

1 NOMINATION HEARING OF HEATH P. TARBERT, OF MARYLAND,
2 TO BE CHAIRMAN AND A COMMISSIONER OF
3 THE COMMODITY FUTURES TRADING COMMISSION

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5 WEDNESDAY, MARCH 13, 2019

6 United States Senate,
7 Committee on Agriculture, Nutrition, and Forestry,
8 Washington, D.C.

9 The committee met, pursuant to notice, at 10:00 a.m.,
10 in Room 328A, Russell Senate Office Building, Hon. Pat
11 Roberts, Chairman of the Committee, presiding.

12 Present or submitting a statement: Senators Roberts,
13 Ernst, Braun, Grassley, Thune, Fischer, Stabenow, Brown,
14 Klobuchar, Gillibrand, Casey, and Smith.

15 OPENING STATEMENT OF CHAIRMAN ROBERTS

16 Chairman Roberts. I call this hearing of the Senate
17 Agriculture, Nutrition, and Forestry Committee to order.
18 Today we consider the nomination of Dr. Heath Tarbert to
19 serve as Chairman and a Commissioner of the U.S. Commodity
20 Futures Trading Commission.

21 It was as pleasure to meet with you, Doctor, earlier
22 this week and I thank you for appearing before the Committee
23 today. I recognize you have quite a few members of your
24 family in the audience today, including your wife, two sons,
25 mother-in-law, and brother. Welcome to the Ag Committee

1 family. If you would stand we would like to recognize you
2 please. Thank you very much for coming.

3 [Applause.]

4 Chairman Roberts. I like that bowtie. That is very
5 fashionable.

6 Before delivering an opening statement I ask the letter
7 of support for our nominee from 25 different agriculture
8 groups to be included in the record. Without objection, so
9 ordered.

10 [The letter follows:]

11 / COMMITTEE INSERT

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1 Chairman Roberts. In the letter, the groups voiced
2 strong support and appreciation for Dr. Tarbert's experience
3 in the financial sector, the effort he has demonstrated to
4 understand their priority issues, and his commitment to
5 visiting agricultural operations as a way to reinforce the
6 importance of these markets to farmers, ranchers, growers,
7 and agribusiness.

8 As I have noted before, the CFTC is charged with
9 fostering an open, transparent, competitive, and financially
10 sound market while working to prevent any systemic risk.
11 Further the Commission is tasked with protecting market
12 users and their funds, consumers and the public from fraud,
13 and manipulation and abusive practices related to
14 derivatives and other products that are subject to the
15 Commodity Exchange Act. The regulation and oversight
16 provided by the CFTC end users, farmers, ranchers,
17 commercial companies, municipalities, energy companies,
18 pension funds, and others to hedge commercial risk using the
19 derivatives markets, these markets allow companies to
20 generate jobs and produce goods and services for our entire
21 economy.

22 While it was not the farmer or the rancher or rural
23 cooperative or electric utility who contributed to the
24 financial crisis of 2008, it is often these folks who
25 shoulder the heaviest burden when regulators write and

1 implement rules. Today this Committee will hear from a
2 nominee who is no stranger to public service. His experience
3 clearly shows he has an appreciation of what led to the
4 financial crisis 10 years ago, and he understands how these
5 markets are impacted by actions taken by Congress and the
6 U.S. federal regulators as well as our legislative and
7 regulatory partners around the world.

8 As the current Assistant Secretary for International
9 Markets at the Department of Treasury, this nominee has
10 exactly the right experience at the right time to lead the
11 CFTC as the world awaits important decisions throughout
12 Europe on how regulators will treat U.S. interests and other
13 market participants operating across that continent.

14 Current CFTC Chairman Chris Giancarlo has done a great
15 job advocating U.S. interests and the importance of
16 equivalency, and there is no doubt this nominee is prepared
17 to continue this legacy when confirmed.

18 Dr. Tarbert, our meeting earlier this week shed light
19 on your policy positions regarding immediate, specific,
20 high-profile issues such as Brexit, and you highlighted your
21 views on issues important to agriculture end users such as
22 position limits.

23 Again, I thank you, Doctor, for being here today. I
24 look forward to your testimony.

25 I now turn to my colleague, Ranking Member Stabenow for

1 her opening remarks.

2 OPENING STATEMENT OF SENATOR STABENOW

3 Senator Stabenow. Well, thank you, Mr. Chairman, and
4 it is good to be with you this morning to consider the
5 nomination to this very important position at the CFTC. Mr.
6 Tarbert, congratulations. It was a pleasure to meet with
7 you, and welcome to your family as well. I am sure they are
8 very proud of you.

9 The CFTC plays a critical role in providing the
10 certainty in our futures and swaps markets for Main Street
11 businesses, consumers, and our farmers and ranchers, as we
12 all know. Everyone in this room understands that
13 agriculture is a risky business, maybe the riskiest business
14 when we look at what is happening with the weather. That is
15 why this Committee wrote and passed a strong bipartisan farm
16 bill that gives our farmers five years of certainty in
17 uncertain times and why strong oversight of the CFTC is so
18 very important.

19 But before we begin discussing the future of the CFTC I
20 must comment on the President's budget. I was disappointed
21 to see that the proposal would roll back many of the
22 important investments we have made in the future of the
23 agricultural economy. The budget includes a nearly 31
24 percent cut to the farm bill, on top of a 15 percent cut to
25 the rest of the USDA. We must ensure that the USDA has the

1 resources it needs to fully implement the bipartisan 2018
2 farm bill quickly, and I know that the Chairman agrees and
3 that we are committed to making sure that happens. This is
4 not the time to put a target on our farmers and our
5 families.

6 I also strongly support providing the CFTC with the
7 funding it needs to protect our financial markets, and we
8 talked about that. This is very important you have the
9 resources you need. The CFTC has been underfunded for many
10 years, which puts our financial system at risk.

11 In addition to robust funding, the CFTC also needs
12 strong leadership. Mr. Tarbert, you have a great deal of
13 experience and expertise in financial markets. You also
14 have first-hand experience in the development of the Dodd-
15 Frank Act. I would like to hear more about how you would
16 continue the significant progress that the CFTC has made
17 over the past nine years in implementing this historic law.

18 The CFTC must continue to prioritize strong customer
19 protections and it must remain vigilant in bringing
20 wrongdoers to justice through the enforcement program. The
21 CFTC must bring certainty to its rule book by finalizing the
22 Dodd-Frank rules that remain incomplete, like setting
23 speculative position limits and establishing minimum capital
24 requirements for swap dealers. And the CFTC must continue
25 to be forward-looking to address emerging risks, such as

1 cybersecurity and automated trading.

2 A decade has passed since the Great Recession. We must
3 never forget that over 8 million people lost their jobs and
4 countless families and farmers and small businesses faced
5 foreclosure and financial ruin. The CFTC needs leadership
6 that is committed to moving forward, not backward, on the
7 critical reforms enacted in 2010 to safeguard our markets
8 and protect our customers.

9 Mr. Tarbert, I am also encouraged that you have shown a
10 strong interest in addressing issues facing our agricultural
11 economy, which is obviously so important to all of us on
12 this Committee. I look forward to hearing more about your
13 plans and your vision.

14 Thank you, Mr. Chairman. Also, welcome to the senior
15 Senator from Texas. We are glad to have you with us today.

16 Chairman Roberts. Well, before I introduce my
17 distinguished friend, and thank you, sir, for coming, from
18 the great state of Texas, I want to echo the comments by the
19 Chairman with regards to the administration's budget
20 proposal, who got tossed through the transom back here in
21 the back room. We looked at it for a little while and
22 decided to throw it back.

23 I am not trying to impugn the motives and the efforts
24 of the administration to try to get a hold of our deficit
25 spending and the national debt and all of that, but we just

1 passed a farm bill in a bipartisan fashion, and the number
2 one issue that we heard all around the country, for two
3 years we traveled around the country, every region, every
4 crop, every commodity, and the number one concern was crop
5 insurance.

6 The recommendations reflect past efforts from past
7 administrations and for some reason they do not quite get it
8 in terms of crop insurance. That particular, quote,
9 "reform" is not a reform. It would gut the program and even
10 places in Texas, Oklahoma, Kansas, Nebraska, all of the high
11 plains would be impacted. We are not doing that.

12 I now am most happy to introduce my good friend, a very
13 distinguished Senator from the great state of Texas. He is
14 known for his leadership qualities, passing legislation, and
15 is a country-and-western aficionado, as I am.

16 Senator Cornyn, thank you for coming. Please proceed.

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1 STATEMENT OF THE HONORABLE JOHN CORNYN, A UNITED
2 STATES SENATOR FROM THE STATE OF TEXAS

3 Senator Cornyn. Well, thank you, Chairman Roberts and
4 Ranking Member Stabenow. It is a pleasure to be with the Ag
5 Committee today and it is my honor to introduce Dr. Heath
6 Tarbert.

7 Looking at his resume it makes one wonder what we have
8 done with our life. He has done so much and I am not going
9 to go into great detail, although I will point out that not
10 only does he have a JD, which is a Juris Doctor, he has an
11 SJD, which is a Scientific Juris Doctor, which entitles him
12 to be addressed as Doctor. Ordinary lawyers are not, even
13 though they have a Juris Doctor. I know you wanted to know
14 all about that. But he also has a Doctor of Philosophy from
15 Oxford, so he has earned that title, and, of course, he has
16 now been nominated to serve as Commissioner of the Commodity
17 Futures Trading Commission.

18 He brings with him a wealth of experience from the
19 private and public sectors. Throughout his work in the
20 private sector he amassed a vast understanding of the Dodd-
21 Frank regulations and developed an expertise in banking and
22 securities law as well as financial compliance law. His
23 time in public service has been spent in all three branches
24 of government and includes serving as Special Counsel to the
25 Senate Banking Committee, Associate Counsel to President

1 George W. Bush, and Law Clerk to Justice Clarence Thomas on
2 the United States Supreme Court.

3 He currently serves as the Assistant Secretary for
4 International Markets at the Treasury Department where he
5 works to advance the U.S.'s interests in various
6 international issues including financial regulation. He
7 also serves--and this is where our lives intersected the
8 most recently--he also serves as the Policy Chair of the
9 Committee on Foreign Investment in the United States, a body
10 which, as the Committee knows, that reviews foreign
11 investments to protect our national security interests.

12 And I will just note that Heath did yeoman's work on
13 behalf of the Treasury Secretary, Secretary Mnuchin, as
14 Secretary Mnuchin did, in helping us get through a very
15 complex and not particularly a politically attractive topic
16 but one which is essential to protecting our national
17 security, and that is to upgrade our rules and regulations
18 with regard to foreign investment in the United States.

19 And if all of these impressive qualifications were not
20 enough, he also happens to be an Eagle Scout.
21 Notwithstanding his stellar credentials, he has a well-
22 earned reputation for being bipartisan, collaborative, and
23 an honest broker, just what you would want.

24 As I said, I saw this first-hand as we worked together
25 on the Foreign Investment Risk Review Modernization Act, or

1 FIRRMA. We know that in complex matters sometimes it is
2 difficult to strike the right balance, and Heath was
3 instrumental in working with members in both the House and
4 the Senate to do just exactly that, and I am confident he
5 will do the same in his new capacity.

6 This bipartisan track record is something that I
7 believe will serve him well should he be confirmed as the
8 next Chair of the CFTC, especially since the Commission
9 works with this Committee to strike a balance between market
10 integrity and market access. As you know, the CFTC serves a
11 critical purpose to foster transparent and competitive
12 markets. Americans across the country depend on well-
13 functioning markets to manage their businesses and mitigate
14 risk, and this Committee knows these market participants
15 well. They are our farmers, our ranchers, our utility
16 companies, and manufacturers. But the CFTC must also
17 enhance stability and confidence in derivatives markets,
18 ensuring end users and the public that they are protected
19 from fraud.

20 So, in conclusion, let me just say I think Heath is an
21 excellent choice to lead the CFTC. He has shown a
22 dedication to work hard across the aisle and in tandem with
23 multiple branches of government toward an end result that is
24 in the best interest of the American people. So I believe
25 the Committee will enjoy a productive relationship with him

1 as you work to promote market access and market integrity.

2 So I thank you for the opportunity to come and say a
3 few words on this outstanding nominee, Heath Tarbert, and I
4 know he is eager to continue serving our country in this new
5 role.

6 Thank you, Mr. Chairman.

7 Chairman Roberts. I thank the distinguished Senator
8 from Texas and agree with virtually everything that you have
9 said.

10 As is the tradition and custom of the Committee, before
11 a nominee witnesses to provide testimony I need to
12 administer the oath. Secretary Tarbert, if you would please
13 stand and raise your right hand.

14 First, do you swear that the testimony you are about to
15 present is the truth, the whole truth, and nothing but the
16 truth, so help you God?

17 Mr. Tarbert. I do.

18 Chairman Roberts. And second, do you agree that if
19 confirmed you will appear before any duly constituted
20 committee of Congress if asked to appear?

21 Mr. Tarbert. I do.

22 Chairman Roberts. Thank you. Please proceed with your
23 testimony, sir.

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1 TESTIMONY OF HEATH P. TARBERT, OF MARYLAND,
2 NOMINATED TO BE CHAIRMAN AND A COMMISSIONER OF THE
3 COMMODITY FUTURES TRADING COMMISSION

4 Mr. Tarbert. Chairman Roberts, Ranking Member
5 Stabenow, and distinguished members of the Committee, I am
6 honored and grateful to appear before you today as the
7 nominee for CFTC chair. I appreciate the kind words of
8 Senator Cornyn and I would like to thank the Committee staff
9 for their professionalism during this process.

10 While I have had the pleasure of working with some of
11 you in the past I thought I would take a moment to introduce
12 myself. I grew up in Baltimore, where my family emphasized
13 hard work, education, and the importance of public service
14 at every level of government. Both of my grandfathers
15 fought in World War II, one with the Army in Europe, the
16 other with the Navy in the Pacific. One of my uncles was a
17 police officer, another a firefighter. My father went to
18 night school to study accounting and eventually served as
19 Comptroller of the Maryland Port Administration. In that
20 role, he oversaw the flow of agricultural commodity exports
21 and imports through Baltimore. Although my father passed
22 away after a courageous battle with pancreatic cancer, his
23 commitment to public service remains a guiding example for
24 me.

25 Each of my adult guests today is or has been a public

1 servant. My mother retired as a child support enforcement
2 officer and my mother-in-law retired as a public school
3 teacher in Ashwaubenon, Wisconsin. My brother, who is a
4 proud Democrat, recently completed a term as Deputy Mayor of
5 Baltimore, and his wife Bonnie has been an art teacher in
6 the city's public schools. Finally, my wife Kate and I met
7 clerking for the U.S. Court of Appeals in town, and let me
8 tell you, I definitely married up. Kate went on to serve in
9 the Justice Department and as a law clerk to Chief Justice
10 John Roberts. She is currently a full-time mom to our two
11 young sons, Ben and Nathaniel, also here today.

12 My family's commitment to public service has inspired
13 me as well. Over the course of my career, I have had the
14 privilege to serve in all three branches of the Federal
15 Government. During that time, I have developed a deep and
16 broad background in financial services regulation. Since
17 2017, I have served as Assistant Secretary of the Treasury,
18 managing and leading 12 offices in the Department's
19 International Division.

20 These experiences have reinforced the importance of
21 working in a bipartisan way, which I know is in the
22 tradition of this Committee. The same is true for the work
23 of the CFTC. The CFTC and the markets it regulates are
24 unique. They are connected to the real economy in ways that
25 other financial markets simply are not. Commodity futures,

1 options, and swaps affect the lives of everyday Americans.
2 They moderate the prices we pay for literally everything,
3 from our groceries to gasoline, from our heating bills and
4 home mortgages.

5 Leading such a unique agency comes with special
6 responsibilities. Our derivatives markets must remain open,
7 transparent, competitive, and financially sound. At the
8 same time they need to be free from fraud and manipulation.
9 And to truly be effective, the CFTC must understand how
10 these markets impact sectors and households in the real
11 economy.

12 In that regard, no sector is more important than
13 agriculture. Our nation's farmers and ranchers depend on
14 derivatives to hedge their risks while consumers benefit
15 from stable prices. Also benefitting are grain elevators,
16 mills, distributors, processors, and other producers. That
17 has been the case for more than 100 years, and it is part of
18 the reason why America's ag industry is the envy of the
19 world. Equipping our ag sector with the tools to hedge risk
20 and receive fair prices was, and will always be, the very
21 cornerstone of the Commodity Exchange Act. If our commodity
22 derivatives markets are not working for the benefits of our
23 farmers and ranchers then in my view they simply are not
24 working. Ensuring the voices of agriculture are heard and
25 their concerns addressed would be a top priority.

1 If confirmed, I would expect to make use of this
2 Committee's expertise as well as knowledge gained from
3 visits with stakeholders across the country.

4 In addition to recognizing the CFTC's historic mandate,
5 it is important that we not lose sight of the
6 future. Congress's enactment of the Dodd-Frank Act has led
7 to significant improvements in the swaps markets, and Title
8 VII implementation work must be completed. At the same
9 time, we have got to acknowledge that our derivatives
10 markets have now been transformed by digital technologies,
11 technologies that come with risk as well as opportunities.

12 CFTC has to strike the right balance between allowing
13 innovations to flourish and protecting our markets and
14 customers from harm. We have also got to remain vigilant in
15 dealing with new threats like cyberattacks.

16 Our futures, options, and swaps markets serve as the
17 global standard. On the whole, they are deep, open, liquid,
18 transparent, and soundly regulated. If confirmed as CFTC
19 chair, I will work hard every day to make sure they stay
20 that way.

21 Thank you.

22 [The prepared statement of Mr. Tarbert follows:]

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1 Chairman Roberts. Let me start some questions here for
2 you, Doctor. Since being nominated now you have engaged
3 with ag stakeholders to better understand their priorities.
4 Will you continue to work with these stakeholders and
5 prioritize their interests should you be confirmed?

6 Mr. Tarbert. Absolutely, Mr. Chairman.

7 Chairman Roberts. Senator Stabenow and I wrote to
8 Chairman Giancarlo last year raising serious concerns about
9 the EU's legislation to regulate our U.S. clearing houses.
10 I understand legislation is about to be finalized and that
11 the EU continues to push for directly regulating financial
12 markets within our borders. In our letter we stated we
13 would encourage the CFTC to take stock of the regulatory
14 relief it has granted to foreign countries--pardon me,
15 foreign entities, in light of the EU's proposed aggressive
16 action.

17 Could you please tell me the status of the EU
18 clearinghouse equivalence issue as you see it, as well as
19 the status of the equivalence for trading venues and what
20 more Congress can do, if anything, to ensure the CFTC
21 remains the exclusive regulator of our U.S. derivatives
22 markets?

23 Mr. Tarbert. Thank you, Mr. Chairman. We are watching
24 that closely, not only as the CFTC and other financial
25 regulators but the Treasury Department as well. I believe

1 what they call the Level 1 text will be finalized soon, and
2 the Level 2 text, which is essentially regulations, will be
3 worked on in the next few months.

4 I want to be very clear on this. I agree with you
5 wholeheartedly that our clearinghouses and exchanges here in
6 the United States need to be exclusively supervised and
7 regulated by U.S. regulators. Now that does not mean we
8 cannot have a collaborative relationship with foreign
9 regulators. They have information interests as we do.
10 Their banks and other financial institutions use our
11 platforms and ours use theirs. But again, I go to the very
12 point that you raised that it is very important that the
13 United States have the jurisdiction and sovereignty to
14 regulate our own markets.

15 Chairman Roberts. At last year's joint CFTC-Kansas
16 State Ag Commodities Conference the major issue of concern
17 among our Kansas ag constituents was the non-convergence and
18 the hard red winter wheat futures contract. Can you provide
19 us your view on this issue and your understanding of what
20 market participants have done to address this issue?

21 Mr. Tarbert. Well, as a general matter, convergence is
22 absolutely critical. Having the derivatives markets
23 converge with the cash markets is the reason why these
24 instruments can be used to hedge. So if there is not
25 convergence or problems in convergence the whole point of

1 setting up these instruments in the Commodity Exchange Act
2 is called into question.

3 With respect to hard red winter wheat, the Kansas City
4 contract, my understanding is that some changes have been
5 made, I believe going from fixed cost to variable cost. But
6 if confirmed I would look into that issue, you know, more,
7 work with your office as well as other commissioners and the
8 exchanges to ensure that the convergence is there.

9 Chairman Roberts. I appreciate that. It is my hope,
10 along with many agriculture end users, that the Commission
11 will move on a final rule regarding position limits later
12 this year. What do you view are important considerations
13 for the Commission when establishing a position limit
14 regime?

15 Mr. Tarbert. Thank you, Mr. Chairman. It is important
16 that the Commission--that the positions limits rule is
17 finalized. In terms of important factors that we would
18 consider, I think first and foremost has to be that we must
19 acknowledge that these are speculative position limits, as
20 you mentioned before, and therefore people that are bona
21 fide hedgers need to be able to use that exemption. So in
22 other words, risk management tools that our ag sector have
23 used all along should be taken into account.

24 Other issues would include, for example, ensuring that
25 the underlying supply, deliverable supply is taken into

1 account--I know the Minneapolis Grain Exchange, for example,
2 has had concerns there--and then other issues tend to be
3 sort of making sure that there is the right parity between
4 the position limits for the three major wheat contracts. So
5 those would be all things that, if confirmed, I would want
6 to take into account.

7 Chairman Roberts. In the interest of time I am going
8 to submit, or ask unanimous consent to submit at this point
9 in the record a question with regard to Dodd-Frank financial
10 reform, blockchains, and the possibility of combining the
11 SEC with the CFTC, which I should not even mention.

12 So given that, without objection, so ordered.

13 [The questions follow:]

14 / COMMITTEE INSERT

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1 Senator Stabenow. Thank you very much, Mr. Chairman.
2 Let me first start with enforcement, because it cannot be
3 overstated how important it is that the CFTC have a strong
4 enforcement program, and frankly, the market participants
5 need to have confidence that the markets are free of fraud
6 and manipulation, and wrongdoers need to know that they are
7 going to face real consequences when breaking the law.

8 So how do you believe the CFTC can further strengthen
9 its enforcement program?

10 Mr. Tarbert. Thank you very much for that question.
11 The CFTC right now, the Enforcement Division is the largest
12 division by far of any, and if confirmed I would, of course,
13 keep it that way and invest resources and enforcement.

14 I think in terms of priorities we would want to focus
15 on protecting markets as well as protecting customers.
16 There have been a lot of issues in the last few years about
17 customer protections, using customer margin, which I think
18 undermines confidence in the entire system.

19 I think also we want to make sure that we have focused
20 on individual responsibility. It cannot be that
21 individuals, you know, cause problems and then they move on
22 to another firm and the firm gets fined but they continue to
23 stay in the industry and cause more problems.

24 Senator Stabenow. Right.

25 Mr. Tarbert. And then, finally, I would say it is

1 important that the CFTC work with other regulators as well
2 as with the law enforcement community--the FBI, the Justice
3 Department--where criminal charges are appropriate.

4 Senator Stabenow. I agree, and when you talk about
5 individuals, though, how does that look to you in terms of
6 enforcement against individuals? Do you think CFTC has the
7 tools to do that right now?

8 Mr. Tarbert. I think they have some tools but it would
9 be something that, if confirmed, I would want to sit down
10 and really think about, talk to the professionals in the
11 Enforcement Division and then maybe this Committee as well,
12 if you have views.

13 Senator Stabenow. When we are doing the
14 reauthorization of the CFTC should we look more at that area
15 to give you better tools? I would welcome your input on
16 that, knowing that.

17 Mr. Tarbert. Yeah, so if confirmed I would look into
18 that issue and have that discussion with you.

19 Senator Stabenow. Okay. Cybersecurity threats.

20 Mr. Tarbert. Yes.

21 Senator Stabenow. Growing every day. I have a deep
22 concern just across the Federal Government as well as in the
23 private sector that we are not focused in doing as much as
24 we should be doing, and certainly in protecting our
25 financial system. We have to allow that our markets are

1 vulnerable right now.

2 Your current position at the Treasury Department has
3 provided you with considerable perspective on the
4 cybersecurity risks facing the financial system. Based on
5 your current perspective at Treasury, what are the greatest
6 cyber threats facing the financial system and what can we do
7 to strengthen our defenses?

8 Mr. Tarbert. Without going into classified information
9 what I would say is that the real concern that I have, and
10 many others in our financial system, is where you take
11 systemic risk, on the one hand, which we all know exists,
12 and then you map that onto cyber risk, and where the
13 confluence of the two, it seems to me that is the area where
14 we want to protect the most.

15 Treasury has something called the Office of Critical
16 Infrastructure Protection, which is led by a former general
17 from U.S. Cyber Command and the NSA, which goes around and
18 thinks specifically about our financial system and
19 vulnerabilities there. And so that would be something that
20 to the extent the CFTC is not currently plugged into, if
21 confirmed I would ensure that the CFTC has the relevant
22 access to the information it needs.

23 Senator Stabenow. Does the CFTC need additional
24 authority to be able to really do what needs to be done on
25 cybersecurity?

1 Mr. Tarbert. It could very--it might. At this moment
2 I have not taken an in-depth study. I am aware of some
3 tools they have, particularly with respect to their current
4 supervisory authority over clearinghouses and exchanges.
5 But there could be areas where the CFTC does not have the
6 tools it needs to address cyber.

7 Senator Stabenow. Again, as we are looking at
8 reauthorization I really would like to have your
9 recommendations on this, and if we need to be doing more in
10 terms of authorities I hope that you will weigh in very
11 specifically to be able to help us.

12 Let me, finally, just ask, as it relates to the budget
13 and funding, this is something that I raise all the time.
14 If you are going to have the tools you need you have to have
15 the resources you need. And it concerns me that the CFTC
16 has not devoted enough resources also to finalizing the
17 important Dodd-Frank rules, such as position limits, even
18 though it has been nine years now.

19 So to confirm, what will you do, as Chairman, to fully
20 implement Dodd-Frank and what will you do to advocate for
21 the resources that you need to get the job done at CFTC?

22 Mr. Tarbert. So as I mentioned in my written testimony
23 and oral testimony, it is important that we finalize the
24 Dodd-Frank Act, particularly those rules that are pending,
25 and as you say, ones that were started years ago.

1 Secondly, as far as I totally agree with you that this
2 agency needs the funding and the tools to get the job done.
3 The American people are depending on it. So I will be an
4 advocate for ensuring that it has the proper funding, and
5 also look at areas where we can increase efficiencies as
6 well.

7 Senator Stabenow. Well we need to get the Dodd-Frank
8 rules finally done, and I hope you will commit, as Chairman,
9 if confirmed, that you will be the one to get this done as
10 soon as possible.

11 Mr. Tarbert. I will work on a number of them, and
12 particularly position limits.

13 Senator Stabenow. We have been working on them for a
14 long time.

15 Mr. Tarbert. I understand.

16 Senator Stabenow. So we need to complete it. So thank
17 you, Mr. Chairman.

18 Senator Braun.

19 Senator Braun. Thank you, Mr. Chairman. I enjoyed our
20 quality time we had yesterday to get to know one another.

21 I remember vividly, 2008, having a business where all
22 my income was in the automotive arena and all my assets were
23 commercial real estate. And I remember the feeling in those
24 few weeks when we were, you know, staring into the abyss.
25 Hopefully we have learned a lot from that. I remember

1 things like credit default swaps, bundled mortgages, and I
2 am a finance guy, all things that, you know, I did not know
3 much about until, you know, it was upon us.

4 Is there anything in the commodities arena, within the
5 institution that you are going to be a part of, that you
6 would want to be wary of, or do you see anything on the
7 horizon at all that, you know, would show signs that there
8 are things that we need to look at more carefully, or do you
9 think, like you said in your opening statement, you want to
10 make sure things stay in good shape, like you think they
11 are. Is there anything on the horizon out there? Because
12 most of us did not see anything coming--

13 Mr. Tarbert. Right.

14 Senator Braun. --back in 2007 either.

15 Mr. Tarbert. I think--thank you very much, Senator--I
16 think, as a whole, our financial system is stronger than it
17 was before, but that said, I think the financial system is
18 far more interconnected than it has been before, especially
19 commodity markets. As we discussed yesterday, the
20 commodities are global markets simply because commodities,
21 as a definition, are the same around the world. And so I
22 would be concerned about a potential risk, for example,
23 coming from outside the United States that is potentially
24 harmful to the U.S.

25 I also think we have to make sure that while we have

1 implemented a number of good changes in the last 10 years
2 that the seeds of the next crisis are not sown in the
3 response to the last one. So while we are pushing more
4 things through centralized clearing, for example, we need to
5 make sure those clearinghouses really are safe and sound and
6 have the risk management practices that they need. There is
7 no reason to believe they do not but it is something that I
8 would want to look at, if confirmed.

9 Senator Braun. One other question. Also being
10 involved in farming, I view what the farm economy is going
11 through now. As bad as it was back many years ago, I think
12 balance sheets are a lot cleaner. But I know a lot of
13 farmers are in a situation where they do not see a light at
14 the end of the tunnel.

15 Assuming the farm economy is going to kind of stay in
16 this trough of low prices, does that bring any heightened
17 concern in terms of, you know, how your organization would
18 have to be vigilant should it persist?

19 Mr. Tarbert. Well, I think there are certain things--
20 there are a number of things that are facing the ag--
21 American ag community now that go beyond the work of the
22 CFTC, but at the very least I do not think the CFTC should
23 increase those burdens on the ag community. Anything that
24 the CFTC can do to help, whether it is making sure that
25 contracts converge properly so they can use risk management

1 tools and also making sure that some of the costs imposed by
2 regulations are not borne directly by farmers and ranchers I
3 think is important.

4 Senator Braun. Thank you. I yield the rest of my
5 time.

6 Chairman Roberts. Senator Klobuchar.

7 Senator Klobuchar. Thank you very much, Mr. Chairman,
8 and welcome to you. Thank you. Congratulations on your
9 nomination.

10 Yesterday the EPA released a proposed rule to allow for
11 the sale of E15 year-round. That is something that we have
12 been working on, Senator Smith and I, and Senator Stabenow,
13 and many others on this Committee that believe we should
14 have not just one kind of fuel but many in this country, and
15 that we should be investing in the farmers and the workers
16 of the Midwest and not just the oil sheiks of the Mideast.

17 The rule also included several changes to the way the
18 renewable identification numbers, or RINs, are traded and
19 used to track compliance with the law. Based on your
20 experience in other markets, Mr. Tarbert, do you believe
21 that providing information on trading data in RINs markets
22 in a timelier manner would increase transparency?

23 Mr. Tarbert. All things being equal, Senator, I would
24 say yes.

25 Senator Klobuchar. Okay. And then the RFS is also

1 critically important and we have long urged the EPA to
2 implement the law consistent with congressional intent. As
3 you know, in March 2016, the CFTC entered into an MOU with
4 the EPA related to the RINs market. This included the EPA
5 sharing RIN data and other information so the CFTC could
6 better advise about ways to minimize any potential fraud and
7 abuse. How would you plan to fulfill the MOU agreement with
8 the EPA, and would you commit to sharing any recommendations
9 or collaborations with the EPA to the Committee?

10 Mr. Tarbert. Thank you, Senator. So the answer to
11 that last question would be, if confirmed, yeah, I would be
12 happy to discuss with the Committee, you know, the work that
13 the CFTC is doing with the EPA. I think it is important
14 that the EPA view the CFTC as a resource, specifically with
15 a background in markets. So I think we would want to
16 provide, if confirmed.

17 Senator Klobuchar. And thank you, because we have had
18 a big issue with some of the waivers in this area, that
19 Senator Grassley and I--he is not here--took on in a big
20 way, and there was a lot of information that was not
21 transparent and it created a lot of problems with the
22 previous administrator of the EPA.

23 So cybersecurity, I know Senator Stabenow asked you
24 about this, but Senator Thune and I have a bill to allow
25 people from the private sector to come in for two years and

1 people from the government to go into the private sector to
2 enhance their skills--that is a nice Minnesota euphemism--
3 when it comes to cyber. You know, we are not like Russia
4 and China where you can requisition people and make them be
5 in a warehouse and do all kinds of bad stuff, and we want
6 our government to be protected, cyber-wise, and to really up
7 our game here.

8 Do you think these kinds of exchange programs could
9 help, or maybe with academics as well, as we look at how we
10 build our cybersecurity?

11 Mr. Tarbert. They could potentially help and I will
12 commit to taking a look at your joint bill to analyze it and
13 study it. I do know that the UK has had a long tradition of
14 secondments, as they call it, where they do exactly as you
15 have said. So it can be helpful to provide that cross-
16 pollinization.

17 Senator Klobuchar. Okay.

18 Mr. Tarbert. So I look forward to looking into that.

19 Senator Klobuchar. Thank you. I have had a lot of
20 conversations with the current Chair of the CFTC, Mr.
21 Giancarlo, about the importance of including the needs of
22 farmers, ranchers, and energy producers in the mission of
23 the CFTC. You mentioned it in your opening. If confirmed,
24 how will you ensure that the actions of the CFTC take into
25 account the concerns and perspectives of all Americans,

1 including the farmers and ranchers directly affected by
2 actions?

3 Mr. Tarbert. I think the first thing, Senator, is, if
4 confirmed, it is important to listen to the ag community to
5 really understand their concerns, and sometimes you cannot
6 do that by sitting here in Washington. You actually have to
7 go out there and meet with stakeholders in the places where
8 they live and work. So that would be a big part, if
9 confirmed, of what I would do in the first few months on the
10 job.

11 Senator Klobuchar. Very good. How will you ensure
12 that the CFTC is accurately documenting and analyzing
13 transaction data within cattle and other markets in order to
14 determine what is irregular? That is because our cattle
15 ranchers in Minnesota depend heavily on the price they
16 receive, and in 2015 there was this big 15 percent drop in
17 the cattle market. It raised questions about market
18 manipulation. And at that time the CFTC collaborated with
19 the GAO to review market factors that may have affected the
20 fluctuation. They did not find trading irregularities in
21 this 2018 report, but it is something that is a big concern
22 in the cattle market.

23 Mr. Tarbert. Yeah, and I am well aware, Senator, of
24 some of the issues with the cattle market. I have had the
25 opportunity to sit down with people from the cattle industry

1 and receive a briefing, actually, from the CFTC on the
2 cattle contracts.

3 I think it is important that that study, while it
4 concluded, at that time, that high-frequency trading and
5 other things did not affect it or there was not necessarily
6 market manipulation, much of the data was back from 2012.

7 Senator Klobuchar. Yeah.

8 Mr. Tarbert. So I would continue to monitor that
9 market.

10 Senator Klobuchar. And quickly, along the lines of new
11 technology, you know, we see blockchain, Bitcoin, financial
12 technology. How can the CFTC position itself to address the
13 changes resulting from these new products and technologies
14 coming on the market?

15 Mr. Tarbert. Thank you. As I mentioned in my
16 testimony, the innovations provide opportunities but they
17 also come with risk, and I think we need to be able to focus
18 and balance on the two so we really assess, you know, what
19 are the opportunities but also what are the risks to
20 customers and markets.

21 Senator Klobuchar. Okay. Very good. Thank you for
22 getting at all those questions, and I can see that you have
23 a well-behaved child behind you and that is also really good
24 through the hearing.

25 Mr. Tarbert. Thank you.

1 Senator Klobuchar. He did not even notice I mentioned
2 him, so very good. He is so engrossed and focused. Thanks.

3 Mr. Tarbert. Thank you very much.

4 Chairman Roberts. We thank you, Madam President.

5 Senator Klobuchar. Thank you very much, Mr. Chairman.

6 Chairman Roberts. The Committee was very proud to have
7 four members of the Committee running for President, the
8 most of any committee in the Senate. However, we now have
9 three. The one that withdrew the day before, I said, "You
10 know, you ought to really run." And then the next day he
11 withdrew. I wonder if there was any connection between the
12 two.

13 Senator Brown, would you like to comment on that?

14 Senator Brown. I am counting on Kansas.

15 Chairman Roberts. I recognize you, sir.

16 Senator Brown. I was never running for President. I
17 was thinking about it.

18 Chairman Roberts. You were thinking about it.

19 Senator Brown. So to withdraw you have to have--never
20 mind. Yeah, I understand.

21 Mr. Tarbert, thank you. I am going to ignore him. It
22 is good to see you again. Thank you for being here.

23 Mr. Tarbert. Thank you.

24 Senator Brown. Timely movement of qualified nominees
25 is imperative. I am concerned about the delay in nominating

1 Democrats and them moving to the Senate. My frustration,
2 Mr. Chairman, is not with you about that, or with this
3 Committee, but it is a problem that has worsened under
4 Senator McConnell's leadership over the past two years and
5 it must be addressed. And I think that view is widely held,
6 not just among Democrats but a number of Republicans too.

7 Let me get to your questions. The Trump shutdown
8 essentially closed the CFTC for five weeks, putting much of
9 the enforcement program and market oversight on hold. It
10 begs the question, why should we continue to take those
11 kinds of risks, understanding we have a President who may do
12 this again, but why should we take these kinds of risks?
13 What is the rationale for not making CFTC fully funded--
14 self-funded, I am sorry, fully self-funded?

15 The Fed is self-funded, as you know. The OCC, Office
16 of the Comptroller of the Currency is self-funded. The FDIC
17 is self-funded. The Consumer Bureau is self-funded. Only
18 CFTC and SEC are not. What is the rationale for that?

19 Mr. Tarbert. Well, I think it is an important issue
20 worth discussing but I think what I would say, as an
21 unelected official, is that it is a decision that really has
22 to be made by elected officials who can consider all the
23 aspects of the question, whether the impact on the taxpayer,
24 the effects on congressional oversight. But I would say it
25 is an important question that I think only elected officials

1 should decide.

2 Senator Brown. Might you now be in a position, or if
3 confirmed be in a position to advocate that on behalf of the
4 day-to-day operations of CFTC, understanding that a number
5 of your employees, if the President decides to shut the
6 government down again, a number of your employees would be
7 either furloughed or working without pay, and the disruption
8 in the markets every bit as much?

9 Mr. Tarbert. I mean, what I would say, Senator, is
10 that I totally agree that the agency needs the funding to
11 continue doing its important work. If confirmed, I would
12 provide whatever technical expertise this Committee or any
13 other needed to be able to consider the question of various
14 funding mechanisms.

15 Senator Brown. I would hope that you would actually
16 advocate doing that. I understand your answer.

17 Last year I told Chair Giancarlo that I was concerned
18 about declines in CFTC enforcement cases and penalties. The
19 trend since then has been positive but I have noticed
20 leniency in some cases where companies self-report. For
21 example, last year the agency settled a fraud case against
22 Deutsche Bank, against a Deutsch Bank trader, but did not
23 penalize the bank in any way. In fact, CFTC Enforcement
24 Division issued its first-ever declination letter closing
25 the case, recommending no action against the bank because of

1 its cooperation.

2 Do you think such leniency is appropriate, going
3 forward?

4 Mr. Tarbert. I do not believe in leniency. I think
5 self-reporting can be useful, assuming it is followed up
6 with systematic self-correction and a record of that. And
7 so when I emphasize, I think, individuals should be held
8 accountable that does not mean that organizations should not
9 be held accountable.

10 Senator Brown. In this bank, I mean, you surely put
11 aside, for purposes of this discussion and the penalties or
12 not for Deutsche, but this bank has clearly been one of
13 having one of the worst reputations, whether it its dealings
14 with the President or its dealings generally in its banking
15 system, its European and American banking system, with its
16 behavior. You know, this bank compliance system did not
17 stop the fraud in the first place, as you know.

18 Let me talk about another issue. CFTC finalized last
19 year the de minimus threshold that exempts swap dealers from
20 registration if their activity is under \$8 billion, as you
21 know. I supported the original rule, and the original rule
22 would have reduced the level to \$3 billion. Although the
23 final rule did not include broad exemptions that were in the
24 proposal, Chair Giancarlo asked staff to look at other
25 carve-outs that would weaken the purpose of the threshold.

1 So they made it \$8 billion and then they looked at carve-
2 outs.

3 Will you commit to maintain the \$8 billion threshold,
4 not succumb to the temptation of a different number, and
5 would you commit to not considering any of the changes that
6 would weaken the registration requirements established under
7 the Wall Street Reform Act?

8 Mr. Tarbert. Senator, my understanding was that was a
9 unanimous decision by the Commission to double the threshold
10 at \$8 billion and also not to have the exemption. So, if
11 confirmed, I do not see that as an issue that I would try to
12 go back in and reopen.

13 Senator Brown. Okay. One last thing. If confirmed,
14 it is imperative--I believe it is imperative that you follow
15 the lead of those like Sheila Bair in work to halt the
16 CFTC's harmful campaign to undermine critical financial
17 safeguards which help protect against excessive risks. I am
18 concerned about your working with the Fed and the FDIC and
19 Treasury. This is an administration that every week, as the
20 Ranking Member of the Banking Committee, I hear every week
21 another example--and Senator Smith sits on that committee
22 with me--I hear, almost every week, another example of
23 weakening rules, as if there is this collective amnesia that
24 nothing bad happened a decade ago because of Wall Street
25 greed and Wall Street malfeasance and misfeasance. Thank

1 you.

2 Mr. Tarbert. Thank you, Senator. I will just say that
3 Chairman Sheila Bair is a personal friend and mentor of
4 mine, and my views and hers closely align on a number of
5 issues.

6 Senator Brown. Good. I like to hear that. Thank you.

7 Chairman Roberts. Senator Smith.

8 Senator Smith. Thank you, Mr. Chair and Ranking Member
9 Stabenow, and Dr. Tarbert, Secretary Tarbert, thank you for
10 being here and welcome to your family, and thank you for
11 your willingness to serve.

12 We had a great conversation the other day and I think
13 that you heard--in that conversation you heard my deep
14 concern about the struggles that we are seeing in the ag
15 economy in Minnesota and across the country, and, you know,
16 the foundation values around having fair prices and fair
17 markets and managing the risk. And so with that spirit I
18 just have a couple of questions to ask you.

19 You know, I am concerned about the concentration in the
20 swaps market. We know that 70 percent or so of all reported
21 swaps are sold by five big Wall Street firms, and that
22 represents 80 percent of the total value traded. And this
23 high level of concentration shows that the largest dealers
24 are sitting on considerable market power, and no matter how
25 you slice and dice it, it is clear that these big banks are

1 really dominating the market.

2 Commissioner Berkovitz recently warned, in a speech,
3 and I am quoting here that "these high levels of
4 concentration present potential systemic risks since the
5 failure of one of these firms in a highly connected market,"
6 as you said, "could have significant impacts on all the
7 other firms in the market."

8 So, Dr. Tarbert, could you--are you concerned about
9 this level of concentration?

10 Mr. Tarbert. Thank you very much, Senator Smith. The
11 issue of concentration is one that I think I would want to
12 look into a little bit more to truly understand it, and it
13 sounds like, as you are saying, there may be possibly a
14 competition law--dimension to all of this.

15 What I will say, with respect to the systemic risk part
16 of your statement, is that it is critically important that
17 initial and variation margin be imposed on all of these
18 financial institutions, and that is critical to making sure
19 that we do not have what we had 10 years ago--

20 Senator Smith. Mm-hmm.

21 Mr. Tarbert. --where you had all of these
22 interconnections between institutions and there was no
23 margin held by anyone, so when one fell, another fell--

24 Senator Smith. The domino.

25 Mr. Tarbert. --the daisy chain effect, exactly.

1 Senator Smith. Exactly. So what can we do? That gets
2 to my sort of follow-up here, which is what can we do to
3 promote a competitive market as we look at this increasing
4 concentration?

5 Mr. Tarbert. Well, I think the more that we can move
6 swaps through centralized clearing and through, you know,
7 swap execution facilities, and ultimately to be traded on
8 exchanges, will make the market more open, more transparent,
9 greater liquidity, and you will not have it dominated by a
10 small group of dealers.

11 Senator Smith. Mm-hmm. So the other thing I wanted to
12 get your perspective on, you know, we mitigated many risks
13 since the 2008 financial crisis, hopefully, but I am
14 wondering if that is creating new risks that we should be
15 aware of. You know, Dodd-Frank put in place important
16 measures to move away from this unregulated trading between
17 two parties and towards a centralized clearing, which makes
18 it easier to monitor risks. But at the same time I wonder
19 if that creates a new concern, which is that all of that
20 counter-party risk that promoted the Congress to push for
21 central clearing is now concentrated in one place, in the
22 clearinghouses themselves.

23 And I know most folks see this as a good thing, because
24 we can understand it better and we know where the risks are,
25 but could you talk a little bit about now that we have all

1 those risks located in one place, what we are doing to
2 better understand and manage the risk there.

3 Mr. Tarbert. I could not agree with you more, Senator,
4 and that is essentially what the Dodd-Frank Act did, was
5 that although it reduced risk it also concentrated risk.
6 And so we still have high levels of risk but they are in
7 clearinghouses now.

8 I think it is critically important that the CFTC
9 supervise clearinghouses to make sure they have got the
10 requisite capital, liquidity, risk management tools they
11 need, and that also they have resolution and recovery plans,
12 particularly recovery plans. So if the largest clearing
13 member fails, or the two largest clearing members fail, they
14 have got a plan of action for that and they have got enough
15 of a cushion to withstand that.

16 Senator Smith. Mm-hmm. Yeah. Do you think that the
17 failure of a major clearinghouse could lead to the sort of
18 daisy chain, ripple, domino effect that we were just talking
19 about?

20 Mr. Tarbert. It possibly could, yes.

21 Senator Smith. And if a clearinghouse were to fail, do
22 you think that the Federal Government has the authority--
23 sufficient authority to fix--to resolve that, and where do
24 you think that authority should go? Is it better in the
25 CFTC or FDIC, or where do you think?

1 Mr. Tarbert. It is a great question, Senator, and it
2 is one that is pretty complex. Right now, under Title II of
3 the Dodd-Frank, right now it could potentially go into a
4 bankruptcy proceeding, but if Title II of the Dodd-Frank Act
5 was triggered it would be the FDIC that would actually
6 oversee the resolution of a clearinghouse. And I think you
7 raise a good question as to whether that is the right
8 regulator or whether another regulator, such as the CFTC or
9 the SEC, depending on the type of clearinghouse, may be
10 appropriate.

11 Senator Smith. Last question. Dr. Tarbert, you have
12 significant experience in financial regulatory areas, and as
13 you and I discuss you are building your experience in
14 agriculture. And for farmers and ranchers in Minnesota,
15 what happens at the CFTC affects them. And so can you just
16 comment on how you will work to build that agricultural
17 experience, should you be confirmed?

18 Mr. Tarbert. Thank you. As I mentioned in my oral
19 testimony and here, one of the things that I think would be
20 really helpful is to actually go out--

21 Senator Smith. Come to Minnesota.

22 Mr. Tarbert. Well, we--

23 Senator Gillibrand. And New York.

24 Mr. Tarbert. --and New York, absolutely. And, in
25 fact, we have got a family vacation planned for Minnesota

1 this summer so maybe we can tag on something. I am not
2 sure.

3 Senator Smith. Oh, good. We will get a plan.

4 Mr. Tarbert. But, yes, thank you, Senator.

5 Senator Smith. Thank you, Mr. Chair.

6 Chairman Roberts. You may have to go to virtually
7 every state that is represented here.

8 Well, Coop, you are up.

9 Senator Thune. High Noon, Mr. Chairman. All right.
10 Thanks for having this hearing and thank you, Dr. Tarbert,
11 for your willingness to serve.

12 This is ground that has been plowed a little bit
13 already, but I would like to just sort of reiterate, if I
14 might, or have you reiterate your commitment with respect to
15 this Memorandum of Understanding between EPA and CFTC
16 dealing with RIN markets, and whether or not you intend to
17 follow through on that and share any recommendations, you
18 know, that process might come up with, with this Committee.

19 Mr. Tarbert. Yes, Senator. Thank you. If confirmed,
20 I would commit to share--maybe not publicly share but to
21 meet with the Committee and brief the Committee and its
22 staff.

23 Senator Thune. Okay. And yesterday there was an
24 announcement by the EPA on the expansion of E15, allowing
25 for year-round sales, and also a reform of the RINs Market.

1 And I guess the follow-up question to that last question
2 would be, do you see the CFTC perhaps being able to have a
3 role in sharing ideas about how to create greater
4 transparency in the ethanol market, assuming, again, that
5 the RINs reforms that have been in this--that are put
6 forward in this proposed rule are designed--I at least hope
7 they are designed to bring greater transparency. But could
8 you offer some of your insights about that as well, and that
9 process?

10 Mr. Tarbert. Yes. Thank you, Senator. I think it is
11 important that the markets have a degree of transparency
12 that makes them open, competitive, and does not lead to
13 volatility and manipulation. So I think under the MOU with
14 the EPA I would, if confirmed, assemble the right team, meet
15 with the EPA, understand exactly what is going on with their
16 transaction monitoring system now. I understand there are a
17 number of fields that are filled, but, for example, price
18 may not be one of them. So there are simple things like
19 that that I think could add to the transparency and the data
20 collection.

21 Senator Thune. Yeah. Good. There is a widely held
22 view in farm country that the RIN market distorts and
23 negatively impacts ethanol prices, and it is a very opaque
24 market and there are a lot of questions and doubts about its
25 transparency. And so I think that anything that you and

1 your organization and team can do to provide advice,
2 insight, recommendations with respect to how to make that
3 market more transparent I think would be greatly
4 appreciated.

5 Let me ask you, we hear complaints, and especially from
6 our livestock producers, that the Chicago Mercantile
7 Exchange, or CME, is not performing as it should. In other
8 words, that cattle producers often think that it negatively
9 impacts cattle prices, or affects cattle prices. Do you
10 have any thoughts about that?

11 Mr. Tarbert. I have had a briefing, both from members
12 of the cattle industry as well as the CFTC. I think that
13 there have been issues with cattle contracts in the past,
14 and my understanding is that a great deal of work has been
15 done. Perhaps more needs to be done, but certainly a great
16 deal of work has been done, carcass delivery requirements,
17 there are a number of things that have been put in place to
18 make sure that the convergence problem either goes away or
19 certainly is not acute. But it is something that I think is
20 still of concern to the cattle industry, and if confirmed, I
21 would certainly look into that and keep that discussion
22 ongoing.

23 Senator Thune. Thank you. And with the oversight of
24 the CME that you will have at CFTC, based on what you know
25 now, are there any CME activities that concern you regarding

1 transparency or price manipulation?

2 Mr. Tarbert. Based on what I know now, no.

3 Senator Thune. All right. Well, I hope that as you
4 get into the job and take a look at some of these issues,
5 you know, obviously we hear from the front line, the people
6 who are actually out there on the farm and the ranch on a
7 daily basis. But having effective, transparent markets that
8 allow them to effectively manage their risk is critically
9 important. So we hope that, in your new role you will be
10 able to focus on that, and if you have insights as you get
11 into that role that you can share with us that would be
12 greatly appreciated.

13 So thank you again for your service. Mr. Chairman, I
14 yield back the balance of my time.

15 Chairman Roberts. I thank the distinguished Senator.
16 Senator Gillibrand.

17 Senator Gillibrand. Thank you, Mr. Chairman. In 2016,
18 then candidate Trump campaigned on the idea of separating
19 commercial banking from riskier financial activities. Has
20 President Trump or anyone in the White House, including his
21 economic team and the National Economic Council, spoken to
22 you or anyone at the CFTC about reinstating an updated
23 version of Glass-Steagall or any action that would divide
24 commercial banking from more riskier financial activity?

25 Mr. Tarbert. No, Senator Gillibrand. No one has

1 spoken to me about that.

2 Senator Gillibrand. Have you examined how the CFTC may
3 be employed through regulation and enforcement to separate
4 derivatives dealing from commercial banking under a new
5 Glass-Steagall rule?

6 Mr. Tarbert. I personally have not, no, nor have I
7 been directed, in my current capacity in the International
8 Division.

9 Senator Gillibrand. I would be grateful if you would
10 consider it and give advice to our office, just so we know
11 what your perspective on that issue is, because it is an
12 issue that will be debated again and one that is important
13 to New York.

14 Second, the increasing dominance of automated trading
15 is one of the biggest transformations occurring in the
16 financial markets today. Automation has made trading faster
17 and, in some cases, cheaper, but it has also contributed to
18 the disturbing number of significant market disruptions in
19 markets ranging from equities to treasures to commodities.
20 The CFTC has investigated and documented repeated flash
21 crashes in CFTC-regulated markets.

22 The Commission proposed a rule, Reg AT, to create
23 better oversight and protections around automated trading
24 but progress on this rule appears to have stopped in recent
25 years. Will you reopen Reg AT and do you believe we need to

1 take steps for better oversight of automated trading?

2 Mr. Tarbert. Thank you, Senator. Yes, if confirmed,
3 Reg AT would be something I would want to get sort of back
4 up and running in terms of the process of considering it.
5 As I mentioned in my oral statement, we have got these new
6 technologies. They come with opportunities and they also
7 come with risk.

8 I also think what is important is that the CFTC
9 continue its analytical studies. They have done some
10 studies in the past but those are using old data, so I think
11 it is something that we continually need to monitor. I
12 think also the clearinghouses and the exchanges need to also
13 put in relevant risk management dealing with automated
14 algorithmic trading.

15 Senator Gillibrand. And I am concerned, you know, the
16 stock market and stock prices used to reflect the value of a
17 company, and under this new environment I do not think flash
18 trading does that, actually. I think it is not related to
19 value. It is related to speed of trading. Do you have any
20 thoughts on that?

21 Mr. Tarbert. That would be a concern, in that we are
22 seeing lots of volatility. Many of the exchanges over the
23 years, for 80 years, have actually had sort of circuit
24 breakers and things that they have had in effect that have
25 reduced the ability of huge price swings, and I think those

1 would be the kinds of things we would want to look at, to
2 make sure that prices are actually reflecting the underlying
3 demand and not something else, and certainly not fraud and
4 manipulation.

5 Senator Gillibrand. Right. The U.S. derivatives
6 market is approximately worth \$337 trillion. Currently the
7 CFTC's budget is \$268 million for fiscal year 2019, far
8 below other prudential regulators with similar regulatory
9 responsibilities. While previous budgetary requests asked
10 for a 32 percent increase, do you not think that Congress
11 should look at how other prudential regulators, like the
12 SEC, use mandatory funding mechanisms to provide more
13 reliable and standard funding sources for the CFTC? And
14 also related, how would a capital infusion help CFTC better
15 carry out its regulatory responsibilities, specifically for
16 technology upgrades, live-time reporting, and retaining
17 qualified staff?

18 Mr. Tarbert. Thank you. So, first of all, the CFTC
19 absolutely has to have the resources needed to do its job.
20 As to how it gets those resources, I mentioned before that I
21 think it is a decision for elected officials, and that if
22 you decide to go in one direction or another, just given the
23 important issues at stake--congressional oversight, tax--

24 Senator Gillibrand. I do not think it is just our job.
25 I think you have to make recommendations, because it is your

1 job to do what the CFTC is required to do. So your input
2 will be necessary for Congress to make those decisions.

3 Mr. Tarbert. If confirmed, we would provide the
4 relevant technical expertise to be able for you to
5 understand the relevant tradeoffs. Absolutely.

6 Senator Gillibrand. Correct. I am little concerned,
7 now that you mention resources, that as we consider your
8 nomination there are many, many posts in the financial
9 regulatory ecosystem that are sitting empty, mainly with
10 minority party nominees. And with this process controlled
11 by the Trump administration the CFTC has a full commission
12 but there are open seats in critical agencies such as the
13 SEC and the FDIC. You want to be the chairman of one of
14 these regulators. You currently work at Treasury, where you
15 are deeply involved with many actors and financial market
16 participants.

17 Do you not agree that commissions like the CFTC and
18 your counterparts operate best when they have
19 representatives from both majority and minority, as
20 contemplated by the statute that created them?

21 Mr. Tarbert. Yes, I do.

22 Senator Gillibrand. In your experience at Treasury and
23 elsewhere, what problems have you seen from regulators with
24 open seats?

25 Mr. Tarbert. Well, one issue--and the CFTC faced this

1 a few years ago--was quorum. And because they only had
2 three people none of the commissioners could actually talk
3 with one another, so it was a very bizarre situation. They
4 could not even take the same elevator up.

5 Senator Gillibrand. Thank you. Thank you, Mr.
6 Chairman.

7 Chairman Roberts. Thank you, Senator. Senator
8 Fischer.

9 Senator Fischer. Thank you, Mr. Chairman. Mr.
10 Tarbert, our farmers and ranchers rely on commodity markets
11 to hedge or to ensure the price of their products for
12 harvest, and as farm commodity prices decrease, which we are
13 seeing, the ability to hedge is more critical than ever
14 before. These hedges are often the difference between a
15 profitable year and an unprofitable one for my neighbors in
16 Nebraska. When markets become illiquid it is harder for
17 them to hedge their crops. It may also raise the cost of
18 these hedges.

19 Can you, broadly speaking, identify what you see as the
20 biggest threats to this liquidity?

21 Mr. Tarbert. Yes. I think one of the big threats to
22 liquidity that I have seen, or at least heard about from
23 briefings, is convergence, that some of the contracts are
24 not actually converging, and therefore farmers and ranchers
25 in Nebraska and other states cannot actually use these

1 contracts to hedge. And when they do not converge there are
2 fewer people using them, and then of course, there is less
3 liquidity. And liquidity is critically important, for a
4 variety of reasons.

5 Senator Fischer. Can you tell me some?

6 Mr. Tarbert. Sure. So first of all, liquidity is
7 absolutely necessary for the futures markets. The forwards
8 markets can go without liquidity but the futures markets
9 need liquidity. And we have seen examples over the years
10 where contracts have actually been taken off exchanges
11 because there has not been liquidity.

12 Obviously, bid ask spreads are affected by liquidity,
13 so farmers and ranchers will pay more for illiquid
14 contracts, all things being equal, than other ones. There
15 is also the question of if you want to get out of a position
16 or change because your dynamics have changed. If the
17 contracts are illiquid it is much harder to do that.

18 And then finally, going to an issue that we talked
19 about--I had talked about with Senator Smith, is
20 clearinghouses. Illiquid contracts are actually much harder
21 to clear and present more risk issues for clearinghouses.

22 Senator Fischer. When I am back home in Nebraska and I
23 speak to community bankers they are telling me the
24 difficulty of offering commodity products for fear of
25 running afoul of the Volcker Rule. And I believe that this

1 rule was meant for Wall Street bankers, not for farmers and
2 ranchers and community banks, and these farmers and bankers
3 did not create the crisis and yet they are being punished,
4 along with larger investment banks.

5 As you know, farming is a risky business and we should
6 encourage and not punish efforts that people are trying to
7 use tools so that they can manage that financial risk.

8 Last Wednesday it was announced that there could be
9 further delays in improving this rule, so I ask for two
10 commitments from you. First, can you promise to work with
11 other agencies to ensure that any revised Volcker Rule
12 ensures that end users, like farmers and ranchers, have
13 access to these products?

14 Mr. Tarbert. Yes.

15 Senator Fischer. And secondly, could you please ensure
16 that this is released in a timely manner, so our farmers can
17 have some certainty?

18 Mr. Tarbert. On that I would make every effort.

19 Senator Fischer. Thank you.

20 As you know, I am supporting some bipartisan
21 legislation that is authored by my good friend from Idaho,
22 Mike Crapo. The goal of this bill is to provide targeted
23 relief to community banks. And I hope that you will have
24 the opportunity to visit Nebraska, if you become Chairman--
25 we would be happy to welcome you--and you will see that

1 farmers rely on agricultural lending from our community
2 banks. It is a bipartisan bill that we have before us and
3 it included a provision exempting small banks from the
4 Volcker Rule. Can you speak about your vision for
5 implementing that bill?

6 Mr. Tarbert. Yes, and I think--I do not know the
7 extent to which the CFTC would have implementing authority,
8 but if confirmed I would certainly work with all of the
9 relevant regulators because I agree--I cannot agree with you
10 more.

11 I actually spent seven years working on the Volcker
12 Rule, advising clients all over the world, mainly larger
13 financial institutions, and it is one of the most complex
14 rules that is out there, literally 1,000 pages of
15 regulations and explanations. And while I think there are
16 important policy reasons for why it is in place, with
17 respect to large institutions, in my view it is not really
18 appropriate for community banks, and there needs to either
19 be tailoring or just simply exempting them altogether, where
20 appropriate.

21 Senator Fischer. Thank you. I believe it is a
22 bipartisan goal here in Congress that we try to provide
23 tools for family farms. Everyone realizes the benefits we
24 have as states, individual states, and also as a country,
25 when family farmers are able to manage their business,

1 because it is a business. It is not a hobby. We feed the
2 world. And to do that we have to have tools that are
3 available but that also do not create additional burdens or
4 add additional costs to farms in order to make a living.

5 So thank you very much.

6 Mr. Tarbert. Thank you.

7 Chairman Roberts. Thank you, Senator Fischer.

8 That will conclude our hearing today. I want to thank
9 the nominee for taking time to address this Committee, to
10 answer the Committee's questions. It is clear, at least to
11 the Chairman, and I think the Ranking Member shares my view,
12 that you are more than qualified to join the administration
13 in the role as Chairman of the CFTC.

14 We learned a great deal today. Your testimony provides
15 us significant information, solid basis upon which to report
16 you favorably out of Committee, per our rules. We cannot do
17 so today--I wish we could--but we will endeavor to do so in
18 the very near future.

19 To that end I would request my fellow members that if
20 they have any additional questions for the record they be
21 submitted to the Committee Clerk by this Thursday, March
22 14th, by 5:00 p.m. We look forward to receiving your
23 responses and to further considering your nomination.

24 Senator Stabenow and I have one more question. What
25 did you feed Ben and Nathaniel for breakfast, as of this

1 morning?

2 [Laughter.]

3 Chairman Roberts. My eldest daughter has three young
4 boys. They were all three born 10 yards outside. And I
5 doubt if they could sit there quietly, clad in bowties, well
6 dressed and well behaved. To what do you attribute this? I
7 am starting to get a little more optimistic about the next
8 generation.

9 Mr. Tarbert. Well, their mother and grandmothers, Mr.
10 Chairman, have done an excellent job. Normally Saturday
11 mornings is Pancake Day, but we decided to have it today,
12 because of this auspicious occasion.

13 Chairman Roberts. That is the secret. All right.
14 Does that work for your Democrat brother?

15 [Laughter.]

16 Chairman Roberts. Do you have to have additional syrup
17 on the pancake?

18 All right. The Committee is adjourned.

19 [Whereupon, at 11:16 a.m., the Committee was
20 adjourned.]

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