

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

PUBLIC MEETING

Washington, D.C.

Monday, November 3, 2014

1 PARTICIPANTS:

2 Commission Members:

3 TIMOTHY G. MASSAD, Chairman

4 MARK P. WETJEN, Commissioner

5 SHARON Y. BOWEN, Commissioner

6 J. CHRISTOPHER GIANCARLO, Commissioner

7 First Staff Presentation: Proposed Rule --
8 Residual Interest Deadline for Futures Commission
Merchants:

9 THOMAS J. SMITH
10 Division of Swap Dealer and Intermediary Oversight

11 PHYLLIS DIETZ
12 Division of Clearing and Risk

13 M. LAURA ASTRADA
14 Division of Clearing and Risk

15 Second Staff Presentation: Proposed Rule --
16 Records of Commodity Interest and Related Cash or
Forward Transactions:

17 KATHERINE DRISCOLL
18 Division of Swap Dealer and Intermediary Oversight

19 AUGUST A. IMHOLTZ, III
20 Division of Swap Dealer and Intermediary Oversight

21 LAUREN BENNETT
22 Division of Swap Dealer and Intermediary Oversight

23 Third Staff Presentation: Proposed Interpretation
24 -- Forward Contracts with Embedded Volumetric
Optionality:

25 ELISE PALLAIS
26 Office of General Counsel

1 ALSO PRESENT:

2 CHRISTOPHER KIRKPATRICK
3 Secretary of the Commission

4 WILLIE CHARLIE
5 Assistant Secretary

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1 P R O C E E D I N G S

2 (10:33 a.m.)

3 CHAIRMAN MASSAD: Good morning. This
4 meeting will come to order. This is a public
5 meeting of the Commodities Futures Trading
6 Commission. I would like to welcome members of
7 the public, market participants, and members of
8 the media, as well as those listening to the
9 meeting on the phone or watching the webcast.

10 Today we are considering three matters
11 that all involve fine-tuning our rules to make
12 sure they work as intended. These are all
13 adjustments to previously issued rules and they
14 are appropriate to make sure our rules do not
15 impose undue burdens or unintended consequences,
16 particularly for the nonfinancial commercial
17 businesses that use these markets to hedge
18 commercial risks.

19 Now, this is a natural process for any
20 regulatory agency and it is particularly
21 appropriate in our case and that is because our
22 responsibilities were increased dramatically as a

1 result of the worst financial crisis this country
2 has faced since the Great Depression. We were
3 given the responsibility to oversee the
4 over-the-counter derivatives market, a \$700
5 trillion market that was largely unregulated prior
6 to the crisis.

7 As we know, excessive risks related to
8 this market were one of the causes of the crisis.
9 The CFTC developed and published many new rules to
10 implement that responsibility and it updated
11 certain other related rules in the course of doing
12 so. With reforms as significant as these, it is
13 inevitable that there will be a need for some
14 minor adjustments and that is what we're doing
15 today.

16 The changes that we are proposing help
17 ensure that as we regulate the potential for
18 excessive risks in these markets, we makes sure
19 that the commercial businesses, whether they are
20 farmers, ranchers, manufacturers, or others who
21 rely on these markets to hedger routine risks and
22 continue to do so efficiently and effectively.

1 The first item we are considering is a
2 proposed amendment to Regulation 1.22. This rule
3 helps ensure that the funds deposited by customers
4 with Futures Commissioned Merchants, or FCMs,
5 remains safe. The rule prohibits and FCM from
6 using customer funds of one customer for the
7 benefit of another customer. Last fall the
8 Commission amended Regulation 1.22 to further
9 enhance the safety of such funds by making sure
10 that customer accounts have sufficient margin.

11 On any day when a customer is required
12 to post additional margin, but has not yet done
13 so, the FCM must maintain its own capital, often
14 referred to as the FCM's residual interest in
15 customer segregated accounts to make up the
16 difference. These amendments provided that the
17 FCM must deposit the additional funds by a
18 specified deadline. Specifically, the amendment
19 said that as of November 14, 2014, the deadline
20 would be 6:00 p.m. Eastern Time on the settlement
21 date. Now the deadline for the FCMs to post their
22 own capital affects the deadline for customers to

1 increase their own funds.

2 The amendments passed last fall also
3 provide that the Commission will conduct a study
4 and solicit public comment, including by way of a
5 roundtable concerning the practicability for both
6 FCMS and their customers, of moving that deadline
7 from 6:00 p.m. to the morning daily clearing
8 settlement cycle, or the time of settlement. For
9 convenience, I will refer to that today as 9:00
10 a.m.

11 The amendment said the Commission would
12 decide within nine months after publication of the
13 report whether to move the deadline to 9:00 a.m.
14 and, finally, the amendment said that if the
15 Commission failed to take any action, the deadline
16 would automatically move to 9:00 a.m. As of
17 December 31, 2018.

18 Today we making a minor, but important
19 change. We are proposing to eliminate the
20 provision that says the deadline will
21 automatically move to 9:00 a.m. as of December 31,
22 2018. The deadline will still move to 6:00 p.m.

1 as of November 14th of this year and we will still
2 conduct a study of the practicability of making
3 the deadline earlier. An earlier residual
4 interest deadline better protects customers from
5 one another, in line with the statute. And we
6 want to make sure we move deliberately so that the
7 model works best for customers, in light of all of
8 their interests. Since the deadline will affect
9 how much margin customers post, have to post, and
10 when. Today's proposal will make sure that
11 customers will have an opportunity to not only
12 review the study, but give us input when we
13 consider whether to accelerate the deadline.

14 The second item today consists of
15 proposed amendments to Regulation 1.35. This
16 regulation requires various types of market
17 participants to keep written and oral records of
18 transactions. This record is very important to
19 our efforts to police the markets and ensure
20 integrity and transparency. Regulation 1.35 has
21 been on the books since 1948 and we have updated
22 it from time to time, in light of changes in

1 marketplace practices, as well as the scope of our
2 jurisdiction.

3 After the Commission amended the rule in
4 December of 2012, and the staff observed
5 implementation of those changes, the staff
6 determined that the cost of complying with certain
7 aspects of the rule for some market participants
8 might exceed the potential benefits, and the staff
9 granted No Action Relief.

10 Specifically, the staff said that
11 regarding written records members of DCMs or SEFs
12 that are not registered with the Commission do not
13 have to keep text messages or store their other
14 records in a manner that is identifiable and
15 searchable by transaction. Regarding oral
16 communications, staff said that commodity trading
17 advisors do not have to record oral communications
18 regarding their swap transactions. Cost of
19 maintaining records, there are rules that require
20 market participants to keep, will ultimately be
21 reflected in the transaction costs incurred by all
22 customers.

1 So we must always keep the costs in
2 balance with the benefit to market oversight.
3 Today we are simply proposing to revise the rule
4 so that it reads consistent with that staff No
5 Action Relief, and to provide a slight expansion
6 of some of that relief so that CTAs do not have to
7 record oral communications. We are also proposing
8 to clarify one aspect of the rule that has
9 generated confusion, and this pertains to the
10 requirement that records must be identifiable and
11 searchable by transaction, and what identifiable
12 and searchable means.

13 The third item we are considering
14 pertains to forward contracts that have what is
15 known as embedded volumetric optionality,
16 generally speaking, contracts to buy or sell a
17 nonfinancial commodity for deferred delivery, that
18 provide for variations in delivery amount. In
19 certain situations, commercial parties are unable
20 to predict at the time a contract is entered into
21 the exact quantities of the commodity that they
22 may need or be able to supply, and the embedded

1 volumetric optionality offers them the flexibility
2 to vary the quantities delivered accordingly.

3 The CFTC put out an interpretation
4 consisting of seven factors to provide clarity as
5 to when such contracts would fall within the
6 forward contract exclusion from the swap
7 definition. Some market participants have felt
8 that this interpretation, in particular the
9 seventh factor, was hard to apply. In some cases,
10 two parties would reach different conclusions
11 about the same contract.

12 Today we are proposing clarifications to
13 the interpretation that I believe will alleviate
14 this ambiguity and allow contracts with volumetric
15 optionality that truly are intended to address
16 uncertainty with respect to the party's future
17 production capacity or delivery needs and not for
18 speculative purposes or as a means to obtain
19 one-way price protection to fall within the
20 exclusion. I note also that because this proposed
21 interpretation pertains to the definition of a
22 swap, we are coordinating with the SEC on this.

1 With respect to all three proposals
2 today, if adopted, there will be an opportunity
3 for public comment before we take any action. I
4 want to thank in advance the Commissioners and all
5 of the staff for their hard work and contributions
6 on these proposals.

7 And with that I would like to recognize
8 my fellow commissioners for their opening
9 statements, beginning first with Commissioner
10 Wetjen.

11 COMMISSIONER WETJEN: Thank you. Good
12 morning, Chairman Massad and Commissioners Bowen
13 and Giancarlo. I want to thank Chairman Massad
14 for convening this meeting and moving quickly to
15 fine tune the Commission's Dodd-Frank rulemakings
16 and provide needed clarity and relief to the
17 commercial end-user community.

18 Likewise, I want to thank Commissioners
19 Bowen and Giancarlo for their constructive
20 approach and willingness to collaborate on these
21 releases. And, of course, the staff deserves
22 thanks for their continued work on these complex

1 and important matters.

2 A few things were clear to me at the
3 time that Congress considered Dodd-Frank and the
4 view that commercial firms were not responsible
5 for the credit crisis. New swaps rules,
6 therefore, should not place additional costs and
7 compliance burdens on firms operating in the real
8 economy unless necessary to achieve the purposes
9 of the post-crisis reforms.

10 In formulating and supporting Dodd-Frank
11 rules since joining the Commission, I've tried to
12 keep this principle in mind. Along these lines
13 I've strived to move policy in a direction that,
14 when implemented, will avoid introducing
15 unnecessary complexity to the operation of firms
16 and that takes into account practical
17 considerations related to compliance.

18 Today's releases recalibrate previous
19 work by the Commission and generally move its
20 policy further in the aforementioned direction.
21 I, therefore, intend to support them.

22 Today's proposal further clarifying the

1 definition of forward contracts with embedded
2 volumetric optionality, or EVO, is intended to
3 provide commercial firms the regulatory clarity
4 they have sought since the original release of the
5 seven-part test in August of 2012.

6 The definition of a swap in the
7 Commodity Exchange Act includes commodity options,
8 but excludes from that definition forward
9 contracts. There is a policy reason for this and
10 at its root was a desire to ensure that
11 Dodd-Frank captured many swaps and swap-like
12 contracts that were structured to be similar to
13 options, while also ensuring that a new regulatory
14 regime was not inadvertently and inappropriately
15 extended into certain physical markets.

16 The broad definitional language in
17 question was designed to ensure that financial, as
18 opposed to physical, contracts could not be
19 structured or recharacterized to avoid the new
20 market structure. While the swap definition does
21 not expressly exclude options on energy and
22 agriculture commodities, it does exclude both

1 futures and forwards. I'm confident Congress did
2 not intend to pull contracts that have
3 historically have been treated as forwards into
4 the new swap regime solely because of optionality
5 and the amount of the physical commodity delivered
6 under the contract.

7 As a policy matter, Congress surely
8 recognized that the swap definition had to reflect
9 a long-held Commission belief that contracts that
10 are physically settled and where delivery is
11 required do not pose the same systemic threats to
12 the financial system as contracts used for
13 speculative purposes. Moreover, Congress expanded
14 the Commission's fraud and anti-manipulation
15 authority over markets where forward contracts are
16 traded, and left intact the Commission
17 surveillance authority to issue special calls to
18 market participants for all positions and
19 transactions related to a commodity.

20 As mentioned, in resolving to adopt the
21 appropriate regulatory treatment of forward
22 contracts with EVO, the Commission also must

1 weight the operational and compliance consequences
2 of that treatment. Indeed, the Commission should
3 bring a heightened sensitivity to these
4 considerations in the context of the power sector
5 because affordable electricity and heat are such
6 fundamental needs of modern life.

7 The Commission's 2012 interpretation,
8 while intended to be helpful, contains certain
9 ambiguities in the seven-part test that created
10 confusion among commercial end- users. Last
11 spring the Commission learned at a public
12 roundtable that some market participants may have
13 withdrawn from the market due to those
14 ambiguities, resulting in inferior execution for
15 commercial firms. It is difficult to measure the
16 exact impact of this phenomenon, but apparently it
17 has not been a positive one for consumers of
18 electricity and gas.

19 In discussing the seven-part test,
20 commentators zeroed in on two primary issues.
21 First, many of the roundtable participants noted
22 that the exercise or non- exercise of volumetric

1 optionality depends on a number of factors, some
2 of which will be outside of the control of the
3 parties and some that will not. Many also noted
4 that parties could reasonably disagree on whether,
5 and the degree to which, a factor is outside of
6 the control of the parties.

7 For example, having choice among more
8 than one source of supply or selecting from those
9 sources the lowest priced contract, to some
10 commercial firms cause the contract to fail the
11 seventh prong. This ambiguity contributed to a
12 second issue. Market participants stated that
13 they often do not know the exact reasons that
14 optionality will be exercised until the time of
15 exercise. In other words, parties are uncertain
16 about how to characterize contracts at the time of
17 execution and intent, at the time of exercise or
18 non-exercise, might affect that analysis.

19 The seventh factor's ambiguity has
20 caused a host of problems. For instance, parties
21 have been asked to provide vague and possibly
22 unenforceable representations and agreements.

1 Parties also often disagree about the proper
2 categorization of a transaction, resulting in them
3 "agreeing to disagree" and considering the same
4 transaction to be, at the same time, a swap, trade
5 option, or a forward with EVO.

6 This has had the unintended consequence
7 of distorting transaction data reported to the
8 Commission. The bottom line is that such
9 uncertainty in the seven-part test increased
10 transaction costs for commercial firms and limited
11 their access to an effective risk management tool.

12 Today's proposal appropriately modifies
13 and clarifies the interpretation of the seventh
14 prong. First, it clarifies that concluding
15 whether the seventh prong is met should be
16 determined by looking to the intent of the parties
17 at the outset of contract initiation.

18 Second, the new proposal also deletes
19 language dealing with physical or regulatory
20 factors being outside of the control of the
21 parties. Deleting this ambiguous language helps
22 clarify that parties having some influence over

1 factors affecting their demand for a nonfinancial
2 commodity will not, per se, cause a contract to
3 fail the seventh prong.

4 In that vein, the proposal also notes
5 that parties may take a variety of factors into
6 consideration when determining whether to exercise
7 volumetric optionality so long as the intended
8 purpose was to address physical factors or
9 regulatory requirements influencing the demand for
10 or supply of the commodity.

11 Prongs one through six of the test are
12 also appropriately crafted to ensure that the EVO
13 does not undermine the four contracts overall
14 purpose. Prongs two and three help achieve those
15 purposes by requiring the predominant factor to be
16 actual delivery and prohibiting the embedded
17 optionality from being severed and marketed
18 separately from the overall agreement. Prongs
19 four and five also helped to deter the potential
20 for abuse of these contracts by requiring that the
21 seller under the contracts intends to deliver and
22 the buyer intends to receive the underlying

1 commodity. Today's proposal should go a long way
2 towards providing commercial firms adequate
3 guidance, but I look forward to comments on
4 whether it is adequate enough.

5 Today's rulemakings also include an
6 amendment to the phase implementation schedule for
7 the Residual Interest Rule that was promulgated
8 one year ago. I supported the rule last year
9 because the implementation schedule would provide
10 the Commission an appropriate amount of time to
11 investigate and consider the practicability of
12 moving the deadline to the time of settlement.
13 Meanwhile, the automatic nature of such a move
14 would incentives FCMs to improve their margin
15 collection and risk management processes.

16 Today's amendment would provide that the
17 residual interest deadline will remain at 6:00
18 p.m. on the date of settlement, absent a
19 Commission rulemaking. This has the effect of
20 increasing certainty to FCMs that any further
21 change to the deadline would occur only following
22 the robust procedures associated with a

1 rulemaking, in addition to the already required
2 study and roundtable, which is an outcome I
3 support. The resulting certainty provided to the
4 FCM community outweighs the potential value of
5 incentivizing FCMs to improve their margin
6 collection practices to comply with a future-time
7 settlement deadline.

8 This release does, however, highlight a
9 continued policy tension concerning the need to
10 balance risk management incentives for FCMs
11 against considerations related to appropriate
12 accessibility to the derivatives markets.
13 Clearly, while the Commission must weigh the cost
14 to FCMS of its risk management requirements, it
15 need not scope them to ensure that every FCM that
16 exists today has systems and practices in place to
17 comply with them.

18 Going forward, the Commission should
19 strive to ensure adequate accessibility to the
20 marketplace, knowing its importance to market
21 liquidity, but remain vigilant in enforcing
22 current FCM requirements under its rules.

1 Finally, I'm also supporting today's
2 proposal amending the recordkeeping requirements
3 under Regulation 1.35. The same staff roundtable
4 mentioned earlier also addressed this topic,
5 particularly the technological challenges and cost
6 associated with complying with the rule.

7 Similar to the residual interest
8 release, this proposal tries to balance certain
9 Commission regulatory prerogatives -- in this case
10 the need to efficiently monitor the derivatives
11 markets and enforce or rules -- against
12 considerations related to accessibility to the
13 derivatives markets, more generally, and certain
14 trading venues, more specifically.

15 I look forward to comments on these
16 proposed changes. In closing, I want to reiterate
17 my thanks to Chairman Massad, to Commissioners
18 Bowen and Giancarlo, and the staff for their
19 constructive work on all three of these proposals.
20 Thank you very much.

21 CHAIRMAN MASSAD: Thank you. Let me
22 turn to Commissioner Bowen.

1 COMMISSIONER BOWEN: Good morning. I
2 want to echo the chairman's remarks and offer my
3 thanks and appreciation to my fellow commissioners
4 and to the staff for working on these two proposed
5 rules, and the proposed interpretation on
6 volumetric options.

7 Let me first talk about these two rules.
8 They are tweaks to past Commission actions, but
9 they are important all the same. I firmly believe
10 that we need to get the little things right to get
11 the big things right. And I feel that we've
12 gotten these small changes right today. I'm proud
13 to vote in favor of these two proposed rules.

14 One of the rules in front of us today is
15 a proposed revision of the very important
16 recordkeeping rule, Rule 1.35. The current
17 proposal is in response to a request from a number
18 of parties. First, many affected market
19 participants, including non-registrants, requested
20 clarity on the meaning of searchable and
21 identifiable in the context of free execution
22 trades. Second, non-registrants sought relief

1 from the obligation to collect text messages.
2 Third, CTAs asked for relief from the oral
3 recordkeeping requirements.

4 In our proposed rule, the staff ably
5 attempts to provide relief to market participants,
6 including small end- users from burdensome
7 requirements, while also ensuring that our
8 enforcement staff is able to perform its vital
9 function. We invite comment on the degree to
10 which the proposal accomplishes this goal.

11 About the residual interest deadline, I
12 understand that the market is now adjusting to the
13 6:00 p.m. deadline that goes into effect in two
14 weeks. The staff study about that deadline and
15 any further changes to it are a couple of years in
16 the future, so today's proposal would remove the
17 December 2018 endpoint to this process. I look
18 forward to hearing from the public about whether
19 it makes sense to remove this endpoint in the
20 context of this particular rule.

21 Following, I want to talk briefly about
22 the proposed interpretation on embedded volumetric

1 optionality. I appreciate that a number of our
2 participants and end-users want clarity regarding
3 which options qualify for it and, therefore,
4 exclude it from our jurisdiction. I am
5 sympathetic to these concerns and agree that we
6 should try to make guidance on this point clearer.

7 Yet, I worry that the current proposal
8 as written goes to far and would cause too many
9 options to be incorrectly regarded as forwards. I
10 think the trade option exemption provides a much
11 clearer and cleaner approach to address the issues
12 raised regarding volumetric optionality. I hope
13 the Commission can revise our trade option
14 regulation soon.

15 With regards to the proposed
16 interpretation before us today, however, I firmly
17 believe that we need to receive public comment and
18 whether this potential change makes sense. In my
19 concurring statement I will lay out my concerns in
20 more detail.

21 I also want to note that the Federal
22 Register notice contains several questions. I

1 hope that the public will consider and respond to
2 these questions. I believe that your responses
3 will provide some critical guidance about whether
4 the Commission should make changes to our propose
5 guidance on this subject. Thank you.

6 CHAIRMAN MASSAD: Thank you.
7 Commissioner Giancarlo?

8 COMMISSIONER GIANCARLO: Thank you,
9 Chairman, for calling today's meeting. We are
10 addressing three rule set that have been
11 particularly problematic for participants in
12 markets over seen by this Commission. I thank you
13 for making these issues a priority of the
14 Commission and of its staff.

15 I thank my fellow Commissioners, their
16 staffs, my own staff, and the CFTC staff for the
17 hard work in preparing today's proposals. With
18 your consent, Mr. Chairman, I'd like to hold off
19 making specific comments on each of the three rule
20 proposals until we begin each discussion, at which
21 point I'll give my particular remarks.

22 CHAIRMAN MASSAD: Thank you. For each

1 of the items on today's agenda, the staff will
2 make presentations to the Commission. After each
3 presentation the floor will be open for questions
4 and comments from each of the commissioners.
5 Following these discussions, the Commission may
6 take votes on the recommendations as presented.
7 All final votes conducted in this public meeting
8 shall be recorded votes and the results of those
9 votes will be included in their relevant Federal
10 Register releases.

11 At this point, I ask unanimous consent
12 to allow staff to make technical corrections to
13 the documents voted on today prior to sending them
14 to the Federal Register?

15 Without objection, it is so ordered. At
16 this time I would like to welcome Thomas J.

17 Smith from the Division of Swap Dealer
18 and Intermediary Oversight and Phyllis Dietz and
19 Laura Astrada from the Division of Clearing and
20 Risk to present the proposal on the residual
21 interest deadline for Futures Commission
22 merchants.

1 MR. SMITH: Thank you and good morning.
2 The Divisions of Clearing and Risk and Swap Dealer
3 and Intermediary Oversight recommend that the
4 Commission publish for public comment a proposed
5 amendment to Regulation 1.22. Regulation 1.22
6 provides, in relevant part, that an FCM may not
7 use the funds of one customer to margin the
8 positions of another person. In order to comply
9 with this restriction, each FCM is required
10 compute the total aggregate under- margin amount
11 for customer accounts as of the close of business
12 each day.

13 Each FCM is further required to ensure
14 that it deposits its own capital, otherwise known
15 as the FCM's residual interest in customer
16 segregated accounts in an amount sufficient to
17 cover the full under-margin amount by the residual
18 interest deadline. Regulation 1.22 defines the
19 residual interest deadline as the time of the
20 clearinghouse settlement on the next business day.

21 In adopting the residual interest
22 requirement the Commission established a phased-in

1 compliance period for the residual interest
2 deadline. Commencing November 14, 2013, the
3 residual interest deadline will be 6:00 p.m.
4 Eastern Time the next business day. The
5 regulation further requires staff, by May 16,
6 2016, to publish for public comment a report
7 addressing to the extent is reasonably available.
8 The practicability for both the FCM and its
9 customers of moving the residual interest deadline
10 from 6:00 p.m. to the time of the clearinghouse
11 settlement or another point in time.

12 The regulation also requires staff to
13 host a public roundtable and to solicit comments
14 regarding specific issues to be covered by the
15 report. If the Commission takes no further action
16 after publication of the report, the regulation
17 provides that the residual interest deadline will
18 change from 6:00 p.m. to the time of settlement on
19 December 31, 2018.

20 Staff recommends that the Commission
21 amend Regulation 1.22 to remove the December 31,
22 2018, automatic termination date. Instead, under

1 the proposal, the residual interest deadline would
2 remain 6:00 p.m. Eastern Time on the next business
3 day, pending a Commission rulemaking to alter the
4 timeframe. The regulation would continue to
5 require staff to publish a report to solicit
6 public comment and host a public roundtable on the
7 residual interest deadline. Staff believes that
8 the amendment is appropriate in order to provide
9 the Commission with a greater degree of
10 flexibility to access the issues and all relevant
11 data associated with revising the residual
12 interest deadline, including information obtained
13 from the report, without the constraints of an
14 established regulatory deadline for Commission
15 action.

16 The proposed amendment would also ensure
17 that the public would have an opportunity to
18 review and comment on any future proposal to
19 revise the residual interest deadline. Prior to
20 concluding, I would just like to acknowledge the
21 significant contributions of our colleagues in the
22 Office of the General Counsel and the Office of

1 Chief Economist.

2 Thank you and we'll be happy to answer
3 any of your questions.

4 CHAIRMAN MASSAD: Thank you. To begin
5 the Commission's consideration of this rulemaking,
6 I will now entertain a motion to adopt the
7 proposed rule as presented by the staff.

8 COMMISSIONER WETJEN: So moved.

9 COMMISSIONER BOWEN: Second.

10 CHAIRMAN MASSAD: Thank you. With that
11 I will ask for the Commissioners if they have any
12 questions or comments? I'll start with
13 Commissioner Wetjen.

14 COMMISSIONER WETJEN: Just one quick
15 question, Mr. Chairman, thank you. And thank you
16 to the staff for presenting today and being with
17 us.

18 Tom, I presume you might be in the best
19 position to speak to this, although maybe I
20 shouldn't presume, but I'm just kind of curious,
21 in the last year now, if you can say, what would
22 you predict would be the sorts of impediments that

1 might make a time of data settlement, i.e., 9:00
2 a.m. data settlement residual interest
3 requirement, difficult to pull off, even several
4 years down the road? Just give the public and the
5 Commission some sense of what the key challenges
6 there might be.

7 MR. SMITH: It's always hard to predict,
8 but in our discussions with some of the FCMS and
9 market participants to date, some of the issues
10 that we're hearing, particularly from the
11 agricultural community and smaller customers, is
12 the ability that they have to move funds. Many of
13 these entities do not want to maintain a
14 sufficient amount of excess margin funds with
15 FCMs. They sort of use more of a real-time
16 financing of their margin positions and they also
17 do not -- as we learned with our recent
18 interpretation for automated clearinghouse
19 transactions -- they do not monitor the markets on
20 a real-time, moment-to-moment basis because of
21 the nature of their own personal businesses.

22 So, in order to meet this deadline they

1 would have to -- certainly after 6:00 p.m., they
2 would have to make sure that they have access to
3 liquidity from whoever their financial
4 institutions are -- banking entities -- and be
5 able to move that money within the period of time
6 specified.

7 COMMISSIONER WETJEN: But there have
8 also been some concerns raised about time zone
9 changes and the fact that you've got customers
10 located in different parts of the globe with FCM
11 operations in another part of the globe, so give
12 us a sense of what kinds of challenges that
13 situation poses.

14 MR. SMITH: Yeah, there could be issues
15 for non- U.S.-based customers who would have to
16 meet a margin call by a U.S.-based FCM.
17 Oftentimes those margin calls will go out at the
18 end of the day or overnight. They would be
19 received by the customers in Asia particularly
20 later the next business day. If they issue
21 instructions to their bank to move funds to the
22 U.S. there could be a delay in those funds

1 arriving. It may take more than one business day
2 for those funds to be moved.

3 COMMISSIONER WETJEN: I'll just end by
4 making one comment, there has been such
5 considerable innovation in recent months and years
6 concerning the payment system and how money moves
7 from one place to another. Perhaps the most
8 recent example is Apple's product that they offer
9 on their smartphones. I'm not suggesting that
10 margin calls would be made with an Apple phone,
11 per se, but the point is that there are all sorts
12 of technological advancement in this area. And so
13 I continue to believe today as I did a year ago,
14 the notion that the solution to this, whether it's
15 a 6:00 p.m. date of settlement deadline or even
16 9:00 a.m., if we get to that point somewhere down
17 the road, that the solution would be pre-funding
18 with the FCM by the customer.

19 That doesn't seem necessary in light of
20 what we're seeing by way of these innovations that
21 I mentioned. And I would expect and hope -- and
22 maybe I won't predict, either, Tom -- but I would

1 expect and hope those sorts of innovations will be
2 brought to this space, as well, and help solve
3 this issue around getting collateral and making
4 margin calls in a timely basis, but, at the same
5 time, making sure we've got the proper risk
6 management processes at these FCMs. So, thank you
7 very much.

8 CHAIRMAN MASSAD: Commissioner Bowen?

9 COMMISSIONER BOWEN: No questions.

10 CHAIRMAN MASSAD: Okay, Commissioner
11 Giancarlo?

12 COMMISSIONER GIANCARLO: Thank you,
13 Chairman, and thank you, Tom, Laura, and Phyllis.
14 I support the issuance of the proposed rule before
15 us. Without it the so-called, and perhaps
16 misnamed, Customer Protection Rule finalized in
17 October of 2013 would likely result in significant
18 harm to the core constituents of this Commission,
19 and that is the American agricultural producers
20 who use futures to manage the everyday risks
21 associated with farming and ranching.

22 As it stands, the rule will cause

1 farmers and ranchers -- without modification it
2 will cause them to pre- fund their futures margin
3 accounts due to the onerous requirements forcing
4 FCMs to hold large amounts of cash in order to pay
5 clearinghouses at the start of trading on the next
6 business day.

7 Without revision, the increased cost of
8 pre- funding accounts will likely drive many
9 small- and medium- sized agricultural producers
10 out of the marketplace and would likely force a
11 further reduction in the already strained FCM
12 community that serves the agricultural community.

13 Last week I visited a grain elevator in
14 Southern Indiana and a family farm in rural
15 Kentucky. I shared lunch in a barn shed with
16 around a dozen small family farmers, some of whom
17 use futures products to manage price and
18 production risk. Simply put, these Kentucky
19 farmers could not fathom why the CFTC would adopt
20 a rule requiring them to pre-fund margin accounts.
21 They saw our rule as ensuring that they would
22 actually lose more of their money, not less, in

1 the event of another failure of the likes of MF
2 Global or Peregrine Financial.

3 So I believe that today's rule proposal
4 will be well received by the farmers I met with
5 and I commend the Commission for today's action.
6 I'm also satisfied that the concerns of my staff
7 were addressed so that any change to this deadline
8 only take place after a rulemaking, following a
9 public comment period. As noted in the proposal,
10 this approach will allow the Commission to better
11 understand the market impacts and operational
12 challenges before moving on the residual interest
13 deadline.

14 This approach is especially important
15 given the potential impact on smaller futures
16 commission merchants and end-users. But while on
17 the subject of automatic adjustments, I call on
18 the Commission to take the same deliberative
19 approach in other areas where there are automatic
20 adjustments to Commission rules. Specifically,
21 the Commission should revisit the de minimis
22 exception to the swap dealer definition and revise

1 this definition so that the de minimis level does
2 not automatically adjust from \$8 billion to \$3
3 billion absent a rulemaking with proper notice and
4 comment.

5 Like today's proposal, the Commission
6 should only adjust the de minimis threshold after
7 it has considered the data and weighed public
8 concerns. As for today's rule on residual
9 interest, I'm pleased to support it.

10 CHAIRMAN MASSAD: Thank you,
11 Commissioner Giancarlo. Just to clarify, Tom,
12 with respect to the study, I assume the study will
13 address the sorts of technological developments
14 that Commissioner Wetjen was referring to. In
15 other words, we wouldn't just look at what the
16 FCMs are able to do, but rather what should they
17 be able to do potentially, in light of
18 technological advances as we go forward in
19 payments.

20 MR. SMITH: That is correct.

21 CHAIRMAN MASSAD: Great. So again, I
22 just want to underscore that all we're doing today

1 is saying that the deadline will not move
2 automatically. And again, I think given that our
3 purpose is in large part to protect customers, I
4 think that is why this is appropriate, so that
5 customers will have an opportunity to comment.

6 If there are no other questions? I
7 would again like to thank the staff for their work
8 in the presentations today. Would any
9 commissioner like to make any further statements
10 before we proceed to the -- okay. If the
11 commissioners are prepared to vote, I would call
12 on Mr. Kirkpatrick to call the roll.

13 MR. KIRKPATRICK: The motion now before
14 the Commission is on the adoption of the Notice of
15 Proposed Rulemaking on the residual interest
16 deadline for Futures Commission merchants.
17 Commissioner Giancarlo?

18 COMMISSIONER GIANCARLO: Aye.

19 MR. KIRKPATRICK: Commissioner
20 Giancarlo, aye. Commissioner Bowen?

21 COMMISSIONER BOWEN: Aye.

22 MR. KIRKPATRICK: Commissioner Bowen,

1 aye. Commissioner Wetjen?

2 COMMISSIONER WETJEN: Aye.

3 MR. KIRKPATRICK: Commissioner Wetjen,
4 aye. Chairman Massad?

5 CHAIRMAN MASSAD: Aye.

6 MR. KIRKPATRICK: Chairman Massad, aye.
7 Mr. Chairman, on this matter the ayes have 4, the
8 noes have 0.

9 CHAIRMAN MASSAD: Thank you. The ayes
10 have it and the motion to adopt the proposed rule
11 is approved. Thank you again to the staff.

12 At this time I would like to welcome
13 Katherine Driscoll, August Imholtz, and Lauren Bennett
14 from the Division of Swap Dealer and Intermediary
15 Oversight to present a recommendation concerning
16 proposed amendments to Rule 1.35 on records of
17 commodity interest and related cash or forward
18 transactions.

19 MS. DRISCOLL: Good morning, Mr.
20 Chairman, good morning, Commissioners. Before I
21 start I just wanted to thank and call out my
22 colleagues in OGC, Carlene Kim and Paul

1 Schlichting, for being incredibly helpful during
2 this process leading up to this proposal. We also
3 consulted with Gretchen Lowe in Enforcement, Steve
4 Sherrod and Duane Andresen in DMO, and Steve Kane,
5 of course, in OCE.

6 Our focus today is on Regulation 1.35,
7 which is records of commodity interest and related
8 cash or forward transactions. Under the rule,
9 with some exceptions, each FCM, RFED, IB, and
10 member of a DCM or SEF must keep records relating
11 to its business of dealing in commodity interests
12 and related cash or forward transactions.
13 Included in those records are all oral and written
14 communications that lead to the execution of a
15 transaction. And all records must be kept in a
16 manner that is identifiable and searchable by
17 transaction.

18 The proposed rule would amend 1.35 by
19 doing two main things. The first thing is to
20 clarify and amend the form and manner requirements
21 identifiable answerable by transaction. The
22 second thing that the proposed rule would do is

1 codify and, in one instance, expand current no
2 action relief.

3 I'll start with the proposed changes to
4 the form and manner requirement. The first change
5 to that is regarding search ability. Under the
6 proposal, all records kept pursuant to this rule
7 must be searchable. This means both the records
8 of a transaction and the records of the
9 communications that lead to a transaction.

10 Regarding the requirement that records
11 be identifiable by transaction, we would propose
12 to amend the rules so that that language now
13 reads, "Allows for the identification of a
14 particular transaction, with one notable
15 exception. Records of the communications that
16 lead to the execution of a transaction," so
17 pre-trade communications, "would not have to be
18 kept in this form and manner that allows for the
19 identification of a transaction. These pre-
20 transaction communications, however, would still
21 have to be searchable."

22 Shifting from form and manner to current

1 No Action Relief, we are also proposing to amend
2 1.35 by codifying Commission Letter 1472. This
3 letter granted No Action Relief from DSIO and DMO
4 to unregistered members of DCMs and SEFs, from the
5 written recordkeeping requirements to retain text
6 messages and to keep your records in a particular
7 form and manner.

8 The second codification would be of
9 Commission Staff Letter 1460, which applies to
10 members of a DCM or SEF that are registered as
11 CTAs. As the chairman pointed out, the No Action
12 Letter applies to CTAs with regard to their swap
13 transactions. We would propose that it applies to
14 CTAs with regard to all transactions. So, under
15 the proposal, CTAs would not have to keep oral
16 communications.

17 The release asks a number of questions
18 intended to elicit comments and we welcome any
19 questions that you may have at this time.

20 CHAIRMAN MASSAD: Thank you, Katie. I
21 will now entertain a motion to adopt the proposed
22 rule as presented by the staff.

1 COMMISSIONER WETJEN: So moved.

2 COMMISSIONER BOWEN: Second.

3 CHAIRMAN MASSAD: Thank you. And I will
4 now turn to the commissioners for any comments or
5 questions. Let me start with Commissioner Wetjen?

6 COMMISSIONER WETJEN: I don't have any
7 questions on this, thank you.

8 CHAIRMAN MASSAD: Commissioner Bowen?

9 COMMISSIONER BOWEN: No questions.

10 CHAIRMAN MASSAD: Commissioner
11 Giancarlo?

12 COMMISSIONER GIANCARLO: Thank you. I'm
13 certainly disappointed with the final form of
14 today's proposed revisions to Rule 1.35. In 2012,
15 the CFTC revised the rule, the changes required
16 the keeping of all oral and written records that
17 led to the execution of a transaction in a
18 commodity interest and related cash or forward
19 transaction in a former manner "identifiable and
20 searchable by transaction."

21 This recordkeeping must be done with
22 certain carve-outs by most futures commissions

1 merchants, retail foreign exchange dealers,
2 introducing brokers, and members of designated
3 contract markets and swap execution facilities.
4 As with the seven-factor volumetric optionality
5 test, which we're also discussing shortly, the
6 revised Rule 1.35 has proven to be simply
7 unworkable.

8 Publication of the rule was followed by
9 requests for No Action Relief. At a public
10 roundtable held in this room, market participants
11 voiced their inability to tie all communications
12 leading to the execution of a transaction to a
13 particular transaction or transactions. And user
14 exchange members pointed out that business that
15 was once conducted by telephone had moved to text
16 messaging, so the carve-out in the rule for oral
17 communications had little utility. They pointed
18 out that it was simply not feasible
19 technologically to keep pre-trade text messages in
20 a form and manner identifiable and searchable by
21 transaction.

22 The revisions to Rule 1.35 that the

1 Commission is proposing today do go a long way
2 towards addressing the rule's difficulties.
3 Unfortunately, they do not go far enough. The
4 proposed rule text raises unanswered questions.
5 It continues to contain provisions that may be
6 difficult or over burdensome in practice for
7 certain covered entities. In my opinion, many of
8 the problems stem from imprecise construction and
9 definition in the legal drafting.

10 Rule 1.35, on the one hand, identifies
11 the particular records that must be kept, while
12 Rule 1.31, on the other hand, sets the form and
13 manner in which such records must be maintained
14 and produced. But the proposal mixes things up by
15 adding in Rule 1.35, where they don't belong, new
16 requirements regarding form and manner.

17 For example, that the records allow for
18 identification of a particular transaction and be
19 searchable, a term that is not defined. While
20 it's likely that electronic records kept in their
21 native file format can be easily produced in a
22 searchable form, it is not clear what "searchable"

1 means when it comes to paper records, such as
2 cancelled checks, signed account agreements, and
3 paper orders. Does this mean that a record of a
4 wire transfer received by a FCM to cover margin
5 for multiple positions be kept in a form and
6 manner that allows for identification of each
7 potential transaction? Will a small FCM embedded
8 in a grain elevator, for example, have to keep the
9 cancelled checks received from farmers in sort of
10 searchable format tied to specific transactions?

11 What if the farmer's check mistakenly
12 references the wrong transactions and the FCM
13 doesn't catch it? Is the FCM now in breech of our
14 requirements for searchability? Do they need to
15 hire a whole paper record searchability team just
16 for records of individual transactions, and to
17 search them in the event, but not the certainty,
18 that some day the CFTC will want those records?
19 And at what cost to them and to American markets
20 and end-users?

21 All right, let me come up from the weeds
22 for a minute and look at the forest from the

1 trees. FCMs are vital to the functioning of
2 America's commodity futures markets. They're
3 essential intermediaries between farmers,
4 manufacturers, and other end-users, and the
5 markets in which they hedge the risks and costs of
6 production. Without healthy FCMs serving their
7 customers, the everyday costs of groceries and
8 winter heating fuel will rise for America's
9 families, yet today we have about half the number
10 of FCMs serving our farmers than we did just a few
11 years ago. FCMs, particularly small FCMs, are
12 being squeezed in the current low interest rate
13 environment and the increased regulatory burdens
14 being placed on them.

15 They are barely breaking even. We
16 should not be squeezing them further with
17 increased compliance costs if we can avoid it and
18 still effectively oversee the markets. Getting
19 these rules and getting these definitions precise
20 and clear is critical. In implementing the
21 Dodd-Frank Act, I'm conscious that the stated
22 purpose -- in fact, the official name of the law

1 -- is to reform Wall Street. Instead, I'm afraid
2 we're burdening Main Street by adding new
3 compliance costs onto our country grain elevators,
4 farmers, and small FCMS. Rather than facilitating
5 the collection of useful records to use in
6 investigation enforcement actions, the underlying
7 rule and the lack of sufficient clarity will
8 instead result in senseless cost increases.

9 The one refrain that I heard again and
10 again last week in Illinois, Indiana, and
11 Kentucky, was that Washington does not listen to
12 ordinary American farmers, energy producers, coal
13 miners, and manufacturers. They say that
14 Washington imposes rules and regulations without
15 regard to their everyday impact on American
16 people.

17 Well, here we have a chance to listen
18 and act accordingly. So I encourage all affected
19 parties to give us detailed comments on this
20 proposal with emphasis on the intersection between
21 Rule 1.35 and Rule 1.31, and how the proposed
22 searchability and identification by transaction

1 requirements will work in practice.

2 I encourage the public to make us listen
3 once again to their concerns that have already
4 been expressed about costs and benefits of this
5 particular rule set. And I'm hopeful that after
6 thoughtful consideration of comments on this
7 proposal, the Commission will promulgate a final
8 rule that better and more clearly balances the
9 legitimate demands of market regulation and
10 enforcement with these burdens being placed on
11 American agriculture and manufacturing. Thank
12 you.

13 CHAIRMAN MASSAD: Thank you. Okay, I
14 don't believe I have any questions for the staff.
15 I would note that what we're doing today,
16 obviously, is a way to receive public comment and
17 it's also, I think, not actually adding new
18 compliance costs. If anything, we are lessening
19 them. So I would hope that we could move forward
20 with this. If there's no other questions or
21 comments?

22 COMMISSIONER WETJEN: Mr. Chairman?

1 CHAIRMAN MASSAD: Yeah.

2 COMMISSIONER WETJEN: If I could make
3 just one comment. I appreciated listening to
4 Commissioner Giancarlo's remarks. I also alluded
5 to this issue of concentration among FCMs in my
6 own prepared remarks. And so I think I agree with
7 you, I think we've identified an issue that we
8 have in our markets at the moment and probably for
9 the shorter, medium term we've got a confluence of
10 impacts on the FCM community, whether it's
11 monetary policy or new regulation, whatever the
12 case might be.

13 There are other factors, as well. But
14 the long and short of it is that it's more
15 expensive to profitably run an FCM and the
16 question is, what does that mean for the number of
17 FCMs that we have? And what does that mean for
18 hedgers and their ability to access these markets?
19 And so I think that's something we really need to
20 keep our eyes on. So I look forward to comments
21 in response to this release, as well, in that
22 regard.

1 CHAIRMAN MASSAD: Okay, if there are no
2 other questions, I would like to again thank the
3 staff: Katie, Lauren, and August, and everyone
4 else who worked on this. I appreciate your work.
5 If there are no other comments or statements, I
6 would like to proceed to a vote.

7 Mr. Kirkpatrick, will you call the roll?

8 MR. KIRKPATRICK: The motion now before
9 the Commission is on the adoption of the Notice of
10 Proposed Rulemaking on Records of Commodity
11 Interest and Related Cash or Forward Transactions.
12 Commissioner Giancarlo?

13 COMMISSIONER GIANCARLO: No.

14 MR. KIRKPATRICK: Commissioner
15 Giancarlo, no. Commissioner Bowen?

16 COMMISSIONER BOWEN: Aye.

17 MR. KIRKPATRICK: Commissioner Bowen,
18 aye. Commissioner Wetjen?

19 COMMISSIONER WETJEN: Aye.

20 MR. KIRKPATRICK: Commissioner Wetjen,
21 aye. Chairman Massad?

22 CHAIRMAN MASSAD: Aye.

1 MR. KIRKPATRICK: Chairman Massad, aye.
2 Mr. Chairman, on this matter the ayes have 3, the
3 noes have 1.

4 CHAIRMAN MASSAD: Thank you, Mr.
5 Kirkpatrick. The ayes have it and the motion to
6 adopt the proposed rule is approved, thank you.

7 At this time I would like to welcome
8 Elise Pallais from the Office of General Counsel
9 and Carlene Kim to present the staff
10 recommendation concerning the proposed
11 interpretation regarding Forward Contracts with
12 Embedded Volumetric Optionality.

13 MS. PALLAIS: Good morning and thank
14 you. In the 2012 products release, in which the
15 Commission and the SEC jointly issued rules and
16 interpretations that further define, among other
17 things, the "term swap," the Commission provided
18 an interpretation with respect to forward
19 contracts that provide for variations in delivery
20 amount, also termed "contracts with embedded
21 volumetric optionality."

22 Consisting of seven elements, the

1 interpretation identified when an agreement
2 contractor transaction containing embedded
3 volumetric optionality would fall within the
4 forward contract exclusions from the swap and
5 future delivery definitions of the Commodity
6 Exchange Act. Understanding from commenters that
7 commercial parties have experienced challenges in
8 applying the interpretation, the Commission is
9 proposing to clarify the interpretation by, one,
10 modifying the fourth and fifth elements of the
11 interpretation to clarify that the interpretation
12 applies to embedded volumetric optionality in the
13 form of both puts and calls; and, two, clarifying
14 the seventh element requires that the embedded
15 volumetric optionality must be primarily intended
16 at the time the parties enter into the agreement,
17 contract, or transaction to address physical
18 factors or regulatory requirements that reasonably
19 influence demand for or supply of the nonfinancial
20 commodity.

21 The Commission is also proposing to
22 clarify that electric response agreements may be

1 properly characterized as the product of a
2 regulatory requirement within the meaning of the
3 seventh element. The Commission seeks public
4 comment on any aspect of its proposed
5 interpretation and has included specific
6 questions.

7 In accordance with Section 712(d)(4) of
8 the Dodd- Frank Act, this proposed interpretation
9 is being issued jointly with the SEC. We thank
10 the Division of Enforcement and Market Oversight
11 for their guidance and assistance in preparing
12 this proposed interpretation and we're happy to
13 entertain any questions you might have for us.

14 CHAIRMAN MASSAD: Thank you, Elise. To
15 open the Commission's consideration of this
16 proposed interpretation, I will now entertain a
17 motion to adopt the proposed interpretation as
18 presented by the staff.

19 COMMISSIONER WETJEN: So moved.

20 CHAIRMAN MASSAD: Is there a second?

21 COMMISSIONER BOWEN: Second.

22 CHAIRMAN MASSAD: Okay, thank you. With

1 that let's begin the discussion. I'll turn again
2 to Commissioner Wetjen?

3 COMMISSIONER WETJEN: Thank you, Mr.
4 Chairman. I don't have any questions. I just
5 want to thank the staff and OGC and DMO and
6 Enforcement for their efforts and work on this
7 matter over the last number of weeks. And I
8 appreciate your cooperation and willingness to
9 consider some of the views of my office.

10 I think we've got this release in pretty
11 good shape now. There are a few items of
12 clarification I thought we could have included,
13 but in the interest of moving the ball forward and
14 soliciting comment, I'm comfortable supporting it
15 as it's drafted. So I appreciate everyone's work
16 and am looking forward to the comment period.
17 Thank you.

18 CHAIRMAN MASSAD: Thank you.
19 Commissioner Bowen?

20 COMMISSIONER BOWEN: Yes, just one brief
21 question. Per the text of this proposal, this
22 would not exempt these options. Instead they

1 would exclude them from our jurisdiction. Could
2 you briefly explain the difference between the
3 two?

4 MS. PALLAIS: The interpretation speaks
5 to forward contracts which are excluded from the
6 Commission's jurisdiction under both the future
7 delivery and swap definitions. The interpretation
8 speaks to forward contracts that provide for some
9 optionality in the delivery amount, meaning that
10 they are still forward contracts, but provide for
11 some variation.

12 So, to the degree that the contracts do
13 not fit within the interpretation, they could be
14 considered options within the Commission's
15 jurisdiction.

16 CHAIRMAN MASSAD: Commissioner
17 Giancarlo?

18 COMMISSIONER GIANCARLO: Thank you,
19 Chairman. Thank you, Elise, and thank you,
20 Carlene. Risk management contracts that allow for
21 an adjustment of the quantity of a delivered
22 commodity are important to America's economy.

1 They provide farmers, manufacturers, and energy
2 companies with an efficient means of acquiring the
3 commodities they need to conduct their daily
4 business at the right time and in the right
5 amounts.

6 They are widely used in everyday
7 business and do not pose a threat to the stability
8 of financial markets. They should not be
9 regulated the same as financial derivatives.
10 These forwards are expressly exempted from the
11 definition of a swap under the Commodities
12 Exchange Act, yet the CFTC's guidance on how to
13 apply the definition using the seven factor test
14 has been burdensome, unnecessary, and duplicative.
15 The Commission captured a large swath of
16 transactions that are not and should not be
17 regulated as swaps, including these products, as
18 Commissioner Wetjen well explained earlier.

19 The regulation of these transactions
20 will actually have the effect of increasing
21 company's cost of doing business. It will force
22 some businesses to curtail market activity and

1 thereby consolidate risk in the marketplace rather
2 than transfer and disperse it. That will
3 ultimately raise costs for consumers.

4 Such costly and unnecessary regulations
5 thwart the intent of Congress under the Dodd-Frank
6 Act. Recently I had the pleasure of seeing
7 firsthand how important EVO forward contracts are
8 to America's energy utilities to ensure a stable
9 and affordable supply of electricity. I visited a
10 Kentucky aluminum smelter whose massive operations
11 require the same amount of daily electricity as
12 the city of Louisville to meet customer demand.

13 In times of stress to the electricity
14 grid, such as during a very cold winter as we had
15 last year or during intense summer heat, these
16 contracts help the utilities ensure that this
17 manufacturing plant's 24-hour-a-day operations do
18 not cease. The aluminum from this smelter makes
19 its way into everything from beer cans and
20 automobiles to the production of U.S. fighter
21 aircraft currently protecting our freedom around
22 the globe. Without the use of these contracts,

1 this Kentucky smelter would incur increased
2 production costs compared to its overseas
3 competitors in Saudi Arabia, China, and Brazil.

4 Our American economy is so complex and
5 interconnected, we must not turn a blind eye to
6 the impact of our actions here in Washington. We
7 cannot afford to make it harder or more costly for
8 our manufacturers and utilities to manage risks of
9 supply. Increased cost to our American
10 manufacturing base represent an economic -- and in
11 this case, in the case of this Kentucky smelter --
12 a strategic and national security risk to our
13 country.

14 So today's proposed interpretation of
15 the seven- prong test benefits from thoughtful
16 review by my fellow commissioners. It provides a
17 good start to providing some sensible relief from
18 the problems arising from the seven prong test.
19 Although I would prefer a proper change to the
20 underlying product definition, today's proposal,
21 at least in the short term, should provide relief
22 through clearer interpretation of the rules.

1 Thank you very much.

2 CHAIRMAN MASSAD: Thank you. If there
3 are no there questions, I would like to thank
4 Elise and Charlene, as well as the rest of the
5 staff who worked on this, for their efforts and
6 the excellent presentation. Thank you.

7 Would any Commissioner like to make any
8 further statements before we proceed to a vote?
9 If not, Mr. Kirkpatrick, will you call the roll?

10 MR. KIRKPATRICK: The motion now before
11 the Commission is on the adoption of the proposed
12 interpretation concerning Forward Contracts with
13 Embedded Volumetric Optionality. Commissioner
14 Giancarlo?

15 COMMISSIONER GIANCARLO: Yes.

16 MR. KIRKPATRICK: Commissioner
17 Giancarlo, yes. Commissioner Bowen?

18 COMMISSIONER BOWEN: Aye.

19 MR. KIRKPATRICK: Commissioner Bowen,
20 aye. Commissioner Wetjen?

21 COMMISSIONER WETJEN: Aye.

22 MR. KIRKPATRICK: Commissioner Wetjen,

1 aye. Chairman Massad?

2 CHAIRMAN MASSAD: Aye.

3 MR. KIRKPATRICK: Mr. Chairman Massad,
4 aye. Mr. Chairman, on this matter the ayes have
5 4, the noes have 0.

6 CHAIRMAN MASSAD: Thank you, Mr.
7 Kirkpatrick. The ayes have it and the motion to
8 adopt the proposed interpretation is approved.

9 Is there any other Commission business?
10 There being no further business, I would entertain
11 a motion to adjourn the meeting?

12 COMMISSIONER WETJEN: So moved.

13 COMMISSIONER BOWEN: Second.

14 CHAIRMAN MASSAD: All in favor?

15 GROUP: Aye.

16 CHAIRMAN MASSAD: Thank you. Meeting is
17 adjourned.

18 (Whereupon, at 11:34 a.m., the
19 PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

I, Carleton J. Anderson, III, notary public in and for the District of Columbia, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

(Signature and Seal on File)

Notary Public, in and for the District of Columbia

My Commission Expires: March 31, 2017

