

COMMENT

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Opening Statement of Commissioner Thomas J. Erickson
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Public Meetings Regarding the Commission's Proposed Regulatory Framework
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These issues are complex, and I hope these meetings help us further develop an understanding of how to best oversee a changing industry in a way that is responsible and at the same time encourages innovation and growth. That being said, I can not help but think that the proposal before us today raises as many questions as it attempts to answer. One of the major questions it raises, for example, involves the much-discussed issue of "legal certainty." The framework is advanced as a partial solution to questions of legal certainty. However, the solutions it proposes seem to me to open the door to expanded uncertainty. I look forward to hearing a discussion about legal certainty and how the concerns of the industry are met by this proposal.

More specifically, the Commission's jurisdiction generally extends to contracts for future delivery and options. The proposed framework is grounded in the authority that allows the Commission to exempt certain transactions without making a determination of whether they are within the Commission's jurisdiction. The framework would extend this relief to transactions in each of the three new marketplaces envisioned - exempt MTEFs, DTFs, and RFEs - while retaining the Commission's anti-fraud and anti-manipulation authority.

Under similar circumstances in the past, members of the over-the-counter derivatives industry have expressed concerns about the enforceability of the Commission's anti-fraud and anti-manipulation authorities retained under the existing Part 35 exemption for swaps. Given the Commission's history with Part 35 - and the much broader system of exemptions in the

proposed framework – I wonder if members of the industry have similar legal certainty concerns with regard to the exempt markets that the Commission proposes regulating on a voluntary basis.

The proposed framework would also preserve the Commission's responsibility for detecting and deterring fraud and manipulation in each of the markets described in Parts 35, 36, 37 and 38 of the framework. But the Commission would be expected to do so without many of the tools currently available to it. It thus appears that the Commission would lose at least some ability to detect and deter. I think it is in the Commission's best interest to have more than those tools necessary to pick up the pieces following a market event. I look forward to some comment about what public interest is advanced with respect to this aspect of the framework.

More generally, the proposed framework clearly follows a trend that we have seen reflected in the Report of the President's Working Group on Over-the-Counter Derivatives, as well as in the legislation currently pending in both the Senate and House. The common theme throughout is the notion that this agency has a diminished – or even no – interest in regulating or overseeing certain types of markets, transactions, and/or market participants. Given this general direction, I think it is legitimate to ask whether this agency should retain *any* interest in regulating many of these markets. And if it does retain an interest, I believe we should be taking a hard look at what tools we have left at our disposal to vindicate these interests.

These are a few of the issues I hope to see discussed today and tomorrow. I recognize the need to modernize and streamline our approach and would like nothing more than to have industry and Commission agreement over a system that provides the industry with the lighter regulatory touch and legal certainty it craves. Legal certainty, however, is a double-edged sword, and I look forward to a plan that also provides the Commission with adequate certainty about its role in preserving the usefulness and integrity of these markets. I do not think it serves anyone's

interests to have a Commission that retains responsibility for oversight, but has a diminished ability to detect and address fraud and market abuses. I am hopeful that these public meetings provide us with a record that will both address and allay these concerns.

Finally, I would be remiss if I did not acknowledge the efforts of Commission staff. Today's and tomorrow's public meetings are the culmination of a great deal of hard work and creative thinking that resulted in the recent *Federal Register* releases outlining the new proposed regulatory structure. I believe that it is always in an agency's best interests to reexamine how it approaches regulation, to provide relief from burdensome regulation where possible, and to ensure that regulation remains current with the demands of evolving markets. I realize that change involves an element of risk. I am prepared to take necessary risks so long as the public record is developed on the questions raised by members of the Commission, interested parties, and the public. Accordingly, I welcome these meetings as a way to hear from the industry and public on these issues.

I would also like to thank the Chairman for making available to us today and tomorrow so many talented industry participants. I know you all care deeply about these issues and that many of you have worked closely with the staff taskforce in developing these proposals. I look forward to hearing from you, and I hope that our discussions will help me take greater comfort in the proposal before us today.