– FACT SHEET –

CFTC Staff Report on April 2020 Volatility & Negative Price Crash in U.S.'s Benchmark Oil Contract Lacks Clear Objectives and Objectivity

For the first time in history, the New York Mercantile Exchange's ("NYMEX") benchmark oil futures contract—the West Texas Intermediate ("WTI") Crude Oil futures contract—fell more than $50 per barrel to close below $0, at -$37.63, on a single trading day (April 20, 2020). To the shock of many, Commodity Futures Trading Commission ("CFTC") Chairman Heath Tarbert stated on CNBC the next day—without any apparent factual basis—that the crude oil plunge was "not a financial markets issue" and "basically" could be "explained by what's going on in the real markets." The Chief Executive Officer of the Chicago Mercantile Exchange (NYMEX's parent), Terry Duffy, unsurprisingly jumped to NYMEX's defense, stating that "the futures market worked to perfection."

Better Markets was the first to call for the CFTC to conduct a "thorough, rigorous, and unbiased investigation" into the April 2020 trading anomalies, urging a review of the apparently significant contribution of excess speculation and financialization to the unprecedented 25-minute collapse. Two days later, on April 24, 2020, the CFTC launched a review of the April WTI trading events. Better Markets applauded the CFTC's announcement of that review, given indications that the dismissive statements by CFTC Chairman Tarbert and Mr. Duffy were not just premature but incorrect. As expected, even without order and position data available to the CFTC and NYMEX, investigative reporters uncovered numerous trading irregularities, including a proprietary trading firm's alleged use or abuse of the trading-at-settlement order type that Better Markets identified as a potential source of issues when the events first occurred. That was only one of many concerns brought to light.

On July 23, 2020, CFTC Chairman Tarbert announced that the CFTC had "completed a detailed forensic study" of the April 2020 crude oil "price aberration." In light of public reporting on technology missteps, potential misconduct, mismanaged positions, and general speculative frenzy, Better Markets eagerly awaited the CFTC's release of facts, findings, and recommendations from the agency's data-based analysis (which we hoped would include CFTC staff analysis of data uniquely in the possession of the CFTC and NYMEX). Four months later, the CFTC's already completed forensic study still has not been released. It is unclear why the CFTC staff report has been delayed and to what extent, if at all, the report may have changed since it was "completed" in mid-July 2020.

This morning, however, the CFTC staff was directed to brief a select group of reporters on the pending release of the CFTC staff report. We will review the report once it is released, but (1) the lack of meaningful input from CFTC (and non-CFTC) stakeholders, (2) the unexplained delays in releasing an already "completed" report, and (3) the likely limitations with respect to the report's scope and content suggest that the investigation may result in less than a thorough, unbiased, and credible basis for corrective regulatory action(s). It is

noteworthy that the CFTC staff briefing was scheduled on a Monday morning during Thanksgiving week, a well-known and longstanding blackhole for inconvenient news, after four months of unexplained delay.

The CFTC staff is almost certainly being pulled in multiple directions, and we do not fault it for the current state of the crude oil investigation. Nevertheless, we fully expect the CFTC's staff report to rationalize continued regulatory inaction, which is not a responsible course of action for the federal agency charged with protecting the integrity of the derivatives markets.

For all of the above reasons, the CFTC staff report almost certainly will need to be revisited in 2021 under leadership that gives the professional staff the independence and mandate to conduct a legitimate and impartial investigation.

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