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Directorate-General for Financial Stability,
Financial Services and Capital Markets Union
European Commission
1049 Brussels, Belgium

Re: European Commission Targeted Consultation on Artificial Intelligence in the Financial Sector

The U.S. Chamber of Commerce ("Chamber") appreciates the opportunity to comment on the European Commission's ("Commission") Consultation on Artificial Intelligence ("AI") in the Financial Sector ("Consultation") to identify the main use cases and the benefits, barriers, and risks related to the development of AI applications in the financial sector.

The U.S. Chamber of Commerce is the world's largest business organization. Our members range from small businesses and local chambers of commerce, to leading industry associations and global corporations, to emerging and fast-growing industries driving innovation and progress. Our members represent the various sectors highlighted in this Consultation, many of which are either headquartered or operate in Europe.

Financial institutions have been using AI technology in different capacities for decades, for the benefit of their consumers and clients. AI has brought efficiencies to the financial services sector that improve the consumer experience, increase inclusion in capital markets, support responsible lending and access to credit, detect and prevent fraud, and support anti-money laundering efforts. AI continues to evolve and will present opportunities to further improve the financial system and customer engagement.

The Chamber has been a leading voice and an active participant in public policy discourse regarding the regulatory treatment of AI. For example, in September 2019, the Chamber released a set of AI policy principles that outline regulatory concepts for AI such as adopting a risk-based approach and endorsing sector-specific solutions as opposed to a one-size-fits-all approach.[1]

[1] U.S. Chamber of Commerce Technology Engagement Center, Artificial Intelligence Principles (September 23, 2019), available at https://americaninnovators.com/news/u-s-chamber-releases-artificial-intelligence-principles/.

Further, in 2022, the Chamber formed the Commission on Artificial Intelligence, Competitiveness, Inclusion, and Innovation ("Chamber AI Commission"). This independent Chamber AI Commission, chaired by former members of the U.S. House of Representatives and composed of academics, business leaders, ethicists, and technological leaders, met with experts of varying opinions across the United States, the European Union, and the United Kingdom. The report and recommendations were a cumulation of over 14 months of work and were released in March 2023.[2] The Chamber's technology policy staff has met with EU officials several times to discuss AI policy and the Chamber AI Commission's recommendations.

In pointing out that many activities which may involve AI are already covered by existing laws and regulations, the Chamber AI Commission advised policymakers to take a gap-filling, risk-based approach when addressing regulatory uncertainty around AI. Broadly, the Chamber has urged regulators to consider the evolving nature of AI and the wide array of regulations and consumer and investor protections already in place before contemplating any new policy options. The financial services industry is already heavily regulated and has existing risk management frameworks in place to manage risks associated with AI.

The Chamber strongly supports a balanced and flexible framework towards AI that mitigates novel risks posed by AI while maximizing its innovative potential. We have advised regulators that any future recommendations for regulation should be technology neutral and in response to a clearly identified regulatory gap, taking into account the robust regulatory requirements already in place and focusing on outcomes, risks, and real-world applications of AI – rather than the underlying technologies deployed by financial institutions.

We understand that the Commission's objective in issuing this Consultation is to improve the implementation of the EU AI Act and other existing financial services legislation in the financial sector. We appreciate the Commission clearly stating that its aim "is not to lead to policy work that would generate new duplicative requirements in relations to the use of AI by the financial sector, or to new requirements that have the potential to stifle AI innovation."[3]

However, several questions in the Consultation ask respondents if further guidance is necessary to support compliance with the AI Act. With a variety of EU regulations already in place across the financial services spectrum, we do not believe

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[2] U.S. Chamber of Commerce Technology Engagement Center, Commission on Artificial Intelligence Competitiveness, Inclusion, and Innovation, Report and Recommendations (2023), available at https://www.uschamber.com/assets/documents/CTEC_AICommission2023_Report_v6.pdf.
[3] Consultation, p. 3.

financial services-specific EU measures are necessary with regard to the use of AI. We encourage the Commission to maintain a flexible and principles-based approach going forward that can adapt to technological advancement, ensuring that innovation can proceed without burdensome guardrails put around it. Any initiatives to address AI through guidance or formal regulations should not inappropriately disincentivize the use of a technology that has been safely and appropriately deployed by many regulated entities for years.

Given the sheer breadth of the questions asked by the Commission in this Consultation, the wide array of financial institutions utilizing AI, and the evolving nature of AI, the Chamber encourages the Commission to continue its learning in this space through public roundtables and other stakeholder engagement before issuing guidance, recommendations, or calls to action.

The Consultation sets forth an array of questions on the use of AI by the financial sector and the impact of the EU AI Act. The Chamber's response will provide feedback on AI tools and models, AI use cases and benefits, AI risks and challenges, governance and risk management considerations, and implementation of the EU AI Act.

AI Tools and Models

Our financial services member firms are currently using a variety of AI tools, including machine learning and natural language processing ("NLP"), and exploring future uses of large language models ("LLMs") such as generative AI ("GAI"), to support various use cases such as customer service, lending and underwriting, fraud detection and prevention, risk management, cybersecurity, marketing, and back-office functions.

Currently, GAI is more likely to be used in well-defined applications, such as internal productivity enhancements, business line back-office productivity, or customer-assisted interactions that involve human support. As our member firms further explore the use of GAI, they are evaluating how to manage various areas of concern, such as cybersecurity, fraud, data privacy, inaccurate data, third-party management, intellectual property, and transparency. Like other technological advancements, AI can have risks associated with already existing types of harm. However, financial institutions can manage these risks within existing regulatory and risk management frameworks. We ask the Commission to please clarify whether the EU AI Office or DG FISMA will be responsible for the specific regulation on GAI within financial services.

Improved access to AI development through the use of open-source development tools and frameworks further expands the range of participants involved in the AI innovation ecosystem. Open-source tools and frameworks also can help ensure that the trustworthy insights, leading practices, and techniques are shared widely within the AI stakeholder community.

For financial institutions, open-source models can play a key role in fostering growth among less resourced actors and helping to widely share access to AI's benefits, such as the ability to detect and prevent fraud and anti-money laundering. In this framework, the Chamber continues to be a strong advocate for using technology to assist small businesses. A Chamber report released last year highlighted that 87% of small businesses believe that technology platforms have helped their business operate more efficiently and that 71% of them plan to adopt the latest technology, including AI.[4]

Financial institutions see a mix of third-party and in-house development in the marketplace, depending on the type of AI involved. Large financial institutions are more likely to develop and train traditional or narrow AI models in-house. In contrast, smaller financial institutions, with fewer resources, are more likely to engage third parties or use open-source models. For GAI, however, most financial institutions rely on models developed by third parties.

While open-source code can accelerate development, financial institutions have a responsibility to ensure the source is legitimate, and they have processes in place to vet the code and monitor the performance of the source code before it is implemented. Firms can manage potential risks similarly to how they handle any technological services provider, including by monitoring the technology and potential outputs, as well as developing robust policies, procedures, and controls to address and mitigate potential risks. For GAI, most financial institutions are ensuring their input data to foundational models is adequately insulated and protected and that their data is not used to update or train the foundational model. Similarly, research is focused on developing GAI systems that are constructed with in-house Retrieval Augmentation Generation ("RAG") technology or the use of internally hosted and trained small open-source LLMs. These approaches support consistent decisions. Some RAG systems rely on Application Programming Interfaces (APIs), while others aim to be open-source to run locally. There are early signals that RAG will reduce hallucinations in LLMs.

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[4] U.S. Chamber of Commerce, Empowering Small Business: The Impact of Technology on U.S. Small Business at 3 (September 2023), available at https://www.uschamber.com/assets/documents/The-Impact-of-Technology-on-Small-Business-Report-2023-Edition.pdf.

AI Use Cases and Benefits

AI brings numerous benefits to the financial services sector and consumers, with the ability to promote the integrity, resiliency, and vibrancy of the financial services markets. The use of AI ultimately helps drive down costs, improve the customer experience, increase efficiency, and expand access to financial services products. The opportunities and potential for positive benefits in the financial sector when using AI are wide-ranging. We discuss below several areas that are benefitting consumers, financial institutions, and the broader economy.

Customer Service and Engagement

AI helps financial institutions to enhance customer service, such as learning how their customers interact with their products and services and providing more timely and accurate responses to customer outreach. For example, one member firm is developing a platform that leverages AI to understand customer interactions and opportunities for improvement.

Financial institutions are using AI to improve the consumer experience as it relates to communications, servicing, and fraud detection. Using AI, financial institutions can improve their understanding of the types of products consumers need. They can then use targeted communications to improve consumer awareness of these opportunities. Similarly, AI can support the origination process and servicing, while minimizing fraud and identity theft, as it can assist with confirming a consumer's identity, employment status, income, and other information.

AI can examine meteorological trends, economic data, and additional variables to forecast possible hazards for distinct geographic regions or business sectors. By using AI-supported risk analysis, insurers may be able expand their product offerings to areas once deemed too risky and difficult to predict. Further, AI enhances risk prevention. Mitigating risks could reduce claims and by extension lower costs.

AI enables insurers to facilitate faster claims payouts after natural disasters so customers will have access to money sooner. Claims processing functions include (1) the use of chatbots to reduce wait times for customers, provide 24/7 customer service, and on-demand engagement; (2) automated processes to produce fast and accurate claims approvals; and (3) rapid evaluation of damage severity and forecasting repair expenses using historical data and image analysis.

Members are also exploring how GAI can be utilized to enhance customer service interactions. This includes providing initial summaries of conversations to help

financial institutions offer improved and personalized service, especially when customers re-engage on specific issues. Recognizing the potential of GAI to power chatbots, member firms are evaluating the technology to ensure data and responses are accurate and to avoid "hallucinations," a known issue among the current generation of GAI chatbots. As they utilize AI technology, member firms have emphasized the importance of human oversight.

Member firms have also reported that their teams are exploring how GAI may help provide content and offers that are more personalized and relevant to their customers, doing so in a manner that is responsible and consistent with the existing framework of regulatory requirements, including privacy, fair banking, and other consumer protection principles. In particular, GAI can be utilized to provide automated insights on products and customer services.

Lending and Underwriting

AI also supports some financial institutions' lending and underwriting processes. Underwriting and pricing models may use machine learning techniques that are many decades old. Specifically, AI is utilized to create models to support human decision-making on credit approvals. By quickly processing and analyzing data sets, AI assists underwriters in their "human-driven/AI-backed" process to evaluate creditworthiness, more accurately assess risk, determine accurate pricing and loan amounts, and offer credit and coverage options. Importantly, AI is enabling insurers in particular to improve access and reach uninsured and underinsured portions of the market. As they utilize AI, financial institutions are well-aware of the need for transparency in this process so that consumers understand how credit and insurance decisions are made and have recourse to take corrective action if necessary.

A U.S. Chamber report, "*Data for Good: Promoting Safety, Health, and Inclusion*," ("Data for Good report") underscores how data-oriented solutions such as credit scoring and automated underwriting are improving lending, reducing default rates and over-indebtedness, reducing origination costs for borrowers and lenders, and increasing financial inclusion.[5] It is worth re-emphasizing that because AI can quickly analyze large data sets, including alternative credit data, financial institutions are already expanding consumers' access to credit, including to those individuals with no credit or limited credit, and those in underserved, low, and moderate-income communities. AI can be a valuable tool in the underwriting process that can consider a wider range of data points and risk factors.

[5] U.S. Chamber of Commerce, Data for Good: Promoting Safety, Health, and Inclusion (January 30, 2020), available at https://americaninnovators.com/wp-content/uploads/2020/01/CTEC_DataForGood_v4-DIGITAL.pdf.

Supporting Investor Access and Participation

A wide range of technological advances over the past decades, including AI, have transformed the capital markets, bringing efficiencies to the services offered by investment advisers and broker-dealers that have translated into fairer, more accessible, and inclusive markets. Advancements in technology have lowered trading costs and made investing in the stock market more accessible for millions. More individuals invest today because they have access to low- or no-fee online brokerage accounts. Technological investments in AI also contributes to more investors entering capital markets to achieve their long-term financial goals.

AI is also helping financial institutions to support retail investors with high quality investment advice and educational tools. By leveraging technology to evaluate geographic constraints and investment preferences, AI can match investors with financial advisors. Our members report that AI enables them to provide new tools and investor education to ensure that their clients remain on a strong financial path to retirement and other major life goals. Given its capacity to evaluate large quantities of data quickly and cost-effectively, we expect institutions to leverage AI to better customize investor portfolios and investment strategies and ultimately improve investment outcomes. With improved digital tools and education, AI has the potential to make capital markets more accessible to individuals in underserved, low-income, and moderate-income communities. Whether an investor chooses to work with a financial professional – a broker-dealer or investment adviser – to help them make trading decisions and to assist with long-term financial planning or chooses to do their own research and trade through a self-directed online platform, both types of investors will benefit from real-time access to market data and research driven by AI.

Greater Efficiency and Performance of Capital Markets and Market Infrastructure

AI is also expected to transform how capital is raised and bring efficiencies to the market ecosystem, as explained by a World Economic Forum ("WEF") report prepared in collaboration with Deloitte.[6] As the report explains, the capital raising process has historically been labor intensive and inefficient. However, AI can help discover promising investment opportunities by tracking patterns and opportunities that are not detectable through conventional research. Further, AI may contribute to

[6] World Economic Forum, The New Physics of Financial Services (August 2018), available at https://www2.deloitte.com/content/dam/Deloitte/cz/Documents/financial-services/WEF_Deloitte_The_New_Physics_of_FS_How_AI_is_transforming_the_financial_ecosystem.pdf.

more accurate and optimized capital reserves in real time, allowing firms to estimate risk more accurately.

In addition, AI is strengthening the capital markets' infrastructure. As the WEF report further explains, AI will help to improve trade speed and price using dynamic execution methods as well as streamline post-trade processes and increase cost efficiency. AI will also create advanced insights on market structure and risk that will enable institutions to identify fraudulent trading activity and to optimize order execution in unstable market conditions.

Fraud Detection and Prevention

AI and machine learning are important tools in assisting in the detection of fraud. Financial institutions are using AI models to proactively track patterns in transactions and identify any anomalies that do not conform with a customer's past financial activities, including changes in communication patterns that might not on their face indicate fraud. As more sophisticated fraud is perpetrated, financial institutions can identify it in real time, thus protecting customers and limiting the need for – and cost of – subsequent claim processing. By relying on such predictive analytics, AI enhances employee productivity as they work to help protect customers by more quickly sorting and flagging suspicious transactions or claims. By helping institutions detect and respond to cyberattacks more quickly and efficiently, AI tools help protect customers and their sensitive information, prevent economic crime, and help institutions lower costs and limit payouts for fraudulent claims.

AI models not only improve the performance of financial institutions' fraud detection capabilities, but also help detect fraudulent activity before it impacts customers. Financial institutions have been analyzing data to detect fraud for decades and have been able to expand their capabilities as new AI tools have been developed. Fraud detection models benefit from the experience of reviewing millions or even billions of examples that consist of both legitimate and illegitimate transactions. This analytical capability enables financial institutions to alert customers about possible fraudulent activity.

Cybersecurity

AI is well-established in the marketplace as a key component in mitigation strategies employed by both enterprises and governments. Financial institutions are utilizing AI, machine learning, and NLP to detect and respond to an array of potential cybersecurity threats – phishing, impersonation, behavioral patterns, vendor business e-mail compromise, account takeover – more quickly and efficiently than human

intelligence alone. AI-based network security software can monitor incoming and outgoing network traffic to identify suspicious patterns in real-time data traffic.

Anti-Money Laundering

AI has the potential to strengthen anti-money laundering/countering the financing of terrorism ("AML/CFT") compliance by helping financial institutions analyze large amounts of data and more effectively identify illicit finance patterns, risks, trends, and typologies. Financial institutions are utilizing AI to meet anti-money laundering ("AML") obligations under a variety of regulations. With its ability to analyze large sums of data quickly and in real time, AI is a helpful tool used by financial institutions as part of their compliance programs to identify potentially suspicious, anomalous, or outlier transactions.

Back-Office Support

Our members report a variety of uses of AI to support back-office functions and increase productivity. AI may be used, for example, to produce real-time transcripts of calls and meetings. One member is exploring AI for several potential use cases, including engineering, financial reporting, knowledge management, and workforce productivity enhancements. For one such use case, the financial institution is evaluating a third-party technology to help engineers code more efficiently. Another firm is assessing future opportunities to utilize AI to enhance existing compliance processes, enabling compliance professionals to conduct certain reviews with increased accuracy and efficiency.

AI Risks and Challenges

To ensure the safety and soundness of AI deployments, our member firms have been leading in developing risk management and governance frameworks, such as maintaining human oversight, pilot programs, technology experiments, and third-party risk management. These frameworks are supported by comprehensive policies and procedures, ensuring consistent application and adherence across the organization. The financial services industry is already heavily regulated and has existing risk management frameworks in place to manage the following risks associated with AI.

Transparency and Explainability

The Consultation explains that since algorithms can be complex and opaque, it "can be difficult for humans to understand how AI arrives at certain conclusions,

which can create issues of trust and accountability."[7] While there is no broadly accepted definition for "explainability," there is a common understanding that AI explainability relates to how humans can understand how an AI model processes input in order to generate a certain output or outcome, and whether the output or outcome generated merits close review or scrutiny.

Overall, the Chamber believes that the degree of explainability for AI systems will differ depending on several factors, including context and user type. Explainability is crucial for investigating the trustworthiness of AI results and explaining the underlying logic to affected persons. Not all AI applications pose the same risks, but explainability must be achievable for all AI to assess their risk profiles. Consequently, explainability may need to be tailored to different audiences based on their interaction with the model. Data scientists who regularly interact with the model may benefit from more detailed information, while other stakeholders might require simpler explanations. A one-size-fits-all approach to explainability is not appropriate.

Financial institutions are committed to improving methods to address conceptual soundness, and they already have substantial experience identifying and mitigating such risks. Effective model risk management systems can help financial institutions protect consumers by ensuring that they understand and can explain how the AI they employ functions as appropriate to the use case. Techniques to explain or interpret models have improved significantly in recent years, and this trajectory is expected to continue as financial institutions continue their investments. Practices around data input, decision-making criteria and weighting of those criteria, assurance review, and others are being developed to ensure that validation processes keep pace with technology, along with ways to trace how AI models process inputs into outputs.

The Chamber's financial services members support responsible, ethical, and explainable AI. With that in mind, many financial institutions automatically incorporate explainability into their models and risk management processes. Related risk management practices in the financial sector are mature and include incorporating relevant elements from the U.S. National Institute of Standards and Technology's ("NIST") 2023 AI Risk Management Framework,[8] in addition to other governance enhancements based on each institution's experience and regulatory guidance.

Financial institutions are already highly regulated in the EU when it comes to AI and transparency. For example, the European Securities and Markets Authority ("ESMA") explains that under the Markets in Financial Instruments Directive (MiFID

[7] Consultation, p. 7.
[8] NIST, AI Risk Management Framework (April 29, 2024), available at https://www.nist.gov/itl/ai-risk-management-framework.

II"), investment firms should be transparent on the role of AI in investment decision-making processes related to the provision of investment services and transparently disclose to clients the use of technology during client interactions.[9] Further, the European Insurance and Occupational Pensions Authority ("EIOPA") explains that regulatory frameworks such as the Solvency II Directive and Insurance Distribution Directive demonstrate that "the insurance sector is already highly regulated" with regard to AI systems.[10]

Data Sources and Privacy

Just as we understand that one must verify information obtained from internet searches, financial institutions understand the limitations of AI and that outputs often require vetting and validation. As the amount of data increases, risk management approaches will adapt appropriately and will leverage a variety of risk management practices, including but not limited to data governance, weighted decision-making criteria, assurance and testing, and continuous risk monitoring. Financial institutions are already highly regulated in the EU as it relates to data accuracy, including through requirements from the General Data Protection Regulation ("GDPR") if such data includes personal data. Further, the Solvency II Directive requires insurers to maintain a record of their data processing activities (thereby mimicking GDPR's own requirements under Article 30) and guidelines around data quality.[11]

We believe that a balance between data protection and innovation is possible through a collaborative effort encompassing all participants in the AI ecosystem. Such an effort must be aligned with core enterprise risk management that allows for the delivery of trusted and reliable outcomes.

We provide below our thoughts on the exchange of data, non-traditional data, and data privacy.

Exchange of data. Encouraging the exchange of data within the financial services sector could enable more robust and effective AI applications that would

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[9] European Securities and Markets Authority, Public Statement on the use of Artificial Intelligence (AI) in the provision of retail investment services (May 30, 2024), available at https://www.esma.europa.eu/sites/default/files/2024-05/ESMA35-335435667-5924__Public_Statement_on_AI_and_investment_services.pdf.

[10] European Insurance and Occupational Pensions Authority, AI Governance: Ensuring a trusted and financially inclusive insurance sector (February 22, 2022), available at https://www.eiopa.europa.eu/publications/ai-governance-ensuring-trusted-and-financially-inclusive-insurance-sector_en.

[11] The Geneva Association, Regulation of Artificial Intelligence in Insurance (September 2023), available at https://www.genevaassociation.org/sites/default/files/2023-09/Regulation%20of%20AI%20in%20insurance.pdf.

benefit consumers, businesses, and the broader economy. Pooling data resources could allow for development of more accurate risk models, fraud detection systems, personalized financial products, and other AI-powered innovations that leverage large datasets. This could drive greater efficiency, innovation, and consumer value in the financial sector.

Data sharing can also foster greater collaboration and knowledge-sharing between financial institutions, helping the industry to stay ahead of emerging risks and challenges through the collective power of AI. From this perspective, public policy measures to facilitate responsible data exchange should be encouraged. Acknowledging legitimate concerns around data privacy and security, the Chamber's members understand the importance of maintaining robust data protection measures and preserving customer privacy. Appropriate data sharing guardrails could include data anonymization, consumer consent, access controls, and oversight measures to prevent misuse or unintended consequences.

Because governments around the world are grappling with many of the same policy challenges, it is vital that they align around interoperable policy solutions to the greatest extent possible. International standards, such as those set forth by NIST, play a significant role so that there is not a patchwork of conflicting regulations. Such an outcome would undermine the potential of AI, particularly for small innovative companies that lack the resources to navigate a fragmented regulatory landscape.

Non-traditional data. Our member firms have policies and procedures designed to address and mitigate risks from the use of alternative data streams. For example, financial institutions may prohibit employees from inputting sensitive personal data or using outputs containing personal data or prohibit the input of sensitive data or code. As explained in the Chamber's Data for Good report,[12] non-traditional credit data is highly effective at filling in the gaps left by traditional credit data to improve the accuracy and fairness of decisions regarding creditworthiness for borrowers and lenders. Additionally, the Chamber's 2021 report, "*The Economic Benefits of Risk-Based Pricing for Historically Underserved Consumers in the United States*,"[13] found that companies are innovating and using alternative data to improve consumers' access to affordable credit. The report also found that incorporating more predictive data into pricing models generates positive economic benefits, especially for underserved populations. Further, an OECD study revealed that underserved

[12] U.S. Chamber of Commerce, Data for Good: Promoting Safety, Health, and Inclusion (January 30, 2020), available at https://americaninnovators.com/wp-content/uploads/2020/01/CTEC_DataForGood_v4-DIGITAL.pdf.
[13] U.S. Chamber of Commerce, The Economic Benefits of Risk-Based Pricing (April 12, 2021), available at https://www.uschamber.com/assets/documents/CCMC_RBP_v11-2.pdf.

populations benefit from having more information incorporated into credit decisions. In the case of credit underwriting, AI has been used to expand affordable lending to individuals with no or limited credit profiles, including those in underserved communities.[14]

Data privacy. Data privacy risks are not unique to AI and financial institutions already adhere to applicable regulatory requirements. Privacy and information security regulations, policies, and procedures apply to AI in the same way they apply to other technologies. This is not to say there are no privacy and cybersecurity risks, but that practices presently used by financial institutions have been effective. These risks are similar to other emerging technologies and can be managed accordingly.

Financial institutions are committed to robust cybersecurity protections and dedicate vast resources to ensure their data – including the data used in AI models – is protected, regardless of whether it includes personal data or not. AI-based cybersecurity tools, notable for their speed and accuracy, may be deployed to prevent, detect, and remediate compromise of information systems containing training data and machine learning models, thereby limiting the occurrence and potential consequences of personal data breaches. Financial services' current required privacy programs focus on data inputs and outputs and permissions for those uses. Privacy requirements like transparency are relevant in AI policy discussions and form some of the strongest controls on AI use. The GDPR requires financial institutions to provide information, as well as a right to object before sharing personal data with another stakeholder (and, in connection with Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, or "ePrivacy Directive", may also require prior and valid consent where such sharing relates to direct marketing through electronic means). Moreover, the recipient of the personal data, as a secondary data controller acquiring it indirectly, would itself be subject to specific information and disclosure requirements, as well as the full array of GDPR and ePrivacy requirements.

Further, GAI algorithms are trained on large data sets. For example, there is a risk that the GAI could use personal data in ways that are not reasonably related to what is disclosed to data subjects. Increased transparency and explainability by financial institutions will be key to ensuring that GAI only uses personal data consistent with declared intentions, disclosures, and data subject expectations. Given data subjects rights provided by various data privacy regimes, our members have noted the challenges of balancing the rights of individuals to control how personal

[14] Turner, Michael and Robin Varghese. 2010. "The Economic Consequences of Consumer Credit Information Sharing: Efficiency, Inclusion, and Privacy." OECD Policy & Economic Research Council, available at https://www.perc.net/publications/economic-consequences-credit-information-sharing/.

information is used against the need to use that personal information by GAI tools. Stanford University's Human-Centered Artificial Intelligence ("HAI") aligns with the Chamber's sentiment and points out the tension between keeping data private and collecting enough information to ensure AI is fair and unbiased.[15]

Responsible Lending

In general, advancing AI systems that work fairly and equitably for everyone is incredibly important. Like any technology, AI users are responsible for ensuring it is used reasonably and appropriately. Financial institutions are aware of – and many are supervised for – their obligations under consumer protection laws, such as the Consumer Credit Directive, including the applicability of these laws to their use of AI.

Governance and Risk Management Considerations

Financial institutions are already subject to a wide range of regulations, policies, procedures, and governance requirements that ensure financial institutions act responsibly and ensure the protection of consumers and investors. AI specifically is also subject to a broad range of laws, regulations, and consumer protections. Existing laws cover many risks associated with the use of AI.

Financial institutions employ robust and well-developed risk and compliance processes that enable them to appropriately identify and manage the risks associated with AI tools and to deliver trust and transparency to consumers. To ensure the safety and soundness of AI deployments, our member firms have been leaders in developing risk management and governance frameworks, such as maintaining human oversight, pilot programs, and technology experiments. These frameworks are supported by comprehensive policies and procedures, ensuring consistent application and adherence across the organization.

Existing regulatory frameworks are robust, and we see no evidence of gaps at this time. If potential gaps are identified in the future, the Chamber believes that any regulatory approach or guidance should be principles-based, technology-neutral, and focus on outcomes, rather than imposing requirements on specific processes or techniques. Rather than excessive requirements, targeted rules should address tradeoffs in AI use cases and the roles of different actors. Initiatives designed to address AI through formal regulations or regulatory guidance would likely disincentivize the use of AI, and this would deprive many consumers and investors of the benefits they may yield. Regulators should not reflexively treat AI as an outlier risk

[15] Stanford University Human-Centered Artificial Intelligence, The Privacy-Bias Trade Off (October 2023), available at https://hai.stanford.edu/policy-brief-privacy-bias-trade.

that must be controlled. Doing so would minimize the benefits and efficiencies that AI is likely to bring to consumers and the capital markets in the coming years.

The process to assess AI risks may vary depending on the institution and use case. Therefore, the Chamber does not believe a one-size-fits-all approach is appropriate. In fact, should any regulatory or supervisory enhancements related to AI be considered going forward, a financial institution's primary regulator, such as ESMA, European Banking Authority ("EBA"), or EIOPA, is in the best position to identify a clearly determined problem, assess any potential gaps in regulation, and ensure that any proposals will not create conflicts or duplication of rules. To the extent further regulation may be necessary in the future to address concerns around AI, regulators must clearly identify a problem, describe how existing regulations are inadequate to address the concern, and explain how any proposed regulation would narrowly address those specific gaps in existing regulation.

Moreover, lawmakers should amend existing applicable requirements, rather than creating altogether new frameworks for AI. Working within existing regulatory frameworks and with existing authorities will enable authorities to build sector- and product-specific AI expertise and facilitate regulation that is targeted to specific use cases. With this approach, regulators will still be able to weigh the benefits of a particular AI technique in a specific product or sector against the effectiveness of existing systems and any risk.

Implementation of the EU AI Act

As a threshold matter, the Chamber believes that it is vital for governments to avoid imposing rules and regulations that create unnecessary barriers for adopting AI. The Chamber has expressed concern that the EU AI Act fails to strike a sensible balance between regulating for risk and promoting innovation.[16] We believe that the AI Act risks disincentivizing European competitiveness and discrimination against U.S. firms. Other markets, including the UK, are expressly diverging from the EU approach to promote innovation. The Chamber also notes that the U.S.-EU Trade & Technology Council ("TTC") has sought to develop harmonized approaches to measuring existing and emerging AI risk and establish standardized AI terminology and taxonomy. Other countries, such as Australia, France, the UK, and the Netherlands, have also established cooperation mechanisms for digital regulators.

[16] U.S. Chamber of Commerce, Future of AI: EU AI Act Fails to Strike Sensible Balance (March 8, 2024), available at https://www.uschamber.com/technology/future-of-ai-latest-updates#:~:text=Our%20Take%3A%20The%20U.S.%20Chamber,to%20discriminate%20against%20U.S.%20firms.

As a practical matter, implementation of the EU AI Act will be challenging for financial institutions as it is overly prescriptive and contains one-size-fits-all risk mitigation measures. Among other things, it defines specific unacceptable and high-risk AI systems in a way that could lead to interpretation challenges. The EU's approach impedes innovation and will become an even more impractical compliance burden on organizations as AI systems become more ubiquitous in our daily lives. To the extent possible, any additional requirements or implementation measures should be practical, support innovation, and align with existing compliance practices, such as those under relevant privacy laws.

The European Commission must now craft dozens of pieces of implementing acts, and it is critical to ensure a least burdensome and non-discriminatory approach to compliance with the AI Act. This is essential to avoid negatively impacting growth in the EU's AI sector and its competitiveness. The Commission must ensure that implementing acts prioritize innovation, leverage existing regulatory frameworks and authorities, and address sector-specific AI needs. Failure to do so will undermine the availability and adoption of AI in Europe.

As the Commission considers the scope of the AI Act and the implementing requirements, including through the work of the new European AI Office, the Chamber would like to reiterate several significant concerns that it outlined in 2023.[17]

Unacceptable and High-Risk AI Systems. The EU AI Act outright bans certain AI practices and imposes rigorous assessments for what it considers high-risk AI systems. The Act includes requirements on data quality, record-keeping, and transparency. Labeling entire sectors as high-risk could have significant repercussions for enterprises employing AI, including many U.S. companies, and creates operational challenges in Europe. Such broad classifications fail to consider the nuanced differences between AI applications within each sector and may hinder technological advancements.

General Purpose AI ("GPAI"). Applying high-risk requirements to all GPAI systems could hinder access to essential low-risk AI systems. Instead of focusing on specific use cases with the potential to cause significant harm, the AI Act's current approach risks hindering innovation in low-risk, general-purpose AI technologies. This could limit development of AI applications that could otherwise benefit society without posing substantial risks.

[17] U.S. Chamber of Commerce, Navigating the EU AI Act: Striking a Responsible Balance (June 30, 2023), available at https://www.uschamber.com/international/navigating-the-eu-ai-act-striking-a-responsible-balance.

Balancing Regulation, Innovation, and Global Competitiveness. Finding a balance between regulation, innovation, and global competitiveness is essential. Overly prescriptive regulations could stifle innovation and impede the potential benefits associated with different AI use cases. It is crucial to consider the roles of various actors in AI development and the trade-offs associated with different applications to avoid unintended consequences.

Geopolitical Considerations. The EU AI Act should prioritize transparency, accountability, and ethical standards without giving undue advantage to non-market actors. However, granting EU regulators access to privately held data and AI source codes raises significant concerns about exposing valuable IP, trade secrets, and personal information to cyberattacks and industrial espionage. Retaining provisions that recognize the proprietary nature of this information are crucial to enable businesses to leverage AI without compromising their competitiveness. Safeguarding commercially sensitive information, respecting data privacy concerns, and acknowledging the proprietary nature of data and technology are imperative in the context of the EU AI Act.

Conclusion

AI holds significant promise for enhancing the operations of financial institutions and increasing opportunities for consumers and investors. We hope that the Commission is deliberative in examining this topic, keeping in focus the important benefits to financial institutions and consumers the technology provides. The Chamber remains dedicated to advocating for a responsible AI regulation that also delivers economic progress. We believe that this can only be done through the gap-filling, risk-based, technology neutral approach that we have outlined in this letter.

We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,

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