



June 24, 2021

By Electronic Submission

Rostin Behnam, Acting Chairman
Dan M. Berkovitz, Commissioner
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Leadership Regarding Climate-Change-Related Risks and the Transition to a Low-Carbon Economy.

Dear Acting Chairman Behnam, Commissioner Berkovitz,

Better Markets, Inc.¹ thanks you for your leadership and for using the public visibility of your positions to bring attention to climate change-related risks and call for urgent action to accelerate the transition to a low-carbon economy. Each of you has acknowledged repeatedly that this transition will require policymakers across the U.S. government, as well as leaders in private industry, to commit to bold, decisive actions and that the Commodity Futures Trading Commission's ("CFTC") has a critical role to play.

Your initial actions have exemplified the way that regulatory officials should be examining statutory mandates to find constructive solutions to the climate crisis and advance the Administration's climate-change-related objectives.² You have also demonstrated that "steady progress" can be made—with

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans' jobs, savings, retirements, and more.

² As part of its ambitious agenda for greenhouse gas pollution reduction and environmental justice, the Biden Administration has ordered an assessment of climate-change-related risks to our financial system and required Treasury Secretary Yellen to coordinate with you and other financial regulators to "issu[e] a report to the President . . . on any efforts by [Financial Stability Oversight Council] member agencies to integrate consideration of climate-related financial risk in their policies and programs." See President Joe Biden, *Executive Order on Climate-Related Financial Risk*, Presidential Actions (May 20, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/20/executive-order-on-climate-related-financial-risk/>. See also The White House, *Fact Sheet: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies* (Apr. 22, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.

the right leadership at our regulatory agencies—in the absence of unlikely (albeit necessary and urgent) legislative action in Congress.³

I. On account of your initiatives, the CFTC has been a leader in bringing attention to climate-change-related risks to the U.S. financial system.

It can no longer be denied that human activities—especially those resulting in emissions of greenhouse gases—are a dominant cause of observed global warming. Limiting greenhouse gas concentrations is therefore “essential to achieve a reasonable probability of avoiding irreversible, catastrophic impacts.”⁴ There is broad scientific consensus that further delays in efforts to limit greenhouse gas emissions will have increasingly severe implications for our institutions, economy, and way of life and ultimately, require more dramatic, more abrupt, and more costly shifts in resources and activities to address the fallout. In all likelihood, we can no longer stop the trend towards destructive climate change; we can only slow it, and that is only if policymakers take bold, decisive, and coordinated international, legislative, and regulatory action.

In this context, Better Markets commends the CFTC for bringing attention to climate-change-related risks to the U.S. financial system. The deleterious effects of climate-change-related risks to financial institutions, market participants, and financial markets were detailed in *Managing Climate Risk in the U.S. Financial System* (“MRAC Report”), the remarkable report of a subcommittee of the CFTC’s Market Risk Advisory Committee drafted under the sponsorship of CFTC Commissioner (now Acting Chairman) Russ Behnam.⁵ The MRAC Report details physical, transition, and other risks and provides, among other things, a series of recommendations for U.S. regulators to improve climate-change-related oversight, disclosures, data collection, and risk management. The report concludes, in essence, that market participants—and regulators responsible for oversight of the U.S. financial system—have not adequately identified, managed, and mitigated climate-change-related risks.

Perhaps most critically, however, the MRAC Report acknowledges the “centrality of carbon pricing,” rightly finding that “[w]ithout an effective price on carbon, financial markets lack the most efficient incentive mechanism to price climate risks.”⁶ One long-overdue policy means for establishing an effective price on carbon would be the creation of a federal cap-and-trade program—a market-based policy framework for controlling the aggregate amount of certain types of pollution emitted from a group of regulated sources and involving tradeable allowances (and perhaps emissions offsets). It is important to acknowledge that there are multiple policy mechanisms that can be employed to internalize carbon costs, as well as multiple ways to design carbon markets, realign industry incentives, and ameliorate the potential costs and effects on working families.

³ Earlier this week, President Biden convened a meeting of U.S. financial regulators, including the CFTC, to discuss the state of the U.S. economy and potential risks to the financial system. The White House readout of the meeting indicated that regulators were making “steady progress” on the climate-related executive order. See The White House, *Readout of President Biden’s Meeting with Lead Financial Regulators*, Statements and Releases (June 21, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/21/readout-of-president-bidens-meeting-with-lead-financial-regulators/>.

⁴ See CFTC Market Risk Advisory Committee, Subcommittee on Climate-Related Market Risk, *Managing Climate Risk in the U.S. Financial System* (“MRAC Report”), at 3 (2020), available at <https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf>.

⁵ *Id.*

⁶ *Id.* at 4-6.

For present purposes, we simply emphasize our agreement that “financial markets will only be able to channel resources efficiently to activities that reduce greenhouse gas emissions if an economy-wide price on carbon is in place at a level that reflects the *true social cost* of those emissions.”⁷ The undeniable scientific consensus is that this “true social cost” has been both astronomical and hidden, in some cases deliberately by certain commercial interests but also because of its nature. Unfortunately, we now face externalized and increasingly visible social and economic costs that very well could be catastrophic if unaddressed.

Although legislative action with respect to a carbon pricing framework looks increasingly, and unacceptably, unlikely near-term, Better Markets is confident that the political will for such action eventually will be forced upon policymakers by events that cannot be ignored. The CFTC must prepare for this inevitability now.

II. The CFTC should leverage its expertise and resources to ensure that carbon and other environmental commodity markets are designed to achieve the Administration’s climate-change-related objectives.

Notwithstanding Congress’ historical lack of political will to take necessary actions to address climate-change-related risks, it has long recognized the need for a carbon pricing mechanism. That, in fact, motivated Congress to create the only statutory CFTC advisory committee, the Energy and Environmental Markets Advisory Committee (“EEMAC”),⁸ which recently examined a number of market design issues with respect to carbon markets under the leadership of CFTC Commissioner Dan Berkovitz. In connection with legislative action creating the EEMAC (passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010⁹), Congress also tellingly instructed eight financial regulatory agencies—including the CFTC—to form an interagency group to study and provide recommendations with respect to “the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets.”¹⁰ The CFTC Chairman *de facto* led that effort and transmitted the group’s *Report on Oversight of Existing and Prospective Carbon Markets* (“Carbon Markets Report”) to Congress in January 2011.¹¹

Better Markets recommends that the CFTC and its key advisory committees under your sponsorship, the MRAC and EEMAC, take further steps to build on the 2011 Carbon Markets Report with an updated CFTC-approved report containing a series of recommendations with respect to market design and oversight of carbon markets. This formal consideration of key issues—preferably issued in final form after public notice-and-comment—would greatly inform the public and policy discourse, given your laudable leadership and fluency on these issues. In addition, an updated report is appropriate at this time in light of market developments (including efforts relating to the scaling of voluntary carbon markets), the

⁷ See MRAC Report, *above* fn. 3, at ii (emphasis added).

⁸ The EEMAC was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010), and subsequently codified in the Commodity Exchange Act, 7 U.S.C. §§ 1 et seq., at 7 U.S.C. § 2(a)(15).

⁹ Public Law 111-203, 124 Stat. 1376 (2010).

¹⁰ Section 750 of the Dodd-Frank Act mandated the creation on an interagency working group that included the Chairman of the CFTC, the Secretary of the Department of Agriculture, the Secretary of the Treasury, the Chairman of the Securities and Exchange Commission, the Administrator of the Environmental Protection Agency, the Chairman of the Federal Energy Regulatory Commission, the Commissioner of the Federal Trade Commission, and the Administrator of the Energy Information Administration.

¹¹ Interagency Working Group for the Study on Oversight of Carbon Markets, *Report on the Oversight of Existing and Prospective Carbon Markets* (Jan. 18, 2011), available at https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfstudy_carbon_011811.pdf.

increasing risks associated with climate change, recent international efforts, and the directives and climate-change-related policy objectives of the Biden Administration. In issuing the report and recommendations, the CFTC has a unique opportunity to leverage the Financial Stability Oversight Council's climate-change-related work under the direction of President Biden and its own expertise relating to *market design* and *oversight* of existing and prospective carbon and other environmental commodity markets.

The CFTC's report and recommendations also would build on its recent efforts to elevate policy discussions on climate-change-related risks. For example, Acting Chairman Behnam recently established a CFTC Climate Risk Unit ("CRU") focused on derivatives markets' role in addressing climate-related risk and transitioning the U.S. to a low-carbon economy.¹² This interdivisional team could be leveraged to build on the 2011 Carbon Markets Report with market design and oversight recommendations. In addition, the EEMAC has raised the profile of climate-change-related issues in recent weeks, including through a deep-dive review of the potential role of carbon markets in the transition to a low-carbon U.S. economy. Per its statutory purpose, the EEMAC should provide an independent perspective on industry initiatives relating to voluntary carbon-markets design¹³ and leverage the expertise and experience of its advisory membership to inform the CFTC report and recommendations.

III. Conclusion

In addition to its disclosure, data collection, research, risk management, and other initiatives to measure, manage, and address climate-change-related risks to the U.S. financial system, the CFTC must continue to lead the policy discussion on carbon pricing by issuing a formal report with a series of *market design* and *oversight* recommendations. These recommendations should extend to primary, secondary, and offset markets issues. In encouraging this proactive work, we cite to former CFTC Commissioner Bart Chilton, the first sponsor of the EEMAC, who noted that that the CFTC must "prepare for what could be the most important commodity market ever."¹⁴ He rightly stated that while "it is sort of rare for government to do a lot of work before a new law is even passed . . . carbon markets are too important for us not to get right."¹⁵ In Commissioner Chilton's view, which we share, the CFTC needs "to be ready on day one to put these markets on a solid path to success."¹⁶

In developing recommendations, the CFTC must remain mindful that Wall Street undoubtedly would extend trading practices, resources, and advantages within existing markets and trading architecture to new markets and asset classes; carbon, offset, and related markets would be no exception. If market design and oversight is not adequately considered before implementation of a federal cap-and-trade or scaled voluntary trading framework, the result would be less transparent, efficient, secure, and stable pricing of carbon than would be the case in a better designed marketplace. But the ultimate result, of course, would be a hidden "tax" on working families arising from disfunctions, dislocations, or manipulations in carbon

¹² See, e.g., CFTC Release 8368-21, *CFTC Chairman Behnam Establishes New Climate Risk Unit* (Mar. 17, 2021), available at <https://www.cftc.gov/PressRoom/PressReleases/8368-21> (quoting CFTC Acting Chairman Behnam as emphasizing that "[c]limate change poses a major threat to U.S. financial stability" and that the CFTC must "move urgently and assertively in utilizing our wide-ranging and flexible authorities to address emerging risks").

¹³ For example, the Taskforce on Scaling Voluntary Carbon Markets is a private sector-led initiative working to scale an effective and efficient voluntary carbon market to help meet the goals of the Paris Agreement.

¹⁴ CFTC Commissioner Bart Chilton, *News Release: Regulators Ready for Climate Change, Agency Anticipating Largest Commodity Markets* (2009), available at https://www.cftc.gov/sites/default/files/idc/groups/public/@aboutcftc/documents/file/eemac_newsrelease051309.pdf.

¹⁵ *Id.*

¹⁶ *Id.*

and related markets, which would raise the prices of critical goods and services and have potentially adverse political consequences for climate change-related mitigation efforts.

Thank you again for your leadership on climate-change-related issues and for your consideration of our recommendations. Please do not hesitate to reach out to discuss these or any other matters and/or issues.

Sincerely,



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