VIA ELECTRONIC SUBMISSION

August 12, 2024

Department of the Treasury
Moses Kim
Director, Office of Financial Institutions Policy

RE: Request for Information on Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector (June 12, 2024)

Dear Mr. Kim:

The Futures Industry Association[1] and the FIA Principal Traders Group ("**FIA PTG**")[2] (Futures Industry Association and FIA PTG collectively, "**FIA**") appreciate the opportunity to respond to the request for comment from the Treasury Department regarding uses, opportunities, and risks of artificial intelligence ("**AI**") in the financial services sector.[3] 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. The Futures Industry Association (of which FIA PTG is a part) is the leading global trade organization for the futures, options and centrally cleared derivatives markets. As such, our members are keenly interested in discussions of AI in financial services.

On January 25, 2024, staff of the U.S. Commodity Futures Trading Commission ("**CFTC**") released a request for comment on the use of artificial intelligence in CFTC-regulated markets.[4] FIA responded to the CFTC's request for comment.[5] We reiterate many of the same thoughts

[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.

[2] 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.

[3] 89 Fed. Reg. 50048 (June 12, 2024).

[4] Request for Comment on the Use of Artificial Intelligence in CFTC-Regulated Markets (Jan. 25, 2024), *available at* https://www.cftc.gov/PressRoom/PressReleases/8853-24.

[5] *See* https://www.fia.org/fia/articles/fia-cautions-cftc-regulation-ai (CME Group Inc. and Intercontinental Exchange Inc. joined FIA in this response).

and considerations from our response to the CFTC in our response to the Treasury Department today.

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."[6] 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 Treasury Department to do here when considering AI in the context of financial services.

Our overarching response to this request for comment is that the Treasury Department's consideration of AI should be focused on the applications of the technology within the context of a particular use case, not the technology as a whole, while also taking into account existing rules and guidance applicable to financial institutions. From this framework, the Treasury Department can then consider whether additional regulatory clarity from financial regulators is necessary. For the reasons set forth below, we caution the Treasury Department against approaching the subject of AI with an outlook of policymaking on the technology broadly in financial markets. Our recommended approach supports the CFTC's long-standing focus, as a market regulator, on risks, while remaining technology-neutral. This letter provides these general comments.

1. **The Treasury Department should urge financial regulators to consider existing rules and guidance prior to taking action.**

We support the Treasury Department's decision to gather information about AI in relation to existing regulatory frameworks and assert that these existing regulatory frameworks already apply to registrants' uses of AI. Financial regulators, including the Securities and Exchange Commission ("**SEC**"), CFTC, Financial Crimes Enforcement Network, Office of the Comptroller of the Currency ("**OCC**"), among others, already have in place robust and comprehensive regulatory frameworks that are tailored to their particular regulatory needs and objectives, regardless of whether they involve particular technologies such as AI.

For example, risk management practices related to automated trading, developed through more than a decade of collaboration among market participants, exchanges and regulators in the exchange-traded derivatives space are key components of stability for the industry and, when they were used, have proven effective through various volatility events. Such risk management practices, recently outlined by FIA, apply to both existing technologies and evolving ones, like AI.[7] Furthermore, the OCC's Supervisory Guidance on Model Risk Management, published in

[6] 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/.
[7] *See* FIA, Best Practices for Automated Trading Risk Controls and System Safeguards (July 2024), *available at* https://www.fia.org/sites/default/files/2024-07/FIA_WP_AUTOMATED%20TRADING%20RISK%20CONTROLS_FINAL_0.pdf.

2011, applies equally to AI models as it does to traditional analog models.[8] As detailed below, any consideration of existing rules or guidance should approach the issue from a use-case perspective, avoiding the regulation of AI technology itself.

2. The Treasury Department 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 associated output. For this reason, regulatory frameworks should continue to focus on outcomes and use cases, rather than the underlying technology, an approach which has proven effective for financial regulators and the various markets they oversee. Different uses and different activities may 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.

We urge financial regulators to refrain from crafting new regulations that generally regulate AI because such approach presents well-known pitfalls. Approaching the issue from the perspective of AI as a technology, rather than focusing on the outcomes of the use of AI, 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.

We have already seen this type of effort undertaken, and the subsequent outcome. 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.[9] Ultimately, the CFTC abandoned efforts to define the technology of automated trading in favor of a principles-based approach focused on key risks.[10] Rather than spend considerable time developing a definition of AI that encompasses activity of interest, the Treasury Department and financial regulators should focus on any risks of AI within the context of how the technology is being used, and ultimately, what the outcome of its use is.

We also note that the rapid evolution of technology would likely render any AI definition or specific regulation, regardless of how comprehensive, only marginally meaningful before becoming moot in the near future. Therefore, a definition of AI would not serve as a useful regulatory or policymaking benchmark. As a historical example, in 2017, the CFTC updated its recordkeeping provisions to remove references to concepts such as microfiche, a method of retaining documents that market participants had long since abandoned.[11] In 2022, the SEC

[8] *See* Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, SR Letter 11-7, Supervisory Guidance on Model Risk Management (Apr. 4, 2011), *available at* https://www.federalreserve.gov/supervisionreg/srletters/sr1107a1.pdf.

[9] *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).

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

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

adopted rule amendments to modernize how broker-dealers preserve electronic records.[12] 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 Treasury Department is already aware, there are pre-existing uses for AI in financial markets.[13] 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, and reduction of operational costs.

A recent survey of market participants shows that early use cases are largely focused on non-customer-facing activities.[14] 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, enhancing personal productivity, summarization, synthesis, comparison, extraction of information from unstructured data, hedging and risk management programs, enhancement and evaluation of 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 technology generally, including AI, should depend upon the nature of the technology and its use.

FIA understands that its members may employ a range of governance structures to manage the use of technology, including 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. Question 7 of the Treasury Department's request for information asks, in part: "[h]ow do financial institutions expect to apply risk management or other frameworks and guidance to the use of AI, and in particular, emerging AI technologies? Please describe the governance structure and risk management frameworks financial institutions expect to apply in connection with the development and deployment of AI."[15] FIA understands that certain institutions may deem it

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[12] *See* Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants, 87 Fed. Reg. 66412 (Nov. 3, 2022).
[13] *See* 89 Fed. Reg. at 50050.
[14] IIF-EY Annual Survey Report on AI/ML Use in Financial Services, Public Summary (Dec. 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.
[15] 89 Fed. Reg. at 50054.

appropriate to appoint an AI Information Technology Officer, whereas others may not believe such a specific role to be necessary.

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. This RMF is becoming integrated into risk management practices across industries in the U.S. Although it 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- and principles-based, flexible approach to governance. In its recent report on managing AI-specific cybersecurity risks in the financial services sector, the Treasury Department notes its support for a financial sector profile of the RMF. We applaud this and encourage the Treasury Department to collaborate with industry and other financial regulators through bodies such as the Financial Services Sector Coordinating Council on that effort.

5. Conclusion

We thank the Treasury Department for the opportunity to respond to this request for information. Should you have any questions about our comments herein, please do not hesitate to contact Natalie Tynan from FIA at ntynan@fia.org or Joanna Mallers from FIA PTG at jmallers@fia.org.

Sincerely Yours,

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