

Congress of the United States
Washington, DC 20515

July 20, 2023

The Honorable Gary Gensler
Chairman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chair Gensler:

We write to convey our concerns regarding the U.S. Securities and Exchange Commission's (the Commission) proposed rule titled Safeguarding Advisory Client Assets, Release No. IA-6240 (Feb. 15, 2023) (the proposal). We are deeply concerned for the effects the proposal would have on the U.S. derivatives and commodities markets. The proposal would indirectly regulate entities overseen by the Commodity Futures Trading Commission (CFTC), upsetting the balance established by Congress in the Dodd-Frank Act. In doing so, it would upend the markets overseen by the CFTC, eroding their essential risk management function and putting the nation's farmers and producers at risk.

We are particularly troubled about the lack of collaboration with the CFTC before proposing this rule. The CFTC is the primary regulator of the U.S. derivatives markets in which commodity futures and swaps are traded. For over a century, the derivatives markets have played an integral role in the U.S. economy, facilitating risk management and price discovery, and contributing to financial stability and predictability critical to American businesses—particularly our nation's farmers and ranchers.

The proposal would disrupt the ability of futures commission merchants (FCMs), commodity trading advisors, commodity pool operators, and swap dealers to facilitate access to derivatives markets, even though these entities are already subject to robust customer protection rules imposed by the CFTC that are tailored to the type of asset and its applicable risks. For example, the proposed expansion of the scope of assets covered would prevent many clients of registered investment advisers from participating in the futures markets due to irreconcilable regulatory requirements, undermining the CFTC's customer protection and risk management regimes established under the Commodity Exchange Act (CEA). The proposal would interfere with the ability of FCMs to facilitate critical risk management functions for advisory clients, without adding customer protections.

Furthermore, the proposal would interfere with advisory clients' ability to enter into swaps contracts by overriding the current risk management, documentation, and margin practices of swap dealers. The proposal contradicts a decade of decision-making and coordination by domestic and foreign market and banking regulators by requiring the segregation of all margin exchanged in connection with these agreements, including variation margin. The proposal would also mandate that a "qualified custodian" maintain possession and control of all client assets, yet this requirement is impractical and unworkable for financial contracts entered into between two

market participants. The proposal makes these significant changes without recognition or deference to existing regulatory frameworks, and, assuming the proposal does not render these markets nonfunctional, it will increase transaction costs of these instruments.

Finally, the proposal could impact commodity markets, including the markets for agricultural, energy, and digital commodities. Because many commodities cannot be held by a “qualified custodian,” the Commission proposes an alternative compliance framework for these assets that would instead require an unworkable verification process for each commodity transaction. By interfering with the efficient operation of the commodities markets, the Commission risks causing systemic harm to the U.S. economy.

Given the proposal’s serious flaws, we request that the Commission withdraw it. The CFTC’s regulatory framework fosters resilient markets that agriculture stakeholders—and American businesses more broadly—rely on, and any proposal that impacts liquidity and customer protections in those markets is unacceptable. Absent the Commission withdrawing the proposal in its entirety, we strongly urge the Commission to consult with primary regulators of the affected markets and refrain from applying the proposal to CFTC-registered entities, CFTC-regulated markets, and cash commodity markets.

Sincerely,

John Boozman
Ranking Member
Senate Committee on Agriculture,
Nutrition, and Forestry

Debbie Stabenow
Chairwoman
Senate Committee on Agriculture,
Nutrition, and Forestry

Glenn “GT” Thompson
Chairman
House Committee on Agriculture

David Scott
Ranking Member
House Committee on Agriculture