

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING ON THE 29TH SERIES OF RULEMAKINGS
UNDER THE DODD-FRANK ACT

Washington, D.C.

Thursday, May 16, 2013

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 WETJEN, Commissioner

8 Presentation 1: Final Rule: Procedures to
9 Establish Appropriate Minimum Block Size for Large
10 Notional Off-Facility Swaps and Block Trades:

11 JOHN DUNFEE, Office of the General Counsel

12 ESEN ONUR, Office of the Chief Economist

13 NHAN NGUYEN, Division of Market Oversight

14 GEORGE PULLEN, Division of Market Oversight

15 RICK SHILTS, Division of Market Oversight

16 Presentation No. 2: Final Rule: Process for a
17 Designated Contract Market or Swap Execution
18 Facility to Make a Swap Available to Trade Under
19 Section 2h(8) of the Commodity Exchange Act (CEA);
20 Swap Transaction Compliance and Implementation
21 Schedule; Trade Execution Required Under 2h of the
22 CEA:

23 NHAN NGUYEN, Division of Market Oversight

24 RICK SHILTS, Division of Market Oversight

25 DAVID VAN WAGNER, Division of Market Oversight

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1 PARTICIPANTS (CONT'D):

2 SAYEE SRINIVASAN, Office of the Chief
3 Economist

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5 Presentation No. 3: Final Rule: Core Principles
6 and Other Requirements for Swap Execution
7 Facilities:

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9 RICK SHILTS, Division of Market Oversight

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15 Economist

16 Presentation No. 4: Anti-Disruptive Practices
17 Authority -- Interpretive Guidance and Policy
18 Statement:

19 DAVID MEISTER, Division of Enforcement

20 ROBERT PEASE, Division of Enforcement

21 JONATHAN MARCUS, Office of the General Counsel

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

2 (10:00 a.m.)

3 CHAIRMAN GENSLER: Good morning. This
4 is a public meeting of the Commodities Futures
5 Trading Commission. I'd like to welcome members
6 of the public, market participants, and members of
7 the media, as well as those listening to this
8 meeting on the phone and watching the webcast.

9 We will consider today three Dodd-Frank
10 reform rules that together bring transparency to
11 the swaps market before a transaction takes place,
12 so-called pre-trade transparency. These rules are
13 (1) procedures to establish minimum block sizes
14 for swaps; (2) a process for a swap execution
15 facility or a designated contract market to make a
16 swap available to trade; and (3) core principles
17 and registration for swap execution facilities.
18 In addition, we will consider today an
19 interpretive guidance regarding anti-disruptive
20 trading practices authority.

21 I'd like to thank Commissioners Sommers,
22 Chilton, O'Malia, and Wetjen for their

1 contributions to this rule-writing process and all
2 of the CFTC's hard-working and dedicated staff. I
3 also want to express my condolences to
4 Commissioner Chilton and all of his family for the
5 loss of his stepfather last week, Ron, and I hope
6 that Bart has been able to join us. I think he's
7 closer to family right now but I just want to
8 check.

9 Bart, are you on?

10 COMMISSIONER CHILTON: I am, Mr.
11 Chairman. Thank you for the condolences. But I'm
12 with you. Thank you.

13 CHAIRMAN GENSLER: Great. I see you're
14 on the video link. Good.

15 Today the CFTC is voting on reforms that
16 will make public transparency in the swaps market
17 a reality. These reforms will make a trade
18 execution requirement come to life. And though
19 many of the 50 or more rules we have completed
20 before today have brought transparency to this
21 once opaque swaps market, today we take a
22 significant step to open up this market.

1 I want to underscore the significance of
2 these three rules taken together. When light
3 shines on a market, the economy and public
4 benefit. These three rules -- the block swap
5 rule, the made available for trading rule, and the
6 swap execution facility rule taken together will
7 provide the public with information trade-by-trade
8 that it didn't have before. These three rules
9 taken together will provide the public with the
10 price and volume of every transaction in real-time
11 -- and I mean in real-time as Congress says as
12 soon as technologically practical. With these
13 three rules taken together, they mean that anyone
14 in the marketplace can compete and offer to buy or
15 sell a swap and can communicate that to the rest
16 of the public. And with these three rules today,
17 no longer will this be a closed, dark market.

18 The 2008 financial crisis, caused in
19 part by the unregulated swaps market, led to 8
20 million Americans losing their jobs. It led to
21 millions being forced out of their homes. And in
22 the aftermath of the crisis, President Obama,

1 along with the leaders of 20 other nations called
2 the G-20 leaders, committed during a summit in
3 Pittsburgh in 2009, nearly four years ago to bring
4 needed transparency and oversight to the swaps
5 marketplace. The leaders of the world's largest
6 economies agreed, and I will quote, "All
7 standardized OTC derivative contracts should be
8 traded on exchanges or on electronic trading
9 platforms where appropriate." It is that
10 commitment of these G-20 leaders that we come
11 together to consider to finalize rules today.

12 Congress fulfilled this commitment by
13 including trade execution requirements in the
14 Dodd-Frank Act. This means that swaps subject to
15 mandatory clearing and made available to trade
16 will move to transparent trading platforms.

17 Market participants will benefit from the price
18 competition that comes from trading platforms
19 where multiple participants have the ability to
20 trade swaps by accepting bids and offers made by
21 multiple participants. Congress also said that
22 market participants must have impartial access to

1 such platforms so they would be open and
2 competitive.

3 In addition, Congress mandated that the
4 public benefit from seeing the price and volume of
5 swaps transactions smaller than a block size in
6 real-time, or as Congress said, as soon as
7 technologically practical after a trade is
8 executed. So farmers, ranchers, producers, and
9 commercial companies that want to hedge a risk by
10 locking in a future price or rate will get the
11 benefit of this competition and transparency
12 through trading platforms called SEFs and
13 designated contract markets. These transparent
14 platforms will give everyone looking to compete in
15 the marketplace the ability to see the prices of
16 available bids and offers prior to making a
17 decision on a transaction. And by the end of this
18 year a significant portion of the interest rate
19 and credit derivative swaps market will likely be
20 in full view in the marketplace before a
21 transaction occurs. This is a very significant
22 shift towards market transparency away from the

1 status quo.

2 Such common sense transparency has
3 existed in the securities and futures markets for
4 decades, and this transparency has lowered cost
5 for investors, businesses, and consumers as it
6 shifts information from the dealer community to
7 the broader public. And it's that type of
8 transparency that Congress mandated should be
9 brought to this market, the swaps market. And as
10 Congress made clear in the law, trading on SEFs
11 and these designated contract markets will be
12 required only when it's a financial institution
13 transacting with another financial institution on
14 swaps. End-users will benefit from the access to
15 the information in these platforms but will not be
16 required to use them. Further, companies will be
17 able to continue relying on customized
18 transactions, those not required to be cleared to
19 meet their particular needs as well as to enter
20 into large block trades. And consistent with
21 Congress's directive that multiple parties have
22 the ability to trade with multiple parties on

1 these trading platforms, these reforms require
2 that market participants trade through an order
3 book and provide the flexibility as well to seek
4 requests for quotes.

5 So to be registered as a SEF, these
6 rules provide that a trading platform will be
7 required to provide an order book to all its
8 market participants. This alone is a very
9 significant feature as for the first time the
10 broad public will be able to gain access and
11 compete in this market with the assurance that if
12 they make a bid and they make an offer it will be
13 communicated to the rest of the market. This
14 provision alone will significantly enhance
15 transparency and competition in the market. SEFs
16 also will have the flexibility to trade through
17 requests for quotes. The rule provides that such
18 requests would have to go out to a minimum of
19 three unaffiliated market participants before a
20 swap is executed. This is just for those that are
21 cleared and made available for trading and less
22 than a block size.

1 There will be an initial phase-in period
2 with a minimum of two participants to smooth this
3 transition. As long as the minimum functionality
4 is met, an order book, a request for COS model and
5 so forth, as detailed in the rule, and the SEF
6 complies with these rules and the core principles,
7 the SEF can conduct business through any means of
8 interstate commerce. Yes, that includes a
9 telephone, even the mail, the Internet, computers.
10 Thus, today's rule as we consider it is technology
11 neutral.

12 Under these transparency reforms, the
13 trade execution requirement will be phased in for
14 market participants giving them time to comply. I
15 think that today's reforms also fulfill the
16 congressional mandate for the CFTC to set up
17 appropriate minimum block sizes. Trades smaller
18 than a block will be reported as soon as
19 technologically practicable, enhancing
20 transparency, and this will build upon the public
21 reporting that began last December 31st. With
22 today's trade execution reforms, all the major

1 building blocks of swaps market reform will be
2 complete -- transparency, clearing, and swap
3 dealer oversight.

4 Looking forward with over 90 percent of
5 our rules behind us if we move forward today on
6 these four rules, it's a priority that the
7 Commission finalizes guidance on cross-border
8 application of swaps market reform, ensuring it
9 appropriately covers the risk of U.S. affiliates
10 operating offshore. The Commission is also
11 pursuing an appeal of the District Court's adverse
12 ruling with regard to position limits. I have
13 also directed the staff to prepare a new proposed
14 rule for the Commission's consideration to
15 implement the speculative position limits required
16 by Dodd-Frank.

17 And with that, before we hear from the
18 staff that will consider their suggestions today,
19 I will recognize my other fellow commissioners for
20 their opening statements.

21 Commissioner Sommers.

22 COMMISSIONER SOMMERS: Good morning.

1 Thank you, Mr. Chairman.

2 This is a momentous day for the
3 Commission and for market participants because we
4 are finalizing the long-awaited trade execution
5 rules. And also for me personally because this is
6 likely the last time I will participate in an open
7 meeting to consider Dodd-Frank rules.

8 It has been an incredible learning
9 experience for me over the past three years, and
10 although I think the Commission would have reached
11 different conclusions on many of the foundational
12 rules if we had been consulted earlier in the
13 process, I really appreciate all the time that the
14 staff has dedicated to this very challenging and
15 oftentimes overwhelming task that we have been
16 given.

17 Today, we are considering rules on swap
18 execution facilities, minimum block sizes for
19 swaps, the process to make a swap available to
20 trade under 2h(8) of the Commodity Exchange Act,
21 and guidance on how we will interpret the
22 disruptive trade practices authority contained in

1 4c(a)(5).

2 That is a lot of ground to cover so I
3 will make my comments brief.

4 With respect to setting block sizes, I
5 have acknowledged in the past the difficulty of
6 establishing the appropriate minimum thresholds.
7 The goal is to promote transparency as much as
8 possible without reducing liquidity in various
9 markets. The Commission cannot achieve this goal
10 without appropriate data. When we proposed the
11 block rules, I applauded the team's effort to
12 analyze the data that was available at that time
13 in interest rates and credit default asset
14 classes, but noted that the team had only access
15 to three months' worth of data from 2010.

16 Regrettably, even though reporting has
17 begun in the swaps markets, we are relying on the
18 same stale data to support the final rule. We are
19 also finalizing the 67 percent notional amount
20 formula, which as I observed at the proposal
21 stage, would allow for only the largest 6 percent
22 of all interest rate and credit default swaps to

1 be executed as blocks, and we are applying the 67
2 percent formula across all asset classes. This
3 approach, in my view, ignores Congress's mandate
4 that we take into account the impact of public
5 disclosure on liquidity when setting block sizes.
6 These are not "one size fits all" markets, and we
7 should not be adopting a "one size fits all"
8 approach.

9 I appreciate that we will initially use
10 a 50 percent notional amount formula in order to
11 phase in the impact of the minimum block sizes,
12 but the rules provide for an automatic adjustment
13 to the 67 percent formula after one year no matter
14 what the data shows at that time. Minimum block
15 sizes should be driven by the most current
16 objective data available, not an automatic across
17 the board formula based on stale data.

18 My objections to the made available for
19 trading rules also remain the same as when we
20 proposed these rules. A few minor revisions have
21 been incorporated into the final rules, but as
22 proposed, the final rules provide the designated

1 contract markets and SEFs, rather than the
2 Commission, will make the determination of when a
3 swap has been made available to trade by
4 considering a list of factors that fail to contain
5 any objective standards.

6 Although we claim we will review the
7 certifications or requests for approval to
8 determine whether a swap is suitable for the
9 mandatory execution requirements, in fact, our
10 hands are tied. Unless a MAT determination is in
11 consideration with the act or our regulations, we
12 must approve it or deem it approved. But because
13 neither the act nor the final rules contain any
14 objective requirements that a swap must meet for a
15 MAT determination to be valid, it is difficult to
16 envision how we could ever find such a
17 determination to be inconsistent with the act or
18 regulation. This approach allows a SEF or DCM to
19 bind the entire marketplace to a trade execution
20 requirement as long as the swap must be cleared,
21 even if liquidity is lacking. This is overly
22 broad, potentially inconsistent with foreign

1 regulations, and just plain bad policy.

2 I suppose we are crossing our fingers
3 and hoping that SEFs and DCMs will be reasonable
4 when they make their MAT submissions, and will
5 submit only highly liquid products that are truly
6 suitable for mandatory execution requirements.
7 But I would not count on that.

8 My comments on the disruptive trading
9 practices guidance relate to my hope that the
10 guidance has clarified how we intend to apply this
11 authority in our enforcement actions. Guidance
12 should be helpful and not create more questions
13 than it answers. While we have made some
14 improvements in the final guidance, I am hopeful
15 that as time passes the Commission may be able to
16 provide more clarity to help the market in certain
17 areas.

18 With regard to the SEF rulemaking,
19 although a lot of noise has been made in the press
20 about the request-for-quote number, I have a
21 number of other concerns with the SEF final rules.
22 As with many of our rules, we have gone beyond

1 congressional intent by imposing requirements not
2 called for by the statute -- the order book and
3 RFQ requirements, to name just a few. Nothing in
4 the statute mandates these minimum trade
5 functionalities. We made them up. This puts us
6 out of sync with the SEC and I suspect with
7 foreign regulators when they finalize their rules.

8 I'm glad that we have lowered the RFQ
9 requirement from 5 to 2 initially, but as with the
10 block rules, the SEF final rules provide for an
11 automatic bump to 3 after one year for all
12 contracts that must be cleared, no matter what the
13 data shows or how illiquid these contracts may be.
14 We should base any decision to increase the RFQ
15 requirements on objective data. There is no
16 reason not to. We have taken a very narrow
17 interpretation of what the statute allows and
18 incorporated it into these final rules. I believe
19 we will regret this restrictive approach because
20 it may cause the U.S. to lose this business to
21 foreign jurisdictions that do not stifle illiquid
22 contracts in this way.

1 I also have questions about why we have
2 refused to contemplate a framework that would
3 allow for exempt SEFs and exempt DCOs, which are
4 clearly included in the statute. Although both
5 concepts are mentioned in the preamble, we fail to
6 give any commitment to develop a process for
7 determining this exempt status.

8 I look forward to all of the staff
9 presentations and to asking some additional
10 questions but would like to finally say that I
11 want to thank especially my staff that I have been
12 privileged to work with over the last six years,
13 as well as the entire Commission staff. Truly I
14 want to thank you for everything that you've done
15 for me and wish all of my colleagues my gratitude
16 for their kindness and respect, and best wishes as
17 you continue your public service. Thank you.

18 CHAIRMAN GENSLER: I want to pause for a
19 moment and thank Ms. Sommers for your service and
20 for your friendship. I know that we sometimes
21 come at these rules in the day-to-day life with a
22 little bit different perspective. We've agreed

1 far more than we haven't, and anytime that we've
2 disagreed we've always, I think, disagreed
3 agreeably. And you have been a marvelous
4 colleague and a remarkable, dedicated public
5 servant. And I thank you. For four years we've
6 served together.

7 Commissioner Chilton, I think, on a
8 video somewhere.

9 COMMISSIONER CHILTON: Yeah, I'm here.
10 Thank you, Mr. Chairman. Thank you, Commissioner
11 Sommers for all your service. We came in at the
12 same time and I very much enjoyed working with
13 you, including on some work we did on the SEF
14 rule, which quite frankly I think might have been
15 a better compromise than we're dealing with today.
16 But thank you for trying to work to get some of
17 these things done. Whenever you had a suggestion
18 it was always very thoughtful and a lot of times
19 made the rules better, even if once in a while you
20 didn't vote for it you made the rules better and
21 that's very admirable. So we're going to miss
22 you.

1 So I've never been a more sort of
2 reluctant and reticent regulator than today on
3 these rules. I think we need to do them. They've
4 been out there for a long, long time -- too long.
5 But I'm just not super plussed by what we have.
6 I'm not saying they're bad and I'm not saying the
7 staff didn't work hard, but I just wish we had
8 reached a different compromise.

9 You know, Churchill had this great quote
10 about how the English always blurred the lines on
11 everything, and I think we really blurred the
12 lines on some of these proposals, in particular on
13 SEF. And I think we could have had more
14 transparency and still been totally consistent
15 with the law. I think we've done just the bare
16 minimum of what those who voted for Dodd-Frank
17 envisioned.

18 At the same time, I think those who
19 voted for Dodd-Frank and the president who fought
20 for it, I think they'd also say, well, look,
21 there's two things that have been going on while
22 we've been sort of messing around trying to figure

1 this out. One is that we've seen this
2 futurization going on, so we've seen, you know,
3 swaps getting moved to exchanges, some of the
4 standardized swaps, and that brings a regulatory
5 light to those swaps, but it also was a disservice
6 to the would-be SEFs. By default, we've been
7 creating winners and losers, and that's not
8 appropriate.

9 And the second reason that we really
10 have to act is that something that the Chairman
11 spoke about. These dark markets, the swap
12 markets, they were part and parcel to the economic
13 collapse. So if we don't do anything, they're
14 totally unregulated and the futurization will
15 continue. So as I said, I'm sort of a really
16 reluctant, reticent regulator today, but I think
17 we need to move forward.

18 I do have some questions, and I do want
19 to get some clarification on a few things as we go
20 through, but at the end of the day Dodd-Frank was
21 about getting rules and regulations for dark
22 markets in place almost above all else. And I

1 hope that we end up doing that. Thank you.

2 CHAIRMAN GENSLER: Thank you,
3 Commissioner Chilton.

4 Commissioner O'Malia.

5 COMMISSIONER O'MALIA: Well, I guess I
6 didn't appreciate the fact that this could be your
7 last meeting. And I didn't write a speech for
8 that.

9 COMMISSIONER SOMMERS: You can sing a
10 song.

11 COMMISSIONER O'MALIA: I cannot sing a
12 song. But what I propose to do since it's -- we
13 only have the microphones, but I know everybody in
14 the audience and the press at the staff table all
15 appreciate your efforts. So I think it would be
16 appropriate we all stand and recognize Jill for
17 her efforts.

18 (Applause)

19 COMMISSIONER O'MALIA: It's really a
20 remarkable career in public service, private
21 sector. She was very helpful to me when I arrived
22 here in helping me navigate the building,

1 understand the process, et cetera. So I am
2 grateful for all your advice and counsel and
3 recommendations. So, a great run. We look
4 forward to seeing what you're going to do next.

5 Mr. Chairman, thank you for calling this
6 meeting to finalize a critical suite of rules
7 regarding swap execution. The adoption of these
8 rules will bring the Commission in compliance with
9 three of the four principles agreed to by the G-20
10 nations who finalized the Pittsburgh Communiqué
11 back on September 25, 2009. The three principles
12 that have been achieved so far are the reporting
13 of all trades to a trade repository; requiring
14 that all standard OTC derivatives be traded on
15 exchange or electronic platform where appropriate;
16 and clearing through central counterparties.

17 Notably, the data rules were one of the
18 first sets of rules implemented by the Commission.
19 While these rules are not without flaws, data is
20 the foundational element of which our regulatory
21 oversight begins because it shines a light on the
22 true makeup of the market, including the trading

1 and risk relationships of this previously opaque
2 market. From this point forward, the excuse of
3 "we don't have the data" simply does not hold
4 water. We have three SDRs, all collecting
5 information regarding real-time, historic, and
6 regulatory data. The big question in my mind is
7 will we use the data to support decisions by this
8 Commission, or will we selectively ignore the
9 facts when it doesn't suit our concerns and our
10 outcomes?

11 Of course, this achievement wouldn't be
12 possible without the hard work and dedication of
13 the staff, who have labored endlessly to put
14 together the thousands of pages we're considering
15 here today. Everybody at the table, everybody who
16 is coming to the table, thank you very much for
17 your patience and time and effort to help explain
18 the rules to me, work through the comment letters,
19 et cetera. I greatly appreciate all the work
20 you've done and all the forces that have been upon
21 you.

22 I would also like to recognize Bella

1 Rozenberg, who had the responsibility for both the
2 SEF and "made available for trade" rules prior to
3 coming to my office. She has done a marvelous job
4 in service to this Commission as well.

5 Today, the big rule everybody is waiting
6 for is the swap execution facility final rule. It
7 has been over two years since the draft rule was
8 first voted on back in January 2011. Since that
9 date, the product has evolved, but it has always
10 remained a little more prescriptive and limiting
11 than what was required by the statute. Having
12 said that, I'm excited about the opportunity SEFs
13 will provide in bringing transparency to the swap
14 market, and I support a flexible framework to
15 ensure that all participants have the opportunity
16 and frankly don't have the excuse not to trade on
17 a SEF.

18 Now let me turn to some of the
19 particulars of the SEF rule. And I've argued
20 strongly and encouraged the Commission to adopt a
21 temporary registration process for SEFs that did
22 not replicate the temporary registration process

1 for the swap data repositories. In that respect I
2 believe we have succeeded. I believe a
3 streamlined, temporary registration process will
4 not disadvantage SEF applicants that are received
5 later in the queue or as the big bulge of new SEF
6 applications arrive on our doorstep in the coming
7 days. More importantly, I am concerned with the
8 process the Commission is using to shift the
9 number of trades on an RFQ from two to three
10 participants. It is incredible to me that the
11 Commission rushed to implement the data rules to
12 ensure that it can make informed decisions and yet
13 has chosen to pick an unsubstantiated number
14 without utilizing the available data. A
15 transparent rulemaking process should utilize
16 available data to make fact-based decisions.
17 However, both the SEF rule and the swap block rule
18 suffer from a willful refusal to utilize available
19 and useful data.

20 Now, as Commissioner Sommers noted in
21 her remarks, it still remains to be seen how these
22 rules will be coordinated internationally, and

1 that is an important feature. And I want to make
2 sure that we are nimble enough to respond to that
3 competitive imbalance, and we have created rules
4 that will keep liquidity here in this country.

5 With regard to the swap block final
6 rule, my frustration lies more in the process than
7 in the outcome. I agree with the premise the
8 goals of promoting pre-trade price transparency in
9 trading on a SEF. However, the foundation of any
10 block size, whether it is a swap or a future,
11 should be based on good data. Again, the
12 Commission is forced to develop a rule without the
13 benefit of extensive data in the financial
14 products and no swap data in the case of foreign
15 exchange and commodities. In fact, the
16 Commission's meager data used to inform its
17 decision on financial products comes from just
18 three months worth of data back in 2010.

19 Like the SEF rule, the Commission has
20 not availed itself to available data and decided
21 against making an informed decision regarding the
22 block rules to automatically move to 67 percent of

1 notional value for each swap category after the
2 initial period. Therefore, I'm prepared to offer
3 an amendment to this rule to require the
4 Commission set block rules based on the study
5 using actual trade data. And I've circulated that
6 at the table here among my colleagues and staff.

7 Now, let me turn to the MAT
8 determination. I recognize the challenge the
9 Commission is facing in interpreting the "made
10 available for trade" provision. Unfortunately,
11 the Congress did not provide the Commission with
12 any guidance as to how and under what condition
13 the trade execution mandate must be considered or
14 triggered. The rule, however, provides illusory
15 comfort that the Commission will have the legal
16 authority to review, and if necessary, challenge a
17 mandatory trading determination made by a SEF or
18 DCM. In fact, the only authority that the
19 Commission has is to rubberstamp a SEF or DCM's
20 initial determination.

21 Finally, the process for removing a
22 "made available for trade" determination lacks any

1 logical or legal basis and is the exact opposite
2 of what is required to make the initial "made
3 available for trade" determination.

4 With regard to the disruptive trade
5 practices, it has been a long process since the
6 initial advanced notice of proposed rulemaking
7 back in 2010, and the proposed guidance was
8 published in 2011, in February, and finally now we
9 are voting on the final guidance today. The team
10 has made significant progress in giving meaning to
11 the Commodity Exchange Act, section 4c(a)(5),
12 which prohibits disruptive trading processes.

13 While I applaud their work in this
14 regard, I do have some concerns that the guidance
15 provided with respect to interpretation of
16 disruptive trading and spoofing. While the
17 guidance we provide says, "It's always a facts and
18 circumstances test," then we really aren't
19 providing guidance. So I have some questions that
20 hopefully will kind of further illuminate the
21 guidance and how we're going to proceed on this in
22 order to give the market some certainty in where

1 we're going.

2 I do want to close again by thanking
3 Commissioner Sommers and certainly the staff for
4 all their work in putting all these pages of work
5 together and these rules. They have increasingly
6 gotten better as time has gone on and the input
7 has been received. I look forward to finalizing
8 these important rules so the market can move
9 forward with a greater certainty surrounding the
10 development of the swaps market. So thank you.

11 CHAIRMAN GENSLER: Thank you,
12 Commissioner O'Malia.

13 Commissioner Wetjen.

14 COMMISSIONER WETJEN: Thanks, Mr.
15 Chairman. Since joining the Commission I've had
16 the good fortune and pleasure of meeting a lot of
17 good friends but no one has been a better friend
18 to me since I've arrived than Commissioner
19 Sommers, and no one has provided more useful,
20 interesting, insightful counsel and just overall
21 very helpful insights about these markets and the
22 work of the Commission than you have, Commissioner

1 Sommers. I know our friendship will continue
2 beyond you tenure here at the Commission, and I
3 look forward to remaining friends and also seeking
4 your counsel even after you leave. So thank you
5 again for your service.

6 Today's releases will fundamentally
7 restructure the over-the-counter markets for swap
8 trading and increase pre-trade transparency and
9 participation for many that were previously unable
10 to access or compete for liquidity in the OTC
11 marketplace. This is a landmark achievement for
12 the Commission. I believe that taken as a whole,
13 the Commission has struck an acceptable balance in
14 these final rules. I'm certainly confident that
15 the next execution framework recommended by the
16 professional staff in consultation with public
17 interest groups, the industry, and the regulatory
18 community over the course of the past two years or
19 so represents a fundamental shift away from the
20 OTC model as it existed only a few years ago.

21 The benefits of this shift are many.
22 For example, many swaps will for the first time

1 trade on regulated platforms and benefit from
2 market-wide pre-trade transparency which should
3 improve pricing for the buy-side commercial
4 end-users and other participants that use these
5 markets to manage risk. Additionally, SEFs, as
6 registered entities, will be required to establish
7 and enforce comprehensive compliance and
8 surveillance programs that simply do not exist in
9 the swap markets today.

10 Another potentially significant benefit
11 not as often discussed is the improved ability for
12 clearinghouses and their members to manage risk
13 during times of market stress, effectuated by
14 liquidity formation on SEFs should these platforms
15 function as envisioned by these rules. The final
16 rules also will facilitate compliance with
17 Dodd-Frank's other derivatives reforms, especially
18 real-time reporting, clearing, and
19 straight-through processing. In this respect, the
20 execution rules complement the Commission's other
21 efforts to streamline participation in the markets
22 by doing away with the need to negotiate bilateral

1 credit and other provisions in order to access
2 liquidity. This not only benefits the end-users
3 that the markets are intended to serve, but also
4 new entrants that intend to compete for liquidity
5 and now will be able to access the markets on
6 impartial terms. In essence, the final execution
7 rules support a transparent, risk-reducing swap
8 market structure under the oversight of the
9 Commission.

10 Like all the Commission's rules, today's
11 releases require the Commission to make a number
12 of policy judgments that necessarily involve
13 tradeoffs. And in making those judgments, the
14 Commission faces the challenge of creating a new
15 market structure on paper while being informed
16 only by what we know or think we know about the
17 swap markets today. The Commission, therefore,
18 must remain open to reassessing the policy
19 judgments in these final rules as the markets
20 evolve, as the Commission has provided new
21 information, and as the Commission benefits from
22 its experience overseeing the new SEF market

1 structure. In short, the Commission must remain
2 open to course correction where necessary and
3 ensure that the swap regulatory regime keeps pace
4 with the markets that it governs.

5 One difficult and widely reported policy
6 judgment concerns the required trading protocols
7 for executing certain swaps subject to the trade
8 execution mandate. A significant number of
9 commenters cautioned the Commission against
10 imposing specific trading protocols on the
11 marketplace. Comment letters suggested, for
12 example, that such rules might have the unintended
13 effect of increasing hedging costs for liquidity
14 providers, thereby adversely affecting pricing for
15 the firms that depend on these providers to assume
16 risk.

17 Other participants have expressed
18 concerns that relatively illiquid swap markets,
19 like off-the-run credit, might be dislocated if
20 the Commission tries to force immediate changes to
21 the currently used means of execution. These
22 concerns and others have contributed to a

1 constructive dialogue both inside and outside of
2 the Commission. Having considered the panoply of
3 execution issues and policy tradeoffs at length, I
4 am confident that the final execution rules before
5 us today contain appropriately flexible trading
6 protocols.

7 Furthermore, it is also my belief and
8 understanding that if questions of interpretation
9 arise from market participants concerning
10 permissible trading protocols, the Commission
11 staff should air on the side of flexibility when
12 providing interpretive guidance.

13 Incidentally, flexible trading protocols
14 is not code for status quo as some might suggest.
15 It is not code for pro-dealer trading protocols,
16 nor is it code for pro buy-side or pro-retirees,
17 pensioners, endowment beneficiaries and end-user
18 trading protocols, although I do believe it is
19 these constituencies who stand to benefit the most
20 from this flexibility. Instead, what flexible
21 trading protocols really means is consistency with
22 congressional intent as it relates to swap trade

1 execution under Dodd-Frank, which on its own was
2 destined to bring dramatic change to the OTC swap
3 markets.

4 Again, the changes are many. Under
5 Dodd-Frank and our implementing rules before us,
6 every SEF will be required to have an order book,
7 another transparency enhancing change to the
8 existing market structure. But a number of
9 important safeguards built into our rules also
10 ensure that participants continue to have access
11 to competitive, timely, and representative prices,
12 as well as liquidity when order book trading may
13 be somewhat premature.

14 One such safeguard, of course, is the
15 block trading rule, which sets the thresholds
16 above which certain swaps can be executed through
17 even more flexible trading protocols. In my view,
18 the long-awaited block rule is consistent with
19 Congress's intent to drive a significant portion
20 of OTC swap activity into a multilateral trading
21 environment, and as a compliment to the SEF
22 regime, the block rule will for the first time

1 usher in real-time post-trade transparency
2 throughout the swap markets.

3 This rule, though perhaps not ideal in
4 several respects, is undoubtedly improved from the
5 uniform social-size approach first proposed in the
6 real-time reporting rule in 2010. Public comment
7 has been essential in this regard. Many
8 commenters raised concerns about the methodology
9 for reaching the block trading thresholds, the
10 dataset upon which the staff has applied that
11 methodology, and definitional judgments that
12 impact transaction distributions and therefore,
13 outcomes, under the final rule. The Commission
14 will need to keep a close eye on these matters
15 once the rule becomes effective. As the markets
16 evolve and the Commission receives new data with
17 which to analyze and set the block thresholds, the
18 Commission has a responsibility to revisit our
19 approach and consider whether this rule has, in
20 fact, landed in the right place. The final rules
21 approach is admittedly blunt, but the Commission
22 has attempted to balance as best it could

1 potentially conflicting objectives.

2 As a final note, I've been especially
3 concerned about supporting a competitive landscape
4 for derivatives execution. Recent actions and
5 comments by some have suggested that certain of
6 the Commission's rules unfairly or inappropriately
7 favor futures execution. Again, the intent of
8 these execution rules before us today is not to do
9 away with flexibility but rather to protect it.
10 What should be clear in the Commission's rules is
11 that participants will have clear choices --
12 choices concerning margin treatment, modes of
13 execution, clearing venues, and in some cases
14 counterparties. If participants weigh carefully
15 the available choices and choose a particular
16 execution venue based upon their own economic
17 interests, the Commission should not second guess
18 that decision and substitute its own. In the end,
19 it is the participants, not the Commission and its
20 staff, who will determine the types of risks that
21 firms should retain or lay off in the markets and
22 the means for doing so. The Commission has

1 strived to promulgate these rules in a manner that
2 will avoid putting its thumb on the scale for any
3 particular marketplace.

4 Thank you again to the staff for all of
5 your hard work on all of these rules today, and I
6 look forward to discussing a few questions a
7 little bit later. Thanks.

8 CHAIRMAN GENSLER: Thank you,
9 Commissioner Wetjen. Thank you again to all of my
10 fellow commissioners for all their input on these
11 rules. I think they have tremendously benefitted
12 from each of the input. And though we might not
13 go over the line unanimously today as I sense from
14 the opening statements, I think that the rules
15 have each benefitted from the input and I want to
16 thank particularly if I might, Commissioner
17 Wetjen. It seems that you and I have been getting
18 some press recently. But I think this is a far
19 better rule and I agree with your statement that
20 these fulfill the congressional mandate and really
21 do deliver to the American public in a balanced
22 way with transparency.

1 But with that I think that I'm going to
2 invite the first panel. The staff will make
3 presentations concerning their recommendations of
4 the final rules implementing the Dodd-Frank Act,
5 as well as the interpretive statement. After each
6 presentation the floor will be open for questions
7 and comments from each of the commissioners.
8 Following these discussions, the Commission may
9 take votes on the recommendations as presented.
10 All final votes conducted in this public meeting
11 shall be recorded votes and the votes will be
12 included in the relevant Federal Register
13 releases.

14 I think I'm supposed to ask for
15 unanimous consent to allow staff to make technical
16 changes.

17 COMMISSIONER SOMMERS: So moved.

18 CHAIRMAN GENSLER: It being unanimously
19 consented. At this point I also ask unanimous
20 consent to allow -- oh, no, I did that one. All
21 right. So presentation number one. The Swaps
22 Block Rule or Procedures to Establish Appropriate

1 Minimum Block Sizes. And I want to invite Rick
2 Shilts, the head of the Division of Market
3 Oversight; George Pullen, who is from the Division
4 of Market Oversight; Nhan Nguyen. You'll be
5 helping on this one as well, Nhan? All right.
6 Nhan Nguyen from the Division of Market Oversight;
7 and then from the Office of General Counsel, John
8 Dunfee, who is now, I guess, our team lead on
9 this. And then Esen Onur from our Chief Economist
10 Office.

11 So I turn it over to the team. I guess
12 that's to you, John.

13 MR. DUNFEE: Thank you, Mr. Chairman and
14 Commissioners for the opportunity to present this
15 final rule-making today. I would like to thank
16 each of the members past and present of the Swaps
17 Block Rule Team for their hard work and
18 contributions to this final rule, which we present
19 to you today for your consideration and vote.
20 Staff is recommending for the Commission's
21 consideration final rules establishing appropriate
22 minimum block sizes for large notional

1 all-facility swaps and block trades, as well as
2 measures to protect the identities of parties to
3 swap transactions.

4 Section 727 of the Dodd-Frank Act
5 created section 2(a)(13) of the Commodity Exchange
6 Act. Section 2(a)(13) requires the Commission
7 issue rules regarding the real-time public
8 reporting of swap transaction and pricing data.
9 The section specifically requires the Commission
10 to do three things that we do in this final rule.
11 First, specify the criteria for determining what
12 constitutes a large notional swap transaction or
13 block trade. Second, to ensure that the public
14 dissemination of swap data does not reveal the
15 identities or business transactions of swap
16 counterparties, and third, the Commission must
17 take into account whether public disclosure will
18 materially reduce market liquidity.

19 In December 2011, the Commission adopted
20 the real-time reporting requirements in new part
21 43 of its regulations. In that final rulemaking,
22 the Commission adopted several provisions relevant

1 to today's final rule.

2 The real-time final rule established
3 five asset classes for swaps: Interest rates,
4 credit default, foreign exchange, equity, and
5 other commodity. The real-time reporting final
6 rule also established a series of time delays for
7 the public dissemination of swap data. Because
8 the Commission did not establish a block size
9 methodology at the time of the real-time rule, the
10 real-time rule provided that all swap trades would
11 be subjected to the block time delay specified in
12 the real-time rule, pending a Commission rule
13 establishing minimum block sizes.

14 In February 2012, the Commission issued
15 a further proposal regarding block sizes and
16 anonymity protection. In issuing that proposal,
17 the Commission was informed by many comments
18 received regarding the initial real-time rule
19 regarding blocks. Today, staff recommends for the
20 Commission's consideration final rules springing
21 from that proposal that establish minimum block
22 sizes for swaps and anonymity protections for

1 parties to swap transactions. Today's final rule
2 benefits from numerous comments from those who are
3 potentially impacted by the rule.

4 The rule also benefits from the fact
5 that staff was able to collect and review relevant
6 data for two asset classes -- interest rate swaps
7 and credit default swaps. Based upon this data
8 and comments received, the final rule establishes:
9 First, detailed criteria for grouping swaps based
10 upon the primary economic indicators within each
11 asset class; second, tailored and measured
12 methodologies for determining minimum block levels
13 in a two-phased approach; and third, additional
14 measures to protect anonymity related to the
15 public dissemination of swap data.

16 I will briefly explain the major
17 components of the block trade rule as well as the
18 anonymity measures. With respect to blocks, the
19 final rule breaks down the five asset classes that
20 I mentioned a moment ago established by the
21 real-time reporting final rule and breaks them
22 down into smaller swap categories. Swaps within

1 each asset class are generally grouped based on
2 common risk and liquidity profiles. For swaps in
3 the interest rate asset class, the final rule
4 establishes 27 swap categories based on nine tenor
5 band groups and three currency groups. For swaps
6 in the credit asset class, the final rule
7 establishes 18 swap categories based on six tenor
8 band groups and three conventional spread groups.

9 For the FX asset class, the final rule
10 establishes approximately 85 swap categories based
11 on unique currency combinations. For the other
12 commodity class, the final rule establishes
13 approximately 120 swap categories based on
14 groupings of economically related swaps and
15 groupings of swaps sharing a common product type.

16 In establishing methodologies for
17 determining appropriate minimum block sizes, staff
18 sought to balance the goals of transparency and
19 protecting market liquidity. The final rule
20 establishes that the Commission will prescribe
21 appropriate minimum block sizes for the swap
22 categories within each asset class through a

1 two-period phase-in approach. The first phase,
2 called the initial period, includes different
3 methodologies based on the availability of data.
4 For the initial period, the final rule sets block
5 sizes in the interest rate and credit default
6 asset classes based upon data obtained and
7 analyzed by the Commission staff.

8 Sizes will be applied to each swap
9 category within these asset classes based on a 50
10 percent notional amount calculation methodology.
11 That methodology determines block sizes by looking
12 at the net notional distribution of swaps and
13 setting the block size at the one-half mark within
14 that distribution. Staff believes that the
15 notional determination methodology is a better
16 measure of risk than other alternatives, such as
17 setting the block size so a specific number of
18 trades could be done as blocks. This notional
19 amount methodology focuses upon the amount of risk
20 in a given swap category. For example, a two-year
21 cross currency U.S. dollar-euro interest rate swap
22 will have a block size of \$460 million.

1 For the FX and other commodity asset
2 classes during the initial period, the final rule
3 sets block sizes based upon DCM block sizes set
4 for economically-related futures contracts. Staff
5 believes that DCM-set block sizes for economically
6 related futures contracts are a good comparative
7 measure for setting swaps blocks. For the initial
8 period, the final rule sets out in appendix F the
9 specific minimum block sizes by swap category
10 based on these methodologies.

11 The initial period will last until SDRs
12 have collected one year of data for each asset
13 class. After the initial period, the final rule
14 states that the Commission will establish
15 post-initial minimum block sizes for each swap
16 category in the interest rate, credit default, FX,
17 and other commodity asset classes based off data
18 collected by SDRs using a 67 percent notional
19 amount calculation. The rules also provide that
20 the Commission will update minimum block sizes no
21 less than once each year using the same 67 percent
22 notional amount calculation. Post-initial block

1 sizes will be published on the Commission's
2 website and will become effective on the first day
3 of the second month after publication.

4 For equity swaps, under the final rule,
5 these swaps will not be eligible for block
6 treatment, and thus these swaps will be publicly
7 disseminated in real time in both the initial and
8 post-initial periods. This is because of the
9 existence of a highly liquid underlying cash
10 market which is where price discovery occurs, the
11 absence of time delays for reporting blocks in
12 that market, and the relative size of the equity
13 swaps market relative to futures, options, and
14 cash index markets.

15 The rule also establishes a series of
16 special rules to deal with complex issues, such as
17 how to determine block sizes for swaps with
18 optionality, how to determine block sizes for
19 swaps in other currencies, and how to address a
20 situation in which a member state is removed from
21 the Euro zone. The rule also prohibits
22 aggregation of orders to satisfy block

1 requirements. The rule establishes a process for
2 market participants to elect to treat their swaps
3 as blocks and how notice of that election will be
4 sent to a SEF or DCM if such swap is traded
5 pursuant to the rules of a SEF or DCM, or if it's
6 traded bilaterally, how reporting parties would
7 provide notice to a SDR. Also, the rule allows
8 the Division of Market Oversight to undertake all
9 responsibilities related to the establishment of
10 block sizes.

11 As I mentioned earlier, this final rule
12 addresses more than just block trades. It also
13 includes measures to protect anonymity related to
14 swap data. First, the rule amends part 43 of the
15 Commission's regulations to establish a permanent
16 system, establishing cap sizes for masking
17 notional amounts of swap transactions reported to
18 the public. Cap sizes will be set using a 75
19 percent notional amount calculation, similar to
20 the methodology used for setting block sizes.
21 Secondly, in regard to anonymity, the rule
22 establishes that certain commodity swaps will be

1 subject to real-time reporting with masking of the
2 specific geographic delivery or pricing point
3 detail related to these swaps.

4 This concludes my prepared remarks
5 regarding the block trade final rule. My
6 colleagues and I would be happy to answer any
7 questions you may have regarding the rule.

8 CHAIRMAN GENSLER: The chair will now
9 entertain a motion to accept the staff
10 recommendation concerning the final rule.

11 COMMISSIONER SOMMERS: So moved.

12 COMMISSIONER O'MALIA: Second.

13 CHAIRMAN GENSLER: Motion made and
14 seconded. Then it's open for discussion and
15 questions.

16 I don't have any questions for John and
17 the team, but I do support the final block rule
18 which is, I think, critical to promoting
19 transparency in these markets. I think that with
20 this rule the public will benefit from seeing the
21 price and volume on transactions post-transaction
22 as soon as technologically practical. Those are

1 words that Congress put in the statute and we will
2 fulfill that mandate initially for approximately
3 50 percent of the market and subsequent to the
4 post-initial period to 67 percent of the market.
5 So half of the market wouldn't tighten up to that
6 period or after the post-initial, a third of the
7 market will not. But I think that it's critical
8 for the non-blocks to have that which Congress
9 wanted is real time, real-time reporting. And it
10 also, in conjunction with the swap execution
11 facility rules that we'll consider later today,
12 brings to light the trade execution mandate. And
13 together is very critical.

14 I do think the Commission has benefited
15 from significant public input on these rules. We
16 first proposed a block rule as Commissioner Wetjen
17 noted, and it had a different methodology called
18 social size, I think, if I remember the words we
19 used. And we got significant public input
20 suggesting that we should move to a different
21 methodology. And, in fact, many of the commenters
22 then suggested moving to something similar to what

1 we have in front of us today. We took those
2 comments to heart and we decided to repropose a
3 block rule. And that reproposal benefitted from
4 the first set of comments, and it also laid out a
5 significant number of alternative methodologies,
6 but the bulk of the commenters came back and said
7 this methodology, percentage-based as it is, to be
8 addressed on an annual basis with an initial
9 period and a post-initial was an appropriate
10 approach. There were comments that some thought
11 we should be higher, some thought we should be
12 lower, and there was a significant comment or
13 support ultimately going to 67 percent. So I
14 think the Commission has already noted in this
15 context that it has had substantial public input
16 but also we have delayed the movement up to 67
17 percent until there is one year of data which is
18 already coming into the swap data repositories as
19 has been noted. I think the 67 percent formula
20 has been well-noticed. It's been subject to
21 public comment and there is ample support in the
22 public record for adopting that but having that

1 methodology apply to data that we later collect.

2 So I support the rule. I'm going to
3 turn it to Commissioner Sommers for her questions.

4 COMMISSIONER SOMMERS: Thank you, Mr.
5 Chairman. I just have a couple of questions about
6 the methodology. And as I said in my opening
7 statement, this has been a challenge, I realize,
8 and the Commission has struggled with block sizes
9 for many years in trying to determine an
10 appropriate methodology. So just to kind of walk
11 through this specific methodology and the 67
12 percent that when you use this formula based on
13 the notional value in a market, then it gives you
14 a percentage to which would set the threshold for
15 block sizes.

16 So when you're looking at whether 67
17 percent is an appropriate number and specifically
18 applying it gets you I think it was 6 percent of
19 the interest rate market based on the data that
20 we're using would be your block threshold, do you
21 decide that 6 percent is what we're looking for;
22 therefore, 67 percent is right? Or do you know

1 that 67 percent is right and it doesn't really
2 matter where the threshold is because based on the
3 notional value of that class, what if you end up
4 getting 20 percent of the market as a block? Do
5 you then decide that 67 percent may not be the
6 right number? I mean, is that going to be
7 flexible for us? Or no matter what, 67 percent is
8 the number? Just sort of walk through with me how
9 we decided that those are the appropriate numbers.

10 MR. DUNFEE: Okay. And just to clarify
11 for a moment, the 67 percent notional amount
12 calculation is going to give you a block level in
13 notional. And so based upon that level, in
14 notional terms, 67 percent of the market will not
15 be blocks; 33 percent of the market will be
16 blocks. The numbers that you're referring to are
17 in regard to number of transactions, right? So on
18 the data that we have for interest rates and
19 credit default swaps, applying the 67 percent
20 notional number, 94 percent of the transactions
21 for the time period that we looked at would not be
22 blocks.

1 In crafting the 67 percent and initially
2 proposing the 67 percent, we were guided by the
3 very goals that you were mentioning in your
4 opening statement, which were to bring real-time
5 transparency to a significant amount of the
6 market, but at the same time to protect liquidity
7 by saying that very large transactions could be
8 done with a time delay. And we thought that the
9 67 percent test, which as you say, did cover 94
10 percent, ultimately being not blocks, that that
11 did those two things.

12 Now, as the Chairman was pointing out
13 earlier in terms of the comment process, we've
14 gotten a lot of comments in regard to the 67
15 percent, so the way that we went about this
16 enabled us to tell people we're going to do 67.
17 Here are the numbers. You know, not just this is
18 the methodology for commenters to comment on, but
19 also here are the results of that methodology and
20 here's what the exact block number is going to be
21 in the initial period at least based on these
22 numbers. And so we sort of have a dual benefit in

1 terms of the comments both for the methodology and
2 the result, and so based on the comments that we
3 got we think that 67 percent is still the right
4 notional methodology.

5 COMMISSIONER SOMMERS: Have we ran this
6 methodology using even a subset of the current
7 data that we're collecting to know that we may get
8 the same sort of result? At least some sort of
9 consistent result with current data?

10 MR. DUNFEE: George.

11 MR. PULLEN: I think the best way to
12 answer that is to look at the way 67 percent works
13 out in the current dataset that we've used, which
14 is the OSG Volunteer Dataset of 2010 that you've
15 mentioned that we got in 2011. When you look at
16 that dataset, the numbers as you mentioned come
17 around 90-95 percent end up not being blocked.
18 But because of a no-show methodology, if you have
19 -- regardless of the dataset, whether someone in
20 our current SDR or the SDR a year from now, if you
21 had completely uniform distribution of size -- and
22 that would mean that everybody within one of our

1 250-plus swap categories all traded a size of one
2 million, for example -- what ends up happening is
3 you could have up to, with complete uniformity, 33
4 percent being blocks. So in the dataset we had,
5 of course, we ran into the situation and the
6 numbers that we supplied to you where you have
7 approximately 5 percent being blocks, but you
8 could have in the future an example where 33
9 percent -- and again, even in the future, it's
10 always based on a historical look back. It's the
11 method of any statistical sample. It's always
12 going to be a historical look back.

13 COMMISSIONER SOMMERS: Okay. My
14 additional concern with this approach is just the
15 inconsistency that could arrive between DCMs and
16 SEFs because we're setting the block sizes for
17 SEFs; DCMs set their own block sizes. And if
18 there are economically equivalent contracts, you
19 know, at least some may say that DCMs have an
20 advantage. Do we intend to take a second look at
21 how we approach block sizes for DCMs? Or, I don't
22 know, Rick, you may want to take this.

1 MR. DUNFEE: If I could just clarify
2 real quickly, this rule is a swaps block rule, so
3 it applies to swaps, whether they're on a SEF, a
4 DCM, or off-facility. So in regard to swaps,
5 there's not a distinction in terms of where the
6 block level should be.

7 COMMISSIONER SOMMERS: I'm sorry. I
8 should have made that distinction. I meant
9 futures that are traded on a DCM that could be
10 economically equivalent.

11 MR. SHILTS: And I think a couple
12 points. One (cough) excuse me, is that I think
13 some of these issues are mostly raised in
14 connection with other commodities. And as this
15 rule adopts in the initial period, it's looking to
16 the DCM's block sizes for equivalents. So in that
17 sense we address...

18 CHAIRMAN GENSLER: You may want to pull
19 your mic closer, and John, if you'd turn yours
20 off.

21 MR. SHILTS: Okay. And the second point
22 is yes, the staff, there is an interdivisional

1 team that is looking at issues related to the
2 setting of block sizes on DCMs and is
3 contemplating some sort of potential commission
4 action or regulations, or rulemaking that would
5 address issues related to the setting of block
6 sizes on DCMs, in particular with respect to the
7 so-called futurization of swaps that happened last
8 year, where a lot of them were listed, especially
9 in the energy area, listed swaps as futures. So
10 it is something that we're looking at.

11 COMMISSIONER SOMMERS: A year from now,
12 when those block sizes for SEFs are no longer --
13 when they're no longer using the DCM block sizes
14 for SEFs in the other asset classes, will we go
15 out for additional public comment on those asset
16 classes to make sure that everyone's aware of how
17 this is going to work for those additional asset
18 classes?

19 MR. SHILTS: Well, as you know, the
20 rules provide that there would be an automatic
21 adjustment in the post-initial period, but
22 depending on what the Commission does with respect

1 to future rulemakings in the DCM block size
2 calculations or whatever, it's hard to -- I can't
3 say what would happen a year from now, but
4 potentially there would be reconsideration of
5 that.

6 COMMISSIONER SOMMERS: Thank you.

7 CHAIRMAN GENSLER: Thank you,
8 Commissioner Sommers.

9 Commissioner Chilton.

10 COMMISSIONER CHILTON: I just have one
11 question. I'm curious why the block and the
12 trading mandate rules don't seem to go effective
13 at the same time. If the block rule goes into
14 effect prior to a trading mandate and a trader
15 wants to trade a smaller than the block size trade
16 with one dealer, which they could do, it seems
17 like they could only do it off SEF, away from the
18 SEF, and that would seem to punish the SEF. And
19 it would also deny the regulator, us, with an
20 audit trail. Can you respond to that?

21 MR. DUNFEE: Well, it may be good that I
22 have Nhan up here for this question also. But

1 just in regard to the swaps block piece of that
2 question, I believe that both the swaps block rule
3 and the SEF rule have the same effective date.
4 And so -- and I understand you're sort of saying
5 when does the trading mandate go effective. But
6 it is at least theoretically possible, I think,
7 that the trade that you're describing actually
8 could occur on a SEF after the block rule goes
9 effective.

10 So that's sort of answer one in regard
11 to the swaps block rule. But also, I don't think
12 that the swaps block rule itself in terms of how
13 it's effective date matches up with other
14 effective dates really makes a difference in terms
15 of what one's choices would be in transacting that
16 swap. So if one could do it off-facility today
17 and then the block rule goes effective, that's
18 still how they would be able to do it. And so I
19 don't think that there's sort of an execution
20 difference that's based on the block rule for that
21 trade. And I also don't think that there's really
22 an audit trail difference. There may be a

1 difference in terms of when the public and when
2 the Commission would see the information in terms
3 of how quickly, but ultimately, I think the audit
4 trail would be the same. The transaction would
5 still be subject to reporting.

6 COMMISSIONER CHILTON: Okay. Thank you
7 for that. I appreciate it.

8 CHAIRMAN GENSLER: Thank you,
9 Commissioner Chilton.

10 Commissioner O'Malia.

11 COMMISSIONER O'MALIA: Thank you, Mr.
12 Chairman. I think it's important to make sure
13 that I get consideration on this motion. I make a
14 motion to adopt my amendment to the swap block
15 rule at this point.

16 CHAIRMAN GENSLER: I have to check
17 whether I'm supposed to let people ask questions
18 first.

19 COMMISSIONER O'MALIA: We don't have to
20 adopt it.

21 CHAIRMAN GENSLER: What's that?

22 COMMISSIONER O'MALIA: We can make the

1 motion now and then we'll get back to --

2 COMMISSIONER SOMMERS: Second.

3 CHAIRMAN GENSLER: Thank you.

4 COMMISSIONER O'MALIA: All right. Thank
5 you, Mr. Chairman. Thank you, Commissioner
6 Sommers.

7 Reading the preamble, and I think the
8 Chairman mentioned it and Commissioner Wetjen
9 mentioned it, that there was support for the 67
10 percent. In reading the document, on page 79, it
11 says 28 commenters provided general comments on
12 the post-initial -- the 67 percent. Of that, 12
13 supported 67 percent; 14 opposed; 2 kind of said
14 we don't have enough information largely based on
15 the data. A lot of people who opposed the number
16 were also concerned that they did not have enough
17 information based on the data that was in the rule
18 when it was drafted in the proposal stage to make
19 a comment as to whether that's accurate. And
20 Commissioner Sommers and I both raised a concern
21 about the data. Not much we could do about it
22 beforehand when we were developing this rule. I

1 appreciate that fact, but since January, we've
2 been receiving data. And have you run the
3 calculations based on that data? And what does
4 that data tell us so far about these rules? And
5 why is it not in this document?

6 MR. DUNFEE: In regard to the data that
7 we get as of now, because reporting has not -- it
8 hasn't started for all asset classes and all
9 participants, we actually don't have the complete
10 data that would be necessary to run the
11 calculation as we were able to based upon data
12 that we have.

13 COMMISSIONER O'MALIA: What impact has
14 the no-action letters, et cetera had on this and
15 you coordinating and looking at the data? Within
16 the data fields do you have a designated -- are
17 people saying I'm not reporting subject to
18 no-action relief?

19 MR. PULLEN: No, that's not a data
20 field.

21 COMMISSIONER O'MALIA: So you couldn't
22 -- in assembling this you either have to know what

1 no-action relief we've offered or guess as to why
2 that field isn't filled out?

3 MR. PULLEN: Correct. But the way that
4 it's working is that people will be back-loading,
5 and so as the backload is completed we'll have a
6 robust dataset. So anyone who currently might
7 have one of those reliefs, that isn't a pass
8 during this period of time. They'll be expected
9 to backload and bring up their information to the
10 same robust level as everyone else.

11 COMMISSIONER O'MALIA: At the expiration
12 of the no-action relief?

13 MR. PULLEN: That's my understanding.
14 I'd defer to one of the lawyers here.

15 COMMISSIONER O'MALIA: And most of this
16 no-action relief kind of dissipates out over the
17 next year or so; right?

18 And of course, you know, with Rick at
19 the table I do want to thank the DMO team.
20 George, you've been helpful as well. And the ODT
21 team, John Rogers in particular, after our TAC
22 meeting, moving to the next steps about

1 standardizing data, improving the quality of the
2 data and working with the SDRs to really put a
3 finer point on this so we can use the data is an
4 essential tool because it's a huge missed
5 opportunity if we've mandated all this and we
6 don't fully utilize it. So I look forward to
7 explaining my amendment when it's appropriate at
8 the end of the questions, but I will end my
9 questions here.

10 CHAIRMAN GENSLER: Commissioner Wetjen.

11 COMMISSIONER WETJEN: I just, for now, I
12 have one, possibly two questions.

13 I think we all can anticipate the answer
14 but is it possible that the ultimate thresholds in
15 the post-initial period could be different than 67
16 percent?

17 MR. PULLEN: Yes.

18 COMMISSIONER WETJEN: Is it possible
19 that the ultimate thresholds -- The post-initial
20 -- for the post-initial period could be something
21 other than 67 percent?

22 MR. DUNFEE: Not with the rule as it is,

1 no. So the 67 percent notional amount calculation
2 is what will be used to determine the post-initial
3 block sizes.

4 COMMISSIONER WETJEN: Well, but there is
5 a new provision in the document. I'll just read
6 it. It says that the Commission notes that in
7 response to either a submission or its own
8 surveillance of swap market activity, the
9 Commission may exercise its legal authority to
10 take action by rule or order to delay the
11 imposition of post-initial appropriate minimum
12 block sizes, particularly with respect to swap
13 categories in the other commodity asset class.

14 CHAIRMAN GENSLER: Page 90.

15 MR. DUNFEE: Right. That is correct.

16 COMMISSIONER WETJEN: That's all I have
17 for now. Thanks.

18 CHAIRMAN GENSLER: Thank you,
19 Commissioner Wetjen. I don't know whether
20 Commissioner O'Malia, you wanted to say something
21 about your amendment before we call the roll on it
22 because I think it's --

1 COMMISSIONER O'MALIA: I'd love to
2 explain.

3 CHAIRMAN GENSLER: It's made a motion.
4 It's duly seconded. And before we call the roll I
5 don't know if you wanted to say something.

6 COMMISSIONER O'MALIA: So to be clear,
7 my amendment does not do anything to change the
8 either 50 percent initial phase. So this is not
9 delaying block rules. It does not change the FX
10 or commodity levels set at the DCM equivalent. So
11 we are going to have upon enactment of this 50
12 percent block levels. What it does require is
13 that we conduct a study over a year's worth of
14 trade data to decide whether the 67 percent or
15 some other percentage is the appropriate level for
16 making notional value calculations. That
17 percentage will form the basis for setting the
18 post-initial swap block levels that will be voted
19 on by the Commission. The amendment also removes
20 the delegated authority from the director of DMO
21 in setting the first post-initial block size and
22 requires the Commission to make this

1 determination. So a year's worth of data,
2 recommendation to what the data tells us based on
3 that, and then we vote on that. That's what this
4 does. This does not take away the 50 percent. We
5 will have block levels in the same manner. It
6 leaves it up to the staff on how quickly, but we
7 do require a minimum of one year. And the data
8 must go out for public comment, which is an
9 important feature to any of our APA features. So
10 we will be making post-initial block
11 determinations, whether it's 67 percent, 75
12 percent, 62 percent, whatever the number, whatever
13 the data tells us, the staff recommendation after
14 public comment will make a recommendation to us.
15 We will vote on it and implement it at that point.
16 That's all it does. It does not take away blocks.
17 It does not radically delay and undermine
18 transparency, et cetera. It is a fact-based
19 decision.

20 COMMISSIONER SOMMERS: If I could just
21 make a comment. I think certainly from my
22 perspective, looking at this from sort of the

1 opposite perspective, when you have the data in
2 front of you, a year's worth of data that will
3 show you what percentage of transactions in a
4 specific class will end up being blocks, it may
5 give you a better judgment of where to set the
6 percentage. So you may decide that 10 percent of
7 transactions should be the threshold and the
8 percentage may end up being 70 percent. But it's
9 based on the data.

10 CHAIRMAN GENSLER: Commissioner O'Malia,
11 I appreciate all the work that you've put into
12 this and on this amendment. I am not able to
13 support this amendment. I feel that the rule
14 that's in front of us today and the staff
15 recommendation is based on data, and it's also,
16 I'd say for four or five other reasons, I am not
17 supporting it. This rule today has benefitted
18 from significant public consultation, and as I
19 mentioned, it's not the first time we proposed it.
20 It's the second time, and we had the benefit of
21 that first comment file to address ourselves to
22 this issue.

1 I think also as you rightly noted, the
2 commenters -- and it's not a polling, but if there
3 were 12 commenters that said 67 percent is correct
4 and 14 were somewhere else, that seems pretty
5 close to me. It's not like there weren't people
6 that truly supported 67 percent.

7 I note also what Commissioner Wetjen
8 said that was inserted and is in this very clearly
9 on page 90 in the document, that we have this
10 opportunity, whether market participants come in
11 by petition or other facts come in to us, that
12 this Commission, through appropriate orders and
13 notice and comment and so forth can do what you're
14 suggesting in your document. But that we
15 basically finalize today that in a year's time
16 based on additional data it moves to 67 percent.
17 We have set in place the formula, but that if
18 people petition us or others come in, this
19 Commission, through notice and comment, can do
20 something.

21 I would also note two other things from
22 the congressional record. Dodd-Frank said we had

1 to complete these rules in one year. I think
2 Congress meant something by that. They didn't
3 mean that we would never come back and change them
4 but just that we had to put them in place. I do
5 think, as all the Commissioners have said at
6 different times, that we constantly have to come
7 back and look. Do we change them? Do we modify
8 them? And so forth. And then just lastly as we
9 note in our document on page 15 that -- and this
10 was just from the congressional record -- I think
11 it was from Chairman Lincoln, but it's in the
12 congressional record -- she noted that the guiding
13 principle in setting appropriate block trade is
14 that the vast majority of swaps transactions
15 should be exposed to the public market through
16 exchange trading. I mean, I think that's what
17 this is trying to meet that congressional intent,
18 at least as expressed by one chairman that worked
19 on Dodd-Frank.

20 COMMISSIONER O'MALIA: If I may respond
21 to a couple of those concerns.

22 I don't disagree at all with Chairman

1 Lincoln on this either. She said do it. Do it
2 quickly. That's what we're proposing. We're just
3 adding the requirement that we do it based on data
4 and the facts. This rule automatically goes to 67
5 percent. Now, I wish -- as I'm frequently on the
6 losing end of a vote, and if I got to win the vote
7 and still have the losing number of votes, then
8 that would be an interesting outcome, which is
9 kind of the way this rule came out. Twelve were
10 for it, 14 were against it, but a lot of them,
11 including -- and this is the craziest part -- if
12 you look on page -- where is it? Page 87.
13 There's a discussion about -- no, page 83. A
14 number of commenters expressed concerns regarding
15 imposing the proposed 67 percent notional
16 calculation prior to analysis of swap data
17 collected by SDRs.

18 Now, two of the entities in here are
19 Barclays and Better Markets in this category that
20 are really supporting a fact-based determination.
21 And I think these are just fundamental, good
22 government kind of solutions that we can take from

1 the data that we're collecting. This was a
2 priority. Get the data out there. We're working
3 to make the data better and I support the
4 Commission's efforts, everybody's efforts to make
5 it good, robust data so we can really surveil the
6 markets. This is not a delay tactic. This is the
7 50 percent block is ineffective upon this rule.
8 This only says let's look at the data before we
9 set the number.

10 CHAIRMAN GENSLER: And I think this is
11 -- this rule in front of us is fact-based and has
12 been exposed to the public and has also looked at
13 data, and we went back when we repropose and
14 looked at significant data as it was available to
15 us then. As we move forward, we can certainly,
16 and I think at all times, look to whether we
17 reconsider things. So I'm not able to support.

18 COMMISSIONER WETJEN: I'd like to make
19 just a couple of comments. My 12th grade Math
20 teacher famously said, "There's more than one way
21 to the mall." And I'm not going to pass judgment
22 on whether this amendment is a better way to get

1 to where we need to go or not, but I think with
2 the benefit of a little bit more notice about the
3 amendment I could have gotten a better handle on
4 this, which is I don't have a sense today what
5 sort of procedural problems could arise by virtue
6 of us adopting this amendment right now.

7 Commissioner O'Malia just referred to a couple of
8 comment letters but I think I would need more time
9 and the advice of counsel to consider whether or
10 not this inappropriately falls within the APA if
11 we were to accept it, which is the main reason I
12 can't support it.

13 COMMISSIONER O'MALIA: Fair enough. But
14 we would have, based on this requirement, a vote
15 by the Commission to set the level based on public
16 comment. So I think we would be not only with the
17 letter of the law but the spirit of the law as
18 well.

19 I won't belabor this point. I'm happy
20 to vote and look forward to the positive outcome.

21 COMMISSIONER CHILTON: Mr. Chairman.

22 CHAIRMAN GENSLER: Yes, Commissioner

1 Chilton.

2 COMMISSIONER CHILTON: I just want to
3 say, I mean, I appreciate Commissioner O'Malia's
4 effort, but I believe that what we have before us
5 is based on facts and data and a fulsome review of
6 the comments. And I echo your concerns, Mr.
7 Chairman, but thank Commissioner O'Malia for his
8 effort but I think what we have is totally
9 justifiable. Thanks.

10 CHAIRMAN GENSLER: I guess we have a new
11 secretary. Ms. Jurgens, do you want to call the
12 roll?

13 MS. JURGENS: This vote is on the
14 amendment to the preamble language and the rule
15 text to require fact-based determination of
16 appropriate percentages of notional amount
17 calculations.

18 Commissioner Wetjen:

19 COMMISSIONER WETJEN: No.

20 MS. JURGENS: Commissioner Wetjen is no.
21 Commissioner O'Malia.

22 COMMISSIONER O'MALIA: Yes.

1 MS. JURGENS: Commissioner O'Malia is
2 aye. Commissioner Chilton. Commissioner Chilton.

3 COMMISSIONER CHILTON: No.

4 MS. JURGENS: No. Commissioner Chilton
5 is no. Commissioner Sommers.

6 COMMISSIONER SOMMERS: Aye.

7 MS. JURGENS: Aye. Commissioner Sommers
8 is aye. Mr. Chairman.

9 CHAIRMAN GENSLER: No.

10 MS. JURGENS: No. Mr. Chairman, no.
11 Mr. Chairman, on this question the ayes are two
12 and the nos are three.

13 CHAIRMAN GENSLER: Thank you. Do I call
14 you Madam Secretary?

15 Ms. Jurgens, do you want to call the
16 roll?

17 COMMISSIONER O'MALIA: Mr. Chairman, I
18 make a motion to consider a second amendment.
19 This amendment is -- do I have a second on that?

20 COMMISSIONER SOMMERS: Second.

21 COMMISSIONER O'MALIA: Thank you. This
22 amendment does not change the percentage at all.

1 Do you want to hand it out? It says, "In making
2 the determination of 67 percent that we have set
3 in this rule that we will at least conduct a study
4 beforehand and get public comment and then have a
5 Commission vote." We also have protected the
6 delegated authority as well to make sure that the
7 Commission has the opportunity to vote on this.
8 So we keep the 67 percent in. We don't -- we
9 don't try to come up with another number, so we're
10 protecting that number. So I just ask that we
11 take a study, public comment, and vote on it.

12 Did you give it to the secretary as
13 well? I promise this is the last one. Maybe.
14 We'll see how it turns out.

15 CHAIRMAN GENSLER: It being motioned and
16 duly seconded, are there any questions?

17 COMMISSIONER SOMMERS: I actually have a
18 question for the team.

19 I just want to confirm because there
20 were a couple of questions asked about this in the
21 round of questioning for the final rule. Did we
22 consider additional data from when we proposed the

1 block rule until now finalizing the block rule?
2 Because I thought that we used the exact same
3 data. And maybe I'm wrong. I didn't know we
4 considered additional data in trying to figure
5 this out.

6 MR. DUNFEE: Right. We did not consider
7 additional data.

8 COMMISSIONER SOMMERS: I thought that
9 that's what I had understood but then the comment
10 was made that we considered additional data and we
11 did not. So I just wanted to confirm that.

12 CHAIRMAN GENSLER: Commissioner O'Malia,
13 again, each of these amendments are only handed to
14 us on the dais but this one I have had less time
15 with than the earlier, but I feel I am not able to
16 support this amendment. Like Commissioner Wetjen
17 mentioned, I don't know what I would have done if
18 I had had this a week or two weeks ago but I don't
19 feel I can support this at this point in time. I
20 do think that the Commission always has the
21 opportunity to take petitions, to even to slow
22 down the director of DMO or any director from

1 doing something if they think it's appropriate,
2 but I think the rule that we have in front of us
3 is a good rule. And so I'm unable to support this
4 amendment.

5 COMMISSIONER O'MALIA: Mr. Chairman, let
6 me just, for the benefit of kind of the public
7 watching, so what this does, prior to establishing
8 the post-initial appropriate minimum block size as
9 well as the post-initial capsize is the Commission
10 shall complete a study that will assess whether
11 the 67 percent is the appropriate percentage to be
12 used for the notional amount calculation after the
13 initial minimum block size period has expired. If
14 based on the study the Commission determines that
15 67 percent is not appropriate for any asset class,
16 it will determine an alternative percentage or
17 percentages to be used for notational amount
18 calculation. The Commission notes that it will be
19 able to make an informed evaluation of the
20 appropriate percentages since it now receives
21 swaps data from SDRs.

22 I won't go into the rest of it. But

1 that's all it does.

2 CHAIRMAN GENSLER: See, I don't accept
3 the premise. I think that we have made and are
4 about to make an informed determination based on
5 notice and comment and a full public record and
6 data with regard to this. And so I'm not able to
7 support this.

8 COMMISSIONER O'MALIA: Fair enough, but
9 with all due respect, the data is three years old
10 and it was only three months worth of data. So,
11 and that was only for financial products; nothing
12 for FX and commodities.

13 COMMISSIONER CHILTON: Mr. Chairman.

14 CHAIRMAN GENSLER: Commissioner Chilton.

15 COMMISSIONER CHILTON: Mr. Chairman. It
16 took us months to get to this point, so it seems
17 to me we need to move on this stuff and get it in
18 place. And after my thoughtful 60-second review
19 of the amendment I can't support it.

20 CHAIRMAN GENSLER: Ms. Jurgens.

21 MS. JURGENS: This vote is on the second
22 amendment to require fact-based determination of

1 appropriate percentages for notional amount
2 calculations.

3 Commissioner Wetjen.

4 COMMISSIONER WETJEN: No.

5 MS. JURGENS: Commissioner Wetjen, no.
6 Commissioner O'Malia.

7 COMMISSIONER O'MALIA: Aye.

8 MS. JURGENS: Commissioner O'Malia, aye.
9 Commissioner Chilton. Commissioner Chilton.

10 COMMISSIONER CHILTON: No.

11 MS. JURGENS: Commissioner Chilton, no.
12 Commissioner Sommers.

13 COMMISSIONER SOMMERS: Aye.

14 MS. JURGENS: Commissioner Sommers, aye.
15 Mr. Chairman.

16 CHAIRMAN GENSLER: No.

17 MS. JURGENS: Mr. Chairman, no. Mr.
18 Chairman, on this question the ayes have two and
19 the nos have three.

20 CHAIRMAN GENSLER: Now, Ms. Jurgens,
21 could you call the roll on the question, I
22 believe, the staff proposal that was motioned and

1 duly seconded?

2 MS. JURGENS: This vote is on the final
3 rule procedures to establish appropriate minimum
4 block sizes for large notional off-facility swaps
5 and block trades.

6 Commissioner Wetjen.

7 COMMISSIONER WETJEN: Aye.

8 MS. JURGENS: Commissioner Wetjen, aye.
9 Commissioner O'Malia.

10 COMMISSIONER O'MALIA: No.

11 MS. JURGENS: Commissioner O'Malia, no.
12 Commissioner Chilton.

13 COMMISSIONER CHILTON: Aye.

14 MS. JURGENS: Commissioner Chilton, aye.
15 Commissioner Sommers.

16 COMMISSIONER SOMMERS: No.

17 MS. JURGENS: Commissioner Sommers, no.
18 Mr. Chairman.

19 CHAIRMAN GENSLER: Aye.

20 MS. JURGENS: Mr. Chairman, aye. Mr.
21 Chairman, on this question the ayes have three and
22 the nos have two.

1 CHAIRMAN GENSLER: I thank you. Let me
2 just say the ayes having or majority voting for
3 it. We will send it along with any technical
4 corrections to the Federal Register. And I want
5 to thank John and George and Esen and Rick and
6 Nhan. I assume that a couple of you, Rick and
7 Nhan, you're staying at the table, maybe others as
8 well, because the next presentation is on the
9 staff recommendation on a rule called Made
10 Available to Trade Process for Designated Contract
11 Market or Swap Execution Facility to make a Swap
12 Available to Trade under the Dodd-Frank Act and
13 the Commodity Exchange Act.

14 I want to thank -- we have some new
15 colleagues joining at the table, I think.

16 Rick Shilts, the head of the Division of
17 Market Oversight; David Van Wagner, deputy and
18 chief counsel for the Division; Nhan Nguyen, who
19 is the team lead; Sayee Srinivasan and Mike
20 Penick, who are both from the Office of Chief
21 Counsel and have spent many, many months, nights,
22 days looking at the economics of the swap

1 execution facility rules, the designated contract
2 market rules that we moved on last summer, and
3 this important made available for trading rule.

4 Do I hand it over to Nhan? Is that
5 right?

6 MR. NGUYEN: That's right. Thanks.
7 Good morning, Mr. Chairman and Commissioners.

8 Today staff is recommending for the
9 Commission's consideration rules that establish a
10 process for designated contract markets (DCMs) and
11 swap execution facilities (SEFs) to make a swap
12 available to trade and establish a schedule to
13 phase-in compliance with the trade execution
14 requirement under section 2h(8) of the Act.

15 First, we'd like to thank our colleagues
16 in the Division of Market Oversight, the Office of
17 the General Counsel, and the Office of the Chief
18 Economist for all of their hard work, advice, and
19 support during this rulemaking process. The
20 available to trade rule was proposed as a Further
21 Notice of Proposed Rulemaking in December of 2011.
22 The Commission hosted a public roundtable on the

1 issue in January 2012. The Commission
2 subsequently received over 30 comment letters on
3 this proposal and held a number of meetings with
4 market participants. The discussions and comments
5 arising out of the roundtable and letters were
6 informative and insightful and have led staff to
7 suggest a number of changes and clarifications to
8 the proposed rule.

9 The statutory basis for this rule lies
10 in section 723 of the Dodd-Frank Act, which
11 establishes the trade execution requirement under
12 section 2h(8) of the Commodity Exchange Act.
13 Under the trade execution requirement, swaps
14 transactions that are subject to the clearing
15 requirement must be traded on a DCM or a SEF
16 unless no DCM or SEF makes the swap available to
17 trade or the transaction otherwise is not required
18 to be cleared. The final rules implement the
19 trade execution requirement by allowing a DCM or
20 SEF to submit a rule filing to the Commission
21 stating its determination that a swap is available
22 to trade either under the Commission's 40.5 rule

1 approval process or the 40.6 rule certification
2 process.

3 In response to comments received, the
4 final rules established two prerequisites
5 regarding its review of these determinations.

6 First, the Commission will only review submissions
7 with respect to swaps that are already subject to
8 the clearing requirement. Second, the final rules
9 require that a DCM or SEF submitting an initial
10 determination must actually list or offer that
11 swap for trading on its own trading platform or
12 system.

13 In making its determination, the DCM or
14 SEF must consider, as appropriate, one or more of
15 the following factors with respect to the swap:

16 (1) whether there are willing buyers and sellers;
17 (2) the frequency or size of transactions; (3) the
18 trading volume; (4) the number and types of market
19 participants; (5) the bid-ask spread; and (6) the
20 usual number of resting firm or indicative bids
21 and offers.

22 The proposed rule included eight

1 factors, one of which would have allowed a SEF or
2 DCM to consider any factor that it considered to
3 be relevant. In response to comments, this factor
4 has been withdrawn from the final rules. Another
5 factor, whether a SEF or DCM will support trading
6 in the swap, has also been withdrawn given the
7 adoption of the listing requirement.

8 In response to commenters, the preamble
9 to the final rule states that the Commission will,
10 for an initial period of time, extend the review
11 periods for these determinations as permitted
12 under section 40.5 and 40.6 to 90 and 100 days,
13 respectively, to allow market participants to
14 submit and for the Commission to consider public
15 comments. The proposed rules also requested
16 comment on whether a SEF or DCM should be allowed
17 to submit a determination with respect to a group,
18 category, type, or class of swap. In response to
19 those comments, the final rules allow a SEF or DCM
20 to do so with discretion given to the SEF or DCM
21 to define that group, category, type, or class of
22 swap. However, such a determination must address

1 how the factors apply to all the swaps in the
2 group, category, type, or class that has been
3 submitted to the Commission. The proposed rules
4 also request a comment on whether a SEF or DCM, in
5 evaluating a swap, should be able to consider
6 activity regarding the same swap on other SEFs,
7 DCMs, or activity in the bilateral market. In
8 response to comments, the final rules allow a SEF
9 or DCM to do so.

10 Upon approving or deeming a swap is
11 available to trade, the final rules clarify that
12 all of the DCMs and SEFs that list or offer that
13 swap for trading must do so in accordance with the
14 trade execution requirement and the Commission's
15 regulations with respect to methods of execution.
16 The final rules also clarify that subsequent SEFs
17 and DCMs will not be required to submit separate
18 determinations for that swap.

19 The proposed rule had included and
20 requested comment on a requirement that
21 economically equivalent swaps that are listed or
22 offered for trading must also be made available to

1 trade and therefore, subject to the trade
2 execution requirement. In response to commenters,
3 the final rules do not adopt this requirement.
4 The proposed rules also request a comment on
5 whether there should be a process by which a swap
6 is deemed no longer available to trade. The final
7 rules clarify that when all SEFs and DCMs that had
8 listed or offered that swap for trading no longer
9 list or offer that swap for trading, then the
10 Commission will deem that swap as no longer
11 available to trade. Given this clarification, the
12 final rules do not adopt a required annual review
13 of all swaps that are available to trade as had
14 been proposed. The final rules also provide that
15 the Commission will post all available to trade
16 determinations on its website.

17 The final rules also include a schedule
18 to implement the trade execution requirement.
19 This schedule was proposed in a proposed
20 rulemaking in September of 2011, and the
21 Commission received over 30 comment letters. The
22 final rules adopt the schedule as proposed which

1 requires market participants to comply with the
2 trade execution requirement at the later of the
3 applicable deadline established under the clearing
4 requirement compliance schedule under the
5 Commission's regulations or 30 days after the swap
6 is deemed available to trade by the Commission.

7 At this time we would be happy to
8 address any questions that you may have.

9 CHAIRMAN GENSLER: Thank you, Nhan. I'd
10 consider a motion on the staff recommendation.

11 COMMISSIONER SOMMERS: So moved.

12 COMMISSIONER O'MALIA: Second.

13 CHAIRMAN GENSLER: Thank you. I don't
14 have questions. I do support this final
15 rulemaking to implement the process for swap
16 execution facilities in designated contract
17 markets to "make a swap available to trade" or
18 what has come to be known as the MAT rule, though
19 MAT is not sitting at the table.

20 Today's rule also finalizes a separate
21 Commission rule proposal on phased-in compliance
22 for the trade execution requirements, so there's

1 actually -- this is one of those moments -- I say
2 this for the public -- where we took two rules and
3 we're pulling them together in one. Completion of
4 these two rules facilitates the congressionally
5 mandated -- and I would say critical -- reform
6 promoting pre-trade transparency in the swaps
7 market. The trade execution facility of
8 Dodd-Frank requires that swaps be traded on SEFs
9 or DCMs that: (1) are subject to mandatory
10 clearing; and (2) made available to trade. Now,
11 this Commission made significant progress through
12 many rulemakings and we now have clearing
13 requirements in four major interest rate markets
14 and a number of credit default swap indices.
15 Those are the indices that are at the center of
16 last year's very public events around JPMorgan
17 chief investment office and what has been called
18 the London Whale.

19 Such platforms, these SEFs and DCMs,
20 will allow participants the ability to trade swaps
21 by accepting bids and offers made by multiple
22 participants with all market participants given

1 impartial access. We've had impartial access or
2 similar broad access to designated contract
3 markets but that is what Congress said would also
4 be on these swap execution facilities.

5 The MAT rule establishes, I believe, a
6 flexible process for a SEF or DCM to make a swap
7 available to trade. And I would note while
8 Congress mandated and had a very specific process
9 for clearing determinations, Congress did not
10 mandate that this Commission have a process for
11 this. It simply said -- and Nhan, you'll tell me
12 what the statutory language -- was it 5h -- what
13 is it? Or David? What's that? Two?

14 MR. VAN WAGNER: The trade execution
15 mandate 2h(8).

16 CHAIRMAN GENSLER: 2h(8) that these two
17 conditions required clearing and made available
18 for trading.

19 So I think this flexible process is
20 appropriate; that the trading platforms will
21 determine first which swaps they wish to make
22 available to trading on their platforms, and that

1 these determinations will be submitted to the
2 Commission either as self-certified or seeking
3 approval under part 40.

4 We did actually propose something about
5 made available for trading in the first SEF
6 proposal back in December of 2010 or it may have
7 been in the Federal Register in January of 2011.
8 Is that correct, Nhan and David?

9 MR. NGUYEN: Yes. It was originally
10 proposed in the SEF.

11 CHAIRMAN GENSLER: And that would have
12 allowed swap execution facilities just to put it
13 up on their website with no Commission
14 involvement. I think that this proposal as
15 modified through the comment process is flexible
16 but provides the public with ample public notice
17 and opportunity to be heard through the process
18 and the Commission process under part 40 I think
19 is appropriate.

20 We also have a phase-in rule here. The
21 phase-in rule we proposed in I believe September
22 of 2011. And that got significant public comment.

1 The phase-in would provide market participants
2 with 30 days after the SEF or DCM
3 self-certification process or rule approval had
4 finished. And as that self-certification or rule
5 approval process may take as much as 100 or so
6 days, it's in essence 30 days after that process.
7 And I know some of the commenters said that such
8 determination should not be taken up until after
9 there's a clearing mandate, and I support the
10 changes the staff made also to ensure as I
11 corrected -- David, you know it says Dan on your
12 card there instead of David? That this MAT
13 determination is only taken up after there's a
14 clearing requirement. Is that right?

15 MR. NGUYEN: Yes, that's correct.

16 CHAIRMAN GENSLER: So I support the
17 rule. Commissioner Sommers.

18 COMMISSIONER SOMMERS: Thank you, Mr.
19 Chairman. And thank you to this team for all of
20 your hard work in helping us navigate what I will
21 or what I always have considered a very
22 significant determination for this Commission.

1 And I know it hasn't been easy to figure out how
2 we apply the statute in this context but this does
3 determine what contracts will be mandated to be
4 traded on exchange. So I think I can't
5 over-exaggerate the significance of this process
6 and the significance of the determination of this
7 Commission to allow SEFs and DCMs to be making the
8 determination of what is mandated.

9 My fear, and I guess assumption, has
10 always been that everything that is mandated to be
11 cleared will end up being mandated to be traded on
12 a platform because of the way we have structured
13 this rule. And because we made broad clearing
14 determinations, and I'm not saying that I disagree
15 with that, but we made broad determinations in
16 what's mandated to be cleared. There are a lot of
17 contracts that I fear are not appropriate to be
18 mandated and I think will be subject to this
19 mandate.

20 I just have a couple of questions. Is
21 there anything in our act or in our rules that
22 would prevent a SEF or a DCM from making a MAT

1 determination for an illiquid, off-the-run credit
2 default swap as long as it trades once in a while?

3 MR. NGUYEN: Commissioner Sommers, I
4 think it's difficult given the novelty of this
5 process to prejudge which swaps, you know, may be
6 deemed not made available to trade. I think what
7 we have here is a process by which a SEF or DCM
8 can submit its initial determination to the
9 Commission with the factors that are in this rule
10 and to allow public comments for a period of time
11 to come in. And on the basis of how the factors
12 are applied and the explanation that a SEF or DCM
13 gives us along with perhaps different perspectives
14 from public comments, at that point we'll be able
15 to make a determination of whether the swap is
16 available to trade or inconsistent with the Act or
17 the regs.

18 COMMISSIONER SOMMERS: Thank you. I
19 appreciate that but I also, you know, I'm
20 concerned that because there aren't really
21 objective standards that it's going to be
22 difficult for the Commission and the Commission

1 staff.

2 The preamble says that satisfying any of
3 the determination factors would sufficiently
4 indicate that a contract is suitable for mandatory
5 trade execution. How will a DCM or SEF satisfy
6 any of the factors given that they don't
7 incorporate objective standards?

8 MR. NGUYEN: Well, Commissioner Sommers,
9 we think that the factors are each and of
10 themselves indicative of trading liquidity and
11 what we have here as I stated is a flexible
12 process by which we expect in a rule filing the
13 SEF or DCM to give us a submission containing an
14 explanation or analysis based on one or more of
15 these factors, how that swap that they've
16 submitted is available to trade, and as we stated
17 in the preamble that we expect that explanation to
18 be clear and informative. It's our hope and
19 expectation that, you know, we will get public
20 comments on those determinations that will help us
21 inform whether that swap should be made available
22 to trade or not.

1 COMMISSIONER SOMMERS: Thank you. As I
2 said in my opening statement, I fear that this
3 rule in particular has the greatest prospect of
4 putting us at odds with some of our colleagues in
5 foreign jurisdictions because I fear that they
6 will not adopt this sort of process. So once we
7 know, especially those major jurisdictions such as
8 Europe, once we know where they may be in making
9 mandatory trade determinations, what process could
10 the Commission take to make a step backwards from
11 any of these determinations? How can we remove a
12 swap from the MAT determination?

13 MR. NGUYEN: Well, as the final rules
14 clarify, once all SEFs -- one SEF or DCM, they
15 make the swap available to trade and the trade
16 execution requirement would apply, when all -- if
17 there are subsequent SEFs or DCMs that list or
18 offer this swap for trading and therefore they're
19 subject to the trade execution requirement. When
20 all those SEFs or DCMs have delisted that swap it
21 would be in our judgment that that swap would no
22 longer meet any of the six factors set forth in

1 the rule and at that point the Commission would
2 deem that swap no longer available to trade.

3 COMMISSIONER SOMMERS: I think that's
4 what I was afraid of. As long as a SEF or a DCM
5 continues to list a swap and it's already been
6 subject to a MAT determination, there's no way to
7 remove it from that determination unless the SEF
8 or the DCM -- this is a question -- unless the SEF
9 or DCM delists it?

10 MR. VAN WAGNER: Just -- right. But in
11 addition to that -- because I thought when you
12 started you were referring to things that the
13 Commission could do of its own initiative. And I
14 think of its own initiative it could take 8a(7)
15 action vis-à-vis the various exchanges that list
16 that product.

17 COMMISSIONER SOMMERS: If you could
18 elaborate on that. I'm sorry, I didn't
19 understand.

20 MR. VAN WAGNER: 8a(7) gives the
21 Commission authority of its own initiative to
22 basically impose rule changes on SEFs or DCMs. So

1 in this case, because the determination itself was
2 prompted by a rule change, essentially you could
3 reverse that by taking action vis-à-vis the
4 exchanges that list that and basically say you
5 want to unwind the determination. And again --

6 COMMISSIONER SOMMERS: So we could use
7 8a(7) to only unwind the MAT determination, not
8 tell them to delist it?

9 MR. VAN WAGNER: Yeah, theoretically.
10 Right.

11 COMMISSIONER SOMMERS: Okay, thank you.

12 CHAIRMAN GENSLER: Can I just follow up?
13 But it's the MAT determination that leads to a
14 trade execution requirement; a simple listing does
15 not.

16 MR. VAN WAGNER: Correct.

17 MR. NGUYEN: Commissioner Sommers, I
18 would also note as we discussed in the preamble to
19 the final rules, insofar there is a listing
20 requirement for the swaps that are submitted to us
21 as available to trade, they're submitted to the
22 Commission initially as a product listing or a

1 product filing under 40.2 or 40.3. And under the
2 part 40 rules, we, the Commission, are allowed to
3 request of a SEF or DCM that's listing that swap
4 additional information that would --
5 hypothetically speaking, that would demonstrate
6 that the swap continues to be available to trade.

7 CHAIRMAN GENSLER: Thank you,
8 Commissioner Sommers. I think that last exchange
9 is very helpful, the 8a(7) can be used by this
10 Commission or future commissions to in essence
11 address itself or reverse a MAT determination.

12 David, do you just want to confirm that
13 again?

14 MR. VAN WAGNER: Correct.

15 CHAIRMAN GENSLER: Without requiring
16 delisting though.

17 MR. VAN WAGNER: Correct.

18 CHAIRMAN GENSLER: Commissioner Chilton.
19 Commissioner Chilton, did you have any questions?

20 COMMISSIONER CHILTON: I'm sorry, the
21 audio wasn't on yet. Yeah, sorry.

22 How will folks be notified when a MAT

1 determination has been made? There has to be some
2 sort of market-wide dissemination, right?

3 MR. NGUYEN: Commissioner Chilton, as we
4 noted in our final rule the part 40 submissions,
5 as with other part 40 submissions, are currently
6 posted on our website, and as we also stated in
7 the preamble, we plan on listing on a centralized
8 area of our website a list of all the swaps that
9 are approved as available to trade and therefore
10 subject to the trade execution requirement. This
11 would, we believe, give market participants notice
12 of which swaps are subject to the trade execution
13 requirement.

14 COMMISSIONER CHILTON: Okay. And will a
15 DCM be able to trigger the trading mandate in
16 advance of SEF being registered? Can they trigger
17 it like that?

18 MR. NGUYEN: No. What a DCM could do on
19 the effective date they could make a filing or
20 make a determination and submit a filing to the
21 Commission that that swap is available to trade,
22 but the actual trade execution mandate wouldn't

1 take effect until after the part 40 review process
2 occurs and after the implementation period that we
3 have for market participants to prepare to comply
4 with the trade execution requirement passes.

5 COMMISSIONER CHILTON: Okay, thank you.

6 CHAIRMAN GENSLER: Thank you,
7 Commissioner Chilton.

8 Commissioner O'Malia.

9 COMMISSIONER O'MALIA: Thank you very
10 much. Thank you to the team for trying to make
11 this process workable with little congressional
12 direction and advice.

13 Can you provide an example of a cleared
14 trade that you believe would be unacceptable to
15 receive the MAT determination?

16 MR. NGUYEN: Commissioner O'Malia, it's
17 difficult to prejudge, you know, which swaps, you
18 know, at this moment we would deem as not made
19 available to trade. I think it would depend on
20 the swaps that SEF or DCM subsequently decides to
21 list first and then to submit to us. And also,
22 what we would do, expect to do is review the

1 explanation analysis and how they've applied to
2 the factors in that determination and also look at
3 the public comments before making that
4 determination.

5 COMMISSIONER O'MALIA: Could a SEF
6 submit the entire rates curve for MAT
7 determination as part of its group grouping that
8 they could submit, that they provide in here?

9 MR. NGUYEN: Well, as long as the SEF is
10 listing or offering swaps for trading that cover
11 that curve that you speak of out to a certain
12 year, then yes, it could submit all those swaps as
13 a group, type, category, or class. But as the
14 final rules stated, they would have to apply at
15 least one or more of the factors to all the swaps
16 and explain how the swaps in that grouping are all
17 available to trade.

18 COMMISSIONER O'MALIA: Do you see any
19 reason why they wouldn't?

20 MR. NGUYEN: It's difficult to determine
21 at this point.

22 COMMISSIONER O'MALIA: Of the six

1 criteria you've selected to make the MAT
2 determination, do you believe one or more of these
3 is relevant to our determination? Or more
4 important? Greater weight?

5 MR. NGUYEN: Well, as we discussed in
6 the preamble to our final rule, we think that each
7 of the six factors are relevant to -- could be
8 relevant to an available to trade determination
9 and they all could be indicators of trading
10 liquidity. But, you know, depending on the swap
11 that's submitted to us as available to trade, one
12 or more of the factors could be more relevant than
13 the other depending on the determination and how
14 the factors are applied.

15 COMMISSIONER O'MALIA: I love all my
16 children equally, right?

17 MR. NGUYEN: Perhaps. Yes.

18 COMMISSIONER O'MALIA: So in the period
19 between the compliance date, this is date 61 and
20 the effective date, which is date 120, will we be
21 using trade data -- actual trade data to make any
22 informed decisions about an eventual MAT

1 determination? And will we use accept pre
2 Dodd-Frank, you know, any trades that are
3 occurring today, for example, as part of a MAT
4 determination?

5 MR. NGUYEN: Well, Commissioner O'Malia,
6 the final rules state that we would consider the
7 information, evidence, or data that would come in
8 at filing and perhaps with public comments, but to
9 the extent that we have data or information
10 available to us in our role, our market oversight
11 role that would help inform us about whether a
12 swap is available to trade, I think we would be
13 able to use that information in the review
14 process. I think it would be -- we would have to
15 disclose what information it is we used to make
16 that consideration as part of the administrative
17 record. And I think this approach is consistent
18 with our practice when we review other part 40
19 filings.

20 COMMISSIONER O'MALIA: So what about
21 futures data? Would that be relevant? I know you
22 don't have an economic equivalency requirement,

1 but could a firm submit or a SEF submit as
2 evidence of tradability futures data?

3 MR. VAN WAGNER: I don't think they're
4 foreclosed from using it to make that argument.
5 I'm not an economist but I don't think they're
6 foreclosed from using that.

7 COMMISSIONER O'MALIA: So like our six
8 factors, all data we view in a very similar,
9 favorite-no favorite children status; it's all
10 good as long as it's data? Relevant trade data.
11 Relevant to the topic.

12 MR. VAN WAGNER: It goes into the
13 administrative record that the Commission would
14 consider when it makes that evaluation at the end
15 of the review period. I don't think there's
16 anything. So it has whatever weight you would
17 eventually want to give it when you consider it.

18 COMMISSIONER O'MALIA: David, can you go
19 through this 8a(7) process for delisting? Is
20 there a notice and comment period? Does somebody
21 submit a request or is this a self-executing
22 thing?

1 MR. VAN WAGNER: There's obviously
2 enough -- it can be informally prompted by
3 somebody filing a petition with us or basically
4 complaining to the Commission. The way the
5 process basically -- there are a number of steps.
6 The Commission itself would basically have to --
7 the particulars -- presumably the particular swap
8 that's in question, the Commission would actually
9 basically have to pose, send a letter to the
10 exchange or the exchanges basically saying, you
11 know, why do you think that this continues to be a
12 made available for trading, an indication being
13 that this would be an 8a(7) letter and the end
14 result might eventually be the Commission actually
15 moving to change the rule. The DCM or SEF that
16 receives it would have an opportunity to respond.
17 The Commission would consider it and then if the
18 Commission wanted to force a rule change on the
19 DCMs or SEFs involved it would actually have to
20 put out a Federal Register notice to that effect.
21 There would be a comment process. I don't think
22 there's any embedded particular number of days but

1 there would be a comment process, and ultimately,
2 the Commission would make a determination whether
3 or not the made available to trade determination
4 with respect to a particular product should stand.

5 And if I remember correctly, it actually
6 -- it ends up even being in our regulations. We
7 actually had -- some years back we had a number of
8 regs which actually said the CBT must -- the Board
9 of the Chicago Exchanges must change a particular
10 arbitration rule and the rule itself was laid out
11 in our rules. I can't remember whether that's
12 still in 8a(7) itself but it's basically the
13 Commission imposing a rule on a DCM or a SEF.

14 COMMISSIONER O'MALIA: And how
15 frequently have we used that?

16 MR. VAN WAGNER: Very infrequently. I
17 will not oversell it. It's probably been 20
18 years.

19 COMMISSIONER O'MALIA: Okay.

20 MR. VAN WAGNER: But the threat is out
21 there.

22 COMMISSIONER O'MALIA: There you go. So

1 the Clear-port situation and with the energy
2 contracts, and we don't have an energy clearing
3 mandate so therefore you don't have a mandatory
4 trade determination pending. But it does -- we
5 have a lot of cleared contracts, right? Thousands
6 of contracts that are cleared, yet the liquidity
7 and the onscreen trading is a little light, so to
8 speak. How do we create a mandatory trade
9 determination in situations like that? How do we
10 say yes, we understand it's clearable?
11 Eventually, these energy products will be
12 mandatorily cleared, and required to be cleared,
13 but how do we make a determination that there is
14 sufficient liquidity to trade using Clear-port
15 energy contracts as an example?

16 MR. NGUYEN: Well, Commissioner, I think
17 in your particular scenario it would be up to the
18 DCM or SEF that's listing these contracts to make
19 the case to us based on the factors set forth that
20 there is, you know, sufficient I guess or enough
21 trading liquidity that it's available to trade and
22 therefore subject to the trade execution

1 requirement we would expect with the public
2 comment period we're offering, you know, we'd have
3 market participants weigh in on their thoughts on
4 whether these swaps should be subject to the trade
5 execution requirement.

6 MR. SHILTS: And also the requirement,
7 it doesn't go into effect or can't even be
8 considered until there's a clearing mandate for
9 these particular swaps.

10 COMMISSIONER O'MALIA: No, I understand.

11 MR. VAN WAGNER: Until that's done
12 there's really not --

13 COMMISSIONER O'MALIA: No, this is more
14 of a hypothetical but, you know, eventually we'll
15 get there. I'm a big fan of data and comments,
16 so. It's really up to the SEF is what you're
17 saying.

18 MR. NGUYEN: In so far as they're making
19 an initial determination and presenting their
20 determination of filing for the Commission's
21 review. That's their role in the process.

22 COMMISSIONER O'MALIA: I have no further

1 questions. Thank you very much.

2 CHAIRMAN GENSLER: Before I hand over to
3 Commission Wetjen, I just want to note I'm sure
4 that Claire, Kelsey, and Macy are very happy to
5 hear that you love them all equally, and I would
6 say the same thing about Anna, Lee, and Isabelle.
7 So, good going, Dad.

8 Commissioner Wetjen.

9 COMMISSIONER WETJEN: If my
10 three-year-old had slept through the night last
11 night, I might agree with you.

12 I don't have any questions.

13 CHAIRMAN GENSLER: Ms. Jurgens.

14 MS. JURGENS: This vote is on the final
15 rule process for a designated contract market or
16 swap execution facility.

17 CHAIRMAN GENSLER: I'm sorry. I'm
18 sorry. Mr. -- yes, we did Commissioner Chilton.
19 Yeah.

20 MS. JURGENS: To make a swap available
21 to trade under section 2(h)(8) of the Commodity
22 Exchange Act or CEA, swap transaction compliance

1 and implementation schedule, trade execution
2 requirement under 2(h) of the CEA.

3 Commissioner Wetjen.

4 COMMISSIONER WETJEN: Aye.

5 MS. JURGENS: Commissioner Wetjen, aye.
6 Commissioner O'Malia.

7 COMMISSIONER O'MALIA: No.

8 MS. JURGENS: Commissioner O'Malia, no.
9 Commissioner Chilton.

10 COMMISSIONER CHILTON: Aye.

11 MS. JURGENS: Commissioner Chilton, aye.
12 Commissioner Sommers.

13 COMMISSIONER SOMMERS: No.

14 MS. JURGENS: Commissioner Sommers, no.
15 Mr. Chairman.

16 CHAIRMAN GENSLER: Aye.

17 MS. JURGENS: Mr. Chairman, aye. Mr.
18 Chairman, on this question the ayes have three;
19 the nos have two.

20 CHAIRMAN GENSLER: The ayes having it,
21 the staff recommendation is accepted. And with
22 any technical edits it will be sent to the Federal

1 Register.

2 I thank you all for all this work. I
3 gather Mr. Shilts, Van Wagner, Sayee, and Mike,
4 you're staying up, too, as well, right? And is
5 Amir Zaidi coming up? Great.

6 Do you want to take a break or anything?
7 I want to introduce to the public the team that's
8 been working on the swap execution facility rule
9 from the Division of Market Oversight, David Van
10 Wagner and Amir Zaidi; from the Office of Chief of
11 Counsel, Sayee Srinivasan and Mike Penick; from
12 our General Counsel's Office, Adrienne Joves; and
13 it looks like Jonathan Marcus is joining us as
14 well. Rick Shilts from the Division of Market
15 Oversight I assume will be joining us.

16 I also just want to give a shout out to
17 Bella Rozenberg, who had team led this for a while
18 before she went to work for Commissioner O'Malia's
19 office. Joe Cisewski who is in Commissioner
20 Wetjen's office who was on the team. It seems
21 this team feeds the commissioners' offices. Riva
22 Adriance, who had been working on it initially.

1 Mauricio and others. There's a lot of people.
2 Carlene Kim, and Steve Seitz, who have been
3 working on this rule.

4 But I thank you all. I know it's been a
5 lot of long nights, a lot of consultation with all
6 five commissioners and their legal assistants, and
7 many a public comments.

8 Who do I turn it over to? Amir. You've
9 got the table.

10 MR. ZAIDI: Good morning, Mr. Chairman
11 and Commissioners.

12 Today staff is recommending that the
13 Commission approve for publication in the Federal
14 Register final rules pertaining to the core
15 principles and other requirements for swap
16 execution facilities. I would also like to thank
17 the many staff members who contributed to this
18 final rulemaking for their hard work and
19 dedication.

20 I'll first provide a little bit of
21 background and then go into the proposal and
22 final.

1 Title 7 of the Dodd-Frank Act
2 establishes a comprehensive regulatory framework,
3 including registration, operation, and compliance
4 requirements for SEFs. Section 733 of the
5 Dodd-Frank Act added section 5h of the CEA,
6 Commodity Exchange Act, which sets forth
7 registration and compliance requirements for SEFs,
8 including 15 core principles that SEFs must comply
9 with in order to register and maintain
10 registration as a SEF. Section 5h of the CEA also
11 states that the goal of this section is to promote
12 the trading of swaps on SEFs and to promote
13 pre-price transparency in the swaps market.

14 Section 721 of the Dodd-Frank Act added
15 section 1a(50) of the CEA which defines SEF as "a
16 trading system or platform in which multiple
17 participants have the ability to execute or trade
18 swaps by accepting bids and offers made by
19 multiple participants in the facility or system
20 through any means of interstate commerce."

21 Section 723 of the Dodd-Frank Act
22 amended section 2(h) of the CEA which sets forth a

1 trade execution requirement in section 2(h)(8) of
2 the CEA. Swaps subject to the clearing
3 requirement and made available to trade must be
4 traded on a DCM or SEF.

5 On January 7, 2011, the Commission
6 published for comment a combination of proposed
7 regulations, guidance, and acceptable practices
8 pertaining to SEFs. The Commission reviewed many
9 comment letters from and participated in numerous
10 meetings with members of the public in connection
11 with the SEF proposal. The Commission also
12 consulted with the Securities and Exchange
13 Commission and International Regulators on
14 numerous occasions. This final rulemaking is
15 informed by and benefits from those public
16 comments and meetings. In this final rulemaking,
17 staff is recommending that the Commission adopt
18 many of the regulations that were proposed with
19 respect to how SEFs comply with section 5h of the
20 CEA. However, as a result of public comments and
21 meetings, this final rulemaking revises or
22 eliminates a number of proposed regulations and in

1 a number of instances establishes guidance and/or
2 acceptable practices in lieu of the proposed
3 regulations.

4 In determining the scope and content of
5 the final SEF rules, the cost and benefits for
6 each rule were carefully considered in light of
7 the public comments. In the interest of time I'll
8 give a general overview of selected aspects of
9 this final rulemaking and then we'll be happy to
10 answer any questions.

11 Section 5h(a)(1) of the CEA sets forth a
12 broad registration requirement which states that
13 no person may operate a facility for the trading
14 or processing of swaps unless the facility is
15 registered as a SEF or DCM. This final rulemaking
16 adopts a registration requirement for any person
17 who operates a facility that meets the SEF
18 definition. Accordingly, this final rulemaking
19 states that any person operating a facility that
20 offers a trading system or platform in which more
21 than one market participant has the ability to
22 execute or trade swaps with more than one other

1 market participant on the system or platform must
2 register as a SEF or DCM.

3 In response to commenters' requests,
4 this final rulemaking provides examples of whether
5 certain better understood categories of facilities
6 fall within the registration requirements. In
7 addition, consistent with the 2(h)(8) execution
8 requirement, swaps subject to the trade execution
9 requirement, those swaps that are subject to the
10 clearing requirement and made available to trade
11 are required to be executed on a SEF or DCM. The
12 rulemaking also states that swaps not subject to
13 the trade execution requirement may be executed on
14 a SEF or DCM or an entity that is not required to
15 register as a SEF.

16 The final rulemaking also provides
17 procedures for full and temporary registration.
18 An applicant seeking registration as a SEF may
19 request that the Commission grant the applicant
20 temporary registration. The Commission will grant
21 a request for temporary registration upon a
22 determination that the applicant has filed a

1 complete form SEF and submitted a notice to the
2 Commission requesting that the Commission grant
3 the applicant temporary registration. Complete
4 form SEF means that the applicant provides
5 appropriately responsive answers to each of the
6 items set forth in form SEF. Staff will not
7 conduct a substantive review before granting
8 temporary registration. An applicant may operate
9 as a SEF under temporary registration upon a
10 notice from staff granting temporary registration
11 but in no case before the effective date of the
12 SEF rules.

13 The final rulemaking adopts the minimum
14 trading functionality requirement as noted in the
15 SEF proposal, which is now termed an order book.
16 An order book is similar to the definitions in the
17 SEF proposal, that is an electronic trading
18 facility as defined under the CEA, a trading
19 facility as defined under the CEA, or a platform
20 in which all market participants have the ability
21 to enter multiple bids and offers, observe or
22 receive bids and offers entered by other market

1 participants, and transact on such bids and
2 offers.

3 An entity that must register as a SEF
4 must ensure that its operations comply with this
5 order book minimum trading functionality
6 requirement. This final rulemaking also
7 distinguishes between transactions that are and
8 those that are not subject to the CEA section
9 2(h)(8) trade execution mandate and provides
10 execution methods for each category.

11 As I noted earlier, swaps not subject to
12 the trade execution mandate may be executed on a
13 SEF or DCM or an entity that is not required to
14 register as a SEF. If a SEF chooses to list such
15 swaps defined as permitted transactions in the
16 release, this rulemaking does not limit the
17 execution methods that are available to market
18 participants or require market participants to
19 utilize certain execution methods for such
20 permitted transactions.

21 On the other hand, transactions
22 involving swaps that are subject to the trade

1 execution requirement must be traded on a SEF or
2 DCM. This final rulemaking provides that
3 transactions in such swaps defined as required
4 transactions in this release and that are not
5 block trades must be executed on a SEF in
6 accordance with the order book or RFQ system and
7 order book execution methods.

8 I previously described the order book so
9 I'll now go into the RFQ system. An RFQ system
10 means a trading system or platform in which a
11 market participant transmits a request for a quote
12 to buy or sell a specific instrument to no less
13 than three market participants in the trading
14 system or platform to which all such market
15 participants may respond. This final rulemaking
16 lowers the minimum market participant requirement
17 from the proposed five market participant
18 requirement to the final three market participant
19 requirement. Several commenters expressed
20 concerns about the risk with respect to
21 information leakage and a potential winners' curse
22 for the market participant whose quote is accepted

1 by the RFQ requester under the proposed five
2 market participant requirement.

3 To address the concerns of commenters
4 while still complying with the statutory SEF
5 definition and promoting the goals provided in
6 section 5h of the CEA that is pre-trade price
7 transparency and the trading of swaps on SEFs,
8 this final rulemaking adopts the market
9 participant requirement of three. This final
10 rulemaking also provides a phase-in for the RFQ to
11 three requirement to assist market participants
12 and SEFs to make an efficient transition from the
13 swap industry's current market structure to the
14 more transparent market structure set forth in
15 this final rulemaking. From the effective date of
16 the final SEF rules until one year from the
17 compliance date of these final rules, a market
18 participant transmitting an RFQ for required
19 transactions may transmit the quote to no less
20 than two market participants.

21 As I noted earlier, the SEF definition
22 includes the phrase "through any means of

1 interstate commerce." Given this phrase, the
2 final rulemaking allows a SEF to use any means of
3 interstate commerce, including but not limited to
4 mail, Internet, email, and the telephone, in
5 providing the execution methods for required
6 transactions. The execution methods are
7 technology-neutral given the "any means of
8 interstate commerce" language. However,
9 regardless of the means of interstate commerce
10 utilized, a SEF must comply with the Act and the
11 Commission regulations including but, not limited
12 to, the execution methods, impartial access, audit
13 trail, and surveillance requirements.

14 The SEF proposal included a time delay
15 requirement for cross trades that are required
16 transactions. The SEF proposal set the time delay
17 at 15 seconds. This final rulemaking notes that
18 the purpose of the time delay is to ensure a
19 minimum level of pre-trade price transparency for
20 required transactions on a SEF's order book. The
21 time delay requirement is similar to time delays
22 in the futures markets for cross trades. The

1 final rulemaking adopts the time delay requirement
2 but in response to commenters' concerns allows
3 SEFs to adjust the time period of the delay based
4 on liquidity or other product-specific
5 considerations. The final SEF rules will become
6 effective 60 days after publication in the Federal
7 Register and there is a general compliance date of
8 120 days after publication in the Federal
9 Register.

10 That concludes my remarks, and we would
11 be happy to take any questions at this time.

12 CHAIRMAN GENSLER: Thank you, Amir. Now
13 I entertain a motion to consider the staff
14 recommendation on the swap execution facility rule
15 set.

16 COMMISSIONER SOMMERS: So moved.

17 COMMISSIONER O'MALIA: Seconded.

18 CHAIRMAN GENSLER: I thank you. Once
19 again I want to thank the tremendous dedication of
20 this team and the many people that have helped
21 before we got here and the dedication of each of
22 the Commissioners and their legal assistants.

1 I do support this rule. I support this
2 final rulemaking as I think it's a key to
3 fulfilling the transparency reforms that Congress
4 and the President came together and laid out in
5 2010. It's been subject to significant public
6 input. I think the file shows at least 100
7 comment letters, but I'm led to believe that there
8 have been more meetings with market participants
9 than even comment letters. And that's all noted
10 on our website. There's also been big public
11 conferences that are called like SEFCOM. Do I
12 have this right? SEFCOM1 and SEFCOM2 that a
13 number of us on this panel have talked with.

14 Congress included a trade execution
15 requirement in the law and this means that swaps
16 that are subject to mandatory clearing and made
17 available to trade would move to a trading
18 platform, and so the swap execution facilities are
19 quite important along with designated contract
20 markets to fulfill that mandate. And Congress
21 also provided the swap execution facilities would
22 allow multiple participants the ability to trade

1 swaps by accepting bids or offers made by multiple
2 participants, the so-called multiple to multiple
3 provision.

4 And I think that the public really
5 benefits by transparency, that farmers and
6 ranchers and commercial companies, municipal
7 governments and the like, whether it's a mortgage
8 company, a community bank, or local insurance
9 company benefits from this transparency. Many
10 end-users will not be required to use this. If
11 it's a nonfinancial end-user you get a choice but
12 you get the benefit of seeing that competition and
13 transparency. And competition does narrow bid ask
14 spreads and competition does benefit the
15 marketplace overall and the economy overall. But
16 it does shift some of the information advantage
17 from Wall Street to Main Street. So it should be
18 no surprise that the record shows that many
19 dealers have had concerns about these rules
20 because they have a different job than this
21 Commission has. This job's Commission (sic) is to
22 comply with the law, implement the law, but as

1 Congress mandated, it's to bring transparency to
2 the marketplace. And as I think Commissioner
3 Wetjen earlier noted, this is a very significant
4 change coupled with the other two rules that will
5 bring significant transparency to this
6 marketplace.

7 I do believe that this rule also strikes
8 an appropriate balance of flexibility. That
9 flexibility I want to express in a number of ways.
10 Though it does require an order book, and the
11 order book means anybody in the marketplace who is
12 guaranteed by a futures commission merchant I
13 should note, but who is guaranteed to do a trade,
14 has the financial resources, can leave a live,
15 executable bid or offer on these platforms. And
16 if they want to communicate to the whole
17 marketplace, that's how they can do it. That's
18 competition. It's very critical. But also, if
19 they want the flexibility to just request from a
20 small number of participants who are unaffiliated
21 with the responses, they can do that as well. And
22 they can do that with what's called the

1 request-for-quote approach.

2 There are other comments that commenters
3 have raised with us about whether is something
4 called a work-up, whether you do a transaction at
5 some level -- let's say it's a \$10 million or \$50
6 million trade, can you add to it or work it up?
7 And the rule appropriately addresses that and says
8 swap execution facilities can have rules about
9 workups so that all the market participants can
10 benefit from that as well to the extent they want
11 to come in with a smaller transaction and then
12 work it up.

13 So I think it provides significant
14 flexibility in that way. In addition, as Congress
15 said in the definition of a swap execution
16 facility that it could be by any means of
17 interstate commerce. This rule is technology
18 neutral. Telephones work. Maybe it's because I'm
19 55 years old, but I think Congress made the
20 decision, and we're just implementing that
21 decision that this rule is technology neutral. As
22 long as there is an order book and somebody can do

1 the minimum functionality around requests for
2 quotes, have an audit trail and the other
3 provisions of the rule, it's technology neutral.

4 I do have a question for the team. I
5 just want to ask specifically David if you can
6 take this one up. We at the Commission in 2011
7 and 2012 issued a series of exemptive orders and
8 then subsequently I think the Division of Market
9 Oversight issued a no-action letter which
10 preserved certain exemptions under the Commodity
11 Exchange Act until the completion of the SEF final
12 rulemakings and various rulemakings on contract
13 markets. If we adopt this SEF rule today, how
14 will that relief measure now operate?

15 MR. VAN WAGNER: You're correct. There
16 were a number of Commission exemptive orders and
17 then in December of 2012 the Division of Market
18 Oversight issued a no-action letter 12-48, which
19 basically permitted facilities that rely on some
20 of the old CFMA exclusions and exemptions -- the
21 ones we know about are exempt commercial markets
22 and exempt boards of trade -- but also there are

1 markets that would have previous to now been
2 opaque to us, like relying on 2(d)(2) and
3 provisions like that. So essentially, we are
4 proposing that no-action letter is due to expire
5 on June 30th, so if the SEF rulemaking is adopted
6 today, the Division of Market Oversight intends to
7 issue a follow-up no-action letter to that 12-48,
8 which would essentially extend the relief that was
9 provided there until the proposed compliance date
10 of the SEF rulemaking, which is 120 days after
11 publication in the Federal Register. The relief
12 would end on that compliance date unless, of
13 course, one of these trading facilities actually
14 have pending before us at that time a DCM or a SEF
15 application. Essentially, the point of this
16 relief was to transition these facilities to the
17 Dodd-Frank regime and they got to take a look at
18 both the DCM and the SEF rules and they decide
19 which way they're going to go when they're moving
20 into a regulated environment. So that's DMO's
21 plan.

22 CHAIRMAN GENSLER: So in essence your

1 plan is to extend the relief that was granted
2 earlier beyond June 30th to effectively four
3 months after this gets in the Federal Register,
4 and as Amir laid out, during that period of time
5 people can get temporarily registered, which is
6 similar to notice registration?

7 MR. VAN WAGNER: Correct.

8 CHAIRMAN GENSLER: Thank you.

9 Commissioner Sommers.

10 COMMISSIONER SOMMERS: Thank you, Mr.
11 Chairman. I have a couple of different questions.
12 First of all, on the effective date versus
13 compliance date, and I think if you could confirm
14 for me that what we had in our proposal was a
15 90-day -- was it an effective and compliance date
16 in our proposal?

17 MR. ZAIDI: Correct. Yes, it was 90
18 days.

19 COMMISSIONER SOMMERS: So now we're
20 being a little bit more aggressive about this
21 effective date, and I think if there's been one
22 takeaway that we've gotten from many of our SEF

1 meetings that we've had is to make sure that
2 there's a level playing field established for
3 those platforms that are currently operating
4 versus maybe new startups that want to be SEFs,
5 that they can be in a place where they all have
6 the ability to start on the same day. So can I
7 assume the starting day for people that have
8 applications pending before us would be on the
9 60th day they could start?

10 MR. ZAIDI: Yes, depending on when
11 applicants get their applications ready and submit
12 them to us. They could submit them after the
13 publication of these final rules in the Federal
14 Register, and depending on our timeframe of
15 reviewing the applications, there's a possibility
16 that they could be starting on day 60.

17 COMMISSIONER SOMMERS: But then they
18 have until the 120th day to come into compliance,
19 so you wouldn't have to have an application, and
20 if you don't care about being one of the first
21 movers --

22 MR. ZAIDI: Right.

1 COMMISSIONER SOMMERS: -- as long as you
2 have an application in before the 120th day you're
3 okay?

4 MR. ZAIDI: Right.

5 COMMISSIONER SOMMERS: For those
6 currently operating?

7 MR. ZAIDI: Right. So, as David
8 mentioned, those who are operating under the
9 no-action relief could still continue to operate
10 under that no-action relief and take additional
11 time to get their application ready and submit it
12 to us as long as it's before the 120-day
13 compliance date and then we would review the
14 application and grant temporary registration. For
15 entities that want to come in after 120 days who
16 aren't operating right now, they have the
17 flexibility to do that as well.

18 COMMISSIONER SOMMERS: Okay. And just
19 to clarify for everyone, on the 121st day, if you
20 are operating a multiple to multiple platform and
21 you still don't have an application in to the
22 Commission, you would be found in violation --

1 MR. ZAIDI: Correct.

2 COMMISSIONER SOMMERS: -- of the act? I
3 am a little concerned about how ambitious this
4 seems for our staff to be able to potentially get
5 through these registrations even for temporary
6 status within 60 days, especially if we have
7 everyone that we believe may want to be SEFs, you
8 know, 15-20 of these different entities putting
9 applications in to us for temporary registration.
10 I am concerned that 60 days is pretty aggressive
11 for us.

12 My next set of questions is with regard
13 to a piece that was actually just added last night
14 in a redline that considers my dissent from the
15 proposal. And there's a footnote, footnote 117
16 that says that "section 13.2 will allow the
17 Commission to consider if a broader model for
18 executing on SEFs consistent with the suggestion
19 in Commissioner Sommers' dissent would be
20 appropriate on a case by case basis in conformance
21 with the CEA and Commission regulations, core
22 principles, and other requirements for swap

1 execution facilities."

2 In my dissent I suggested that the
3 Commission had gone beyond the mandate by
4 requiring that there be a minimum functionality
5 for SEFs. If you could just explain to me how
6 section 13.2 will work on a case-by-case basis.

7 MR. ZAIDI: Section 13.2 of the
8 Commission's regulations, from what I understand,
9 allows any person to file a petition with the
10 Commission to issue, amend, or repeal a rule. So
11 a participant or a person could come in and ask
12 for a rulemaking as far as the execution methods
13 or ask us to look at the execution methods and
14 either issue a rule or amend what's in the current
15 rules.

16 COMMISSIONER SOMMERS: So potentially
17 somebody could come in as a SEF and petition us if
18 they don't have the minimum functionality
19 requirement and petition us to allow them to be
20 registered as a SEF under 13.2?

21 MR. VAN WAGNER: Correct. But 13.2 is
22 forcing -- basically, it's forcing a regulatory

1 change. So during the pendency of any Commission
2 consideration of that petition the reg that's
3 being suggested there be revisions to would stand.
4 So they would, presumably if they wanted to
5 operate or continue operations they would have to
6 comply with the SEF requirements.

7 COMMISSIONER SOMMERS: Okay. Thank you.
8 And then finally, I have questions regarding the
9 concept of exempt DCOs and exempt SEFs. So,
10 sorry, Dodd-Frank has required me to use reading
11 glasses because of the thousands of pages that
12 we've been going over has made me lose my
13 eyesight.

14 So on page 38 -- well, I'm sorry, this
15 is potentially an older version, but we recognize
16 that we're authorized to notice register SB-SEFs
17 under 5h(a)(2) and 5h(g) of the Act. And we say
18 that the Commission must comprehensively review
19 and understand a SEF's proposed training models
20 and operations which will facilitate trading for a
21 more diverse universe of financial instruments and
22 underlying commodities than SB-SEFs could offer.

1 But at this time the Commission is not permitting
2 notice registration given the differing
3 requirements and we also note that form SEF may
4 differ from the SEC's registration form.

5 So we acknowledge that the Commission
6 has the ability to notice register entities or
7 exempt SEFs and we do the same for exempt DCOs.
8 There's a section in the preamble where we
9 acknowledge that the statute clearly allows for
10 the Commission to exempt SEFs. However, until
11 such time as the Commission determines to exercise
12 its authority to exempt DCOs from the application
13 registration requirement, SEFs must rattle swaps
14 through registered DCOs. So we acknowledge that
15 we have this ability, yet we don't set out any
16 type of framework to allow these entities to be
17 recognized as exempt DCOs or exempt SEFs. If you
18 could just outline for me whether we have plans to
19 do this or what the Commission intends.

20 MR. ZAIDI: Sure. You mentioned 5h(g).
21 Under 5h(g), the Commission, as you said, may
22 exempt a SEF from registration but it's also if

1 the facility is subject to comparable
2 comprehensive supervision and regulation by the
3 SEC, another prudential regulator, or governmental
4 entity in the facility's home country. We note
5 that at this time the SEC or other regulators
6 don't have comprehensive comparable supervision
7 and regulation for SEFs to what the Commission is
8 considering today. So at this time we're not
9 going to consider exempt SEFs or allow for exempt
10 SEFs, but it doesn't foreclose the possibility in
11 the future that we could consider exempt SEFs and
12 also as we discussed, 13.2 of the Commission's
13 regulations, if at some time in the future an
14 entity wants to come in and petition the
15 Commission for a rule with respect to exempt SEFs
16 then the Commission could consider it at that
17 time.

18 COMMISSIONER SOMMERS: What about
19 entities that are just comparably regulated by the
20 SEC or prudential regulators, not necessarily as
21 an SB-SEF? Have we made the determination that
22 just because they're not currently being regulated

1 as a SEF that they're not comparably regulated as
2 a trading platform? They could be registered as
3 an ATS with the SEC and be comparably regulated.

4 MR. ZAIDI: We haven't made any
5 determinations at this time.

6 COMMISSIONER SOMMERS: Okay.

7 MR. ZAIDI: It's just if those entities
8 want to come in and petition, then we can decide
9 at the time whether they're comprehensive and
10 comparable regulation.

11 COMMISSIONER SOMMERS: Okay. Thank you.
12 My last meeting wouldn't be complete without being
13 able to put Ananda on the spot. So can I ask
14 Ananda to answer the question about exempt DCOs?

15 CHAIRMAN GENSLER: I want to thank
16 Commissioner Sommers because I always enjoy this.

17 MR. RADHAKRISHNAN: Thank you for
18 inviting me. Court reporter, my name is Ananda
19 Radhakrishnan. I'm director of the Division of
20 Clearing and Risk.

21 Commissioner Sommers is correct. The
22 statute does provide for an exempt DCO and the

1 standard the statute lays is comparable and
2 comprehensive supervision and regulation by either
3 the SEC or foreign regulators. To date, no one
4 has asked the Commission or petitioned the
5 Commission to exempt them as an exempt DCO, and if
6 you're wondering why we don't have a process it's
7 a function of the fact that nobody has asked. And
8 also, because of the tremendous amount of work
9 that not just DCR but other people have had, we
10 believe it is time better spent dealing with
11 issues that we've got to deal with rather than
12 dealing with issues that might arise.

13 The other consideration is as follows:
14 An exempt DCO cannot legally segregate customer
15 money. And if you look at the structure of the
16 statute, for customers who want to trade and clear
17 swaps, if they're not a direct clearing member of
18 a registered DCO, they must go through a
19 registered FCM. And a registered FCM is obliged
20 to segregate customer funds. At the clearinghouse
21 level, that segregation must also take place,
22 legal segregation, otherwise, in the event of a

1 bankruptcy there will be all sorts of issues and
2 it's highly doubtful that there will be customer
3 protection.

4 So anyone who is exempt cannot claim to
5 legally segregate customer funds. They may be
6 able to physically segregate it but they cannot
7 legally segregate it. The reason I bring this up
8 is if we do have exempt DCOs clearing for a SEF,
9 then by definition that SEF can only transact
10 dealer-to-dealer business; it cannot transact
11 customer business because it cannot send the
12 customer transaction to a DCO. So something for
13 the Commission to think about in considering
14 whether to exempt DCOs. Is the Commission going
15 to be satisfied having a dealer-to-dealer SEF?

16 COMMISSIONER SOMMERS: Thank you. And
17 one last question on this point. If an entity
18 were to ask us for exempt status as a SEF, is that
19 a Commission decision or is that a decision that
20 the division can make on its own?

21 MR. ZAIDI: I believe under 13.2 that's
22 a Commission decision.

1 COMMISSIONER SOMMERS: Thank you.

2 CHAIRMAN GENSLER: Thank you,

3 Commissioner Sommers.

4 Commissioner Chilton. Commissioner

5 Chilton.

6 COMMISSIONER CHILTON: Thank you. Thank

7 you, Mr. Chairman.

8 On voice brokers, and Mr. Chairman, you

9 spoke about being technology neutral and we've

10 heard it from staff but since this is something

11 that I've been really an ardent advocate for from

12 the beginning from the time we had the proposal, I

13 just want to get a simple answer. Can we be sure

14 that under this rule that voice brokers, who have

15 been executing trades, will continue to be able to

16 execute trades on SEFs?

17 MR. ZAIDI: Yes. Voice brokers will

18 continue to --

19 COMMISSIONER CHILTON: Thank you.

20 That's good. That's all I need. Thank you.

21 Okay. And Commissioner Sommers asked

22 some good scheduling questions but I have a follow

1 on. So under the proposal would a platform
2 operating prior to the registration have to stop
3 trading like the day before they go live as a SEF?
4 How would that actually work? That wouldn't make
5 sense, right? That's not what we're saying?

6 MR. VAN WAGNER: Right, Commissioner
7 Chilton. That's actually an interesting point,
8 and I think that we just realized that there is a
9 little bit of a gap here. And I think you're
10 referring to the fact that you're an entity right
11 now who is operating, relying on the no-action
12 letter, and then you are temporarily registered on
13 a particular day. And then as a SEF at that point
14 you would have to file all your products with us
15 pursuant to part 40, and that's actually a process
16 that might take a few days. So I think that we
17 probably have to take care of that in the
18 no-action letter that I described at the top of
19 the meeting or this segment of the meeting to sort
20 of cover that gap because we certainly don't want
21 there to be any exposure for somebody who is
22 coming in to be a regulated SEF. So I think we're

1 going to take care of that but it's actually a
2 very good observation. Thank you.

3 COMMISSIONER CHILTON: Thank you, David.
4 Two others. On these workups, I'm okay with them
5 but I'm a little reluctant. What would we do to
6 ensure that these workups, where somebody may go
7 out for a small amount and then not have to go out
8 for a full meal deal RFQ to work that amount up.
9 What procedures or policies should the SEF have or
10 would we have as part of our oversight to ensure
11 that this isn't some big gaping loophole to get
12 around going out for RFQs?

13 MR. ZAIDI: Sure. So first of all, the
14 SEFs would have to have rules about their workups
15 and as far as how that mechanism would operate,
16 and they would also have to have systems in place
17 so that all the market participants can
18 participate in the workup and also that the
19 information from the workup session are
20 distributed to all market participants.
21 Furthermore, workups can actually promote
22 pre-trade price transparency where all the market

1 participants are able to participate in a workup
2 session. And by having other market participants
3 who didn't participate in the initial trade
4 participate in the workup session can actually
5 promote liquidity as well.

6 COMMISSIONER CHILTON: Okay. So just to
7 stray out a little bit more, so is there any
8 potential -- think about this theoretically -- any
9 sort of fact pattern that where, you know, a
10 trader might be out there and continually use the
11 workups to -- you could do a workup all the way up
12 to the block size, right? So is there some sort
13 of fact pattern that we would look at and if we
14 could potentially take an action on or would we
15 have to amend the rules? I mean, it would be
16 consistent with the SEF rules, I suppose, but
17 could we, for example, if we saw the spec pattern
18 of people doing the workups and always going right
19 up to the block size, for example, say no, that's
20 not what we intended? Or would we have to provide
21 some further clarity either as part of a, you
22 know, a letter or would we have to amend the

1 rules?

2 MR. ZAIDI: Sure. Well, with respect to
3 the block size, the proposal or the final rules
4 note that workup trades, you can't just work up a
5 trade to the block size and consider it a block.
6 It would actually be individual trades. And
7 you're --

8 COMMISSIONER CHILTON: Yeah, but what
9 I'm saying is as long as long as you're under the
10 block size you could work it up until that point.

11 MR. ZAIDI: Correct.

12 COMMISSIONER CHILTON: So as long as you
13 keep it under the block size, then you put it out
14 there for a small trade and then you work all the
15 way up just below the block size.

16 MR. ZAIDI: Sure.

17 COMMISSIONER CHILTON: Look, if that
18 happens, you know, sporadically, okay. I'm just
19 concerned that people are going to try to drive a
20 truck through the workup provision. And I know
21 the SEFs don't want to do that. They're just
22 happy to get rules. I also don't want to just

1 allow it to happen without having some oversight.

2 MR. ZAIDI: Sure. And that's why
3 opening it up to the whole market will probably
4 mitigate your concerns there because it's not just
5 the two original counterparties who are doing a
6 small sized trade and then working it up to almost
7 the block size; it would be opened up to the whole
8 market. So other market participants could
9 participate in that workup session.

10 COMMISSIONER CHILTON: Okay. Thank you.
11 The last thing I had was something that -- and I
12 prepared an amendment on this but it doesn't look
13 like I need one assuming I get the answer I think
14 I'm going to get from you all. And that is
15 dealing with this whole debacle with Bloomberg and
16 maybe, you know, having information that was sort
17 of misappropriated from the terminals. And my
18 question is, presuming that a firm like a
19 Bloomberg would register as a SEF, and once
20 they've done that if we, you know, smelled
21 something fishy with this potential SEF, could we
22 then go after them under 1.59 to further review,

1 probe, investigate, et cetera whether or not they
2 misused material, non-public information?

3 MR. VAN WAGNER: Yes, Commissioner.
4 Regulation 1.59 would apply to SEFs and SEF
5 employees. They would have to have rules
6 prohibiting their employees, governing board
7 members, disciplinary committee members from
8 misusing and disclosing material non-public
9 information. And we could also pursue them. And
10 I should point out it's not in the part 37 rules
11 that are being considered today; that is by
12 application of a number of rules which have
13 broader application to not only SEFs but DCMs.
14 And as sort of a public service announcement to
15 prospective SEFs they should beyond whatever
16 publication comes out of today's meeting, they
17 should look at 77 FR 66288, which actually has
18 1.59 and a number of other provisions that are
19 going to be more broadly applicable to SEFs and
20 DCMs post Dodd-Frank.

21 COMMISSIONER CHILTON: Great. That's
22 why I asked. Good public service. Thank you,

1 David.

2 That's all I have, Mr. Chairman.

3 CHAIRMAN GENSLER: Thank you,

4 Commissioner Chilton.

5 Commissioner O'Malia.

6 COMMISSIONER O'MALIA: Mr. Chairman, I
7 make a motion that my amendment that I circulated
8 earlier be adopted.

9 COMMISSIONER SOMMERS: So moved. Sorry,
10 second.

11 CHAIRMAN GENSLER: Being motioned and
12 seconded it's part of the record.

13 COMMISSIONER O'MALIA: Thank you. I'd
14 like to follow up on two lines of questions that
15 Commissioner Sommers started, and this is the
16 temporary registration. And I think we've made a
17 lot of progress. I'm quite pleased with where we
18 are, and I think Commissioner Sommers raised a
19 good point, you know, with this new compliance and
20 effective date split. The ability to put and
21 approve the multitude of SEFs and put them in a
22 position so that there is not a competitive

1 disadvantage as a result of the first mover and
2 not being ready to go, how are we going to ensure
3 that? She does bring up a good point. And
4 certainly, if you look at our SDR track record,
5 our ability to pencil-whip an application seems to
6 be endless. How are we going to learn from that
7 mistake and not get in the same position that we
8 found ourselves in SDRs?

9 MR. ZAIDI: Sure. I'll note this
10 process is very different from what they did in
11 the SDR rulemaking. From what I understand, that
12 process, there had to be substantial compliance
13 with the requirements in the SDR rule. Here it's
14 just a complete application review, so basically
15 we're just looking for appropriately responsive
16 answers to all the questions and exhibits in form
17 SEF and we're not doing a substantive review like
18 they did in the SDR space. So this process is
19 meant to be an expedited process because as you
20 noted, a lot of SEFs could come in here and staff
21 has resource constraints, so we're well aware that
22 we don't want to drag this process out. So it's

1 meant to be an expedited process for temporary
2 registration.

3 CHAIRMAN GENSLER: Can I just ask,
4 because I can't remember the page number, but I
5 think some of us have used the expression "notice
6 registration." I know technically it's temporary
7 registration but could you point to where we put
8 that in the preamble?

9 MR. ZAIDI: Sure. The version --

10 CHAIRMAN GENSLER: I see page 38.

11 MR. ZAIDI: I believe it's on --

12 CHAIRMAN GENSLER: I'm pleased to see --
13 I'm pleased to see this, the Commission notes that
14 there is -- or wait.

15 MR. ZAIDI: I believe it's on page 48 --
16 47-48.

17 CHAIRMAN GENSLER: Forty-seven, 48?

18 MR. ZAIDI: Yeah.

19 CHAIRMAN GENSLER: Okay.

20 MR. ZAIDI: And there's also reference
21 to it, I think around page 46, too.

22 CHAIRMAN GENSLER: I just think that

1 Commissioner O'Malia raises a very good point.
2 We're resource constrained and there's 15 to 20
3 aspiring swap execution facilities who are ready
4 to get going. It's been nearly three years since
5 Dodd-Frank passed and two and a half years since
6 this rule was put out. And as we all know, about
7 six or seven months since we've been debating it
8 intensely. And we want to see that happen. We
9 don't want our resource constraints to limit that
10 and we've had a lot of discussions up on the panel
11 but David, you and Amir and Rick, as head of DMO,
12 you've explained it to me that you're going to
13 take these 15 or 18 applications that may come in,
14 not do a substantive review. It's similar to a
15 notice registration, and then over what might be a
16 two-year period after that, you know, work with
17 those SEFs and work with whether there's issues
18 that might be there and how they have come in. Is
19 that correct?

20 MR. ZAIDI: Yes, that's correct.

21 CHAIRMAN GENSLER: I think that's an
22 appropriate compromise with the realities of our

1 resources. I just think that that's -- and
2 coupled with the public policy imperative to get
3 these entities, in essence be licensed or
4 registered and operating.

5 COMMISSIONER O'MALIA: That's great
6 news. I appreciate that. Obviously, it does
7 require the prospective SEFs to do their job and
8 put together a really adequate application to make
9 sure that they answer all of the questions that
10 we're looking for, but the reality is that we're
11 going to make sure that they've done their job and
12 then we can quickly approve them so we can have a
13 good, robust, competitive market.

14 Now, another area that I'm concerned,
15 again, Commissioner Chilton -- Commissioner
16 Sommers raised this, and it's the international
17 differences. Right? We've got -- we're waiting
18 on the MiFiD rules. They have these MTEFs and
19 OTEFs which are different from the standards that
20 we have but they're not final yet is my
21 understanding, and it's going to take a year or
22 two before they are final, at least in Europe, and

1 it could even take longer in Asia. So there could
2 be some differences. And one thing I don't want
3 to create is a situation where we pass our rules
4 and then not look back and make any corrections
5 that we need to fix our rules to remain
6 competitive internationally and to make sure that
7 liquidity resides here to the extent that we can
8 compete for it and it's transparent in our markets
9 and people have the ability to transact
10 domestically. It's a competitive business. I
11 don't, you know, want to make any misunderstanding
12 about that.

13 Now, I know that Europeans and Asians
14 are thinking about the same thing when they put
15 their things together, but I do not want to put
16 forward a rule that is cast in stone that we
17 cannot have the opportunity to look back and make
18 a response in case we're left out and we're
19 uncompetitive in this environment. Is there
20 anything that we can -- that provides this rule to
21 really go back and fix problems in light of the
22 international situation?

1 MR. ZAIDI: Sure. I'll come back to
2 regulation 13.2, that petitioners or persons can
3 come in here and petition for a rulemaking or to
4 amend a rule such as these SEF rules. But also,
5 we've included in these final rules a review.
6 Commission staff will conduct a review of the
7 execution methods within four years of the
8 effective date of the rules and provide
9 recommendations to the Commission, so that could
10 address some of your concerns there as far as --

11 COMMISSIONER O'MALIA: I'll be honest.
12 That one -- that is a study in four years with no
13 requirement to make a recommendation or have the
14 Commission act. And I'm a little concerned that
15 that is just cover.

16 CHAIRMAN GENSLER: Commissioner O'Malia,
17 if I can address a little bit and enter into a
18 discussion here if that's all right on the
19 international.

20 I think that we've done a number of
21 steps, but I agree with you that we have to stay
22 very vigilant going forward. But let me just

1 mention some of the steps we have taken. I think
2 as Commissioner Sommers noted, we have clearly
3 stated that a swap execution facility may also
4 refer trades or execute trades that go to an
5 exempt clearing organization to which Ananda spoke
6 to earlier. And I know Sarah Josephson, our new
7 head of the international office was actually over
8 in Europe -- was it earlier this week? I'm losing
9 -- yes, earlier this week. And that was very
10 constructively received. We have a lot more work
11 as Commissioner Sommers noted as to what
12 processes. We don't have any applications but I
13 think that's an important way to keep swap
14 execution facilities that might be registered with
15 us competitive if, for instance, they might have
16 international parties that don't necessarily want
17 to come into a clearinghouse here and have some
18 exempt DCO. I think that's very relevant to this.
19 But I also concur with you that I think we stay
20 vigilant, whether it's through rule 13.2 or any
21 other means that people come in.

22 The Europeans look close to passing

1 their legislative initiative but it will be nearly
2 three years after our legislative initiative. And
3 they will go forward with rulemaking and sometime
4 in 2014 or maybe 2015, they'll land somewhere
5 around order books and requests for quote models
6 and all that we've debated here, and I share your
7 view that this Commission should relook at this
8 and be open because these are international
9 platforms ultimately. Some of these swap
10 execution facilities will be located actually
11 offshore which is fine as well.

12 COMMISSIONER O'MALIA: Well, it's
13 reassuring to know that I have your commitment
14 that we'll reopen this if we get in kind of a
15 regulatory imbalance here because we are going
16 first, and going first you could possibly make
17 some mistakes and over-reach or under-reach,
18 frankly, but I want to be in a position that this
19 Commission is doing this with its eyes wide open
20 and we're prepared to make adjustments if
21 necessary. And while we haven't gone back to fix
22 any of our rules that I would argue that need

1 fixing, I will take you at your word and your
2 commitment that we will revisit this one as well
3 if we're out of kilter internationally.

4 CHAIRMAN GENSLER: I think it's
5 appropriate. I also share your view with some of
6 our others we're going to have to go back. And
7 we're learning. As you go from a law to a rule to
8 an actual compliance --

9 COMMISSIONER O'MALIA: We could start a
10 list right now.

11 CHAIRMAN GENSLER: -- things get very
12 granular. I know. I know.

13 COMMISSIONER O'MALIA: How about part
14 45?

15 CHAIRMAN GENSLER: I know about part 45.
16 We actually apparently have a lawsuit on that,
17 too.

18 But on the swap execution facility, as
19 other jurisdictions take this up, I think these
20 will provide flexible means of liquidity and that
21 market participants will come to them, but as you
22 say, other jurisdictions set something up. If

1 they're slightly different we should really look
2 at conflicts and inconsistencies and be creative
3 about it.

4 COMMISSIONER O'MALIA: Well, being
5 nimble and adjusting is a great opportunity.

6 Thank you very much for that, Mr.
7 Chairman. Now, it appears by reading the preamble
8 that the rule will permit voices and independent
9 method of execution. Why wouldn't the rule
10 expressly state so? We've had this discussion a
11 little bit but execution by voice is buried within
12 the definition of RFQ. So why don't we just call
13 it out, A, B, C, by any means of interstate
14 commerce? For those watching at home it's A and B
15 and then some subcategories within B that provide
16 for the voice. I'm wondering why we didn't
17 expressly and specifically state it as a third
18 prong.

19 MR. ZAIDI: Sure. As you noted, the
20 rule text does provide for any means of interstate
21 and it includes voice or the telephone in the rule
22 text. When we came up with the execution methods

1 for the required transactions which are similar to
2 what was in the SEF proposal, we looked at the SEF
3 definition and also the goals in 5h of pre-trade
4 transparency and also promoting trading of swaps
5 on SEFs, and we also note the any means of
6 interstate commerce language in the SEF
7 definition. And we believe that by looking at the
8 SEF regulatory regime as a whole and not in a
9 vacuum of just looking at the SEF definition, that
10 the order book and the RFQ, in conjunction with
11 the order book are the appropriate methods that
12 meet the SEF definition and also the SEF regime in
13 5h. And as you noted, any means of interstate
14 commerce is included in the SEF definition and
15 that also includes a telephone, so we are saying
16 you can use the telephone to meet the order book
17 or the RFQ system in conjunction with the order
18 book requirement. So there can be a voice system
19 as long as it meets those.

20 COMMISSIONER O'MALIA: Excuse me. How
21 do you execute on the phone?

22 MR. ZAIDI: Sure.

1 COMMISSIONER O'MALIA: Is there the
2 opportunity --

3 CHAIRMAN GENSLER: Can I try this? From
4 the old Wall Street days you say you're done.

5 COMMISSIONER O'MALIA: Walk me through
6 -- so walk me through done backwards. If Chairman
7 Gensler wants to be done on the phone and he wants
8 -- and you have a requirement to interact with the
9 order book and the RFQ, how does that function?

10 MR. ZAIDI: Sure.

11 COMMISSIONER O'MALIA: Does he have to
12 post something?

13 MR. ZAIDI: As we noted in the final
14 rule there's a couple of examples of how this
15 would work. I'll just go through one
16 hypothetical.

17 Say Chairman Gensler calls you on the
18 phone and wants to execute a trade and you're the
19 SEF, you're a SEF employee. In keeping with the
20 RFQ to three requirement you can go out to -- you
21 would go out to three market participants to try
22 to fill Chairman Gensler's order. And then you

1 could use the telephone to go back to him and say
2 these are the three responsive orders. And also
3 --

4 COMMISSIONER O'MALIA: Would you have to
5 put -- can I clarify something?

6 MR. ZAIDI: Sure.

7 COMMISSIONER O'MALIA: As the RFQ
8 employee, would you have to type his order into a
9 screen?

10 MR. ZAIDI: No, you could --

11 COMMISSIONER O'MALIA: You could call
12 other people?

13 MR. ZAIDI: You could call other people
14 on the telephone or use a squawk box or use email
15 or chat. And ping three market participants and
16 you can take whatever responses you get back,
17 either one, two, or three, go back to Chairman
18 Gensler with the responsive orders and also
19 telling him what is resting on the order book and
20 he can say I want this one and you are done on the
21 phone. So that's kind of one example of how it
22 could work.

1 CHAIRMAN GENSLER: So I can say I hit
2 that bid or I lift that offer?

3 MR. ZAIDI: Yes, you may.

4 CHAIRMAN GENSLER: And you would say
5 you're done?

6 MR. ZAIDI: Exactly.

7 CHAIRMAN GENSLER: Thank you.

8 COMMISSIONER O'MALIA: Thank you very
9 much. Can you explain how we treat EDRP exchange
10 for derivative positions in this on a SEF footnote
11 216?

12 MR. VAN WAGNER: We got a comment from
13 MFA, I believe. Essentially, it was not in the
14 proposal but there was a comment requesting that
15 exchange of derivatives -- well, actually, three
16 particular types of EDRPs (exchange of derivatives
17 for related positions) that the commenter asked to
18 permit SEFs to list as an exception to the trade
19 execution mandate. They basically analogized the
20 three transactions to the types of EDRPs that core
21 principle 9 permits on DCMs. So essentially at
22 the outset we would note that Congress obviously

1 enough in the context of DCMs explicitly
2 recognized exceptions to the centralized
3 marketplace trading requirement for DCMs for
4 EDRPs. There is the absence of any such exception
5 to the trade execution mandate for SEFs.

6 COMMISSIONER O'MALIA: Are they
7 prohibited on SEFs?

8 MR. VAN WAGNER: Excuse me?

9 COMMISSIONER O'MALIA: Did they prohibit
10 them on SEFs?

11 MR. VAN WAGNER: No, they did not.

12 COMMISSIONER O'MALIA: They're just
13 silent?

14 MR. VAN WAGNER: Excuse me?

15 COMMISSIONER O'MALIA: Congress is
16 silent on this issue?

17 MR. VAN WAGNER: That's correct. Right.
18 So what we worked through was to look at each one
19 because they did not really offer any clear bona
20 fide purpose in discussing them in their comment
21 letter, so there were two that essentially -- that
22 they didn't quite justify or we didn't quite

1 understand what the rationale for the exception
2 would be. There was one in particular I think
3 that had some -- basically had some traction. And
4 that is EDRP, which would be a swap in exchange
5 for a physical commodity. At this time, obviously
6 enough physical commodities are not yet subject to
7 the clearing mandate, therefore, not subject to
8 the trade execution mandate, so they would not be
9 mandated to be on a SEF and subject to the trade
10 execution mandate. And even if they were, we
11 would anticipate that most of them would be used
12 by end-users who would be able to -- would be
13 exempted from the trade execution mandate. At the
14 end of this little thing, we did recognize that
15 there might be a possibility that non-end-users
16 might want to do this transaction in the future,
17 and so we basically in the release indicate that
18 we'll take it under consideration if and when
19 physical commodities have become subject --
20 physical commodity swaps ever become subject to
21 the trade execution mandate.

22 COMMISSIONER O'MALIA: So is there a

1 process that people have to apply to get these
2 things -- to trade some sort of exchange for
3 derivative position on a SEF?

4 MR. VAN WAGNER: At this point there's
5 nothing that explicitly recognizes them in the
6 context of part 37, no.

7 COMMISSIONER O'MALIA: So what does that
8 mean? So is there or is there not a process that
9 they would have to come back to apply?

10 MR. VAN WAGNER: The request was to make
11 it an exception to the trade execution mandate,
12 when a swap is subject to the trade execution
13 mandate. And we said at this point in time,
14 because those swaps are not yet subject to the
15 trade execution mandate, we were not going to be
16 granting an exemption in advance of that fact. I
17 mean, obviously enough if they're permitted
18 transactions that are involved, if the swaps are
19 not yet subject to the trade execution mandate,
20 you know, a swap -- excuse me, a SEF wouldn't be
21 restrained.

22 COMMISSIONER O'MALIA: Okay. So --

1 MR. VAN WAGNER: Yeah, right,
2 ultimately, they could always come to us with a
3 no-action request, too.

4 COMMISSIONER O'MALIA: But that is not
5 for a non-required transaction. They don't need
6 to come to you for --

7 MR. VAN WAGNER: Well, I was jumping
8 ahead to when they might need it as an exception
9 to the trade execution mandate.

10 COMMISSIONER O'MALIA: Right. So they'd
11 have to come ask for no-action relief for required
12 transactions?

13 MR. VAN WAGNER: Right.

14 CHAIRMAN GENSLER: David, I gather --

15 MR. VAN WAGNER: It's still a
16 hypothetical situation.

17 CHAIRMAN GENSLER: Your point of view
18 and one that I support is that this comment from
19 -- was it MFA?

20 MR. VAN WAGNER: Right.

21 CHAIRMAN GENSLER: This comment was
22 sufficiently generalized that it didn't get down

1 to this narrow point.

2 MR. VAN WAGNER: Right. I mean, we --

3 CHAIRMAN GENSLER: But that when you get
4 to the narrow point you say in exchange for swap
5 for swap, well, that's what a SEF is about. But
6 an exchange for swap for something that's
7 physical, you note in the footnote that we don't
8 have any required or clearing mandate, physical
9 commodity swaps at this point in time. If that
10 were to occur in the future, many people would be
11 out because they would be end-users, but if it was
12 a financial company doing a transaction with a
13 financial company, and it was cleared and required
14 to be cleared and they wanted to do an exchange
15 for a swap for a physical --

16 MR. VAN WAGNER: ESP.

17 CHAIRMAN GENSLER: What would that be?

18 An ESP?

19 MR. VAN WAGNER: ESP, I guess. I don't
20 know.

21 CHAIRMAN GENSLER: Then you note in the
22 bottom of this footnote for the officionados that

1 they'll end up looking at what, footnote 219 --
2 that at that time the Commission could consider
3 it.

4 MR. VAN WAGNER: Correct.

5 COMMISSIONER O'MALIA: David, is there
6 another option using -- if a SEF wanted to put in
7 their own rule book and use part 40 to petition
8 us, would that been an acceptable use? An
9 acceptable application I guess?

10 MR. VAN WAGNER: I mean, I'd have to
11 think about that one but obviously the words that
12 are in the mouth of the Commission in that
13 footnote is not at this time.

14 COMMISSIONER O'MALIA: So we've created
15 --

16 MR. VAN WAGNER: If you accept the
17 footnote.

18 COMMISSIONER O'MALIA: -- a lot of
19 uncertainty around where Clear-port is and kind of
20 how those are treated. And there's been a number
21 of press articles recently about that and there's
22 a lot of uncertainty about what their standing is

1 and how we're going to treat them, et cetera. It
2 seems as though we're creating the same thing. If
3 it's a non-required -- what do we call those?
4 Non-permitted transaction, anything goes.

5 MR. VAN WAGNER: Right.

6 COMMISSIONER O'MALIA: But all of a
7 sudden when you get to required, what if those
8 products that have been permitted all of a sudden
9 want to leap the required? All of a sudden we're
10 back in regulatory limbo again.

11 MR. VAN WAGNER: I take your point but
12 there's issues on the DCM side in core principle
13 9. I guess in staff's view that should inform us
14 at this point in saying go slow before creating
15 exceptions to the trade execution mandate.

16 COMMISSIONER O'MALIA: Go slow and/or
17 create regulatory uncertainty doesn't sound like
18 the same thing. And I think that's where we find
19 ourselves on this one.

20 CHAIRMAN GENSLER: If I might,
21 Commissioner O'Malia, wouldn't it be possible to
22 take -- if we actually had a physical commodity

1 swap clearing determination as part of that
2 process at that time to address now that we're
3 doing this, a year from now or three years from
4 now or whenever we might, to simultaneously take
5 up what to do about what staff is now calling an
6 ESP, an exchange for a swap for a physical.

7 COMMISSIONER O'MALIA: Well, that in and
8 of itself is a better process than what we've
9 provided in this footnote because what we provided
10 in this footnote doesn't provide you the
11 certainty. It doesn't say, "Oh, by the way, when
12 you come in as a required from a permitted, that
13 we'll consider this as a solution." It doesn't
14 say that. And it would be really useful to say
15 either you could use part 40 or in part of a
16 determination for required transaction we will
17 revisit this issue.

18 CHAIRMAN GENSLER: With regard to
19 exchange for swaps for physicals as opposed to the
20 broader request was more general, which could have
21 included exchange for swaps for swaps. Yeah, that
22 doesn't. But exchange of swap for a physical is

1 the question for you.

2 COMMISSIONER O'MALIA: Could we just put
3 in a sentence that says that this is a path and
4 how we address it and warn anybody who might be
5 considering, well, where does this really stand?
6 At least we'll tell them, you know, we're willing
7 to consider this as part of the --

8 CHAIRMAN GENSLER: I think as part of
9 the administrative record I'm saying right now I
10 think -- and you're saying -- I think that it's
11 appropriate if we take up a physical commodity
12 clearing mandate at that time to consider this
13 exchange for a swap for physical.

14 COMMISSIONER O'MALIA: Let's put those
15 words in this footnote.

16 CHAIRMAN GENSLER: Somebody found the
17 transcript of what I just did, that's your first
18 amendment on this rule?

19 COMMISSIONER O'MALIA: Well, I make a
20 motion to --

21 CHAIRMAN GENSLER: No, that's your
22 second amendment.

1 COMMISSIONER O'MALIA: That would be my
2 second amendment. But, you know, I think that's
3 just -- what's the path forward? How might
4 people? And I'd frankly be interested in the part
5 40 submission. Could they, as part of that and
6 part of their rulebook, say we're going to adopt
7 these things. We think as a SEF that serves kind
8 of this physical market, that we're going to make
9 this part of our solution and put it in the rule
10 book and then we'll have to review it under the
11 part 40 submission. That's another way of doing
12 it. But you weren't as equivocal on that one.

13 MR. VAN WAGNER: I guess I'm still
14 thinking of it but I mean it seems to me that,
15 again, I mean, this is obviously somebody coming
16 in well in advance of even the trade execution
17 mandate pertaining to any particular commodity
18 yet, I mean, the trade execution mandate does not
19 have -- it does have exceptions carved into
20 2(h)(8) and it's for 2(h)(7), the clearing
21 exemptions. And there is not embedded any other
22 exceptions that are akin to what's in core

1 principle 9 for DCMs, which is obviously the
2 analogue that the commenter was trying to go
3 towards.

4 COMMISSIONER O'MALIA: But they're also
5 not banned either.

6 MR. VAN WAGNER: I'm sorry?

7 COMMISSIONER O'MALIA: They're also not
8 banned.

9 MR. VAN WAGNER: I mean, in a case such
10 as that, I mean, I would think that it would
11 probably be wise to accompany -- since there is
12 some ambiguity around it I would think it would be
13 wise to accompany the rule submission with either
14 a no-action or 4c petition for absolute certainty.

15 COMMISSIONER O'MALIA: I'm not a big fan
16 of the --

17 MR. VAN WAGNER: I can't prejudge part
18 40 filings here.

19 COMMISSIONER O'MALIA: So I'm a little
20 uncertain. Are we going to change that they can
21 submit this as part -- and change the footnote to
22 reflect that it's part of their submission that

1 they could -- that's how they could address this
2 for a required transaction?

3 CHAIRMAN GENSLER: Well, I think what I
4 was suggesting, and I think it's appropriate, is
5 it concurrent with any future action of this
6 Commission on a clearing mandate for physical
7 commodities that at that time market participants
8 could come to us, petition with regard to exchange
9 for swaps for physical, the ESP part of it? And
10 that I would be comfortable. And if people by
11 unanimous, if Commissioners by unanimous consent
12 want to amend the footnote to add that type of
13 language, I'm comfortable with that.

14 COMMISSIONER O'MALIA: I'm comfortable
15 with that as well. Thank you.

16 CHAIRMAN GENSLER: Any objection for it?

17 COMMISSIONER O'MALIA: Thank you, David.
18 Rick, can I ask a question on technology? There
19 are 18 proposed SEFs that have been registered
20 with the NFA to conduct their market surveillance.
21 I've even toured the NFA market surveillance
22 floor, and it was explained to me that with all

1 the API connections, the NFA will be able to
2 monitor across its registrants and see across all
3 SEFs in real-time, you know, an effective
4 real-time market watch room. Are we going to have
5 that same capability?

6 MR. SHILTS: No. We've never had the
7 capability to monitor any markets in real time. I
8 mean, all of our oversight has been on a T+1 basis
9 whether it is large trader or trade information.

10 COMMISSIONER O'MALIA: Right. How will
11 we interface with NFA to help them with their
12 market surveillance? Are we going to expect each
13 SEF to download its position and information data
14 or can we work with NFA to get a more
15 comprehensive view?

16 MR. SHILTS: Well, we'll be working with
17 NFA. I mean, NFA is operating on behalf of the
18 SEFs, who they've delegated the responsibility to
19 do the oversight. We'll be getting information,
20 you know, from them as well as from the SDRs and
21 then from the clearing organizations for the swaps
22 that are cleared. So it would be a -- we haven't

1 actually set up processes yet but that's something
2 as the SEFs start coming in and if the rules are
3 approved, we can start working with them to get
4 the information to do oversight. To some extent
5 the obligation is on us to do the overall
6 oversight of the markets because each SEF is only
7 responsible for its particular exchange.

8 COMMISSIONER O'MALIA: It's probably not
9 lost on you but that's only 60 days away.

10 Do we have a technology strategy? Do we
11 need to buy more computers? Move desks? Do
12 something to prepare for that technology?

13 MR. SHILTS: I'd have to talk with John
14 Rogers and others. I don't have that answer right
15 now.

16 COMMISSIONER O'MALIA: That's all I
17 have. Thank you very much.

18 CHAIRMAN GENSLER: Thank you very much.
19 Commissioner Wetjen.

20 COMMISSIONER WETJEN: Thank you, Mr.
21 Chairman. I don't have a lot of questions, just a
22 couple here. I thought maybe it might be helpful

1 for the benefit of the public -- I know your
2 presentation got into this some and my opening
3 statement alluded to it as well as the Chairman's,
4 but it might be helpful, I think, to reiterate
5 just what the key differences are between the
6 environment we'll now see in light of the SEF rule
7 and the related rules compared to the current OTC
8 market. A lot of focus has been paid to trading
9 protocols, but what are some of the other things
10 that might be useful to review as required in this
11 rule that will bring some additional benefits to
12 the public?

13 MR. ZAIDI: Sure. In addition to the
14 trading protocols that you mentioned, and another
15 requirement that will be in effect if these rules
16 become final is the impartial access requirement.
17 So all market participants will have impartial
18 access to -- that ECPs will have impartial access
19 to SEFs market. Another --

20 COMMISSIONER WETJEN: I'm sorry to
21 interrupt but with this -- I'll just jump in with
22 a follow-up.

1 MR. ZAIDI: Sure.

2 COMMISSIONER WETJEN: In rough terms
3 anyway, how is impartial access going to be
4 provided for or monitored by the Commission? How
5 are we going to measure whether a SEF is
6 permitting impartial access? What's the standard?

7 MR. ZAIDI: The impartial access
8 standard is for a SEF to provide impartial access
9 to ECPs and ISVs so they have to have
10 nondiscriminatory rules in place when they're
11 considering whether to grant access to ECPs. So
12 the SEFs will have the rules in place and then
13 obviously we'll have our oversight authority
14 through rule enforcement reviews or other
15 mechanisms to oversee that.

16 A couple other benefits that I didn't
17 mention in my remarks, there will be audit trails
18 and surveillance requirements that SEFs will be
19 required to keep that is not necessarily true in
20 today's OTC market. And also --

21 COMMISSIONER WETJEN: And again, sorry
22 again to interrupt, Amir, but why is that

1 important? I mean, why is that an important
2 reform that the Commission today feels needs to be
3 part of this rule?

4 MR. ZAIDI: Sure. Well, for the audit
5 trail requirement, the SEF will have to be able to
6 reconstruct transactions and keep audit trail from
7 the time orders come in through the time of fill
8 or allocation or other. So that's very important
9 for our oversight responsibility to look into if
10 there is some prohibited trading practices going
11 on or other disruptions in the market. We can
12 gain access to that data to find out what's going
13 on similar to the real-time trade monitoring that
14 SEFs have to implement and also automated trade
15 surveillance as well. So that will be very
16 important to us for our oversight responsibilities
17 and my colleagues and DMO for them to review on a
18 daily basis.

19 A couple other things --

20 COMMISSIONER WETJEN: Again, just to
21 interject again, I agree these are important
22 provisions that benefits pre-trade transparency or

1 multiple -- obviously, one has a lot to do with
2 pricing of these contracts, but through these
3 other mechanism and other requirements, under the
4 core principles of SEFs, it's also going to be
5 extremely important that the Division of
6 Enforcement, as they monitor for manipulation --
7 well, for DMO and surveillance as well -- but
8 these will all be very, very useful tools just to
9 ensure against manipulation.

10 MR. ZAIDI: True. Yes. Also, the CCO
11 requirement for SEFs, that will also be
12 implemented, and these final rules when they
13 become effective, if they become effective, that's
14 also another important aspect to these rules so
15 the SEF can have the rules in place, they can have
16 somebody at the SEF overseeing the rules, and also
17 the compliance measures that we just went through.
18 So that's another important aspect to these rules
19 that is not in place today in today's OTC market.

20 And also just from another aspect, the
21 clearing will be mandatory clearing obviously that
22 has started to take into effect right now and the

1 real-time reporting, that will be in effect when
2 the SEFs get up and operating. So there are many
3 benefits that these rules will provide for the
4 marketplace.

5 COMMISSIONER WETJEN: Thank you for
6 going through that.

7 MR. VAN WAGNER: Can I just add one
8 thing because we sort of forget. I mean,
9 obviously enough, SEFs are building out the
10 requirements that they have but, I mean, at the
11 outset when we were talking about the no-action
12 letter and some of the entities that are relying
13 right now on that no-action letter because they
14 were real relying on CFMA exclusions and
15 exemptions.

16 I mean, there are markets that we
17 literally do not know who they are prior to Dodd_
18 Frank. I mean, they relied on 2(d)(1) and 2(d)(2)
19 to trade interest rate swaps on trade facilities
20 and nontrading facilities. Without any notice to
21 us. Obviously, no data provisions, et cetera, you
22 know, since Dodd-Frank there is obviously

1 reporting requirements that have kicked in. And
2 then moving them to a regulated space. So I think
3 we get lost in the details as the big picture
4 changes that have happened post-Dodd-Frank.

5 COMMISSIONER WETJEN: I agree. I
6 appreciate you pointing that out.

7 And again, as it relates back to
8 protocols, the trading protocols, I said in my
9 remarks I thought it was important. I thought
10 that Congress was informing or directing the
11 Commission to be flexible in that regard. And
12 again, I think we've provided for appropriate
13 flexibility in this rule.

14 But in any event, isn't there a baseline
15 level of pre-trade transparency that's always
16 going to be required to be met by virtue of us
17 requiring trading protocols in the first place,
18 again, in a way that's different from what we
19 might see in the current OTC space.

20 MR. ZAIDI: So for required
21 transactions, transactions that are subject to the
22 trade execution requirement, we've laid out the

1 baseline execution methods that market
2 participants and SEFs will have to comply with,
3 and we've taken into account the pre-trade price
4 transparency goals of section 5h, and we believe
5 that, as you said, it provides appropriate
6 flexibility to SEFs and market participants.

7 CHAIRMAN GENSLER: Commissioner Wetjen,
8 if I can add, I think that even parts of the
9 market that are not required to use a SEF will
10 benefit because there will be an order book there
11 and if somebody wants to leave quotes, that will
12 be relevant to their thinking, too. They'll be
13 able to see that. They might not execute against
14 it because they're permitted not to, but I think
15 that just actually having a place that any market
16 participant can come to, who, of course, is
17 appropriately guaranteed to be there and so forth,
18 that really is a big part of this benefit well
19 before you get to whether it's a required trade
20 execution mandate swap; well, before you get to
21 whether the request-for-quote model is 2/3/5 or
22 something else.

1 COMMISSIONER WETJEN: Well, and
2 similarly, again, I alluded to it in my statement
3 but there might be some enhancements to risk
4 management for clearinghouses and clearing firms
5 alike.

6 CHAIRMAN GENSLER: No, I agree with that
7 because I think as the Congress said that so much
8 has to come to clearinghouses, clearinghouses
9 benefit by having that available pricing data, as
10 well as the liquidity that swap execution
11 facilities will provide, and it will lower some of
12 the risk of clearinghouses. And I think that's a
13 major -- when we think about cost and benefits,
14 that's a major benefit that clearinghouses, this
15 will help lower their risk.

16 COMMISSIONER WETJEN: I appreciate the
17 staff working with me on this exchange. Again,
18 the moment we're at right now as a Commission is
19 pretty important and transformative, and I thought
20 it was useful for the public to just understand a
21 little bit better and in more detail all the
22 different ways this rule set today brings about

1 reform. So I appreciate that.

2 That's all I have.

3 CHAIRMAN GENSLER: Before calling the
4 roll I didn't know whether --

5 COMMISSIONER O'MALIA: I'd like to
6 explain what my amendment does and I'd be happy to
7 entertain any questions.

8 So this is very similar to what we
9 discussed in terms of block rules. This is a data
10 requirement that would require the Commission to
11 conduct a study based on a year's worth of swap
12 trade data in order to make an informed decision
13 about the appropriate minimum RFQ requirements.
14 Based on this study and after public comment, the
15 Commission will be required to vote on the
16 appropriate changes based on the recommendations
17 of the study. My amendment binds the Commission
18 to act before two years but there is no
19 requirement why it can't act prior, so long as the
20 completed study has had the benefit of public
21 comment and review.

22 Obviously, it goes without saying we've

1 discussed it here at the dais. By requiring the
2 Commission to act in this amount of time and after
3 some time has gone by in terms of moving this, we
4 would also have the opportunity to see where
5 Europe is in terms of its RFQs. And we would
6 obviously have a forcing mechanism to adopt our
7 rules in light of the MiFiD final rules. This
8 amendment does not change the bias of the rule
9 towards a minimum RFQ of three; it simply ensures
10 that we undertake our appointed responsibilities
11 and they are done so based on the facts and the
12 data before us.

13 So if anybody has any questions or
14 concerns, let me know. I'd be happy to answer
15 them.

16 COMMISSIONER SOMMERS: Just to clarify,
17 this does not do anything to the timing of the SEF
18 rule. The SEF rule will still go into place. It
19 just requires us to look at the data before the
20 RFQ automatically goes to three?

21 COMMISSIONER O'MALIA: That is correct.

22 COMMISSIONER SOMMERS: I guess, sorry,

1 one more question.

2 In looking at the data, the Commission
3 then would have the ability to decide whether some
4 more liquid contracts would be appropriate for a
5 higher RFQ versus a lower RFQ number for more
6 liquid?

7 COMMISSIONER O'MALIA: The facts in the
8 data would tell us.

9 CHAIRMAN GENSLER: I'm not able to
10 support your amendment, Commissioner O'Malia.
11 We've come a far way, this Commission, and you and
12 I have in these three years of discussing this. I
13 think that this Commission included at your good
14 suggestion in the initial proposal phase a
15 request-for-quote model recognizing that we would
16 provide market participants flexibility in the
17 swaps market that was not necessarily in the
18 futures market; that that request-for-quote model
19 was appropriate, and I still support that, that we
20 have a request-for-quote model here. In the
21 futures market for the public, if you want to
22 request a quote, the information has to go out to

1 all of the market and the responses come back.

2 Everybody gets to see that.

3 Fairly different here, what we proposed
4 is you could go out to a minimum of five and the
5 responses didn't have to be shared with the
6 market. I feel that based on the comments in the
7 public record that we've come out in an
8 appropriate place based on the data and the facts
9 that we know it as of May 16, 2013, is that
10 there's a request-for-quote minimum of going out
11 to three. Now, if the three parties don't come
12 back and only one comes back, you can execute by
13 any means of interstate commerce. For a phase-in
14 period, which is approximately, what, about 16
15 months, to one year from the four months --

16 MR. ZAIDI: It's one year from the
17 compliance date, so about 14 months.

18 CHAIRMAN GENSLER: Well, isn't the
19 compliance date four months?

20 MR. ZAIDI: Yes, sorry. Yeah, you're
21 right. Sorry.

22 CHAIRMAN GENSLER: I'm sorry. All

1 right, so 16 months. Has a phase-in at two that
2 again helps the market adjust if there's any
3 adjustment. I feel that it's appropriate. I
4 would note that these are highly liquid markets
5 because we've already determined that they're
6 under the clearing mandate and one of the five
7 factors that Congress asked us to determine and we
8 went out to notice and comment was the liquidity
9 of these markets. But I would further note that
10 we have 77 registered swap dealers and 66 of them
11 registered before December 31st, which meant that
12 they passed the de minimis of \$8 billion of
13 trading. And that was an annual de minimis they
14 passed in just 18 days in October of last year.
15 Now, of course, that's not necessarily 77
16 independent, unaffiliated members, but I think
17 it's 35 unaffiliated members. And this is that
18 they are registered and making markets as dealers
19 in the credit derivative indices and the interest
20 rate markets.

21 I also feel it's an appropriate
22 balancing because each of the market participants

1 could, if they wish, also have other means
2 available to them. They can use the order book.
3 We have a crossing rule that was proposed and is
4 still in here. Some people call it the 15 second
5 rule, but a party could one-on-one do a
6 transaction and bring it to the swap execution
7 facility and the swap execution facility by any
8 means of interstate commerce would have to note
9 that a cross was happening and somebody could
10 improve on it. This is a mechanism that's used
11 with quite success in the options market. Options
12 on futures markets today. And as we talked
13 earlier today there is also the work-up rule to
14 the extent if somebody feels that they would
15 somehow have a bit of a winner's curse or
16 something on something they could come in, let's
17 say at 50 million rather than 300 million and then
18 work up the transaction without going back to
19 three parties. So I think it's an appropriate
20 balance, and I'm going to continue to support
21 what's in the staff recommendation, and with all
22 respect, decline to support your amendment.

1 COMMISSIONER WETJEN: I'm just going to
2 make a couple of quick comments, too.

3 Over the course of the last week or so
4 we spent considerable time carefully calibrating
5 all the words of the preamble to make sure that
6 this is a bulletproof document in some respects.
7 And so, again, my fear here is that without the
8 benefit of the sort of labored study and analysis
9 that we've gone through over the last week or so
10 in making the final edits to the rulemaking, I
11 worry that by accepting this amendment now without
12 that same level of analysis we'd be taking a risk
13 that I just can't, well, tolerate at the moment.
14 In other words, I don't want to delay this rule
15 any further and bring about some of the
16 uncertainty that we're resolving by adopting this
17 rule today. And so I think the policy we've
18 struck here is appropriate in this rule. Again,
19 there's a number of different ways we could have
20 done it but we've settled on where we've settled,
21 so I think I'm going to have to reject the
22 amendment as well.

1 COMMISSIONER O'MALIA: Well, I -- go
2 ahead.

3 COMMISSIONER SOMMERS: I just have a
4 couple of comments.

5 I think certainly based on everything
6 that we've been reviewing over the past two and a
7 half years to be able to get to the place we are,
8 the data that we have been receiving even over the
9 past four months has shown us that the contracts
10 that are now being cleared and reported are not
11 all liquid contracts. So being able to use the
12 data and to consider the data and how we set the
13 RFQ I think would be helpful to the Commission,
14 and I'm hopeful that if this amendment doesn't
15 pass today that future commissions will consider
16 the data when making any determinations.

17 COMMISSIONER WETJEN: Just one quick
18 follow-up. I think Jill made an excellent point,
19 and we actually do have in the rule a requirement
20 that the Commission do conduct a study, and the
21 purpose of the study is going to review the
22 trading protocols that are contained in the

1 rulemaking today and to review whether they've
2 been appropriate in light of what the Commission
3 sees after some amount of time. I don't remember
4 the exact amount of time laid out by the rule, so
5 I think that's an important part of this
6 rulemaking as well that gives me a little bit more
7 assurance that we've landed in an appropriate
8 place.

9 COMMISSIONER O'MALIA: Let me respond to
10 both the Chairman and Commissioner Wetjen.

11 You're right. We do have a three-year
12 study in here, exactly two years after we make a
13 decision unfortunately. Or a decision is just
14 automatically made for us, actually, based on this
15 rule.

16 The other thing that I think you
17 highlighted, Mr. Chairman, was the transparency.
18 That's what this is about. We insist that the
19 market have pre-trade transparency. You mentioned
20 the 15-second crossing rule. We mention the RFQ.
21 We make sure the industry does all these things
22 for transparency, yet we don't spend a single

1 second to consider the data before we make a
2 decision. I think it's just upside down. I'm
3 disappointed that we're not going to take the data
4 and make the decision, but let's vote and figure
5 out where we go. But I certainly hope going
6 forward that we will consider the data more
7 carefully.

8 COMMISSIONER WETJEN: One last time. I
9 agree with Scott, and I think the study that's
10 part of the rule has to be taken very, very
11 seriously, and I expect and hope and believe that
12 Commission staff will, in fact, do that.

13 CHAIRMAN GENSLER: And I expect that the
14 Commission staff and the Commission will do that.
15 I do feel that we've taken to heart all of the
16 obligations we have, though it is three years and
17 Congress gave us one year to do this. And we have
18 considered the data at the proposal stage and at
19 this possible point of finalizing this rule.

20 I didn't know if Commissioner Chilton
21 had anything before we called the roll. I just
22 want to make sure.

1 Commissioner Chilton.

2 COMMISSIONER CHILTON: I'm still holding
3 my nose and biting my tongue. I think I'll just
4 be quiet here. Thank you. No.

5 CHAIRMAN GENSLER: Ms. Jurgens.

6 MS. JURGENS: This is a vote on the
7 amendment to require fact-based analysis of RFQ
8 minimum.

9 Commissioner Wetjen.

10 COMMISSIONER WETJEN: No.

11 MS. JURGENS: Commissioner Wetjen, no.
12 Commissioner O'Malia.

13 COMMISSIONER O'MALIA: Aye.

14 MS. JURGENS: Commissioner O'Malia, aye.
15 Commissioner Chilton.

16 COMMISSIONER CHILTON: No.

17 MS. JURGENS: Commissioner Chilton, no.
18 Commissioner Sommers.

19 COMMISSIONER SOMMERS: Aye.

20 MS. JURGENS: Commissioner Sommers, aye.
21 Mr. Chairman.

22 CHAIRMAN GENSLER: No.

1 MS. JURGENS: Mr. Chairman, no. Mr.
2 Chairman, on this amendment the ayes have two, the
3 nos have three.

4 CHAIRMAN GENSLER: All right. So Ms.
5 Jurgens, you can call the roll on the base
6 recommendation that had been duly motioned and
7 seconded. The swap execution facility rule.

8 MS. JURGENS: This is the final rule,
9 core principles and other requirements of swap
10 execution facilities.

11 Commissioner Wetjen.

12 COMMISSIONER WETJEN: Aye.

13 MS. JURGENS: Commissioner Wetjen, aye.
14 Commissioner O'Malia.

15 COMMISSIONER O'MALIA: Aye.

16 MS. JURGENS: Commissioner O'Malia, aye.
17 Commissioner Chilton.

18 COMMISSIONER CHILTON: Aye.

19 MS. JURGENS: Commissioner Chilton, aye.
20 Commissioner Sommers.

21 COMMISSIONER SOMMERS: No.

22 MS. JURGENS: Commissioner Sommers, no.

1 Mr. Chairman.

2 CHAIRMAN GENSLER: Aye.

3 MS. JURGENS: Mr. Chairman, aye. Mr.
4 Chairman, on this matter the ayes have four, the
5 nos have one.

6 CHAIRMAN GENSLER: The swap execution
7 facility rule with the ayes in the majority with
8 technical edits and that unanimous consent
9 amendment on footnote 219 will be sent to the
10 Federal Register.

11 I want to thank all the team. I want to
12 thank my fellow Commissioners. This is all, I
13 will say, just part of a journey, and I do concur
14 that we have to be open, whether it's because of
15 international regimes, new data as it becomes
16 available. This is a paradigm shift for the
17 American markets that will bring transparency but
18 we have to be open to revising based on new
19 information along the way.

20 David Meister is coming. But does
21 anybody want a break or should we just get on and
22 just do it?

1 All right. We've deliberated, and David
2 Meister is here.

3 We have in front of us David Meister,
4 the head of the Division of Enforcement; Robert
5 Pease, who is in the Division of Enforcement, and
6 who have worked on a staff recommendation on an
7 interpretive guidance with regard to disruptive
8 trading practices. So I hand the floor over to
9 you, David.

10 MR. MEISTER: Thank you, Mr. Chairman.
11 Thank you, Commissioners.

12 Today the staff is recommending that the
13 Commission issue a final interpretive guidance and
14 policy statement or interpretive statement for
15 short concerning the Commission's prohibitions of
16 destructive practices. I'll summarize the
17 highlights of the interpretive statement and then
18 we'll take the Commission's questions.

19 In the Dodd-Frank Act, Congress adopted
20 a provision prohibiting certain disruptive
21 practices. The provision took effect on July 16,
22 2011, and it applies to violations arising after

1 that date. The provision prohibits three types of
2 conduct on a registered entity. First, violating
3 bids or offers; second, recklessly disregarding
4 orderly execution during a closing period; and
5 third, spoofing, an example of which is given in
6 the provision as "bidding or offering with the
7 intent to cancel the bid or offer before
8 execution."

9 This Dodd-Frank law, now numbered
10 section 4c(a)(5) of the Commodity Exchange Act is
11 an important and welcomed new enforcement tool to
12 be used against persons who employ these
13 destructive practices which harm the critical
14 price discovery function of CFTC regulated
15 markets. It can and will be used in furtherance
16 of the Commission's core mission to protect market
17 participants and promote market integrity.

18 This Dodd-Frank provision provides the
19 Commission with rulemaking authority but it does
20 not mandate the promulgation of rules.

21 Nonetheless, beginning in November 2010, the
22 Commission took steps to inform the market as to

1 how the Commission interprets and intends to apply
2 this provision. Those steps, which included a
3 public roundtable and opportunity for the public
4 to submit comments in response to Commission
5 proposals, are now culminating today with today's
6 recommended interpretive statement.

7 As a threshold matter, the interpretive
8 statement sets forth the Commission's
9 interpretation that all three categories of
10 prohibitions apply only with respect to violations
11 on a registered entity, such as DCM or a SEF.
12 They do not apply to bilateral, off-exchange
13 trades conducted in accordance with Commission
14 rules.

15 Now, taking each of the three types of
16 prohibitions in turn, the highlights include the
17 following: First, with respect to the prohibition
18 on violating bids or offers, the interpretative
19 statement makes several points clear. When a
20 person buys on a registered entity higher than the
21 lowest price offered or sells lower than the
22 highest priced bid, the Commission's

1 interpretation is that the law is violated
2 regardless of the person's intent. This conduct
3 is disruptive. It impedes the price discovery
4 function, and therefore, Congress made this a per
5 se or strict liability offense.

6 The interpretive statement also makes
7 clear the Commission's policy that there are
8 limitations on the reach of this first category.
9 For example, as to SEFs, the prohibition on
10 violations of bids and offers applies only when a
11 person is using the SEF's order book but not with
12 respect to other SEF execution methods such as a
13 request-for-quote system. The provision also does
14 not create a best execution standard between
15 different trading platforms within a particular
16 DCM or SEF or across multiple registered entities.

17 Second, with respect to the prohibition
18 concerning orderly execution during the close, the
19 interpretive statement makes clear that the
20 Commission interprets this to cover not only
21 intentional but also reckless conduct. It also
22 makes clear that the violative conduct does not

1 necessarily have to be undertaken during the
2 closing period. Reckless, a common term in the
3 law, means conduct that departs so far from the
4 standards of ordinary care that it is very
5 difficult to believe the actor was not aware of
6 what he or she was doing.

7 The closing is a particularly important
8 period because many derivative contracts are
9 valued based upon closing period prices. The
10 interpretive statement confirms what the
11 Commission understands closing period to mean in
12 the context of this provision. As to what is
13 orderly, the interpretive statement highlights
14 that the fundamental concepts of orderly trading
15 are similar in the CFTC regulated markets and the
16 securities markets and that there is a substantial
17 body of judicial precedent applying the concept of
18 orderly trading in the securities markets. The
19 interpretive statement sets forth the policy of
20 the Commission to be guided by, but not controlled
21 by, that precedent.

22 Third, with respect to the prohibition

1 of spoofing and similar practices, the
2 interpretive statement makes clear that the
3 Commission intends to apply the provision only
4 when the actor engages in intentional conduct. It
5 does not cover reckless conduct. This limitation
6 flows directly from the statute. The interpretive
7 statement states that the Commission's position
8 that it intends to employ -- let me start that
9 again.

10 The interpretive statement states the
11 Commission's position that it intends to employ
12 this prohibition against a person who at the time
13 he or she places an order intends to cancel it
14 prior to execution. The interpretive statement
15 provides that the statutory prohibition applies to
16 conduct on all registered entities, regardless of
17 the trading system. It can apply to partial fill
18 situations, and it can apply to one instance of
19 misconduct or to a pattern. On the other hand,
20 the interpretive statement makes clear that the
21 Commission does not intend to apply the
22 prohibition to good faith order cancelations or

1 modifications.

2 The statement lists four possible
3 examples of violations under this spoofing
4 paragraph of the provision but these are just by
5 way of example, and they do not limit the
6 Commission's authority to consider the facts and
7 circumstances of a given situation to determine
8 whether the conduct meets the elements of the law
9 as provided by Congress. One of the Commission's
10 core missions is to protect against disruptions of
11 market integrity. In that vein, staff believes
12 that this interpretive statement, which takes into
13 consideration comments that we have received and
14 constructive dialogue with commissioners will help
15 market participants abide by the law.

16 I'd like to thank my staff colleagues
17 who worked on the interpretive statement and other
18 prior initiatives on this project and on this
19 subject, Vince McGonagle and Bob Pease from the
20 Division of Enforcement.

21 With that, I'll entertain any questions
22 that you may have.

1 CHAIRMAN GENSLER: I'll entertain a
2 motion to adopt the staff recommendations on
3 disruptive trading practice guidance.

4 COMMISSIONER SOMMERS: So moved.

5 COMMISSIONER O'MALIA: Second.

6 CHAIRMAN GENSLER: I support the
7 interpretive guidance and policy statement with
8 regard to disruptive trading practices for swap
9 execution facilities in designated contract
10 markets.

11 As part of reform, Congress actually
12 included a new section about various abusive
13 practices, the three that Mr. Meister just went
14 through, and expressly prohibited certain
15 activity. And what we found after Dodd-Frank
16 passed is many market participants asked what does
17 this mean? And we went out and we actually had a
18 lot of discussions, and we had an advance notice
19 that we put out with 17 or 20 questions. Is that
20 right, David?

21 MR. MEISTER: I think it was 19, Mr.
22 Chairman.

1 CHAIRMAN GENSLER: Nineteen questions.

2 We had a roundtable, and I think separately it
3 also probably came up at the Tech Advisory
4 Committee a number of times as well if I remember,
5 Commissioner O'Malia.

6 But based on that roundtable and the
7 advanced notice and some of the advisory
8 committee, then we put out this proposed
9 interpretive guidance. And I think that it's
10 helpful to the markets. The guidance addresses
11 the comments the Commission received during that
12 process, and I support it. And I have a longer
13 statement that will go in the record but I'm going
14 to let others ask you questions.

15 Commissioner Sommers.

16 COMMISSIONER SOMMERS: Thank you, Mr.
17 Chairman. I just have a couple of questions. One
18 is specifically to the disregard for orderly
19 execution of transactions during the closing
20 period, and the guidance recommends that market
21 participants should assess market conditions. And
22 I'm just wondering if you could give us a little

1 bit of color on that because market conditions are
2 constantly changing and one market participant's
3 view of a market condition versus another one
4 could be very different. How are we going to
5 evaluate whether a market participant adequately
6 assessed market conditions?

7 MR. MEISTER: The guidance provides the
8 language that you're talking about. I look at
9 that in terms of the overall interpretive
10 statement that says that this applies to reckless
11 conduct. And reckless is defined in the rule, as
12 I said, it's sort of department very far from the
13 standards of ordinary care. And so under the law
14 what people do in determining whether or not
15 someone acted recklessly is they look at what did
16 the person observe? What did the person try to
17 observe? You know, what is the evidence that
18 reflects on the person's mental state? One thing
19 that we suggest, and the statement says that one
20 ought to look at is, you know, what does the
21 market look like at the time that you're entering
22 the market. It's really -- that's a long way of

1 saying it's really all wrapped up in an assessment
2 of whether or not one acts recklessly.

3 And as I say, the word "recklessly" is a
4 common word in the law. It appears also actually
5 in the Commodity Exchange Act as well, and it
6 appears in many statutes across the spectrum of
7 the law and ultimately the assessment of whether
8 or not someone acts recklessly does depend upon,
9 in part, what the person knew and was observing at
10 the time.

11 COMMISSIONER SOMMERS: I also wonder,
12 because our registered DCMs did comment during
13 this process and I wonder whether or not we've
14 reviewed the exchanges' trade practice rules to
15 make sure that this guidance, it doesn't conflict
16 with what exchanges might have in their own rules.

17 MR. MEISTER: We certainly did review
18 all of the comments. We received more than 50,
19 and we received some, I agree, from registered
20 entities. It's the goal of this guidance to give
21 the market and market participants an
22 understanding as to how we interpret the statute.

1 But I will say that whether or not the interpret
2 -- I'm sorry, whether or not the statute conflicts
3 with a DCM's rule -- and I'm not saying that it
4 does -- we would still be bound to apply the
5 statute as written.

6 COMMISSIONER SOMMERS: Of course. I'm
7 just saying if perhaps something that may be
8 conflicting or confusing in an exchange rule, you
9 know, conflicts with the guidance that we've given
10 here, you know, I assume that the Exchange will
11 just have to change their rule.

12 MR. MEISTER: I think that's -- I would
13 agree. I mean, if the Exchange has written a
14 rule, say, making lawful spoofing, just by way of
15 example, but without getting into something
16 granular or some sort of conduct that violates
17 congressional statute, I think it would behoove
18 them to change the rule as well.

19 CHAIRMAN GENSLER: Thank you,
20 Commissioner Sommers.

21 Commissioner Chilton.

22 COMMISSIONER CHILTON: Thank you, Mr.

1 Chairman. Mr. Meister, with regard to the
2 "cheetahs", with regard to HFTs, you know, since
3 they don't have phone messages that we would, you
4 know, recordings that we would get or maybe
5 instant messages, what sort of circumstantial
6 evidence would you look for for spoofing for those
7 guys?

8 MR. MEISTER: Thank you, Commissioner.
9 Your question about circumstantial evidence is a
10 good one. Just to remind everyone, under the law
11 the weight of circumstantial evidence and the
12 weight of direct evidence is the same. And what
13 we would -- and we often, in the Division of
14 Enforcement, rely on circumstantial evidence.
15 Circumstantial evidence can take various forms,
16 including pattern of trading. It could include,
17 you know, for example, how a particular algorithm
18 is coded. For example, if an algorithm was coded
19 to cancel trades from the get-go. In other words,
20 if an algorithm was coded that before an order was
21 placed there was an intent to cancel it, then that
22 would be a level of circumstantial evidence that

1 we would actually, definitely look at.

2 COMMISSIONER CHILTON: Thank you. I'll
3 put on my Scott O'Malia hat for a minute. Do we
4 have the tools, the technology tools to really
5 detect this sort of in a real-time -- on a
6 real-time basis? I mean, I know we can go in and
7 respond to complaints, referrals that we get, but
8 do we have at this point the technology tools
9 available to detect this? I'm particularly
10 interested in it, by the way, during the closing
11 period. I think you addressed this a little bit
12 but give me a little bit more flavor.

13 MR. MEISTER: With respect to the
14 surveillance tools that we have, I don't have a
15 DMO colleague sitting next to me here. You know,
16 so I just don't have a direct answer to your
17 question.

18 CHAIRMAN GENSLER: Rick Shilts, do you
19 want to come up to the table?

20 Sorry, David. You seemed to call out
21 for a lifeline. You get two more lifelines.

22 MR. MEISTER: It was a phone a friend.

1 MR. SHILTS: Yeah. I guess the short
2 answer is no, we don't have that capability. To a
3 large extent it would involve looking at messaging
4 data, which is something we're just starting to
5 look at and we would need more people that are
6 familiar with algos, you know, computer programmer
7 types that would be able to look at that. So
8 that's something that we would be wanting to do
9 down the road but as I think we mentioned at the
10 last -- as Commissioner O'Malia asked, we're now
11 working to integrate our oversight of SEFs. We're
12 also trying to integrate SDR data into our
13 oversight of the swaps markets and the futures
14 markets. So frankly, I don't see with our current
15 resources that's something that we'll have the
16 capability to do in the near term.

17 COMMISSIONER CHILTON: Mr. Shilts, if
18 you want to answer this one too then, because my
19 next question was about the prohibition on
20 violating bids and offers operate sort of a SEF
21 world. And you know, where there's no best
22 execution requirement. How does this work in the

1 SEF world? And maybe back to you, David. I'm
2 sorry, whoever.

3 MR. MEISTER: That's okay. I'll take
4 it. The violation -- you're talking about the
5 first paragraph of the provision, which makes it a
6 prohibitive practice to violate bids or offers.
7 That works in the SEF world only with respect to
8 the order book. It doesn't work with respect to
9 RFQs.

10 COMMISSIONER CHILTON: Okay. I do think
11 it's significant that, you know, what Mr. Shilts
12 just said is we don't have the tools to stop this
13 stuff. So we can put the rule in place or we can
14 put your guidance in place and it's concomitant
15 with all the other rules but the bottom-line is,
16 you know, we may not be able to catch these people
17 until we go after them and it could be a long
18 time. So it's just another really shout out to
19 Congress to say if you want us to abide by our
20 rules, you want us to be able to enforce this, we
21 need the technology tools and the people power to
22 do so.

1 Thank you.

2 CHAIRMAN GENSLER: Thank you,
3 Commissioner Chilton.

4 Commissioner O'Malia.

5 COMMISSIONER O'MALIA: He actually said
6 that he was intentionally going to proffer me on
7 that question. He should be brought up on
8 charges.

9 So I do have a number of questions.
10 David, I've sent you a list of three ATS
11 strategies which I think probably I'll give to the
12 reporter. I don't want to have to go through
13 these, but you and I -- I sent you the specific
14 strategies.

15 MR. MEISTER: The ones you sent me last
16 night?

17 COMMISSIONER O'MALIA: Yeah.

18 MR. MEISTER: Yes.

19 COMMISSIONER O'MALIA: Strobing,
20 priority positioning or laddering, and front
21 running. You've had the opportunity to review
22 those. These are a variety of different

1 strategies that involve high level cancelations,
2 flashing liquidity and pulling it back real quick.
3 Where does that fall in terms of our guidance?
4 Maybe if you could kind of go by each strategy. I
5 mean, if we try to explain it here it might be a
6 little difficult.

7 CHAIRMAN GENSLER: And David, as you
8 think that through I'm just asking unanimous
9 consent to put those three things fully in the
10 record.

11 Hearing no objection --

12 COMMISSIONER O'MALIA: I've got actually
13 a pretty good little explanation on each one of
14 them.

15 CHAIRMAN GENSLER: All right. So
16 they'll all go fully in the record. Thanks.

17 MR. MEISTER: What's going to go in the
18 record is as sent to --

19 COMMISSIONER O'MALIA: As sent to you.
20 The questions I sent to you.

21 MR. MEISTER: Okay. So your first
22 category concern is labeled strobing. I can't

1 tell you I've had a ton of opportunity to consider
2 it but it does -- something that leaps out with
3 respect to strobing, which as described in this
4 document is an HFT strategy that rapidly sends and
5 cancels the same order many times to create the
6 false appearance of liquidity. That one certainly
7 seems like a problem to me under the provision.
8 And I would be thinking about the third category
9 of the provision which concerns spoofing because I
10 think what this is talking about is intentionally
11 placing an order with an intent to cancel it
12 before execution, which would meet the
13 prohibition's language.

14 COMMISSIONER O'MALIA: So in this they
15 do flash orders. They just do it quickly. And if
16 they are lifted then that obviously -- the intent
17 to cancel is, you know, that intent seems to be
18 mitigated if they actually did get lifted. This
19 is a tough one to solve and obviously a tough one
20 to describe in terms of what good and bad behavior
21 is. So wouldn't the response be, well, we are
22 placing orders. The question is how fast do they

1 get out.

2 MR. MEISTER: Right. I think that's a
3 very good question and good to clarify here.

4 The offense is complete if someone
5 places an order with the intent to cancel it at
6 the time it's placed. It doesn't -- I would
7 suggest to you that it's not a defense if, in
8 fact, that order is ultimately executed on. Just
9 like, for example, in manipulation space just by
10 way of analogy, sometimes people will try to
11 manipulate the market by putting in orders to move
12 a market price. That's not spoofing; that's in
13 the manipulation space. It's not a defense if, in
14 fact, that order is executed on. That just so
15 happens. Perhaps it's the cost of doing business.
16 But so with respect to your question, I don't
17 think that it's a valid defense to say, oh, the
18 order was executed on.

19 I should also point out that just so the
20 record is clear here, your definition or this
21 strobing hypothetically talks about an intent to
22 create a false appearance of liquidity. That is

1 not a necessary element of spoofing.

2 COMMISSIONER O'MALIA: That's good to
3 know. Thank you.

4 Do you want to address either priority
5 positioning in laddering or front running?

6 MR. MEISTER: With respect to laddering
7 -- and maybe I should just read what is laddering
8 here.

9 COMMISSIONER O'MALIA: Sure.

10 MR. MEISTER: It says it's an HFT
11 strategy for highly liquid markets, extracts
12 profits from a market by using speed to gain
13 superior positioning. This strategy adds very
14 little or no benefit or even harms the marketplace
15 as it seeks to intercept trading that would
16 otherwise take place and extract profits from the
17 system without participating in the transference
18 of risk.

19 This one we would have to study further.
20 This certainly suggests there may be a market
21 structure issue and may well violate other
22 provisions in the act, but one question that would

1 come to my mind is whether or not there was a
2 disruptive -- this was disruptive of orderly
3 execution in the close. I don't see in the
4 hypothetical on the other hand, if you were trying
5 to analyze this under spoofing, whether there was
6 an intent to cancel. So it raises questions in my
7 mind but I wouldn't be able to answer those
8 questions here on the spot.

9 COMMISSIONER O'MALIA: Fair enough.

10 MR. MEISTER: And then with respect to
11 the last point, which is front running, and I'll
12 just read that quickly, front running defined here
13 is an HFT strategy that relies on ultrahigh speeds
14 to observe a trade take place in the marketplace
15 that they took no part in so as to rush and buy or
16 sell the underlying stock or future in front of
17 the anticipated forthcoming hedge orders. I read
18 this to say there's some strategy to watch trading
19 take place, to sort of make observations about
20 what trading is taking place and then once you get
21 that observation you take advantage of the
22 information that you've gathered.

1 Again, for this one I'd want to study
2 this further. I don't see anything about -- on
3 the spoofing side about intending to cancel
4 orders, so that seems out. But with respect to
5 does it -- and I'll assume there's no violation of
6 bids or offers, which is a per se event. So
7 again, it just raises a question about whether
8 this is during the close and whether the trading
9 conduct disrupts orderly execution.

10 COMMISSIONER O'MALIA: Now, you brought
11 up disruptive trading in the closing period. And
12 since trades outside the closing period may affect
13 the trading during the closing period, the portion
14 of the rule effectively applies to all trading
15 activities taking place on the registered entity's
16 order book. Is that correct? Because we say
17 anything -- doesn't the guidance say that there is
18 a closing period and if you execute trades outside
19 the closing period that affects the closing period
20 then that, too, would be considered affecting the
21 close? Is that how you interpret it?

22 MR. MEISTER: Yeah. It's conceivable

1 that conduct that occurs outside of the closing
2 period could disrupt the orderly execution. And
3 the way the statute is written it makes sense to
4 consider conduct that occurs outside as possibly
5 disruptive.

6 COMMISSIONER O'MALIA: Would it possibly
7 include trading that occurs in the open might
8 affect the close? Is that how broad this is?

9 MR. MEISTER: I wouldn't limit it.
10 First of all, you keep on saying trading and I
11 keep on saying conduct. Conduct outside the close
12 can disrupt the close. Could it be conduct during
13 the opening? I guess it would depend upon the
14 facts and circumstances. Obviously, as you get
15 further and further away of a closing period on a
16 particular day it gets harder to prove that
17 someone was acting recklessly with respect to the
18 close. And we would certainly take that into
19 consideration.

20 COMMISSIONER O'MALIA: And this is one
21 of your facts and circumstances kind of guidances?

22 MR. MEISTER: That would certainly

1 depend upon the facts and circumstances.

2 COMMISSIONER O'MALIA: What about the
3 practice of multiple trading strategies within a
4 firm and kind of coming back to trade the S&P. If
5 there were an equity strategy and a commodity
6 strategy and they happened to cross in the S&P,
7 same firm but different trading strategies and
8 they essentially cross themselves in the S&P but
9 executing different strategies on different
10 markets, do you believe that's disruptive?

11 MR. MEISTER: I think you're talking
12 about again about disrupting the orderly execution
13 during the close. Just to be clear, there's the
14 violation of bids or offers, there's disrupting
15 the close, and then there's spoofing. There's no
16 cancelation in your hypothetical. And I'm
17 assuming you're not worried about violating bids
18 and offers. So you're talking about if there was
19 disruption of a closing period because two
20 different strategies from the same company hit
21 themselves during the close. We would look at
22 whether or not there was -- whether it was

1 disorderly and whether the conduct was reckless.

2 COMMISSIONER O'MALIA: Would it be under
3 your new manipulation authorities a violation?

4 MR. MEISTER: Under the new manipulation
5 authorities there is, you know, that prohibits,
6 again, all reckless conduct or reckless conduct
7 but there has to be some level of deception in the
8 fraud-based manipulation space. So we would opt
9 to see whether or not there was some sort of
10 deception of the market in that context.

11 COMMISSIONER O'MALIA: Are there any
12 other authorities that that would be illegal?

13 MR. MEISTER: Well, if a firm is meeting
14 itself, it raises questions about whether there's
15 a wash trade problem. That comes to mind. You
16 know, I'd have to crack the book to look for
17 others.

18 COMMISSIONER O'MALIA: I should have put
19 that in my written submissions for you.

20 MR. MEISTER: And frankly, what you say,
21 when we look at facts we sort of look at the facts
22 carefully and then we look to see whether or not

1 there are any prohibitions that are violated.

2 COMMISSIONER O'MALIA: As I said in my
3 opening statement, you know, I'm pleased that we
4 have reserved some activities and clarified that
5 they are not captured into this disruptive. I
6 think we have a long way to go in terms of really
7 illuminating where this authority starts and
8 stops. And we attempted to do some of that here,
9 obviously. But, you know, the market, there's a
10 lot of gray area in this one and hopefully we'll
11 continue to define the space a little better so
12 everybody understands where good and bad behavior
13 resides. So I appreciate your looking at those
14 strategies and giving me your assessment. I look
15 forward to following up with you on those. Thank
16 you.

17 MR. MEISTER: Thank you.

18 CHAIRMAN GENSLER: Thank you,
19 Commissioner O'Malia.

20 Commissioner Wetjen.

21 COMMISSIONER WETJEN: I don't have any
22 questions. Thanks.

1 CHAIRMAN GENSLER: All right. If there
2 are no amendments, absent hearing any amendments,
3 Ms. Jurgens.

4 MS. JURGENS: This is a vote on the
5 anti-disruptive practices authority --
6 interpretive guidance and policy statement.

7 Commissioner Wetjen.

8 COMMISSIONER WETJEN: Aye.

9 MS. JURGENS: Commissioner Wetjen, aye.
10 Commissioner O'Malia.

11 COMMISSIONER O'MALIA: Aye.

12 MS. JURGENS: Commissioner O'Malia, aye.
13 Commissioner Chilton.

14 COMMISSIONER CHILTON: Aye.

15 MS. JURGENS: Commissioner Chilton, aye.
16 Commissioner Sommers.

17 COMMISSIONER SOMMERS: Aye.

18 MS. JURGENS: Commissioner Somers, aye.
19 Mr. Chairman.

20 CHAIRMAN GENSLER: Aye.

21 MS. JURGENS: Mr. Chairman, aye. Mr.
22 Chairman, on this question the ayes have five, the

1 nos have zero.

2 CHAIRMAN GENSLER: The vote being
3 unanimous, with any technical corrections, Mr.
4 Meister, if you can send this along with the
5 secretary to the Federal Register.

6 Before I ask for a motion to adjourn I
7 just want to again thank all of the staff. This
8 is a very significant day for this Commission and
9 I think for the American public that a market that
10 is measured in vast numbers, nearly \$20 of swaps
11 for every dollar in our economy, we took a step
12 closer today to enhance transparency, both after
13 the transaction and before the transaction. And I
14 know a lot will be written about whether the
15 request-for-quote model was two, three, or five,
16 and it seems that that's caught a lot of public
17 attention. I frankly think that's only part of
18 the story, and it's a small part of the story. I
19 think what we really did today said swap execution
20 facilities can come alive, compete with each
21 other, provide transparency to the markets, that
22 everybody in the marketplace is going to benefit

1 and have an opportunity, that the block swap rule
2 set appropriate, that approximately half the
3 market will benefit from greater post-trade
4 transparency and later after a transition,
5 two-thirds. I think these are very significant
6 accomplishments for the American public and
7 deliver on what Congress asked for. And I know
8 all five Commissioners have spent it feels like a
9 lifetime on this particular set of rules.

10 I want to thank Commissioner O'Malia who
11 first led the way in how to do a swap execution
12 facility rule because I know we spent a lot of
13 time.

14 I want to thank Commissioner Chilton,
15 who, though he lost his stepdad just a week ago,
16 has really participated, but also over these last
17 three and a half years, really looking out and I
18 think Bart, you really brought many excellent
19 suggestions to this rule. I know as you said, it
20 wasn't exactly the rule you would have wanted.

21 Commissioner Wetjen, you and I have
22 spent more time on this rule probably than any

1 other rule but I think we found the appropriate
2 balance. I really do, and I know we both seem to
3 be getting some press over this but I really think
4 this rule brings the appropriate transparency to
5 the markets.

6 Commissioner Sommers, although you
7 didn't necessarily support the final rule, all of
8 your suggestions were helpful. I think
9 particularly on the international front we made
10 really good progress in making this rule more
11 accessible internationally. And I'm going to miss
12 you as a Commissioner here. You have served the
13 American public for -- what is it, seven years?

14 COMMISSIONER SOMMERS: Six years.

15 CHAIRMAN GENSLER: Six years. Since the
16 day Bart was sworn in. And you've really served
17 the public, and we all owe you a closing round of
18 applause.

19 (Applause)

20 CHAIRMAN GENSLER: Do you want to say
21 anything before I take a motion to adjourn?

22 Motion to adjourn the meeting.

1 COMMISSIONER SOMERS: So moved.

2 COMMISSIONER O'MALIA: Second.

3 CHAIRMAN GENSLER: All in favor?

4 COMMISSIONERS: Aye.

5 CHAIRMAN GENSLER: The meeting is

6 adjourned. Thank you.

7 (Whereupon, at 2:20 p.m., the

8 PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

(Signature and Seal on File)

Notary Public, in and for the District of Columbia

My Commission Expires: March 14, 2014