

## Public Statements & Remarks

# Keynote Address of Chairman Rostin Behnam at the Futures Industry Association Expo 2023, Chicago, Illinois

October 02, 2023

(An abbreviated version was delivered)

### Introduction

Good morning and thank you Walt, and to everyone at FIA for inviting me to join you this morning to help kick off this year's Expo. There is much going on at the CFTC, and our markets are more important than ever as a time-tested means for assessing, monitoring, and managing risk, and for exploring ways to ensure a resilient and stable future.

Markets continue to demonstrate volatility amid economic and geopolitical uncertainty. And that means that the Commission must act purposefully while remaining careful stewards of our resources. I feel more committed than ever to these principles of deliberation and stewardship during this time of uncertainty. Recognizing the responsibilities of a financial regulator, my duties include prioritizing market resilience and stability, and protecting the public from fraud and abuse, while resisting calls for action rooted in short-termism that may place our markets at risk. Every decision we make, and every word we say impacts people and markets, and this reality will continue to anchor me.

Every action the Commission takes is rooted in the Commodity Exchange Act and is informed by facts and circumstances, nothing else. As I have said before, we must continually pivot in evaluating the products and proposals presented for our consideration. The Commission must abide by core and regulatory principles that prioritize, among other things, customer protections, market stability, and resilience.[i] And, we must ensure a level playing field. It has never been, and it will never be our job to choose winners and losers. The onus is on the market and its participants to determine which innovations add value and which end with novelty.

We have had a tremendous year at the Commission, and not just because we just ended fiscal 2023 with annual enforcement results that continue to demonstrate the value of the CFTC as our borders (by statutory design) grow and evolve in tandem with market trajectories. In early February, I outlined the CFTC's regulatory agenda for 2023 and into 2024,[ii] and highlighted areas of ongoing importance requiring deliberation before the Commission, including the continued investment in the expansion of our Division of Data. My goal for the agency through our enforcement, regulatory, and data efforts is to address the expanding dislocation between regulation and innovation.

This morning, I would like to highlight our progress on these priorities and provide some insights into the agency's direction in the upcoming months. I will, however, begin with a brief overview of some events, actions, externalities, and fundamentals impacting derivatives markets in 2023.

### The Storm Rolls On

For anyone who is not familiar, El Niño is a natural climate pattern, generally occurring every 2 to 7 years, with unusual warming of surface waters in the Pacific.[iii] El Niño years are known for downpours, droughts and threats to crop yields and pricing.[iv] Previous El Niños have resulted in global inflation, adding almost 4 points to non-energy commodity prices, and 3.5 points to oil prices.[v] For CFTC regulated markets, surveillance staff are monitoring the supply and demand driving price discovery and watching and analyzing trading activities for manipulative, inappropriate, and disruptive conduct that could distort markets and impact consumers. Commission staff are in regular contact with the exchanges, self-regulatory organizations (SROs), and intermediaries to ensure compliance with trade processing, execution, and clearing obligations and provide guidance and input as needed.

During El Niño events, agriculture and energy sectors generally experience increased volatility, due to weather patterns impacting crop productions and energy consumption.[vi] We have long recognized that extreme weather events and climate impacts manifest in our markets directly, indirectly, and in feedback loops in every asset class.[vii] Our markets are keeping pace, building resilience strategically through product and market development and public private partnerships at every level. Examples include my creation of the Climate Risk Unit or "CRU,"[viii] the work of the various CFTC Advisory Committees,[ix] and the 2022 and 2023 Voluntary Carbon Market Convenings.[x] As I mentioned at the last Convening and in recent remarks, the Division of Market Oversight (DMO) in coordination with the CRU is drafting for Commission consideration, proposed agency guidance addressing integrity in the voluntary carbon markets.[xi] There is demand in this space for a baseline registrants and regulated exchanges can rely upon, and I am hopeful that by the end of the calendar year, the Commission will vote for a proposal and get the public comment process started.

As market participants from across all asset classes, including in the energy, agricultural, industrial, and financial sectors, increasingly turn to the derivatives markets as they manage the impact of physical and transition risks related to extreme weather events and climate-related financial risk, the CFTC will remain stalwart in protecting against fraud and manipulation in new and emerging markets.

### Enforcement: Always Rising to the Challenge

Over five years ago, as a relatively new CFTC Commissioner, I delivered remarks in Houston where I focused on enforcement trends and the CFTC's approach to innovation as we increasingly moved into the age of fintech.[xii] My stance has not changed. I continue to believe that the U.S. needs to play a more direct, inclusive role in the fintech economy and support responsible innovation. As a regulator, I want to be clear—and as recent history bears out, increasing reliance on new structures and technologies does not diminish our commitments to a culture of compliance, rooted in trust and responsible supervision. Our duties do not change. Neither should yours.

Market innovation does not absolve registrants and market participants of their duties under the Commodity Exchange Act (CEA), Commission regulations, and SRO obligations. As I said in Houston, regardless of your registration status, if you are participating in our markets—if you are “any person,”<sup>[xiii]</sup>—even if you are operating as an unincorporated association<sup>[xiv]</sup> as, one court recently found—you are subject to the CEA, and perhaps most significantly, to its prohibitions on fraud, manipulation, and disruptive trade practices. If you are registered—or required to be registered—with the CFTC, you may have additional duties to diligently supervise various persons and activities within your business.<sup>[xv]</sup> Critically, whether you are relying on technology or outsourcing to third-parties, your duties to comply with the rules and regulations and contribute to the integrity of our markets cannot be abdicated. Whether and how you choose to comply is within your discretion, and that is where the potential for misconduct is the greatest.

Further, I have long maintained that our enforcement efforts should focus on the need for a culture of compliance and achieving deterrence. We can accomplish this through cooperation, and ensuring education for new market entrants, thus bringing them into the regulatory fold.<sup>[xvi]</sup> For our part, the Commission must make clear in its public statements (1) the nature of the misconduct with sufficient detail, and (2) how that conduct runs afoul of the CEA and regulations. Not every violation is premised on proof of customer harm; much of our regulatory and enforcement activities are designed to prevent and deter disruptions to the markets and harm to the public.

As I prepared these remarks, we were just reaching the end of our fiscal year. To the credit of our Division of Enforcement, the CFTC obtained orders imposing a total of more than \$6 billion in monetary relief.

Continuing our success in the fight against fraud and illegal conduct involving digital assets, 45 of those actions this fiscal year involved digital asset related misconduct, representing over 34% of the 131 such actions brought by the Commission since 2015.

Included in those numbers are matters like the Ooki Dao litigation in which the founders of a decentralized autonomous organization touted the illegal token trading platform’s structure as an innovative means to remain above the law. However, the CFTC prevailed in precedent-setting litigation. <sup>[xvii]</sup> After previously holding at the service stage that the Ooki DAO is an unincorporated association who can be sued and served, the U.S. District Court for the Northern District of California entered a default judgment order in which it held that the Ooki DAO is a “person” under the Commodity Exchange Act who can be held liable for violations of the law. The court then held that the Ooki DAO did, in fact, violate the law as charged by operating an illegal trading platform, unlawfully acting as an unregistered FCM, and failing to implement a customer information program (CIP) or conduct Know Your Customer (KYC) or anti-money laundering (AML) procedures.

Earlier this month, the Commission announced the resolution of three actions involving operators of DeFi platforms, each of which were offering and confirming off-exchange leveraged or margined retail commodity transactions, and engaging in other activities that required CFTC registration.<sup>[xviii]</sup> The findings of liability and imposition of sanctions in each instance cannot be equated to findings that the technology was per se violative of the CEA or illegal. Nor should it be said that these entities simply failed to check the box on a form;<sup>[xix]</sup> registration and the duties, regulatory requirements, and SRO compliance that it entails cannot be reduced to the rote process of filing paperwork. To suggest that we must wait until victims suffer and cry out for help to be proactive and ensure that critical market oversight, robust cybersecurity and system safeguards, and customer protections are in place undermines our mission and purpose. If you require an analogy, think about whether you would be comfortable on the road if only some individuals were required to have a driver’s license, or whether, given the choice, you would entrust your healthcare to an untrained, or unlicensed physician.

These matters, among other things, include: an enforcement sweep resulting in the charging of 14 entities with falsely claiming to be CFTC-registered futures commission merchants (FCMs), registered foreign exchange dealers (RFEDs), and NFA members;<sup>[xx]</sup> multiple complaints and an order in the fraudulent scheme involving Sam Bankman-Fried and FTX;<sup>[xxi]</sup> first time charges against individuals operating an illegal exchange for violation of Commission Regulations by engaging in conduct to willfully evade or attempt to evade the Commodity Exchange Act (CEA) and its Regulations;<sup>[xxii]</sup> and a default judgment ordering the individual defendant in a retail foreign currency fraud case to pay the highest civil monetary penalty ordered in any CFTC case to date, over \$1.7 billion, which was later followed by a consent order against his company resulting in an order to pay more than \$1.7 billion in restitution to over 23,000 U.S. persons.<sup>[xxiii]</sup> This last matter, involving Mirror Trading International Proprietary Limited, represents the largest fraudulent scheme case involving bitcoin resolved by the CFTC to date.

The CFTC also brought its first case involving a romance scam, commonly known as “Pig Butchering,” a type of fraud that is growing in popularity, in which the fraudsters cultivate a friendly or romantic relationship with a potential customer, “fatten” them up with falsehoods, before soliciting the customer to participate in a fraudulent financial opportunity here involving digital assets. That case is ongoing and is running parallel to a criminal action out of Florida.<sup>[xxiv]</sup>

Outside the digital asset space, we continue to uncover and vigorously prosecute retail fraud and in FOREX. Putting an end to a years-long matter and following substantial litigation, including two appeals to the Ninth Circuit,<sup>[xxv]</sup> in December, the CFTC obtained an order imposing \$33 million in restitution to customers, and a \$5 million civil monetary penalty against precious metals firm Monex Deposit Company and its affiliated companies and principals for fraud and illegal off-exchange transactions.<sup>[xxvi]</sup> More recently, we obtained an order imposing nearly \$146 million in restitution and civil monetary penalties against defendants who, acting as a common enterprise, engaged in a fraudulent and deceptive scheme to solicit and misappropriate tens of millions of dollars in funds and silver in connection with a fraudulent silver leasing program known as the “Maximus Program.”<sup>[xxvii]</sup> Earlier this month, the CFTC filed a complaint in my home state of New Jersey charging an individual and his companies operated as “My Forex Funds” with defrauding more than 135,000 customers who paid over \$310 million in fees to join the trading program in hopes of becoming “professional traders.”<sup>[xxviii]</sup> Litigation is ongoing and is related to a separate action by the Ontario Securities Commission.

The Commission’s zero tolerance policy towards manipulative, deceptive, and spoofing transactions was illustrated several times, most recently when it found all three activities—in addition to supervisory and recordkeeping failures—in an order against a provisionally registered national bank swap dealer who, in addition to agreeing to several remedial measures, will pay a \$45 million civil monetary penalty.<sup>[xxix]</sup> Earlier this month, enforcement team filed an action in the Northern District of Illinois against Logista Advisors LLC and its head-trader and CEO Andrew Serotta charging them with spoofing, engaging in a manipulative and deceptive scheme, failing to supervise, and for violating a prior CFTC order resolving similar misconduct. <sup>[xxx]</sup> The current allegations involve trading in crude oil and natural gas futures.

Similarly, the CFTC is aggressively addressing important issues in our jurisdictional oversight space. As demonstrated in the action against the Options Clearing Corporation (OCC),<sup>[xxxix]</sup> a registered derivatives clearing organization (DCO) designated by FSOC as systemically important, window dressing is not acceptable in this house. DCOs play a critical role in U.S. futures and options markets. Any lapse in their duties to not only establish policies and procedures designed to manage their risks, but to also implement, maintain and enforce those policies and procedures puts our markets and the larger financial system at risk.

Equally relevant, our enforcement actions ensure that financial institutions meet their business conduct standards. In particular, we are addressing disclosure gaps and honing in on what it means to inform customers and communicate in good faith and in a fair and balanced manner.<sup>[xxxix]</sup> And, we are continuing to clean up recordkeeping and supervisory violations related to internal and external communications via unapproved communication methods.<sup>[xxxix]</sup> Including 12 orders issued in FY 2022,<sup>[xxxix]</sup> the CFTC has imposed over \$1 billion in civil monetary penalties against financial institutions for these types of recordkeeping failures.

As always, there is so much more I can say about the CFTC enforcement staff, whose exemplary efforts are directly correlated with the ingenuity and impropriety of some of those operating in our markets. But, for now, I will pause and let the public filings and orders speak for themselves.

## **A Progressing Agenda**

Since my February remarks, Commission staff have been working nonstop to put forward for Commission review by the end of this year proposed and final rules covering areas such as: (1) enhancing risk management and resilience across intermediaries, exchanges, and DCOs; (2) fostering sound and responsive practices regarding cybersecurity and the use of third-party vendors; (3) strengthening customer protections; (4) promoting efficiency and innovation; (5) improving reporting and data policy; and (6) addressing duplicative regulatory requirements and amplifying international comity and domestic coordination with both federal and state regulators.

To date, the Commission has approved three final rules and proposed six, published four additional matters for public comment in the Federal Register, and issued one order. Commission staff have issued two advisories and ten letters providing various forms of relief. By the end of the year, I anticipate that staff will present the Commission with roughly a dozen additional matters for consideration and public comment and a handful of final rules and orders. Here are some previews for the rest of 2023.

We anticipate considering proposed amendments to the swap dealer business conduct standards and documentation requirements to codify into rules long-standing staff no-action positions related to prime broker arrangements and swaps executed with the intention that such swaps be cleared.

The Commission will also consider a proposed rulemaking addressing operational resilience programs for FCMs, swap dealers (SDs), and major swap participants (MSPs) designed to adapt to the risk profiles of those registrants and the ever-evolving nature of the cyber risk landscape while being mindful of how it intersects with other existing cybersecurity requirements. Alongside this proposal, the Market Participants Division (MPD) will develop and issue guidance regarding the use of third-party service providers to satisfy compliance obligations.<sup>[xxxix]</sup>

Focusing on strengthening customer protections, Commission staff will also propose codification of routinely provided exemptive letters for account statement reporting deadlines for certain commodity pool operators. Codifying this letter would ensure pool participants continue to receive more frequent and complete account statement reporting. The CFTC will also soon consider a proposal to thoughtfully expand the types of permitted investments of customer funds by DCOs and FCMs under regulation 1.25. By the end of 2023, the Commission will also consider amendments to a rule applicable to DCOs to apply many of the protections currently applicable only to FCM customer funds, such as segregation of funds and acknowledgement letters from depositories, to clearing member funds as well.

An additional proposal scheduled for later this year aims to level the playing field for SIDCOs, Subpart C DCOs, and other DCOs by making certain requirements in Part 39 of the Commission rules applicable to all registered DCOs.

By the end of the year, the intermediary space will also see proposed codification of staff no-action letters addressing swap dealer business conduct standards and documentation requirements. Among other things, the lineup of potential rulemakings for the DMO includes addressing conflicts of interest and governance for SEFs and DCMs, proposing UPI supplemental reporting fields, and a proposed rulemaking regarding event contracts.

## **Proactive Priorities will Determine our Direction**

I set an aggressive regulatory agenda. There are multiple workstreams underway in the Commissioner-sponsored Advisory Committees. We are providing leadership and expertise with respect to climate-related financial markets. I have consistently highlighted the need for Congressional action to address the lack of federal regulation over the digital commodity market. The CFTC participates in international bodies such as IOSCO (International Organization of Securities Commissions), for which I currently serve as Board Vice Chair, and the Financial Stability Board.

Enforcement's nonstop drumbeat is flushing out and addressing clear and present risks to our markets and dangers to our retail customers. These are bold efforts to bridge that gap I mentioned earlier in these remarks (and over a year ago in Boca<sup>[xxxix]</sup>). The cornerstone of our latest era is disintermediation brought about by groundbreaking technology: DeFi, AI, and standard WiFi. The limits in the CEA established in essentially another era create real barriers to engaging in rulemakings and policy that is necessary to our mission, but just beyond our scope.

At the same time, there is a dearth of principles. Sound policy written out decades ago to serve an immediate need now presents as non sequitur, forcing the agency to engage in increasingly resource intensive quests for assurances that we are acting within the bounds of our intended remit and are not sacrificing the efficacy of time-tested principles and pillars of our regulatory structure. After the financial crisis and now more than a decade since the Dodd-Frank Act's sweeping reforms, and two decades since the Commodity Futures Modernization Act, what once seemed like elegant solutions are increasingly maligned as hyperbolic responses with far reaching consequences. Of course, we work with the knowledge and understanding of our time, and no one could have predicted how transformative the last several years would be.

What we are experiencing now is a trend towards vertical integration of markets; an outgrowth of electronification and the promise of DeFi. Our markets are no longer physically delineated by geographical separation of activities by distinguishable market actors (i.e., trading pits, floor brokers, clearing firms, co-location sites). The activities exist in integrated systems, but our regulations historically developed according to activities as they pertain to an individual registrant. Vertical integration combines these activities into one entity, raising various concerns regarding conflicts of interest, the robustness of capital, margin, and segregation requirements, the role and responsibilities of self-regulatory organizations, affiliate risk management, and of course, customer protections.

Customer protections mean something different now—an extension of the technological leaps of this last decade. We are witnessing a growing number of retail participants entering the markets, who are enabled by easy to use apps and endless information. They are less familiar with the current structures, so we must ensure they are keyed into the risks, their rights, and the identities and obligations of those they choose to engage with.

The bottom line is that we cannot and should not remain idle when faced with reasonable proposals to facilitate new and novel ways to transfer and mitigate financial risk. Given the potential impact on clearing members and FCMs who play a critically important risk management role and currently hold close to \$520 billion in customer funds, it is paramount to apply professional skepticism, to be transparent, and to provide an opportunity to hear from the public.

Continuing with a process that fundamentally positions the agency as reactionary, having to wait until a market event happens before we can respond puts our markets and the public at risk. As a result, I proactively directed staff to draft and issue the Request for Comment on the Impact of Affiliations on Certain CFTC-Regulated Entities (the “RFC”) well before the agency is forced into a primarily responsive posture.<sup>[xxxvii]</sup>

The RFC is broad and addresses a range of issues presented across FCMs, DCOs, DCMs, Designated Self-Regulatory Organizations. It’s an invitation to put yourself in the CFTC’s seat and consider the possibilities presented by potential and possibly already developed affiliations in the industry. We have asked you to share your knowledge and experiences so that we can better understand how and whether efficiencies for market structures translate duties and discretion within our ruleset, introduce or alleviate risks across all the major categories, whether there are costs or benefits that we would not otherwise appreciate, and whether the purpose for such affiliation would support or undermine the public interest. The comment period closed on Thursday and review is already underway.

Experience has taught me that, to fully realize its mission, the agency needs the unfettered ability to participate in prudent engagement within a timeframe that is dictated by risk and complexity, as opposed to an arbitrary deadline. Our duty should firmly be to ascertain the validly innovative and novel market structures before they are permitted to operate as a means for financial risk mitigation.

## Conclusion

In addition to progressing our regulatory agenda, using our enforcement authority to its fullest extent, and seeking your input on issues that that will aid in our realization of a ruleset that truly acknowledges where we are in the market evolution, I have continued to advocate for additional authority in the crypto space, demonstrated leadership domestically and internationally in the emerging climate-related financial risk space, and worked closely with Congress on ways to solidify much needed amendments to our authorizing statute.

Internally, my staff is working to optimize operations and fulfilling our commitment to building a bench of future leaders in the derivatives industry. We are taking a more strategic approach to human capital management through new hiring initiatives and building out our Office of Minority and Women Inclusion.

The CFTC recently hired its first Chief Data Scientist and will soon select a new Chief Data Officer. With these new critical hires, and renewed commitments of resources, it is time to upskill our data science techniques, develop capacity and capability, and make real and substantial progress. My expectation over the next months is to see a strategy with concrete benchmarks and a path to reach them. I plan to deliver a fuller story in upcoming remarks.

In short, we still have a few months left of 2023, and I intend to make the most of them. Thank you.

[i] See, e.g., Rostin Behnam, Chairman, CFTC, Keynote of Chairman Rostin Behnam at the FIA Boca 2022 International Futures Industry Conference, Boca Raton, Florida (Mar. 16, 2022), Keynote of Chairman Rostin Behnam at the FIA Boca 2022 International Futures Industry Conference, Boca Raton, Florida | CFTC (<https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam21>).

[ii] Rostin Behnam, Chairman, CFTC, Keynote Address of Chairman Rostin Behnam at the ABA Business Law Section Derivatives & Futures Law Committee Winter Meeting (Feb. 3, 2023), [Keynote Address of Chairman Rostin Behnam at the ABA Business Law Section Derivatives & Futures Law Committee Winter Meeting | CFTC](https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam31) (<https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam31>).

[iii] National Geographic, El Niño, [El Niño \(nationalgeographic.org\)](https://www.nationalgeographic.org) (<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Feducation.nationalgeographic.org%2Fresource%2Fel-nino%2F&data=05%7C01%7CMMelara%40CFTC.gov%7C7872dda5665d4962ea9408dbc36ee629%7Cff902a6348374fa7905b52887c7f3cff%7C0%7C0%7C63831> accessed on 09/13/2023).

[iv] *Id.*

[v] The Economist, The next threat to commodity supplies will be El Niño, <https://www.economist.com/graphic-detail/2023/07/21/the-next-threat-to-commodity-supplies-will-be-el-nino> (<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.economist.com%2Fgraphic-detail%2F2023%2F07%2F21%2Fthe-next-threat-to-commodity-supplies-will-be-el-nino&data=05%7C01%7CMMelara%40CFTC.gov%7C7872dda5665d4962ea9408dbc36ee629%7Cff902a6348374fa7905b52887c7f3cff%7C0%7C0%7C63831865> accessed on 09/13/2023); Bloomberg, El Nino Climate Change, <https://www.bloomberg.com/graphics/2023-el-nino-climate-change-extreme-weather/#xj4y7vzkg> (<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.bloomberg.com%2Fgraphics%2F2023-el-nino-climate-change-extreme-weather%2F%23xj4y7vzkg&data=05%7C01%7CMMelara%40CFTC.gov%7C7872dda5665d4962ea9408dbc36ee629%7Cff902a6348374fa7905b52887c7f3cff%7C0%7C0%7C63831865> accessed on 09/13/2023).

[vi] See Charles Schwab, El Niño Could Bring Storms to the Markets, <https://www.schwab.com/learn/story/el-nino-could-bring-storms-to-markets> (<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.schwab.com%2Flearn%2Fstory%2Fel-nino-could-bring-storms-to-markets&data=05%7C01%7CMMelara%40CFTC.gov%7C7872dda5665d4962ea9408dbc36ee629%7Cff902a6348374fa7905b52887c7f3cff%7C0%7C0%7C638316> accessed on 09/25/2023).

[vii] See, e.g., Rostin Behnam, CFTC, Remarks of CFTC Chairman Rostin Behnam at the 56<sup>th</sup> Crop Insurance and Reinsurance Bureau Annual Meeting, Bonita Springs, Florida (Feb. 14, 2020), [Remarks of CFTC Commissioner Rostin Behnam at the 56th Crop Insurance and Reinsurance Bureau Annual Meeting, Bonita Springs, Florida | CFTC](https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam15) (<https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam15>).

[viii] See Press Release Number 8368, CFTC, CFTC Acting Chairman Establishes New Climate Risk Unit (Mar. 17, 2021), [CFTC Acting Chairman Behnam Establishes New Climate Risk Unit | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8368-21) (<https://www.cftc.gov/PressRoom/PressReleases/8368-21>).

[ix] See, e.g., Press Release Number 8719-23, CFTC, CFTC's Energy and Environmental Markets Advisory Committee to Meet June 27 (June 13, 2023), [CFTC's Energy and Environmental Markets Advisory Committee to Meet June 27 | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8719-23) (<https://www.cftc.gov/PressRoom/PressReleases/8719-23>); Press Release Number 8628-22, CFTC, The Agricultural Advisory Committee Announces Agenda for December 7 Meeting (Nov. 30, 2022), [The Agricultural Advisory Committee Announces Agenda for December 7 Meeting | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8628-22) (<https://www.cftc.gov/PressRoom/PressReleases/8628-22>); Press Release Number 8418-21, CFTC, CFTC's Energy and Environmental Markets Advisory Committee to Meet September 15 (Aug. 25, 2021), [CFTC's Energy and Environmental Markets Advisory Committee to Meet September 15 | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8418-21) (<https://www.cftc.gov/PressRoom/PressReleases/8418-21>); Press Release Number 8234-20, CFTC, CFTC's Climate Related Market Risk Subcommittee Releases Report (Sept. 9, 2020), [CFTC's Climate-Related Market Risk Subcommittee Releases Report | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8234-20) (<https://www.cftc.gov/PressRoom/PressReleases/8234-20>).

[x] See Press Release Number 8525-22, CFTC, CFTC Announces Voluntary Carbon Markets Convening (May 11, 2022), [CFTC Announces Voluntary Carbon Markets Convening | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8525-22) (<https://www.cftc.gov/PressRoom/PressReleases/8525-22>); Press Release Number 8731-23, CFTC, CFTC Announces Second Voluntary Carbon Markets Convening on July 19 (June 27, 2023), [CFTC Announces Second Voluntary Carbon Markets Convening on July 19 | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8731-23) (<https://www.cftc.gov/PressRoom/PressReleases/8731-23>).

[xi] Rostin Behnam, CFTC, Opening Statement of Chairman Rostin Behnam at the Second CFTC Voluntary Carbon Markets Convening, Washington, DC (July 19, 2023), [Opening Statement of Chairman Rostin Behnam at the Second CFTC Voluntary Carbon Markets Convening, Washington, DC | CFTC](https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement071923) (<https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement071923>); Mike Szabo, *US Regulatory Guidance on Voluntary Carbon Rules Coming this Year, "Cop on the Beat" CFTC Chair Says*, CARBON PULSE (Sept. 19, 2023), [US regulatory guidance on voluntary carbon rules coming this year, "cop on the beat" CFTC chair says « Carbon Pulse \(carbon-pulse.com\)](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcarbon-pulse.com%2F223688%2F%3Futm_source%3DCP%2BDaily%26utm_campaign%3D1d9d530821-CPdaily19092023%26utm_medium%3Demail%26utm_term%3D0_a9d8834f72-1d9d530821-110448858&data=05%7C01%7CMMelara%40CFTC.gov%7C7872dda5665d4962ea9408dbc36ee629%7Cff902a6348374fa7905b52887c7f3cff%7C0%7C0%7C638318653) ([https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcarbon-pulse.com%2F223688%2F%3Futm\\_source%3DCP%2BDaily%26utm\\_campaign%3D1d9d530821-CPdaily19092023%26utm\\_medium%3Demail%26utm\\_term%3D0\\_a9d8834f72-1d9d530821-110448858&data=05%7C01%7CMMelara%40CFTC.gov%7C7872dda5665d4962ea9408dbc36ee629%7Cff902a6348374fa7905b52887c7f3cff%7C0%7C0%7C638318653](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcarbon-pulse.com%2F223688%2F%3Futm_source%3DCP%2BDaily%26utm_campaign%3D1d9d530821-CPdaily19092023%26utm_medium%3Demail%26utm_term%3D0_a9d8834f72-1d9d530821-110448858&data=05%7C01%7CMMelara%40CFTC.gov%7C7872dda5665d4962ea9408dbc36ee629%7Cff902a6348374fa7905b52887c7f3cff%7C0%7C0%7C638318653)).

[xii] Rostin Behnam, Chairman, CFTC, Remarks of Commissioner Rostin Behnam before Energy Risk U.S.A., Houston, Texas (May 15, 2018), [Remarks of Commissioner Rostin Behnam before Energy Risk USA, Houston, Texas | CFTC](https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam6) (<https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam6>).

[xiii] Commodity Exchange Act § 1a(38), 7 U.S.C. § 1a(38) defining "person" as importing the plural or singular, and including individuals, associations, partnerships, corporations, and trusts.

[xiv] See Press Release Number 8715-23, CFTC, Statement of CFTC Division of Enforcement Director Ian McGinley on the Ooki DAO Litigation Victory (June 9, 2023), [Statement of CFTC Division of Enforcement Director Ian McGinley on the Ooki DAO Litigation Victory | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8715-23) (<https://www.cftc.gov/PressRoom/PressReleases/8715-23>).

[xv] See, e.g. 17 CFR §§ 23.602 and 166.3.

[xvi] See, e.g. Rostin Behnam, CFTC, Remarks of Commissioner Rostin Behnam before the FIA/SIFMA Asset Management Derivatives Forum 2018, Dana Point, California (Feb. 8, 2018), [Remarks of Commissioner Rostin Behnam before the FIA/SIFMA Asset Management Group, Asset Management Derivatives Forum 2018, Dana Point, California | CFTC](https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam2) (<https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam2>).

[xvii] [Statement of CFTC Division of Enforcement Director Ian McGinley on the Ooki DAO Litigation Victory | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8715-23) (<https://www.cftc.gov/PressRoom/PressReleases/8715-23>).

[xviii] See Press Release Number 8774-23, CFTC, CFTC Issues Orders Against Operators of Three DeFi Protocols for Offering Illegal Digital Asset Derivatives Trading (Sept. 8, 2023), [CFTC Issues Orders Against Operators of Three DeFi Protocols for Offering Illegal Digital Asset Derivatives Trading | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8774-23) (<https://www.cftc.gov/PressRoom/PressReleases/8774-23>).

[xix] See, e.g., Daniel Kuhn, *Will the CFTC Blot Out DeFi in the U.S.?*, COINDESK (Sept. 11, 2023), [Will the CFTC Blot Out DeFi in the U.S.? \(coindesk.com\)](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.coindesk.com%2Fconsensus-magazine%2F2023%2F09%2F11%2Fwill-the-cftc-blot-out-defi-in-the-us%2F&data=05%7C01%7CMMelara%40CFTC.gov%7C7872dda5665d4962ea9408dbc36ee629%7Cff902a6348374fa7905b52887c7f3cff%7C0%7C0%7C6383181) (<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.coindesk.com%2Fconsensus-magazine%2F2023%2F09%2F11%2Fwill-the-cftc-blot-out-defi-in-the-us%2F&data=05%7C01%7CMMelara%40CFTC.gov%7C7872dda5665d4962ea9408dbc36ee629%7Cff902a6348374fa7905b52887c7f3cff%7C0%7C0%7C6383181>).

[xx] See Press Release Number 8693-23, CFTC, CFTC Charges 14 Entities for Fraudulently Claiming to be Registered with the Agency (Apr. 21, 2023), [CFTC Charges 14 Entities for Fraudulently Claiming to be Registered with the Agency | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8693-23) (<https://www.cftc.gov/PressRoom/PressReleases/8693-23>).

[xxi] See Press Release Number 8638-22, CFTC, CFTC Charges Sam Bankman-Fried, FTX Trading and Alameda with Fraud and Material Misrepresentations (Dec. 13, 2022), [CFTC Charges Sam Bankman-Fried, FTX Trading and Alameda with Fraud and Material Misrepresentations | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8638-22) (<https://www.cftc.gov/PressRoom/PressReleases/8638-22>); Press Release Number 8644-22, CFTC, CFTC Charges Alameda CEO and Alameda and FTX Co-Founder with Fraud in Action Against Sam Bankman-Fried and his Companies (Dec. 21, 2022), [CFTC Charges Alameda CEO and Alameda and FTX Co-Founder with Fraud in Action Against Sam Bankman-Fried and his Companies | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8644-22) (<https://www.cftc.gov/PressRoom/PressReleases/8644-22>); Press Release Number 8669-23, CFTC, CFTC Charges FTX Co-Owner with Fraud by Misappropriation and Aiding and Abetting Fraud Related to Digital Asset Commodities (Feb. 28, 2023), [CFTC Charges FTX Co-Owner with Fraud by Misappropriation and Aiding and Abetting Fraud Related to Digital Asset Commodities | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8669-23) (<https://www.cftc.gov/PressRoom/PressReleases/8669-23>).

[xxii] See Press Release Number 8680-23, CFTC, CFTC Charges Binance and its Founding, Changpeng Zhao, with Willful Evasion of Federal Law and Operating an Illegal Digital Asset Derivatives Exchange (Mar. 27, 2023), [CFTC Charges Binance and Its Founder, Changpeng Zhao, with Willful Evasion of Federal Law and Operating an Illegal Digital Asset Derivatives Exchange | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8680-23) (<https://www.cftc.gov/PressRoom/PressReleases/8680-23>).

[xxiii] See Press Release Number 8696-23, CFTC, Federal Court Orders South African CEO to Pay Over \$3.4 Billion for Forex Fraud (April 27, 2023), [Federal Court Orders South African CEO to Pay Over \\$3.4 Billion for Forex Fraud | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8696-23) (<https://www.cftc.gov/PressRoom/PressReleases/8696-23>); Release Number 8772-23, CFTC, Federal Court Orders South African Company to Pay Over \$1.7 Billion in Restitution for Forex Fraud (Sept. 7, 2023), [Federal Court Orders South African Company to Pay Over \\$1.7 Billion in Restitution for Forex Fraud | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8772-23) (<https://www.cftc.gov/PressRoom/PressReleases/8772-23>).

[xxiv] See Press Release Number 8726-23, CFTC, CFTC Charges California Resident and His Corporation with Fraud and Misappropriation in Popular Romance Scam Involving Digital Asset Commodities and Forex (June 22, 2023), [CFTC Charges California Resident and His Corporation with Fraud and Misappropriation in a Popular Romance Scam Involving Digital Asset Commodities and Forex | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8726-23) (<https://www.cftc.gov/PressRoom/PressReleases/8726-23>).

[xxv] See Press Release Number 7984-19, CFTC, Ninth Circuit Rules in Favor of CFTC in Fraud Case Against Monex Deposit Company and its Principals (July 26, 2019), [Ninth Circuit Rules in Favor of CFTC in Fraud Case Against Monex Deposit Company and its Principals | CFTC](https://www.cftc.gov/PressRoom/PressReleases/7984-19) (https://www.cftc.gov/PressRoom/PressReleases/7984-19).

[xxvi] See Press Release Number 8643-22, CFTC, Federal Court Orders California Precious Metals Firm and Its Owners to Pay \$38 Million for Commodity Fraud and Registration Violations (Dec. 21, 2022), [Federal Court Orders California Precious Metals Firm and Its Owners to Pay \\$38 Million for Commodity Fraud and Registration Violations | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8643-22) (https://www.cftc.gov/PressRoom/PressReleases/8643-22).

[xxvii] See Press Release Number 8741-23, Federal Court Orders Two Delaware Companies to Pay Nearly \$146 Million for Misappropriation and Fraud Related to a Precious Metals Scheme (July 3, 2023), [Federal Court Orders Two Delaware Companies to Pay Nearly \\$146 Million for Misappropriation and Fraud Related to a Precious Metals Scheme | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8741-23) (https://www.cftc.gov/PressRoom/PressReleases/8741-23).

[xxviii] See Press Release Number 8771-23, CFTC, CFTC Charges "My Forex Funds" with Fraudulently Taking Over \$300 Million from Customers Hoping to Become Professional Traders (Sept. 1, 2023), [CFTC Charges "My Forex Funds" with Fraudulently Taking Over \\$300 Million from Customers Hoping to Become Professional Traders | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8771-23) (https://www.cftc.gov/PressRoom/PressReleases/8771-23).

[xxix] See Press Release Number 8773-23, CFTC, CFTC Orders HSBC Bank USA, N.A., to Pay a \$45 Million Penalty for Manipulative and Deceptive Trading in Connection with Swaps Related to Bond Issuances Spoofing, and Supervision and Mobile Device Recordkeeping Failures (May 12, 2023), [CFTC Orders HSBC Bank USA, N.A. to Pay a \\$45 Million Penalty for Manipulative and Deceptive Trading in Connection with Swaps Related to Bond Issuances, Spoofing, and Supervision and Mobile Device Recordkeeping Failures | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8702-23) (https://www.cftc.gov/PressRoom/PressReleases/8702-23).

[xxx] Press Release Number 9773-23, CFTC, CFTC Charges Texas Firm and Head Trader with Spoofing and Engaging in a Manipulative and Deceptive Scheme and Violating a Prior CFTC Order (Sept. 7, 2023), [CFTC Charges Texas Firm and Head Trader with Spoofing and Engaging in a Manipulative and Deceptive Scheme and Violating a Prior CFTC Order | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8773-23) (https://www.cftc.gov/PressRoom/PressReleases/8773-23).

[xxxi] See Press Release Number 8661-23 CFTC, CFTC Orders The Options Clearing Corporation to Pay a \$5 Million Penalty for Violations of Core Principles and Regulations Related to Operational Risk Management (Feb. 16, 2023), [CFTC Orders The Options Clearing Corporation to Pay a \\$5 Million Penalty for Violations of Core Principles and Regulations Related to Operational Risk Management | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8661-23) (https://www.cftc.gov/PressRoom/PressReleases/8661-23).

[xxxii] See, e.g., Press Release Number 8695-23, CFTC, Swap Dealer Pays Over \$6.8 Million for Violations of Swap Dealer Business Conduct Standards (Apr. 25, 2023), [Swap Dealer Pays Over \\$6.8 Million for Violations of Swap Dealer Business Conduct Standards | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8695-23) (https://www.cftc.gov/PressRoom/PressReleases/8695-23).

[xxxiii] See, e.g., Press Release Number 8794-23, CFTC, CFTC Orders Interactive Brokers to Pay \$20 Million for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods (Sept. 29, 2023), [CFTC Orders Interactive Brokers to Pay \\$20 Million for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8794-23) (https://www.cftc.gov/PressRoom/PressReleases/8794-23); Press Release Number 8762-23, CFTC, CFTC Orders Four Financial Institutions to Pay Total of \$260 Million for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods (Aug. 8, 2023), [CFTC Orders Four Financial Institutions to Pay Total of \\$260 Million for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8762-23) (https://www.cftc.gov/PressRoom/PressReleases/8762-23); [CFTC Orders a Los Angeles Futures Commission Merchant to Pay \\$6 Million for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8763-23) (https://www.cftc.gov/PressRoom/PressReleases/8763-23); Press Release Number 8763-23, CFTC, CFTC Orders a Los Angeles Futures Commission Merchant to Pay \$6 Million for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods (Aug. 8, 2023), [CFTC Orders a Los Angeles Futures Commission Merchant to Pay \\$6 Million for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8763-23) (https://www.cftc.gov/PressRoom/PressReleases/8763-23); Press Release Number 8701-23, CFTC, CFTC Orders HSBC to Pay a \$30 Million Penalty for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods (May 12, 2023), [CFTC Orders HSBC to Pay a \\$30 Million Penalty for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8701-23) (https://www.cftc.gov/PressRoom/PressReleases/8701-23); Press Release Number 8699-23, CFTC Orders The Bank of Nova Scotia to Pay a \$15 Million Penalty for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods (May 11, 2023), [CFTC Orders The Bank of Nova Scotia to Pay a \\$15 Million Penalty for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8699-23) (https://www.cftc.gov/PressRoom/PressReleases/8699-23).

[xxxiv] See Press Release Number 8470-21, CFTC, CFTC Orders JPMorgan to Pay \$75 Million for Widespread Use by Employees of Unapproved Communication Methods and Related Recordkeeping and Supervision Failures (Dec. 17, 2021), [CFTC Orders JPMorgan to Pay \\$75 Million for Widespread Use by Employees of Unapproved Communication Methods and Related Recordkeeping and Supervision Failures | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8470-21) (https://www.cftc.gov/PressRoom/PressReleases/8470-21); Press Release Number 8599-22, CFTC, CFTC Orders 11 Financial Institutions to Pay Over \$710 Million for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods (Sept. 27, 2022).

[xxxv] This guidance will seek to harmonize and be consistent with the National Futures Association's (NFA's) Interpretive Notice on Member's Use of Third-Party Service Providers. See NFA Interpretive Notice (IN) 9079 – NFA Compliance Rules 2-9 and 2-36: Members' Use of Third-Party Service Providers, <https://www.nfa.futures.org/rulebook/rules.aspx?Section=9&RuleID=9079> (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.nfa.futures.org%2Frulebook%2Frules.aspx%3FSection%3D9%26RuleID%3D9079&data=05%7C01%7CMMelara%40CFTC.gov%7C78

[xxxvi] Behnam, *supra* note 1.

[xxxvii] See Press Release 8734-23, CFTC, CFTC Staff Releases Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities (June 28, 2023), [CFTC Staff Releases Request for Comment on the Impact of Affiliations of Certain CFTC-Regulated Entities | CFTC](https://www.cftc.gov/PressRoom/PressReleases/8734-23) (https://www.cftc.gov/PressRoom/PressReleases/8734-23).

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