



May 3, 2024

Via Electronic Submission

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

Re: Request for Comment on the Use of AI in CFTC-Regulated Markets; Release No. 8853-24

Dear Mr. Kirkpatrick:

MFA¹ appreciates the opportunity to submit these comments to the Commodity Futures Trading Commission (“**CFTC**” or the “**Commission**”) staff in response to the above-referenced request for comment (“**RFC**”).²

MFA acknowledges the value of the Commission staff’s thoughtful and consultative approach by issuing this RFC, which reflects the Commission’s desire to constructively engage with various market participants regarding the role of potential new technologies, including artificial intelligence (“**AI**”). MFA believes the CFTC’s existing regulatory framework is well-designed to address the current and potential uses of AI. The CFTC’s technology neutral framework appropriately addresses specific activities rather than technologies, and this approach has served the public interest well. While use cases for AI are still evolving, the technology has demonstrated the potential to unlock important efficiencies and yield benefits. As a result, while the Commission must ensure its regulatory framework is adequate to govern the marketplace as it exists today, we urge the CFTC to avoid any potential actions that could unintentionally stymie the development of new technological tools that could augment human capabilities and ultimately amplify benefits to investors.

¹ Managed Funds Association (MFA), based in Washington, DC, New York, Brussels, and London, represents the global alternative asset management industry. MFA’s mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 member fund managers, including traditional hedge funds, credit funds, and crossover funds, that collectively manage over \$3.2 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.

² The RFC was issued by the CFTC’s Divisions of Market Oversight, Clearing and Risk, Market Participants, and Data and the Office of Technology Innovation to seek public comment on “the use of artificial intelligence . . . in markets regulated by the Commission, as well as the implications of such use or adoption.” CFTC, “Request for Comment on the Use of Artificial Intelligence in CFTC-Regulated Markets” (Jan. 25, 2024), available at: <https://www.cftc.gov/PressRoom/PressReleases/8853-24>.

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We would be pleased to meet with CFTC staff to provide additional background on the use of AI and on our comments on the RFC.

I. Executive Summary

As discussed further below, the following are three high-level recommendations we believe the Commission should consider in connection with any potential regulation of the use of AI in CFTC-regulated markets.

- A. Existing Regulations Already Sufficiently Address Potential Concerns Posed by the Use of AI Tools
- B. As a Principles-Based Regulator, the CFTC Should Remain Technology Neutral and Prioritize Regulating Activities
- C. Potential Use Cases for AI Are Still Developing and Could Unlock Important Benefits

II. The Commission Should Consider Several High-Level Recommendations

MFA's response to this RFC is centered on assisting the Commission staff in evaluating how the Commission's existing regulatory framework applies to potential uses of AI tools that may impact derivatives market participants.

To that end, MFA outlines the following three high-level recommendations that it believes the CFTC should consider carefully before evaluating any further action derived from this RFC.

A. Existing Regulations Already Sufficiently Address Potential Concerns Posed by the Use of AI Tools

MFA's membership consists of, among other types of market participants, commodity pool operators ("**CPOs**") and commodity trading advisors ("**CTAs**"), which use many different forms and types of technological tools to maximize business efficiencies, reduce costs for fund investors, decrease operational risks, and optimize regulatory compliance. MFA recognizes that as fiduciaries to investors and as market participants, any adoption, use or implementation of new technologies must promote the safety and soundness of the derivatives markets.

Existing regulatory frameworks already apply to registrants' use of new technologies. Recent advancements in AI have not fundamentally changed or required wholesale revisions to the core tenets of the CFTC's regulatory and compliance framework. As a result, as new potential use-cases for AI are considered, the CFTC's existing control frameworks remain the proper mechanism for oversight of activities that involve the use of such tools. For example, MFA believes that the CFTC's existing regulatory frameworks applicable to registered firms' research, risk management, financial reporting, and customer protection sufficiently address existing and emerging risks related to AI.

MFA members that are CFTC registrants are also required to be members of the National Futures Association ("**NFA**"). Historically, the CFTC has relied upon NFA, a self-regulatory organization and the only registered futures association under Section 17 of the Commodity Exchange Act ("**CEA**"), to set forth and

enforce its own rules that establish, among other things, training standards and proficiency testing, minimum standards governing the sales practices of its members and associated persons, as well as special supervisory guidelines to protect the public interest relating to the solicitation of new futures or options accounts.³

As a result, in addition to CFTC rules, registrants are also subject to NFA rules that apply to regulated activities where AI technologies may be deployed.⁴ As one example, NFA-registered MFA members are already subject to rules governing supervision, such as NFA Rule 2-9, which “places a continuing responsibility on every Member futures commission merchant . . . , [CTA], [CPO], and introducing broker . . . to diligently supervise its employees and agents in *all aspects* of their commodity interest activities.”⁵ NFA has also issued numerous Interpretive Notices under Rule 2-9 further setting forth detailed supervisory guidelines as applied to activities that involve the use of certain technologies, including but not limited to CPO control systems,⁶ information systems security programs,⁷ and automated order-routing systems.⁸

All told, NFA’s existing regulatory framework is a complementary balance between the CFTC’s principles-based approach (as discussed below) and NFA’s more prescriptive approach. AI, as merely one of many new and emerging technological tools,⁹ should not necessitate altering this dynamic.

³ See 7 U.S.C. § 21(p).

⁴ The CFTC has the authority to review all proposed NFA rule changes to ensure these rules comply with the CFTC’s overarching principles.

⁵ NFA Interpretive Notice 9074, available at: <https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=9&RuleID=9074> (last visited Apr. 23, 2024).

⁶ See *id.*

⁷ See NFA Interpretive Notice 9070, available at: <https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=9&RuleID=9070> (last visited Apr. 23, 2024).

⁸ See NFA Interpretive Notice 9046, available at: <https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=9&RuleID=9046> (last visited Apr. 23, 2024).

⁹ As the Commission is aware, much like other novel technological tools that have emerged in the recent past, AI is merely a tool. AI tools may support human decision-making in the investment process and enhance efficiency and productivity, but AI tools should not be a stand-in for ultimate human decision-making. See Statement of Kristin N. Johnson, Comm’r, CFTC, “Commissioner Kristin N. Johnson Statement on the CFTC RFC on AI: Building a Regulatory Framework for AI in Financial Markets” (Jan. 25, 2024), available at: https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement040924?utm_source=govdelivery (“The use of AI in regulatory surveillance applications is but one avenue being explored by federal agencies Because the CFTC is able to obtain and aggregate data across markets and products, we can develop a more complete picture [of the market] This allows us to detect potential misconduct or other market disruption more effectively and take appropriate action earlier. An increasing proportion of the cases brought by our Division of Enforcement are driven by data analytics rather than more traditional sources such as complaining customers, whistleblowers, or self-disclosure.”).

B. As a Principles-Based Regulator, the CFTC Should Remain Technology Neutral and Prioritize Regulating Activities

MFA believes that, as a principles-based regulator,¹⁰ the CFTC should avoid regulating specific technological tools, which is antithetical to the Commission’s legislative mandate under the CEA to be technology neutral in overseeing the U.S. derivatives markets.¹¹

As a principles-based financial markets regulator, the CFTC has historically embraced a flexible approach to regulatory oversight that is premised on the understanding that the derivatives markets are ever-evolving.¹² The Commission generally has not strayed from this paradigm even in the face of rapid and widespread adoption of once-new technological tools such as the internet and electronic trading. This approach has served the markets well and has laid the groundwork for thriving and resilient derivatives markets in the United States because registrants are not burdened by cumbersome or soon-to-be anachronistic rules.

It is instructive to consider the Commission’s determination to withdraw the proposed Regulation AT Notice for Proposed Rulemakings (“**NPRMs**”), when it decided “not to proceed with detailed prescriptive

¹⁰ See Statement of Rostin Behnam, Comm’r, CFTC, “Remarks of Commissioner Rostin Behnam before the FIA/SIFMA Asset Management Group, Asset Management Derivatives Forum 2018, Dana Point, California” (Feb. 8, 2018), available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabeznam2> (expressing belief that “a principles-based approach to implementation can be suitable in certain instances. A principles-based approach provides greater flexibility, but more importantly focuses on thoughtful consideration, evaluation, and adoption of policies, procedures, and practices as opposed to checking the box on a predetermined, one-size-fits-all outcome.”); see also Heath Tarbert, Chair, CFTC, “Fintech Regulation Needs More Principles, Not More Rules”, FORTUNE.COM (Nov. 19, 2019), available at: <https://fortune.com/2019/11/19/bitcoin-blockchain-fintech-regulation-cftc/> (“Principles-based regulation involves moving away from detailed, prescriptive rules and relying more on high-level, broadly-stated principles to set standards for regulated firms and products. Companies will then be responsible for finding the most efficient way of satisfying those standards. Such an approach affords greater flexibility to the tech sector. It will also enable the CFTC to stay ahead of the curve by reacting more quickly to changes in technology and the marketplace.”) (emphasis added).

¹¹ See 7 U.S.C. § 5(b) (“It is the purpose of [the CEA] . . . to promote responsible innovation and fair competition among boards of trade, other markets and market participants.”); see also Statement of Summer K. Mersinger, Comm’r, CFTC, “Remarks of Commissioner Summer K. Mersinger at the International Woman of Blockchain 2023 Web3 and Metaverse Conference” (Mar. 24, 2023), available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/opamersinger4> (“The CFTC is a technology neutral regulator, which means, in practice, we do not view any one technology as better than any other technology Our governing statute, the [CEA], specifically identifies one of its purposes as being to promote responsible innovation and fair competition.”) (emphasis added).

¹² See Regulation Automated Trading; Withdrawal, 85 Fed. Reg. 42,755, 42,757 (July 15, 2020) (“The markets we regulate are changing. To maintain our regulatory functions, the CFTC must either halt that change or change our agency. Swimming against the tide of developments like electronic markets is not an option, nor should it be. The markets exist to serve the needs of market participants, not the regulator. *If a technological change improves the functioning of the markets, we should embrace it.*”) (emphasis added).

requirements.”¹³ When the Commission attempted to regulate a specific technology (i.e., automated trading), it encountered tremendous challenges drafting proposed rules “just right” and ended up withdrawing its initiative in its entirety and solely deferring to existing rules and regulations.¹⁴ Through this rulemaking initiative and process, the Commission ultimately realized that the markets it regulates and the technological tools used by its market participants are constantly changing.¹⁵ Similarly, the Commission changed the definition of storage media recordkeepers could employ under CFTC Rule 1.31 from “optical disk” to “electronic storage media”¹⁶ and then again to “electronic regulatory records”¹⁷ in order to “modernize and make technology neutral the form and manner in which regulatory records must be kept.”¹⁸ We would encourage the Commission to maintain its commitment to remain technology neutral and avoid putting in place regulations tied to technological terms and concepts that will quickly become outdated and out of step with the marketplace.

The CFTC’s principles-based approach has successfully adapted to new technologies over the past several decades. Taking a different approach, such as attempting to regulate any one specific technology over another, could unintentionally stifle innovation, reduce returns to investors, and potentially circumscribe the ability of smaller and emerging managers to remain nimble and agile in an ever-competitive market.

C. Potential Use Cases for AI Are Still Developing and Could Unlock Important Benefits

MFA recognizes that advancements in technology, including AI, have benefitted fund investors. While use-cases for AI are still evolving, the technology has demonstrated the potential to unlock important efficiencies and yield benefits. MFA thus believes the CFTC should disfavor a reactive, proscriptive approach that could impede innovation and should instead carefully consider how best to responsibly capture the potential benefits of AI within its existing control framework.

¹³ See *id.*, 85 Fed. Reg. at 42,756 (On proposed Regulation Automated Trading: “In light of feedback the Commission received in response to the Regulation AT NPRMs, and upon further consideration, the Commission has determined to withdraw the pending Regulation AT NPRMs, to specifically reject the policy responses listed above as means of addressing the perceived risk underlying the Regulation AT NPRMs. *Furthermore, the Commission has determined not to proceed with detailed, prescriptive requirements such as those contained within the Regulation AT NPRMs.* Finally, the Commission has decided not to pursue regulatory proposals that would require additional classes of market participants to become registrants or compel market participants to divulge their source code and other intellectual property absent a subpoena.”) (emphasis added).

¹⁴ *Id.*

¹⁵ *Supra* note 12.

¹⁶ Recordkeeping, 64 Fed. Reg. 28,735 (May 27, 1999) (changing the term “optical disk” to “electronic storage media”).

¹⁷ Recordkeeping, 82 Fed. Reg. 24,479 (May 30, 2017) (again changing the term “electronic storage media” to “electronic regulatory records”).

¹⁸ *Id.*



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We appreciate the opportunity to provide our comments to the Commission on the RFC. If the Commission or its staff has questions or comments, please do not hesitate to call Matthew Daigler, Vice President & Senior Counsel, or the undersigned at (202) 730-2600 with any questions.

Very truly yours,

/s/ Jennifer W. Han

Jennifer W. Han
Executive Vice President
Chief Counsel & Head of Global Regulatory Affairs

cc: Honorable Chairman Rostin Behnam
Honorable Commissioner Christy Goldsmith Romero
Honorable Commissioner Kristin N. Johnson
Honorable Commissioner Summer K. Mersinger
Honorable Commissioner Caroline D. Pham