April 24, 2024

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

RE: Release No. 8853-24 (Jan. 25, 2024) Request for Comment on the Use of Artificial Intelligence in CFTC-Regulated Markets

Dear Mr. Kirkpatrick:

The Futures Industry Association (**FIA**), the FIA Principal Traders Group (**FIA PTG**) (collectively FIA), [1] CME Group Inc. (**CME**),[2] and the Intercontinental Exchange Inc. (**ICE**)[3] appreciate the opportunity to respond to the request for comment from Staff of the Commodity Futures Trading Commission (**CFTC**) regarding the use of artificial intelligence (**AI**) in CFTC-regulated markets. From our collective perspective, this request for comment should be the first amongst many steps that Staff and the CFTC take to better understand any potential, risks, and use cases for AI. To that

[1] FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. FIA's mission is to support open, transparent and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of professional conduct.

FIA PTG is an association of firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy.

[2] As the world's leading derivatives marketplace, CME Group enables clients to trade futures, options, cash and OTC markets, optimize portfolios, and analyze data – empowering market participants worldwide to efficiently manage risk and capture opportunities. CME Group exchanges offer the widest range of global benchmark products across all major asset classes based on interest rates, equity indexes, foreign exchange, energy, agricultural products and metals. In addition, CME Group operates one of the world's leading central counterparty clearing providers, CME Clearing. CME Group has pioneered some of the most advanced technologies and services available in the global financial marketplace.

[3] ICE operates regulated marketplaces for the listing, trading and clearing of a broad array of derivatives contracts and financial instruments, such as commodities, interest rates, foreign exchange and equities as well as corporate and exchange-traded funds, or ETFs. ICE operates multiple trading venues, including 13 regulated exchanges and six clearing houses, which are strategically positioned in major market centers around the world, including the U.S., U.K., European Union, or EU, Canada, Asia Pacific and the Middle East.

end, we encourage the CFTC to continue gathering information from its various advisory committees, industry participants, academics, and the broader public. Each of our respective organizations have a long history of working collaboratively with the CFTC across numerous regulatory initiatives and are happy to remain engaged with Staff on the subject of AI in CFTC-regulated markets.

We recognize that many policymakers are examining current and future uses of AI technology in the sectors that they oversee and whether its use results in new or increased risks. In October 2023, the White House issued an Executive Order on AI (**EO**) encouraging agencies "to consider using their full range of authorities to protect American consumers from fraud, discrimination, and threats to privacy and to address other risks that may arise from the use of AI, including risks to financial stability, and to consider rulemaking, as well as emphasizing or clarifying where existing regulations and guidance apply to AI."[4] We certainly support these laudable goals, but also note another aspect of the EO where the White House emphasizes the consideration of existing regulations and guidance, which we implore the CFTC to do here when considering AI in the markets it regulates and oversees.

Our overarching response to this request for comment is that the CFTC's consideration of AI should be focused on the application of the technology within the context of a particular use case, not the technology as a whole. From this framework, the CFTC can then consider whether additional regulatory clarity is necessary. For the reasons set forth below, we caution the CFTC against approaching the subject of AI with an outlook of regulating the technology generally in CFTC-regulated markets. Our recommended approach supports the CFTC's long-standing regulatory focus on risks while remaining technology neutral.[5] This letter provides these general comments and also responds to specific questions from Staff in the request for comment.

1. **The CFTC should consider its existing rules and guidance prior to taking action.**

Before acting to regulate AI use cases and/or perceived risks, the CFTC should consider its existing rules and guidance. In many instances, existing CFTC rules and guidance provide the controls and oversight needed for the CFTC to promote and protect the integrity and resilience of our markets. For example, when contemplating the use of AI in records management, the CFTC should consider its existing recordkeeping requirements and whether or not there is a need to update them. We

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[4] Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (Oct. 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/.

[5] *See* Remarks of Commissioner Summer K. Mersinger at the International Women of Blockchain 2023 Web3 and Metaverse Conference, March 24, 2023, https://www.cftc.gov/PressRoom/SpeechesTestimony/opamersinger4; and Regulation of the Future: Building Responsible Digital Asset Markets: Keynote Address by Commissioner Caroline D. Pham, 18th Nasdaq Technology of the Future Conference—Reimagining Tomorrow's Markets, June 28, 2022, https://www.cftc.gov/PressRoom/SpeechesTestimony/opapham3; *see also* Recordkeeping, 82 Fed. Reg. 24479, 24480 (May 30, 2017) ("the final rule merely modernizes and makes technology neutral the form and manner in which regulatory records must be kept.")

believe that the CFTC's risk-based approach to developing a regulatory framework around outcomes and use cases, rather than the underlying technology, likely means that the CFTC's existing rule sets already address perceived risks.

Furthermore, and as set forth in detail below, any consideration of existing rules or other guidance should approach the issue from the perspective of the use-case, such as AI used to transcribe audio, within the context of existing rules relevant to that function, but not look to regulate the technology of AI itself.

2. The CFTC should approach the topic of AI based upon specific use cases, not the technology itself.

Consistent with other technology, any risks posed by AI are dependent on the purpose for which it is used and the output. As a principles-based regulator focused on risk, the framework for the CFTC to consider the risk of a new or existing technology should depend upon its application. Different uses and different activities dictate different levels of risk, and the tool or technology itself should not be considered in a vacuum, but rather in the context of its use. The distinction of focusing on the risk for a given use case and not the technology itself supports a technology neutral position, consistent with past practice of the CFTC and the framework set forth in the CEA.[6]

We urge the CFTC to refrain from crafting new regulations that generally regulate AI because this approach presents certain well-known pitfalls. By approaching the issue from the perspective of AI as a technology, rather than the use case for the technology, corresponding regulations would likely necessitate a definition of AI. We anticipate that any attempt to properly define AI would be very challenging and require considerable resources. A comprehensive definition that differentiates AI from other technology would be extremely difficult to develop.

As a comparable matter, in recent years, the CFTC attempted to define and regulate automated trading. This led to investment of considerable resources to define "automated trading" in order to capture the relevant activity.[7] Ultimately, the CFTC abandoned efforts to define the technology of automated trading in favor of a principles-based approach focused on key risks.[8] Rather than spend considerable time developing a definition of AI that encompasses activity of interest, the agency should focus on any risks of AI within the context of how the technology is being used.

We also note that the rapid evolution of technology would likely render any AI-specific regulation only marginally meaningful, before becoming moot in the near future. As a historical example, in 2017, the CFTC updated its recordkeeping provisions to remove references to concepts such as

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[6] *See* CEA Section 3(b) (one of the goals of the CEA is to "promote responsible innovation and fair competition").

[7] *See Regulation Automated Trading*, 80 Fed. Reg. 78824 (Dec. 17, 2015) (proposed rule); *Regulation Automated Trading*, 81 Fed. Reg. 85334 (Nov. 25, 2016) (supplemental proposed rule); and *Regulation Automated Trading; Withdrawal*, 85 Fed. Reg. 42755 (July 15, 2020) (proposed rule, withdrawal).

[8] *Electronic Trading Risk Principles*, 85 Fed. Reg. 42761 (July 15, 2020).

microfiche, a method of retaining documents that market participants had long since abandoned.[9] CFTC regulations should withstand inevitable changes to technology, including changes to the prevalence, application, and general use of AI. In this regard, the focus on the application of technology rather than the technology itself should maintain a technology-neutral regulatory framework that remains meaningful to market participants and the public over the long term.

3. The use cases for AI are long-standing, expansive, and commercially sensitive.

As the CFTC is aware, certain participants within the financial markets have long used AI.[10] The implementation of AI for a particular use case likely varies from firm to firm. However, implementation typically begins with addressing a business need and involves assessing whether an AI solution would perform better than existing solutions, including in terms of speed, accuracy, cost, security, and other factors depending on the use case. AI may not always be appropriate or optimal. Firms oftentimes focus on particular benefits in financial markets including an increase in efficiency of existing processes, improving employee productivity, reduction of operational costs, and increased revenue.

Recent surveys of market participants show that early use cases are largely focused on non-customer-facing activities.[11] We understand that FIA's members may utilize AI, now or in the future, across a broad array of areas, including the development of text transcription, hedging and risk management programs, trading strategies, and compliance processes and controls. This is not meant as a comprehensive list or to say that all members do or will engage in all use cases, but rather serves as representative examples of possible use cases.

4. The governance and controls around the use of AI should depend upon the type, size, and complexity of the business.

FIA understands that its members may employ a range of governance structures to manage the use of AI that vary based on their business models and existing frameworks. It is critical that companies retain the flexibility to consider and implement technology governance consistent with the type, size, and complexity of the relevant business. To use a specific example, Staff asked whether senior management at an institution are responsible for oversight of AI. FIA understands that certain institutions may deem it appropriate to appoint an AI Information Technology Officer, whereas others may not believe such a specific role to be necessary.

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[9] *See Recordkeeping*, 82 Fed. Reg. 24479 (May 30, 2017).

[10] *See* written statement of Daniel Gorfine, Director, LabCFTC, September 20, 2023, https://www.banking.senate.gov/imo/media/doc/gorfine_testimony_9-20-23.pdf.

[11] IIF-EY Annual Survey Report on AI/ML Use in Financial Services, December 2023, https://www.iif.com/portals/0/Files/content/2023%20IIF-EY%20Survey%20Report%20on%20AI_ML%20Use%20in%20Financial%20Services%20-%20Public%20Report%20-%20Final.pdf.

We also note that the National Institute of Standards and Technology's (**NIST**) AI Risk Management Framework (**RMF**) provides a voluntary, risk-based, and flexible framework to help firms establish their own best practices that are aligned with legal and regulatory obligations. Although this framework is in its infancy and does not yet have a supplement addressing the financial sector, organizations such as NIST may help inform the need for a risk-based and flexible approach to governance.

5. Conclusion

We thank Staff for the opportunity to respond to this request for comment. Should you have any questions about our comments herein, please do not hesitate to contact Allison Lurton from FIA at alurton@fia.org, Joanna Mallers from FIA PTG at jmallers@fia.org, Jonathan Marcus from CME at jonathan.marcus@cmegroup.com, or Kara Dutta from ICE at Kara.Dutta@ice.com.

Sincerely Yours,

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