UNITED STATES OF AMERICA

COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING ON THE SECOND SERIES OF
PROPOSED RULEMAKINGS UNDER THE DODD-FRANK ACT

Washington, D.C.
Tuesday, October 19, 2010
PARTICIPANTS:

Commission Members:
- GARY GENSLER, Chairman
- BART CHILTON, Commissioner
- JILL SOMMERS, Commissioner
- SCOTT D. O'MALIA, Commissioner

Presenters:
- DON HEITMAN
- DAN BERKOVITZ
- BRUCE FEKRAT
- STEPHEN SHERROD
- CARL KENNEDY
- HAROLD HARTMAN

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PROCEDINGS

(9:35 a.m.)

CHAIRMAN GENSLER: Good morning. This meeting will come to order. This is a public meeting of the Commodity Futures Trading Commission to consider issuance of the following proposed rules under Dodd-Frank Wall Street Reform and Consumer Protection Act. First, the definition of agricultural commodity; second, large trader reporting for swaps on physical commodities; a third, preventing certain business affiliate marketing and establishing other consumer information protection, what I'll call privacy protections under the Fair Credit Reporting Act; and fourth, expanding the scope of existing privacy protections for consumer financial information under Gramm-Leach-Bliley Act.

This is our second public meeting with regard to rulemaking under the Dodd-Frank Act. Our next meeting will be actually next Tuesday, October 26, in which the Commission will consider
actually six proposed rules. These will be on anti-manipulation and disruptive trading practices, rule certifications under Part 40 of our regulations, alternatives to credit ratings, and some associated revisions to our existing 1.25 regulations, and the process, lastly, the process of reviewing swaps for clearing.

Before we hear from staff, I'd like to thank my fellow commissioners for all their work. I believe that Commissioner Chilton is on the phone -- I'm hoping -- I just want to check to see if we've got that connection. Commissioner Chilton?

COMMISSIONER CHILTON: I'm here.

CHAIRMAN GENSLER: Great. And I think that Commissioner Dunn, as it turned out, is at a doctor's appointment, right? And so I'd like to thank my fellow commissioners and also welcome the public, the market participants and members of the media to today's meeting, as well as welcome those listening to the meeting by phone and by webcast. I'm thanking the staff in advance for all their
work that's gone already, but also the work that
will come in the future as we get more public
comments, and thoughtful recommendations on how
the Commission should proceed on these provisions.

We look forward to receiving public
comment, as we said in our last meetings. These
public comments are very important to us. Each of
the rules, as well as the factsheets and questions
and answers will be posted on our website. But
before we turn to the staff presentations, I turn
to my fellow commissioners, and I think with
Commissioner Dunn not here, Commissioner Sommers.

COMMISSIONER SOMMERS: Good morning.

Thank you, Mr. Chairman. I just really briefly
want to say this morning that as we move forward
on the three proposals that we're considering
today, to help us implement provisions of the
Dodd-Frank Act, I just want to compliment the
staff of all of the rule writing teams for all of
your hard work and the long hours that you've put
in, and again want to stress that in order for us
to continue to move forward with all of the
different proposals that we have to implement to comply with this law, that the resources for this Commission are extremely important.

So thank you all, not just the rule writing teams that are here before us today, but to all 30 of the teams for all of your help, and I look forward to discussing these issues this morning.

CHAIRMAN GENSLER: Thank you, Commissioner Sommers. Commissioner Chilton.

COMMISSIONER CHILTON: I guess all I can say is, you go, Commissioner Sommers, I'm with you. Thank you. That's all.

CHAIRMAN GENSLER: Thank you, Commissioner Chilton. Commissioner O'Malia.

COMMISSIONER O'MALIA: Mr. Chairman, I'd like to thank the teams that have spent the long hours developing the rulemaking. I'd like to commend Don Heitman and his team for a well-constructed and straightforward proposal, with good questions. I'd like to thank Carl Kennedy and his team for their work on the Fair
Credit Reform Act. Protecting sensitive and personal information is always of paramount importance.

With regard to the large trader reporting proposal, I continue to have concerns with the reporting methodology being developed by the Commission. I do appreciate the hard work of Bruce and his team in putting this rulemaking together.

Mr. Chairman, the other night I was watching a profile that -- on television, a profile of the construction of a zero energy home, or a passive home, located in Maine. As the name suggests, a zero energy home means the home operates on no external energy sources. The home profiled in the segment operates on the same amount of energy as a hair dryer to keep it warm and operating. During the show, they discussed how this was possible and it came down to the foundation and how all the parts -- the doors, the windows, the air handling -- all work together to minimize energy use and optimize a solar
potential, even in Maine.

This new design concept is the first of its kind built in Maine and only the 12th built in the U.S. While I'm passionate about energy policy, the real reason I was watching the show instead of reviewing another memo or term sheet was that the home was designed and built by my younger brother, Matt, and his company, Geologic Homes.

This project made me think about what we're doing here today with these rulemakings. We're attempting to build a foundation for a new of market oversight and surveillance that is nothing like we have done so far. In particular, the large trader report is attempting to bring together information from both swaps and futures markets, to set position limits on applicable to linked contracts.

The foundation of the position limit is the reporting. However, I am concerned that the foundation will not be robust and that the large trader reports will not effectively support the
structure given that they will ultimately be
replaced by swap data repositories. Furthermore,
the temporary system is not up and running, and
the cost born by industry and the cost of the
Commission will be considerable to both
Commissioner Sommers' and Chilton's point. The
large trader reporting scheme will provide greater
insight into the OTC market, but it lacks a
fidelity required to track the individual
positions across both swaps and futures markets.

On July 19th of this year, the
Commission proposed a rulemaking on ownership and
control which was necessitated by the fact that
the existing large trader reports were
insufficient to fully capture the analysis of
dynamic and integrated trading across regulated
futures markets. In particular, the proposed
rulemaking stated that the OCR is necessary to
improve the Commission's surveillance capabilities
by "linking individual transactions reported on
exchanged trade registers with aggregate positions
reported on large trader data, the TSS and ISS
DMO would have the necessary data to reconstruct trading based on a trade register and determine how large traders establish their positions as recorded in the large trader reporting system. This is directly from the OCR rulemaking and why this is so necessary. I fear that we are rushing to implement new reporting methodologies without taking into consideration how each of the new and existing reporting requirements fit together as our foundation.

From a technology standpoint, I believe we must undertake a complete overhaul of our reporting system to clarify and streamline the process, and, at a minimum, ensure that all Commission forms are electronic and will automatically populate our trade and market surveillance systems.

Establishing and relying on a trade reporting system that lacks critical details will undermine the effectiveness of any proposed -- of any position limit proposal. The Commission will
address the position limit proposal very shortly,
and I hope to see a proposal that will: One,
protect bona fide hedgers, including looking
through the swap dealer to the actual commercial
trader to determine whether or not to issue an
exemption; two, ensure that we establish limits on
contracts that have clear price linkages based on
empirical data; and three, not adversely impact
commercial interests such as a utility that uses
these markets to hedge multi-year commercial risk
of building a power plant. Recognizing that the
Commission will spend months establishing
reporting protocols, agreeing on futures
equivalent positions and trying to prevent double
pounding or filling in gaps in the reporting of
data, I question whether we would be better off
waiting until we have a solid foundation using a
complete and accurate data from a swap data
repository and a modified ownership and control
rule before we impose hard limits on contracts
outside the most liquid swaps and futures
contracts being traded today.
In addition, because the large trader reports or swaps will be produced by swap dealers, the dealer definition will not be effective until July 2001. It might be wise for the Commission to delay the implementation of the large trader reporting scheme until the Commission rulemaking defining the swap dealer is finalized.

I would prefer the Commission take an aim ready fire approach to position limits rather that they shoot first, ask questions later. I hope the Commission will think through these concerns before implementing a reporting rulemaking. Thank you.

CHAIRMAN GENSLER: Thank you, Commissioner O'Malia. We'll hear from the large trader reporting system group, but I think that we are very much, all five of us, taking an approach that we're aiming first. So all of what we're doing and all of our good collaboration, I think there's even a question in the large trader reporting as to whether it should be delayed until the swap dealer definition is defined in that
rule.

COMMISSIONER O'MALIA: Agreed.

CHAIRMAN GENSLER: Before I turn to the
presentations, though, I would like to note for
the record that I am aware that due to a
publishing error, the notice of this meeting was
not published in the Federal Register until
October 14th. We're learning a lot about Federal
Register releases and getting things there and so
forth.

So in order to ensure that we conduct
this meeting in accordance with the Sunshine Act,
the chair will entertain a motion that the
business of the Commission necessitates the
holding of this meeting today.

COMMISSIONER SOMMERS: So moved.

COMMISSIONER O'MALIA: Second.

CHAIRMAN GENSLER: All in favor.

GROUP: Aye.

CHAIRMAN GENSLER: Any opposed? The
ayes having had it, then we can conduct this
meeting I guess in the way that we're supposed to.
And then, also, before we proceed to the proposed rules we'll be considering, we'll need to deal with a matter of practice and procedure.

Commissioner Dunn has an unavoidable conflict today and is unable to attend this meeting either in person or by phone. He's requested that he be permitted to vote by limited proxy for all votes taken just at this meeting.

Our general counsel, Dan Berkovitz, will further describe the voting procedure. Dan.

MR. BERKOVITZ: Thank you, Mr. Chairman.

As you noted, this would be a vote by limited proxy. Limited proxy voting would allow a commissioner to delegate his or her voting authority on a specific matter in a specific way to another member of the Commission. The limited proxy could only be used particularly as specified in the proxy. It would not be a general proxy which would be delegating general voting authority to another member of the Commission, so there would be no discretion as to how to vote the proxy.
Generally, proxy voting is typically addressed in the agency's rules. In the absence of a particular rule, addressing unauthorized proxy voting, if the Commission were to vote at a meeting to authorized proxy voting at the meeting, that would be as good as authorization if there were a rule in effect. So if the Commission were to accept a motion to allow limited proxy voting, it would be effective for that purpose at this meeting.

CHAIRMAN GENSLER: And in your opinion, Dan, is this proxy voting consistent with the Commodities Exchange Act and other, you know, various federal laws?

MR. BERKOVITZ: Yes, it is. The Commodities Exchange Act gives the Commission sufficient authority to establish rules and procedures for the conduct of its meetings and governance of its business.

CHAIRMAN GENSLER: Then I'll entertain a motion to permit limited voting as described by Dan there on all votes subsequently taken at this
meeting.

COMMISSIONER SOMMERS: So moved.

COMMISSIONER O'MALIA: Second.

CHAIRMAN GENSLER: All in favor, say aye.

GROUP: Aye.

CHAIRMAN GENSLER: And nays? No. The ayes having it. Thank you, Dan.

And then we're going to turn to the rules. The first proposed rules consideration today is to define the term "agricultural commodity." Don Heitman from the CFTC's Division of Market Oversight will be presenting an overview of the proposed rule. Don.

MR. HEITMAN: Mr. Chairman,

Commissioners, the Dodd-Frank Act includes provisions applicable to a swap in an agricultural commodity as defined by the CFTC. Up to now, neither Congress nor the Commission has ever promulgated a definition of agricultural commodity for purposes of the Commodity Exchange Act or CFTC regulations. The rulemaking proposal before you
today would publish for comment a proposed
definition of the term, agricultural commodity.
The definition will be significant in two areas.

First, under Section 723(c)(3) of
Dodd-Frank, swaps in an agricultural commodity are
prohibited unless permitted under the Commission's
Section 4(c) general exemptive authority. As the
Commission knows, an advanced notice of proposed
rulemaking seeking comment on the appropriate
conditions, restrictions or protections to be
included in any rules governing the trading of
agricultural swaps is currently out for comment,
and the comment period closes on October 28th.

Second, Section 737 directs the
Commission to adopt speculative position limits
for agricultural commodities within 270 days of
the enactment of Dodd-Frank. Turning to the
definition itself, the proposed definition is
broken down into four categories. First is the
enumerated commodities listed in Section 180 of
the Act, including such things as wheat, cotton,
corn, the soybean complex, livestock and so on.
Then the second part is a general operational definition that covers all other commodities that are or once were or are derived from living organisms, including plant, animal and aquatic life, which are generally fungible within their respective classes and are used primarily for human food, shelter, animal feed or natural fiber.

Then the third category is the catch-all category for commodities that would generally be recognized as agricultural in nature, but which don't fit within the general operational definition, and that includes tobacco, products of horticultural and such other commodities used or consumed by animals or humans as the Commission made by rule regulation or order designate after notice and opportunity for a hearing.

And then finally there's a provision applicable to commodity based contracts based wholly or principally on a single underlying agricultural commodity.

Just looking quickly a little more
closely at the four categories, obviously,
category one, the enumerated commodities, is
self-explanatory. Congress has declared these
things to be agricultural commodities. Category
two seeks to draw a line between products derived
from living organisms that are used for human
food, shelter, animal feed or natural fiber, which
are covered by the definition, and products that
are produced through processing plant or
animal-based inputs to create products largely
used as industrial inputs, which would be outside
the definition.

And just to give a simple example,
polyactic acid, a corn derivative used in
biodegradable packaging, falls outside the
definition. So when you buy a bag of Sun Chips in
a biodegradable package, the chips are within the
definition, but the package is not.

Category three, as I noted, includes
commodities that don't readily fit within the
first two categories, but would generally be
recognized as agricultural in nature. And the two
examples that are in the definition are tobacco
and products of horticulture, for example,
ornamental plants. Anything else used or consumed
by humans or animals that doesn't fit within
categories one or two, the Commission would deal
with under this category on a case-by-case basis
as questions arise in the context of specific
markets or products, so there's only -- if
somebody actually develops market that we have to
take a look at would that come into play.

And then category four covers contracts
that are based wholly or principally on a single
underlying agricultural commodity. Such contracts
don't necessarily involve the potential for
physical delivery of the underlying commodity; for
example, basis swaps, calendar swaps or crop yield
swaps would all fall within this commodity based
contract category.

Category four would also include an
index based wholly or principally on a single
underlying agricultural commodity. For example,
the Minneapolis Grain Exchange corn and soybean
price index contracts, corn, wheat and soybean price index contracts.

Likewise, any index made up of more than 50 percent of any single agricultural commodity would fall within the definition. And basically we're just looking at something that would, in effect, be a proxy for a single agricultural commodity. On the other hand, a contract based on an index of the prices of multiple agricultural commodities would not fall within that fourth part of the definition. So if you had a swap based on an index of equal parts, wheat, corn and soybeans or even 50 percent corn and 50 percent wheat, it would not be wholly or principally on a single underlying agricultural commodity and would not fall within the agricultural commodity definition. Such index based swaps would not be subject to special rules, if any, that might be adopted for agricultural swaps, rather, they would appear to fall within the excluded commodity definition. So I'll be happy to take any questions.
CHAIRMAN GENSLER: Just to help for the public, because we know -- we talked about this a little bit, so biofuels are --

MR. HEITMAN: Biofuels are not an agricultural commodity, because they can't be used or consumed. Ethanol, the way it's set in the proposal, ethanol just -- it's pure alcohol which can be used in an alcoholic beverage, or so I've heard, would actually be an agricultural commodity. But denatured ethanol, which is what is used as fuel, is not used or consumed by humans as food and it would fall outside the definition. And the same with methane biodiesel. We do have a question, we do have a specific question, in the proposal that asks whether commenters would believe that methane or biodiesel or ethanol should be inside the definition, so we're asking for comment on that.

CHAIRMAN GENSLER: Great. And then one other category just because we've had in the staff discussions, lumber, where it just -- again, for the public.
MR. HEITMAN: Lumber is -- because lumber or plywood, strand board, random length, 2-by-4s, all of which could be used in the construction of human shelter, would fall within the definition. But there are other products -- and likewise maple syrup, which is also a product of trees, would fall inside the definition, but there are other products of trees: Turpentine, rosin, paper, pulp, cardboard, paper. Those are -- generally we regarded those as industrial inputs and they would fall outside the definition.

CHAIRMAN GENSLER: And again, the reason that we're doing this is -- and we haven't done this in 70 -- 80+ years, but the reason we're doing this is because the Dodd-Frank Act explicitly says --

MR. HEITMAN: It says as defined by the Commission, so.

CHAIRMAN GENSLER: So we need to define it.

MR. HEITMAN: Yes, and we need to have the definition actually, not only for purposes of
establishing, you know, what would fall under the agricultural swaps rules and what would fall under the spec limits for agricultural commodities, but, in fact, you need it even sooner than that because the first speculative position limits rules are going to be for the exempt commodities, and the definition and the act of exempt commodity is anything that's not an excluded or an agricultural. So you have to know what an agricultural commodity is to draw the line between that and exempt. To know what an exempt commodity is, you have to know what an agricultural is, too.

CHAIRMAN GENSLER: Thank you.

Commissioner Sommers.

COMMISSIONER SOMMERS: Thank you, Mr. Chairman. My questions are primarily on category four and how you treat indices with regard to what you explained in the rule is to not allow people to evade the limitations on trading agricultural swaps. So if you have a swap that is a broad basket of different commodities, it's considered to be excluded.
MR. HEITMAN: That wouldn't be within the definition.

COMMISSIONER SOMMERS: And a basket that maybe is, although based on a number of different types of commodities, if it's just on one, like wheat --

MR. HEITMAN: Right, so if you had -- we would consider if you had an index that was made up of, you know, soft red winter wheat, CBOT soft red, Kansas City hard red, and Minneapolis, you know, if you had all -- an index made up of just the different varieties of wheat, we would consider that nevertheless an index that's primarily -- or wholly wheat and that would be within the definition. Or likewise, if you had an index of the soybean complex and they mix it with soybean, soybean meal, soybean oil, we would consider that within the definition.

COMMISSIONER SOMMERS: If you could just explain a little bit about your analysis of how you decided where to draw the line, and especially when it comes to the imposition of speculative
limits, if you draw the line at one or two
commodities being on the agricultural -- within
the definition, and if it's above that, it's
outside the definition, if it's potentially a way
for people to avoid speculative limits on those
commodities.

MR. HEITMAN: Well, the basic idea was,
we wanted to avoid somebody using an index as a
proxy for a single commodity. As far as
speculative position limits goes, we didn't --
we're not expecting that the definition will have
a great deal of impact on speculative position
limits because the limits are not going to be set
based on some -- on the big, broad definition.
They're going to be based on the characteristics
of each individual contract and the underlying
cash market and deliverable supplies and so forth.

COMMISSIONER SOMMERS: I have one other
question with regard to onions. In the
release, you talk about how onions are, of course,
prohibited, that the trading of onion futures,
because of the way the new law is structured, that
may not be the case for onion swaps. If you could explain.

MR. HEITMAN: Yes, onions are a unique case because in 1958, the onion farmers who were concerned that the onion futures market was creating unwarranted volatility in their cash market got their congressional representative to sponsor -- who was, by the way, Jerry Ford -- to sponsor a legislation that put onions in a special class, took onions out of the definition of commodity, and also specifically prohibited the trading of futures, of onion futures.

And there were two groups of people that were happy about that, the first being the onion farmers and the second being the economists, the agricultural economists. And, in fact, a few years after the ban went into effect, the two different, very respected economists did studies that showed that, in fact, there was more volatility in the onion market, in the cash market for onions, before and after the period of futures trading than there was while there was an onion
futures market in operation.

In fact, one of the members of our team found a magazine article by somebody who's an onion farmer in Michigan, and he said, well, my dad was an onion farmer and he was behind one of the guys behind this move to get onion futures trading banned, but now I'm not so sure it was a good idea and I kind of wish we had an onion futures market.

Nevertheless, the law is clear and we don't do anything to disturb that. Onion futures trading will be prohibited. However, the -- under Dodd-Frank, the definition of swap in Section 1(a)(47), is not limited to transactions based on commodities as defined in Section 1(a) of the Act. Therefore, under the Act as amended by Dodd-Frank, a swap could be based on an item that is not defined as a commodity. So, therefore, it would seem that onion swaps would be permissible, even though onion futures aren't, but they would not be considered swaps in an agricultural commodity.

COMMISSIONER SOMMERS: Thank you, Don.
CHAIRMAN GENSLER: If I might, so you're saying onion swaps would be allowed under Dodd-Frank because that's the reading of the statutory context?

MR. HEITMAN: That's what the general counsel has said, but they wouldn't be a swap in an agricultural commodity.

CHAIRMAN GENSLER: Dan Berkovitz, is that -- do you want to go to the mic so he's not just impugning? I mean, you're from Michigan, is that right, Dan?

MR. BERKOVITZ: Indiana.

CHAIRMAN GENSLER: You're from Indiana?

MR. BERKOVITZ: Yeah.

CHAIRMAN GENSLER: You work for Carl Levin from Michigan?

MR. BERKOVITZ: That's correct.

CHAIRMAN GENSLER: All right. I knew there was a Michigan connection.

MR. BERKOVITZ: Don is correct, if an onion is not a commodity, then it's not an agricultural commodity.
CHAIRMAN GENSLER: That's going to burn up the nightly news, I'm sure, on this subject, but all right. And so you're defining an onion swap as not an agricultural -- it's not an agricultural commodity because it's not a commodity?

MR. HEITMAN: Right.

CHAIRMAN GENSLER: I see, okay.

Commissioner Chilton is on the phone.

COMMISSIONER CHILTON: I'm just curious if we've received any sort of general comments on this proposal.

CHAIRMAN GENSLER: No, we haven't gotten anything on the share point site about the agricultural commodity definition. And, in fact, we have -- we've only gotten one general comment letter from the National Grain and Feed Association that treats a number of different things and has a paragraph about agricultural swaps, and that's the only thing we've gotten so far on the advanced notice of proposed rulemaking. But again, the comment period closes on the 28th,
and so all the comments will be pouring in on the 27th or the 28th. We never seem to get them in advance.

COMMISSIONER CHILTON: Okay, thank you.

CHAIRMAN GENSLER: If there are no further questions, I guess it says I'm supposed to go -- so do I need to vote now or just go forward? Well, I think I just go forward.

The second set of proposed rules being considered today -- what's that? I've moved to the vote, that's great. All right. It's not written there. All right, then I'll follow. So do I hear a motion on this rule?

COMMISSIONER SOMMERS: So moved.

COMMISSIONER O'MALIA: Second.

CHAIRMAN GENSLER: All in favor.

GROUP: Aye.

CHAIRMAN GENSLER: And I have a proxy -- it's just a voice vote, but there is a proxy there, okay. Nays? The vote being unanimous, 5-0, we'll be sending it to the Federal Register. Thank you.
MR. HEITMAN: Thank you very much, because I had sent a memo to the legal assistants that said if there were three votes against this, I was going to have to change my name and move to Canada to avoid embarrassment.

CHAIRMAN GENSLER: Thank you, Don, terrific work. We look forward, Don, to you being back in front of us on agricultural swaps, as well.

And I think the second set of proposed rules being considered today prescribes a large trader reporting mechanism with regard to physical commodities. Bruce Fekrat from the Commission's Division of Market Oversight will be presenting, along with Steve Sherrod, who the public has gotten to know a lot on -- who heads up our surveillance part, are going to report on this proposal on large trader reporting. So I'm going to recognize Bruce and Steve.

MR. FEKRAT: Good morning, Mr. Chairman, Commissioners. Today's staff is recommending the
rulemaking to establish position reports for certain physical commodity swaps. The proposed regulations would establish a reporting regime for certain physical commodity swaps that is analogist to the Commission's large trader reporting system for commodity futures and options contracts traded on the designated contract markets.

Under the proposed regulations, certain firms would file reports with the Commission daily for reportable positions in the physical commodity swaps. The Commission's existing large trader reporting system requires futures Commission merchants to file reports with the Commission on a daily basis for positions that are reportable.

There are two sources for position reports under the proposed regulations. First, for clear swaps, clearing organizations and their members will provide reports. Second, for swaps that are not cleared, the swap dealers would provide position reports on their own positions and also on the positions that are large enough that meet the threshold for their reportable
counterparties.

Swap positions that are economically equivalent to futures contracts are a part of this proposed rulemaking, and we've listed 46 physical commodity futures contracts in the proposed regulations that are listed on DCM's. And the swaps that are covered are swaps that are linked to these 46 contracts. The list includes futures with the highest level of open interest, as well as other futures that staff believes may underlie a significant number of swaps.

For reporting purposes, swap positions would be converted into futures equivalence. A reportable position is 50 futures contracts in a single month. The proposal includes numerous examples of how a firm should convert a swaps position to a futures equivalent position. For cleared swaps with an option component, the clearing organization would also provide the appropriate delta, that is, the risk factor would suggest the futures equivalent position to account for optionality. For swaps that are not cleared,
the swaps dealer would report on a gross basis and on a delta adjusted basis.

Reporting, as I mentioned, would be on a daily basis. However, the proposed regulations would be only after a reasonable period of time to permit firms to program or purchase software. Staff envisions an effective date of between 6 to 10 months following the publication of the final rulemaking.

Swap position reports would be filed electronically with the Commission in a manner similar to that of large trader reports currently. The swap reports would give the Commission visibility into the physical commodity swaps markets and provide the Commission with information on large holdings of physical commodity swaps that are economically equivalent to physical commodity futures contracts. Part of this visibility is currently available to the Commission by way of special call on persons holding reportable positions in futures contracts. However, the Commission lacks a regular,
consistent and comprehensive data reporting system for swaps.

Staff will use the swaps data to improve the process for surveillance of the underlying futures contracts because the reportable swaps are economically equivalent to exchange traded futures contracts. The trader could attempt to distort the price of a futures contract to cause favorable payment under a related swaps contract.

Staff also envisions using the swaps data to facilitate review of the need for position limits on a trader's aggregate positions and cause physical commodity futures contracts and physical commodity swaps that are economically equivalent to the futures contract.

If the Commission adopts aggregate position limits, the swaps data will be essential for staff to conduct surveillance and determine compliance with such limits. Congress directed the Commission to consider whether such position limits are appropriate within 180 days of enactment of the Dodd-Frank bill and 270 days for
agricultural commodities.

Finally, the proposal includes a sunset provision. Staff envisions as swap data repositories may eventually be capable of processing positional data in a manner that could potentially be redundant with the collection of swaps positional data under the proposal. The Commission at that time would issue an order rendering the regulations for positional reporting ineffective. However, to expedite the regular collection of swaps data both for surveillance usage and to facilitate the consideration of establishing and enforcing aggregate position limits, staff recommends that the Commission publish the proposed regulations for comment in the Federal Register.

I and Steve, we would be happy to answer your questions.

CHAIRMAN GENSLER: I think I'm supposed to actually entertain a motion before I ask questions, now that I remember how we're supposed to do this. So I'll entertain a motion on the
proposal and then we'll ask the questions.

COMMISSIONER SOMMERS: So moved.

COMMISSIONER O'MALIA: Second.

CHAIRMAN GENSLER: So now we'll ask questions. What's that? No, I'm not voting, I'm asking questions.

I'm supportive of this proposal, but I just wanted to ask, there's this interplay of timing between swap data repositories that are supposed to have all swaps data at some point in time and these large trader reporting. And as Bruce just said, even this large trader reporting will have some phase-in. Staff has not yet made a recommendation, but it could be as much as, you know, six months or longer. So how do you see the interplay of this large trader reporting and swap data repositories?

And I was glad to see there's a sunset that we can, in essence, by Commission order, relieve the marketplace of this reporting requirement if and when swap data repositories are up. But how do you -- just help us through that
timing. Is that sort of a one-year process, a
two-year process? I mean, how long do you
envision that we'll have this before swap data
repositories?

MR. FEKRAT: We've been -- the
Commission has been directed by Congress to set
position limits, as I said, within 180 days and
270 days for agricultural commodities. In order
to be able to do that while swap data repositories
are not available, the Commission would need some
reporting and visibility into the swaps market for
economically equivalent swaps. The interplay
between position reports that would be collected
under the proposal and swap data repositories are
dependent on the timing of when swap data
repositories would be up and functioning and
capable of collecting positional data. That could
be some time. It could be one year, two years,
maybe further out than two years.

So this would be an interim transitional
system to collect data. And certain aspects of
this position reporting proposal could be plugged
into the swap data repository. So we have positional data that's being collected here, and certain data may be difficult for swap data repositories to collect, such as deltas and futures equivalent calculations. So another interplay is plugging that flow of data from a large trader reporting system into swap data repositories.

CHAIRMAN GENSLER: I think the staff has done excellent work. I would be supportive when the swap data repository team reports to us, which I think is in November. It's now just made news, but, I mean, I think they're scheduled up in a few weeks, that include the delta equivalence that you put here and the futures equivalence and the really strong work that's here. So it's my hope that ultimately swap data repositories would be able to do this. I mean, I'm supportive of this sort of as an interim, but I'm hopeful that, you know, we can get to the point where swap data repositories would do this.

MR. FEKRAT: I think we're definitely
supportive of that, as well, and we will -- we've already started to communicate with the team that's working on swap data repositories to make sure that that happens.

CHAIRMAN GENSLER: Commissioner Sommers.

COMMISSIONER SOMMERS: I actually have a concurring statement regarding this proposal. Also I have questions, but I'll go ahead and read my concurring statement.

I support this proposal to receive daily position reports for physical commodity swaps and swaptions because I believe it furthers our continued effort to expand transparency into swaps markets and because I believe it's critical that the Commission receive this information as soon as possible. I recognize that this proposal is a precursor to the Commission moving forward with its proposal on the imposition of position limits.

That said, my vote in support of this proposal today should not in any way be interpreted as expressing support for moving
forward with the imposition of position limits by
the deadlines set forth in Dodd-Frank. In July and
August of 2009, the Commission held three public
hearings to discuss the imposition of position
limits in energy markets. Five months later, in
January of 2010, the Commission issued a proposed
rule imposing position limits in four enumerated
energy contracts.

I had grave concerns about moving
forward with position limits on those four
contracts and accordingly voted against the
proposal. My grave concerns about moving forward
with the position limits have not been eased, and,
in fact, have only been heightened by certain
provisions of Dodd-Frank.

Second 737 of Dodd-Frank states that the
Commission shall, by rule, regulation or order,
establish limits on the amount of positions as
appropriate that may be held by any person. This
section requires the limits to be aggregated
across markets and related products and to be
imposed within 180 days for energy and metals and
270 days for agricultural contracts.

In my view, no position limit is appropriate if it is imposed without the benefit of receiving and fully analyzing complete data concerning the open interest in each market. Only then is the Commission able to properly consider the size of each market and calibrate a limit that is appropriate for each market. Currently, the Commission does not have complete data and will not have complete data until swap data repositories are up and running and all swap market data is reported to swap data repositories or to the Commission.

I believe that, optimistically, the earliest this reporting can happen will be by the end of 2011. Because of the 180- and 270-day requirements in Dodd-Frank, as we sit here today, the Commission is tentatively planning a November 30th public meeting to vote on proposed speculative limits for exempt and agricultural commodities. By November 30th, the Commission will not have garnered any data from the proposed
rule we're discussing today because it or some
modified version of it will not be effective in
final form by November 30th.

In addition, by November 30th, swap data
repositories will still be about a year away from
operating. Even if the proposed rule we are
discussing today were effective by November 30th,
it will not provide complete information
sufficient to impose position limits. Under these
circumstances, when considering the imposition of
aggregate position limits on exempt and
agricultural commodities, I believe that the
Commission should find that imposing such limits
is not appropriate in the absence of full and
complete data and analysis of the open interest of
each market. I believe it is a mistake to
interpret the arbitrary 180- and 270-day deadlines
as somehow trumping the requirement that the
Commission make an appropriateness determination
before imposing any position limit.

This is a view -- an issue that I will
be following closely and I look forward to hearing
the views of the public and market participants as they comment on this issue. Thank you.

CHAIRMAN GENSLER: Thank you, Commissioner Sommers. Commissioner -- did you have questions?

Commissioner Chilton.

COMMISSIONER CHILTON: I'm actually somewhat sympathetic to the predicament that we're in that Commissioner Sommers described, sort of putting the cart before the horse to some extent. Even when we have talked about this, you know, a year ago in our hearings and then in January, one of the suggestions I had in general on limits was that we do no harm, and that we, you know, sort of err on the high side, and that we can further calibrate in the future, and so I still think that's the way to go forward. And given what, you know, we've seen from the large trader reports, which I think are very helpful and I don't want to get rid of them until we are absolutely sure that we're going to have what we need in the swaps data repositories, that, you know, there is large
concentrations which I think are too high in metals, in energy, and even in ags. And so, you know, I think that we do need to go forward with it. You know, it is the law.

That doesn't mean that I'm not sympathetic to what Commissioner Sommers says, but I still think we need to go forward. We just need to be extra careful and find that right line to walk. Thank you.

The only question I have is whether or not we received any comments on this specific proposal that we're going to be putting out today, hopefully.

MR. FEKRAT: Whether we will receive comment or have?

COMMISSIONER CHILTON: No, I know we'll receive comments. Have we received any general comments so far?

MR. FEKRAT: I believe we've received one comment on this rulemaking.

COMMISSIONER CHILTON: Who was that from and what did they say?
MR. FEKRAT: It was from a law firm, and I believe it was on futures equivalence describing some of the potential difficulties in converting swaps into futures equivalence.

COMMISSIONER CHILTON: Okay. I think you've done a good job on this. In general, I want to make sure that everybody has looked at every comment that comes in, even if it's before now, and make sure that we've sort of addressed it. But I think you've done a good job on this, and I'll certainly support it. Thank you.

CHAIRMAN GENSLER: Commissioner O'Malia.

COMMISSIONER O'MALIA: Do you have questions?

COMMISSIONER SOMMERS: I do.

CHAIRMAN GENSLER: I'm sorry.

COMMISSIONER SOMMERS: That's okay. My questions are generally about assumptions that we may be making about when we're going to get the data. Do you know, or when do you think we'll start receiving the position data, how quickly are we going to require that they start reporting,
those kinds of issues, to give us a general idea?

And then, in addition to that, when we issued the
special call in 2008, we had a lot of, you know,
calibrations in the kind of data that we received
and making sure that it fit into the system. So
how long do you think it will take us or do you
think that we are, because of the special call,
already completely capable of receiving what we're
going to be asking for?

MR. FEKRAT: When we wrote this or when
we put together some of the recommendations in the
proposed rules, we took -- we put a lot of effort
into attempting to be very clear on the type of
information we would want swap dealers and
clearing members and clearing organizations to
provide. And we provided -- we have two
appendices. One is on futures equivalence, and
that is key, and we took quite a bit of time to
put that together. So on the front, we believe
that that will cut out a lot of time in
calibrating and conversion issues that may come
up.
In terms of how quickly we would get the data, typically with something like this, once it's proposed, and if it's something that will be supported by the Commission, firms would probably start getting prepared for it almost immediately. And from the point that something is proposed to the point where it becomes final, in those months, there would be a lot of communication with these firms, a lot of planning, a lot of preparation. So hopefully, when this goes final, we would be able to get -- to collect the critical data that we would need for position reports.

COMMISSIONER SOMMERS: And are we expecting that we will have that finalized before we'll finalize the position limits? So within 30 or 60 days, we'll have this finalized?

MR. FEKRAT: No, we won't. We will not have it finalized and it won't be implemented in that short a time frame. With position limits, we have to address that separately and consider all these issues and consider what should be the base of whatever the calculations are based on in the
absence of data on swaps, so we would consider
that fully, and we are.

COMMISSIONER SOMMERS: Thank you. I
guess I would just say that although I think that
the question that has been added regarding the
definition of a swap dealer and whether or not
this should be contingent on the finalization of
that definition, I think it's completely
appropriate to add that to this release. But that
being said, I think that a lot of the issues that
Commissioner O'Malia discussed in his opening
statement are also an integral part of making this
all fit together, so maybe not just the
definition.

CHAIRMAN GENSLER: Commissioner Sommers,
before I pass it on, I think that all five of us
are grappling with the timeline here. Congress
has mandated position limit rules in this 180- and
270-day period, so, as you said, we've calendared
a November 30th. There'll be other subjects, by
the way, in November, and it's not our only
November meeting. But we calendared a meeting,
and so between now and November 30th, the five of us have to, in compliance with the Sunshine Act and our little bilateral discussions, try to come together with staff as to how we do that, recognizing we don't have the data yet. I think we all five know that.

This rule I'm supportive of because I think it would also give us data for surveillance purposes and, hopefully, it will sunset once the swap data repositories are in place. But I gather this rule really -- we won't be getting data until next summer or next fall from, just because we have to finalize it, people have to have time to implement it. We might, in fact, make it contingent on the swap dealer definition, that question that's in there, so that the data from this is probably, you know, next summer to next fall, but still maybe before the swap data repositories are giving us information.

So I look forward to the dialogue that we're going to have between now and November 30th, trying to thread all of this together as Congress
had mandated. Commissioner O'Malia.

COMMISSIONER O'MALIA: Thank you. The
rulemaking does a thorough job of kind of
estimating what the reporting burden is going to
be on industry. I think you have a number of over
$30 million estimated annual cost for reporting on
swaps.

As I noted in my opening statement, the
OCR rule, which we believed and you all have been
working on diligently to make sure that we have
the fidelity in the futures market, we had a
roundtable and they thought by firm it would cost
at least $18 million. Do we have a good sense of
what it's going to cost us to implement new swaps,
ISS, TSS repository, to take in the data developed
from large trader and then merge it and marry it
with the futures market data so we can see across
all markets, how long will that take and how much
money is it going to cost us? That is not in this
rulemaking and is a real concern of mine.

MR. SHERROD: You're correct that the
burden on the industry is estimated to be a little
less than $40 million per year. From our side, we will be programming, and our intention would be to absolutely be prepared to accept the data from firms in advance of any effective date. That would allow firms for say a period of a couple months to test their transmissions and for us to walk firms individually, the larger firms, through the reporting process.

In order for us to be ready, we have a substantial amount of database preparation. The collection procedures would be essentially the same process in the existing large trader reporting system. However, in order to be able to communicate with all the firms that are involved, there will be substantial resources of staff involved.

So if I were to make an estimate, it would be somewhere on the order of about $2-1/2 million per year in terms of our staff resources, both on the front end to program and then on an ongoing basis to be able to work with the firms on the receipt of the data and analyze it.
appropriately, as is the case with the Market
Information Group and the Division of Market
Oversight that works with reportable Futures
Commission merchants on a daily basis.

COMMISSIONER O'MALIA: Are we going to
be able to avoid kind of the pitfalls we have
today between ISS and TSS with some manual
searching and data entry to marry those two
databases together in order to bring the positions
together? How will we avoid that with both -- how
will we correct it in futures and then avoid it in
swaps?

MR. SHERROD: With the swaps data,
because it's end-of-the-day position data, just as
is the case with the large trader reporting
system, when a trader first becomes reportable,
they'll follow 102 for their positions. We will
then assign a special account, and that will be
able to link the swaps data with the large trader
reporting in the futures markets at the end of the
day.

The OCR, in contrast, is trying to link
the intraday transaction data with the end of the
day, and this proposal won't address that; that
problem will still exist on the futures side. And
as I envision down the road, when we have swap
execution facilities with intraday transaction
data, we will need some way to try to marry that
up with the end of the day positions of the swaps.

COMMISSIONER O'MALIA: Is this going to
be the same model of receiving and bringing data
together as we -- through the swap data repository
or are we going to -- do you have in mind kind of
a radically new idea that would be a little more
mechanical or automatic using that data that comes
in to marry all data together?

MR. SHERROD: Well, the swaps data
repositories as they come online will be more
comprehensive than this limited collection. This
limited collection is designed for large traders,
that is, a swaps participant that has a position
equivalent to, at a minimum, 50 futures in a
single contract month. So we would be collecting
data on the large traders.
It's also limited to physical commodities that are enumerated in the proposal. The swaps data repositories will be gathering data on all the different exempt and excluded commodities because the swaps data repository, as the chairman indicated, will include both the transaction data from the swaps execution facilities and, as we're likely to request in the SDR rulemaking, the positions on all swaps at the end of the day. And then the further data that would be necessary to implement and do surveillance for position limits, that would be converting those positions to a futures equivalent amount, including the appropriate risk factors, the deltas for the option-laden swap, swaptions, if you will. The SDR's may have a substantially larger dataset, and so our way of accessing that data would be different. In this case of the current proposal, the firms would be reporting directly to the CFTC on a daily basis. In terms of the swaps data repository, those entities would be receiving data on a daily basis, and then the
Commission staff would access information from the swaps data repositories.

COMMISSIONER O'MALIA: Bruce, can you walk us through kind of what end users might be able to expect in this reporting requirement, the large trader reporting requirement, and how swap dealers are going to be doing the reporting on behalf of the end users?

And Congress is very clear about protecting the bona fide hedge position of end users. How will that be taken care of and assured that end users will still have their bona fide hedge and will be able to, you know, accurately protect them?

MR. FEKRAT: The current rulemaking addresses reports, position reports, and is not coupled with bona fide hedges. For the position reports, the swap dealer, when they enter into a swap, if they're a counterparty and they -- with that swap dealer, if they can -- they would look at all the similar swaps for that single month, convert them into futures equivalent contracts,
and if it's above 50, they would submit a report
that identifies the end user as the counterparty. They would also throw in that swap, the position
that's attributable to that swap, in the same bulkhead as their own positions and report their own positions. So the end user would not be affected in that way. Anyway, they would not be subject to reporting. It would be the swap dealer who would be doing the reporting.

COMMISSIONER O'MALIA: But in protecting their bona fide hedge position, you know, they're doing commercial activities, how do we know that we don't lump them up with a swap dealer and say, well, I'm sorry, we didn't see that?

MR. FEKRAT: Well, we have an exemption in the rule that if an entity falls within the definition of a reporting entity, which is a clearing member or a swap dealer, we would be able to exempt them and make sure that that doesn't happen.

COMMISSIONER O'MALIA: I just want to be clear, to give the confidence to end users, how
they will be treated going forward in this
reporting regime?

MR. FEKRAT: We had end users in mind,
we didn't want to burden them with reporting at
this stage. They're not -- they don't have the
systems maybe in place and the sophistication with
reporting and compliance. You know, swap dealers
do an end-of-day risk analysis, and these things
may not be done at the same level of
sophistication by end users.

So we were -- we didn't want reports
from end users because we believe that the quality
of data may not be as good as the reports we would
get from swap dealers in the short amount of time
that we would be establishing this kind of system.

CHAIRMAN GENSLER: So if I can follow up
on some of the questions here. I pulled out the
statute, the 737 and the time limits and
everything, and so I just -- maybe Dan is going to
have to answer this one. But the team -- but it
says that we're supposed to, on exempt
commodities, the limits required under this
section shall be established within 180 days of
the date of enactment and then the 270, so it's on
page 355, Dan. That's what we'll be trying to do
in a proposal later in November and try to
finalize in these various dates.

Could we, if we chose to and if staff
recommended it, though, do proposals that are
finalized in these 180 and 270 days which are
formulas rather than actual numbers, so, you know,
X percent of the market, Y percent of this, you
know, et cetera, et cetera, such that -- and then
their effective date would be some subsequent date
when we actually have the data? I'm just trying
to think through whether we can skin this by doing
what Congress said in the 180 to 270 days, make a
proposal in some, I'm going to call them formulas,
but they don't really, you know, until we get the
size of the market, the formulas would have an
effective date based on the -- so that's my
question. As a legal matter, you might wish to
comment on the policy, too, with the legal
question.
MR. BERKOVITZ: I'll stick to the legal issues. And without seeing the specific proposal, it has a definitive --

CHAIRMAN GENSLER: It hasn't been created, that's just a question.

MR. BERKOVITZ: Right. I think that the Commission would have the flexibility. On the effective date of the rules under this section, the Commission would have flexibility. Typically, inherent in the rulemaking authority is the flexibility on the effective date. Also, the phrase I think Commissioner Sommers mentioned as appropriate, that if the Commission determined that the effective date -- it was appropriate to have a certain effective date based upon the data or the other considerations, that it could be under that authority, as well.

CHAIRMAN GENSLER: So you've answered half the question, an important half, is the effective date. But do you think that the rule itself could be some formula to be applied to data which we might get many months later, you know, so
that, you know, X percent or Y percent or whatever
formula the staff recommends --

MR. BERKOVITZ: I think that would be
one of the permissible avenues that the statute
would permit within the Commission's discretion to
do that, yes.

CHAIRMAN GENSLER: I'm not saying it's
the only way to thread this, but it may be one way
to thread it.

MR. BERKOVITZ: Subject to the -- if the
Commission were to establish a formula subject to
the future availability of the data to apply the
formula, that would go into that discretion as
appropriate to make the provision effective, yes.

CHAIRMAN GENSLER: It's really the
Sunshine Act, where this was not a question they
were prepared for. Are there other questions? I
know we sort of -- again, I'm going to have some
comments as Commissioner Sommers and O'Malia did.
I don't know if yours was concurring, but, I mean
--

COMMISSIONER O'MALIA: We'll find out.
CHAIRMAN GENSLER: We'll find out. But I've got a concurring statement, but rather than reading through it, I'll just have it posted on the web. So if there are no further questions, I'd like to, of course, thank Bruce and Steve, but call the vote. So all those in favor.

GROUP: Aye.

CHAIRMAN GENSLER: Any nays? It appearing unanimous, we'll send this off to the Federal Register and really seek public comment on it. Thank you, Bruce and Steve, and for your cameo, Dan.

I think that the next two rules, Carl Kennedy from the Office of the General Counsel gets to do two, and Harold Hartman. Harold is the deputy general counsel for rules, and so, in some way, Harold is working on all 30 rule sets.

Carl, you joined the agency, what month was it?

MR. KENNEDY: In July.

CHAIRMAN GENSLER: In July. It was a few days before July 21st, and we're honored that
you joined us and volunteered so quickly to be a
team lead. He's going to talk about some rules
that we needed to expand existing privacy
protections under Gramm-Leach-Bliley to include, I
guess, swap dealers and MSPs, but also to catch up
with some of the other federal regulators under
the Fair Credit Reporting Act for Privacy
Protections there, where the statute -- I guess
when the Fair Credit Reporting Act passed years
ago didn't include the CFTC under a section that
the bill now does. So if you can discuss the rule
and then we'll do as we did before.

MR. KENNEDY: Good morning,
Commissioners. Thank you, Chairman Gensler.

CHAIRMAN GENSLER: You have to -- you
can discuss it and then we do a motion, but we can
do it before, either one, okay.

MR. KENNEDY: Sure. Good morning,
Commissioners. Thank you, Chairman Gensler, for
the opportunity to present. Before I begin, I'd
like to thank my team for their assistance in
preparing the two rulemakings that we present to
you today for your consideration and vote.

The first rulemaking that I'll present today is promulgated under Section 1088 of the Dodd-Frank Act. This section sets out two amendments to existing consumer protection statutes: The Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act of 2003. Staff recommends creating a new Part 162 to include both amendments under Section 1088.

Essentially these two rules are intended to provide privacy protections to non-public consumer information held by CFTC regulatees. One rule sets out a regime for consumers to opt out of affiliate marketing solicitations; the other rule requires a CFTC regulatee to develop and implement written disposal plans with respect to any non-public consumer information in that entity's possession.

Prior to Dodd-Frank, as you've noted, Chairman, the Fair Credit Reporting Act and the FACT Act required other federal regulators to jointly promulgate affiliate marketing rules and
disposal rules. The FTC, SEC, FDIC and other federal regulators have all promulgated final rules to date. Staff believes that many of our regulatees already may be complying with the affiliate marketing rules and disposal rules of other federal regulators, so we do not believe that there will be a significant hour or cost burden associated with this rulemaking.

The staff proposes that the following types of entities be covered by this rulemaking because of the increased likelihood that they would come in contact with non-public consumer information: Futures Commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, swap dealers and major swap participants.

Title 10 does not create a deadline for this rulemaking. However, staff proposes that these rules become effective no earlier than July 21, 2011, which is the effective date of Section 1088 of Dodd-Frank and the date on which the Bureau of Consumer Financial Protection, which was
created as a result of Title 10, becomes operational.

I will now briefly describe the affiliate marketing rules. Our affiliate marketing rule gives consumers the right to block CFTC regulatees from using certain non-public consumer information obtained from an affiliate to make solicitations to these consumers.

The purpose of the affiliate marketing rules is to help consumers deal with the solicitations from businesses with which they have no prior business relationship. The rule includes a general notice requirement which provides that affiliates can only make a solicitation to a consumer based on that consumer's information if:

One, the consumer is given clear, conspicuous and concise notice; the consumer is given a reasonable opportunity to opt out of the use of their information for marketing purposes, and the consumer does not opt out. It is important to note that this rule does not prohibit the sharing of information among affiliates, but instead, only
prohibits the use of that information for
marketing purposes.

Our proposal places the responsibility
to provide an opt-out notice on the affiliate that
has the -- has or previously had a pre-existing
business relationship with the consumer. This
approach is consistent with the approach taken by
other regulators. Alternatively, a group of
affiliates may send a joint notice if at least one
affiliate has or previously had a pre-existing
business relationship.

Our proposal provides several exceptions
from the general prohibition against affiliate
marketing. Some of these exceptions include
situations where the consumer information is used
in response to a communication initiated by the
consumer and situations where the consumer
information is used to make a solicitation that
has been authorized requested by the consumer.

Our proposal provides that a consumer's
affiliate marketing opt-out election shall be
effective for a period of at least five years
commencing from the period of time that the
consumer receives the opt-out notice. A CFTC
regulatee may, however, extend the election period
beyond five years, even indefinitely.

Staff has followed the other federal
agencies in requiring that such notices be in
writing and must include, for example, the name of
the affiliate with the pre-existing business
relationship, the list of affiliates or types of
affiliates whose use of information is covered by
the notice, and a general description of the type
of information that may be used to make
solicitations.

The proposal also sets forth several
model opt-out notices in Appendix Part 162,
proposals in Part 162 that were meant to aid
entities that have to comply with these rules.
The proposal requires that a CFTC regulatee give
consumers a reasonable opportunity to opt out
following his or her receipt of the notice, and it
sets forth several examples on how a covered
entity can satisfy this requirement. Lastly, the
proposal requires a consumer be given a reasonable and simple method to opt out. Again, the proposal sets out many examples of what constitutes a reasonable and simple method, including a self-addressed stamped envelope, toll-free number, and, if the consumer elects, electronic media such as e-mail or the Internet.

I'll now provide a brief description of the disposal rules. Section 1088 of the Dodd-Frank Act also directs the Commission to promulgate rules dealing with the disposal of consumer information.

Our proposal requires CFTC regulatees to reasonably dispose of any consumer report information in their possession related to their business activities. The rule is meant to provide unauthorized access to consumer information.

The disposal rules do not define what reasonable disposal measures are. Instead, the proposal sets forth a list of examples. We believe -- staff believes that the proposal provides our regulatees with a sufficient amount
of flexibility to develop and implement a plan
that fits the size and complexity of their
businesses.

This concludes my summary of the two
rules under Section 1088 of the Dodd-Frank Act.
Thank you for your time, and I'm happy to answer
any questions.

CHAIRMAN GENSLER: I think I'm going to
entertain a motion before we ask questions.

COMMISSIONER SOMMERS: So moved.

COMMISSIONER O'MALIA: Second.

CHAIRMAN GENSLER: Carl, I can't help
I'm, you know, in the midst of some of the news in
the last couple of days about Facebook and its use
of information, so I'm trying to analogize. This
is affiliate marketing that a consumer can
basically opt out of affiliate marketing.

MR. KENNEDY: Correct.

CHAIRMAN GENSLER: Does it speak to use
by vendors, suppliers? I mean, in that other
circumstance it's apps, so I don't know what the
analogy is here, but you follow my question.
MR. KENNEDY: Yes, it does include specific rules relating to the use by service providers of an affiliate.

CHAIRMAN GENSLER: And so -- so this rule does. What we would be voting on potentially today is a proposed rule that would also limit -- you can opt out of service providers marketing to you, is that what you're saying?

MR. KENNEDY: Yes, the service provider of an affiliate that doesn't have a pre-existing relationship, you can opt out of that, as well.

CHAIRMAN GENSLER: So it's opting out of affiliates and the service providers?

MR. KENNEDY: Yeah, the service providers of those affiliates, as well.

CHAIRMAN GENSLER: I don't have any other questions. Commissioner Sommers.

COMMISSIONER SOMMERS: Thank you. I just have one question with regard to the part of the proposal that we would be proposing to adopt similar rules that other financial agencies have already finalized, and in what kind of context we
have consulted with those regulatory agencies on us adopting similar rules to what they've already done, you know, if they may contemplate changing what they've done with regard to Dodd-Frank and if we're going to be completely consistent in how those consultations have gone.

MR. KENNEDY: Yes, we have been in consultation specifically with the SEC and the FTC and FDIC on their rules, and none of those agencies contemplate changing their affiliate marketing rules or disposal rules in light of Dodd-Frank. And we have shared earlier drafts of our proposal with them, and to the extent that they had comments and we were able and it was appropriate to take those comments, we did.

COMMISSIONER SOMMERS: Thank you, Carl.

CHAIRMAN GENSLER: Commissioner Chilton.

COMMISSIONER CHILTON: We haven't received any comments ourselves on this in the general comments, have we?

MR. KENNEDY: No, we haven't received any comments from the public prior to --
COMMISSIONER CHILTON: Well, I'm hopeful that, you know, consumer groups that have been involved in this -- Public Citizen, Consumer Federation of America and others -- will comment. I think it's a good rule, I'll support it. Thank you.

CHAIRMAN GENSLER: Thank you, Commissioner Chilton. Commissioner O'Malia.

COMMISSIONER O'MALIA: Carl, you mentioned that consumers have an opt out that will last for five years. What is the process for us to extend that beyond that or make it permanent?

MR. KENNEDY: Well, the rule provides a regulatee with flexibility. They can decide to do the minimum, which is five years, or they can extend it indefinitely. So if a regulatee decides that they do not want to go through the process every five years of determining which consumers have opted out, they can just give a consumer an option to opt out permanently and they wouldn't have to monitor the phasing out of an opt out election.
COMMISSIONER O'MALIA: But we leave that to the regulatee, not the consumer?

MR. KENNEDY: Right, we leave that to the regulatee. We do not give the consumer that option.

COMMISSIONER O'MALIA: Should we?

MR. KENNEDY: Well, we do provide a process for renewal of those opt-out notices, and so if a consumer receives one opt-out notice, they are instructed that they, regarding the duration of that period and in a period of time, maybe six months before the opt-out period -- it's to elapse; the regulatee would have to provide another notice. So it would be somewhat not annoying or burdensome, but they would receive another notice within a five-year period of time.

COMMISSIONER O'MALIA: No, that is annoying, that's the definition of annoying. I'm reminded when I get those -- when my five years is up on the Do Not Call list because I begin to receive a lot more calls.

MR. KENNEDY: Right.
COMMISSIONER O'MALIA: Maybe we should consider that.

CHAIRMAN GENSLER: Can we add a -- I mean, I assume that we could add -- I'd support adding a question to that regard.

MR. KENNEDY: Sure.

COMMISSIONER O'MALIA: At least allowing them to check the "don't call me again" box as opposed to five years down the road.

MR. KENNEDY: Yes, we can add a question to the rule.

COMMISSIONER O'MALIA: Thank you.

CHAIRMAN GENSLER: I didn't mean to say that Facebook was a regulatee, but can I just confirm are they a CPO, CTA, a swap dealer?

MR. KENNEDY: Not to my knowledge, I don't believe so.

CHAIRMAN GENSLER: But if they were, then they couldn't have their affiliates or service providers market if somebody chose to opt out?

MR. KENNEDY: Correct.
CHAIRMAN GENSLER: I see.

COMMISSIONER O'MALIA: (inaudible)

CHAIRMAN GENSLER: Yes, you never know, a new SEF. So I think that -- are there any other questions on the Fair Credit Reporting Act rule? So then I will call the motion. All in favor.

GROUP: Aye.

CHAIRMAN GENSLER: Any opposed? The ayes appearing to be unanimous, we'll send this to the Federal Register with a new question as well.

MR. KENNEDY: Correct.

CHAIRMAN GENSLER: And then you wanted to do the Gramm-Leach-Bliley?

MR. KENNEDY: Yes, thank you, Chairman.

There is a second rulemaking that my team is presenting today, as I mentioned. This rulemaking is promulgated under Section 1093 of the Dodd-Frank Act. This section amends Title 5 of the Gramm-Leach-Bliley Act to affirm the Commission's authority to promulgate privacy rules protecting consumer information.

I think it's easy to get the two rules
confused as to what they cover, so I think it's important to know that this rule primarily covers non-affiliate sharing of consumer information, whereas the other proposed rulemaking presented and voted on today related to affiliate use of consumer information for marketing purposes. The Commission's rules under Title 5 of Gramm-Leach-Bliley are presently found in Part 160 of our regulations, and in general, Part 160 requires a financial institution to provide initial and annual notices to customers about its privacy policies and practices. Many of you may receive similar notices from your credit card companies and your banks because they have to provide such notices.

Also, our Part 160 rules describe the conditions under which a financial institution may disclose non-public personal information to consumers to non-affiliated third parties. And also Part 160 provides a method for customers to prevent a financial institution from disclosing this information to most non-affiliated third
parties by opting out of that disclosure.

Prior to the Dodd-Frank Act, the term "financial institution" included future Commission merchants, commodity trading advisors, commodity pool operators, and introducing brokers. As a result of the issuance of the final Forex rules in September of this year, the Commission recently added retail foreign exchange dealers to the list of entities that fall within the term "financial institution." The Commission's proposal today simply seeks to amend Part 160 to expand the scope to include swap dealers and major swap participants, which, as you know, were created as a result of Title 7 of Dodd-Frank.

It's important to note that staff used -- in our rulemaking, we use the statutory definitions of the term "swap dealer" and "major swap participant" as they may be further defined by the Commission. In addition, we propose to make other small textual changes to Part 160. For instance, as I mentioned before, Title 10 of the Dodd-Frank Act created the Bureau of Consumer
Financial Protection and transferred authority relating to consumer financial protection from several federal agencies, including the FTC. Our current Part 160 rules make reference to the FTC in several places, and so, accordingly, staff proposes to remove those references in -- the references to the FTC and replace those with references to the Bureau of Consumer Financial Protection. Like the previous rulemaking, staff proposes that these rules become effective no earlier than July 21, 2011.

And this concludes my presentation of the second rulemaking, which is under 1093 of the Dodd-Frank Act. Again, thank you for your time and I'm happy to take any questions.

CHAIRMAN GENSLER: Do I hear a motion on the 1093 rule?

COMMISSIONER SOMMERS: So moved.

COMMISSIONER O'MALIA: Second.

CHAIRMAN GENSLER: Carl, my question just is, I note that we cover swap dealers and major swap participants, but there's another
couple of new registrants, swap execution
facilities, swap data repositories and the like,
and could you just help us, why we're not covering
those. And I'm presuming we maybe haven't covered
designated contract markets in the past, but why
is that?

MR. KENNEDY: There are two reasons.
One, the Gramm -- we became a functional regulator
as a result of the CFMA to promulgate rules
relating to the Gramm-Leach-Bliley privacy
protections back in 2000. And it created -- CFMA
created a new Section 5(g), and it listed in 5(g)
Futures Commission merchants, introducing brokers,
CTAs and CPOs, but did not list any exchanges or,
you know, DCMs or FBOTs there. And so the rules
that were initially promulgated only listed those
entities that were in Section 5(g). Since that
time, the Commission, as a policy matter, has
added registrant regulatees to that list because
of the proximity or the point of contact. These
entities would have a first point of contact with
a consumer, or more likely to have a first point
of contact.

And so in promulgating -- or in proposing today's rules and developing today's rules, we've taken a consistent approach in adding swap dealers and major swap participants because staff believes that they would, again, have a first point of contact, whereas a SEF, a DCM, and even an SDR, in our view, would not have that contact, and, in fact, a consumer would more likely interact with the other intermediaries and the SDR, SEF or DCM would just receive information relating to the transaction, but not relating to the consumer specifically.

CHAIRMAN GENSLER: I'm supportive, but I'm hopeful as we consider swap data repositories and SEFs and so forth that we have appropriate confidentiality and privacy provisions which are tailored for those platforms, but that consumers still sort of get protection one place and then find that it sort of, you know, slips out through the swap data repository or elsewhere.

MR. KENNEDY: I've been in consultation
with some members of the data team and will continue to do so as they move towards providing more guidance and proposing their rules.

CHAIRMAN GENSLER: Commissioner Sommers.

Commissioner Chilton.

COMMISSIONER CHILTON: No, thank you.

CHAIRMAN GENSLER: Commissioner O'Malia.

I, too, will just have a statement that will just, you know, a paragraph on the web, but -- all those in favor.

GROUP: Aye.

CHAIRMAN GENSLER: Any opposed? The vote being unanimous, we'll also send that to the Federal Register.

I have one thing that I think will probably be -- every time we meet, I'll be saying the same thing, but I will be asking for unanimous consent to allow staff to make technical changes to the documents and the question that Carl will be adding approved today prior to their publication of the Federal Register.

COMMISSIONER SOMMERS: So moved.
COMMISSIONER O'MALIA: Second.

CHAIRMAN GENSLER: I guess we're all saying aye because it's unanimous consent. Without objection, it's so ordered.

So we've identified 30 topic areas for rulemaking that must be implemented under the Dodd-Frank Act. We're working very closely with the SEC and the Federal Reserve and the other federal regulators. Our next meeting is October 26th and we'll be covering those six topics. The reason I announce the six topics is because we've, I think, committed to do that seven days before and that's what it is.

As Commissioner Sommers mentioned, a meeting on November 30th. I'll say I think we have three meetings scheduled for November, but we'll appropriately put that in the Federal Register and we'll notice the topics of those usually seven days before.

And then we're shooting -- our current internal plan is to have either one or two meetings in December, I don't recall now, but
basically to finish this up before Christmas or
the middle part of December. And when I say
finish, it's just a set of proposals. We deeply
are committed to taking in the public comments and
then moving through the final rulemaking stage as
appropriate and taking into consideration the
public comments.

I didn't know if there were other
comments that any of my fellow Commissioners had.
Commissioner Chilton?

COMMISSIONER CHILTON: No, thank you,
Mr. Chairman. I appreciate all the work of the
staff.

CHAIRMAN GENSLER: So if there's not any
further business, Commission business, I would
entertain a motion to adjourn the meeting.

COMMISSIONER SOMMERS: So moved.
COMMISSIONER O'MALIA: Second.
CHAIRMAN GENSLER: All in favor.
GROUP: Aye.

CHAIRMAN GENSLER: The last unanimous
vote of the day. The meeting is adjourned. Thank
you all.

(Whereupon, at 11:05 a.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

I, Stephen K. Garland, 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.

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Notary Public, in and for the District of Columbia

My Commission Expires: May 31, 2014