

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING TO CONSIDER A FINAL RULE ON CORE
PRINCIPLES AND OTHER REQUIREMENTS FOR DESIGNATED
CONTRACT MARKETS AND A PROPOSED ORDER AMENDING THE
EFFECTIVE DATE FOR SWAP REGULATION

Washington, D.C.

Thursday, May 10, 2012

1 PARTICIPANTS:

2 Commission Members:

3 GARY GENSLER, Chairman

4 BART CHILTON, Commissioner

5 JILL E. SOMMERS, Commissioner

6 SCOTT D. O'MALIA, Commissioner

7 MARK P. WETJEN, Commissioner

8 Presentation 1: Final Rule on Core Principles and
9 Other Requirements for Designated Contract Markets

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16 RACHEL BERDANSKY, Division of Market
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19 Others Present:

20 DAVID STAWICK, Office of the Secretariat

21 DAN BERKOVITZ, Office of General Counsel

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

2 (9:33 a.m.)

3 CHAIRMAN GENSLER: Good morning. This
4 meeting will come to order. This is a public
5 meeting of the Commodity Futures Trading
6 Commission to consider final rules under the
7 Dodd-Frank Act.

8 I'd like to welcome members of the
9 public, market participants, and members of the
10 media, as well as those listening on the phone and
11 watching this webcast. Today is the 27th open
12 meeting of the Dodd-Frank rules. We will consider
13 a final rule on designated contract market core
14 principles.

15 I'd like to thank Commissioner Sommers,
16 Chilton, O'Malia, and Wetjen for their significant
17 contributions to the rule writing process and
18 CFTC's hardworking and dedicated staff.

19 I'm going to read my statement of
20 support since there's just one rule here today.
21 But I support the final rulemaking on designated
22 contract markets, which includes rules, guidance,

1 and acceptable practices. It advances important
2 Dodd-Frank Act transparency reforms. The act
3 squarely addresses the historically opaque swap
4 markets through its strong transparency
5 provisions.

6 A critical element to this is pre-trade
7 transparency requiring standardized swaps between
8 financial firms, but just those that are cleared
9 and made available and those that are not blocks
10 to be traded on exchanges such as designated
11 contract markets, swap execution facilities, and
12 on recently finished rules regarding foreign
13 boards of trade. When markets are open and
14 transparent, prices are more competitive, markets
15 are more efficient and liquid, and costs are
16 lowered for the companies and their customers.

17 Now designated contracted markets have
18 long demonstrated the value of open and
19 competitive trading, and these exchanges, for the
20 first time, will be able to list and trade swaps
21 helping to bring the benefits of pre-trade
22 transparency that designated contract markets have

1 had for decades to the swaps marketplace.

2 In addition, the Dodd-Frank Act
3 incorporated the previously existing eight
4 statutory designation criteria for designated
5 contract markets into what's called core
6 principles. So it took designation criteria and
7 folded it into core principles and expanded that
8 list, adding five new core principles. So the
9 final rulemaking from the Commission we'll
10 consider today conforms to these various
11 transparency reforms.

12 I think it benefits from extensive
13 public comment, provides exchanges, rules, as well
14 as guidance and acceptable practice to comply with
15 the new Dodd-Frank core principles. In many
16 instances, we're codifying industry practices that
17 the Commission has observed and found works within
18 the marketplace.

19 While preserving a principles-based
20 regime, these regulations will provide greater
21 legal certainty and transparency to the exchanges
22 themselves in determining their compliance

1 obligations, as well as to market participants in
2 determining their obligations, and will
3 facilitate, from time to time when necessary,
4 enforcement of such provisions.

5 The final rulemaking is consistent with
6 the core principles-based regime in the Commodity
7 Exchange Act, and I think that the rule provides
8 each exchange or designated contract market with
9 the flexibility to deploy additional measures to
10 address core principle requirements.

11 As just one example, the final rule
12 requires DCMs to put in place effective pre-trade
13 risk filters, including pauses and/or trading
14 halts to address extraordinary price movements
15 that may result in distorted prices or trigger
16 market disruptions, an important provision,
17 particularly in today's increasingly electronic
18 marketplace, a world with high frequency traders
19 and algorithmic traders.

20 But the rulemaking also recognizes that
21 pauses and halts comprise only one category of
22 risk controls and provides that additional

1 controls may be necessary and be put in place by
2 exchanges to reduce potential for market
3 disruptions. So the final guidance, as opposed to
4 a rule, but the final guidance includes, for
5 instance, that exchanges may possibly implement
6 price collars or bands, maximum order size limits
7 or message throttles. So it gives a sense of the
8 flexibility that's built into the guidance.

9 Today's rule does not yet finalize
10 Commission's proposal relating to Core Principle
11 9, which some in the public have called the 85
12 percent provision, which requires designated
13 contract markets to provide an open, competitive,
14 and efficient market mechanism for transactions
15 that protects the price discovery process on the
16 central marketplace. I expect the Commission to
17 consider a final rule on this matter when it takes
18 up the SEF rulemaking later this summer, or, I
19 should say, hope sometime this summer.

20 The additional time, I believe, will
21 allow the Commission to more fully analyze the
22 many public comments on these provisions,

1 including comments on the implications for
2 exchange of futures for swaps transactions,
3 so-called EFS transactions, and I know I'm a
4 little bit into the esoteric here. But I think
5 it's important that we have some time to consider
6 the relation of these transactions to the
7 transparency reforms of Dodd-Frank as well as the
8 requirement for non-discriminatory access to
9 clearing. And I'm glad that we've arrived at a
10 place where we can take up Core Principle 9 when
11 we later take up the SEF rules.

12 Before turning to my fellow
13 Commissioner, I'd like to address a few other
14 items the Commission has been considering and will
15 take up in the near term. I usually get asked
16 this question at the end, so I thought I'd just
17 address it up front.

18 We recently completed the joint rule
19 with the Securities and Exchange Commission to
20 further define the term "swap dealer." We're
21 turning shortly to the rule to further define the
22 term "swap" and "securities based swap."

1 The staff at the CFTC has made very good
2 progress in putting forth to the Commission a
3 final rule for our consideration. I would say
4 working jointly with the SEC staff, and my
5 compliments to them as well.

6 In an effort to leverage these resources
7 and complete the rulemaking, I'm pleased that
8 we've also arranged for a staff member from the
9 Office of Information and Regulatory Affairs to
10 supplement the excellent work of the CFTC staff
11 with technical assistance, particularly with
12 respect to consideration of costs and benefits.
13 In consideration of costs and benefits of
14 financial reform, I believe the Commission should
15 take into account the overall benefits to the
16 American public and market participants of
17 increased transparency, lower risk, and help
18 protect against another such crisis that occurred
19 in 2008. I don't know if anyone needs to be
20 reminded, but eight million Americans lost their
21 jobs as a result of that crisis. I believe
22 Commissioner Chilton spoke well and made a similar

1 point on this in a speech he had earlier this
2 week.

3 The Commission also approved this
4 morning a proposed exemptive order regarding the
5 effective dates of certain Dodd- Frank provisions.
6 It had originally been calendared for
7 consideration at today's meeting, but we decided
8 just to move it along.

9 I have a longer statement of support for
10 the record, but, most importantly, the proposed
11 exemptive order provides additional relief through
12 December 31st of this year. This is the third one
13 of these that we've moved along. Furthermore, it
14 addresses comments from market participants
15 requesting clarity regarding the transactions in
16 and clearing of agricultural swaps. We look
17 forward to public comments on that, but I think
18 we've addressed that concern well. As well as
19 comments from unregistered trading facilities that
20 offer swaps for trading.

21 In addition, the Commission will soon
22 complete a final rule establishing data

1 recordkeeping and reporting requirements for
2 pre-enactment and transition swaps, collectively
3 called historical swaps. We'll do this through
4 what's called Part 46. This rule will promote
5 transparency by helping to give regulators a
6 fuller picture of the swaps market from prior to
7 when we completed the Part 45 rules for data
8 reporting.

9 I also anticipate that we'll be seeking
10 public comment in the near term on an exemptive
11 order regarding certain contracts traded on
12 regional transmission organizations, as well as an
13 interpretive guidance on the cross-border
14 application of the swaps provisions of Dodd-
15 Frank.

16 And with that, I think I will recognize
17 Commissioner Sommers.

18 COMMISSIONER SOMMERS: Good morning.
19 Thank you, Mr. Chairman, and thank you to the
20 whole team for all of your hard work and diligence
21 in getting this final rule before us today. It's
22 very much appreciated.

1 Core principles were designed to allow
2 DCMs the flexibility to establish compliance
3 regimes that fit with their markets and business
4 models. This flexible approach has been very
5 successful. The proposed DCM core principle rules
6 published in late 2010 significantly and
7 needlessly strayed from the flexible approach in
8 favor of a prescriptive, one size fits all,
9 rules-based approach. I did not and still do not
10 support abandoning the flexible principles-based
11 approach to regulation.

12 I am pleased that in the final rules
13 before us today we recognize the value of
14 retaining flexibility and have pulled back from
15 the overly prescriptive regime set out in the
16 proposed rules. I understand that in a number of
17 areas where we have established specific rules, we
18 have codified the best practices already in place
19 at DCMs today. While on the face this may seem
20 reasonable, I have lingering concerns about
21 whether codifying today's best practices will
22 prevent exchanges from developing tomorrow's best

1 practices. Our industry evolves quickly, and we
2 are on the cusp of regulating vast markets and
3 diverse products that we have never regulated
4 before. We must remain vigilant to ensure that
5 our lack of experience in these markets and with
6 these products does not cause us to stand in the
7 way of continued evolution and progress.

8 Conspicuously absent from the rules we
9 vote on today are final rules relating to the Core
10 Principle execution of transactions. The proposal
11 requiring at least 85 percent of all trading in
12 each contract to occur in the centralized market
13 or risk for delisting was an unnecessary solution
14 in search of a problem. Moreover, in my view, it
15 was at odds with the Commodity Exchange Act, and,
16 if challenged, likely would not withstand judicial
17 scrutiny.

18 An unfortunate result of these proposed
19 rules has been that exchanges, particularly
20 smaller and newer exchanges, have been reluctant
21 to list and, in some cases, have decided not to
22 list new contracts because of the uncertainties

1 surrounding the possibility of forced delisting if
2 liquidity did not grow within the specific time
3 frame set by the government.

4 When we take up final rules relating to
5 Core Principle 9 in the near future, we must seek
6 to establish certainly so DCMs can get on with
7 listing new products without fear of forced
8 delisting. And we should reject any construct

9 that fails to recognize that the Commodity
10 Exchange Act does not require every listed
11 contract to serve a price discovery function by
12 trading in the centralized market.

13 Another core principle that is of
14 particular concern to me is Core Principle 21
15 relating to financial resources. Nobody can argue
16 against the notion that DCMs must be financially
17 secure and must have sufficient resources
18 available to continue their operation. The
19 challenge becomes balancing the need for DCMs to
20 set aside capital for regulatory purposes with the
21 need for the DCMs to deploy their capital to build
22 robust, competitive businesses that create jobs

1 and additional opportunities for market
2 participants and American businesses.

3 The rules we are voting on today allow
4 for sufficient flexibility to appropriately
5 achieve that balance. Flexibility, however, when
6 not carefully and appropriately exercised, can
7 upset that balance. We need to make sure that
8 does not happen.

9 Finally, last month we finalized the
10 further definition of "swap dealer," "major swap
11 participant," and "eligible contract participant."
12 And rumor has it, and the Chairman has just
13 confirmed, that we're getting close to finalizing
14 the product definitions. Once that happens, there
15 will be a date certain for entities to register as
16 swap dealers or major swap participants.

17 It appears that the date certain for
18 required registration will be well before the
19 Commission issues final rules or guidance related
20 to the extraterritorial application of Dodd-Frank
21 and before the Commission issues final rules on
22 capital and margin.

1 As we sit here today, I have yet to see
2 a term sheet, a comment summary, or a working
3 draft of the extraterritoriality release. And I
4 have not seen any drafts of final rules for margin
5 and capital. I have no reason to believe that
6 either will be final before registration is
7 required. Requiring registration before critical
8 rules are finalized makes no sense and is contrary
9 to the approach being taken by the SEC.

10 It is my understanding that the SEC does
11 not play to require registration until after all
12 of their substantive rules are finalized. This
13 gives market participants the ability to fully
14 evaluate what activity triggers the registration
15 requirement and all the costs and benefits
16 associated with registration before this decision
17 to register must be made. This is a reasonable
18 approach and one I would hope we would consider.

19 As I have said many times before, this
20 process is complex, and these rules have
21 consequences for market participants. We are all
22 aware of the importance of making this new

1 regulatory framework for derivatives successful.
2 With every step forward, we must try to avoid
3 taking an unnecessary step backwards. But we seem
4 to have a penchant for putting the cart before the
5 horse.

6 I strongly support a concise, clear, and
7 comprehensive implementation plan that can
8 harmonize the efficacy of these rules with both
9 domestic and global regulators. I'm concerned
10 that as we get closer to the finish line, we may
11 look back only to realize that no one is capable
12 of crossing it. Thank you.

13 CHAIRMAN GENSLER: Thank you,
14 Commissioner Sommers. Commissioner O'Malia?

15 COMMISSIONER O'MALIA: Thank you. Today
16 the Commission will consider a final rule on core
17 principles for designated contract markets. I'd
18 like to thank the team for their hard work. It's
19 a large rule, and there's a lot of moving pieces.
20 You've done a great job to help keep us informed
21 and to walk us through all the pieces. So I
22 greatly appreciate that and to adopt many of our

1 changes.

2 Before I get into my statement, Mr.
3 Chairman, you mentioned the joint memo with OIRA,
4 which is the Office of Intergovernmental
5 Regulatory Affairs. And I greatly appreciate this
6 new level of cooperation that you have engaged. I
7 think that OIRA and OMB are the keepers of the
8 gold standard for cost benefit analysis, and to
9 bring them into our process, albeit late, is going
10 to be a great step, and it's going to make our
11 rules better, enable to withstand legal challenge.
12 I wholeheartedly support it, and I greatly
13 appreciate this cooperation between OMB and this
14 agency.

15 CHARIMAN GENSLER: I thank you for that,
16 Scott. I mean, I think it's helpful to get the
17 technical assistance. I think we have excellent
18 staff here. But particularly as we started to
19 look at this product roll and trying to get it
20 across the line, we made this arrangement. I
21 thank everybody because we did enter into this
22 memorandum of understanding that we're still an

1 independent regulatory agency, and we're trying to
2 get some technical assistance from their great
3 staff.

4 COMMISSIONER O'MALIA: Independent or
5 not, they have kind of the collective wisdom on
6 cost benefit analysis and whether we're going to
7 by letter or by memo adhere to it. It's a great
8 step. I'm not going to bite the hand that feeds
9 me on this one and be able to support this.

10 Let me go back to the core principles
11 for the DCM. When the Commission proposed the
12 original proposal in December 2010, I expressed
13 some serious concerns regarding the overall
14 prescriptive approach to this rule. I believe the
15 Commission core principle regime for DCMs has
16 worked well, and has provided important price
17 discovery and hedging functions, and has adapted
18 to the market as we've seen it. I think the clear
19 port issue that Commissioner Sommers has referred
20 to and the Chairman responded to regarding EFS was
21 an important adaptation at a time, post-Enron, that
22 allowed for more companies to bring -- to clearing

1 some important products, mitigating fellow
2 customer risk.

3 Congress left the core principles
4 largely intact, recognizing the futures market has
5 weathered the financial crisis far better than
6 other markets. And I'm pleased the Commission is
7 going to adopt a rule that has scaled back many of
8 the prescriptive rules that were originally
9 proposed. And at the proposal stage and since
10 that time, I've expressed serious concerns
11 regarding Core Principle 9, which, as proposed,
12 required an 85 percent centralized market trading
13 requirement. Under the 85 percent test, the DCM
14 would be forced to delist any futures or swaps
15 contract it failed to meet that trading volume of
16 85 percent in a centralized market over a 12-month
17 period. Not surprising, this rule is highly
18 controversial and was widely opposed.

19 I am able to support the rule today
20 because the Commission has decided to delay that
21 decision and have a comprehensive discussion on
22 the execution alongside of the Commission's SEF

1 rules, core principles. And hopefully we'll have
2 some better insight as to what mandatory trading
3 requirements we'll have.

4 So there are three goals I hope that we
5 can accomplish in doing this temporary delay of

6 Core Principle 9. One is to consider available
7 alternatives to the 85 percent test. Two is to
8 anticipate and calculate the associated costs and
9 benefits of Core Principle 9 to the overall swap
10 trading infrastructure. And three is to address
11 the related implications of the rules for
12 transactions executed on SEFs for all exchange
13 transaction, including blocks and exchange for
14 derivatives positions.

15 To this end, I hope the Commission will
16 hold a roundtable on the execution of futures and
17 swaps platform rules and the mandatory trading
18 requirement in order to develop a more complete
19 understanding of how the execution rules will
20 impact both the futures and swaps markets.

21 I'd also like to note the Commission has
22 made changes to the rules and guidance under Core

1 Principle 21, which will enable the Commission to
2 consider alternative financial packages. And if
3 the Commission hopes to create competition in this
4 space, we must be flexible and cannot expect all
5 DCMs to meet a core principle that is a one-size-
6 fits-all approach.

7 Additionally, I'd like to mention Core
8 Principle 4, which I think gives DCMs greater
9 flexibility regarding the monitoring for market
10 anomalies. I also appreciate the recognition that
11 the staff included in the preamble regarding the
12 Technology Advisory Committee and our efforts to
13 understand pre-trade functionality and high
14 frequency trading. And I do appreciate that they
15 did not front run on us one and are going to let
16 the process work.

17 As the Chairman noted, it's not
18 presented here because the Commission signed it,
19 took action to further modify the temporary
20 exemptive relief. This action would propose,
21 among other things, to extend the temporary relief
22 from July 16th of this year to December 31st.

1 Based on the Chairman's statements at a
2 recent industry conference, the Commission will
3 complete Dodd-Frank rules by the end of the year.
4 Assuming this to be true, I think the proposed
5 amendment is appropriate and will provide the
6 industry with the necessary comfort, and the new
7 swaps regulatory regime will not disrupt current
8 market practices.

9 The big question in my mind, however,
10 remains, which rules are we talking about, and
11 what is the order that we will consider them?
12 Notwithstanding the proposed amendment on
13 exemptive relief, I believe the market continues
14 to seek guidance regarding the timing of the
15 remaining rules. I see no reason why we shouldn't
16 make the process completely transparent and
17 outline all the remaining rules and the proposed
18 schedule for their consideration. For that
19 reason, I have included, along with my concurrence
20 on that seriatim vote, a list of what I believe
21 are the Commission rules, orders, and guidance, as
22 well as a timetable of when I understand the

1 Commission expects to vote on these rules, orders,
2 and guidance based on conversations I've had with
3 staff.

4 Now this is a draft. I've color coded
5 it by foundational rules, clearing and trading
6 rules, et cetera, and I will put it on my website.
7 I'll include it as part of my concurrence, and
8 I'll make it available to anybody that wants to
9 take a look at it. But it looks to be about 30
10 more rules we have yet to do. Not all of them are
11 Dodd-Frank. There's an OCR rules, for example.
12 There are a couple of other things in here. But I
13 think that these are all things that the
14 Commission is going to consider over the next
15 couple of months, or over the next six months as
16 we try to meet this year-end deadline.

17 So my hope is to put this in with the
18 exemptive relief, to get some input on it to see
19 what the market thinks of the proposal, to give
20 comment on which rule should go first. I did this
21 about a year ago. You know, we're in kind of the
22 last six months of this rulemaking, so I want to

1 make sure that we -- as we go in, we pick our
2 priorities and we figure out what it's going to
3 take to get across the line to complete all of our
4 rules within the appropriate deadlines and the
5 schedule the Chairman has set. So that'll be
6 available on my website, and we'll put it as part
7 of the Federal Register as well.

8 I'd like to thank Nadia and her team
9 again and everybody on the team for their hard
10 work and patience to accommodate many of our
11 requests. Thank you very much for that. Thank
12 you, Mr. Chairman.

13 CHARIMAN GENSLER: Thank you,
14 Commissioner O'Malia. Commissioner Chilton.

15 COMMISSIONER CHILTON: Thank you, Mr.
16 Chairman. Sometimes I think this process is a
17 little bit like, you know, a Rorschach that it
18 just looks different to different people.

19 I think actually we've done a really
20 remarkable job. We've had 62 percent of the
21 Dodd-Frank rules -- there are 300 Dodd-Frank rules
22 out there in the government, and, you know, we've

1 got a little more than 50. But 67 percent have
2 not been done. Sixty-percent of the 300 have not
3 been done. But we're well over half. I mean,
4 we've produced, what did you say, 32 today. So,
5 you know, the process doesn't always go along
6 swimmingly absolutely. I mean, I'd agree. But
7 we've got a lot of rules. We've got more work
8 than this agency has ever had, and, you know, you
9 do the best you can in life, right? That's what
10 you do. And, you know, all of us get frustrated
11 at times.

12 But I really want to thank the Chairman
13 because the staff, you know, you're a taskmaster,
14 and you've been out there whipping them. And
15 they've taken it, and once in a while we hear
16 screams up on the 9th floor, but by and large, you
17 kept it under control, and you've done a very good
18 job, and you've kept the trains moving on time.

19 And when you look at all of the other
20 agencies, all of the other agencies that are
21 working on Dodd-Frank, nobody comes close to doing
22 what we've accomplished. They don't hold a candle

1 to it. I mean, I won't mention it by name, but
2 there's one agency that they've only met one time
3 this year, and they got a lot more rules than we
4 do.

5 So I just want to say, we've produced a
6 lot. The Chairman's produced a lot. The
7 Commission has produced a lot. Staff has produced
8 a lot. And I thank you for one.

9 Now on cost benefit, just a brief thing.
10 I mean, I appreciate the dialogue we've had in the
11 past and appreciate what Commissioner O'Malia has
12 said. And we all want to get to a good cost
13 benefit analysis. And I think this OIRA thing,
14 this MOU will be helpful. But, you know, it is in
15 no way any commentary on any past or current
16 litigation. These things are a dime a dozen,
17 these MOUs. I'm not making light of the
18 importance. It's important that we have it, look
19 forward to the technical expertise. If we can get
20 a full-time equivalent staff person here to help
21 us since we're under funded, then so much the
22 better.

1 If you ask people in the countryside,
2 well, why do you have to do these memorandums of
3 understanding, these MOUs? I mean, shouldn't you
4 guys just work together? I mean, I understand
5 that perspective, but, you know, we've got to
6 protect confidential information. We want to
7 guard against disclosure. So you have to do these
8 documents to protect markets, protect businesses.

9 And so we're always trying to do things
10 better, get more advice. And in that regard, I
11 want to again thank the Chairman for another
12 thing, and that's being responsive to other ideas,
13 not only Commissioner O'Malia's, but the thought
14 that, you know, I had yesterday and spoke about,
15 looking at what are the costs of not doing these
16 regulations. Not just the profit and loss
17 statements on a balance sheet, which is important,
18 but, you know, what are the costs if we didn't
19 have oversight of the hundreds of trillions of
20 dollars in swaps? Could we be back where we were
21 or where we still are trying to crawl out of?

22 So I thank the Chairman for being

1 responsive on that, for continuing to be open to
2 ideas, and trying to incorporate them as best you
3 can as you see fit. We've produced a lot.

4 So I guess my parting thing would be
5 let's keep the hammer down. Let's keep going.
6 There was a vegetable who, when I was working on a
7 farm bill one time, you know, in urging me to get
8 it done, he said, let us produce. Get it?
9 "Lettuce" "produce." So thank you.

10 CHAIRMAN GENSLER: Thank you,
11 Commissioner Chilton, for all those comments.
12 Commissioner Wetjen.

13 COMMISSIONER WETJEN: Thanks, Mr.
14 Chairman. I want to thank the staff, too, for all
15 your hard work on this rule. Appreciate your
16 flexibility in the last couple of weeks
17 accommodating a lot of the changes that I have
18 requested. The final rules before us today codify
19 and interpret the core principles that apply to
20 designated contract markets, or DCMs. As with so
21 many of our rules, today's recommendations are
22 designed to protect the public and ensure fair

1 competition between exchanges and markets.

2 The recommendations seek to accomplish
3 this objective in multiple ways. They require,
4 for example, risk controls and safeguards for
5 trading unregulated exchanges, which better ensure
6 that our markets remain transparent and stable.
7 They also require that DCMs as self-regulatory
8 organizations are capable of detecting and
9 preventing position limit violations, disruptive
10 practices, and manipulation.

11 Additionally, the rules protect the
12 efficiency of our markets both by ensuring the
13 integrity of listed contracts and by ensuring that
14 participants have appropriate clearing
15 arrangements, thereby mitigating counter party
16 credit concerns that could impede liquidity. And
17 the rules set for a number of additional
18 requirements that will enable DCMs to transition
19 from trading venues solely for futures contracts
20 to venues facilitating trading and swaps as well.

21 As we consider these rules, it is
22 important to acknowledge that the Commodity

1 Exchange Act's principles-based regulatory regime
2 was retained in Dodd-Frank. Indeed, Congress not
3 only retained much of the previous DCM regime, but
4 also expanded that regime to new registered
5 entities, like swap data repositories and swap
6 execution facilities, or SEFs.

7 But it is equally important to
8 acknowledge that Dodd-Frank did not merely restate
9 the existing regulatory responsibilities of DCMs.
10 It expanded those responsibilities by authorizing
11 DCMs to facilitate trading in swaps, and to
12 facilitate such trading between retail market
13 participants. These swap-related functions and
14 responsibilities in the evolution of the futures
15 markets over the past decade inform Congress'
16 decision to add several new core principles to the
17 DCM regime, as well as provide the Commission the
18 authority to specify the means of compliance.

19 It is important, however, that the
20 Commission use its authority cautiously and avoid
21 unnecessarily upsetting the expectations of those
22 who depend on the exchanges. To be sure, private

1 incentives are not always aligned with the public
2 interest, but in seeking to align those
3 incentives, we must take care to avoid doing harm
4 to what is now a functional and effective
5 marketplace.

6 In light of these considerations, the
7 swap market structure poses difficulty policy
8 questions for the Commission and equally difficult
9 operational questions for DCMs. The rules before
10 us today will not answer all of these questions.

11 Perhaps most consequentially, the
12 Commission today is not considering Core Principle
13 9 so that it can fully evaluate it in the context
14 of the swap execution rules. Many DCMs and
15 potential SEFs no doubt would like regulatory
16 certainty on this matter, but I am confident that
17 the public will be best served by a continued
18 dialogue on Core Principle and related issues.
19 Public input remains our best protection against
20 unintended consequences.

21 The debate about Core Principle 9 is not
22 and should not be about a particular trading venue

1 or business model, nor is it about the value of
2 trading through the centralized market.
3 Centralized trading enhances the transparency and
4 efficiency of markets, and centralized trading
5 generally means increased pre-trade transparency,
6 and, more specifically, order book transparency,
7 which provides important information about the
8 supply of and demand for a particular commodity or
9 contract. In short, centralized trading
10 facilitates price discovery, provided there is
11 sufficient trading interest to discover.

12 I believe there is consensus on the
13 objectives of increasing centralized trading and
14 pre-trade transparency. There remain, however,
15 many challenging questions about the best means
16 for achieving these objectives. For instance,
17 there can be tension between our centralized
18 trading objective and our statutory objectives of
19 reducing systemic risk and promoting responsible
20 innovation at exchanges. I look forward to
21 engaging with the public on these questions in the
22 months ahead. For now I am confident that these

1 final rules appropriately carry out the relatively
2 modest changes to the core principles regime for
3 DCMs.

4 The other Commissioners mentioned our
5 completion of the exempt -- proposal on the
6 exemptive order, and I obviously supported that.
7 I look forward to the comments on that.
8 Commissioner Sommers and I were talking ahead of
9 time. I think one area of particular concern that
10 I'm going to be in reviewing comments about is
11 whether it's better to have a sunset date as we've
12 done the last couple of times now, or whether we
13 consider some other approach. So I look forward
14 to the comments on that.

15 Thanks again to all the professional
16 staff and the DCM rule team. Appreciate all your
17 hard work on this, and look forward to continuing
18 our discussion on Core Principle 9 and other
19 matters. Thanks.

20 CHAIRMAN GENSLER: Thank you to all the
21 Commissioners. With that, I think I'll turn it
22 over to the staff. But if I would note, I think

1 on the sunset date, which is important. I guess
2 it went back to when Mike Dunn first suggested
3 ago. It has allowed us -- it wasn't anticipated a
4 year ago that we would do a third one, but it has
5 allowed us to refresh it, and, for instance, now
6 address ourselves specifically to what I think
7 were important comments that came from the
8 agricultural community from packers, and
9 merchants, and farmers that said we needed to
10 address something.

11 So we hadn't focused on something like
12 that a year ago, and I'm glad we're able to
13 address that. And that's just one example, but,
14 you know, it may well be that come November if we
15 need -- hopefully we don't need another one, but
16 if we do need another one, there'll be some new
17 issues that will, you know, have emerged that we
18 need to incorporate.

19 So I think we've -- it's a balancing.
20 It was Commissioner Dunn's suggestion, but I think
21 it's -- allowed us to refresh this and bring it --
22 particularly this agriculture issue I know was an

1 important one.

2 We're going to have Rachel Berdansky,
3 Rich Shilts, Nancy Markowitz, Nadia Zakir, David
4 Van Wagner, all from the Division of Market
5 Oversight, and Mike Penick from the Office of
6 Chief Economist, present to us.

7 MS. ZAKIR: Thank you, Chairman and
8 Commissioners. I'd like to thank --

9 CHAIRMAN GENSLER: Could you move the
10 mic a little closer?

11 MS. ZAKIR: Sure. Is this better?
12 Thank you, Chairman and Commissioners.

13 I'd like to thank our DCM rulemaking
14 team, and, in particular, Nancy Markowitz, Aaron
15 Brodsky, and each of the persons at this table, as
16 well as all of the hardworking and dedicated staff
17 of the Commission, for helping with this
18 particular rulemaking.

19 This final rulemaking establishes the
20 regulatory obligations that each DCM must meet in
21 order to comply with Section 5 of the CEA,
22 Commodity Exchange Act, as amended by the

1 Dodd-Frank Act initially upon designation, and
2 thereafter on an ongoing basis.

3 Section 735 of the Dodd-Frank Act
4 amended Section 5 of the Commodity Exchange Act
5 pertaining to the designation and operation of
6 contract markets by, first, eliminating the eight
7 designation criteria, then amending most of the
8 core principles, including and incorporating most
9 of the subset of elements of the former
10 designation criteria, and finally by adding five
11 new core principles.

12 In addition, Section 723(a)(3) of the
13 Dodd-Frank Act added Section 2(h)(8) to require,
14 among other things, that swaps that are required
15 to be cleared must be executed either on a DCM or
16 on a swap execution facility, or SEF, unless no
17 DCM or SEF or makes the swap available to trade.

18 On December 22nd, 2010, the Commission
19 established and published proposed regulations to
20 implement the statutory provisions of the
21 Dodd-Frank Act relevant to the designation and
22 operation of DCMs under Part 38 of the

1 Commission's regulations. The Commission received
2 numerous written comments from members of the
3 public, and Commission staff participated in
4 several meetings with market participants,
5 including representatives of both
6 currently-designated and prospective contract
7 markets.

8 In this notice of final rulemaking,
9 staff is requesting that the Commission adopt many
10 of the proposed rules, guidance, and acceptable
11 practices. However, as a result of the written
12 comments received and dialogue with market
13 participants, the substance of a number of the
14 proposed regulations have been revised, and in
15 several instances, the proposed rules are replaced
16 with more flexible guidance and/or acceptable
17 practices.

18 By way of background, the Commission has
19 regulated designated contract markets since the
20 enactment of the Commodity Futures Modernization
21 Act of 2000. Through its oversight of these
22 markets over the past 10 plus years, Commission

1 staff has gained a substantial understanding of
2 the practices that DCMs have adopted in complying
3 with the various core principles. In implementing
4 the relevant provisions of the Dodd-Frank Act,
5 staff first undertook a comprehensive evaluation
6 of its preexisting regulations, guidance, and
7 acceptable practices to determine whether any core
8 principles would benefit from new or revised
9 guidance or acceptable practices, and which core
10 principles would be better served by the
11 codification of rules.

12 In some instances, this final rule is
13 converting proposed rules to guidance and/or
14 acceptable practices largely based on specific
15 comments that address the need for greater
16 flexibility. In other instances, the final
17 rulemaking is maintaining the proposed rules with
18 appropriate revisions arising from the
19 Commission's consideration -- staff's
20 consideration of comments. These rules largely
21 implement new statutory mandates or codify certain
22 requirements and practices that have evolved, are

1 commonly in industry, and that staff has found
2 based on experience in overseeing DCMs to
3 represent the appropriate means of complying with
4 the core principle.

5 Many of the final rules also reflect
6 conclusions and determinations contained in the
7 rule enforcement reviews that staff periodically
8 carry out to examine a DCM's compliance with
9 specific core principles. Commission believes
10 that the codification of clear-cut rules that
11 reflect the statutory mandate and existing
12 practices will provide greater transparency and
13 regulatory certainty to DCMs in determining their
14 compliance obligations, and to market participants
15 in determining their obligations as DCM members.

16 These rules will also improve the
17 ability of the Commission to enforce its
18 regulations. These final rules, guidance, and
19 acceptable practices implement and clarify the
20 obligations of DCMs with respect to the core
21 principles, while at the same time preserving the
22 principle-based regulatory framework under the

1 Commodity Exchange Act.

2 In the interest of time, I will provide
3 a general overview of selected aspects of the
4 final rulemaking, and will look forward to
5 responding to any questions on specific aspects of
6 the rulemaking.

7 As an initial matter, the final
8 rulemaking includes additional regulations and
9 revisions to the existing regulations in Part 38
10 pertaining to the process of applying for
11 designation as a contract market and to certain
12 other designation-related requirements.

13 The final rulemaking provides a
14 comprehensive application form for contract market
15 applicants, along with a specified list of
16 documents and information that must accompany the
17 application in order to provide additional
18 transparency and efficiency to the designation
19 procedures. The rulemaking also eliminates the
20 accelerated approval procedures for DCM
21 applications, requiring instead that all
22 applications be reviewed under the 180-day

1 statutory review period and procedures.

2 The final rulemaking also adopts rules
3 governing the dual registration of a board of
4 trade as both the DCM and the swap execution
5 facility. In particular, a board of trade that is
6 designated as a contract market also may operate a
7 SEF, provided that it separately registers
8 pursuant to the SEF registration requirements, and
9 on ongoing basis complies with the SEF rules and
10 core principles under Section 5(h) of the
11 Commodity Exchange Act.

12 Moreover, any board of trade intending
13 to operate a DCM and a SEF may use the same
14 electronic trade execution system for listing and
15 executing swaps, provided that they make it clear
16 to market participants whether the electronic
17 trading of such swap is taking place on the SEF or
18 the DCM platform.

19 For the 23 core principles, I will
20 briefly highlight some of the key proposals.

21 Several core principles require a DCM to
22 establish and enforce compliance with the rules of

1 the DCM. Amendment Core Principle 2, for example,
2 requires a DCM to establish, monitor, and enforce
3 rules relating to access requirements, terms and
4 conditions of contracts to be traded on its
5 system, and rules prohibiting abusive trading
6 practices. The core principle also requires the
7 DCM to have the ability to detect rule violations
8 and sanction persons that violate the rules.

9 The implementing regulations for Core
10 Principle 2 in this final rulemaking are derived
11 from a number of sources, which include specific
12 statutory mandates, current standard industry
13 practices, and existing guidance and acceptable
14 practices, and practices stemming from rule
15 enforcement reviews and staff experience in
16 regulating DCMs. For example, the proposed
17 regulations would require all DCMs to prohibit a
18 list of abusive trade practices, all of which are
19 already prohibited by most DCMs today, and others
20 prohibited by statute or under Commission
21 regulations.

22 In many instances, the regulations

1 codify existing practices, including those
2 requiring automated trade surveillance system,
3 real-time market monitoring, and regulations
4 pertaining to investigations and investigation
5 reports.

6 The final rules also include a
7 requirement that DCMs must obtain from their
8 members and market participants consent to the
9 DCM's jurisdiction prior to granting access to its
10 markets. Staff believes this is an essential
11 pre-condition to a DCM's ability to carry out its
12 statutory obligations under the core principles.

13 Core Principle 6 also imposes compliance
14 obligations on DCMs with respect to emergency
15 actions. Under the people, a DCM is required to
16 have rules to provide for the exercise of
17 emergency intervention in the market. Recognizing
18 that DCMs may have different procedures for taking
19 emergency action, staff believes it is appropriate
20 to maintain an expanded version of the existing
21 guidance that includes provisions emphasizing
22 cross-market coordination of emergency action, and

1 to have alternate lines of communication and
2 approval procedures in order to be able to address
3 in real time emergencies that may arise.

4 Staff believes that this is an important
5 obligation in light of the need for DCMs to be
6 able to react quickly to market events and to
7 intervene without delay. Over the years, DCMs
8 have developed certain standard practices for
9 emergency programs which are included in this
10 final rulemaking as acceptable practices.

11 In the Notice of Proposed Rulemaking,
12 the Commission proposed regulations implementing
13 amended Core Principle 9, which required, among
14 other things, that DCMs provide a competitive,
15 open, and efficient market and mechanism for
16 executing transactions that protects the price
17 discovery process of trading in the centralized
18 market.

19 The proposed regulations included, among
20 other things, a rule requiring that 85 percent of
21 the total trading volume of any contract listed on
22 the DCM must consist of centralized market

1 trading. The rule included a mandatory delisting
2 requirement for noncompliant contracts, specified
3 procedures for treatment of preexisting contracts,
4 and provided a limited exemption for certain
5 contracts upon petition to the Commission. The
6 proposed rule also included guidance and rules
7 pertaining to requirements for block trades and
8 futures contracts and other oft exchanged
9 transactions, including exchange of derivatives
10 for related positions.

11 The Commission received a significant
12 number of comments on many aspects of the proposed
13 rules under Core Principle 9, including comments
14 pertaining to the Commission's interpretation of
15 the core principle as proposed. Staff has
16 considered these comments and believes that
17 additional time is appropriate before finalizing
18 the proposed rules for Core Principle 9.

19 In particular, staff recommends that the
20 Commission take up the proposed rules under Core
21 Principle 9 when the Commission considers the
22 final SEF rulemaking. The additional time will

1 allow the Commission to consider the available
2 alternatives for contracts that may not comply
3 with the proposed centralized market trading
4 requirement, as well as any related implications
5 of the rules pertaining to ~~off-ft-exchanged~~
6 transactions, including exchange of derivatives
7 for related position transactions.

8 Another group of core principles pertain
9 to the requirements for contracts traded on a DCM
10 and the DCM's obligation to monitor trading
11 activities. Core Principle 3, for example,
12 requires that contracts listed on a DCM must not
13 be readily subject to manipulation. The final
14 rule maintains the existing guidance for Core
15 Principle 3, with necessary revisions to provide
16 greater detail to DCMs regarding relevant
17 considerations when listing a contract, including
18 swap contracts.

19 Amended Core Principle 5 requires DCMs
20 to adopt for each contract, as is necessary and
21 appropriate, position limitations or position
22 accountability, and requires that this limit

1 cannot be higher than the position limit
2 established by the Commission for any contract.
3 The implementing rule for this core principle
4 requires that each DCM comply with the
5 requirements of Part 150 or 151 of the
6 Commission's regulations as applicable.

7 Core Principle 4, now titled Prevention
8 of Market Manipulation, was amended to require
9 DCMs to take an active role not only in monitoring
10 trading activities within their markets, but also
11 in preventing market disruptions. The
12 implementing rules include a requirement that DCMs
13 have the ability to conduct real-time trade
14 monitoring and comprehensive trade reconstruction.

15 In order to prevent market disruptions
16 due to sudden volatile price movements, the rules
17 also require DCMs to establish and enforce trade
18 risk controls, including, but not limited to,
19 market restrictions that pause or halt trading in
20 the event of extraordinary price movements that
21 may result in distorted prices or trigger market
22 disruptions.

1 In response to comments received on this
2 topic, the final rulemaking includes acceptable
3 practices that provide a non-exhaustive list of
4 additional risk controls that DCMs may implement
5 to further reduce the potential of market
6 disruptions. The rules also require DCMs to
7 require all traders on their markets to keep
8 trading records that are available to the DCM to
9 enable it to carry out its obligations under this
10 core principle.

11 Core Principles 11 and 21 pertain to the
12 financial integrity of markets and the financial
13 resource obligations of DCMs, respectively.

14 Amended Core Principle 11 requires DCMs
15 to establish and enforce rules and procedures for
16 ensuring the financial integrity of transactions
17 entered into on or through the DCM, including the
18 clearing and settlement of the transactions with
19 the DCM. This core principle also requires DCMs
20 to establish and enforce rules to ensure the
21 financial integrity of any FCM, futures commission
22 merchant, ~~FCM~~ and introducing broker.

1 In particular, the rules require DCMs to
2 adopt establishing minimum financial standards for
3 both member FCMs and introducing brokers and
4 non-intermediated participants, and to conduct
5 ongoing financial surveillance of the risk created
6 by FCM customer positions on DCMs. Under the
7 final rules, DCMs must have rules prescribing
8 capital requirements for member FCMs and
9 intermediated brokers. And to the extent that a
10 DCM allows customers direct access to its
11 contract, they must implement certain access
12 controls and procedures in order to provide member
13 FCMs with tools to manage their financial risk.

14 The FCM would continue to have primary
15 responsibility for overall risk management, but
16 the DCM would be required to establish an
17 automated risk management system permitting an FCM
18 to set appropriate risk limits for each customer
19 with direct access to the contract market.

20 New Core Principle 21 requires that a
21 DCM must have adequate financial resources to
22 discharge its responsibilities and to maintain

1 financial resources sufficient to cover operating
2 costs for a period of at least one year,
3 calculated on a rolling basis. To implement this
4 core principle, the final rulemaking includes
5 regulation addressing the types of financial
6 resources available to DCMs to satisfy the
7 financial requirements, valuation and calculation
8 requirements, and financial resource reporting
9 requirements.

10 Finally, new Core Principle 20
11 establishes operational and system safeguard
12 requirements for all DCMs. The rules implementing
13 this core principle require that DCMs establish
14 and maintain a program of risk analysis and
15 oversight to identify and minimize sources of
16 operational risks, emergency backup procedures,
17 and a disaster recovery plan, including resources
18 sufficient to enable resumption of trading and of
19 all responsibilities and obligations during the
20 next business day following any disruption of its
21 operation.

22 The rules also require DCMs to notify

1 Commission staff of various system
2 security-related events, including providing
3 relevant documents and to conduct regular,
4 periodic, and objective testing and review of its
5 automated systems.

6 The Commission also received a number of
7 comments pertaining to the cost and/or benefits of
8 certain proposed regulations. Staff has
9 undertaken an extensive review of the cost and
10 benefits of the regulations being adopted in this
11 release, and has determined that the final rules
12 appropriately balance the cost and benefits
13 associated with the oversight of DCMs pursuant to
14 the Commodity Exchange Act, as amended by the
15 Dodd-Frank Act.

16 I would be happy to answer any questions
17 at this time.

18 CHAIRMAN GENSLER: Thank you, Nadia.
19 With that, I'll consider a motion on accepting the
20 staff recommendation on the rules, guidance, and
21 acceptable practices for DCMs.

22 COMMISSIONER SOMMERS: So moved.

1 COMMISSIONER O'MALIA: Second.

2 CHAIRMAN GENSLER: Nadia and team, I'm
3 going to do something a little unusual. But
4 Commissioner O'Malia and I both have some
5 questions around Core Principle 3. And
6 particularly Core Principle for the public is
7 about contract markets ensuring that their
8 contracts are not susceptible to manipulation.
9 I'm saying it in lay terms.

10 But I think we're both interested, and
11 I'm going to take Commissioner O'Malia take the
12 lead, on how this relates to price reporting
13 agencies. For instance, many of the contracts
14 relate to in the energy markets to things from
15 Platts, or in the financial markets to things from
16 something -- from the British Bankers Association
17 called LIBOR. And so it's very relevant.

18 So I'm going to -- Commissioner O'Malia
19 is going to ask some questions, but we both might
20 have some questions here on this.

21 COMMISSIONER O'MALIA: All right. Thank
22 you, Mr. Chairman.

1 CHAIRMAN GENSLER: So he's taking part
2 of my time.

3 COMMISSIONER O'MALIA: Appendix C
4 guidance to Core Principle 3, as the Chairman
5 noted, provides that where a private sector price
6 reporting agency calculates settlement prices,
7 DCMs "should verify that the third party utilizes
8 business practices that minimize the opportunity
9 or incentive to manipulate the cash market price
10 area." This core principle is not new, and
11 neither are the use of PRAs.

12 How have DCMs complied with Core
13 Principle 3, and do you expect the compliance
14 obligations to change with respect to the use of
15 the PRA settlement price under this new rule?

16 MR. SHILTS: Yes, Commissioner. As
17 you've noted, Core Principle 3 has been around for
18 a long time. It is not new, and PRAs are not new
19 either.

20 I think generally the way the exchanges
21 the DCMs have looked at -- well, first let me say
22 there's nothing in the DCM final rulemaking that

1 addresses PRAs specifically. It really is talking
2 about exchanges using -- for cash settle contracts
3 setting prices based on some third party, which
4 could be another exchange, you know, like a
5 look-alike, or it could be a price reporting
6 agency. But the same principles would apply.

7 But I think in general when many of the
8 exchanges have looked to listing contracts based
9 on indexes or whatever, that the industry
10 generally used either for, in many cases, for swap
11 contracts, are based on those. And I think to a
12 large extent, they've relied on the reputation and
13 industry acceptance of a particular index, whether
14 it be a Platts price or a British Bankers
15 Association price or whatever. And I think to a
16 large extent, our staff have generally kind of
17 looked to the reputation of these entities, to
18 some extent, ensuring compliance with Core
19 Principle 3, that this is something the industry
20 has accepted, that everybody -- there hadn't been
21 necessarily issues raised with the methods or the
22 procedures used by these price reporting agencies.

1 I think of late, and I know you've been
2 very interested in this, there's been both when
3 the industry in general and the DMO staff has
4 taken a closer look at some of these price
5 reporting agencies, or the indexes that they're
6 using for settling various contracts, whether it
7 be in the energy space or financial contracts, and
8 looking at going back to the exchanges and taking
9 a closer look because of some issues that have
10 been raised about the ability to get precise
11 information about how the PRAs are actually
12 computing their prices and how robust the prices
13 are, and whether there are potential, or there
14 would be potential for entities that have
15 positions in swaps or futures markets to distort
16 those prices.

17 So to some extent, the guidance that --
18 the additional guidance that you referred to was
19 an attempt to have the exchanges do, I guess, a
20 more robust due diligence review of these -- the
21 prices that they're selecting, the PRA prices that
22 they're being used for settling cash settle

1 futures, and then ultimately swaps. And that
2 they, in addition, make sure that not only that to
3 do a better evaluation of what they're using, but
4 also that they, in effect, do have the rights to
5 that. In some cases we found that they didn't,
6 and that there's an ability to get information to
7 look to the extent possible from the price
8 reporting agency so that they and then ultimately
9 our staff or surveillance staff can assess whether
10 those that are contributing to the price reporting
11 have positions in futures or ultimately in swaps
12 as we get that data for doing oversight to make
13 sure that they -- those that have an incentive to
14 distort the PRA price, that we can take action
15 against if they're doing that to benefit on a
16 position in the futures markets.

17 So we don't have -- as I said, there
18 aren't specific rules or guidance that goes
19 directly to PRAs, but this is an ongoing -- as I
20 said, you've shown a strong interest in this.
21 This is an issue that we are exploring in a number
22 of contexts, and I know IASCO has a project going

1 on to look at this. So ultimately it may lead to
2 further guidance, or rules, or just inform how the
3 staff looks at these contracts that are submitted.
4 I don't know if that answered your question.

5 CHAIRMAN GENSLER: I think all five of
6 us are interested, but Commissioner O'Malia and I
7 decided to sort of share this line of questions.

8 I take it from what you say that under
9 Core Principle 3, that you do believe that
10 contract markets have had and will continue to
11 have some obligations to ensure that if they're
12 relying on an index, whether it's an oil index or
13 a financial index, that that is not readily
14 susceptible to manipulation.

15 MR. SHILTS: Yes, that is correct. And
16 the additional language and the guidance was kind
17 of to flesh that out, things that we felt the
18 exchanges should look at when they're making their
19 assessments and making the determination about a
20 particular price reporting index to use for
21 settlement, yes.

22 CHAIRMAN GENSLER: I mean, in essence,

1 if the underlying index is susceptible to
2 manipulation, then it calls into question the
3 contract itself.

4 MR. SHILTS: Yeah. It calls into
5 question its compliance with the core principle,
6 yes.

7 CHAIRMAN GENSLER: Well, as I said
8 earlier, I support the rule. And so I had lots of
9 questions for you over the last 18 months, but I
10 think that this really finds the right balance. I
11 think it's benefitted from public comment,
12 including rules, but also acceptable guidance and
13 practices. As Commissioner Sommers says, it dials
14 back on the rules and puts more into guidance.
15 And I use the one example on risk mitigation or
16 pre-trade risk filters, and I think it will
17 benefit the markets by giving greater clarity to
18 exchanges and contract markets moving forward.

19 Commissioner Sommers.

20 COMMISSIONER SOMMERS: Thank you. I
21 have just a couple of different questions. First
22 of all, with regard to Core Principle 2 and under

1 the access requirements, there's a provision that
2 requires DCMs to obtain in writing from market
3 participants the consent to the DCM's
4 jurisdiction. And I just wanted to talk through
5 how we would expect the DCMs to accomplish this
6 and how flexible we will be with their approaches.

7 MS. BERDANSKY: I'll take that question.
8 I mean, staff's expectations, we actually
9 purposely in the rule didn't, you know, state how
10 an exchange would -- has to go about this. We
11 think it's important that an exchange has the
12 flexibility for itself to figure out how it's
13 going to work, to go ahead and obtain the
14 jurisdiction. There will be various ways that I
15 can envision they could do this.

16 Some exchanges, those that don't have
17 any intermediation, they'll have the names,
18 addresses of their market participants to directly
19 contact them and to secure those agreements.
20 Other exchanges with intermediation, it could be a
21 mix of they will have, you know, names, addresses
22 of some market participants, even those that

1 aren't members because some of those people are
2 registered at the exchange for fee programs.
3 They'll also utilize the services I would imagine
4 of their clearing firms to secure those
5 agreements. But they will have the flexibility to
6 determine for themselves how to do this.

7 COMMISSIONER SOMMERS: Can you talk a
8 little bit about what this accomplishes for us,
9 and without this type of consent from market
10 participants what our concerns would be?

11 MS. BERDANSKY: Our concern in this area
12 -- well, let me just start with saying that it was
13 important -- basically we think this rule codifies
14 the requirements in Core Principle 2 that a DCM
15 have the capacity to detect, and investigate, and
16 impose sanctions for rule violations.

17 In the past, something that we have
18 found in conducting our rule enforcement review
19 examinations is that there have been several
20 instances where an exchange has seen a potential
21 violation, and they refer it over to the
22 Commission. And the Commission will take a look

1 and enforcement determines, and they can bring in
2 action. But when the Division of Enforcement
3 brings an action, they will bring it for, you
4 know, violation of Commission regulations or the
5 statute. They don't bring actions typically for
6 violations of the exchange rules.

7 We think it's important to establish,
8 and for exchanges to do it up front, that all
9 market participants understand their obligation
10 to, you know, comply with exchange rules,
11 participate in investigations, and to participate
12 in the disciplinary process. So that would be
13 what is behind these rules.

14 COMMISSIONER SOMMERS: So this is
15 nothing really new. We've always thought that
16 these market participants had this obligation, but
17 this just puts it in writing.

18 MS. BERDANSKY: This puts it in writing,
19 and there have been instances where the DCMs
20 haven't believe that they have had the
21 jurisdiction. And we think clearly now with this
22 language in Core Principle 2 in this rule that it

1 sets forth our expectation that they exercise this
2 jurisdiction.

3 COMMISSIONER SOMMERS: Thank you. Then
4 I have a couple of questions about Core Principle
5 21. And the preamble language, and I think Nadia
6 talked a little bit about this in her opening with
7 the flexibility that we would provide to a DCM in
8 calculating their operating expenses. And I
9 wondered if you could talk a little bit about how
10 that would work.

11 MS. MARKOWITZ: I'll take that question.
12 I think we contemplate a continuation of what
13 we've done in the past year or so or a couple of
14 years in connection with similar financial
15 resource requirements that are in designation
16 orders for DCMs I think in the last three years.

17 And we've approached this in a practical
18 manner on a case by case basis. And I think we
19 will continue to do this, being mindful of the two
20 goals that you mentioned, which is to secure --
21 you know, have financial security of DCMs. On the
22 other hand, recognizing the capital requirements

1 of the DCM.

2 And the way we've approached this is the
3 flexibility and cost. We've had some internal
4 guidance that we've applied -- tried to apply
5 consistently, but also with some flexibility,
6 depending on the particular situation of the DCM.
7 And, for example, we've, in terms of cost, we've
8 approached relatively new or, let's say, DCMs that
9 have not had as much financial resources, we've
10 been -- view costs to not include such things as
11 non-cash costs, like depreciation or amortization.

12 Also we've basically looked at cost as
13 those costs that are needed to continue to be
14 compliant with the core principles. So we've
15 excluded things like growth costs. And so in that
16 way, many DCMs, and particularly new DCMs, have
17 been able to meet the cost requirements to, you
18 know, to meet the financial requirements.

19 So I think we contemplate continuing to
20 do that, being consistent as we can, but on the
21 other hand, providing flexibility on a case by
22 case basis.

1 COMMISSIONER SOMMERS: Okay. With
2 regard to those entities that may have multiple
3 registration and share costs, how do we do those
4 types of evaluations, and how do we ensure that
5 there's no double counting?

6 MS. ZAKIR: Sure. Regulation 38.1101
7 under the final rule provides that an entity that
8 is registered, for example, as both a derivative
9 clearing organization and a designated contract
10 market has to comply with the financial resource
11 requirements of both of those entities under our
12 regulations. However, what it would have to do is
13 demonstrate that it has sufficient resources to
14 operate the single combined entity.

15 And so staff anticipates that a
16 corporate entity that operates both -- more than
17 one registered entity would be able to share
18 certain costs. And to give you a specific example
19 of that, if you have, you know, a corporate entity
20 that operates both a DCO and a DCM, and they have
21 an employee that works for both, I would say, we
22 would not -- we don't contemplate that we would

1 require that corporate entity to count that full
2 salary of that employee, both for the DCO and then
3 again for the DCM, but rather would be able to
4 share that cost.

5 COMMISSIONER SOMMERS: Okay. I really
6 appreciate this type of flexible approach, and I
7 think it's important because I think we will have
8 a number of new registrants that are in much
9 different positions than our typical situations in
10 the past. So I appreciate that. Thank you.

11 CHAIRMAN GENSLER: Before I go to
12 Commissioner Chilton, I just remembered, I believe
13 it's Core Principle 11, but I'm just highlighting
14 it a little bit for the public, but confirming
15 this, Nadia and Nancy, that we did finalize in
16 this, or we're about to finalize in this, what we
17 propose that parties who have direct access to
18 exchanges have to have a futures commission
19 merchant, somebody checking that they actually are
20 guaranteed before the trade is sent to the
21 clearinghouse. Is that correct? Do I have this
22 -- yeah.

1 MS. ZAKIR: The direct market access
2 provision pertaining to the IOSCO Core Principle 6
3 and 7, I think that's what you're referring to,
4 Chairman?

5 CHAIRMAN GENSLER: I can't --

6 MS. ZAKIR: Is it the rule that's
7 designed to ensure that ~~declared-clearing~~ members of
8 ~~guaranteed trades~~ have a means to risk manage ~~and~~
9 the trades of their customers who enter their trades
10 directly? That's correct, we do have a rule that
11 would --

12 CHAIRMAN GENSLER: So, in essence, it's
13 consistent with that which we did about a month
14 ago when we finished rules for futures commission
15 merchants also, then finalized some rules that
16 they have pre-trade risk filters to ensure that
17 somebody standing behind the trade before it goes
18 to the clearinghouse.

19 MS. ZAKIR: Correct.

20 CHAIRMAN GENSLER: And we have that --
21 we have sort of the -- this marries up with that
22 rule to help promote anonymous trading on contract

1 markets. I thought it was part of Core Principle
2 11, financial integrity of transactions when you
3 gave the shout out to the Tech Advisory Committee.
4 What's that, Scott?

5 COMMISSIONER SOMMERS: Eleven.

6 CHAIRMAN GENSLER: Core Principle 11?

7 MS. ZAKIR: Chairman, I would just say
8 that we put the obligation on the DCM that direct
9 market access provision requires that the DCM be
10 able to facilitate the FCM's risk controls, their
11 management of risk, to the extent that there is a
12 direct market access participant that bypasses the
13 FCM's own controls.

14 CHAIRMAN GENSLER: I see. I see.

15 MS. ZAKIR: The obligation --

16 CHAIRMAN GENSLER: So the DCM has to
17 facilitate the FCM --

18 MS. ZAKIR: That's right.

19 CHAIRMAN GENSLER: -- doing their job.

20 MS. ZAKIR: That's correct.

21 CHAIRMAN GENSLER: But it marries up so
22 that when swaps or futures come to a contract

1 market, somebody's guaranteeing it in the
2 clearinghouse.

3 MS. ZAKIR: I believe so, correct.

4 CHAIRMAN GENSLER: All right, thanks.

5 COMMISSIONER CHILTON: I want to thank
6 the team. I think you did a very good job. I
7 don't have any questions, although we've asked
8 some in our briefings. But, you know, like all of
9 these rules, we may need to do some interpretive
10 guidance. And this is all an effort to make a
11 more perfect regulation. We may not be exactly
12 perfect, but we'll have to do some guidance
13 probably as we have on others. You know, like I
14 said earlier, doing the best we can, and
15 particularly when we're talking about a market
16 that we heretofore hadn't regulated and is so
17 large.

18 I did want to make one point because I
19 saw this mischaracterized in the media recently
20 about core principles. By and large, the core
21 principles have added a whole lot of flexibility
22 to what the exchanges can do. And if you look at

1 the volume in the futures industry between 2000
2 and 2005, there was a five-fold increase in volume
3 in the U.S. compared to a three-fold increase in
4 futures other places around the world. So maybe
5 that had something to do with core principles,
6 things like exchanges offering products, offering
7 a contract, you know.

8 I was told that it could've taken in the
9 past five, six months to approve something, and
10 now they can self- certify. We have the ability,
11 you know, question it. There's a whole list of
12 things we can do. But it allows them to be more
13 nimble and to be more quick, and I think that's
14 been good.

15 But the point I wanted to make is that
16 just because we have core principles and we're
17 expanding them into the OTC land, that that
18 doesn't mean that under the Commodity Exchange Act
19 that we don't have the law behind us with regard
20 to not only oversight, but enforcement. I mean,
21 we can still very aggressively -- in fact, more
22 aggressively because I think the core principles

1 enhance our ability to go after violations of the
2 Commodity Exchange Act. So these aren't separate
3 things. It's not core principles versus the law.
4 The law overreaches all of it. The core
5 principles enhance us, enhance our ability to
6 oversee and enforce markets, and I think it also
7 enhances the flexibility of the exchanges.

8 So I just wanted to sort of correct that
9 because I read it some place that core principles
10 were just loosey- goosey, and, you know, nobody
11 went under in the financial collapse. No firm
12 went under because of their position in the
13 regulated futures world. It was you know, OTC
14 land that was a problem.

15 Thanks, Mr. Chairman.

16 CHAIRMAN GENSLER: Thank you,
17 Commissioner Chilton. Commissioner O'Malia, take
18 two.

19 COMMISSIONER O'MALIA: Thank you. To
20 kind of start this one, I do appreciate the
21 Commission taking kind of the unorthodox step of
22 removing a core principle and considering it later

1 in order to understand better how this transaction
2 space is going to work. And I think that's a
3 great solution to this proposal, and we'll be able
4 to see how swaps and futures integrate and are
5 going to transact. So I set that up with that
6 caveat.

7 CHAIRMAN GENSLER: I think it was the
8 right thing. I mean, I think we all five of us
9 sort of were grappling. Core Principle 9 has
10 changed. Congress did change the language about
11 ensuring for the price discovery on the
12 centralized market. We put a proposal out. We
13 got a lot of comments, as you say. But the inner
14 section, you listed three things. I listed a
15 fourth thing. Also the intersection to me with
16 direct, open access to clearing, you know, I think
17 will benefit from another, whether it's another
18 month or two or, as Commissioner Wetjen said,
19 months, I don't know. But however it is until we
20 get to that to that SEF role.

21 COMMISSIONER O'MALIA: Now you're
22 getting into my question, so let me ask it. So

1 what is going to happen, though, with regard to
2 implementation of -- and this is for the team --
3 this goes into effect 60 days after this hits the
4 Federal Register. And as we work through the
5 integration and discussion, what will DCMs have to
6 do to comply with Core Principle 9 in the
7 meantime?

8 MS. ZAKIR: Yeah. So the core
9 principles have been effective since the
10 Dodd-Frank Act took effect, which was last June.
11 And so the DCMs today are currently complying with
12 each of the core principles, but use their
13 reasonable discretion in determining the method in
14 doing that. We anticipate that DCMs would
15 continue to do that for Core Principle 9 in the
16 way that they've complied over the past, I guess,
17 until final rules are adopted.

18 COMMISSIONER O'MALIA: Terrific. Thank
19 you. We asked the Core Principle 3 -- I think
20 Commissioner Sommers took care. Core Principle
21 21, which I think greater flexibility is a great
22 solution there to facilitate competition in this

1 space.

2 Core Principle 4 I mentioned in my
3 opening remarks. You have changed it to be,
4 again, this is another area where it's more
5 flexible than the original proposal. Can you kind
6 of explain how you've -- what accommodations
7 you've made to this core principle and your
8 expectations for it?

9 MS. ZAKIR: Sure. So in the NPRM,
10 Notice of Proposed Rulemaking, we posed questions
11 to market participants as to what types of risk
12 controls were appropriate. And based on the
13 comments that we received, we determined that --
14 and based on the TAC Subcommittee report, we
15 determined that there were was some level of
16 standardization that was important, particularly
17 in extreme market disruptions.

18 The rule requires that designated
19 contract markets must implement risk controls as
20 appropriate to ensure that there aren't
21 disruptions in the underlying -- in the markets.
22 And those risk controls must include, but not be

1 limited to, trade pauses and halts.

2 What we've done is essentially then also
3 included acceptable practices, which have a
4 non-exhaustive list of enumerated trade risk
5 controls that DCMs can implement depending on
6 their particular markets, the products, the
7 parameters of which they themselves would set and
8 would submit to the Commission, but essentially
9 would leave it in the DCM's court to be able to
10 make those determinations.

11 And that is sort of consistent with the
12 TAC subcommittee report findings and would also
13 leave room there for any additional guidance or
14 interpretation or rulemakings that the Commission
15 may in the future decide to put together in order
16 to mandate additional risk controls if necessary.

17 COMMISSIONER O'MALIA: Thank you very
18 much. That's all I have, Mr. Chairman.

19 CHAIRMAN GENSLER: Thank you,
20 Commissioner O'Malia. Commissioner Wetjen?

21 COMMISSIONER WETJEN: Thanks, Mr.
22 Chairman. One of the -- when Congress put

1 together the Dodd-Frank Act, it had -- well, I
2 guess the first choice it had was to decide
3 whether swaps should be executed on these
4 platforms. And the answer to that was yes. And
5 then the next question was, well, should we just
6 use DCMs or is there some other way to go about
7 this? And so in Dodd-Frank there was created this
8 new registration category for swap execution
9 facilities. I think the thinking behind it was
10 that there would probably more competition among
11 execution platforms if this new registration
12 category were created, and all the attendant
13 benefits that come with that.

14 And so in recent days we've -- I think
15 all the Commissioner have heard from a community
16 of folks who might try and become SEFs at some
17 point, and there have been some concerns about
18 anti-competitive behavior of DCMs that could make
19 it more difficult for SEFs to get off the ground.
20 And in light of -- the purposes behind Dodd-Frank
21 actually have some sensitivity to those concerns.

22 And there are a variety of

1 considerations that swap users are going to have
2 to make related to both clearing and then
3 execution in terms of how they decide and where
4 they decide to do these contracts. But focusing
5 on what's in front of us today, the DCM rule, the
6 one place where this issue could be addressed is
7 in our Core Principle 19, the antitrust core
8 principle.

9 So I just wanted to ask the staff, you
10 know, how would this work? If there were a
11 potential SEF out there or an existing SEF at some
12 point in the future, who suspected some type of
13 illegal anti-competitive activity, what would be
14 the process by which the Commission would consider
15 that? I presume it would be something that would
16 have to be brought to our attention, brought to
17 the Commission's attention. But if that's the
18 case, what would be the process after the
19 Commission were made aware of this?

20 MS. MARKOWITZ: Well, I think it may
21 come to our -- well, let me just back up and say
22 that we are aware of recent ~~days~~ letters that were

1 submitted to the Commission, to the Commissioners,
2 and to us about potential problems with
3 competition between existing DCMs and the SEFs.
4 And we are cognizant of the concerns because in
5 those couple of days, it's something that was not
6 addressed particularly in this rulemaking.

7 We recognize the concerns, and we fully
8 intend to fully explore those concerns and work
9 with all the Commissioners and their offices as to
10 delve into these concerns. It's fairly
11 complicated. Issues that are raised, antitrust
12 theory issues as well as some factual issues. So
13 we can't really opine on the antitrust or other
14 kind of legal basis for this.

15 I can address how this may come to our
16 attention outside of the letters that we've
17 received, which may be a rule that one of the
18 exchanges may promulgate and self-certify to us
19 saying that they are going to maybe bundle or cut
20 fees, and that's something that we would then have
21 an opportunity under our Part 40 to review. And
22 we have a 10-day, but with the option if it's

1 complicated and novel to turn it over to a 90-day
2 review. And we take every opportunity to do that.

3 COMMISSIONER WETJEN: Well, I appreciate
4 that answer, Nancy, and that's the answer I was
5 looking for. I think the point I was trying to
6 get across to the public and, in part, to these
7 same people that you heard from was that we do
8 have the tools available to us through this rule
9 to respond to any kind of behavior like that even
10 if it wasn't specifically addressed in this rule
11 in quite the way that they might've expected. So
12 I appreciate that answer. Thank you. That's all
13 I have.

14 CHAIRMAN GENSLER: Can I just follow up
15 on Commissioner Wetjen's question? I think that
16 he's absolutely right that we have that
17 opportunity. We used it once when -- sorry, it
18 was called ELX, right? It was under Core
19 Principle at that point.

20 MS. MARKOWITZ: Eighteen at the time.

21 CHAIRMAN GENSLER: What was it called?

22 MS. MARKOWITZ: Eighteen at the time.

1 CHAIRMAN GENSLER: Eighteen. Core
2 Principle 18, which was -- so there is an example
3 at least in my nearly three years here, one
4 example where ELX raised, in essence,
5 anti-competitive issues, and the Commission took a
6 lot of time and the Commission staff took a lot of
7 time addressing that. So that is an example of
8 it.

9 I think the bundling issues also relate
10 to another provision of Dodd-Frank, that Congress,
11 to promote competition amongst trading venues as
12 Commissioner Wetjen noted, also provided that
13 clearinghouses provide non-discriminatory open
14 access to trading venues. So I think that's a --
15 and I would hope that during this period, whether
16 it's a month, whether it's three months, but
17 whatever time we take as we're considering Core
18 Principle 9 and the SEF rules that market
19 participants continue to give us their best
20 thoughts as to the intersection of
21 non-discriminatory open access as well, that swap
22 execution facilities really are not required by

1 Congress to be vertically integrated with a
2 clearinghouse, but have access on a
3 non-discriminatory basis. And sometimes bundling
4 to one person appears non-discriminatory, but to
5 another person appears to be discriminatory. And
6 that would be helpful to understand.

7 COMMISSIONER WETJEN: I appreciate your
8 comment, Mr. Chairman. Again, I think the
9 importance here is that the Commission has
10 historically shown a real responsiveness to these
11 types of concerns, and you gave one example -- and
12 it took place before it came -- but that should be
13 reassuring to people as well.

14 CHAIRMAN GENSLER: If there are no
15 further questions --

16 COMMISSIONER CHILTON: I have one quick
17 -- I'm sorry.

18 CHAIRMAN GENSLER: Commissioner Chilton.
19 No, no, this is helpful.

20 COMMISSIONER CHILTON: You know, I'm
21 wondering. I've been a little bit concerned about
22 the APA and comments that we get past the comment

1 period. And I just wonder -- I don't have a firm
2 opinion on this, but with regard to Core Principle
3 9 if we should open up the comment period for some
4 length of time certain. I don't know what it
5 would be or what staff or you, Mr. Chairman,
6 think. But I'm just curious whether or not we
7 should do that because the comment period is
8 closed on this. We're doing the rule.

9 CHAIRMAN GENSLER: But as -- Mr.
10 Berkovitz, you can come forward and let us know.
11 You're going to get a mic, question here. We've
12 used our discretion to continue to take comments,
13 post them on our website, post the meetings as
14 well as the actual comments. But, Dan, do you
15 want to address --

16 MR. BERKOVITZ: Generally the staff has
17 been operating under a policy of accepting late
18 comments, provided that it's not so late in the
19 process that it would actually impede the ability
20 of the Commission to deliberate. So until very
21 close up to the Commission's consideration, the
22 staff has been exercising its discretion generally

1 to consider late comments.

2 CHAIRMAN GENSLER: And does that -- I
3 mean, you feel comfortable that we could do that
4 in this circumstance?

5 MR. BERKOVITZ: The staff could continue
6 to exercise that discretion, yes.

7 CHAIRMAN GENSLER: And can we direct
8 them to continue to do that discretion?

9 MR. BERKOVITZ: Certainly. Certainly.

10 CHAIRMAN GENSLER: So following
11 Commissioner Chilton's suggestion on hearing the
12 public, I'm directing you all to continue to
13 consider and post into the administrative record
14 and on to our public website so everybody can see,
15 and there's transparency.

16 COMMISSIONER CHILTON: Yeah, that's
17 good. Thank you. You know, my concern in general
18 is, you know, we set these timelines that say
19 we're going to accept comments until this date,
20 and then we have -- we've provided flexibility to
21 staff to still look at things afterwards. Well,
22 you know, you've got a lobbyist or you're a big

1 firm and you know how we operate. You know, you
2 can come in and talk to us. But the general
3 public may not be aware that you can continue that
4 and that we do have this discretion.

5 So I'm fine going forward, as the
6 Chairman suggested. But that's my -- had been my
7 concern.

8 CHAIRMAN GENSLER: And to give a little
9 bit more transparency. And I've yet to look at
10 Commissioner O'Malia's list, but I will give
11 thoughts to it even before it goes on the website
12 hopefully. But our hope is, and I think, Nancy,
13 you can give us feedback because the relevant
14 folks -- Bella and others -- report into DMO is to
15 get to a version to put in front of Commissioners
16 either by the end of this month or early in June.
17 I see Bella there. She might be wincing a little
18 bit as to when you think you would be getting a
19 SEF document in front of Commissioners.

20 But if that were by in June, then we
21 could possibly be taking it up and voting on it in
22 July. Bella, is that, you know, roughly possible,

1 or is it probably later?

2 MR. SHILTS: I think our goal is to have
3 a draft early June to --

4 CHAIRMAN GENSLER: And then
5 Commissioners could start to give feedback and so
6 forth. Yeah.

7 MR. SHILTS: Yeah, sometime in June,
8 yeah.

9 COMMISSIONER SOMMERS: I have a question
10 on the same subject.

11 CHAIRMAN GENSLER: Sure.

12 COMMISSIONER SOMMERS: If we were to
13 propose something or try to come up with something
14 completely different than the 85 percent forced
15 delisting that we put out in 2010. Would we be
16 able to just go final with that without soliciting
17 comment?

18 CHAIRMAN GENSLER: I think Dan's going
19 to come back up and best be able to answer that.

20 MR. BERKOVITZ: In terms of final from
21 the -- what the Commission could do in a final
22 rule, variations from the proposed rule, the basic

1 test is whether the final rule would be a logical
2 outgrowth from the proposed rule, so it would
3 depend on exactly what the final rule was. But as
4 long as it was something that the public had an
5 opportunity to comment on, and then the particular
6 could be termed a logical outgrowth of what was
7 proposed. So it could be different, but it would
8 be a logical outgrowth.

9 CHAIRMAN GENSLER: Yeah. I mean, an
10 example is the block area we re-proposed. I mean,
11 we have a couple of others that weren't as noted
12 as the block rule, but we re-proposed, went
13 straight through processing, though. Again,
14 didn't get a lot of publicity. And other
15 circumstances where we have -- it's been a logical
16 outgrowth, and we've often been less prescriptive.
17 We've, I think, been advised that we can finalize
18 in those circumstances.

19 COMMISSIONER CHILTON: So, Dan, if we
20 went -- hypothetically, if we went one percent or
21 we went 100 percent, would those be logical
22 outgrowths?

1 MR. BERKOVITZ: I think it's difficult
2 to -- I wouldn't want to give a definitive answer
3 right here and now. But the fact --

4 COMMISSIONER CHILTON: Theoretically it
5 could potentially be a logical outgrowth.

6 MR. BERKOVITZ: If it's --

7 COMMISSIONER CHILTON: Two caveat words
8 there, "theoretically" and "potentially."

9 MR. BERKOVITZ: Yes. Yes. Yes, I would
10 agree on that, Commissioner.

11 COMMISSIONER CHILTON: Thank you.

12 MR. BERKOVITZ: Yes.

13 COMMISSIONER O'MALIA: Mr. Chairman,
14 again, we delayed Core Principle 9, not because it
15 was a bandwidth problem. We could've voted yes or
16 no on Core Principle 9 and we would've had, at
17 least in my opinion, a different outcome. But I
18 think we were searching for the right answer on
19 execution. So I do hope, and this is an appeal to
20 the public, so long as we have the opportunity,
21 and you've instructed the staff to talk about
22 this, you know, putting this in a box, the four

1 corners of what is clearing -- the trading mandate
2 going to be. The issue of straight through
3 processing and clearing that you mentioned, and
4 the execution on DCMs versus SEFs. All of that
5 comes into play.

6 You know, we need input from the public
7 on how that will impact trading in this market,
8 the new larger Dodd-Frank regulated market. So I
9 think if anybody's listening and watching, and I
10 suspect a few are, think about it. Provide
11 comment. The door, window, whatever is open, and
12 that would be helpful.

13 I would urge that we do a roundtable
14 because then you could sit down and have that, and
15 it's open. Everybody would see that. It would be
16 the public could see it to Commissioner Chilton's
17 point, and it wouldn't be a bunch of, you know,
18 high-paid lobbyists and firms here that would have
19 an input on this, but people could watch an open
20 meeting and discussion about a roundtable. And I
21 think that would be -- then we could have all the
22 points discussed in the trade-offs.

1 Commissioner Sommers?

2 COMMISSIONER SOMMERS: Aye.

3 MR. STAWICK: Commissioner Somers, aye.

4 Mr. Chairman?

5 CHAIRMAN GENSLER: Aye.

6 MR. STAWICK: Mr. Chairman, aye. On
7 this question, the yeas are five, the nays are
8 zero.

9 CHAIRMAN GENSLER: Thank you, Mr.
10 Stawick. Thank you to all the Commissioners.
11 The ayes being unanimous, we'll be
12 sending it to the Federal Register. Do I need a
13 unanimous consent on technical corrections?

14 MR. STAWICK: Yes, sir.

15 CHAIRMAN GENSLER: So I ask for
16 unanimous consent on also allowing for technical
17 corrections?

18 (No response.)

19 CHAIRMAN GENSLER: Without objection. I
20 want to thank Nadia, Nancy, Rick, David, Rachel,
21 and Mike, who sat at the table, but all of the
22 many other people, probably dozens, who have

1 worked on this. I think it is a very important
2 rule to help promote the transparency reforms of
3 Dodd-Frank, but also to give clarity to these
4 exchanges in contract markets on how to best
5 comply, and, where appropriate, to ensure that
6 they're not competing on risk mitigation and other
7 things, that futures commission merchants and
8 market participants have sort of something
9 consistent to work with. So I thank you. I know
10 it's been a lot of work, and this is hundreds of
11 detailed provisions, but I thank you all.

12 If there's nothing else, I'll take a
13 motion to adjourn the meeting.

14 COMMISSIONER SOMMERS: So moved.

15 COMMISSIONER O'MALIA: Second.

16 CHAIRMAN GENSLER: All in favor?

17 (Chorus of ayes.)

18 CHAIRMAN GENSLER: Any opposed?

19 (No response.)

20 CHAIRMAN GENSLER: We all are unanimous
21 on adjournment. Thank you.

22 (Whereupon, at 11:03 a.m., the

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PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

I, Christine Allen, 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: January 14, 2013

