



October 7, 2022

Via Electronic Mail

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

Re: **Request for Information on Climate-Related Financial Risk (Release No. 8541-22)**

Ladies and Gentlemen:

The Bank Policy Institute¹ appreciates the opportunity to comment on the Request for Information on Climate Related Financial Risk published by the U.S. Commodity Futures Trading Commission on June 2, 2022 (the "CFTC RFI"),² which aims to better inform the CFTC's understanding and oversight of climate-related financial risk as pertinent to the derivatives markets and underlying commodities markets.

BPI supports the CFTC's efforts to better understand climate-related financial risks as well as the Commission's climate leadership exhibited to date, including among other things through the CFTC's recent Voluntary Carbon Markets Convening, establishment of the CFTC's Climate Risk Unit, establishment of the Climate-Related Market Risk Subcommittee of the CFTC's Market Risk Advisory Committee, and the CFTC's participation in the climate-related activities of the Financial Stability Oversight Council and other domestic and international bodies. Our members are likewise actively evaluating climate-related financial risks and their potential impacts, as well as engaging with various regulatory agencies, clients and other stakeholders.

Given the vast amount of climate-related work and outputs coming from the official sector, our comments are directed to one key concern, which pertains primarily to questions 2, 7-9, and 34 of the CFTC RFI. In particular, BPI seeks to emphasize the importance of any regulation adopted by the CFTC being developed harmoniously with, and taking into account the actions of, other U.S. federal financial regulators so as to avoid unnecessary regulatory overlap and burden. In establishing the statutory mandates of the different U.S. federal financial regulators, Congress has expressed a clear intention to encourage inter-agency coordination and regulatory harmony and to allocate regulatory responsibility according to distinct spheres of jurisdiction and expertise. Consistent with the CFTC's past efforts in pursuit of this regulatory harmonization and inter-agency coordination, we urge the CFTC to pay heed to, and ensure any regulatory action by the CFTC is appropriately tailored taking account of the

¹ The Bank Policy Institute (BPI) is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ nearly 2 million Americans, make nearly half of the nation's bank-originated small business loans and are an engine for financial innovation and economic growth.

² Request for Information on Climate Related Financial Risk, 87 Fed. Reg. 34856 (Jun. 8, 2022).

Congressional allocation of principal prudential oversight responsibility for swap dealers that are prudentially regulated to the U.S. prudential banking regulators.

A. Multiple U.S. financial regulatory agencies are considering climate-related financial risks and regulatory action with regards to climate change.

Various other U.S. federal financial regulators are already pursuing climate-related actions, which should be factored into and accounted for in the CFTC's consideration of any potential regulatory action. These include actions by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission.

The OCC and FDIC have both issued proposed principles for climate-related financial risk management for entities within their respective regulatory remits. In December 2021, the OCC issued a bulletin proposing Principles for Climate-Related Financial Risk Management for Large Banks ("OCC Bulletin 2021-62"), in preparation for the issuance of subsequent climate-risk guidance.³ There are clear similarities in subject matter as between the CFTC RFI and what is being already considered by the OCC in their oversight of climate risk for large banks. For example, OCC Bulletin 2021-62 iterates similar principles regarding the management of various types of climate-related risks.⁴ Furthermore, request 4 from OCC Bulletin 2021-62 explicitly focuses on the types of tools banks are using to adapt their risk management frameworks to incorporate climate-related risks, similar to request 8 from the CFTC RFI.⁵

The FDIC's proposed Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions ("FIL-13-2022") is very similar to the OCC's risk management proposal. As with OCC Bulletin 2021-62, FIL-13-2022 covers a range of climate-related information that overlaps with the types of information requested in the CFTC RFI. For example, with regard to the CFTC's consideration of climate scenario analysis, the FDIC principles contain an entire sub-section regarding performance of such analyses.⁶ They indicate that "management should develop and implement" such frameworks "in a manner commensurate to the institution's size, complexity, business activity, and risk profile" and "include clearly defined objectives."⁷

The FDIC principles also include a discussion of how banks should address various types of climate-related risk, substantially overlapping with the question in CFTC RFI request 9.⁸ In addition, request 4 in FIL13-2022 specifically contemplates regulation of large financial institutions' risk management practices with regards to climate change.⁹ Overlap and similarities between the CFTC RFI and FIL-13-2022 are evident in several other areas of the publications, including considerations for capital planning, liquidity buffers/risk management, and underwriting and

³ OCC Bulletin 2021-62 (Dec. 16, 2021), available at <https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-62.html>.

⁴ Compare *id.* at 3-5 (outlining principles for banks to incorporate climate-related financial risk into their "existing risk management framework[s]" including climate scenario analysis and noting the various risk categories (credit, liquidity, operational, legal/compliance, etc.) associated with climate change) with CFTC RFI, 87 FR 34856, 34859, available at <https://www.cftc.gov/sites/default/files/2022/06/2022-12302a.pdf> (asking how registered entities may need to adjust risk management frameworks for climate change "including, but not limited to...scenario analysis, stress-testing...and/or enterprise risk management programs" and how CFTC regulations and/or guidance "could better address climate-related financial risk, including credit risks, market risks, counterparty risks, and other financial and operational risks").

⁵ CFTC RFI request 8 asks "[h]ow might registered entities and/ or registrants need to adapt their risk management frameworks...to address climate-related financial risk," whereas request 4 from the OCC Bulletin 2021-62 examines "[w]hat specific tools or strategies have banks used to successfully incorporate climate-related financial risks into their risk management frameworks." This difference underscores that many banks, including in BPI's membership, have already undertaken significant effort to incorporate climate-related risks into their risk management and decision-making.

⁶ Compare CFTC RFI, *supra* note 3 at 34859 with FIL-13-2022, 87 FR 19507, 19510, available at <https://www.fdic.gov/news/board-matters/2022/2022-03-29-notational-fr.pdf>.

⁷ FIL-13-2022, *supra* note 5 at 19510.

⁸ Compare CFTC RFI, *supra* note 3 at 34859 with FIL-13-2022, *supra* note 5 at 19510-11.

⁹ FIL-13-2022, *supra* note 5 at 19511.

portfolio monitoring. As such, there is a substantial risk of regime proliferation to the extent financial regulatory agencies do not work together to harmonize their regulations.

In addition, the Federal Reserve announced on September 29, 2022 that they would be undertaking a pilot climate scenario analysis exercise with six of the nation's largest banks. This exercise is expected to run over the course of 2023 with further details to be published.¹⁰

Similarly, the SEC has proposed requirements for climate-related disclosures through its Notice of Proposed Rulemaking released in March 2022, including, among other things, requirements to disclose climate risk oversight, use of scenario analysis, and various emissions metrics.¹¹ In doing so, the SEC has recognized that the U.S. Environmental Protection Agency ("EPA") has already issued regulations governing greenhouse gas emissions measurement and reporting by various (though not all) public companies. Accordingly, various aspects of the SEC's proposed requirements are influenced by and in keeping with the EPA's greater substantive expertise on environmental matters.¹² A separate proposal in May 2022 included requirements for various ESG-related disclosures from investment companies and investment advisers, including special consideration of climate-related matters.¹³ In this proposal, the SEC noted that the March and May rules may impose two sets of obligations on certain companies, namely business development companies.¹⁴ With that said, the SEC observed that it believes the rules will be complementary, implying in its requests for comment that the two rules should not both apply to the same entity.¹⁵

As the examples above demonstrate, multiple U.S. federal financial regulators are considering climate-related financial risks and potential regulatory actions related to climate change. In various respects, such U.S. federal financial regulators have recognized the need for harmony and coordination to prevent duplicative regulation and to appropriately allocate regulatory responsibility and resources in light of differences in core mandates and expertise. As discussed further below, BPI wishes to emphasize the importance of this theme of regulatory coordination and harmonization also guiding the CFTC in its consideration of climate-related financial risks and potential climate-related regulatory action.

B. The CFTC's actions should consider the actions of other U.S. financial regulatory bodies with regards to climate change.

As noted in the CFTC RFI, climate-related financial risks have the potential to impact, directly or indirectly, Commission registered entities and other derivatives market participants, as well as derivatives markets and underlying commodities markets themselves. It is thus appropriate that the CFTC is giving consideration to the impacts of climate-related financial risks within the scope of the Commission's statutory mandate and authority. BPI does not seek to dissuade the CFTC from exercising its authority in areas within the scope of the CFTC's statutory mandate; however, BPI seeks to emphasize the importance of any regulation adopted by the CFTC being developed harmoniously with, and taking into account the actions of, other U.S. federal financial regulators so as to avoid

¹⁰ Board of Governors of the Federal Reserve System press release, "Federal Reserve Board announces that six of the nation's largest banks will participate in a pilot climate scenario analysis exercise designed to enhance the ability of supervisors and firms to measure and manage climate-related financial risks", available at <https://www.federalreserve.gov/newsevents/pressreleases/other20220929a.htm>.

¹¹ Securities and Exchange Commission Proposed Rule, "The Enhancement and Standardization of Climate-Related Disclosures for Investors", RIN 3235-AM87, available at <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>

¹² See *id.* at 150, 175, (allowing the use of EPA-established methodologies in complying with the SEC's proposed emissions disclosures and defining certain fundamental concepts, such as "greenhouse gases," in alignment with the EPA definition).

¹³ Securities and Exchange Commission Proposed Rule, "Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices", RIN 3235-AM96, available at <https://www.sec.gov/rules/proposed/2022/ia-6034.pdf>

¹⁴ *Id.* at 89.

¹⁵ *Id.* at 89, 110 (asking whether commenters agree that the proposed requirements in the two rules would be complementary if both adopted and asking, if not, whether one or the other rule should apply).

unnecessary regulatory overlap and burden. We believe such an approach is entirely consistent with the CFTC's goals in issuing the CFTC RFI, including to ensure that "market participants are equipped to manage their risks from increasingly severe and frequent weather events as well as the transition to a net-zero, low-carbon economy" as recently observed by Chairman Behnam.¹⁶

In this regard, BPI recognizes that whereas for certain entities the CFTC may be the sole or principal U.S. federal financial regulator (for example, with respect to a designated contract market or swap execution facility), many other Commission registered entities are dually registered with other U.S. federal financial regulators and/or subject to multiple sources of regulation and oversight (for example, a swap dealer may also be registered with the SEC as a security-based swap dealer and/or subject to oversight by a U.S. prudential banking regulator).

With respect to the latter category of dually registered and regulated entities, we note that the CFTC has clear experience with and a well-established history of inter-agency coordination and efforts in pursuit of regulatory clarity and harmonization. The regulation of over-the-counter derivatives pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") provides a number of clear examples in this respect. At the threshold level of definitional clarity, Section 712(d) of the Dodd-Frank Act directed the CFTC and the SEC, in consultation with the Fed, to engage in joint rulemaking to define certain terms such as the terms "swap", "security-based swap", "swap dealer", and "security-based swap dealer." The resulting joint products release and joint entities release have been instrumental in providing regulatory clarity to market participants in terms of the allocation of regulatory responsibility as between the CFTC and the SEC under Title VII of the Dodd-Frank Act. Similarly, Section 731 of the Dodd-Frank Act, adopting the registration requirement for swap dealers, clearly evidenced a Congressional intention to allocate certain areas of swap dealer regulation to the U.S. prudential banking regulators for swap dealers that are subject to prudential regulation. Thus, with respect to swap dealers that are subject to prudential regulation, it was the U.S. prudential banking regulators that were mandated, in consultation with the CFTC and the SEC, to adopt rules regarding swap dealer capital and margin requirements. More recently, the CFTC's 2020 cross-border swaps rulemaking reflects, in many respects, an effort to achieve greater regulatory harmonization as between the SEC's security-based swap and the CFTC's swap regulatory regimes, which the Commission described as "expected to reduce undue compliance costs for market participants." As these examples illustrate, in various contexts, Congress has spoken with a clear voice and evidenced a clear intention to encourage inter-agency coordination and to allocate responsibility for certain matters as between the different U.S. federal financial regulators according to their distinct statutory mandates and expertise. As noted by Commissioner Pham in her concurring statement to the CFTC RFI, this reflects that the CFTC is "not, for instance, a prudential banking regulator...nor [is it] a primarily disclosures-based market regulator like the SEC."

Against this backdrop, BPI notes that, writ large and approached with a high level of generality, certain of the topics and questions encompassed in the CFTC RFI could be understood as indicative of broad prudential oversight concerns and regulatory tools that are not specific to CFTC registrants or derivatives market participants. Indeed, as discussed above in Part A of this comment, certain of the topics and questions encompassed in the CFTC RFI, such as the discussion of risk management requirements, scenario analysis, stress testing, and margin model adjustments, reflect areas of overlapping concern with other U.S. federal financial regulators that are or will likely be the subject of regulatory consideration and action on the part of such other U.S. federal financial regulators. To be clear, BPI recognizes and acknowledges that such topics also form part of the CFTC's remit and existing regulatory toolkit, and indeed are currently employed in various contexts specific to CFTC-regulated products and entities. For example, CFTC-registered swap dealers are required to maintain a risk management program with respect to their swaps activities, and in certain circumstances are required to provide scenario analysis with respect to individual swap transactions offered to counterparties. Similarly, non-prudentially regulated swap dealers are subject to the margin rules promulgated by the CFTC, including regarding the approval of proprietary margin models.

¹⁶ Remarks of Chairman Rostin Behnam at the July 28, 2022 Financial Stability Oversight Council Meeting, *available at* <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabeenam25>.

However, in certain contexts Congress has evidenced a clear intention to require inter-agency coordination and/or allocate principal regulatory responsibility and oversight, particularly with respect to matters of prudential concern, to a U.S. federal financial regulator other than the CFTC. In this regard, BPI's members include a range of Commission-registered swap dealers that are also subject to regulation and oversight by a U.S. prudential banking regulator. Absent coordination and attention being paid to harmonization as between the requirements of the CFTC and such other U.S. federal financial regulators, duplicative and/or contradictory regulatory obligations have the potential to impose unnecessarily increased compliance costs on such entities, which increased costs may ultimately result in increased prices for derivatives market participants and end-users.

BPI wishes to emphasize the importance of any regulation adopted by the CFTC being developed harmoniously with, and taking into account the actions of, other U.S. federal financial regulators so as to avoid duplicative regulation. In particular, consistent with the CFTC's past efforts in pursuit of regulatory harmonization and coordination, we urge the CFTC to pay heed to, and ensure any regulatory action by the CFTC is appropriately tailored to avoid unnecessary regulatory overlap and conflict and in light of, the Congressional allocation of principal responsibility for prudential regulation and supervision to the U.S. prudential banking regulators for those swap dealers that are subject to oversight by a U.S. prudential banking regulator.

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BPI appreciates the opportunity to comment on the request for information regarding this important issue. We thank the CFTC for its consideration. We and our members stand ready to engage on this topic further.

If you have any questions, please contact the undersigned by phone at (202) 737-3536 or by email at Lauren.Anderson@BPI.com.

Respectfully submitted,



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