



# governmentattic.org

*"Rummaging in the government's attic"*

Description of document: Commodity Futures Trading Commission (CFTC)  
Legislative briefings on two topics: Aluminum Markets  
and Virtual Currencies 2021

Requested date: 21-September-2021

Release date: 03-November-2021

Posted date: 25-July-2022

Source of document: Freedom of Information Act Request  
FOIA Compliance Office  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581  
[CTFC FOIA Online Request Form](#)  
[FOIA.gov](#)

The governmentattic.org web site ("the site") is a First Amendment free speech web site and is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW, Washington, DC 20581  
[www.cftc.gov](http://www.cftc.gov)

November 3, 2021

RE: 21-00151-FOIA

This is in response to your request dated September 21, 2021 under the Freedom of Information Act seeking access to: I request the following records from the CFTC Intergovernmental Affairs Branch: A copy of the most recent (or else possibly the "standard" or "canned") Legislative/Hill briefing on EACH of the following topics for which that office has such briefings: Funding; 1) RINS Markets, 2) Aluminum, 3) FinTech/LabCFTC/virtual currencies regulatory oversight, 4) Automated/High-Frequency/Electronic Trading; 5) Position Limits and Bona Fide Hedge Exemptions; 6) End-User related Concerns; 7) "Bad Actor" waivers within the Enforcement context; 8) Live Cattle Futures. I limit this request to a search for records during the time period January 1, 2018 to the present within the Intergovernmental Affairs Branch. In accordance with the FOIA and agency policy, we have searched our records, as of September 21, 2021, the date we received your request in our FOIA office.

We have located 34 pages of responsive records. You are granted full access to the responsive records, which are attached. If you have any questions about the way we handled your request, or about our FOIA regulations or procedures, please contact me at 202-418-5912, or Jonathan Van Doren, our FOIA Public Liaison, at 202-418-5505.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 8<sup>th</sup> Floor, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, within 90 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

Sincerely,

Rosemary Bajorek  
Assistant General Counsel



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5521  
[www.cftc.gov](http://www.cftc.gov)

### **Aluminum Futures Market CFTC Staff Report**

This document and the attached Aluminum Futures Market CFTC Staff Report are responsive to H.R.116-446, *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2021*, which directs the Commodity Futures Trading Commission (“CFTC”) to provide a report to the House and Senate Committees on Appropriations regarding its review of the aluminum futures markets and their impact on pricing for aluminum end users.<sup>1</sup>

This document and the attached Aluminum Futures Market CFTC Staff Report do not contain data or information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers. *Cf.* Section 8(a) and 8(e) of the Commodity Exchange Act (“CEA”), 7 U.S.C. § 12(a), (e). The Aluminum Futures Market CFTC Staff Report is based upon cash and futures market information available to staff as of May 5, 2021, and any different, changed, or omitted facts or circumstances may require additional analysis. Staff also notes that access to proprietary data and premium calculations or trade methods could bring different observations. Every effort has been made to ensure data accuracy.

### **Aluminum Futures Market CFTC Staff Report Observations**

Global aluminum prices have increased during the past year, affecting end-users and consumers. These price increases are mainly attributable to a market recovery from the pandemic lows, significant demand from China, increased freight and shipping costs, and regional demand-supply differences, including tariffs.

The London Metals Exchange’s (“LME”) aluminum contracts are a primary price discovery market for global aluminum prices. LME’s registered Foreign Board of Trade (“FBOT”) status gives U.S. customers direct electronic access to its markets. All-in reference prices in the U.S. are derived by adding a location differential to the LME price. Price Reporting Agencies (“PRAs”) publish price assessments for location differentials. In the U.S., the predominant aluminum differential is the Midwest Premium (“MWP”). Futures trading in U.S. aluminum futures contracts is primarily in the Chicago Mercantile Exchange’s Commodity Exchange (“COMEX”) MWP futures contract.

---

<sup>1</sup> “Market surveillance oversight.—Last year, the Committee requested CFTC to look into the aluminum futures market. The Committee remains interested in CFTC’s review of aluminum futures markets and its impact on pricing for aluminum end users and directs CFTC to provide a report to the House and Senate Committees on Appropriations within 60 days of the review’s completion. The Committee expects CFTC’s market surveillance branch to take prompt action, if warranted, to ensure that aluminum end users are protected from fraud, manipulation and abusive practices that are prohibited by the Commodity Exchange Act.” H.R. 116-446 (2020).

## Executive Summary

Aluminum, a widely used non-ferrous metal, has seen significant price increases as the global economy recovers from the COVID-19 pandemic. In 2021, annual output is estimated to climb by 3.4% to 67.2 million tons supported by increased demand and rising prices.<sup>2</sup> During the COVID-19 pandemic, global industrial demand for aluminum stalled and stocks of aluminum at each of the significant exchanges increased, which led to weakness in aluminum prices.

For non-ferrous metals like aluminum, the Shanghai Futures Exchange (“SHFE”) and LME are the leading futures exchanges. The LME is a registered FBOT with the CFTC, which allows participants located in the United States direct access to electronic order entry and trade matching systems (see section on CFTC’s Authority below). The COMEX lists various aluminum futures contracts for market participants including end users and producers.<sup>3</sup>

Reference points for prices for physical metals that are traded globally, such as aluminum, consist of two components: a global benchmark price plus a locality differential. The differential is designed to reflect changes in price due to local supply-demand conditions, such as transportation costs, and directly affects the all-in reference price for delivered metal. In the U.S., the predominant locality differential is the MWP.

Several PRAs publish spot or price assessments for a variety of commodities. S&P Global Platts, a division of S&P Global Inc (“Platts”), and Harbor Aluminum Intelligence Unit LLC (“Harbor”) are two PRAs that publish aluminum MWPs. The COMEX lists the Aluminum MW U.S. Transaction Premium Platts (25MT) (“COMEX MWP”), financially settled futures contract where the final settlement value incorporates the Platts MWP.

COMEX contracts, including the COMEX MWP, represent less than 1% of global aluminum financial markets in notional value. According to the LME, daily volume for LME aluminum futures averages 200,000 contracts per day.<sup>4</sup> Based on COMEX data submitted to the CFTC, the average daily volume across all of COMEX’s aluminum futures for the calendar month May 2021 was 1,088 contracts per day.

## The CFTC’s Authority

The CFTC’s Division of Enforcement furthers the CFTC’s mission to protect market users and the public from fraud, manipulation, and abusive practices that are prohibited by the CEA. In addition, analysts within the Market Surveillance Unit of the Division of Enforcement work to detect potential violations, which are then referred to an investigative team within Enforcement.

The CFTC’s authority lies within several sections of the CEA. Designated Contract Markets (“DCMs”) and Swap Execution Facilities (“SEFs”) are obligated by Core Principle 3 (17 C.F.R. §

---

<sup>2</sup> According to Bloomberg Intelligence report May 2021.

<sup>3</sup> COMEX lists one physically delivered aluminum future, plus various financially settled contracts. *See* <https://www.emegroup.com/trading/metals/aluminum-futures.html> for more information on these products.

<sup>4</sup> For additional information on LME aluminum, *see* <https://www.lme.com/-/media/Files/Education-and-events/Online-resources/Brochures/Non-ferrous/LME-Aluminium-factsheet.pdf?la=en-GB>

38.200 and § 37.300, respectively) to list contracts that are not readily susceptible to manipulation.<sup>5</sup> In addition, the CFTC has provided guidance in Appendix C to Part 38 that DCM's are self-regulatory organizations responsible for monitoring trading on their platform. The guidance states that when evaluating the susceptibility of a cash-settled contract, such as the COMEX MWP, to manipulation, the DCM should consider the size and liquidity of the underlying cash market and design the terms and conditions of the contract to avoid any impediments to convergence. 17 C.F.R. pt. 38 App. C. For cash-settled contracts, DCMs must give appropriate consideration to the commercial acceptability and robustness of the cash price series. Also, as provided in the guidance for DCMs, each cash-settled contract's price series should be based on publicly available prices and should be available on a timely basis for calculating the cash settlement price at the expiration of the commodity contract.

LME is regulated by the Financial Conduct Authority ("FCA") in the U.K. It is registered with the CFTC as an FBOT only for the purpose of permitting direct access trading, and the CFTC's oversight of LME is limited to the aspects of direct access trading. LME has been able to offer the aluminum contract for direct access trading since receiving a staff no-action relief letter on March 12, 2001 (CFTC Letter No. 01-11). That letter was superseded by an Order of Registration issued pursuant to CEA section 4(b)(1) and Part 48 of the CFTC's regulations on October 31, 2016. Should it be deemed necessary, the CFTC, under Part 48, can impose additional requirements and conditions on the direct access trading and could, under the worst scenario, revoke the Order, thereby prohibiting trading by direct access.<sup>6</sup> It should be noted that prohibiting direct access trading does just that, and U.S. persons could continue to trade LME contracts by other means.

The CFTC and the FCA are both signatories to the International Organization of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU), revised May 2012, and the IOSCO Enhanced MMoU (EMMoU), dated 2016. The MMoU and EMMoU enable the CFTC to request the FCA's assistance in obtaining data from the LME in connection with enforcement investigations.

Neither commodity warehouses nor the PRAs, such as Platts or Harbor, are registered with the CFTC in any category of registration or oversight. The CFTC, therefore, has no direct regulatory authority over warehouses, wherever located, or their provision of commodity information. Nor does the CFTC have direct authority over the PRAs such as Platts or Harbor. However, the CFTC has enforcement authority for commodities in interstate commerce and can bring actions, as appropriate, for manipulative activity, including false reporting, and fraud.

CFTC-registered DCMs and SEFs may have contractual arrangements with both warehouses and PRAs in connection with their marketplaces. If such arrangements were to impact the ability of

---

<sup>5</sup> See 17 C.F.R. § 38.200 (2012) and 17 C.F.R. § 37.300 (2013).

<sup>6</sup> In 2014-15, CFTC staff held frequent dialogue with LME's senior leadership, as well as with UK regulatory authorities to understand LME's perspective on aluminum contract and warehouse issues, and to assess LME's proposals for resolving such issues. Within the limits of its jurisdiction over LME as an FBOT, CFTC staff made recommendations for addressing issues in the aluminum contract and related warehouse practices, and encouraged LME to move promptly to address problem areas. CFTC staff monitored market conditions, LME's implementation of responsive measures, and legal developments in UK courts that impacted the scope and timing of any responsive measures to be undertaken by LME.

a DCM or SEF to comply with its respective regulatory obligations, such compliance issues would come within the CFTC's authority and oversight responsibility.

### **Contacts**

For further information or clarification, please contact Ann Wright, Acting Director, Office of Legislative and Intergovernmental Affairs, CFTC. She is reachable by phone at 202-418-5594 or email at [AWright@CFTC.gov](mailto:AWright@CFTC.gov).



**Aluminum Futures Market CFTC Staff Report**  
U.S. House and Senate Appropriations Committees  
July 2021

# Disclaimer

This report is a review of Aluminum derivatives markets conducted by the Market Intelligence Branch of the Division of Market Oversight at the Commodity Futures Trading Commission (“CFTC”). The report analyzes broad market trends and various demand, supply, and other fundamental factors affecting Aluminum derivatives markets. The report does not evaluate any proprietary reference contracts or the underlying methodologies used to create, calculate or measure benchmarks.

The attached report does not contain data or information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers. *Cf.* Section 8(a) and 8(e) of the Commodity Exchange Act (“CEA”), 7 U.S.C. § 12(a), (e). This report is based upon cash and futures market information available to staff at the time, and any different, changed, or omitted facts or circumstances may require additional analysis. Staff also notes that access to proprietary data and premium calculations or trade methods could bring different observations. While every effort has been made to ensure data accuracy, further development may be warranted.

Aluminum is a global metal and flows from mines and processors to many final products. As a matter of course, it moves readily across U.S. state and international borders. Many of the movements, trades, and subsequent values are independent transactions. These transactions occur outside the purview of U.S. exchanges and are not cleared by CFTC registrants. However, certain cash market activity can fall under CFTC’s enforcement authority to prevent fraud and manipulation in interstate commerce.<sup>1</sup> Additionally, these bilateral transactions also serve as the basis for several price reporting subscription services used as one component of futures prices. Platts and Harbor Aluminum are significant participants in this space, and they combine to publish several daily price assessments. Neither Platts nor Harbor are registrants with the CFTC.

This analysis is based on longer-term trends in futures, cash, and aluminum prices (both physical and premiums) and does not provide an opinion on individual price points, fixings, or other non-public information.

# Purpose

In compliance with the Agriculture, Rural Development, Food and Drug Administration and related Agencies Appropriations Bill, 2021, this report on aluminum futures markets is submitted by the Market Intelligence Branch in the Division of Market Oversight of the CFTC to the House and Senate Appropriations Committees. The information in the report is current as of May 5, 2021.

The report provides:

1. Aluminum futures and derivatives markets landscape,
2. Outline of the fundamental factors affecting the aluminum markets, and
3. Summary Conclusions

# Aluminum Futures Markets

The world's major aluminum futures markets are the London Metals Exchange (“LME”) and the Shanghai Futures Exchange (“SHFE”). In the U.S., the CME Group’s Commodity Exchange (“COMEX”) offers several aluminum futures contracts with a variety of underlying markets types (physical delivery, scrap metal, financially settled).

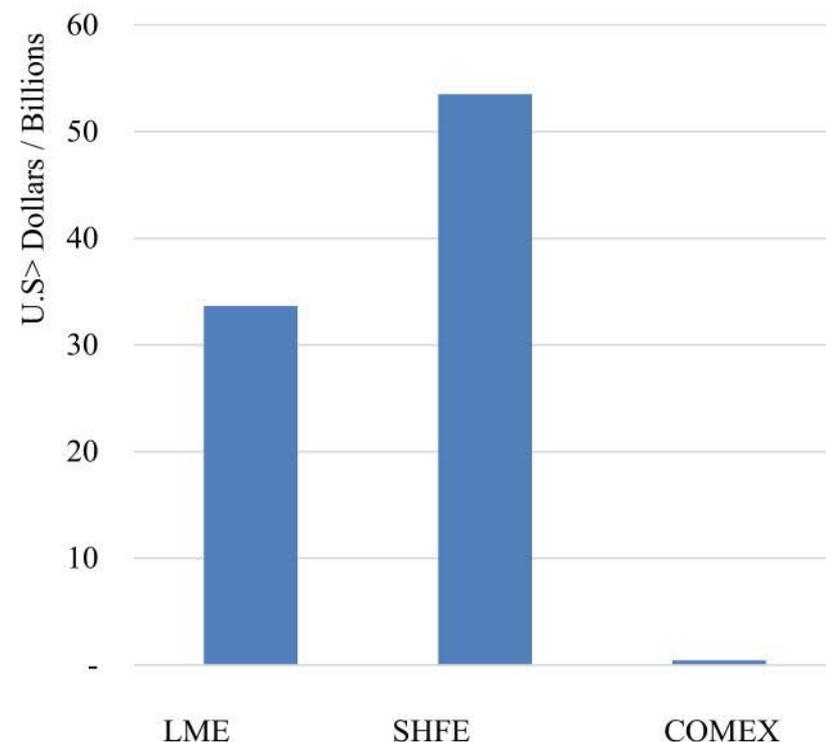
<https://www.cmegroup.com/trading/metals/aluminum-futures.html>

LME, as a registered Foreign Board of Trade (“FBOT”) with the CFTC, allows participants located in the United States direct access to its electronic order entry and trade matching systems.<sup>2</sup>

In addition to the futures markets, aluminum is traded globally across various venues through options, swaps, forward,<sup>3</sup> spot<sup>4</sup> and various bespoke agreements.

The LME’s spot and forward prices are the benchmark reference prices that are widely used in swaps and other over-the-counter contracts.

**Chart 1: Global Aluminum Futures Markets**  
Primary Aluminum Contracts



Sources: CFTC, FIA, Bloomberg LP

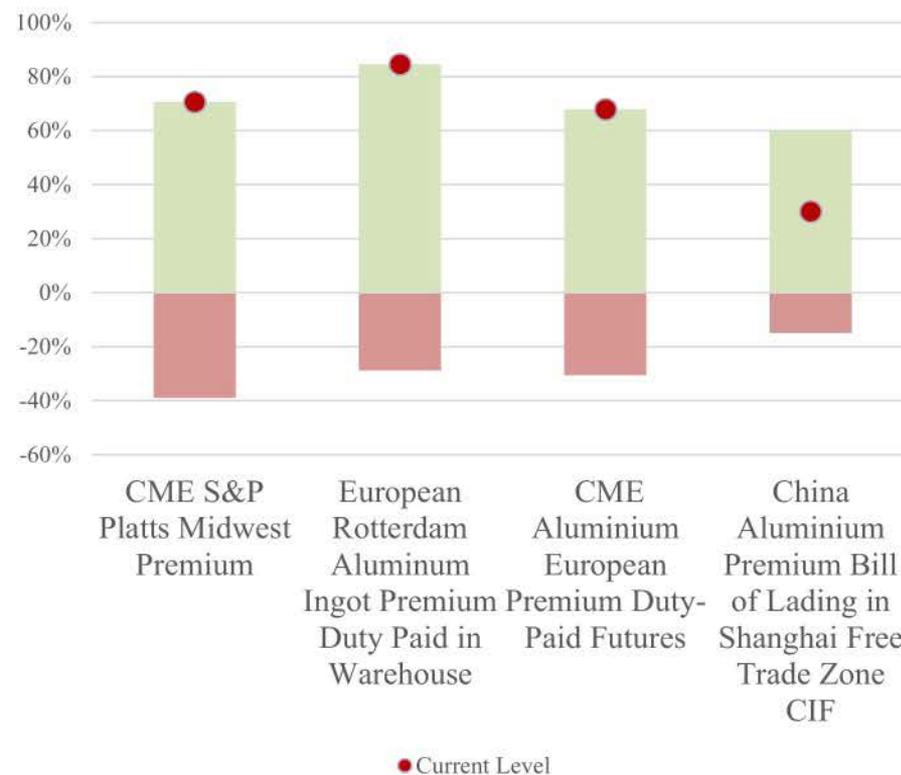
# Aluminum Futures Markets

As a global commodity, shipped worldwide, a reference point for prices for physical aluminum at different delivery points consists of two components: a global benchmark price plus a locality differential. The differential should reflect changes in price due to local supply-demand conditions, including, for example, transportation costs. Thus, locality premiums or discounts affect the all-in reference price for delivered metal.

The primary locality differential in the U.S. is the Midwest Premium (“MWP”),<sup>5</sup> which is assessed by several price reporting agencies, including S&P Global Platts, a division of S&P Global Inc (“Platts”), and Harbor Aluminum Intelligence Unit LLC (“Harbor”).<sup>6</sup>

**Chart 2: Regional Premium Contracts**

Price Range from Jan 2020 to May 2021



Sources: CFTC, Bloomberg LP

# U.S. Metals Futures Markets

U.S. futures markets for metals are approximately \$325 billion.<sup>5</sup> Gold is the largest futures market followed by silver and copper. Base metal futures are approximately \$32.5 billion.<sup>6</sup>

Metal prices have surged the past year mainly due to Chinese demand, a weaker dollar, and bullish sentiment over demand from the clean technology, green energy sectors, and expected infrastructure investments.

**Table 1: U.S. Metals Futures Markets**  
May 2021 Open Interest in U.S. Dollars Millions

Base Metals	
Iron	\$237
Scrap	\$353
<b>Aluminum</b>	<b>\$486</b>
Steel	\$939
Copper	\$30,510
Precious Metals	
Palladium	\$3,933
Platinum	\$4,432
Silver	\$32,776
Gold	\$251,040

Sources: CFTC

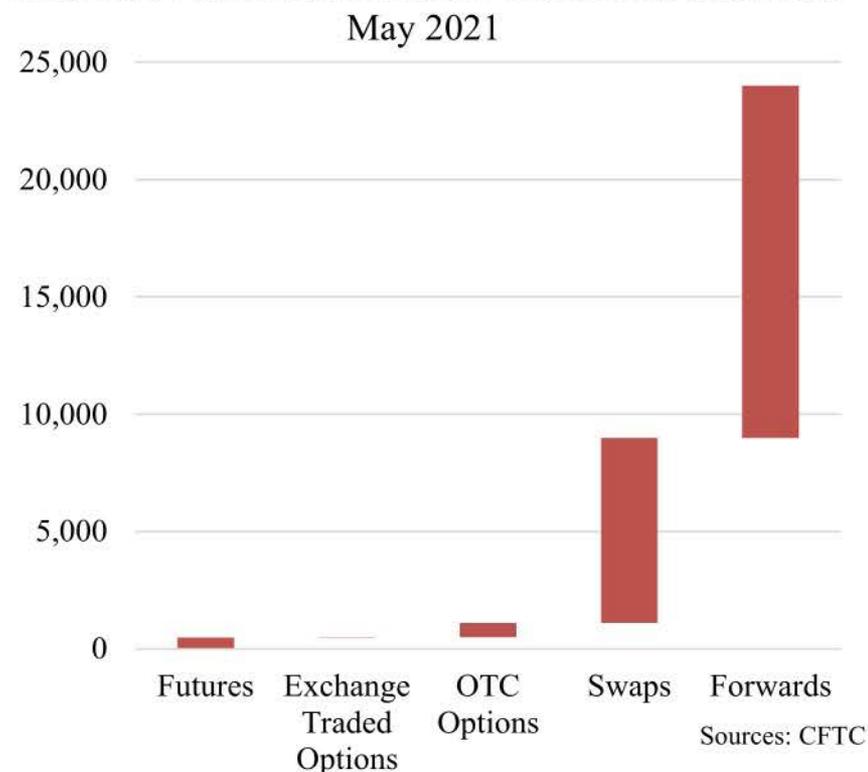
# Aluminum Swaps Markets

The over-the-counter (“OTC”) swaps,<sup>7</sup> forwards and options<sup>8</sup> markets have a combined notional value of close to \$25 billion and are used by both international and U.S. commercial participants.

Comparatively, the notional value of the Mid West Premium contract traded on COMEX is approximately \$481 million.

Large trader reports by market participants<sup>9</sup> to the CFTC indicate that most U.S. commercial participants engage in swaps that reference LME prices rather than U.S. aluminum futures prices. Additionally, the data suggests that less than 10% of the swaps reported to the CFTC include the MWP even though the all-in price for U.S. aluminum is derived by adding the MWP to the LME price.

**Chart 3: U.S. Aluminum Derivatives Markets**



**Note:** Futures, Exchange Traded Options, OTC Options, Swaps and Forwards from CFTC data (Part 16, 17, Part 20 and Part 45). Although the CFTC receives data on forward transactions under Parts 20 and 45 of the Commission’s regulations, certain forward transactions in CEA section 1a(47)(B)(ii) are excluded from the CFTC’s “swap” definition and are therefore not subject to CFTC oversight (i.e., “any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transactions is intended to be physically settled.”).

# Aluminum Swaps Markets

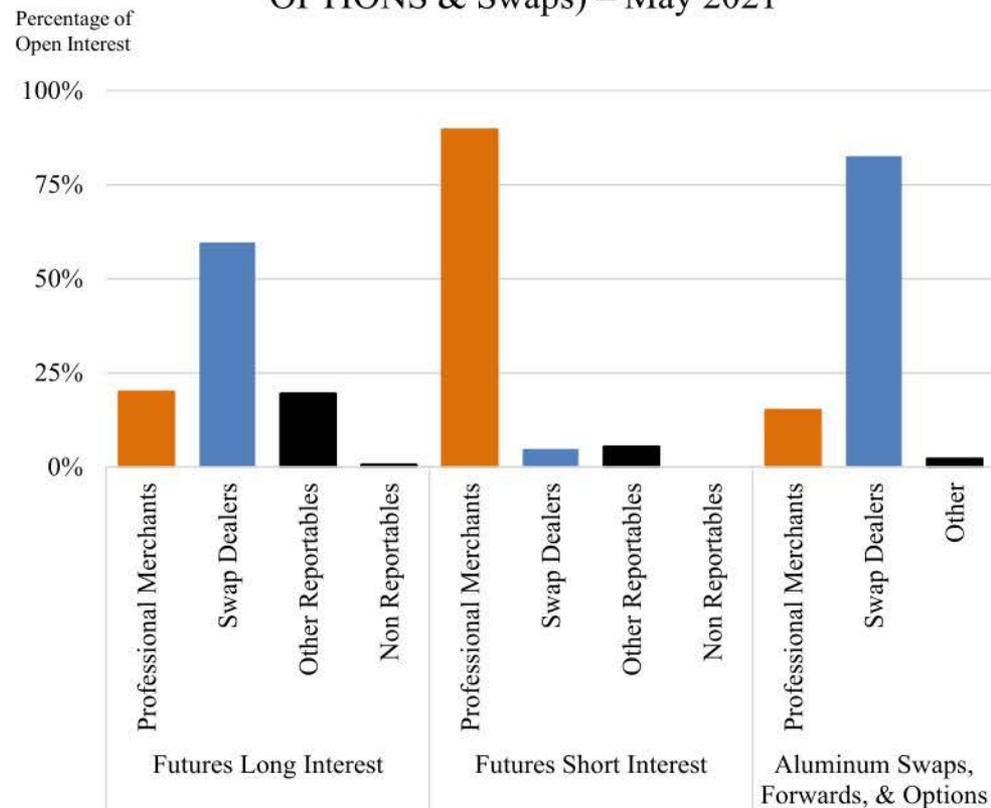
The Commitments of Traders (“COT”) report is a weekly publication that shows the aggregate holdings of different participants in the U.S. futures market.

The commercial merchants, as classified in COT data, tend to be net short and are the largest market segment in aluminum swaps and forwards.

Aluminum swaps are primarily used by merchants who face dealers. These dealers may offset risks in various global contract venues.

## Chart 4: Market Participation

Traders Classifications in Aluminum Derivatives (Futures, OPTIONS & Swaps) – May 2021



Source: CFTC Swaps Data and CFTC Commitment of Traders Report for Futures & Options

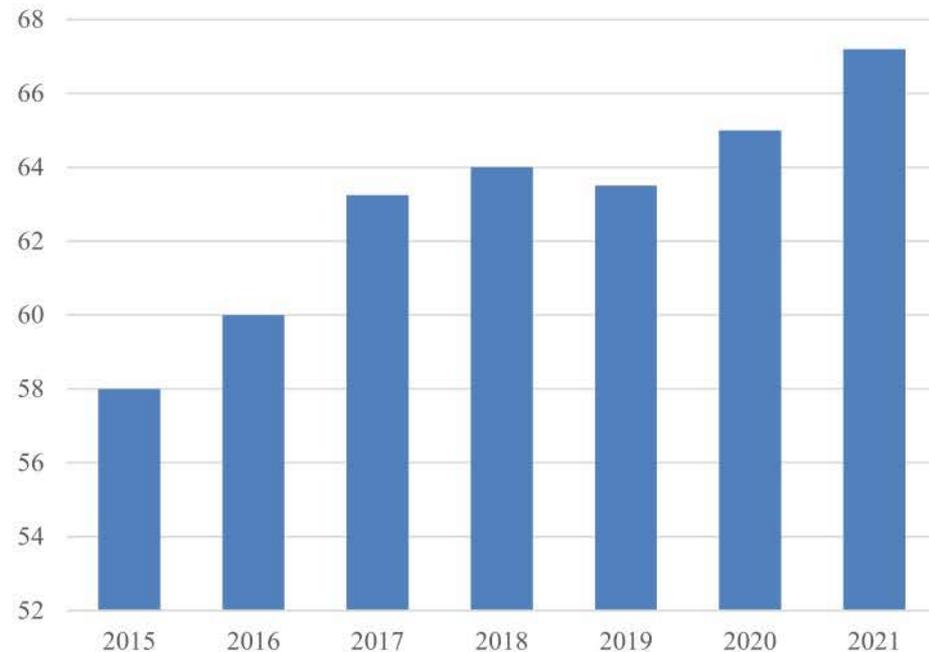
# Fundamental Factors

The global recovery from the pandemic saw a heavy increase in demand, particularly by China, the world's largest producer, and consumer for the metal.

Global aluminum output is forecast to climb by 3.4% in 2021 to 67.2 million tons,<sup>10</sup> supported by rising prices and increasing demand.

China is by far the global leader in primary aluminum production. Global mining, smelting and refining industries have increased production levels since pandemic lows in 2020.

**Chart 5: Global Aluminum Output**  
May 2021 (Full Year 2021 estimated)



Source: Bloomberg Intelligence

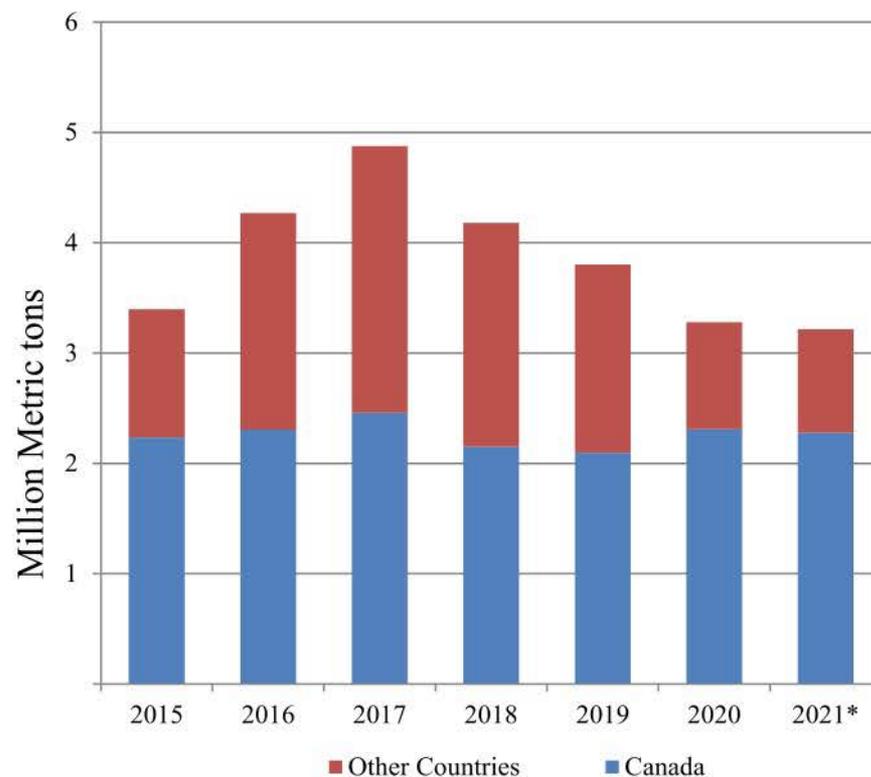
# Fundamental Factors

The U.S. data indicates that the total imports in the U.S. have not increased to pre-pandemic levels as total U.S. unwrought aluminum<sup>11</sup> imports dropped 14% in 2020 (526k mt). Seventy percent of U.S. imports of unwrought aluminum come from Canada.

Tariffs of 10% on imports of aluminum to the US, imposed under Section 232, began in March 2018 and are still in effect. Canada and Mexico were granted exemptions in 2019 amid negotiations for the U.S.-Mexico-Canada Agreement.

The Biden administration has noted that, following the imposition of tariffs in March 2018, domestic aluminum production increased by 22% through 2019, before the coronavirus pandemic began.

**Chart 6: U.S. Unwrought Aluminum Imports (HS 7601)**



\* Annualized Source: US Census Bureau

# Fundamental Factors

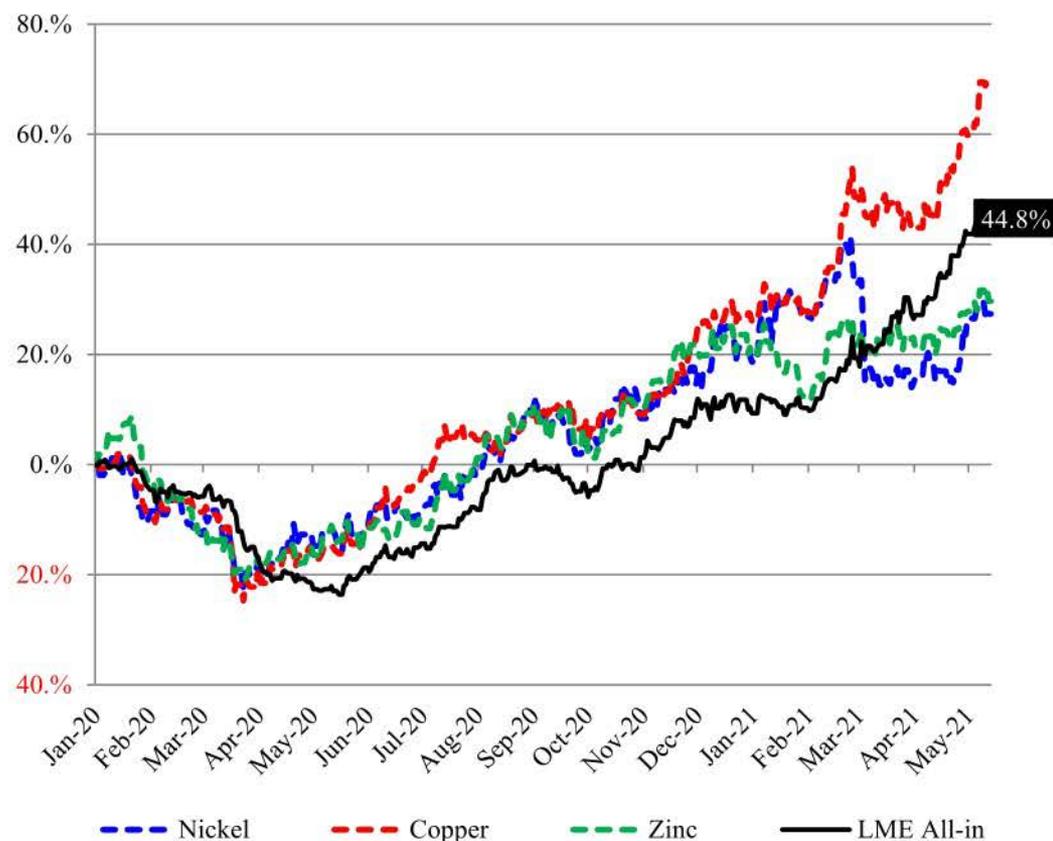
The economic recovery from the pandemic, stimulus efforts, and weaker dollar have all contributed to increased global demand for non-ferrous metals and alloys, particularly from China.

Copper has outperformed all other non-ferrous metals since January 2020, recording a 60% price increase.

The LME Aluminum All-in price (LME + MWP) gained 44.8% during the period when comparing Jan 1-2020 prices to May 2021.

### Chart 7: Non Ferrous Metals

All-In Aluminum, Copper, Zinc and Nickel (Jan,2020-May 2021)



Source: Bloomberg LMNIDY Comdty, LMCADY Comdty, LMZSDY Comdty, PMMUAKE0 Index

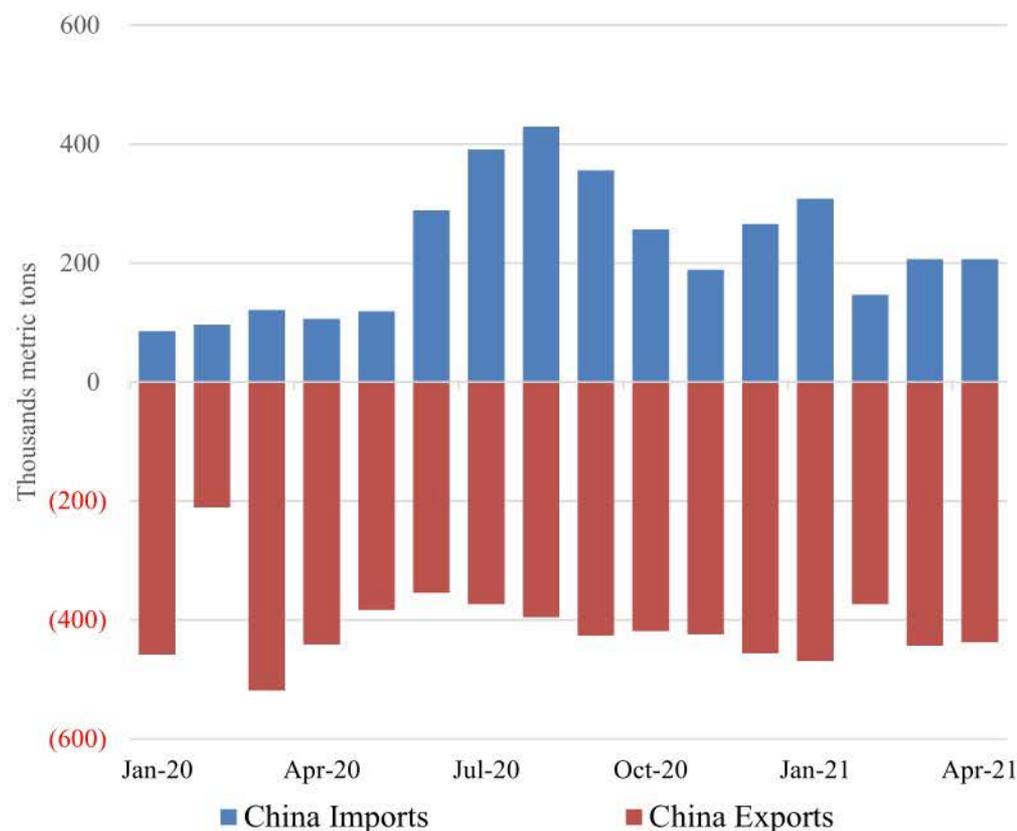
# Fundamental Factors

China unwrought aluminum imports increased fourfold in 2020 from 646k mt to 2.7 mmt. Taking advantage of lower prices, China imported more than it exported in mid 2020.

During the second half of last year, China increased its unwrought aluminum imports, driving global prices higher and likely building up reserves during the pandemic period.

China recently announced plans to release industrial metals, including aluminum, -from its national reserves to curb commodity prices in 2021.

**Chart 8: China's Aluminum Imports & Exports**  
Unwrought Aluminum and Aluminum Products



Source Bloomberg

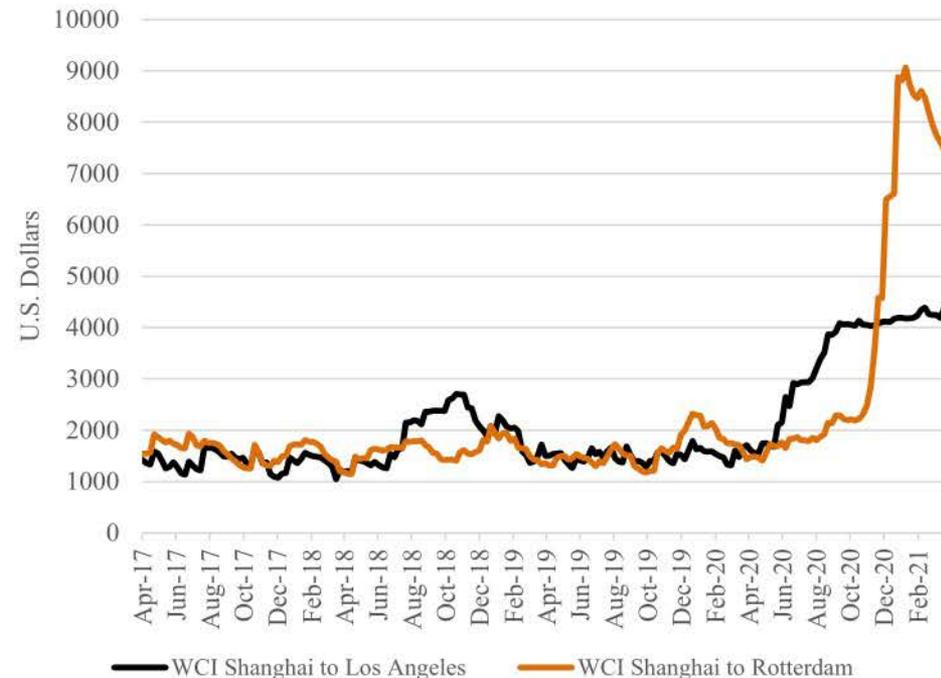
# Fundamental Factors

Container and freight backlogs were strained further by the Suez Canal blockage in March. The rising demand for raw materials, as vaccination success reopens the global economies, raised container shipping rates in 2020 that have since remained elevated.

Shipping disruptions and increased freight costs may have played a factor in price/premium increases.

### Chart 9: Container Freight Rates

U.S. – China 40-Foot Box Rates



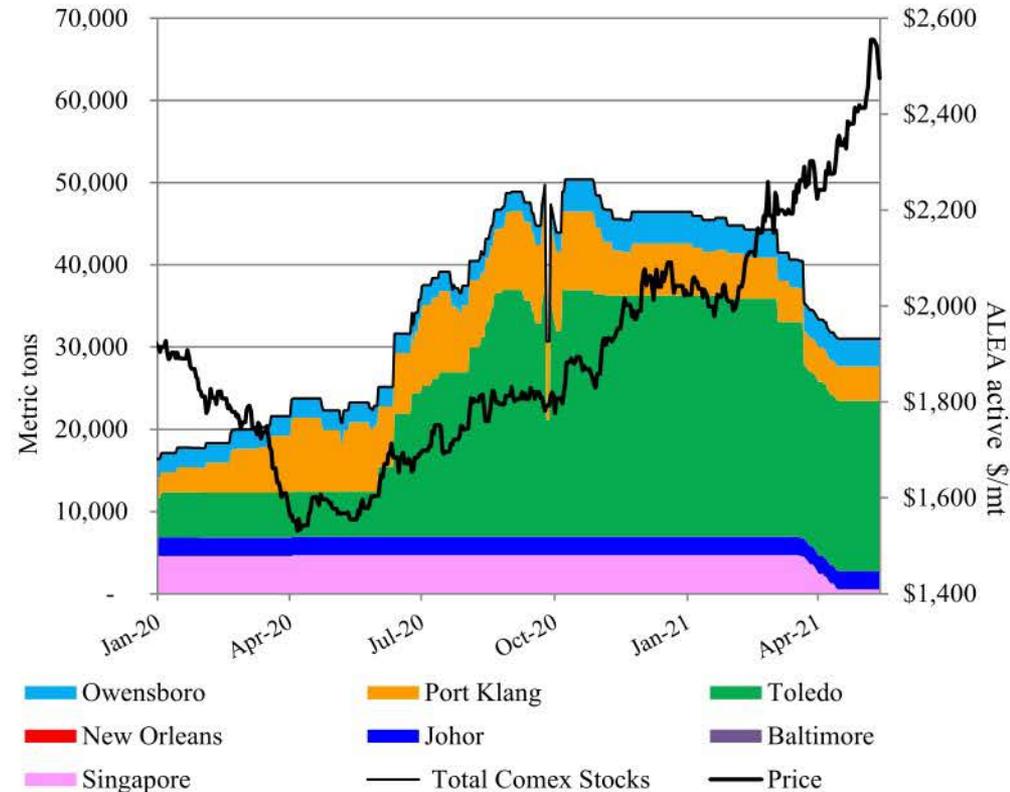
Source: Bloomberg

# Exchange Stocks

COMEX aluminum stocks increased 183% in 2020, and declined 33% in 2021 (31,025 mt). Toledo warehouses hold 67% of COMEX stocks.

The CFTC has no direct regulatory authority and/or oversight of metal warehouses and CME warehouses are not registered with the CFTC.

**Chart 10: CME Aluminum Stocks by Location**



Source: Bloomberg COMXALTL Index, COMXSPTL Index, COMXBATL Index, COMXJOTL Index, COMXNEWT Index, COMXTLTL Index, COMXPCTL Index, COMXOWET Index. ALEA Comdtv/

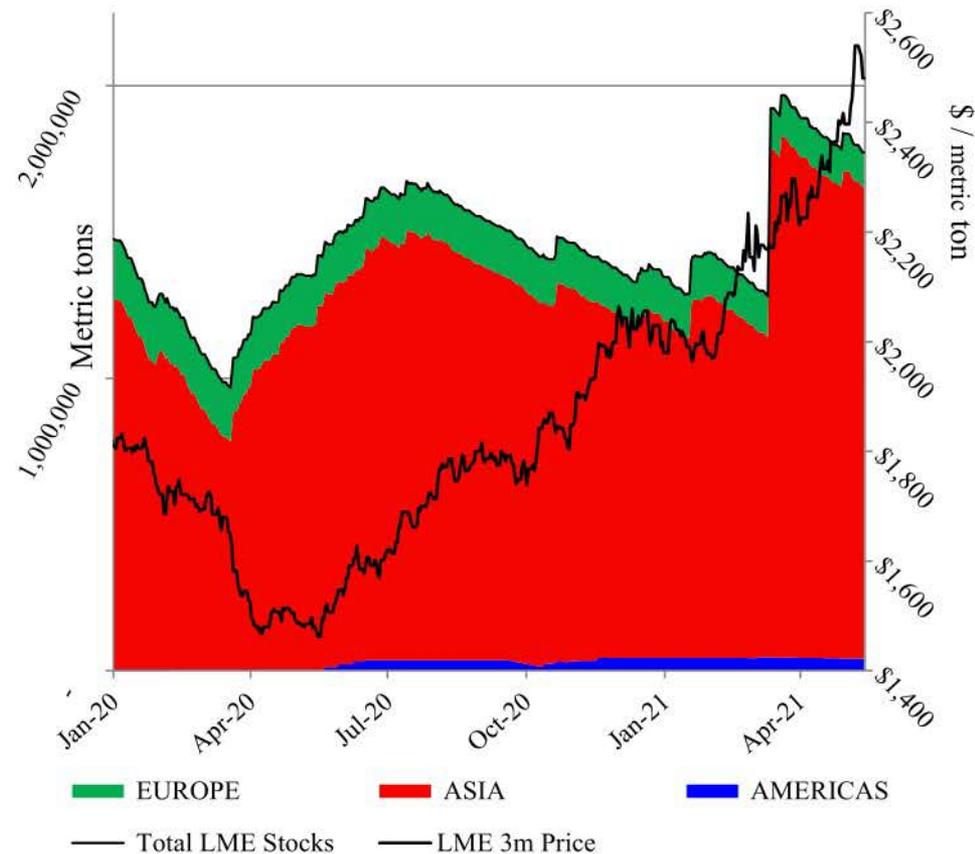
# Exchange Stocks

The LME aluminum contract is considered the world's benchmark. Over 1.1 million mt or 90% of the registered stocks in the LME warehouse system are located in Asia.

LME has multiple warehouses that are able to receive stocks in 14 different nations in the U.K., the U.S., Asia and the Middle East.

LME aluminum reports indicate that warehouse stocks have increased 20% since the beginning of 2020.

**Chart 11: LME Aluminum Stocks**  
Regional Breakdown



Source: Bloomberg NLSAH Index, NLSAH %AMER

# Exchange Stocks

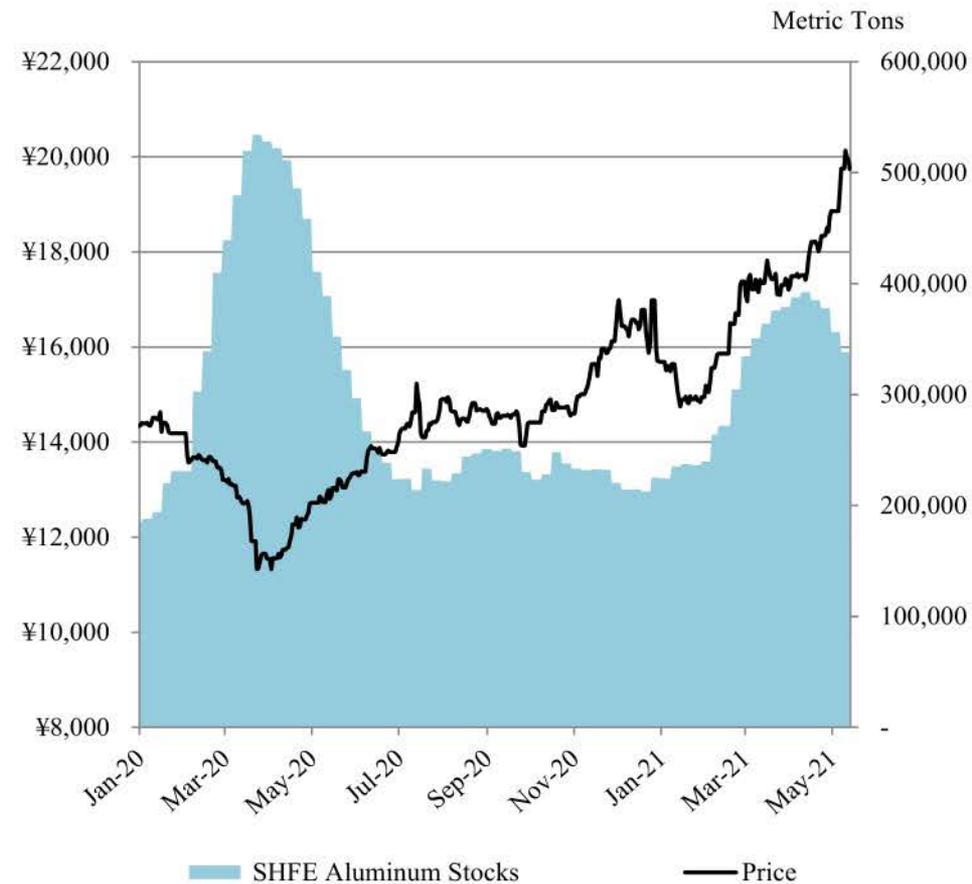
SHFE stocks increased in early 2020 due to the pandemic-induced global slowdown. China's demand has since recovered prompting a draw down of stocks.

Shanghai aluminum futures prices have been trading at their highest levels since 2010 amid high volumes and open interest. Additional scrutiny on speculation has thus far failed to significantly dampen prices.

The SHFE aluminum futures market continues to be in backwardation, which may signal that the prices are expected to decrease in the future.

**Chart 12: SHFE Aluminum Stocks**

May 2021



Source: Bloomberg

# The U.S. Midwest Premium

Each delivery market has one or more local pricing points that are priced as differentials to the LME cash price. This additional surcharge is known as the premium.

The COMEX Aluminum MW U.S. Transaction Premium Platts (25MT) (“COMEX MWP”) futures contract is the predominant aluminum futures contract traded on a U.S. exchange. It was originally created to cover the cost of freight from Baltimore to the Midwest. It now prices supply and demand of the North American-specific market to complement the LME aluminum contract.

As a Designated Contract Market (“DCM”), Comex is required to comply with the CEA and CFTC regulations, including, among other requirements, that Comex shall only list contracts that are not readily susceptible to manipulation. The CEA further states that Comex must have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures.

# The U.S. Midwest Premium

The MWP contract specifications established by COMEX:

- Contract size is 55,116 pounds (25 metric tons (mt)).
- Priced in U.S. dollars and cents per pound.
- Listed for 24 consecutive months.
- Last trading day (LTD) is the last business day of the contract month.
- The floating price for each contract month is equal to the average price calculated for all available price assessments and is published by Platts Aluminum MW U.S. Transaction Premium assessment for that given calendar month.
- The contract is cash settled on expiry.

**Chart 13: COMEX Midwest Premium**

May 2021



Source: Bloomberg

# The U.S. Midwest Premium

The U.S. MWP futures contract has a significantly smaller number of reportable traders when compared to the over 250 contract markets published in the weekly COT-data.

On average, the number of reportable traders in the COT is 74. Comparatively, the Comex MWP futures contract has, on average, 31 reportable traders, with an aggregate open interest of 22,653 contracts (as of May 2021). Additionally, the MWP futures forward curve is also in backwardation (prices further forward are lower than the current contracts).

**Chart 14: COMEX Midwest Premium**  
Open Interest and Forward Curve



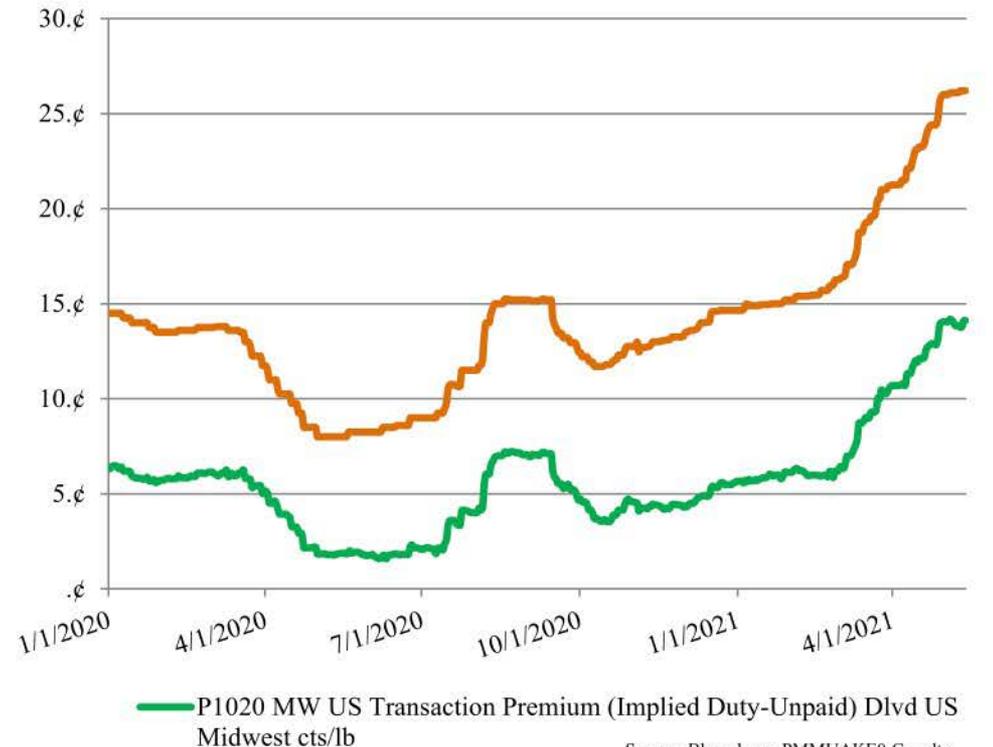
Source: Bloomberg

# The U.S. Midwest Premium

The COMEX MWP futures contract is delivered on a duty-paid basis. In 2018, Platts launched the implied duty-unpaid premium (DUP) to gauge where value might be if the U.S. had not implemented 10% tariffs on aluminum imports. The DUP is not a price assessment but a calculated number that strips out the cost incurred if importing tariffed material.

After backing out import duty of 12.09 cents, the COMEX MWP futures contract without duty (DUP) comes to 14.11. This amount is still below Jan. 2015 premium levels (high 24.25) when there were extended LME warehousing queues and no U.S. duties.

**Chart 15: COMEX Midwest Premium**  
Open Interest and Forward Curve



Source: Bloomberg PMMUAKE0 Comdty, NAMM00CA PLRT Index, NAMM00CE PLRT

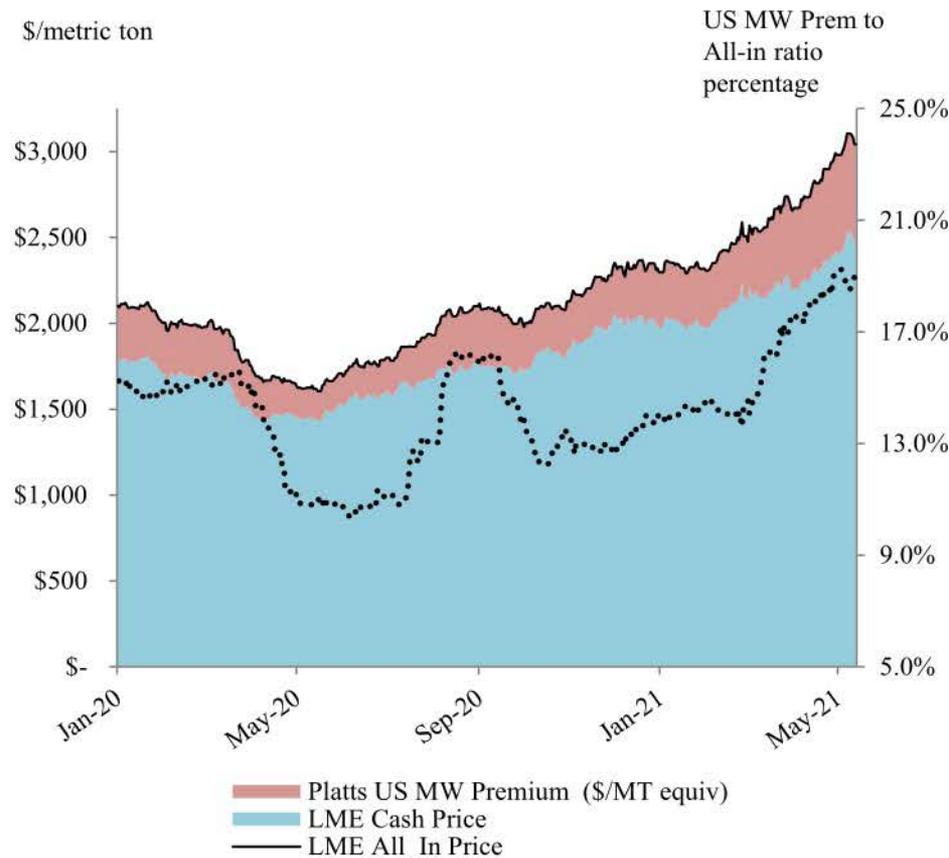
# The U.S. Midwest Premium

The LME all-in price has risen 87% (\$3,041/mt) since May 2020 lows. LME cash price rose 70% to \$2,464/mt and the MWP rose 228% to 26.2 cents/lb. The MWP as a percent of the all-in price is trending up and is currently at 19%.

Each delivery market has one or more local pricing points that are priced as differentials to the LME cash price. This additional surcharge is known as the premium.

In the U.S., the predominant premium is called the Midwest Premium (“MWP”). The daily assessment reflects delivery to a typical-freight consumer in a broad US Midwest region via truck or rail. Pricing data reported to Platts as FOB,<sup>12</sup> FCA,<sup>13</sup> or for non-Midwest locations may be normalized for assessment purposes.

**Chart 16: LMR All in Prices**  
All-In \$3,041 = LME Cash \$2,481 + MWP \$576.6



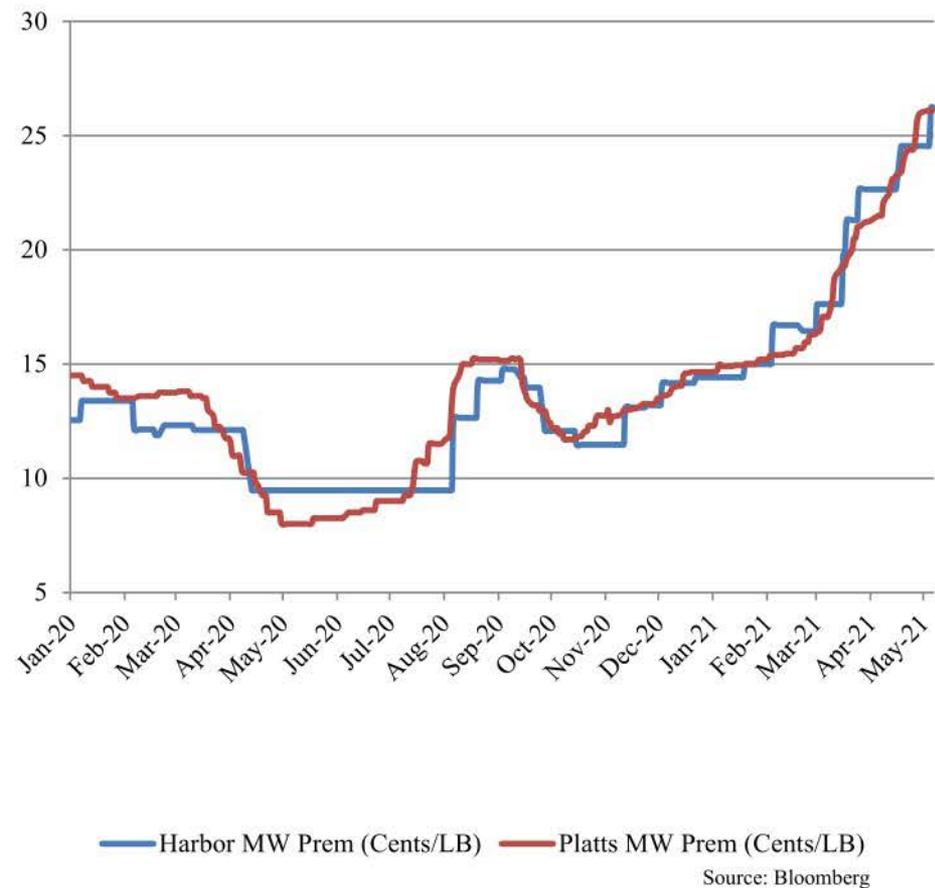
Source: Bloomberg LMAHDY Comdty, PMMUAKE0

# The U.S. Midwest Premium

The U.S. Midwest Premiums reported by S&P Platts and Harbor Aluminum offer markets with independent assessments for regional differences in aluminum prices.

In analyzing these assessments through a linear correlation calculation, the longer-term correlations point to both premiums tracking closely to each other.

**Chart 17: Correlations**  
S&P Platts MWP and Harbor MWP



# Conclusions

Global aluminum prices have increased during the past year as global economies recovered from the COVID-19 pandemic, and due to rapidly growing demand, particularly by China. However, some of the various bottlenecks related to the supply chain (freight and shipping) still have turbulence and increased costs. In addition, U.S. aluminum tariffs have increased the costs of certain aluminum imports. As a result, aluminum prices have risen globally, including in the U.S., and regional premiums such as the MWP, are now higher than pre-pandemic levels. As a result, the overall increases to all-in aluminum prices have a significant impact on pricing for end-users and consumers. Our analysis indicates that:

- The LME's aluminum contract markets (futures, forwards, swaps and options) are the primary price discovery markets for global aluminum markets. Based on internal CFTC reports, most U.S. commercial participants engage in swaps that reference LME prices rather than U.S. aluminum futures prices..
- The U.S. aluminum futures activity is primarily limited to MWP. The CFTC's large trader data show that the U.S. MWP futures contract is a relatively small contract as measured by the number of participants actively engaged in the futures market. In analyzing long term trends between S&P Platts MWP and Harbor Aluminum MWP (a separate and independent price assessment) there is a high-long term, correlation (i.e. tracks closely) between the two assessments.

1. Together, Sections 6(c), 6(d), and 9(a)(2) of the Act prohibit acts of attempted manipulation. Section 9(a)(2) of the Act makes it unlawful for "[a]ny person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity ... " 7 U.S.C. § 13(a)(2) (2006). Section 6(c) of the Act authorizes the Commission to serve a complaint and provide for the imposition of, among other things, civil monetary penalties and cease and desist orders if the Commission "has reason to believe that any person ... has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, ... or otherwise is violating or has violated any of the provisions of [the] Act .... " 7 U.S.C. § 9 (2006). Section 6(d) of the Act is substantially identical to section 6(c). *See* 7 U.S.C. § 13b (2006).
2. LME has been able to offer the aluminum contract for direct access trading since receiving a staff no-action relief letter on March 12, 2001 (CFTC Letter No. 01-11). That letter was superseded by an Order of Registration issued pursuant to CEA section 4(b)(1) and Part 48 of the Commission's regulations on October 31, 2016. LME is not a registered entity and remains regulated by the FCA in the U.K. It is registered with the CFTC only for the purpose of permitting direct access trading, and the CFTC's oversight of LME is limited to the aspects of direct access trading. Should it be deemed necessary, the CFTC, under Part 48, can impose additional requirements and conditions on the direct access trading and could, under the worst scenario, revoke the Order, thereby prohibiting trading by direct access. It should be noted that prohibiting direct access trading does just that, and U.S. persons could continue to trade LME contracts by other means.
3. Forward contracts are typically one period physically or cash settled contracts.
4. Spot contracts are typically over-the-counter transactions that settle immediately (typically two business days) after the trade has been completed.
5. Open Interest including all futures and exchange traded options that are not delta adjusted. Open Interest is the dollarized notional of the longs (which equals the shorts)
6. Some small markets are consolidated under the various categories and adjustments have been made to totals.
7. Swaps include all multi period and single period swap contracts that are cash and physically settled. Options include puts, calls and spread contracts.
8. CFTC's data reporting and record keeping requirements as defined in Part 15, Part 17, Part 20 and Part 45.
9. Bloomberg Intelligence Reports May - 2021.
10. According to the Terms and Definitions published by the Aluminum Association (March 1, 2009), Aluminum products in the form of ingots, blocks, billets, slabs and similar manufactured forms. This term does not encompass rolled, forged, drawn, or extruded products, tubular products, or cast or sintered forms which have been machined or processed, other than by simple trimming, scalping, or descaling. These products include the following types: A. Primary unwrought aluminum: Aluminum produced directly from bauxite or alumina, typically at a primary smelter. Aluminum alloys produced subsequently are also included. B. Secondary unwrought aluminum: Aluminum and aluminum alloys that are typically produced at secondary smelters, cast houses, or remelters. Usually produced from scrap, but may also be produced using a combination of aluminum scrap and primary aluminum.
11. FOB means Free On Board, is a transportation term that indicates that the price for goods includes delivery at the Seller's expense to a specified point and no further.
12. Under the shipping terms for the FCA Incoterms (short for "Free Carrier"), the seller is responsible for export clearance and delivery of goods to the carrier at the named place of delivery. ... Buyer must clearly specify the precise point of delivery in the contract of sales or carriage.

## The CFTC's Role in Monitoring Virtual Currencies

***NOTE: This CFTC report on virtual currency monitoring was generated in compliance with House Report 116-107, The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2020.***

### **House Report Language**

The advent of virtual currency markets has presented several new challenges for the Commission in its efforts to carry out its mission. Each virtual currency derivatives contract currently ties its price in some way, through various settlement processes, to prices of virtual currency on certain cash market platforms. This underlying virtual currency cash market is relatively nascent, and the platforms operating in the cash market remain largely unregulated, with the Commission having only limited enforcement authority over the cash market. Those features of the underlying cash market platforms have led the Commission to note multiple risks to the markets. Therefore, the Committee encourages the Commission's ongoing efforts, in coordination with other financial regulators such as the Securities and Exchange Commission, to continue monitoring virtual currencies, including Bitcoin futures contracts, and to detect, investigate, and prosecute fraud and manipulation in these markets. The Commission is directed to prepare a report on how to better protect virtual currency investors and promote American competitiveness in this evolving global marketplace. This report should include, but is not limited to a discussion of how to protect investors against fraud and manipulation involving virtual currency. This report is to be made available on the Commission website within 270 days of the date of enactment of this Act.

### **The CFTC's Mission**

The mission of the CFTC is to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation. We do this by:

- Protecting market participants against fraud, price manipulations, and abusive trading practices.
- Ensuring the financial integrity of the clearing process.
- Promoting transparency, by conducting research on economic issues related to the futures and options markets, and sharing data about market activity.
- Encouraging market efficiency through principles-based regulation.
- Working with the exchanges, self-regulatory organizations, and other governmental and international organizations to enforce against instances of manipulative or disruptive market activity.

Under the authority of the Commodity Exchange Act (CEA), the CFTC writes rules and supervises market activity and market participants—including exchanges, clearing organizations, large traders, and the companies and individuals who handle customer funds or offer trading advice. The agency also investigates and brings cases for

violations of the CEA and Commission regulations. And, the CFTC educates market customers about their rights, protections, and how to spot, avoid, and report fraud.

### **CFTC Oversight of Virtual Currencies**

The Commission and federal courts have found that virtual currencies are commodities under the CEA. While its regulatory oversight authority over commodity cash markets is limited, the CFTC maintains general anti-fraud and manipulation enforcement authority over virtual currency cash markets as a commodity in interstate commerce.

The Commission has not formally defined virtual currency via regulation. The Commission, however, adopted a broad definition of the term “virtual currency” for purposes of its March 2020 [Final Interpretive Guidance for Retail Commodity Transactions Involving Certain Digital Assets](#).

In the context of that interpretation, virtual currency was referenced as:

- a digital asset that encompasses any digital representation of value or unit of account that is or can be used as a form of currency (*i.e.*, transferred from one party to another as a medium of exchange);
- may be manifested through units, tokens, or coins, among other things; and
- may be distributed by way of digital “smart contracts,” among other structures.

However, the Commission noted that it did not intend to create a bright line definition given the evolving nature of the commodity and, in some instances, its underlying public distributed ledger technology (“DLT” or “blockchain”).

For purposes of below, the term “digital assets” encompasses the term “virtual currency.” Many of the Commission’s primers and advisories can be found on [cftc.gov/Bitcoin](https://cftc.gov/Bitcoin) and other areas of the agency’s website.

### **The CFTC’s Embrace of Innovation**

The Commission recently released its Strategic Plan for 2020-2024. Among the five strategic goals, the Commission focused on encouraging innovation and enhancing the regulatory experience for market participants at home and abroad. The strategic plan commits the Commission to addressing both the risk and opportunities arising from “21<sup>st</sup> century commodities.” The Commission will develop a holistic framework to promote responsible innovation in digital assets. The final 2020-2024 Strategic Plan is available [here](#).

Upon taking office one year ago, the Chairman increased his focus on innovation in the derivatives markets. Soon after starting, he elevated LabCFTC (the Commission’s innovation arm) to an office with the Director reporting directly to the Chairman. This enabled innovation throughout the Commission, including the focus on digital assets.

LabCFTC also hosts an annual conference called Fintech Forward. This conference, held in 2018 and 2019, included panel discussions on a wide range of topics: artificial intelligence in the 21st century marketplace, digitization and custody, big data and cloud computing, and global perspectives on fintech issues. In light of the pandemic, LabCFTC shifted the format of this conference for 2020 to be an Empower Innovation Series this Fall. Here, the focus will be on technology and innovation in light of the pandemic, how regulators are looking at innovation, and the role technology and innovation will play for the future of finance.

**Over the past year, the Commission has focused on digital assets and their role in the derivatives markets. This includes:**

- **[Adopting Interpretive Guidance for the Actual Delivery of Virtual Currency:](#)** On March 24<sup>th</sup> 2020, the Commission voted unanimously to approve final interpretive guidance concerning retail commodity transactions involving certain digital assets. Specifically, the guidance clarifies the CFTC's views regarding the "actual delivery" exception to Section 2(c)(2)(D) of the CEA in the context of virtual currencies. In sum, the final guidance provides the Commission's views on an exception to CFTC regulations involving certain leveraged, margined, or financed virtual currency transactions offered to U.S. retail investors. The final guidance provides a central interpretation of what this concept of "actual delivery" means and several examples of situations that demonstrate or do not demonstrate actual delivery in the Commission's view.
- **[The CFTC's response to the Telegram case:](#)** In February, 2020, CFTC was asked to comment on the *SEC v. Telegram* case with regard to the commodity and security definition for the Telegram's "Gram" token. In response to the Judge's request for comment from the Commission, the Office of General Counsel (OGC) issued a letter that defined commodities and the Commission's jurisdiction. The letter stated that blockchain-based digital assets are commodities and acknowledged that these digital assets may also be securities but declined to offer analysis on that point as such analysis is within the purview of the SEC. CFTC did not comment on the merits of the case, nor take a position on whether GRAM was a security or a commodity.<sup>1</sup>

### **Protecting and Educating**

- **CFTC Enforcement Activities:** The Commission has recently announced a number of enforcement actions related to fraud and manipulation in virtual currency markets. Below is a compilation of cases from the past year. A complete list can be found [here](#).

---

<sup>1</sup>: Robert A. Schwartz, Deputy General Counsel, Litigation, Enforcement & Adjudication, Commodity Futures Trading Comm'n, Letter to Judge Castel, Re: *SEC v. Telegram Group, Inc., et al.*, No. 1:19-cv-09439 (PKC) (S.D.N.Y. Feb. 18, 2020), ECF No. 203.

- [CFTC Sanctions Two Firms Offering Digital Asset-Based Swaps for Illegal Off-Exchange Trading and Registration Violations](#)
  - [CFTC Files Charges in \\$20 Million International Binary Options and Digital Asset Fraud Scheme](#)
  - [CFTC Charges Florida Man and His Companies in Fraudulent Forex and Digital Asset Scheme](#)
  - [CFTC Charges Colorado Resident with Fraud in Digital Asset-Linked Ponzi Scheme](#)
  - [CFTC Charges Foreign Trading Platform for Failing to Register with the CFTC](#)
  - [Federal Court Permanently Enjoins Defendants and Orders Them to Pay Penalties and Restitution for Bitcoin Solicitation Fraud, Impersonating a CFTC Investigator, and Sending Forged CFTC Documents](#)
  - [CFTC Charges Company and its Principal in \\$147 Million Fraudulent Bitcoin Trading Scheme](#)
  - [Foreign Trading Platform and Its CEO to Pay \\$990,000 for Illegal Bitcoin-Related Transactions with U.S. Customers](#)
  - [CFTC reinstates TeraExchange, LLC as Swap Execution Facility](#)
- **Education:** The Commission has increased its internal training efforts on various virtual currency topics: bitcoin, ether, blockchains, zero knowledge proofs, and forks of virtual currency blockchains. This internal education enhances current regulatory staff know-how – enabling more innovation in the regulatory process.
  - **CFTC Customer Advisories on Virtual Currencies:** The Office of Customer Education and Outreach have developed several customer advisories related to digital assets and virtual currency. These advisories provide tips customers can take to avoid fraud or other problems.
    - [Use Caution When Buying Digital Coins or Tokens](#)
    - [Beware Virtual Currency Pump-and-Dump Schemes](#)
    - [Beware of "IRS Approved" Virtual Currency IRAs](#)
    - [Risks of Virtual Currency Trading](#)
    - [Customer Advisory: Beware of Fee Scams Targeting Workers Sideline by COVID-19](#)
    - [Investor Alert: Watch Out for Fraudulent Digital Asset and "Crypto" Trading Websites](#)
    - [Customer Advisory: There's Nothing to Like about Scammers on Social Media](#)

In addition, the [cftc.gov/check](https://www.cftc.gov/check) web page includes information on how to check the registration of virtual currency over-the-counter spot trading websites using the money service businesses ([MSB](#)) [Registrant Search](#) operated by the Financial Crimes Enforcement Network and the [Nationwide Multistate Licensing System \(NMLS\)](#) operated by the Conference of State Bank Supervisors. This information is

included with other registration FAQs and information that encourage customers to verify entity registration before committing funds to a trade or investment.

## **Overview of Prior CFTC Efforts**

The CFTC has been focused on virtual currencies for some time, spanning multiple agency heads. These efforts span prior enforcement actions, LabCFTC policy primers, Commission requests for information (RFIs), Staff Advisories, and resources developed by the Office of Public Affairs.

**Enforcement Actions:** The CFTC began filing cases involving virtual currencies as early as 2015. These cases include:

- [CFTC Orders Bitcoin Options Trading Platform Operator and its CEO to Cease Illegally Offering Bitcoin Options and to Cease Operating a Facility for Trading or Processing of Swaps Without Registering](#)
  - [CFTC Settles with TeraExchange LLC for Failing to Enforce Prohibitions on Wash Trading and Prearranged Trading in Bitcoin Swap](#)
  - [CFTC Orders Bitfinex to Pay \\$75,000 for Offering Illegal Off-Exchange Financed Retail Commodity Transactions and Registration Violations](#)
- 
- **[LabCFTC Primer on Virtual Currencies](#):** In October 2017, LabCFTC released a primer on Virtual Currencies. The primer was aimed at the general public. The primer provided an overview of what virtual currency is, the role of the CFTC in virtual currency spot and derivative markets, as well as an overview of the risks associated with Virtual Currencies.
  - **[CFTC Backgrounder on Oversight of Virtual Currency Futures Markets](#):** In January 2018, the Office of Public Affairs released a backgrounder on the Commission's oversight of virtual currency futures markets. The backgrounder provided clarity regarding federal oversight of and jurisdiction over virtual currencies; the CFTC's approach to regulation of virtual currencies; the self-certification process generally, as well as specifically regarding the self-certification of new contracts for bitcoin futures products by DCMs; background on the CFTC's "heightened review" for virtual currency contracts; and a discussion of the constituencies the CFTC believes could be impacted by virtual currency futures.
  - **[RFI on Crypto-asset Mechanics and Markets/Ether Commodity Determination](#):** In December 2018, the CFTC released a Request for Information (RFI) seeking input about the virtual currency marketplace, particularly related to Ether and the Ethereum network. The RFI specifically sought public comments on a range of questions related to the underlying technology, opportunities, risks, mechanics, use cases, and markets, related to Ether and the Ethereum Network. The responses to the RFI did not find opposition to Ether-related derivatives. Many commentators noted that Ether derivatives could have a positive impact on Ether and the Ethereum

Network.<sup>2</sup> In October 2019, CFTC Chairman Tarbert noted that, in his view, Ether is a commodity.<sup>3</sup> Since this announcement, CFTC has begun to hear from interested stakeholders about the potential to initiate a listed derivatives contract based on Ether.

- **DMO and DCR Staff Advisory on Virtual Currency Derivative Product Listings:** In May 2018, DMO and DCR issued a joint staff advisory (No. 18-14) to exchanges and clearinghouses providing guidance for listing virtual currency derivative products. The advisory is intended to clarify CFTC staff priorities and expectations in its review of new cash-virtual currency derivatives to be listed on a DCM or SEF, or to be cleared by a DCO. Highlighted in the advisory are key areas that require particular attention in the context of listing a new virtual currency derivatives contract. These include:
  - Establishing enhanced market surveillance processes (such as having formal information sharing agreements with spot market platforms that are used to form settlement prices).
  - Coordinating with CFTC surveillance staff.
  - Setting large trader reporting levels equivalent to 5 BTC.
  - Undertaking outreach to member and market participants to address concerns on the product.
  - Coordinating with CFTC staff on a review of the DCO's risk management policies for the clearing of virtual currency derivatives.

---

<sup>2</sup> See <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2941>.

<sup>3</sup> "It's my conclusion as Chairman of the CFTC that ether is a commodity and therefore would fall under our jurisdiction." <https://www.cftc.gov/PressRoom/PressReleases/8051-19>.