Board of Governors of the Federal Reserve System (Board) April 15, 2014

Robert V. Frierson, Secretary

Advanced Notice of Proposed Rulemaking (ANPR): Complementary Activities, Merchant Banking Activities, and Other Activities of Financial Holding Companies Related to Physical Commodities (RIN 7100 AE-10)

Docket No. R-1479

Electronically submitted comment

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The Institute for Agriculture and Trade Policy (IATP)[1] appreciates this opportunity to respond to questions raised by the ANPR[2] concerning the above-captioned request for comment. Financial Holding Companies' (FHCs) Complementary Commodities Activities (CCAs) generally do not include owning, storing and trading agricultural commodities. However, CCAs in land, fertilizer and other energy inputs into agricultural commodity production strongly affect agricultural prices, both in the physical and derivatives markets, and particularly when agricultural derivatives contracts are bundled into energy-dominant commodity index funds.[3] Trade-weighted Freight-on-Board agricultural prices continue to rise, contributing to food insecurity in food-import-dependent developing countries with little price risk management capacity in the agricultural and foreign exchange derivatives markets.[4]

The following comment is comprised of an introduction, evaluation of criteria for evaluating "safety and soundness", and review of criteria for evaluating "public benefits" and public risks of the FHC CCAs permitted by the Board of the Federal Reserve. We derive a conclusion and recommendations from these comments. The comment largely responds to the questions concerning "Complementary Authority" but not in the order in which they are posed. As a member of Americans for Financial Reform, IATP supports AFR's comment to the Board on this ANPR.

Introduction

First, IATP believes that the recent pullback of FHCs from physical ownership and trading of commodities[5] (and as noted in the ANPR, 13) is no reason for the Board to not regulate further CCAs or even to terminate Board permission for FHCs to engage in CCAs. Whether FHCs exit the trading and ownership of physical commodities because of reputational risk, declining profits putatively due to regulation, or because an internal assessment of their operational liabilities, is immaterial to the Board's duty to regulate under the authorities of the Bank Holding Company Act (BHCA) and the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (DFA).

If a commodity trading house fails because its structured finance deals in commodities fail, the exposure of the financial system to these shadow banking-like failures is relatively small. However, if CCAs result in FHC liabilities that exceed the prudent leveraged asset ratio that the Board is considering[6], not even implicit guarantees of a further round of Fed rescue loans for an over-leveraged FHC might prevent contagion damage to smaller and sounder financial institutions.

Indeed, if the extent of Federal Reserve guarantees to the FHCs are made explicit, as part of the FHC "living wills"[7], the Board should exclude from the explicit guarantee those complementary activities with the highest degree of liability exposure, including CCAs. Restricting an explicit guarantee from covering losses and liability payouts associated with CCAs would prevent FHCs from developing "unsafe or unsound concentrations in physical commodities" (Question 5). With a resolution mechanism for "too big to fail" FHCs still far from agreed,[8] the Board's role in ensuring that the value of FHC liabilities do not exceed the value of their assets is paramount.

There are two main criteria by which the Board will evaluate the FHC claims of complementarity (Question 1). First, "As part of the finding of complementarity, the Board must find that the activity [of owning, storing, transporting and trading physical commodities] does not pose a substantial risk to the safe and soundness of depository institutions or the financial system generally" (ANPR, 3). The ANPR illustrates risks to safety and soundness in terms of operational risks of CCAs – above all, "environmental catastrophes" -- that could result in losses to depository institutions and produce contagion effects throughout the financial system.

The second criterion is whether FHC CCAs "may be reasonably expected to produce benefits to the public" (ANPR, 3). The Board, however, need not ponder econometric projections of future claimed public benefits to determine whether they "may be reasonably expected". There is a historical record of CCAs that will inform the Board whether CCAs have produced the public benefits adumbrated under the BHCA and whether the Board-stipulated limits on CCAs have been effective in producing those benefits. The Board should consider, for example, whether industrial consumer complaints of Goldman Sachs controlled price and supply manipulation in aluminum markets[9] and documented, but not prosecuted, JP Morgan price fixing in electricity distribution and trading[10] are outliers to be remedied by self-regulatory activities and exiting from CCAs respectively. Or are public harms of these and other FHC CCAs outweighed by the generic benefits claimed by the FHCs that regard CCAs as a necessary and integral part of their overall commodity activity, including trading of Over the Counter (OTC) derivatives, project financing and structured financing?[11]

The in/adequacy of current "safety and soundness" metrics for making a determination of complementarity

One of the difficulties of evaluating whether CCAs pose a "substantial risk" to the safety and soundness of individual FHCs and of the financial system is that FHCs are not required to report granular data of CCAs to regulatory authorities. As Saule Omarova notes, "It is virtually impossible to glean even a broad overall picture of Goldman's, Morgan Stanley's or JMPC's physical commodities activities from their public filings with the Securities and Exchange Commission (SEC) and federal bank regulators."[12] Even though Board permitted CCAs are the great exception to the historical anti-trust doctrine of separating banking from commerce, the publicly available data justification for that great exception is remarkably slight. This CCA data gap is a subset of the larger FHC failure to deliver high quality data to enable supervisory evaluation of FHC risk culture.[13] How should the Board begin to mitigate this data gap?

First, according to the FHCs, capacity to engage in CCAs is essential to their OTC commodity derivatives trading strategies.[14] The Board should evaluate the paucity of CCA data reported to the Federal Reserve in the context of the deregulation or non-regulation of OTC commodity derivatives from 1999 to 2010. The regulatory erosion of the separation of banking from commerce under the authority of the Graham Leach Bliley Act[15] is part and parcel of the regulatory exemptions, exclusions and waivers (for example, the notorious SEC waiver from capital reserve requirements obtained in 2004 by Goldman Sachs CEO Hank Paulson[16]) that enabled the boom and bust in opaque and largely unregulated OTC derivatives markets. Data opacity and reporting exemptions helped to fuel the OTC counterparty default cascades of 2007-2009, and gave rise to Title VII of the DFA. Part of the struggle to implement the DFA-authorized rules has resulted in rulemaking to standardize and report OTC trade data in near real time, and even proposals to aggregate globally the OTC trade data[17]. Even with backing of the DFA authorities, the Commodity Futures Trading Commission (CFTC) has not been able to obtain high quality data from OTC dealer brokers, above all from the FHCs, and is seeking the assistance of the Department of Treasury to secure that data.[18]

There have been no reforms in CCA reporting, comparable to those in OTC commodity derivatives under the DFA, to enhance the granularity and transparency of physical trading of commodities. The Board requires FHCs to report quarterly only "the gross market value of physical commodities in their trading inventory".[19] This self-reported figure is the only regular statistical metric the Board has with which to verify the threshold of safety and soundness, i.e. to "limit the aggregate market value held as a result of Physical Commodity Trading to no more than 5 percent of the FHC's consolidated tier one capital" (ANPR, 4). (IATP is aware of the unsettled international regulatory debate over the definition and surveillance of consolidated tier one capital reporting[20], but is unable to comment on the outcome of that debate regarding CCA metrics for safety and soundness.)

Limiting the aggregate market value of CCAs is, of course, just one safety and soundness measure. The Board's decision to increase the FHC leverage ratio from three percent to five percent of assets held against possible losses is an important improvement towards establishing the safety and soundness of the FHCs. However, consistent with the Basel III accords of the Bank for International Settlements, FHCs will not be required to comply with this higher leverage ratio until 2018.[21] While it is unlikely that CCA trading losses alone will cross the Board's safety and soundness threshold even after 2018, the ANPR wisely poses questions about whether CCA related risks and liability costs could lead to transgression of the leverage ratio threshold and thereby signal FHC insolvency.

Given the CCA-related "environmental catastrophes" outlined in in the ANPR (5-7), IATP believes the Board should require that the FHCs submit quarterly two independent estimates of the cost of environmental, transportation, personal injury and death, public health, reputational and legal liabilities associated with the trading, storage and delivery of those FHC CCAs reported to the Fed. The decades of environmental damage, public health costs, clean-up costs and lost income resulting from "environmental catastrophes" such as the Exxon Valdez disaster, have shown that such liabilities must be estimated for years.[22] For example, Exxon's clean-up activities ended in 1992,[23] three years after the disaster, but the ongoing Exxon Valdez caused environmental and economic damages show that the Fed's methods for evaluating risks and liabilities, informed by environmental economics, will need to project long-term loss and damage.

Furthermore, the FHCs engaged in CCAs should submit at least annually to the Board copies of the insurance policies they and/or third parties contracted by them carry on the storage and delivery of their physical commodities. If the Board judges such insurance policies to be inadequate to cover the costs of the associated liabilities, it would require the FHC to increase the amount of existing insurance policies and/or buy new policies designed to cover risks identified by the independent audits of the FHC CCA liabilities. (Questions 2 and 3). FHCs would have to report to the Board immediately, if they were not able to purchase a policy that would cover FHC losses and liabilities for the Board permitted CCA. The Board would then consider whether to suspend its order to permit the FHC to engage in CCAs at least until such time as the FHC demonstrate that it had sufficient insurance to cover its short and long term CCA related liabilities and losses. IATP also believes that FHCs engaging in CCAs should be required to have higher capital reserves than FHCs that do not engage in CCAs. (Question 3) A higher capital buffer will be required to retain solvency following long-term costs of CCA related catastrophes.

The FHCs very likely would resist additional reporting requirements to internalize the costs of the CCA liability exposure. However, the Board should evaluate complaints about "burdensome and costly" reporting requirements not in the context of individual or even collective FHC representations, but in terms of systemic costs and benefits. According to the Bank for International Settlements, the macroeconomic benefits of OTC derivatives regulation ***were estimated to be about four times the costs of regulation*** (our emphasis).[24] Regarding CCAs, these complaints should be evaluated in the context of independently assessed Value at Risk posed by FHC CCA liabilities and liability contagion, including reputational risk, to system-wide safety and soundness.

The Board supports CCAs by aiding the FHCs with risk management requirements to prevent the FHCs from sharing liability costs with the third parties contracted to manage their CCA logistics and storage in the event of an "environmental catastrophe". If Board expands this form of liability prevention for the FHCs, it should expect that the FHCs will use the protection granted against "piercing the corporate veil" of liability to engage more aggressively in yet riskier CCAs, e.g. to trade in rare earths and rare earth derivatives, with all the geo-political and national security risks entailed (Questions 7-8). In our view, the Board should get out of the business of inadvertently enabling riskier CCAs by protecting the FHCs against "piercing the corporate veil" from plaintiffs seeking damages that result from harms caused by CCAs. (Questions 7 and 20)

Safety and soundness issues outside existing U.S. law

Most of the ANPR questions concern how CCAs comport with the BHCA. However, the ANPR also asks whether CCAs "create material conflicts of interest that are not addressed by existing law" (Question 16). IATP believes that there are at least two issues in which Board orders to allow FHC to engage in CCAs raise "material conflicts of interest not addressed by existing law".

The first issue is the conflict raised by Board support for FHCs fossil fuel based CCAs and the consequences for safety and soundness of FHC climate change risk exposure. This risk exposure is structurally different from the sum of individual catastrophic risks for which the ANPR seeks recommendations to limit FHC liabilities (Question 6). Given the very modest White House objectives and actions to reduce greenhouse gasses and adapt to climate change, and the lack of political will/opposition in Congress to pass and budget for the implementation of comprehensive climate change legislation, the Board should consider measures to prevent financial system instability resulting from FHC CCAs, especially those based in fossil-fuels.

Just as the Board was forced to take extraordinary measures to stimulate the economy in the absence of adequate legislation to do so, so too should the Board consider taking on the burden of getting FHCs and other Systematically Important Financial Institutions (SIFIs) out of the business of financing an increase in climate change risk exposure and into the business of regulating FHCs to assume the costs of their climate change liabilities to ensure their safety and soundness. IATP further believes that the Board should develop policy and credit windows to finance greenhouse gas reduction and adaptation to climate change, but understands that such a proposal is not only beyond the scope of this ANPR but perhaps beyond the scope of current Board legal authorities. (The carbon emissions derivatives market, in which some FHCs trade, has already failed at this climate change financing task. For example, according to the Swiss bank USB, "By 2025, the [European] ETS [Emissions Trading Scheme] will have cost consumers 210 billion euros. Had this amount been used in a targeted approach to replace the EU's dirtiest plants, emissions could have dropped by 43 percent, instead of almost zero impact on the back of emissions trading." [25])

The second CCA safety and soundness issue outside the BCHA, partly alluded to in Question 15, concerns the anti-competitive effects of CCA-engaged FHCs supported by Board policy and emergency loan programs, and privileged access to low-interest credit windows vs. unsupported commercial hedgers of commodities. There is a legal vacuum relevant to CCAs between anti-trust law affecting the trading of physical commodities and the law governing the trading of commodity derivatives contracts. While price fixing in physical commodities can be litigated successfully under the Sherman Anti-Trust Act[26], there is no existing law to discipline anti-competitive business practices that arise from synergies in excessive speculation in commodity derivative contracts and physical trading of those commodities.

The Commodity Exchange Act, as modified by the DFA, provides for a position limit regime to prevent, diminish and eliminate excessive speculation in OTC, futures and options commodity derivative contracts. The market power of FHCs, particularly as commodity derivatives index speculators, is far greater than that of commercial hedgers, not only in the OTC commodity derivatives markets,[27] but in the determination of physically deliverable supply that is a factor in setting position limits on OTC commodity derivatives.

FHCs are suing to prevent the implementation and enforcement of the position limits regime[28] and the cross-border application of DFA authorized OTC derivatives rules to the foreign subsidiaries of the FHCs.[29] If the FHCs prevail in court, the dark market synergies between FHC dominance of the OTC derivatives markets and of physical trading will continue unabated not just in U.S. markets but in the dozens of jurisdictions in which FHCs operate.[30]

Regardless of the outcome of the aforementioned FHC lawsuits against the CFTC, the Board should consider whether Board regulations on CCAs should include criteria to prevent anti-competitive business practices by FHCs not covered under the Sherman Anti-Trust Act. The BCHA provides for just one quantified CCA requirement, namely to "limit the aggregate market value held as a result of Physical Commodity Trading to no more than 5 percent of the FHC's consolidated tier one capital" (ANPR, 4). This requirement is largely a safety and soundness metric. The Board should consider whether its existing authorities enable it to modify Rule Y orders to include criteria to prevent anti-competitive business practices among the FHC CCAs.

IATP believes that few commercial users of and hedgers in commodities affected by FHC CCAs will comment for this ANPR, even if they are negatively affected by FHC CCAs. First, some of them are preparing litigation against FHCs for price and supply manipulation of physical commodities and would not want to reveal their data of CCA caused competitive harms prior to trial. Other commercial hedgers, who depend on FHCs for banking services, such as Initial Public Offerings or hedging in foreign currencies, are unlikely to criticize FHC CCA engagement, because of the possibility of FHC retaliation.

Climate change related CCA risks to safety and soundness

Regarding climate change, most of the ANPR illustrations about how CCAs might affect safety and soundness are in terms of hypothetical SIFI liability and/or losses in the event of catastrophic events, e.g. the massive Deepwater Horizon oil contamination of the Gulf of Mexico and its coastal regions (9). Catastrophes connote severe and unpredictable events whose economic losses and civil liabilities can be compensated, at least partially, under insurance policies designed actuarially for such events.[31] However, as the Secretary of the United Nations Framework Convention on Climate Change (UNFCCC) recently noted, extreme weather trends and the catastrophes that result from them are not exceptional, but are part of an unavoidable and somewhat predictable future under current Business As Usual policies and practices[32], contrary to climate change denial and doubt campaigns financed by the fossil fuel industry.

How will an ever more catastrophe prone climate[33] affect the liability costs of FHCs' CCAs, when the climate risk of transportation and storage of commodities increases the size and kinds of economic, public health and environmental damages? The U.S. insurance industry has begun to grapple with the cost of climate change to the industry.[34] IATP is not aware of evidence that non-insurance SIFIs have begun to publish analysis of that issue.[35]

One study very conservatively estimates that investment fund corporate climate risk exposure could reach $8 trillion by 2030.[36] This estimate does not include the climate risk exposure of FHCs. Given the incipient state of climate change risk planning in the majority of U.S. insurance companies and the global interconnectivity of finance,[37] loss and damage could become uninsurable under current actuarial models, as positive feedback loops of loss of polar ice and ocean acidification unpredictably intensify the severity and frequency of damage from extreme weather events.

Under the DFA, publicly traded companies are required to report their climate risk exposure to the Securities and Exchange Commission, but the SEC and corporations have been lax in complying with this climate risk exposure reporting requirement.[38] The Board should review the FHC climate risk exposure filings to the SEC to determine whether those filings adequately represent the FHC liabilities and costs of climate risk exposure as a factor in safety and soundness determination, particularly with regard to CCAs.

If the Board is not satisfied with the detail, accuracy and comprehensiveness of the FHC filings to the SEC, it should develop its own climate risk exposure reporting requirements for FHCs. Given the possibility that the Board could reduce explicit and implicit guarantees of support to the non-compliant FHCs, IATP believes that the FHCs would be more likely to comply with Board stipulated climate risk exposure reporting under safety and soundness liability criteria.

Competition issues, public benefits and potential adverse risks of CCAs

As noted above, the paucity and opacity of FHC CCA data reported to the Board make it very difficult to verify the FHC claimed public benefits for CCAs (Question 17). Furthermore, the data paucity and opacity make it difficult to evaluate competition issues between FHC CCAs and commercial hedgers and users of commodities. Consider, for example, the FHC claimed benefits of CCAs in the jet fuels market in a Securities Industry and Financial Markets Association (SIFMA) commissioned study: "As a part of a Chapter 11 restructuring, a leading U.S. airline sought a major bank's help in reducing its operating costs".[39] As airline representatives have testified to the U.S. Senate, the major operating cost it has not been able to control is the steep increase in jet fuel price levels and price volatility since 2006.[40]

Airline industry testimony to the agriculture committee of the House of Representatives noted in 2009, "Since December 2007, eight airlines have ceased operations".[41] This testimony identified excessive speculation, particularly by commodity index funds managed by FHCs, in the commodity derivatives markets, and particularly in the oil markets, as a principal factor in the huge increase in jet fuel prices and price volatility. Airline industry attempts to manage jet fuel prices by hedging upstream in oil derivatives contracts were ineffective.

The SIFMA jet fuel CCA case study is disingenuous and even deceptive because it elides the history of FHC excessive speculation in oil derivatives contracts, and airline incapacity to risk manage jet fuel prices due to FHC induced price volatility. The SIFMA study claims the case study "major bank" had to "compete" with other airlines for jet fuel in order to reduce the jet fuel costs of the bank's client airline. "Moreover, to obtain the most effective hedge for its own risk management, the bank needed to trade in illiquid jet fuel and the related, but not identical, liquid heating oil markets".[42] Not content to engage in proprietary trading in jet fuels, the major bank thought it necessary to "compete" in the liquid heating oil markets, largely composed of small companies with even less financial ability to pay the collateral costs of hedging in oil derivatives markets driven by FHC and index fund bets.[43] The only "relation" of jet fuel to oil heating markets is the bank's oil derivatives contract strategy.

SIFMA's sophistry and paucity of data in defending the "necessity" of FHC CCAs should come as no surprise to the Board. SIFMA et al's lawsuit against the CFTC's setting of DFA authorized position limits on OTC commodity derivatives[44] to limit FHC speculation likewise seeks to undermine the ability of commercial hedgers to compete with FHCs in the commodity derivatives markets. Commodity end-users in the Commodity Markets Oversight Coalition have supported the CFTC's position limits rule against the SIFMA et al lawsuit as part of their overall campaign for transparent and competitive commodity derivatives markets that serve the price risk management needs of commercial hedgers.[45]

Unfortunately, the Commodity Exchange Act provides no legal authority for the CFTC to regulate physical commodity trading by the FHCs or by anyone else, including the global commodity trading houses that do compete with the FHCs in physical trading. The commodity trading houses are mostly privately held and so report only the data they wish to report, when and if they wish to report it. While IATP believes that commodity trading houses should be subject to far greater regulation and regulatory disclosure, the prospects for U.S. legislation and international regulatory cooperation to do so are very dim.

An indicator of the reluctance of governments to regulate "their" headquartered commodity trading houses, even despite the political instability risks of trade house managed commodity pricing changes (e.g. riots partly resulting from Glencore's re-pricing of wheat contracts to Tunisia, Egypt and Algeria[46]), are the voluntary and unsuccessful initiatives of the Group of 20 industrialized governments even to gather data on the physical stocks of agricultural and energy commodities. As an article about the Joint Organisations Data Initiative on energy commodities noted, "the current economic crisis is having an impact on the resources allocated to statistics: for instance, in many countries surveys have stopped and departing statisticians are not being replaced".[47]

The lack of existing legislation to regulate physical trading to make CCAs cohesive with safety and soundness and with the provision of public benefits is not, however, in our view, the principal reason for the Board to terminate permission for FHCs to continue to engage in CCAs. Rather the expansion of FHCs into CCAs in light of the failed system of financial services regulation across the asset classes of the FHCs would add one more asset class to an already ill-regulated mix far from the core activities of FHCs. As Professor Omarova has written, "[t]he U.S. system of financial regulation is already highly fragmented and ill-suited to detect and reduce systemic risk across different financial markets and products. The expansion of FHC's activities into yet more new activities subject to extensive regulation under very different regulatory schemes – environmental regulation, workplace safety regulation, utility regulation – lays the foundation for jurisdictional conflicts on an unprecedented scale".[48] The Board must not add to this potential for jurisdictional conflicts by allowing FHCs to continue their CCAs despite the paucity of data for judging complementarity and the numerous and large potential risks outlined above.

Conclusion

President Richard Fischer of the Federal Reserve Bank of Dallas recently remarked, "It is improper to ask the taxpayer to underwrite the non-commercial banking operations of a complex bank holding company".[49] Just as it is improper to ask the taxpayer to provide an implicit guarantee to FHCs for losses incurred in non-commercial banking practices, IATP believes is it improper for FHCs to enjoy the benefits of an implicit guarantee for their CCAs. And yet FHCs have enjoyed and continue to enjoy this huge competitive edge over commercial hedgers who trade physical commodities without the benefit of this implicit guarantee, to say nothing of other FHC benefits of being associated with the Federal Reserve System. IATP strongly prefers that the Board terminate its permission for FHCs to engage in CCAs. However, if the Board decides to allow FHCs to continue to engage in CCAs, it should at least remove CCAs from coverage in any explicit guarantee the Board decides to offer to ensure FHC safety and soundness.

The Board will consider whether to initiate rulemaking on CCAs more than three years after the end of its $29 trillion 2007-2010 emergency loan program, largely to U.S. and foreign SIFIs, and to the central banks of the SIFI jurisdictions.[50] Notwithstanding this massive and indispensable rescue, a Bank for International Settlements study reported, "We find no evidence that that rescued banks reduced the riskiness of their new lending more than non-rescued banks in response to the crisis and the public rescues."[51] The second failure of Citigroup to pass the Federal Reserve's stress test[52], despite the nearly $3 trillion Federal Reserve emergency loan rescue of that SIFI, should prompt Board concern about whether FHC self-reporting of Value at Risk is a valid, or at least adequate, metric to evaluate the "safety and soundness" of FHCs engaged in "complementary activities".[53] In view of the many potential adverse risks of CCAs outlined above, IATP recommends that any FHC that fails to pass a Fed stress test must be required to stopping engaging in all CCAs.

Furthermore, the Board should consider whether FHCs that are unable or unwilling to provide standardized and usable OTC derivatives data for regulators and market participants should be rewarded with Board order to allow them to engage in CCAs. As the Senior Supervisors' Group recently reported to the Financial Stability Board, "Five years after the financial crisis, firms' progress toward consistent, timely, and accurate reporting of top counterparty exposures fails to meet both supervisory expectations and industry self-identified best practices. The area of greatest concern remains firms' inability to consistently produce high-quality data."[54] If FHCs continue to be unable or unwillingly to produce consistently standardized, comprehensive and usable data for a segment of its business that is intimately connected to their CCAs, shouldn't the Board review the FHC applications for permission to continue CCAs in light of their in/capacity to document that they manage all the segments of their commodity business to the Board's satisfaction? The old business school adage, "if you can't manage something well, manage something bigger" should not be allowed to apply to the FHCs.

IATP has made several recommendations concerning FHC reporting of its climate change risk exposure. We believe that climate change poses risks of a scale and kind to both insurance and non-insurance SIFIs beyond what the ANPR outlines as resulting from "environmental catastrophes". Again, we strongly prefer that the Board terminate permission for FHCs to engage in CCAs. But if the Board decides to continue granting permission for FHC CCAs, in order to have adequate data upon which to base a complementarity determination, the Board should require vastly expanded reporting of FHC CCA related operational risks, including climate change risk exposure, as we have recommended above. The Board should initiate its own research program on the consequences of climate change for the safety and soundness of non-insurance SIFIs.

Finally, the ANPR asks how Board termination of orders to allow FHCs to engage in CCAs will affect the CCA relevant commodity markets and the FHCs (Question 18). Because of the aforementioned data opacity, it is difficult to know how a Board order to the FHCs to unwind their physical trading operations and storage and transmission contracts, and sell their stocks of physical commodities will affect their commodity derivatives, structured commodity finance and project finance operations. The FHCs exiting physical commodities will lose their ability to influence the physically deliverable supply upon which positions in the covered commodity contracts in the swaps, futures and options markets are based.

However, given the FHCs' enormous economic intelligence capacity, it is very unlikely they will lose a competitive informative edge in the commodity derivatives market. Although the relevant commodity contracts of CCAs will lose some volume of capital flows, since much of these flows were connected to trading in energy dominant commodity index funds, which made markets less liquid for commercial hedgers, the quality of commodity derivatives market liquidity will be improved. Commodity trading houses have and will supply liquidity in physical trading as they buy FHC physical trading assets, as Mercuria will do in place of JP Morgan.[55] While it is regrettable that commodity trading houses are largely unregulated, as noted above, a failure of one or more commodity trading houses will not negatively affect the safety and soundness of the financial institutions under the Board's authority.

IATP hopes that these comments will assist the Board in its review of Regulation Y and other authorities for allowing FHCs to engage in CCAs.

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[1] The Institute for Agriculture and Trade Policy is a U.S. nonprofit, 501(c)(3) nongovernmental organization, headquartered in Minneapolis, Minn., with an office in Washington, D.C. Our mission states, "The Institute for Agriculture and Trade Policy works locally and globally at the intersection of policy and practice to ensure fair and sustainable food, farm and trade systems." To carry out this mission, as regards commodity market regulation, IATP has participated in the Commodity Markets Oversight Coalition (CMOC) since 2009, and the Derivatives Task Force of Americans for Financial Reform since 2010. IATP has submitted several comments on CFTC rulemaking, and on consultation papers of the International Organization of Securities Commissions, the Financial Stability Board, the European Securities and Markets Authority, and the European Commission's Directorate General for Internal Markets.

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[6] Emily Stephenson, "U.S. Fed to consider final bank leverage rules on April 8", Reuters, April 1, 2014.

[7] "Too Big to Fail", Federal Reserve Bank of Richmond, February 20, 2013. https://www.richmondfed.org/research/our_perspective/toobigtofail/index.cfm

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