can lift particularly agribusiness, this most important industry. It is all of our commodities. It is the food we eat, clothes we wear, our energy, our shelter. All the basics. It is the fundamental arm of our trade policies. And so, it is very important that everyone knows that an important part of this Subcommittee is going to be an ongoing look, taking a look at all the aspects of our financial markets and their disrupters, especially Brexit. And as you can see from the questions on the Committee, this is a primary concern, and we cannot allow our leading market participants and our clearinghouses, our banks, our entire financial sys-

tem that deals with cross-border to be regulated by a foreign entity, as we have discussed here today.

And I also plan to bring to the Subcommittee's attention credit. The credit situation, particularly facing our farmers, biofuels, the energy situation, and developing the rural areas toward prosperity in this country. And this is particularly timely as we know from the meeting at the White House with the President the other week, we are seriously looking ahead now to rebuilding and reenergizing our crumbling infrastructure, and we have to make a centerpiece of that our rural communities.

And of course, all these issues will be based on how we keep our agribusiness up front.

And we are going to also look at the issue of the specific tariffs that are having such an impact on our commodities, cotton, pecans, peanuts, poultry, particularly in China.

Mr. GIANCARLO. Yes.

The CHAIRMAN. These are areas we will look at under the commodities section of what we are doing.

And then, so significant, this whole issue of weatherization, climate change. We have to find out and bring to this Committee the experts, the scientists, to give us their information. We have had, for example, farms in Georgia, my home state, that haven't had a crop since 2015, largely because of the back to back storms. Then we have the problem of trying to find a way to get the help right now. We haven't even gotten the help for the emergency aid to our farmers. It is tied up. We have to be bold and try to look at some other ways to make sure. We may need a private fund, a set aside fund that doesn't have to go through the regular appropriations process, the CR, because it is tied up in political winds. Somebody doesn't like this part, and who suffers? I have farmers down there not getting their aid. This isn't good.

This is a great country. It is America, and we respond to our people, but we have not responded to the needs of our farmers. And we are going to look at this credit situation, and we are going to examine the impact that this is having, and we are going to fix this problem so that we will never be in the shape where we can't get the direct aid financially quickly, and on time to our farmers.

And our mission in this Committee, which I consider a very important Subcommittee, we are the financial arm for the Agriculture Committee, and we are dedicated to bringing God's light on each of these challenges and bringing the help to our nation's agriculture businesses as they need it.

And so, I am very serious about having you on call because of your knowledge, particularly as we reach some of the issues we have discussed here. Thank you again. I thank the Committee.

And with that, I may say under the Rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive additional material, and supplementary written responses from the witness to any questions posed by a Member.

This hearing of the Subcommittee on Commodity Exchanges, Energy, and Credit is adjourned. Thank you for your time.

[Whereupon, at 11:55 a.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUBMITTED LETTER BY HON. DAVID SCOTT, A REPRESENTATIVE IN CONGRESS FROM
GEORGIA

April 30, 2019

Ms. SARAH SUMMERVILLE,
Director,
Office of Minority and Women Inclusion,
U.S. Commodity Futures Trading Commission,
Washington, D.C.

Dear Ms. Summerville:

I write to request information regarding the current representation of minorities and women on staff at the Commodity Futures Trading Commission (“Commission” or “CFTC”) and programmatic efforts and initiatives aimed at increasing diversity, especially in management level positions. Our country’s diversity is one of its greatest assets, and I believe it is important that public and private sector workplaces reflect this diversity. Surveys and interviews with leading businesses and their executives have found that diversity in knowledge, perspectives, ideas and experiences fosters innovation, and has had a positive effect on an organization’s success and financial performance.¹

The CFTC’s Equal Opportunity Employer & Diversity Statement recognizes that workplace diversity and inclusion are critical to the agency’s success,² and espouses a commitment to supporting the recruitment and maintenance of a truly diverse CFTC workforce. Current data suggest that the Commission may be falling short on those commitments, and in turn, undermining the agency’s success. This is especially true with respect to management-level positions. For example, according to the most recent publicly-available CFTC Management Directive 715 Report, as of Fiscal Year (“FY”) 2017, among the CFTC’s 705 employees, 298 were women (42%), 117 were African-American (17%), 69 were Asian-American (10%), 18 were Hispanic-American (3%), and 6 were considered “Other” (1%).³

The employee breakdown is considerably less diverse at management levels. In FY 2017, the CFTC’s 148 senior level employees (Grades 15 and above) included 49 women (33%), 14 African-Americans (10%), 10 Asian-Americans (7%), and 5 Hispanic-Americans (3%).⁴

The underrepresentation of minorities and women at the CFTC is consistent with the findings in various reports that document the lack of diversity in the financial services industry and Federal financial agencies. In 2017, the U.S. Government Accountability Office (“GAO”) published a study on trends in management representation of minorities and women in the financial services industry.⁵ GAO found the following:

- Although overall minority representation increased from approximately 17 percent to 21 percent at financial services firms from 2007 through 2015, representation of African-Americans decreased during this period.
- From 2007 through 2015, representation of women in senior management at financial services firms remained stagnant at 29 percent.

In addition, the Democratic Staff of the U.S. House Committee on Financial Services published a report on diversity at certain financial services agencies in 2015 (“Report”).⁶ The Report found that, at these agencies, minorities and women were

¹Forbes Insights, “Global Diversity and Inclusion: Fostering Innovation Through a Diverse Workforce” (July 2011), <https://i.forbesimg.com/forbesinsights/StudyPDFs/InnovationThroughDiversity.pdf>; Anna Powers, *A Study Finds That Diverse Companies Produce 19% More Revenue*, FORBES, June 27, 2018, <https://www.forbes.com/sites/annapowers/2018/06/27/a-study-finds-that-diverse-companies-produce-19-more-revenue/#2e09fe6a506f>.

²CFTC, Equal Opportunity Employer and Diversity Statement, <https://www.cftc.gov/WebPolicy/EEOSTatement/index.htm>.

³CFTC Management Directive 715 Report for FY17 (Table A1), <https://www.cftc.gov/sites/default/files/2018-06/md715reportfy17.pdf>. The “Other” category includes Native Hawaiian or Pacific Islander, Native American or Alaska Native, and “two or more races.”

⁴CFTC Management Directive 715 Report for FY17 (Table A3–1), available at: <https://www.cftc.gov/sites/default/files/2018-06/md715reportfy17.pdf>.

⁵U.S. Government Accountability Office, *Financial Services Industry: Trends in Management Representation of Minorities and Women and Diversity Practices, 2007–2015*, Nov. 2017, <https://www.gao.gov/products/GAO-18-64>.

⁶Dem. Staff Report, Comm. On Fin. Serv., *The Dodd-Frank Act Five Years Later: Diversity in Financial Services Agencies*, (Nov. 5, 2015), https://financialservices.house.gov/uploadedfiles/fsc_dems_staff_report_-_dodd-frank_five_years_later_-_diversity_in_the_financial_services_

Continued

underrepresented in their workforces and “significantly underrepresented” at the senior management level in proportion to their overall participation rates.

The importance of a diverse and inclusive work environment to recruitment, retention and career development cannot be overemphasized. In February, the CFTC received a \$19 million increase in appropriations bringing its FY 2019 budget to \$268 million. With this appropriations increase, the CFTC is able to augment its diversity and recruitment efforts, and hire individuals for newly-created positions or mission critical positions that have been vacant for some time. With that said, I would like to work with your office on diversity and inclusion initiatives to improve the statistics set forth above. In order to do so effectively, I ask that you respond to this letter by May 17, 2019 with answers to the following questions:

1. What are the CFTC’s current recruitment and retention initiatives to ensure and increase racial, ethnic, and gender diversity and inclusion in its workforce? How does the CFTC track and evaluate the success of these initiatives? How does the CFTC communicate these initiatives throughout the agency, and in particular, to officials in recruitment and hiring positions?
2. Does the CFTC have a strategic plan for encouraging racial, ethnic, and gender diversity and inclusion throughout its workforce? If so, what are the objectives, performance goals, targets and time horizons for diversity and inclusion efforts? Does the plan include mandatory unconscious bias training? What metrics does the Commission use to evaluate the effectiveness of its plan? Under these metrics, how effective has the plan been with respect to diversity and inclusion?
3. Do the CFTC’s current initiatives include career planning assistance for and development of lower to mid-level employees (grades 14 and below) aimed at advancement within the agency? If so, do these initiatives endeavor to promote diversity at the management level?
4. In addition to workforce diversity and workplace inclusion, the OMWI offices mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) are responsible for increasing the participation of minority- and women-owned businesses in contracts for services with the agencies and assessing the diversity policies and practices of entities that are regulated by the agencies. Does the CFTC currently have a program for increasing the participation of minority- and women-owned businesses that enter into contracts for services with the agency? If so, please describe the program, what metrics are used to evaluate its effectiveness, and how effective the program has been under any such metrics.
5. The CFTC’s OMWI is not mandated by the Dodd-Frank Act. Would statutory establishment of the CFTC’s OMWI, putting it on par with the OMWIs of the other financial services agencies, better enable the CFTC’s OMWI to increase workforce diversity, workforce inclusion, and participation of minority and women owned businesses in contracts for services with the CFTC? If so, how?
6. How has the OMWI performed compared to the OMWIs of the other financial services agencies? If the performance is different, what accounts for the differences?
7. How will the CFTC’s OMWI benefit from the recent increase in the CFTC’s annual appropriation? Will OMWI be able to fund new diversity and inclusion initiatives? If so, what are they?

agencies - final.pdf. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) and the Housing and Economic Recovery Act of 2008 (“HERA”) included provisions to address the lack of women and minority representation in the public and private sectors of the financial services industry. Section 342 of the Dodd-Frank Act directed the establishment of Offices of Minority and Women Inclusion (OMWIs) across most of the Federal financial services agencies, and required the OMWIs to develop standards to promote diverse employment within the agencies, increase participation of minority and women-owned businesses that enter into contracts for services with the agencies, and assess the diversity policies and practices of entities that are regulated by the agencies. Pursuant to this section, the agencies required to establish an OMWI are: (A) the Departmental Offices of the Department of the Treasury; (B) the Federal Deposit Insurance Corporation; (C) the Federal Housing Finance Agency (FHFA); (D) the 12 regional Federal Reserve Banks; (E) the Federal Reserve Board of Governors; (F) the National Credit Union Administration; (G) the Office of the Comptroller of the Currency; (H) the Securities and Exchange Commission; and (I) Consumer Financial Protection Bureau. Pub. L. No. 111–203, § 342, 124 Stat. 1376, 1541 (2010). Similarly, Section 1116 of HERA required the FHFA to establish an OMWI or a functional equivalent. Pub. L. No. 110–289, § 1116 (2008). The CFTC’s OMWI is not required by the Dodd-Frank Act.

Thank you for your attention to this important matter.
Respectfully,



ROSTIN BEHNAM.

SUBMITTED QUESTIONS

Response from Hon. J. Christopher Giancarlo, Chairman, Commodity Futures Trading Commission

Questions Submitted by Hon. Jefferson Van Drew, a Representative in Congress from New Jersey

Question 1. I just want to take a moment to urge you and your fellow Commissioners to coordinate and harmonize regulatory programs when possible, with other regulators where there may be shared jurisdiction—like the SEC. If you can work together not only will it ease burdens on market participants, but it will make markets more efficient and ultimately make our markets safer and more secure.

Can you speak a bit on this issue, where there is overlap in is regulatory authority, and what steps the CFTC is taking to proactively work with other regulators, such as the SEC to harmonize rules and procedures in a clear and consistent manner?

Answer. Early on in my Chairmanship, Chairman Clayton and I committed to having our agencies work more closely together on issues of regulatory enforcement and rulemaking, and it set a tone from the top. Cooperation today between the Securities and Exchange Commission (SEC) and the CFTC in matters of enforcement work, virtual currencies, Dodd-Frank rule harmonization, and disaster recovery testing and planning and more is excellent.

Most recently, CFTC staff and SEC staff have worked closely to harmonize final rules regarding capital, margin, and segregation for security-based swap dealers with the corresponding requirements for swap dealers. By working to align the regulatory requirements for swap dealers and security-based swap dealers, the agencies hope to minimize unnecessary regulatory burdens on joint registrants caused by divergent rule sets and promote a unified market for both swaps and security-based swaps trading. As the CFTC moves forward to finalize its own capital regime for swap dealers, staff will continue to coordinate with their SEC counterparts to minimize differences and harmonize the two regulatory frameworks.

Question 2. Your 2017 Roadmap to improve swaps data reported to the Commission indicated you planned to make two or three interrelated rule proposals. You recently released one of those proposals and indicated in your written testimony that it will be impacted by the future release of two further proposals. Why weren't all three proposals published at the same time or in a single rulemaking?

Answer. The 2017 Roadmap review focused on three areas of swaps reporting: (i) verifying swap data accuracy by swap counterparties; (ii) reevaluating the rules for reporting swap data to swap data repositories; and (iii) right-sizing and harmonizing the data fields that the Commission requires counterparties to report. Each of these areas involves distinct legal, policy, and practical considerations. For instance, the goal of real-time public reporting is price transparency for market participants, while the goal of regulatory reporting is making sure the Commission has the right data to oversee the swaps market. We believe three separate proposals will permit a thorough analysis of each area that will be manageable for the public to comment on.

The Commission chose to release the first of the three anticipated proposals now, in order to provide market participants and the public with ample time to review and provide feedback as part of the rulemaking process. The recent proposal is the least dependent on the other proposals of the three anticipated rulemakings, with most of the proposed amendments and additions being unaffected by any other planned rulemakings. As discussed in the proposal, the Commission anticipates reopening the comment period for the first proposal when the other proposals are released, in order to provide market participants and the public with the opportunity to comment on the three proposals collectively.

Question 3. One challenge with incorrect data on swaps is the unknown. That is, it is difficult to know if the new prescriptive requirements you have for verifying data will be worth the additional costs for market participants, including end-users. In your 2017 Roadmap, you suggested that part of the problem is the number of data fields that the rules require to be reported. Should the focus of your reforms

be on implementing consistent data elements in fewer fields than originally required, which could reduce costs and instances of what may be seen as “incorrect” data?

Answer. The 2017 Roadmap proposed to advance several complementary swaps data reporting initiatives, including both right-sizing the number of data elements and implementing a verification solution. The Commission expects the future release of proposals to address the goal of right-sizing the number of data elements. At the same time, the Dodd-Frank Act requires swap data repositories (SDRs) to confirm the accuracy of data with both swap counterparties. The 2017 Roadmap therefore allowed CFTC staff to identify the most efficient and effective solution for counterparty(ies) to meet the Dodd-Frank verification requirement.

When the CFTC solicited comments on the 2017 Roadmap, commenters overwhelmingly told us that they did not want phased implementations; that implementation costs could be reduced by simultaneously implementing the initiatives detailed in the Roadmap. The recent verification proposal thus seeks comment on implementing changes to the verification process with the expected future interrelated rule proposals, including the expected proposal to right-size the number of data elements. One drawback to simultaneously implementing complimentary solutions is the “unknown” that you reference; that it is difficult to attribute data improvements to the individual proposed changes.

The Commission is expecting to receive many comments on the recent verification rulemaking. We expect to receive comments on the costs and benefits of the proposed verification solution. We will seriously consider those comments to ensure that the final rule represents the most efficient and effective verification solution for counterparties to meet that Dodd-Frank requirement.

Question Submitted by Hon. Stacey E. Plaskett, a Delegate in Congress from Virgin Islands

Question. In the United States, single stock futures are margined under a strategy-based margin regime, with a minimum margin of 20% for stand-alone positions. Meanwhile, competing products such as cleared stock loan are margined under a risk-based margin regime, and over the counter equity swaps are margined at 15%.

What is your perspective on the use of risk-based margin for single stock futures?

Answer. The statute requires a joint rulemaking with the Securities and Exchange Commission (SEC). We have been in discussions with the SEC and are making progress.

The Securities Exchange Act of 1934 (Exchange Act) authorized the Board of Governors of the Federal Reserve System to delegate its authority over margin requirements for security futures products to the CFTC and SEC. Pursuant to such delegated authority, any change to margin requirements for such products requires joint action by the two Commissions in accordance with certain conditions under the Exchange Act. CFTC and SEC staffs are making progress on amending the regulations that currently govern margin for security futures in order to lower the minimum margin requirement from 20% to 15% of current market value. This regulatory action by both Commissions would reflect a constructive effort to harmonize security futures margin requirements with the margin required for comparable products.

Questions Submitted by Hon. Angie Craig, a Representative in Congress from Minnesota

Question 1. I appreciated hearing in your testimony that you took time to visit several producers, including in my home State of Minnesota. I understand the Agricultural Advisory Committee meeting you held in conjunction with your Agriculture Futures Conference at Kansas State discussed Futures Commission Merchants or “FCMs”.

The number of FCMs has been in decline for more than 10 years. With a smaller number of FCMs with which to do business, farmers, ranchers and other derivative market end-users face the prospect of increased consolidation within the industry—and potentially higher prices as a result as they manage their risks.

What did you learn about how our agricultural end-users view increased concentration among FCMs at the Agricultural Advisory Committee meeting? Are you considering any policy changes to address the issue? Do you have any recommendations for us on this topic? What are some of the reasons for the increased consolidation within the industry? What can we do to incentivize new entrants or greater competition? Are there any larger market forces at play that might have contributed to the decline of FCMs and the increased concentration of a few big players in this space?

Answer. As I mentioned during our Agriculture Advisory Committee meeting in Kansas, it is important that the CFTC “ensures that the deepest and most liquid

agricultural markets in the world remain a place where farmers, ranchers, elevators, producers and processors meet to manage risk and discover prices well into the future.” Our commitment to that principle included a discussion with our advisory committee members—end-user representatives—on the future of FCMs. CFTC staff began the discussion with a detailed presentation on the steady decline in the number of FCMs and what that means for end-users seeking to access risk mitigation markets.

There are a number of reasons, including market forces and regulatory policy that have shifted the FCM landscape. Some Committee Members noted that the CFTC’s rules related to ownership and control, recordkeeping, and capital impose regulatory burdens fall disproportionately on smaller FCMs that traditionally serve agricultural and small manufacturing interests more harshly than bank-affiliated FCMs with more substantial resources. Other compliance costs, including staff and technology, particularly in the cybersecurity space, have increased over recent years. Under my leadership, the CFTC has reviewed our regulations in our “Project KISS” initiative, with the goal of reducing duplicative or unduly burdensome regulations. Part of this workstream has included trying to “right size” our rules for small FCMs so that they do not face the same obligations as larger institutions.

Related, the decreasing interest rates over the last several years have not caught up to the late 1990s/early 2000s. FCMs are earning less interest income from the investment of customer funds. These low interest rates make FCMs less profitable. FCMs are forced to either increase commission costs or operate with a decreased revenue stream. As a result, many FCMs have had to increase commission costs to customers, causing the smaller FCMs to become less price competitive than some of the larger FCMs with greater volumes. This also acts as a barrier of entry to new FCMs, as they must also charge these higher commission costs. Typically the larger FCMs have multiple lines of business and can “carry” the derivatives line of business despite the narrow profit margin.

We remain committed to ensuring that American derivatives markets are accessible and reliable for America’s farmers and ranchers. This important work includes evaluating the FCM landscape and providing the necessary incentives for intermediaries to offer their services to commercial end-user customers.

Question 2. Dairy farmers in my district have raised some concerns about the prices in the cash market for cheddar cheese. Normally there is about a 3¢ spread in the price per pound between blocks and barrels, but over the last year producers and processors in my district have seen that spread widen to as high as 25¢. The most recent spread between barrel and block futures ran between 5¢ and 10¢. This spread has an impact on the price of Class III milk futures, which in-turn impact the Federal Milk Marketing Order formula.

What has the Commission has done to make sure cheese and milk futures are trading fairly and that troubling spreads like these aren’t a sign of manipulation?

Answer. As part of its mission to ensure that derivatives markets accurately reflect the forces of supply and demand and are free of disruptive activity, the CFTC conducts market surveillance of trading in futures, options, and swaps. In addition, it conducts research on major economic issues related to the derivatives markets and collects and reviews market data.

The Class III milk market is the largest dairy contract at the Chicago Mercantile Exchange and cheese prices are an influence on Class III milk final settlements. The spot call trade is an indicator of the most current supply and demand picture in the market and price spreads between block and barrel cheese are watched closely.

Block-Barrel spread is currently at 4.75¢/lb premium for Blocks. This is below the 10¢/lb average for the last couple of years and below the 30¢/lb highs of last June. U.S. cheese markets continue to be burdened with record large cheese inventories. Stocks of cheese now stand just short of 1.4 billion lb., a similar level to a year ago, at an all-time record high level. This supply has put significant downward pressure on cheese prices that have only recently begun to rebound.

The agency will continue to monitor ongoing talks around the United States-Mexico-Canada Agreement (USMCA), which will open up market opportunities for the U.S. dairy industry and producers, as well as other supply and demand factors that influence the price of cheese.