October 7, 2022

via https://comments.cftc.gov

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

RE: Request for Information on Climate-Related Financial Risk

Dear Secretary Kirkpatrick:

Western Energy Alliance is struck by the magnitude of the questions posed to the public in the Request for Information on climate-related financial risk and the implications arising should the Commodity Futures Trading Commission (CFTC) seek to aggressively regulate in this space. We appreciate the opportunity to comment, yet must begin by asking the fundamental question of whether CFTC has a congressional mandate to regulate in the sphere of climate-related financial risk at all. We strongly object to any CFTC climate change regulation aimed at eliminating the use of oil and natural gas, particularly in the absence of an alternative that does everything that oil and natural gas do and in the absence of statutory authority.

Western Energy Alliance represents 200 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independents, the majority of which are small businesses with an average of fourteen employees.

The US Oil & Gas Association is the only national association with divisions in the states along the vital Gulf of Mexico. Because of the Gulf region's importance to our current and future domestic energy supplies, national policy debates often center on the Gulf of Mexico, making our coordination of national and regional activities an important industry asset. The most distinguishing characteristic of the US Oil & Gas Association is the strong support it receives from a membership covering the full spectrum of the domestic petroleum industry.

The essential problem with many measurements of climate impact and other ESG topics is a disagreement about what is good, valuable, reasonable, and just, and what is too much, too little, overly intensive, or even meaningful. The value judgments involved are those on which reasonable people can and do differ, not to mention the technical problems of how to actually measure and quantify those value judgements. Those advocating climate change policies aimed at eliminating oil and natural gas typically profess a set of values arising from one ideological perspective, whereas the commodities

markets that CFTC overseas involve thousands of diverse actors in multiple industry sectors. CFTC regulation that attempts to solve these problems by overriding the judgement of thousands of companies and traders Is not equitable or prudent.

With respect to what is "good," the enormous benefits that oil and natural gas provide to humanity should be considered good in the context of climate change. Yes the burning of fossil fuels produce greenhouse gas emissions, but would humanity be better off without them? Without an alternative that does everything that oil and natural gas do 24/7, a modern, healthy, secure and yes, environmentally protective mode of existence is not possible. Our industry not only heats homes, provides mobility, and powers all facets of the economy, but puts food on the table, medicine in the cabinet, and delivers clean drinking water to the tap. Without the energy and products we provide, modern life is not possible. Providing more oil and natural gas to the world will bring those benefits to the billion people without sufficient energy and help lift them out of poverty.

Oil and natural gas also provide a net benefit to the environment. Countries with greater access to reliable, affordable energy not only have higher standards of living but also cleaner environments and healthier populations. Increased use of natural gas electricity generation leads to lower levels of air pollution and offers a tangible solution for climate change. Fuel switching to natural gas in the electricity sector is the number one reason the United States has reduced greenhouse gas emissions more than any other country since 2005.[1] Intermittent wind and solar energy are not possible without backup, with natural gas electricity being the best backup source. CFTC should recognize that the balance of benefits from oil and natural gas heavily outweigh the impacts and that potential regulation should not be aimed at eliminating their use.

CFTC should not overlook the increasing wealth, health, and safety achieved by countries like the United States that have abundant access to fossil fuels. The past 80 years have been marked by unprecedented improvements in life expectancy, prosperity, food security, infant mortality, and many other health and welfare factors. Deaths from malaria, the most consequential climate-sensitive disease, declined by 52% from 2000 to 2015 with the aide of petroleum-based pharmaceuticals.[2] In the developing world where a billion people lack access to electricity, reliable power is needed to lift them out of poverty. Only natural gas, coal, nuclear, and hydropower reliably provide 24/7 power, yet all are opposed by activists who promote climate change disclosure schemes as a way to limit their use.

On the other hand, those same activists take it as a given that wind and solar energy are preferable. They are considered "good" over oil and natural gas, yet their extensive impacts on the environment are completely ignored. The huge footprint on the land and its associated impact on climate doesn't seem to be considered, nor the extensive mining requirements. The International Energy Agency (IEA) has outlined the huge increase in minerals needed for a "clean energy transition" or "net-zero" agenda.[3] IEA

[1] *Inventory of US Greenhouse Gas Emissions and Sinks,* Environmental Protection Agency (EPA), April 2020, p. ES-4. *Global CO2 Emissions in 2019,* IEA, Paris, February 2020; U.S. Energy-Related Carbon Dioxide Emissions, 2019, U.S. Energy Information Administration (EIA), September 2020.

[2] *Our World in Data* provide many more indicators of improved human health and welfare made possible by fossil fuels.

[3] *The Role of Critical Minerals in Clean Energy Transitions*, IEA, May 2021

discusses the near impossibility of mining the necessary minerals, without which a complete transition is simply not realistic.

Advocates likewise overlook the enormous environmental, economic and social impacts and geopolitical risks. From human rights violations in China, particularly with Uyghur slave labor used to manufacture solar panels, to child labor in Congolese mines to the possibility of China withholding minerals, there are likewise many risks to the markets from supposedly climate-friendly industries. Our discussion is intended to point out to CFTC that the value judgements inherent in elevating certain environmental, climate change, human rights and other ESG factors over financial risk can be fraught with value judgements that make assessing climate risk highly subjective and complex.

Lack of Statutory Authority

CFTC should recognize its lack of statutory authority to regulate in this space since its powers are not unlimited. CFTC appears to be going down the path of climate change regulation despite the fact that the representatives of the American people in Congress have not passed into law legislation granting CFTC authority to do so and the Supreme Court in *West Virgina v. EPA* clearly ruled that on the major questions doctrine. Until such time as Congress changes CFTC's mission, it should not enact climate regulation as an end-run around Congress.

The mission statement of CFTC "is to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation." CFTC's statutory mandate is primarily to "deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants." There is nothing in the CFTC mission statement or statutory authority about addressing climate change or effecting a transition to a "low-carbon economy."

In *West Virgina v. EPA* the Supreme Court clearly ruled that an agency cannot act outside the regulatory authority granted by Congress. Were CFTC to attempt a climate-change rulemaking without considering the limits the Supreme Court clearly put on its authority, the final rule resulting would clearly be vulnerable to legal action. As the commodities and derivatives markets are fundamentally important to the economic health of the nation, any final rule designed to address climate change and transition away from fossil fuels would be considered to be of great "economic and political magnitude" and would swiftly run afoul of the limits the Supreme Court has placed on agency power.

Lack of Expertise

CFTC is a financial regulator, not an environmental regulator with expertise in climate modeling, risk analysis, and emissions inventories. The Commission does not have the expertise or administrative ability to assess the veracity, or lack thereof, of any firm-specific speculative analysis regarding climate-related risk based on highly divergent and uncertain economic models projecting the economic impact of climate change. Climate models show huge variations in projections with a wide divergence in the

ability of models to account for past warming and the degree of warming that is anthropogenic. CFTC has neither the expertise nor the remit to assess climate risk in any meaningful and material way.

Further, the information contemplated for companies to report would require armies of new consultants, auditors, and accountants collecting information unlikely to be material to commodities trading. CFTC's time would be better spent on its core mission of ensuring market and financial integrity so that the U.S. economy continues to grow and strengthen in order to provide the resources necessary to conduct climate change research, develop alternative sources of energy, and adapt to climate change. Assisting with the growth of the economic resources our country needs to address climate change is a much more worthy endeavor than expanding CFTC staff considerably to conduct speculative climate change risk analysis or become greenhouse gas emissions bean counters.

Risk Time Horizons

The timescale for assessing climate policy is generally to the year 2100, 80 years into the future. According to the Bank of International Settlements, only 8% of credit default swaps have a maturity of over five years.[4] According to Office of the Comptroller of the Currency (OCC), only 12% of interest rate, FX, and gold derivatives held by banks were over five years in maturity.[5] Thus, the CFTC regulated entities appear to face vastly less climate-related risk than securities issuers or banks extending loans. Of all the financial regulators in the Financial Stability Oversight Council (FSOC), CFTC regulation involves markets with the least exposure to "climate risk." In short, the complexity and uncertainty of assessing climate risk and the misalignment of the climate change time horizon with derivatives markets render CFTC regulation of climate risk to be inappropriate.

Were CFTC to proceed with regulation, it would be focusing on risks that are outside the purview of CFTC regulation. CFTC refers to the FSOC's Report on Climate-Related Financial Risk 2021, which asserts that "businesses, financial institutions, investors, and households may experience direct financial effects from climate-related risks". However, the peer-reviewed science compiled by the IPCC shows a relatively modest financial risk from climate change, whereas the climate *policy* risk may be greater.

A recent study that examined, "Scenarios set out under the UN Climate Panel (IPCC) show human welfare will likely increase to 450% of today's welfare over the 21st century. Climate damages will reduce this welfare increase to 434%."[6] That amounts to a 3.6% reduction in total GDP out to 2100 in a world that is much wealthier than today's world. Additionally, the predictions from the integrated assessment models, the central one being the William Nordhaus' Dynamic Integrated Climate and Economy Model, for which he won the Nobel Prize in Economics in 2018, estimates that global GDP in 2100 would suffer about a 3% loss from climate change, a small amount considering how much richer society will be in 2100.[7] Such a relatively small economic impact out well beyond a time horizon that is operative for today's commodities trades should be well beyond CFTC's regulatory concern.

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[4] *Credit Default Swaps by Remaining Maturity*, Bank for International Settlements, 2021.
[5] *Notional Amounts of Derivative Contracts by Contract Type and Maturity (Interest Rate, FX, and Gold*, OCC
[6] "Welfare in the 21st century: Increasing development, reducing inequality, the impact of climate change, and the cost of climate policies", Bjorn Lomborg, *ScienceDirect, Volume 156,* July 2020.
[7] "*DICE 2013R: Introduction and User's Manual*," Yale University, Department of Economics, October 2013.

On the other hand, CFTC would be contributing to *policy risk* from climate change. The Government Accountability Office (GAO) inadvertently has shown how climate change energy transition policies would cause U.S. public pension plans to be 6% lower in 2050 than without such policies. GAO finds that:

> "In 2016, a consulting firm knowledgeable about climate risks estimated that **the total value of assets in an average U.S. public pension portfolio could be 6 percent lower by 2050 than under a business-as-usual scenario due largely to transition risks associated with climate change**… These data resulted from an analysis of projected returns from 2015 to 2050 for a model public pension plan under a scenario where global warming is limited to 2 degrees Celsius above pre-industrial levels by 2100 and compared to a business-as-usual scenario where efforts to mitigate climate change remain fragmented and warming reaches 4 degrees Celsius by 2100. The climate scenarios estimate the effects of both transition and physical risks from climate change. **The study noted that the worst physical impacts from climate change are not expected for decades (2100 and later) and therefore beyond the study's time horizon for effects on investment returns.**"[8] (emphasis added)

Note from the emphasis added to the GAO quote above, that the study showing 6% lower returns specifically didn't attempt to assess the *actual* physical impacts from climate change, since those happen in 2100 or later, *beyond the time horizon for effects on investment returns*. CFTC would do well to heed GAO's sound advice and not implement regulation meant to address an impact relevant 80 years hence to turn-of-the-century traders, well beyond the horizon for today's and even tomorrow's traders but that would likewise contribute to climate policy risk introduced by CFTC and other government agencies themselves.

The 6% climate change policy risk represents a higher loss by 2050 than the 3% economic impact that IPCC uses as the best assessment of economic impact out to the year 2100, far beyond the timelines that should be the purview of CFTC.[9] With this regulation and other policies, the government itself is the source of risk to investors and traders. Surely CFTC would want to guard against contributing to that 6% decline via this rule.

Conflict of Interest

CFTC appears to be oblivious to the conflict of interests on its own advisory board and the report emanating from it.[10] It is no surprise that a committee composed almost exclusively of people with ideological and/or large financial interests in climate change regulation would release reports finding the need for climate change regulation and vote unanimously to move forward. Clearly a report issued by a board stacked with such advisors should not be considered objective. But even such a board did not

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[8] '*Retirement Savings: Federal Workers' Portfolios Should Be Evaluated For Possible Financial Risks Related to Climate Change*', GAO, GAO-21-327, 2021, page 11, citing to a Mercer and Center for International Environmental Law study in footnote 19.
[9] *DICE 2013R: Introduction and User's Manual*, Yale University, Department of Economics, October 2013.
[10] *Managing Climate Risk in the U.S. Financial System*, report of the Climate-Related Market Risk Subcommittee, Market Risk Advisory Committee of the CFTC, September 9, 2020.

recommend concrete regulatory steps that CFTC should take because any objective interpretation of CFTC's mission and statutes would find no support for moving forward with rulemaking.

Reliability of Climate-Related Financial Risk

On the issue of reliability of information, CFTC should be concerned about the regulatory burden of producing volumes of information that may or may not be useful and actionable. CFTC should be cautious of requiring data that do not help with decision-making and relevant assessments of risk. Kenneth Pucker, former chief operating officer at Timberland, wrote recently that "the impact of the measurement and reporting movement has been oversold," going so far as to say that "the focus on reporting may actually be an obstacle to progress."[11] Despite a dedication to the goals of sustainability and ESG, Pucker describes how his company was unable to create meaningful quantitative measurements.

Measuring Climate Risk

What information can be quantified and measured is a fundamental question. Climate activists believe corporations should be required to report the magnitude and probability of the financial losses they could incur from the physical impacts of climate change. They also want fossil fuel companies to report the transition and liability risks that they may incur as climate policies devalue and strand their assets and courts compel them to pay compensation to climate change victims.

However, objective quantification and measurement of such risks is usually impossible. Climate risk assessments typically depend on multiple assumptions fraught with uncertainties, and are of little financial value to investors. Boston University professor Madison Condon's paper *Market Myopia's Climate Bubble* has been influential.[12] Even though she is advocating for mandatory disclosure and quantification of climate change risks, Condon is honest about the myriad challenges:

> Evaluating climate risk involves forecasting macroeconomic energy demand, guessing on the success of carbon regulation and future technologies, modeling the relationship between atmospheric gas concentrations and global temperatures, predicting how temperature rise will change the earth's climate systems, and calculating how those changes impact physical economic assets. The task requires skills beyond that of a typical financial analyst, colossal amounts of data, and models that have only begun to be built. Each step of estimation adds layers of uncertainty to risk projections. In some cases, particularly those longer-term and macroeconomic, the estimation of the economic impact of climate change may be dwarfed by this uncertainty.

Sometimes it is these very activists who are creating the risks to businesses. How are companies to assess the uncertainty arising from the political system itself and the actors in it? "No amount of regulatory or corporate governance intervention can give shareholders and managers the ability to foresee the future—the outcomes of national elections, for example, are both largely uncertain and

[11] "Overselling Sustainability Reporting", Kenneth P. Pucker, *Harvard Business Review,* May-June 2021.
[12] "Market Myopia's Climate Bubble," Madison Condon, *SSRN*, May 15, 2021.

hugely influential in determining the strength of future climate policy." Condon therefore cautions against an "overemphasis on false precision provided by complicated models."

Further, the climate disclosure movement is not merely a disinterested participant in solving the "problem" of reducing climate risk but an active contributor to raising political risks themselves. By advocating for policies, however unrealistic, to get rid of fossil fuels or to increase the regulatory burden on them, they are the source of many of the risks they purport to address. Some of these activists seek to deny access to capital through agencies by pressuring financial institutions and attempting to strand the very assets they purport to be so worried about on behalf of investors. It is unlikely they have the best interests of investors in mind as much as a particular a political agenda. CFTC should not involve itself in these efforts to defund the energy that supplies over 80% of the world's energy needs, particularly at a time of energy crisis, with millions at risk from lack of fuel to heat their homes and businesses this winter in Europe. Americans themselves are suffering from high energy prices as well, with many facing tough choices about how to feed their families, fuel their vehicles, and keep warm this winter.

We appreciate the opportunity to comment. We urge CFTC to recognize the ramifications of the Supreme Court's recent ruling that precludes climate-related financial regulation of derivatives and commodities markets.

Sincerely,

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Timothy Stewart
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U.S. Oil & Gas Association