U.S. Chamber of Commerce

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

Re: Request for Comment on the Use of Artificial Intelligence in CFTC-Regulated Markets

Dear Mr. Kirkpatrick:

The U.S. Chamber of Commerce (the "Chamber") writes to provide our comments on the Commodity Futures Trading Commission ("CFTC") Request for Comment ("Request") regarding the use of artificial intelligence ("AI") in markets regulated by the CFTC. The Chamber appreciates the CFTC soliciting views from the public about the evolving nature of AI and the implications of AI use in the financial markets.

As a threshold matter, it is critical for the CFTC and other regulators to recognize that regulated entities have been using AI technology in different capacities for decades. Many of the questions surrounding AI – and concerns over risks expressed by government authorities – have been driven by the more recent proliferation of generative AI. The Chamber believes it is vital that any initiatives to address AI through formal regulations or regulatory guidance should not inappropriately disincentivize the use of a technology that has been efficiently and appropriately deployed by many regulated entities for years.

The Chamber has been a leading voice and an active participant in public policy discourse regarding the regulatory treatment of AI. In 2022, the Chamber formed the Commission on Artificial Intelligence, Competitiveness, Inclusion, and Innovation ("Commission"). This independent Commission, chaired by former Representatives John Delaney and Mike Ferguson and composed of academics, business leaders, ethicists, and technological leaders, met with experts of varying opinions throughout the United States, European Union, and the United Kingdom. The

Commission's report and recommendations were a cumulation of over 14 months of work and were released in March 2023.[1]

The Commission provided policy recommendations on the four key policy areas of regulation, workforce, global competitiveness, and national defense. Relevant to the current CFTC Request, the Commission pointed out that many AI activities are already covered by existing laws and regulations. The Commission advised policymakers to take a gap-filling, risk-based approach when addressing regulatory uncertainty around AI and to focus on five pillars for regulation: efficiency, neutrality, proportionality, collegiality, and flexibility.

Current CFTC rules and regulations already set forth a comprehensive regulatory scheme that is technology neutral. This regulatory framework has successfully adapted to many new technologies over the years. Any future regulation should be based on a clearly identified need, taking into account existing requirements. In this regard, the CFTC's oversight and regulation of AI in CFTC-regulated markets should continue to focus on the outcome, risks, and real-world application of the use of AI – rather than the technology itself. The CFTC should also use caution when seeking to adopt a definition of AI for regulatory purposes. A definition that is too broad risks encompassing other technologies that do not have the same risk profile as certain AI applications. Yet, a definition that is too narrow will likely become obsolete over time as AI continues to develop as a technology. Again, the focus by the CFTC and other agencies should be on outcomes and whether markets remain efficient or problems such as fraud can be adequately addressed – regardless of the underlying technologies deployed by regulated entities.

We encourage the CFTC to convene public roundtables to ensure there is a robust dialogue between industry and regulators surrounding the use of AI technology. Such dialogue is essential to provide clarity for all parties on issues and matters which may need to be addressed.

The Chamber's views on these matters are discussed in further detail below.

[1] U.S. Chamber of Commerce Technology Engagement Center. Commission on Artificial Intelligence Competitiveness, Inclusion, and Innovation, Report and Recommendations (2023), available at https://www.uschamber.com/assets/documents/CTEC_AICommission2023_Report_v6.pdf.

October 2023 Executive Order and Definition of AI

In October 2023, President Biden issued an Executive Order ("EO") outlining the Administration's priorities to promote the responsible development of AI technology.[2] While the Chamber appreciates some of the general priorities of the EO, the EO should not be viewed as a license for independent agencies – such as the CFTC – to promulgate new regulations based upon theories and assumptions about AI that are not grounded in facts.[3] The CFTC is not a regulator of technology and its statutory obligations are confined by its authority under the Commodity Exchange Act ("CEA") and the CFTC's mission to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation.

The CFTC should refrain from seeking to define AI on its own in a regulatory context. Even if the CFTC is able to develop a definition that seems reasonable upon its adoption, it would only be a matter of time before that definition becomes out of date as the underlying technology would likely eclipse its parameters. This is especially important to consider as it seems highly unlikely that the development of AI will stall or slow down in the coming years.[4]

At the same time, if the CFTC were to conceptualize a definition of AI that was extremely broad, it would loop in other longstanding technologies that by no objective measure would create a risk to the derivatives markets on their own. A recent example of this kind of regulatory folly is the proposed rule from the Securities and Exchange Commission ("SEC") regarding "predictive data analytics."[5] While ostensibly an effort to address risks posed from AI or similar technologies, that proposal's definition of "covered technology" would effectively prohibit brokers and investment advisers from using *any* technology to service customers. As one SEC commissioner pointed out, the proposal would go so far as to regulate or even prohibit the use of Excel spreadsheets in connection with customer accounts.[6] A similar rulemaking effort by the CFTC would

[2] Executive Office of the President, Sec. 8a(a) of the Executive Order on the Safe, Secure and Trustworthy Development and Use of Artificial Intelligence (October 30, 2023), available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/.
[3] U.S. Chamber of Commerce, AI Executive Order Addresses Important Priorities but Needs More Work, (October 30, 2023), available at https://www.uschamber.com/technology/ai-executive-order-addresses-important-priorities-but-needs-more-work.
[4] Time Magazine, *4 Charts That Show Why AI Progress Is Unlikely to Slow Down* (November 6, 2023), available at https://time.com/6300942/ai-progress-charts/.
[5] Securities and Exchange Commission, Proposed Rule on Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, (July 26, 2023).
[6] SEC Commissioner Mark Uyeda, Statement on the Proposals re: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers. (July 26, 2023), available at https://www.sec.gov/news/statement/uyeda-statement-predictive-data-analytics-072623.

be catastrophic for the derivatives markets which are driven so much by underlying market and economic data that can only be analyzed by advanced technological tools.

The CFTC Should Adopt a Principles-Based Approach Towards AI

A more reasonable – and effective – approach would be for the CFTC to continue to employ a principles-based approach that focuses on outcomes for market participants and regulated entities instead of trying to regulate specific technologies. For example, the CFTC already prohibits fraud and penalizes bad actors who engage in fraud. Regardless of whether fraud occurs because of the actions of a human or because of the decisions of an AI model that someone trained to commit fraud, or even if the model taught itself to engage in fraudulent activity, it does not fundamentally alter the outcome and the fact that fraud occurred, and it is already illegal. Existing regulations address concerns related to AI without the need for new definitions of certain technologies or other rules that may have more costs than benefits.

Taking a technologically neutral approach would be prudent as it would allow for the continued development of advanced technologies to further strengthen America's position as the global leader in AI, while still enforcing our existing regulations to protect market participants.

The CFTC Should Consider the Benefits of AI Alongside Its Risks

The Request is notable in that it focuses heavily on the potential risks associated with AI while spending comparatively little effort to discuss or solicit feedback on the potential benefits of AI to the derivatives markets. In fact, the Request dedicates an entire section (Section III) towards discussion and questions regarding AI risks, while mention of AI's benefits are largely relegated towards passing mentions in the introductory section and conclusion of the Request.

The CFTC should leverage the expertise and frameworks of regulated entities already using AI to inform any potential regulation and risk management. The potential benefits should not be overshadowed by the risks, which should be considered with respect to those that are material. Existing risk management processes can be utilized in many cases, and emerging risks can be monitored and overseen in the context of existing regulatory frameworks.

In some ways, the Request is a missed opportunity by the CFTC to better understand how AI can further promote the integrity, resiliency, and vibrancy of the U.S. derivatives markets. The derivatives markets – and the broader markets in general – are unique in the sense that speed and accuracy are critical to their proper functioning. Adequate compliance systems employed by regulated entities are also important to ensure that trust and transparency remain hallmarks of the capital markets and make the U.S. the premier destination for global capital. AI can be a major contributing technology on all of these fronts. Regulators should not reflexively treat AI as an outlier risk that must be controlled. Doing so would minimize the benefits and efficiencies that AI is likely to bring to the markets in the coming years.

Further Consultation with the Public

To fully understand the relationship between AI and the derivatives markets and how regulated entities use AI for compliance, risk management, and trading, the Chamber recommends that the CFTC convene a series of public roundtables that encompass a wide range of organizations and views regarding AI. Certain divisions and offices within the CFTC could hold sessions to focus on issues under their specific jurisdiction to have a more robust conversation about AI and regulated entities. The back-and-forth and expert insight brought to roundtables can help elicit greater awareness on behalf of the CFTC on all the issues stemming from the use of AI.

Conclusion

The Chamber appreciates this opportunity to provide input. We hope that the process used by the CFTC to examine the topic remains deliberative and that the CFTC – or any other regulator – does not rush into regulation of AI that turns out to be misinformed and ultimately harmful to the reputation of the U.S. capital markets. The Chamber offers our expertise and that of our members as a resource for policymakers regarding AI and its continued role in the financial markets.

Sincerely,

Kristen Malinconico
Senior Director
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce