

June 21, 2022

# CFTC Releases Request for Information on Climate-Related Financial Risk

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## CFTC Seeks Public Input to Inform its Understanding of Climate-Related Financial Risk to Derivatives and Commodities Markets

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### SUMMARY

On June 2, the Commodity Futures Trading Commission (“CFTC”) voted unanimously to release a Request for Information (“RFI”) to solicit comments to better inform its understanding of climate-related financial risks to commodities and derivatives markets. The RFI states that the CFTC intends to use this information to inform potential future actions, which could include new or amended guidance, new regulations or other CFTC action pursuant to its existing statutory authority. The RFI notes that such actions could apply to any CFTC-registered entities, registrants or other derivatives and commodities market participants. The RFI follows action by a number of other U.S. and international regulatory bodies concerning the mitigation of climate-related financial risk. The CFTC seeks comment on all aspects of its existing regulatory framework and market oversight function as they may be affected by climate risk, and such comments are due on August 8, 2022.

### BACKGROUND

The RFI<sup>1</sup> is the latest in a series of actions by the CFTC indicating an increased focus on climate-related issues. For example, in September 2020, the Climate-Related Market Risk Subcommittee of the CFTC’s Market Risk Advisory Committee released its “Managing Climate Risk in the U.S. Financial System Report,” which, among other things, set out 53 recommendations to mitigate the risks to financial markets posed by climate change.<sup>2</sup> In March 2021, the CFTC established a new Climate Risk Unit at the CFTC, tasked with focusing on the role of derivatives in understanding, pricing, and addressing climate-related risk and transitioning to a low-carbon economy.<sup>3</sup> Most recently, in June 2022, the CFTC held its first voluntary carbon markets convening to discuss carbon markets products and market structure.<sup>4</sup>

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The CFTC is also participating in interagency efforts to address climate-related financial risks. For example, on May, 20, 2021, President Biden signed Executive Order 14030 on Climate-Related Financial Risk (“Executive Order 14030”), which detailed a whole-of-government strategy for reducing climate-related financial risk.<sup>5</sup> Section 3 of Executive Order 14030 specifically directs the Financial Stability Oversight Council (“FSOC”), of which the Chairman of the CFTC is a voting member, to consider “assessing, in a detailed and comprehensive manner, the climate-related financial risk, including both physical and transition risks, to the financial stability of the Federal Government and the stability of the U.S. financial system.”<sup>6</sup>

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### REQUEST FOR INFORMATION

In the RFI, the CFTC solicits public feedback on all components of climate-related financial risk as it may relate to registered entities such as derivatives clearing organizations and designated contract markets, other registrants such as swap dealers and futures commission merchants, and other related market participants, as well as the derivatives and underlying commodities markets.<sup>7</sup> In addition to soliciting general feedback, the RFI sets out 34 specific questions spread across 10 categories: (1) Data, (2) Scenario Analysis and Stress Testing, (3) Risk Management, (4) Disclosure, (5) Product Innovation, (6) Voluntary Carbon Markets, (7) Digital Assets, (8) Financially Vulnerable Communities, (9) Public-Private Partnerships/Engagement and (10) Capacity and Coordination.<sup>8</sup>

Examples of questions from these categories include:

1. Data: What types of data would be helpful to the Commission in evaluating climate-related financial risk and should the Commission reporting requirements include such information as related to listed products, reported transactions and/or open positions?<sup>9</sup>
2. Scenario Analysis and Stress Testing: Are there any climate forecasts, scenarios or other data tools that would be useful for testing purposes and should registered entities and registrants be required to incorporate climate stress tests into their risk management processes?<sup>10</sup>
3. Risk Management: How might risk management frameworks need to be modified to address climate-related financial risk and are there ways in which the Commission could amend minimum capital and liquidity requirements or better clarify expectations around such risk management?<sup>11</sup>
4. Disclosure: Are there ways in which updated disclosure requirements would be useful in better assessing climate-related risks and should the Commission make specific requirements dependent on the registrant category?<sup>12</sup>
5. Product Innovation: What derivatives products are currently used to manage climate-related financial risk, and are there any customer protections, other guardrails or potential innovations that could promote market integrity or impact the derivatives markets?<sup>13</sup>
6. Voluntary Carbon Markets: In what ways, if any, could the Commission enhance the integrity of the voluntary carbon markets and should some registration framework be created?<sup>14</sup>
7. Digital Assets: Are digital asset markets creating climate-related financial risk and do they offer any mitigating benefits for such risk?<sup>15</sup>
8. Financially Vulnerable Communities: What factors are important for the Commission to consider as related to climate-related financial risk and its impact on households and communities as well as financially vulnerable populations in particular?<sup>16</sup>

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9. Public-Private Partnerships/Engagement: How should the Commission go about fostering public-private partnerships and are there any experts with whom to collaborate with on identifying climate forecasts, scenarios or any other relevant tools to better understand exposure?<sup>17</sup>
10. Capacity and Coordination: What should the Commission consider doing in order to expand its ability to deal with climate-related financial risk and should such efforts be coordinated with any other regulatory bodies or international groups?<sup>18</sup>

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### IMPLICATIONS

The RFI is indicative of the increasing focus that the CFTC and other financial regulators are placing on climate-related financial risks. In the U.S., the SEC recently proposed a rule that would require extensive disclosure of climate-related information by public companies,<sup>19</sup> and each of the Board of Governors of the Federal Reserve System,<sup>20</sup> the Office of the Comptroller of the Currency<sup>21</sup> and the Federal Deposit Insurance Corporation<sup>22</sup> has also taken action (or has indicated that it may take action soon) with respect to climate-related financial risks. Regulators in other jurisdictions and other international regulatory bodies<sup>23</sup> are also advancing climate-related regulatory changes for financial services companies. Though the RFI itself does not require any immediate action by CFTC-registered entities or market participants (beyond potentially providing comments to the CFTC), it is likely that the CFTC will engage in rulemaking, issue guidance or take other action in the near future. Although any such action is likely to take into account the activities of these other regulators, it is possible that the CFTC will ultimately adopt its own unique standards or requirements in addition to those adopted by other regulators.

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ENDNOTES

- 1 Commodity Futures Trading Commission, *Release Number 8541-22: CFTC Releases Request for Information on Climate-Related Financial Risk* (June 2, 2022), available at <https://www.cftc.gov/PressRoom/PressReleases/8541-22>.
- 2 *Managing Climate Risk in the U.S. Financial System* (September 9, 2020), available at <https://www.cftc.gov/PressRoom/PressReleases/8234-20>.
- 3 *CFTC Acting Chairman Behnam Establishes New Climate Risk Unit* (March 17, 2021), available at <https://www.cftc.gov/PressRoom/PressReleases/8368-21>.
- 4 *CFTC Announces Agenda for the June 2nd Voluntary Carbon Markets Convening* (June 1, 2022), available at <https://www.cftc.gov/PressRoom/PressReleases/8539-22>.
- 5 *Executive Order Ensuring Responsible Development of Digital Assets* (March 9, 2022), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/>.
- 6 *Id.*
- 7 RFI, *supra* note 1 at 9.
- 8 *Id.* at 9-18.
- 9 *Id.* at 10.
- 10 *Id.* at 11.
- 11 *Id.* at 11-12.
- 12 *Id.* at 12-13.
- 13 *Id.* at 14-15.
- 14 *Id.* at 15.
- 15 *Id.*
- 16 *Id.* at 15-16.
- 17 *Id.* at 16-17.
- 18 *Id.* at 17.
- 19 *Id.*
- 20 Speech of Lael Brainard, *Building Climate Scenario Analysis on the Foundations of Economic Research*, 2021 Federal Reserve Stress Testing Research Conference (October 7, 2021), <https://www.federalreserve.gov/newsevents/speech/brainard20211007a.html>.
- 21 Sullivan & Cromwell, *OCC Seeks Public Feedback on Principles for Climate-Related Financial Risk Management for Large Banks* (December 21, 2021), <https://www.sullcrom.com/files/upload/sc-publication-occ-release-and-seeks-feedback-on-principles-for-climate-related-financial-risks-management-for-large-banks.pdf>.
- 22 Federal Deposit Insurance Corporation, *Request for Comment on Statement Principles for Climate-Related Financial Management for Large Financial Institutions* (March 30, 2022), <https://www.fdic.gov/news/financial-institution-letters/2022/fil22013.html>.
- 23 E.g., Bank for International Settlements, *Principles for the effective management and supervision of climate-related financial risks* (November 2021), <https://www.bis.org/bcbs/publ/d530.pdf>; Financial Conduct Authority, *FCA's new rules on climate-related disclosures to help investors, clients and consumers* (December 17, 2021), <https://www.fca.org.uk/news/news-stories/new-rules-climate-related-disclosures-help-investors-clients-consumers>.

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