UNITED STATES OF AMERICA

COMMODITY FUTURES TRADING COMMISSION

GLOBAL MARKETS ADVISORY COMMITTEE MEETING

Washington, D.C.

Wednesday, February 12, 2014

PARTICIPANTS:

Introductions:

TED SERAFINI

Opening Statements:

SCOTT D. O'MALIA

MARK P. WETJEN

Panel No. 1: Cross-Border Guidance:

GARY BARNETT

CARLENE KIM

ROBERT A. SCHWARTZ

Panel No. 2: November 14 Staff Advisory Issues:

JOHN RAMSAY

BRIAN BUSSEY

DAVID BAILEY

HANNAH RAYNER

Attendees:

CHRIS ALLEN, Barclays

DARCY BRADBURY, D.E. Shaw

CLIVE CHRISTISON, BP

RANDALL COSTA, Citadel

MIKE DAWLEY, Goldman Sachs

WALLACE TURBEVILLE, Demos

PARTICIPANTS (CONT'D):

DAVID GOONE, Intercontinental Exchange

Paul Hamill, UBS

GEORGE HARRINGTON, Bloomberg

DOUG HEPWORTH, Gresham Investment

JAMES HILL, Morgan Stanley

SUPURNA VEDBRAT, BlackRock

SAMARA COHEN, Goldman Sachs

~~Panelists:~~

KIM TAYLOR, CME Group

YASUSHI TAKAYAMA, Nomura Group

DAN ROTH, National Futures Association

JOHN PARSONS, MIT

STEVE O'CONNOR, International Swaps and Derivatives Association

JOE NICOSIA, Louis Dreyfus Commodities

RAJ MAHAJAN, Allston Trading

MIKE LESAGE, Risk Management for Cargill

CAITLIN CLINE, Better Markets

BOB KLEIN, Citigroup

SUNIL HIRANI, trueEX

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P R O C E E D I N G S

(2:06 p.m.)

MR. SERAFINI: Good afternoon, everyone, and thanks for coming. My name is Ted Serafini. As the GMAC-designated Federal Officer and temporary Chair of the Committee, it's my pleasure to call to order the 15th meeting of the Global Markets Advisory Committee.

Today, we'll start by opening it up to statements for Acting Chairman Mark Wetjen -- and he's also sponsor of the GMAC -- and Commissioner O'Malia.

CHAIRMAN WETJEN: Thank you, Ted. The members of the committee probably heard from Ted -- must have heard from Ted in the last number of weeks. And Ted works for me, as one of my legal advisors. But he's also the designated Federal Officer, which is a term of art, for these advisory committees. So, he's going to be helping us, at least through this meeting, and moderating it for us. So, thanks, Ted.

Thank you all for coming. Thanks for

agreeing to be part of this. We have a fairly narrow agenda today, but it's an important topic. As all of you know, the CFTC staff issued an advisory with respect to our cross-border guidance from last summer. The advisory was issued last November, November 14.

And it quickly became a document of significant interest on the part of market participants and other stakeholders -- and just people generally interested in what we do here at the CFTC.

So, Chairman Gensler, I think, made a good decision to essentially elevate that advisory to a Commission action, in a lot of ways. So, that's what happened by us putting the advisory out for comment.

And so this is, in some ways, a part of that comment period, which is still open. But we're hoping that, through this meeting today, we can talk through some of the issues implicated by the advisory, and start thinking about different things we need to continue considering, as we, at the Commission, move forward in fleshing out and building out our cross-border policy.

~~Just~~ I'll mention real quickly -- you might have seen an announcement earlier today regarding trading venues in London. So, we've been able to do some work on that front. Again, I see that as a continuation of efforts that had begun last year. And this was something that was indicated in the path forward agreement from last summer, with European Commission, as something -- or a step, rather -- that the CFTC would take.

So, I appreciate the help of my fellow Commissioners, including Commissioner O'Malia, in thinking through that, and working through that. And, as I said, we'll continue further steps as necessary to keep rounding out and building out our cross-border policy, as begun through the guidance last summer.

So, with that, I will turn it over to Commissioner O'Malia.

COMMISSIONER O'MALIA: Thank you, Mark, for calling this meeting, and to begin the discussion regarding the impacts of the Commission's cross-border guidance and the staff's notorious February 14th advisory, further expanding our jurisdiction over swaps trading by non-U.S. –Persons.

As I've consistently stated, the Commission must collaborate with foreign regulators to increase global harmonization of swaps regulation. The international community has worked together to develop consistent standards for the capital and margin requirements for OTC swaps; however, in other areas, such as day reporting, the Commission has failed to provide a clear path forward for market participants and foreign regulators.

Today is the first day of trading in the European Commission and the European Union, and the Commission has still not recognized the E.U. reporting regime for substituted compliance. I do remain optimistic that the Commission will work with foreign regulators to quickly resolve the outstanding issues, and rely on a compatibility process, rather than imposing the U.S. regime globally.

Today's meeting is a positive step in working with foreign regulators to develop a solution to limit the extraterritorial application of the Dodd-Frank Act to foreign transactions that have a "direct and significant connection," as provided in the statute. And then we can also begin discussions about comparability of foreign regulations.

So, I greatly appreciate the Chairman calling this meeting to talk about this issue, and just because we put it out for public comment does not make it a Commission document, I hope. And maybe we can have our legal counsel opine on that.

But this is something that we need to be able to understand what the rules are, going forward, and how they will be legally enforceable going forward. There are a number of questions regarding guidance, the impact of advisories on guidance, and how that relates to the statute, and what our legal obligations are, and what your legal obligations are.

So, I'm all for having this discussion, to have that good discussion, to make sure we're very clear about where our jurisdiction starts and stops, and how we can continue to rely on foreign regulators -- which I'm grateful to have both the E.C. and FCA here today, to participate in our discussion, and to make sure that we're aligned similarly. And I've had very good discussions in Asia, as well, to ensure that we're working together, just as the G20 nations promised back in Pittsburgh of 2010.

So, with that, Chairman Serafini and Chairman Wetjen, I'm Chairman O'Malia of the TAC, but just Chairman up here -- but I look forward to the conversation today. Thank you all for coming.

CHAIRMAN WETJEN: Thank you, Commissioner O'Malia. Just one last thing before I turn it back over to Ted.

I wanted to give a special thanks to David Bailey and Hannah Rayner, who have come in from Europe to be part of this meeting. David is with the FCA in the United Kingdom, and Hannah is with the European Commission in Brussels. So, we so appreciate their being here, despite some threatening weather, and hope they'll get back safely after today's meeting.

But, again, I think their presence here is going to add significantly to the level of discussion. So, I really appreciate your being here.

MR. SERAFINI: Thanks, Chairman Wetjen. As everyone knows, we've had a couple of changes to the composition of the GMAC committee, and there are a lot of new faces. So, we thought it might be useful for people to go around the room, and briefly introduce themselves.

So, I'll start with Chris, over here.

MR. ALLEN: My name's Chris Allen. I'm from Barclays. I head the Regulatory Policy Unit for the global organization, based in London.

MS. BRADBURY: Darcy Bradbury -- I'm a Managing Director with D.E. Shaw. We're a global multi-strategy hedge fund firm, and we're active in both the futures and the swaps markets -- so take a great interest in these issues.

MR. CHRISTISON: Hi. Good afternoon. I'm Clive Christison. I'm leading the BP supply and trading business here for the Americas. I'm based in Chicago.

MR. COSTA: I'm Randall Costa, with Citadel, and I'm a Managing Director. I focus on derivatives and reformed market structure issues for Citadel.

MR. DAWLEY: Good afternoon. I'm Mike Dawley. I'm a Chairman of the Futures Industry Association, and also a Managing Director at Goldman Sachs, who looks after their client clearing business.

MR. TURBEVILLE: Good afternoon. My name is Wallace Turbeville -- generally called Wally. I am a Senior Fellow at Demos, which is an organization that does research, and writing, and advocates for the public's interest.

MR. GOONE: I'm David Goone. I'm the Chief Strategy Officer for Intercontinental

Exchange.

MR. HAMILL: Paul Hamill at UBS. I'm in e- commerce for FX rates and credit.

MR. HARRINGTON: My name is George Harrington. I'm the Global Head of Fixed Income, Currency, and Commodity Trading at Bloomberg. I'm also Vice President of Bloomberg's Swap Execution Facility and Vice President of Bloomberg's Swap Data Repository.

MR. HEPWORTH: My name is Doug Hepworth. I'm with Gresham Investment Management, which is an asset management firm, managing about $15 billion in commodity-related strategies.

MR. HILL: James Hill -- I'm Managing Director in the Global Credit Group at Morgan Stanley.

MS. VEDBRAT: Supurna VedBrat -- Managing Director at BlackRock, a global asset management firm, and a Co-Head, Electronic Trading and Market Structure.

MS. COHEN: I'm Samara Cohen, Managing Director in the Securities Division of Goldman

Sachs. I've been at Goldman for 15 years. I spent the first 13 in our interest rate products business, and I've spent the last 2 exclusively focusing on helping our clients globally prepare for derivatives reform.

MR. BARNETT: We're your panelists.

MS. TAYLOR: I'm Kim Taylor, with CME Group. I'm responsible for clearing and the trade repository services.

MR. TAKAYAMA: I am Yasushi Takayama, the General Counsel to the U.S. broker-dealer of the Nomura Group and Nomura Securities International, Inc. The Nomura Group is based in Tokyo, Japan, but has a central presence in the United States, with 2,300 employees.

So, I feel greatly honored to be here. Thank you.

MR. ROTH: I'm Dan Roth. I'm the President of National Futures Association.

MR. PARSONS: I'm John Parsons, from the Sloan School of Management at MIT, interested in research and public policy issues on end users and risk management.

MR. O'CONNOR: I'm Steve O'Connor, Chairman of the International Swaps and Derivatives Association.

MR. NICOSIA: I'm Joe Nicosia, Senior Vice President with Louis Dreyfus Commodities, an international commodity trading firm.

MR. MAHAJAN: Hello. My name is Raj Mahajan. I'm the CEO of Allston Trading. Allston's a proprietary trading firm, headquartered in Chicago -- specialized in market-making and algorithmic trading across all asset classes -- very pleased to have the invitation and opportunity to participate in the Global Markets Advisory Committee.

MR. LESAGE: Hi. My name is Mike LeSage. I'm President of Risk Management for Cargill, located in Minneapolis.

And I'm very thankful that we're having this meeting today, and not tomorrow.

MS. CLINE: I'm Caitlin Cline. I'm the Derivatives Specialist at Better Markets, which is an organization to advocate for the public interest and the financial markets.

MR. KLEIN: I'm Bob Klein. I'm a Managing Director and General Counsel at Citigroup, where I work with our futures, clearing, and OTC businesses.

And I'm pleased to be here today. Thank you.

MR. HIRANI: Hi. I'm Sunil Hirani, with trueEX. We're a DCM NSF for swaps.

MR. SERAFINI: Thanks, everyone. I think we had a couple members joining on the phone who have speaking privileges, if they'd like to introduce themselves.

All right. Maybe we didn't get that worked out, but, with that, I'll turn it over to Acting Chairman Wetjen, to introduce our first panel.

CHAIRMAN WETJEN: Thanks, Ted. First panelists we have with us today are from the CFTC staff. And it's Gary Barnett, Carlene Kim, and Rob Schwartz, all of whom have had some involvement in developing the agency's cross-border policy -- so I turn it over to Gary.

Mr. Barnett: Great. Thank you, Chairman Wetjen. Good afternoon, everyone. It's a pleasure to be Here with you today, to discuss staff advisory number 1369. It was issued by DSIO, November 14, 2013. It relates to the applicability of transaction-level requirements to non-U.S. Swap dealers when they enter into trades with a non-U.S. Person, where those trades are arranged and negotiated -- or executed -- by personnel or agents of the non-U.S. swap dealer from the U.S. And we've got a lot of ground to cover in our time_slot, so let's try to move quickly.

First, in terms of ground rules -- because of outstanding litigation -- and Rob is sitting right over there -- our orientation will be to get your thoughts and advice. There will be limits on what we can tell you. For instance, we won't be able to describe internal deliberations or express personal views -- things of that sort.

These are fine. These limitations are

appropriate -- and also fine because our goal today is to hear and obtain your views in order to assist the Commission's deliberation of the issues.

In order to assist our discussion of the advisory -- and some of the history and issues that led to it that we are able to discuss -- we're putting up a chart -- and should be in your packs. It summarizes the Commission's guidance on application of the transaction-level requirements to registered swap dealers. This is for category A of the transaction-level requirements.

And what you see on the left side of the chart, in the first vertical column, are three types of swap dealers. And moving to the right from each of those types is a horizontal row that summarizes how transaction-level requirements are applicable to that type of swap dealer when facing different classes of counterparties, as described in each of the four buckets in that particular row.

Okay. So, to start with a little bit of

history behind the advisory -- on November 14, 2013, DSIO issued the advisory, which expresses the Division's understanding -- which we believe to be consistent with the Commission's guidance -- of the intended application of the transaction-level requirements to a swap transaction between a non-U.S. Swap dealer and a non-U.S. person, if that transaction was arranged, negotiated, or executed by personnel or agents of that non-U.S. swap dealer located in the U.S.

The advisory was created in response to strong expressions of concern raised by some of our U.S. swap dealers -- those of the type shown in the top horizontal row in the chart. So, the U.S. swap dealer -- and go across the chart.

They explained that their issues rose from the fact that they are prohibited from applying substituted compliance or entitled to total deference in any trades, unlike the foreign swap dealers described in the second and third horizontal rows.

They went on to explain that those

foreign entities were competing unfairly with them in the U.S., using their foreign status as a competitive advantage. So, unless the U.S. swap dealers move their businesses into a foreign entity -- which might not be practically possible -- it was going to have a significant effect on their business. They didn't believe these entities were applying a fair reading of the guidance, and it was creating a problem for them.

The initial discussion with those swap dealers led to many hours of meetings and calls with market participants and internal deliberations before the advisory was prepared and issued.

In terms of the substance of the advisory, it expresses the belief that the Commission intended substituted compliance to be available or transaction-level requirements to not apply to those foreign-to-foreign swap transactions, where the related activities take place outside the U.S. -- and, conversely, where the swap activities are occurring from inside the

U.S., it expresses the belief that the Commission would not extend either substituted compliance or total deference to foreign law to those transactions, so that direct compliance with Title VII transaction-level requirements would be intended for those transactions.

Also, in anticipation of follow-on questions like, does any little bit of activity from the U.S. make it a problem, and which activities make it a problem -- we were of the belief that occasional irregular behavior wouldn't be problematic from the Commission's perspective.

Instead, in the context of the issues we were hearing existed, what would be a problem would be a foreign swap dealer competing with the U.S. swap dealers by regularly operating the front office portion of the foreign swap dealer's business from the U.S.

To rule out occasional or irregular actions from being problematic, the extent of the problematic activity was expressed as regular, and to rule out prohibiting activities that were not creating the concerns that were being raised, we described as problematic core front office activities, and described it as using personnel or agents located in the U.S., to engage in activities related to arranging, negotiating, or executing swaps with non-U.S. Persons.

And, of course, we'll pursue your views and advice on those terms as we get into the questions.

After the issuance of the advisory, immediately, certain non-U.S. swap dealers raised serious concerns regarding the time to come into compliance with the transaction-level requirements for swaps with non-U.S. Persons.

When it was communicated that no immediate enforcement action was contemplated, there were requests for greater public notice of that intention and for more guidance on implementation timing. And we were advised that the lack of such guidance might create market disruptions.

A lawsuit was subsequently filed -- who, what, when -- I'll let OGC describe that, if need be. In order to avoid market disruption and allow time to sort the issues, additional time -- until January 14, 2014, originally -- was provided to foreign swap dealers in NAL 1371, which was issued jointly by DSIO, DMO, and DCR. We issued that on November 26, and then that relief was extended until September 15, 2014.

Then the Commission issued a request for comment on the application of Commission regulations to swaps between non-U.S. swap dealers and non-U.S. counterparties, involving personnel or agents of the non-U.S. swap dealers located in the U.S. The request for comment was published in the Federal Register on Wednesday, January 8, and the comment deadline is March 10, 2014.

The basic operative statement in the request reads: "In view of the complex legal and policy issues involved, with respect to the staff advisory, the Commission is soliciting comment from all interested parties, to further inform the Commission's and its staff's deliberations regarding the subjects addressed in the staff advisory."

And that's some of the history behind the advisory. As I said in the very beginning, we want to use this opportunity to get your thoughts on the issues, including the questions in the request for comments. And if time permits, you know, we'll take any thoughts or comments you have on the cross-border topic, more generally.

With that, I will start with some questions for the group.

Let me start by asking for views on the concerns expressed by the U.S. swap dealers about the foreign dealer competition in the U.S. Are the concerns legitimate and real, and does the fact that foreign entities get to apply substituted compliance or total deference, as shown in the horizontal rows two and three, and not permitted to U.S. Swap dealers -- does that translate into a significant advantage for the foreign dealers over the U.S. swap dealers, and how big a difference?

Can I get thoughts on that?

CHAIRMAN WETJEN: Looking for one brave soul.

MR. BARNETT: Yep. I know the foreign --

MR. ALLEN: Shall I start?

MR. BARNETT: Yep. Go ahead. Yep.

MR. ALLEN: I think the question turns, does it not, on, what is the activity you're contemplating? And where, in substance, is it really taking place?

So, if you take the fact pattern where you have a non-U.S. swap dealer that is effectively trading somewhere outside of the United States -- let's say London's an example, with a client that's also based in London -- but maybe there is sales coverage being provided from the United States.

In those circumstances, the risk associated with that transaction, first and foremost, is risk which is residing in the London entity, where it's traded and booked.

I think, looked at from that perspective, it's difficult to see why, in those circumstances, U.S. Transaction-level rules should apply to that transaction at all -- and to the extent that they might, why you wouldn't have substituted compliance available in those circumstances.

I think that's a valid concern, as a matter both of principle, in terms of why, if you follow the risk kind of notion, those rules would apply -- but, also, there are practical ramifications of the absence of things like substituted compliance in the context of other sets of regulation applicable to that entity and to that transaction in London -- which may be difficult to reconcile with the obligations being imposed by the CFTC.

MR. BARNETT: Thank you.

MR. HILL: I would agree with that, entirely. From a U.S. bank's perspective, we think that makes 100 percent sense. And, moreover, I think the statute is relatively clear on this point -- that the CFTC's authority was intended to be limited only to those transactions which had a direct and significant impact on U.S. interstate commerce.

And surely, a transaction with a non-U.S. person, which is booked to a non-U.S. entity, and the only contact with the U.S. is simply sales coverage for a U.S. product, doesn't seem to rise to the level of what was intended by Congress for the CFTC's jurisdiction.

MR. BARNETT: Okay.

MR. COSTA: But arranging, negotiating, or executing a swap in the U.S. does have a significant and direct connection. It's activity in the market. It's price formation. It's drawing from market activity. It'd be like doing a trade. In a world where you can only trade on exchange, it's allowing some trading in the marketplace, off of that system, off of the pre- and post-trade transaction requirements. That does have a direct and significant impact.

MR. HILL: So, if the sales coverage was

in London, that would somehow change your analysis? It's still price formation. The prices still have an impact on the U.S. market, but, clearly, you wouldn't have those transactions be within the jurisdiction of the CFTC.

MS. KIM: Can I try to frame the issue -- unless the litigators stop me from continuing -- I think the issue is -- I mean, we recognize that the fact pattern that Gary described of the non-U.S. space swap dealer transacting with their foreign clients -- but they have some presence here in the U.S., and conducting some key aspect of what makes them a swap dealer in the U.S.

And the question that we're posing in the release is whether some type of transaction-level requirement -- not the risk-oriented rules, but those rules that get at market transparency and counterparty protection -- whether they should apply. And even if they should apply, whether we should give some deference and recognition to substituted compliance.

So, we totally agree with you --

MR. TURBEVILLE: It seems to me that -- yeah.

MS. KIM: -- at the staff level that this is not really a risk-oriented issue; it's a question about, when does a non-U.S. space swap dealer, whose activities in the U.S. may raise issues or concerns about us doing our job and protecting market integrity and counterparty protection?

MR. TURBEVILLE: Yeah. I mean, I think one of the things that is significant here is, we slide often into discussions -- where is the trade booked? It's all about risk. And it's not all about risk. It's manifestly not all about risk.

So, the question is how the market functions, and the impact on how the market functions. So, the activity is in the United States. If you start defining what activity is going to trigger this, the type of activity is going to infer what the business purpose is of the activity in the United States in the first place.

In other words, why does XYZ Euro Bank have an office at 40 Broad Street in New York City? So, one can infer from that what the activity is.

The other thing that we seem to slide into a lot of questions of jurisdiction. And the jurisdiction, at least as I -- as you might expect -- as I read, the potential jurisdiction of the CFTC is extraordinarily broad.

That's not necessarily what we're talking about here. So, we're talking about how things should come out, as opposed to the question of jurisdiction and some kind of, you know, court-like analysis of the statute.

So, you know, what kind of activity? What does that infer about what they're doing here? It's not about risk; it's about impact on the market function. And it's really not about jurisdiction, unless I've got something wrong.

COMMISSIONER O'MALIA: Carlene, can I -- where do we have a territorial authority within the CEA? I think that's what Wally was pointing out. I mean, our jurisdiction is defined by the CEA, and we have jurisdiction over participants, registrants, et cetera. For some of these type of activities, we don't -- we're not the district court, all right?

We don't have jurisdiction over everything that occurs in the United States. We have very specific activities on DCMs or SEFs; those type of activities. Where does this fall within our specific CEA jurisdiction?

MR. TURBEVILLE: Carlene, before you answer it, does someone have 2I? It might be helpful just to read it, if someone has it in front of them.

COMMISSIONER O'MALIA: Well, but, then, that's a different test, right? Wally just said it's not about risk.

MS. KIM: Well, I'm sorry to interrupt. On one level, you can look at this as an activity that's within the U.S., and that doesn't implicate 2I. But, personally, I think that might be too simplistic -- because it's very difficult to determine when activities within the U.S. or outside the U.S. --

COMMISSIONER O'MALIA: But where in the CEA does it say we have a territorial -- just all things territorial are under our jurisdiction?

MS. KIM: Let me point to what I understand to be the CFTC's historical approach in the futures space. And that is that, to the extent that any activity takes place -- and I'm talking in the context of intermediaries -- the agency has always taken the view that any activity -- any solicitation, for example -- that takes place in the U.S. Would trigger our jurisdiction.

And so building off that, the staff has taken the view that -- or at least has raised the question whether similar approach should be taken in the swaps context.

MR. HILL: The Dodd-Frank statute doesn't give you that authority. The Dodd-Frank statute says you have jurisdiction over swaps that have a direct and significant impact on the U.S. economy.

MS. KIM: Right.

MR. HILL: Moreover, the authority given to the SEC in the same statute was considerably broader -- such that they would have the kind of jurisdiction you're talking about. But that jurisdiction was not given to the CFTC, and it was intentional.

MS. KIM: But I would also point out that section 2I specifically refers to activities outside the U.S. You could only presume that Congress, when they gave us that 2I, recognized -- or at least made a distinction between activities in the U.S. and activities outside the U.S. It's a language that was purposefully placed in the statutory provision, which just made explicitly clear that we do have the authority to reach activities outside the U.S.

I certainly don't read it as a way to limit what traditionally has been our interests and our jurisdiction of activities that takes place within the United States.

MR. TURBEVILLE: As I recall, 2I -- the

way it works is that it doesn't give you an affirmed or grant of jurisdiction; it says that, as it relates to activities outside of the U.S., there are restrictions. So, I --

COMMISSIONER O'MALIA: To the contrary, Wally -- it's a limit on our jurisdiction. It says "to the extent it has a direct and significant impact on the United States," then it's within our jurisdiction -- specific "to the extent."

MR. TURBEVILLE: Right. No, I'm actually agreeing with you. I'm saying it is a limitation.

COMMISSIONER O'MALIA: Who?

MR. TURBEVILLE: But it's a limitation on how far -- well, then, where does it stop, if --

COMMISSIONER O'MALIA: Well, I mean, that's a -- I mean --

MR. TURBEVILLE: Under this one, it doesn't seem there is an end to it. I mean, at some point, somebody will decide what the words mean and in the context. I have a few. Others will have narrower views. A few will have broader views, I assume, but it's --

COMMISSIONER O'MALIA: I got outvoted on my view.

MR. COSTA: But we don't need to reach outside the United States, if we refer back to the discussion before. The language says "unless those activities have a direct and significant connection with activities in or effect on commerce of the United States."

I thought what we were saying is, the activity of arranging, negotiating, or executing a swap, in the context of a market, is an activity that is in or has an effect on commerce in the United States.

And the question, I thought, that was being addressed in the first instance by the November 14 advisory was whether that activity would be subject to, for example, the pre- and post-trade transparency effects, or whether some piece of it could be carved out, or whether we would create incentives that would move people to structure their business to avoid those requirements that bore on the integrity of the market in the United States -- squarely within that clause.

COMMISSIONER O'MALIA: But Carlene argued a territorial application, which is -- we interchange 2I with some sort of broad territorial authority, which really doesn't show up in our statute, unless you go by registered entities -- the specific entities that we have jurisdiction under the CEA.

And, you know, it's convenient to argue that we have 2I when it's outside the United States, and we have every jurisdiction when it's inside the United States. I'm not sure that's the case.

MR. HILL: I wonder if we could back for a minute, and talk about the types of transactions we're talking about, and what will happen if the current approach is the final approach.

And that is, you're talking about

non-U.S. clients who are transacting with non-U.S. banks, who occasionally want to trade a U.S. product, okay?

With respect to those counterparties, a U.S. bank is operating out of a London branch or a London affiliate, who has a sales force in the U.S. covering those products. The European client will not trade with those entities, because they do not want to be subject to the U.S. rules.

So, only one thing can happen: Those European clients will choose to transact with those European banks that cover U.S. products out of Europe, rather than the U.S. That's what's going to happen.

The natural response to that is, the U.S. banks will either give up that business entirely -- which is not good for the market -- or they will simply develop a second sales force in Europe that covers U.S. product. That's what's going to happen. So, either we're out of the business completely, or we set up a separate sales force in London, covering U.S. product.

So, that's what we're talking about here. It's not like somehow people are going to stop trading these products, and we're not going to have any impact on the U.S. Economy or anything like that. What is going to happen is, clients in Europe will be covered out of Europe, rather than out of New York.

And if that's what the CFTC wants, that's where we'll end up. That doesn't seem to make a lot of sense.

MS. COHEN: I agree with Mr. Hill's points, and I'm happy to kind of walk through at a high level. And, again, it's in agreement with what he said -- what it would look like, and what it would cost, I think, systemically, to implement a conduct test.

But, importantly, I'd like to back up a few more months from November to what I would argue was the very broad cross-border reach that the Commission took with the U.S. person definition, which was implemented with a tremendous amount of work across the industry, both buy side and sell side, in the weeks between, you know, June and October 10.

And in that period of time, we had thousands of clients located in countries, you know, everywhere who became U.S. people, and who are now subject to transaction- level rules. And in those weeks, we had to work with those clients, to explain to them what clearing was, what a SEF was, what the protocols were, how to come into compliance. It wasn't good enough to know that they were going to be U.S. people on October 10; they had to be ready to trade under the Dodd-Frank framework on October 10.

And that type of entities-based approach, which we worked very hard to implement, is fundamentally different than this trade-by-trade type of implementation that's proposed by the November advisory. If the guidance that was given to us back in the spring suggested a conduct-based approach, we would have built something all together different than what was built and implemented very transparently across the industry over the summer and into the early fall.

MR. ALLEN: I agree with that. I think it fundamentally (inaudible) through the relevance of the U.S. person concept, as expanded in October, when it comes to U.S. dollar products or products which are otherwise covered, from a sales perspective, out of the United States.

As the previous speaker commented, it's a fundamentally different philosophy and outlook in terms of how one builds systems and trading upright of some distribution coverage from the one which is predicated upon the concept of U.S. person, which is obviously the one we've been working with for the last couple of years.

MR. TURBEVILLE: But the concept of U.S. person is very distinguishable. A U.S. person engaging in behaviors outside of the U.S. has certain implications. A non-U.S. Person engaging in behaviors inside the U.S. has certain implications.

Criminal law -- somebody can engage in

criminal conduct as a U.S. person and be prosecuted in the United States, but if a foreign person comes here and engages in criminal conduct, they are prosecuted, hopefully.

I don't think anybody else is unclear on this. Maybe it's just me. I don't really -- I think it might be more productive to talk about what kinds of behaviors and activities in the U.S., at 40 Broad Street, are we talking about, and whether there really is a nexus between the quality of the U.S. markets and those kinds of activities that we've covered.

If everybody else understands that, ignore that comment.

MR. HILL: The example we're talking about is, you have a European pension plan who trades European products on a regular basis; on occasion, wants to trade a U.S. dollar swap. And if they're trading with a large German bank, whose sales force is located in London or in Germany, they call the sales force in London; clearly no implication for the U.S.

On the other hand, if they're trading with a U.S. Bank who has their U.S. sales force for U.S. swaps located in New York, even though that transaction will be booked to our London affiliate, they may talk to a sales person in the U.S. to understand the swap and understand the pricing.

And the question is, do you want to treat those two transactions differently?

MR. COSTA: Historically, that swap would've been booked to the U.S. -- your U.S. affiliate, right?

MR. HILL: That is absolutely incorrect.

MR. COSTA: Okay.

MR. HILL: So, when they're trading with a German bank and covered out of London, we say no CFTC jurisdiction. Same product -- when they're trading with a U.S. bank, booking to their London broker-dealer -- who you have said is a non-U.S. person under the U.S. guidance -- and the only contact and the only implication for the U.S. is, the salesperson, who is the expert in that product, gets on the phone with the client and says, "Here's where our levels are today, and here's some market color." That's the only difference.

MS. KIM: Can I just clarify? Well, you know, you're skipping a step here. You're raising a good point, but the step that we're skipping is whether that conduct that you describe, the conduct in the U.S., should be sufficient enough for us to apply transaction-level requirement. So, we would like to know more --

MR. HILL: That's exactly the point I'm making -- is that really sufficient enough? Are those transaction sufficiently different that you want to regulate them differently and say, "You can't rely on substituted compliance for that transaction; you have to comply with U.S. rules" -- because if that's what you say -- it's not us driving this.

MS. KIM: Let me rephrase my question.

MR. HILL: It's not us driving. It's the clients driving it.

MS. KIM: Right. Let me rephrase that.

MR. HILL: If you say the U.S. transaction rules apply to that transaction, the client will not want to trade with us, and they will choose to trade with the German bank.

My only response to that is to get out of the business, or to move my sales force to London, and have two sales forces -- one in London, covering U.S. products for non-U.S. clients, and one in New York, covering U.S. Products for U.S. clients.

COMMISSIONER O'MALIA: And can I -- I think Wally's point was, let's talk about that activity. Well, if Wally wanted to talk about the activity -- this arranging or negotiating activity -- and to regulate that, that's one thing. But by implicating that as a U.S. activity, all the transaction-level and data reporting rules -- everything applies.

It's not simply regulating that activity, correct? It is not the negotiating that we're going to regulate; it's everything after negotiating -- the trading, the swap data repository, the continuation data. All of these things become U.S. products.

This might be a different conversation if we limited it to what Wally noted -- the activity in the United States.

MS. KIM: No, but that's the question. There's a spectrum of activities that could take place in the U.S., to support or to be part of a swap transaction that's ultimately booked in a non-U.S. jurisdiction.

At the extreme is, all of the discussions, the negotiation, dealing with the material terms of the swap transaction, being done right out of the U.S.

At the other end, there's something very ministerial that could include something as minimal as giving pricing information or market data information.

The question we're asking in this release is, in that spectrum, at what point is it sufficient enough to trigger our jurisdictional interest?

So, I mean, that's what I meant by skipping the question here, the threshold issue.

MR. HILL: I would suggest that if the transaction is being booked to London and the counterparty is a non-U.S. Person, as per your release over the summer, then a salesperson being involved in that phone call -- even saying done on the trade -- is not a direct and significant impact on U.S. interstate commerce.

MR. TURBEVILLE: But what you're doing is saying, if it's booked to London, and if it's only sales activity, the question is really, what is the activity that has the nexus?

And I didn't mean to suggest that only that activity that occurs in the United States should be -- those are the only rules. Once that activity is there, then what that means is that that transaction is part of the U.S. Market, and the integrity of the U.S. market requires that that transaction be -- to say, "I can book it somewhere else and get out of this" -- there's the inverse of it: "I'll just book it to Micronesia." So, you've got to talk about what the activity is here that gets us into the U.S. market.

MR. BARNETT: Let me ask, what would the outcome be if we allowed U.S. swap dealers to use substituted compliance? In other words, if we were to align the top row with the second or the third row.

MR. HILL: That goes a long way toward addressing the issue, because if they were transacting with the German bank, then when we're transacting with them, we're subject to the same rules -- then I think it's a level playing field.

Again, it's not us driving this. The clients are driving it. The non-U.S. client trading in a U.S. product doesn't want to do RFQ to three -- or two. They don't want it. That's why they're dealing with our London affiliate or with the German bank; it's not us.

F: Just -- I know we could debate facts for a long time, and perhaps with Jim's firm it's different, but, typically -- and this goes to something that he pointed out -- he said the salesperson in the U.S. is an expert. That's because the U.S. dollar interest rate swap expertise and trading activity is, by and large, housed. It's very, you know, solid in New York, right?

So, typically, when our firm has traded U.S. Dollar interest rate swaps, whether out of a non-U.S. entity or a U.S. entity, we're interacting with the salesperson who's down the row from the trader.

Now what was happening last year is, we were being encouraged to change agreements so that we could book offshore -- in order to avoid the burden of U.S. regulation.

So, doesn't that have a direct and significant connection to the market activity, the extent of pre-input, like RFQ for two or three. I understand people want to avoid it, but the activity is in the U.S. -- the actual arranging or negotiating.

And there is a market of price formation and activity that's being impacted by allowing -- again, you had regularly. I get the occasional. I get the fact that you could be -- you know, you have a Greek fund who deals with a London salesperson, and that salesperson is traveling in New York. They're the relationship person. They do a one-off trade, right?

But the point was regularly. So, if you have the sales desk with all that expertise, calling that trader -- and now, just because somebody puts another hat on and says, "Well, for the moment now, I represent an entity in London. You can avoid those requirements" -- that seems to me to have a direct and significant impact on price formation, transparency, and trading in the U.S.

MR. KLEIN: But, Randall, I think your point assumes that there is no comparable regime that would pick up transparency price reporting and other things outside the United States. And that's really not what we're talking about. We're talking about a debate where there ought to be concepts of substituted compliance, and where the G20 commitment is built on the concept of a coordinated regulatory response to what is a global market.

And in some ways, I find this debate to be interesting, but not really acknowledging the realities that there are clients, as Jim alluded, who are in Europe. And we've talked about the costs on U.S. dealers. I think Jim's point a few minutes ago was really the key point. This is customer-driven. There are clients in the E.U. that are spending a considerable amount of money to come into compliance with E.U. reporting rules, E.U. documentation rules, with business conduct standards outlined in (inaudible). And the mere fact that when they pick up the phone, they're suddenly connected to somebody in the U.S. -- or even routinely connected to somebody in the U.S. who might be booking back into Europe -- means that they now have to ditch all of that infrastructure and be prepared to comply with a set of U.S. rules, and that's nonsensical --

particularly in a world where we're not talking about U.S. Regulation versus no regulation; we're talking about what ought to be a coordinated global regulatory approach.

MR. ALLEN: I completely agree with that. And if I may, just picking up on that point -- it's not just a case that you wouldn't then be applying European rules, and you'd be applying the CFTC's rules instead -- of course, you'd be applying both. But if you don't have any substituted compliance, then any progress that's made in the light of the path forward and various discussions between the CFTC and the European Commission are, quite frankly, completely academic.

MR. NICOSIA: I think one of the things we have to be very cognizant of is -- I agree with what Jim was saying -- is that the world's going to find a way to do this in the most efficient manner, the way the customer wants. In today's world, customer is very flexible on where he does his business -- and is able to adapt very quickly.

So, really, part of the issue is, if all compliance was the same globally, you wouldn't have an issue. The bigger you drive the differences between regulation here and regulation overseas or anywhere else, the larger the problem you're going to have to drive business to the least common denominator of what the participants want.

So, the largest task that the CFTC has is actually in negotiation with the substitute compliance authorities that are around to narrow that gap, so as then the issues of -- because there is a cost to be able to have to book that other transaction and to create a second workforce.

If you can narrow that cost gap, then you'll narrow the differences of what other people -- to what extremes they will go to. But if those differences are wide, you're either going to have substitute products -- they're going to take the place of what looks to be a direct U.S. product of what they're doing -- and there'll be lookalikes that they'll get around the law to where they are. And the business will flow overseas.

MR. KLEIN: I'm going to take issue with the concept of lowest common denominator of regulation. I don't think that's the issue. I think the issue is that it takes systems, and time, and money to comply with any regulatory regime.

And to the extent that those regulatory regimes are not perfectly harmonized -- and they never will be -- then market participants are going to build primarily to one regulatory regime or the other, because it's not cost- effective to do otherwise. And I think you need to keep that in mind.

I also think that part of the issue here that we haven't really talked about is predictability of regulation, and the fact that, you know, we've had here a series of events where very, very significant rules were adopted by staff guidance and staff no-action letter -- and, in some instances, even footnotes in those letters.

And that, I think, has been a large part of the problem, because it makes it extremely difficult for people to anticipate what they need to do to comply with the rules.

MS. TAYLOR: I think that point that we're heading toward about exporting very specific elements of one jurisdiction's regulation into another jurisdiction -- the extra-territory element -- is a much broader problem than just as being discussed with this particular issue.

And I couldn't agree more that there needs to be an ability of the regulators to work together toward an outcome-based assessment of equivalence, or substituted compliance, or whatever you want to characterize it as, so that customers, intermediaries, markets, clearinghouses are not being forced to meet sets of requirements that are, in some cases, in opposition to each other.

MR. O'CONNOR: Just looking at the overseas bank angle for a second -- I was in France last week, and party to a discussion between a French bank and a French regulator, where they were talking about a fact pattern where a French corporation wants to do a Euro swap with a French bank, but because it's out of house, the book is passed to the U.S., and there's a trader for that French bank in New York who executes the trade, and then passes the risk back to Europe the following morning.

They were just expressing consternation that that could, in any way, be picked up by U.S. regulation.

MR. BARNETT: Okay. So, following on, then, from the point about substituted compliance and thinking about the guidance -- and the first line -- I guess, moving down, when we look at what we've got going on on the second and third rows, and looking at the differences between the two bottom horizontal rows -- what about those two? Are they creating competitive disadvantages between the two types of swap dealers?

MR. BARNETT: Obviously, they're the same, except for the true foreign trades.

MR. ALLEN: I think, just as a general observation about it, the point one of the previous speakers made, I think, is quite relevant to this -- which is the issue of the global international regulation of this activity can't just be looked at exclusively through the U.S. law lens -- or the CFTC law lens.

A lot of the activities which take place where activity is traded in London, where client is in London, maybe the dollar product expertise based in New York, which is why that person is on the phone -- but, otherwise, that activity is almost exclusively London-based.

That is going to be picked up as a matter of U.K. Regulation. The PRA and the FCA, in that particular example, will have particular views about how they believe that conduct and interaction with clients ought to occur.

So, I think when we look at this question of symmetry and competitive application of CFTC's rules to one type of entity or another, I think it has to be done in the context of looking internationally at, what is the aggregate framework of regulation that applies to that activity more holistically -- and not exclusively to the CFTC Title VII lens?

MR. BARNETT: Additional thoughts? I mean, I think what you're saying, then, in that context is -- looking to cut it at some point -- then you're saying -- again, I'm trying to think about in a practical term. You're thinking about the bottom row, in terms of total deference, because it stops certain requirements at some point.

Or are you just talking conceptually?

MR. ALLEN: Well, I certainly think the bottom right box ought to stay as it is. That would be very worrying.

But I think the point -- which has already been raised by a couple of people -- so, kind of to my mind, falls into two conceptual categories.

The one -- which I know people have different views about, but is -- I go back to the point I made with my initial column. The concept is kind of following the risk.

If that activity is essentially taking place outside of the United States -- it's been booked into a non-U.S. entity (inaudible) may well be traded there, as well. And all you have is dollar product expertise assisting in the negotiation of that product with a client.

I think one has to look very carefully at what rules you would expect to apply exported into that relationship, in a transaction-level capacity, given, as Commissioner O'Malia pointed out, the kind of application of U.S. rules that would be triggered under the advisory, as it currently stands, would go substantially beyond the specific actions of that individual on the phone, and would extend to that transaction more generally.

I also think -- and this is the second of the two conceptual categories that I have in mind -- even if one doesn't accept that point, the absence of substituted compliance, in that context, is going to be a real on-the- ground, practical execution problem when you're conducting that transaction in my example in London -- because you're going to be absolutely bang to rights, within the scope of U.K. rules and U.K. regulations, as pushed out from the European Commission, and being applied by the FCA and the PRA in the U.K., relations to that relationship.

Now even if he gets to a place where the system of rules in Europe is virtually identical to that of the United States, if you don't have substituted compliance in that context, then it becomes completely academic that you have a similar outcome, because the institution in question will have to comply simultaneously with both -- and no discussions about an outcomes-based or otherwise perspective as to the equivalence or otherwise view of substituted compliance with the (inaudible) regime will be of any relevance whatsoever.

CHAIRMAN WETJEN: Gary, if I may, I think what you were asking, though, is -- I appreciate Chris's point, but I think, just to try and clarify, if I can -- if I understood it right -- try and clarify Gary's point or question.

I think what you are asking is the box to the far right -- so it's in the last column to the right, and it's the middle row -- is substituted compliance the right words to have in that box, or, instead, should it be total deference? I think that's what you're asking, wasn't it?

MR. BARNETT: Yeah, but I think I'm understanding it. I'm just trying to think about how to apply in a practical way, you know. And, obviously, substituted compliance is better than direct compliance from some perspective. Total deference would be loved by all for certain things -- and which things, and which not -- but I think it aligns with -- I mean, I understand what he's getting at.

Certain things should fall through. Now whether it's the transaction doesn't get picked up, or it gets caught but the requirements don't apply, I think, are sort of the same. You get the same end result, I think.

MR. ALLEN: Just on the point about the difference between those two lines for the far right box, as it falls under true foreign -- I think it's difficult to answer the question completely in the abstract. It kind of depends what total deference would mean, because the position, as it would apply to a bank which is established in the E.U., is potentially quite different from the position of an entity which is operating through a branch in the E.U., but has not otherwise established that.

European law takes a very different view as to the outcome, in terms of the application of rules -- certainly under the EMIR regulation, which, of course, is directly relevant as an analog to our discussion around Title VII. So, there is a basis for distinction there, as a matter, at least, of European law, in terms of how it would answer that question.

MR. LESAGE: Again, I think I'm

concurring somewhat with how Chris was outlining things -- just say again, this has to be done under the focus of global harmonization, because, for the case of our company, we've got, you know, a number of affiliates, you know, in Europe that we've Dodd-Franked, and then now, due to EMIR, they've got to go through, you know, regulatory compliance, work with that. So, it's duplication, you know, across the board -- redundancies.

You know, and a different example we face is that we get customers in Australia that we're, you know, explaining, going through the process of getting them, you know, Dodd-Franked. And they -- you know, to explain to them, you know, relative to what their license practice is already in Australia, and under their regulations, it's easier for them just to say, "Yeah, no, I feel more comfortable with what I currently know, and how I've currently been operating."

So, frankly, we've seen that, from a competitive standpoint, to be a disadvantage, you know, for us in operating globally -- is that these -- again, since there's not this harmonization -- or at least a base level of standards of harmonization -- you're going to create pockets of, you know, ineffectiveness, you know, frankly, due to duplicity many times. And it's very, very confusing for customers.

So, it's unfortunate we don't have more customers at this table to talk about how -- and maybe that's for the next meetings, because, you know, some global customers have complained vigorously to us about how onerous the process has been.

COMMISSIONER O'MALIA: I do find it interesting that the temperature's gone down when we start looking at entity-level charts. We don't really disagree with the entity-level chart. What we start to disagree -- and where we started this whole discussion -- is activity base. And then that throws your chart completely off when we tell the world this is the entity and how the rules apply, and then we substitute another test -- which was Samara's test -- concern about -- then you apply an activity test to everything.

And then that's when everything comes off the rails about who's in charge, and what activity, and when it becomes direct, and when it becomes significant. And, you know, the temperature's lowered around here. Everybody kind of sees where the boxes are, and it makes sense to them, right -- until we start applying it.

And I think that's where we're back into the soup.

MR. KLEIN: I think that leads to an important macro-point that doesn't really answer your question, but I think there are all kinds of problems with trying to come up with an effective conduct-based test.

But to the extent that you're going to apply a conduct-based test, it has to be applied across the board -- otherwise, you're going to create competitive disparities based upon business organizations that don't really lead to different results.

So, it's a bad idea, but if you're going to do it, you need to do it across the board.

COMMISSIONER O'MALIA: Right.

MR. TURBEVILLE: Just remember, there really are two different things going on when you talk about jurisdiction and conflicts of law.

There's entity and there's activity. And, again, just because you're a foreign national, and you rob a bank in the United States doesn't mean you get tried -- say you're a French national; you don't get tried in France.

So, these things are almost inevitable, if you're going to deal in an international market. I was with Goldman Sachs for five years in Europe, and we had many things that made us competitively disadvantaged -- part of which is, they gave me a very generous housing allowance that I used, that undoubtedly was a drag on Goldman Sachs's performance in Europe, my house allowance.

But those are facts, and those are true, and those can never be -- I mean, I don't think the goal of this is to wipe out some of the issues of disparity that occur when U.S. banks go global, when European banks go global.

So, to me, that chart is perfectly logical, with its focus on activities, and it's just up to us to come up with the right standards.

MS. COHEN: I have to say, the bank robbing analogy is a little confusing to me. I mean, we're talking about -- and we could give you a whole host of other examples, but we're still talking about activity between a non-U.S. person and -- I mean, this gets to Scott's point -- a regulated, registered swap dealer with the Commission.

So, these trades are being reported to the SDR. Entity-level requirements have applied, and we're talking about the application of transaction-level rules in a place that the customer has no expectation of being subject to these kind of Dodd-Frank-specific elements, like having to sign up to a protocol, and having your trades publicly reported.

But they're still training with the CFTC registrant.

MR. TURBEVILLE: I think that this is not about protection of the customer; this is about effect on the U.S. Marketplace. So --

MR. HILL: Sorry; RFQ2 is specifically a customer -- theoretically, at least -- a CFTC customer protection rule that is specifically the rule that non-U.S. clients would like not to have applied to them. So, it is about customer protection.

MR. TURBEVILLE: I view RFQ2 -- maybe we should do it differently -- as not so much saving a customer from hurting itself as a question of market integrity that's part of the Dodd-Frank Act, that suggested prices should be competitively set -- not just for the customer, but because of the integrity of the marketplace.

MR. COSTA: And to Bob's earlier point -- isn't it a bit of a timing thing when we talk about reciprocity? In Europe, there isn't yet an effective derivatives reform trading structure. When we have equivalents, then you could imagine boundaries. The line will have to be drawn.

So, you could say, for this use case, you have two non-U.S. parties that are arranging where you have the arrangement, the negotiation, and the execution in the U.S. If you flipped it around, presumably when Europe has, for example, a comparable regime, you know, it could work the same way.

In other words, you could have two U.S. parties that are negotiating a trade through Europe. It's possible that then the European rules would apply, because that was the nexus.

I recognize that's jurisdictional, but that would achieve the reciprocity that we're talking about. Today, that doesn't exist. There's a time lag to, you know, follow on Bob's point.

MR. HILL: Just to be clear, the test is not negotiating, arranging, and executing; it's or.

So, for example, I can price a trade in Europe. I can execute a trade in Europe. But if

I have a documentation person sitting in New York, negotiating the ISDA master agreement -- in a way that has an impact on price -- I now am subject to the U.S. rules.

If it was and all of those things, it might be a very different test. But it's not. It's or.

MR. HEPWORTH: A point of clarification -- does the substituted compliance really mean substituted compliance if positively affirmed; otherwise, direct compliance?

MR. BARNETT: Yes, and that's an important point, because even if you went to two or three, for instance, you'd have places where it wouldn't work. And you have to deal with that, as well.

So, I'd have to think about how to deal with that, as well. So, what I'm hearing is that moving towards trying to find something that harmonizes better -- we can think of some ways to do that, and then there's still some issues like that, to figure out how to deal with better.

MR. HEPWORTH: And is there consideration of perhaps two paths toward substituted compliance -- one being --

MR. BARNETT: I can't talk about it. I don't -- yeah. But we understand your point.

MR. HILL: The CFTC makes these kinds of distinctions all the time. For example, if I have a commodity pool that is sold to all non-U.S. investors, but it is traded out of New York -- all of the trading decisions are made in New York -- and the FCM is located in New York, as long as all the investors are located offshore, the CFTC says, "That commodity pool's not within my jurisdiction, and an exemption is granted."

So, it's not like we're asking or suggesting the CFTC should change the way they think about rules. In fact, I think I would suggest that we're asking to be consistent in the swap space, as you are in other spaces.

MR. TURBEVILLE: Sorry to do this again, but the fact is, the rules we're talking about are for a different purpose. And you can actually reach two different conclusions easily. I mean, Title VII did things that have never been done before, and went to areas that have never been done before because of the relationship between this market and, you know, the greatest financial calamity that the planet has experienced, bar one.

So, there are two different purposes, and just because the commodity pool rule exists doesn't mean --

MR. BARNETT: Yeah, we sort of have almost two kind of U.S. person kind of things in the commodity pool space, in two different contexts. And you're right. And then Title VII has got its own impact and rules.

But as we work through other things, we can think, for instance, why somebody should be a U.S. person in one context, but maybe shouldn't for another, because of, you know, risk importation reasons. But that doesn't change the -- we get that. That's sort of legal analysis.

And the other part is, you know, getting this to practically work right.

MS. COHEN: I would just come back to -- quickly -- I mean, you said that quite quickly, but multiple U.S. Person definitions just, like, systematically are --

MR. BARNETT: Makes you shake, huh?

MS. COHEN: Yeah, they do make me shake. I mean, we've already coded our systems with, you know, CFTC U.S. Person and SEC U.S. person plats with the expectation that they may come out to be different.

But the fact is, you're exactly right. And our clients point this out to us on numerous occasions -- there's more than one U.S. person definition operating within the CFTC. So, think about the complexity of overlaying a trade-by-trade transaction-level rule test on top of that.

Practically speaking, it's just incredibly difficult -- and, therefore, very expensive.

MR. BARNETT: I don't disagree, and I'm not trying to be argumentative, but just, sometimes, U.S. person is not supposed to be an objective standard of who is a citizen. You know, it's partly to achieve a regulatory goal that's stated.

So, you know, in terms of, like, the Title VII U.S. person thing, it's like, with whom should we look for sufficient contact in the U.S.? What transactions do we look at to see if there's been sufficient contact with the U.S.?

So, you might end up with one thing there for those purposes. We call it U.S. person, but we weren't trying to define you're a U.S. person, but you're -- it's sort of for that purpose.

And there's, you know, other contexts, where you end up with different results -- again, in the commodity pool space. We've got two different ones and two very different rules to different things.

But I totally get what you're saying. We can't lose sight of efficiency and, you know, how to make this work right, and thinking that we can just start using multiple definitions, you know, just won't work. I mean, I get the point.

MR. HILL: And even if you could make it work, I still think where you end up is, the end result is, the European clients either won't trade with those dealers who have sales coverage in the U.S. -- and, ultimately, those salespeople will simply be moved to London to cover those clients.

So, even if you think this is the right answer, the outcome is not what you want it to be, I think.

MR. MAHAJAN: I just wanted to make a couple of comments.

We're neither a bank nor a customer, so I'm not sure we're particularly relevant to this discussion, but we provide a lot of liquidity globally.

So, I find the arguments -- and I started my career at a bank -- I find the arguments around avoiding customers incurring duplicative regulatory costs to be extremely persuasive. I think that's self-evident.

I find it less persuasive linking that argument to an aversion to RFQ2. And that's because I think that is a very different issue. It's about transparency, and it's about price formation. And I would submit sort of two arguments around why that's -- if you could decouple them as regulators, I actually think you would be on pretty solid ground.

You know, one, that foreign pension fund more than likely does business with Morgan Stanley, Goldman Sachs, Barclays on any given day. So, the notion that, for one particular transaction, they're going to have a problem with getting two indications -- yeah, I just don't find that credible.

And I think the second, from a customer perspective, there's always going to be an initial aversion to the RFQ-type sort of process. It's just inconvenient. There's going to be some process. But there is precedent, whether it's corporate bonds or others, to that ultimately being adopted. And you've got large, public, successful companies, like Market Access, as a testament to that.

MR. HILL: I think you should review the comment letters that were submitted by buy side firms on the RFQ proposals, because what you said is actually inconsistent with the views of --

MR. MAHAJAN: Self-selection.

MR. KLEIN: I'm going to suggest that talking about RFQ is not really constructive to this dialogue -- because I think RFQ is not in the G20 communiqué, and it's not in Dodd-Frank. I think the different regulators in different jurisdictions can choose different paths toward creating open, transparent markets. And if a regulator in another jurisdiction chooses a different path, that does not mean they are presumptively wrong, and the CFTC should be applying RFQ to transactions that are predominantly located in that jurisdiction.

But I'm not sure getting down to this micro-level is really helpful, because the point is, there are going to be different regulatory approaches. And the question is, you know, how do you sort out the potential overlap with those kind of micro-issues?

MS. TAYLOR: And, again, if the focus is on the outcome being relatively equivalent, in terms of safety, soundness, transparency, whatever the goal is, then I couldn't agree more that the application of micro-specific details being exported across jurisdiction is problematic.

MR. HARRINGTON: One of the things that we've seen, as a SEF, is that, you know, through the on-boarding process, there were about 650 clients that are now signed, ready to use the RFQ system.

I think, you know, there's general concern, there's general trepidation about using it, but I think people are getting over that. I think that Samara touched on it briefly. The reporting is absolutely the big difference, right?

So, the fact that you have this -- your trades are hitting a tape, the tape is public, everyone can see it -- versus in a mirror. You have to report to a TR. First off, you're reporting on T plus one, but second off, it's disappearing. It's not going anywhere. It's aggregated in a way that no one can make out what happens -- especially when you're talking about -- maybe not in the on-the-run index market, where it's so liquid and it's, you know, not so obvious.

But when you get into interest rate swaps, and you're getting into, you know, specific interest rate swaps, you know, if you have a certain trading strategy, it's very, very clear to people who are in the know of what's going on in the market that one particular type of account trades a particular type of product, and that is a huge difference.

So, when you talk substituted compliance, if you know, you have one going into an SDR in the United States, that's printing. You have one going into a TR, it's very clear what the clients are going to prefer, if they have a choice.

MR. COSTA: But that also suggests that

markets are, in fact, jurisdictional in some ways, right? You have a U.S. dollar swap market. And if you can take a piece of it and hive it off, whatever people want and for whatever reasons, that has a potential significant and direct effect on the integrity of the market.

MS. VEDBRAT: I'd just like to, you know, add a little bit, you know, to the debate.

So, as we're making these decisions, I would encourage not losing sight of how onerous this could be for the end user. When we're talking about non-U.S. clients that have the optionality of trading, you know, with pure European counterparties, we tend to do two tasks.

One is, like, you know, maybe they will be willing to adhere to Dodd-Frank, and then we will consider at the asset management firm, will there be a liquidity hit to the end price? You know, because as a fiduciary, we have to make sure that we're able to get the best price possible.

So, if the client doesn't want to adhere, then it's very simple: We just will deal with the counterparties that we are assured we won't have any conflict. But if they are willing to adhere, the question that we get is, once the European regulation, you know, comes to play or we have more clarity, is there going to be a conflict?

And for that, we actually have no answer. So, you ultimately end up in a situation that you have to take the most conservative view -- and that is to deal with the pure European counterparties -- which I don't think is actually beneficial, from a pricing perspective, to the client.

MR. BARNETT: Thank you. Other thoughts? That's very helpful -- appreciate it.

CHAIRMAN WETJEN: Gary, you have some other questions, too, don't you, for the group?

MR. BARNETT: I think that the overall arching conversation's covered a lot of the questions we had prepared. So, I mean, if we want, we can cover other cross- border issues, other thoughts about it. I think we have a lot from this that we can come back and talk to you about, with respect to, what should we do about where we're going with this part of the guidance?

CHAIRMAN WETJEN: I have a quick question. So, we're looking at this graph, Gary. I think what we're talking about here is, again, the bottom right box, and how the effect of the guidance, in some circumstances, anyway, put people in the box two rows about it, right?

MR. BARNETT: Yep. Correct.

CHAIRMAN WETJEN: And, you know, this might not even be necessary, but another way to potentially do this -- and this doesn't account for problems that we continue to have with timing -- but maybe there's some lower amount of activity on U.S. soil that would render that top right box eligible for substituted compliance. I'm not sure that's necessary, as a matter of policy, but it could be a workable, practical solution.

MR. BARNETT: I think we have the competition issue to deal with, as well, but I take your point on the activity -- and what's the threshold, and --

CHAIRMAN WETJEN: Yeah, and I'm thinking specifically about Europe -- whether it's total deference or whether it's substituted compliance. The same rules would be followed if you're talking about a European pension fund facing a non-U.S. dealer registered with the CFTC -- located in London, for example.

MR. BARNETT: Mm-hmm. Right.

MS. TAYLOR: I'm not an expert on the way this would affect this specific issue, but I have seen other cases where activity-based limits that drive cliffs about other regulations applying do tend to have a significant impact on how people do their business.

People do anything they can to avoid going over the edge of the cliff, and that, I think, is a problem with specific activity level-based requirements.

MR. TURBEVILLE: Would you suggest that if somebody did everything associated with a transaction in the United States, and booked it to

London, that activity should have no effect on the outcome of what market protection- based regulation applies?

MS. TAYLOR: I think the gentleman from Barclays keeps coming back to, where's the risk? And I think, in a lot of cases --

MR. TURBEVILLE: I'm not interested in what risk. It's protecting the market. Okay, maybe I'm wrong, but you're disagreeing with my basic premise.

MS. TAYLOR: The risk is a big element of protecting the market. And I'm not saying it should be a free-for-all, but there are a variety of jurisdictions who have adopted a variety of different elements of the policy objectives, in slightly different ways.

And to the extent that there can be kind of an application of international calibration of outcomes, as opposed to -- if everybody applies their most specific rule to every entity, every transaction, every activity, every product, we are going to have a marketplace globally that nobody's going to be able to trade, because it's going to become vastly too -- you want to buy safety up to a certain point, and then you don't want to buy anything.

MR. TURBEVILLE: Yeah, there's an urge to make it a completely global marketplace. And there should be one- world government.

But we actually have different jurisdictions. I mean, it does happen, and we spend --

CHAIRMAN WETJEN: Just look around the table. It seems a lot of people disagree with that last point.

MR. TURBEVILLE: It's a benign one-world government, right?

But the --

CHAIRMAN WETJEN: I still don't see nodding heads.

MR. TURBEVILLE: Yeah, exactly. But the point is -- I mean, I'm going to just invert a lot of the arguments that are happening here. I go back to my hometown, Nashville. I set up a complete trading shop with everything there, and then I set up in London an entity to which to book the trade -- a risk entity that's just a vehicle for clearing operations --

The fact is, we're stuck with the concept of jurisdiction. We're stuck with the fact that this organization spent a heck of a long time trying to figure out, what is the right way to configure a transparent marketplace? And came to a conclusion. And the question is where you draw the lines.

And activity -- I just can't see that activity shouldn't be relevant to that, since we're stuck with it.

MR. HILL: To use your example, though -- in that situation, where you've got a London client, the transaction's being booked to a London entity, and there is some activity in the U.S. -- I mean --

MR. TURBEVILLE: I said all of the activity in the U.S.; it's just a shell booking --

MR. HILL: Okay, well, we're not talking

about shells in London, because they're registered swap dealers. So, they're not shells, obviously. There's a whole requirement for capitalization and everything else associated with these entities. They're not shells.

But let me just go back to your --

MR. TURBEVILLE: Sorry; a single-purpose entity. But my point is, I'm just inverting the argument --

MR. HILL: I understand, but they're U.S.- registered swap dealers, not shells.

But to go to your example -- so, in that case, where it's a European pension plan, and a European-based U.S. swap dealer, and there's activity going on in the U.S. And so you would apply the U.S. rules.

Would you suggest that the European rules shouldn't apply, or are you suggesting that they both should apply? Because, surely, the European regulator -- in my example, London -- the U.K. regulator has an interest in protecting the U.K. pension plan. So, would you apply both sets of rules?

MR. TURBEVILLE: I can't speak to the outcome of what I would -- since there is no one-world government, I actually can't speak to the outcome.

But what I can speak to is that the transaction- level requirements of the U.S. law should apply.

MR. HILL: Okay. So, what happens if --

MR. TURBEVILLE: And, in fact, what should happen is that the Europeans should defer.

MR. HILL: So, it's a European pension plan, with all the retirement money of all the European pensioners, and it's being booked to a European bank --

MR. TURBEVILLE: Transacted in the U.S. market. The European pension plan came to the U.S. market to transact, because all the activities are in the U.S., in the marketplace.

MR. HILL: So, the European regulator has no interest in protecting the European pension plan, whose assets are being traded by a European asset manager.

MR. TURBEVILLE: Yes. Again, that's a straw man argument. I'm not saying that the European pension plans shouldn't be protected. I mean, they should be. But the integrity of the U.S. market should be, also, and those are two different things.

MR. HILL: Well, what happens when the rules are inconsistent?

MR. TURBEVILLE: If there's a European company that comes and buys products in the United States, the rules and regulations for production of that product in the United States should apply. And then that entity can take it back to Europe, and use it in accordance with the rules that apply in Europe. So, they're two different things.

And what I'm saying is that there are activities that suggest very strongly, to the point of being, to me, fairly obvious, that those activities happening in the United States should attract U.S. transaction-level regulation.

MR. COSTA: Isn't a theme of this

discussion risk versus the integrity of a market in a jurisdiction?

So, I thought a lot of this table was driven by the concern that, from the side of an entity that ends up -- in any of these paradigms -- as a U.S. nexus, the risk finds its way back, right?

A situation, let's say, where a swap is booked offshore, but it's back-to-back to the United States, which we all know is a structure that can be widely used.

So, part of the goal there was focused, indeed, on risk and entity. But there is a separate point, just to distinguish, about the integrity of a market.

MR. O'CONNOR: So, Randall, just picking up on that -- and I think --

CHAIRMAN WETJEN: And, Steve, sorry to interrupt, but after your point, maybe we'll take a break.

MR. O'CONNOR: You think I'm going to be so exhausting?

I think when Jim made a point earlier, you said -- I forget the exact fact pattern, but it was two parts. He's based in European. One could have been the overseas branch or sub of a U.S. bank. If they were executing a dollar interest rate swap, say, and the salesman was in the U.S., and he provided market color, that trade had an impact on price discovery in the U.S. -- therefore, that should get on the radar.

Surely, that, though, extends, therefore, to any U.S. dollar interest rate traded throughout the world. And if so, isn't the logical extension of that argument that the CFTC should regulate any dollar swap, wherever traded, between whatever parties, even if everything is totally offshore?

CHAIRMAN WETJEN: Someone can respond before we break.

MS. BRADBURY: Well, I think one of the issues is, as someone was saying earlier, we don't yet know what the rules are going to be other places. And so it's hard to have this discussion when we sort of only have half the sky clear; the other half looking like snow right now.

So, at the end of the day, you know, in a year from now, the clients in Europe who don't want currently to have U.S. rules apply to them may think, "Gee, those are good rules. You know, I'd like to trade U.S. interest rate swaps in New York. That's a better deal for me."

And so it's very hard for clients who may not have to comply now, unlike my firm, which is pretty firmly in the U.S. category. They don't know how to make that judgment. And I think if we can maybe, over time, really ask the Commission to work closely with your colleagues in other jurisdictions so we get, if not identical, kind of similar, analogous, you know, substitutable rules that will help everyone -- because if, you know, you would like most U.S. Interest rate liquid swaps to be traded on these SEFs, that would be really good for customers -- but as opposed to a very split market, you know, with less liquidity and less transparent pricing.

But I think it is literally hard to have this discussion when you don't know what the other rules are going to be. That's the challenge for the Commission and, I think, your colleagues overseas.

MR. NICOSIA: Yeah. If I could, though, I think Stephen's question was a really good one, because the argument sometime is switching here from the ability of transparency and what's right for the market versus other regulatory issues.

And then we're trying to define a line of how much interaction, whether it's sales force, whether it's color -- where do you cross the line that U.S. picks up jurisdiction? And you can get to the point where it's so minute that his question then becomes relevant.

MR. TURBEVILLE: Right, but that's not what --

MR. NICOSIA: And is it just the interest rate swap, or is it the U.S. product in and of itself that drives the jurisdiction or not? So --

MR. TURBEVILLE: The United States has an interest in the product itself, no matter where it happen. However, that's as an interest. That's not to suggest that this process would pick that up, and that's not to suggest that I wouldn't suggest this process should pick it up.

So, the fact of the matter is, what has been chosen to be the indicia have to do with activities -- and you can say, no matter how many activities in the United States occurred, our rules shouldn't apply -- or not.

I happen to think that the discussion should be around what kinds of activities are that make it part of the U.S. market, as opposed to just an interest rate swap that happens in Micronesia, and safeties and rules shouldn't apply.

MR. NICOSIA: It's very difficult to get to define a rule according to degree of either activity or level of activity. You have to be able to choose between what it is you're going to regulate against. It's either going to be against the product, it's either against the jurisdiction, the locale, the activity.

But you cannot just apply a general feel-good-man story to everything and say, "If I believe I want to do this when it's good, but I won't in that case."

MR. TURBEVILLE: But that's what the law says all of the time.

SPEAKER: That's actually the great answer to Steve's, you know, interesting question, which is jurisdiction -- as, I think, you know, the SEC has found for over a long jurisprudence, is a very clean way of drawing that materiality distinction, right?

The U.S. interest rate swap market, against which, you know, Treasury trading is used to hedge -- it's very centered here. So, when we're talking also about, how do you define a workable construct for a market with integrity, a market where everybody plays by the same rules, jurisdiction is a very logical line to do it.

And I think that is reflected in the

Comment [TS1]: Who is speaking?

statute where it's direct and significant connection with activities in or effect on commerce of the United States.

MR. HEPWORTH: To the extent that we desire to go to foreign governments, and convince them to harmonize rules, this chart creates a perverse incentive -- which is basically saying, "Hey, we want you to harmonize the rules to our rules. And if you don't, we are not going to let our banks compete in your market."

MR. GOONE: I have one or maybe two comments. It's interesting that the conversation here has always been about dollar swaps. So, let's just say, for example, dollar swaps are a U.S. and aren't portable.

You know, my personal view might be -- I would say that's a little absolute, and nothing's, you know, forever, but talk about a global market that can be traded, whether here, or Europe, or Asia that isn't necessarily owned by any. I'll just throw out, for example, oil or something like that, where it is not specific to any one jurisdiction.

Would we be having these same discussions, number one?

And number two -- my other point I wanted to make is, if you have the concept of substituted compliance -- so back to my first point, though. On my first point, it seems like, let's take dollar swap -- and I know that's a big issue here, and probably the primary issue of many people around the table -- but I think if you're going to apply these rules to everything, we should at least think about markets that are global, and where will the markets move to or not move to?

And I don't think the intent -- and maybe I'm wrong -- of the CFTC or any of the other regulatory bodies are to have markets move, you know, through, for lack of a better word, regulatory arbitrage to somewhere else. It's just to ensure the safety of its marketplace -- whatever that is defined as.

The second one is, under that concept,

if you do have a concept of substituted compliance, the question I would have is, you know, the timeline that Randall brought up is, I think, very important -- that you can't have a -- let's use hyperbole -- five-year gap between compliance of one regime versus another, because you're still, you know -- it kind of renders some of this chart -- I don't want to say meaningless, but a lot less viable if their substituted compliance has huge time gaps with the regulatory bodies that are all trying to work together.

MR. SERAFINI: This seems like maybe it's a good place to take a break -- because I know we have a second panel that's eager to present. I know they will have a lot to say on these issues, so let's take a 10-minute break, and then we'll reconvene.

(Recess)

MR. SERAFINI: Thanks, everyone. I'd like to call the GMAC meeting back to order, and I'd like to turn it over to Chairman Wetjen to introduce the speakers on our next panel.

CHAIRMAN WETJEN: Thanks, Ted. I mentioned both Hannah's and David's presence.

They're now at the table, joining us. They'll give some of their perspectives in the advisory from November.

But I'd also like to introduce John Ramsay and Brian Bussey, from the Securities Exchange Commission -- our little sister agency, as we refer to it around here.

And with that, I think we'll start first with our guests from Europe, and have either David or Hannah start -- whichever you prefer.

MS. RAYNER: Hello. So, for those of you that I haven't met before, my name's Hannah Rayner. I work for the Market Infrastructure Division at the European Commission, with responsibility for implementing EMIR, with a particular focus on cross-border aspects.

So, first of all, I'd like to say thank you to the CFTC for inviting us along to participate in this meeting today. The advisory has significant ramifications for market participants in the E.U., as we've heard today from some of the committee members.

The CFTC and the European Commission have had a fruitful and well-documented dialogue on cross-border issues over the past few years, and we've had numerous conversations already on many of the issues raised by the November advisory.

So, I'm quite sure that the Acting Chairman and Commissioner O'Malia are fully anticipating the constructive criticism that I'm here to deliver on behalf of the European Commission today.

The European Commission is concerned by the lack of regard to cross-border realities of the derivatives markets in the advisory -- to the extent that we are seriously concerned that the scope to which the CFTC is seeking to now apply its transaction rules will further inhibit cross-border activity.

A broad range of transactions between non-U.S. Persons will become subject to U.S.

rules. In the E.U., particularly, as well as in many other G20 jurisdictions who advanced in their own rulemaking and implementation processes, those non-U.S. persons will be subject to similar rules in their home authorities, and this leads to dual regulation -- the impacts of which is unnecessary compliance burdens, which can cause uncertainty, increased costs of a type that Samara was talking to earlier, to the extent that cross-border activity simply ceases to no longer be commercially viable for these firms.

And the ultimate consequence of this is market and liquidity fragmentation along geographical lines.

I think, frankly, we're not completely clear on what the reasoning is behind the policy in the advisory. The starting point under the Dodd-Frank Act is that extraterritorial application of its provisions should not be the case, unless there is a direct and significant effect on U.S. commerce.

So, the CFTC was not mandated to go out

and develop rules as to when the Dodd-Frank provisions should apply extraterritoriality. Quite the opposite -- the starting point is that the rules should not apply extraterritoriality, unless there really is this significant and direct effect on U.S. commerce.

And I would have to question whether the transactions that are caught by the DFA provisions as a result of the advisory really do meet this test. Certainly, there was no explanation contained in the very short advisory as to how the CFTC believes that this test is met.

I won't comment on procedural matters, but the advisory just simply doesn't seem to make the case for expanding U.S. regulation to non-U.S. market participants in such a broad and indiscriminate way.

And I think, from the European Commission's perspective, particularly, we were disappointed by the contradiction of the approach under the advisory, with the spirit of the path forward agreement that was reached between

Commissioner Barnier and former Chairman Gensler, back in July of last year.

Getting, really, to principles under the path forward, the EC and the CFTC agreed that relevant definitions, as a matter of principle, should be construed on a territorial basis.

We agreed that we would not seek to apply our rules unreasonably in other jurisdictions. And, importantly, we agreed that we should be able to defer to each other when justified by the quality of our respective regulation and enforcement regimes -- so providing for substituted compliance or equivalence. And this advisory would seem to depart from that agreed approach.

I mean, this isn't just an E.U.-U.S. issue, of course. This affects other jurisdictions that are also in the process of implementing similar rules. These market participants will become subject to dual regulation.

In September '13, the G20 leaders

committed to deferring to each other when justified on the basis of our respective regulatory and enforcement regimes, taking an outcomes-based approach -- and avoidance of dual regulation through a territorial approach, and through deference between international regulators needs to be applied -- not just in the E.U.-U.S. sphere, but across the globe, to ensure that we have efficient cross-border regulation that doesn't inhibit market growth.

So, what do we need to make cross-border markets work, generally? We need two things.

The starting point should be a territorial approach to regulation. We shouldn't be regulating outside our borders, unless there's clear justification. There are identifiable gaps that can harm financial or market stability, and import risk to our shores.

To the extent that we think that there could be gaps or there could be risk imported, on effect on our markets, we should provide, nonetheless, for deference to each others' roles.

This can't be disconnected from territoriality.

There are instances where a transaction that crosses borders will carry regulation with it. But if we allow for our counterparties to comply with competing rules that achieve the same objectives, in line with the G20 commitment, then we can avoid both dual regulation for our firms and all of the burdens that brings, as well as preventing against the importation of any risk to our shores.

So, the European Commission would appeal to the CFTC to keep these two fundamental principles in mind when reviewing the advisory.

CHAIRMAN WETJEN: David? Y: Thank you very much, gentlemen. I'd like to thank you for inviting the FCA to participate today in these important discussions.

To start with, I'd like to make it very clear to the entire committee that the FCA's benefitted from a very open dialogue over the past few years, with all of the regulatory authorities that are present today, on cross- border issues concerning derivative markets.

And that's really important, because, as has already been talked about, these markets are an important cog in the wheel of the broader global economy, and over 50 percent of trading in them takes place on a cross-border basis. So, it's really important that the way we oversee these markets supports our regulatory objectives in a way which underpins the smooth functioning of the broader global economy.

As has already been mentioned, the G20 and the FSB made clear and very public statements about how regulation should operate on a cross-border basis. And that's based on the concept of allowing deferral to fellow regulatory regimes.

Now I'm not going to repeat the FSB and the G20 statements, but if you'll indulge me, I would like to briefly reiterate an abridged version of the intent -- the OTC Derivatives Regulators Group. For obvious reasons, I'll now refer to as the ODRG -- a group which includes all of my fellow regulatory authorities here today -- a statement they made in August last year, which was that the principles have acknowledged the desire to eliminate the application of inconsistent and duplicative requirements, and a flexible outcomes-based approach should form the basis of final assessments regarding equivalence or substituted compliance.

Of course, these are not new concepts. They're not new under Dodd-Frank, or under EMIR, or any of the pieces of legislation being implemented on a global basis. And they apply equally to firms and to infrastructures.

For example, for several years, the CFTC and the FCA -- or FSA, as we used to be known -- have recognized that derivatives trading venues serve a global market. Hence, the UK's recognized overseas investment exchange regime, and the CFTC's Foreign Board of Trade regime, and our overseas exchanges to operate in our respective jurisdictions, and remain primarily supervised by the home supervisor on a day-to-day basis, provided that home regime achieves substantially similar regulatory outcomes.

We've had great collaboration with colleagues here at the CFTC on those regimes, and we've shown that the intent the ODRG expressed can be made to work effectively in practice.

I think it's important we reflect on what would happen if we don't implement our rules in a way that's consistent with what the ODRG said. And that's real risk exist that we'll submit firms and trades to duplicative regulation, and the potential for conflicts or inconsistencies, which could prevent or discourage firms from trading cross-border -- and basically imply that they need to trade locally, not globally.

And these are not hollow concerns. As we've already seen from the data that ISDR has published, following the implementation of the SEF regime, liquidity and certain core derivative markets have fragmented significantly, with cross-border activity reduced by as much as 3/4 in some markets.

Feedback the FCA continues to receive is that this is a live and growing issue, which has real implications for both market resilience and the broader economy.

So, putting that into context of the advisory that we're here to discuss today, my understanding is that that promotes a situation whereby non-U.S. firms that are fully regulated in their home jurisdictions, simply by virtue of the activity they do within the U.S., have to comply with two sets of regulations. And that brings into view the issues that I've highlighted previously.

In the U.K., we also appreciate the importance of ensuring that activity which might bring risk to our markets is subject to appropriate oversights. But, importantly, our rules always allow for the rules that apply to be our own or equivalent ones from the relevant overseas jurisdiction, like the U.S.

So, if you were to look at the table

that's still up on the chart there, that would look very different if you superimposed the E.U. requirements on top. There'd be a lot more substituted compliance and a lot more deference.

So, in considering this advisory, I would urge the CFTC to think of a few questions in line with the ODRG statement as you reassess the guidance. And there's three questions.

Firstly, does the advisory cover business that really has a direct or significant impact here? If it does, then the second question is, does it seek to eliminate inconsistent or duplicative requirements? And thirdly, does it provide for the deferral to another regime, where that regime achieves similar outcomes?

In my view, those are excellent questions that I think all regulators would do well to ask themselves about every aspect of our respective cross-border regimes.

So, I'm really pleased that the Commission has taken the opportunity to review and consult on the advisory, and I look forward to working with you as you finalize it.

Thank you.

CHAIRMAN WETJEN: Thanks very much. John?

MR. ROTH: Thank you. I should, at the outset, begin -- I'll do this for both Brian and me, the standard disclaimer that any views we express are our own, don't necessarily reflect those of the Commission, Commissioners, or colleagues on the staff. Did I get that right? Thank you.

So, to give you a little bit of the SEC perspective on these issues -- I know the SEC is sometimes accused of being the tail on the derivatives dog, so I'll try hard not to wag it too much in the discussion today. As you may recall, in May of last year, the Commission issued proposed rules relating to the application of Title VII in the cross-border area. One key element of those proposed rules was that any transaction that is conducted within the United States generally would be subject to regulation under Title VII.

The proposed conduct test that we created actually is broader than the conduct test that has been discussed and sort of incorporated in footnote 513 of the CFTC's cross- border guidance, in that it would capture security-based swap transactions carried out within the United States, whether or not they were done by non-U.S. dealers or by other non-U.S. persons. Unlike the CFTC's approach, our proposal would permit substituted compliance in various circumstances.

There are several reasons why the SEC proposed this approach. First, we felt that it was consistent with our longstanding approach in the traditional securities space, which has been a core element of our approach to regulating our markets -- which is to say any significant activity, particularly what I will call sort of front office dealer activity that takes place physically within the United States has always been viewed as activity that not only do we have the authority to regulate, but, in some sense, feel it's incumbent upon us to take charge of in some kind of meaningful way.

Second, the proposed approach is consistent with our view that Title VII is not just about risk characteristics or limiting the potential for risk to be transported to the U.S. As has been discussed here earlier, you know, much of Title VII, as we know, is also about market integrity, market transparency, other issues that bear on the ways that the markets generally operate for market participants.

Third, we were concerned that not capturing activity that has those kinds of key elements taking place within the U.S. could create gaps in the coverage of Title VII.

And finally -- and a related point -- we were concerned about ensuring a level playing field for all entities that are engaged in securities-based swap activity within the U.S.

As the Commission noted specifically in the proposal, treating foreign dealers with offices here differently could have adverse effects on U.S. dealers and competitive parity.

We've received a large number of comments on many issues, but certainly including this issue. Many of the commenters stressed the importance of consistency between the approach taken by the SEC and the CFTC.

They were concerned that the approach that we adopted was not in line with what was assumed to be the approach, at least, that the CFTC was taking at that time.

Other commenters raised concern about the workability of the approach, again, echoing some of the concerns that have been described here about relying on a trade-by-trade kind of determination to craft compliance procedures.

The European Commission, in particular, criticized the approach, because it did not provide, in EC's view, sufficient opportunity for substituted compliance in applying rules to those kinds of situations.

We also received a few supporting comments. So, there were a few of those, too -- probably not -- the weight of the comments was not supportive.

So, in terms of where we are in our process, as you may know, we've proposed substantially all the rules we're required to, and have adopted several key final rules, as indicated in the proposal. And as our Chair reiterated in recent Congressional testimony, the Commission is likely to consider, before long, certain of the issues presented in the proposal, in an initial release that would address many of the key definitional issues -- also, tend to be some of the more controversial issues, including the issue that we're talking about today.

Other matters dealing with the applicable cross-border issues in the context of trade reporting, mandatory trading, clearing, et cetera, would be handled in subsequent and separate releases.

So, I will leave it there. Just one more note that may be of relevance or may be of interest -- since I have been intimately involved with the Volcker Rule in recent months -- is to just point out that in the context of the adoption of the Volcker Rule, a similar kind of approach to one that's being discussed here today was taken in defining activities by banking entities that would take place outside the United States -- and, therefore, could take advantage of what would be excluded from the Volcker Rule prohibitions on proprietary trading.

And, among other things, the particular exemption that was provided in the rule as adopted provides that a banking entity engaging in offshore activity in the trade, including any personnel of the banking entity or its affiliate, that arrange, negotiate, or execute the trade is not located in the U.S. or organized under U.S. law.

So, there was this concept that in order to take advantage of the exemption, you need to make sure that people were not performing sort of front office kind of dealing activity in the U.S.

There was also some language in the adopting release for the cognoscenti or people who are really interested -- footnote 1521 talks a little bit about what it means for personnel to arrange, negotiate, or execute a trade for these purposes. And I won't belabor that point here, but if people find that instructive at all, they might refer to it.

So, I think I will cut it off there, and I'd be glad to participate in the rest of the discussion, along with Brian.

Thanks.

CHAIRMAN WETJEN: Thank you, John.

Brian, do you want to add anything?

MR. BUSSEY: I think John covered it.

CHAIRMAN WETJEN: Okay, thank you. I'll turn it over to the membership, and see if there might be any questions of the panelists. I'll start with a question. This came up a little bit earlier, and then John just alluded to it -- in fact, identified this footnote, where, I gather, the SEC went into quite a bit of detail concerning what arranging, or negotiating, or executing means.

And so I guess my first question is whether or not how that was defined, even in the advisory, was specific enough -- you know, putting aside any quibbles to the overall approach of the advisory -- but I'm just curious whether that was specific enough to give people an idea of what kind of conduct was contemplated -- again, putting aside judgments about whether it was the requisite amount of conduct on U.S. soil.

MS. RAYNER: I mean, I think, from our perspective, there is definitely detail lacking into the nature of transactions that the advisory was meant to capture. Putting aside the fundamental objections we have to taking an extraterritorial approach and not providing for substituted compliance, there really was a lot of detail lacking in the advisory as to which types of transactions were being included.

I was actually quite unnerved to hear James, who earlier suggested if the master agreement was negotiated in the U.S., that could bring the transaction into scope in U.S. rules, even if the transaction was ultimately was executed and booked in Europe or elsewhere.

So, I mean, I think to the extent that this concept remains in any advisories or further guidance, then there really needs to be very, very clear elaboration around which types of transactions are intended to be covered.

MR. HILL: Just to be clear, I wasn't advocating for that approach.

MS. RAYNER: That was very clear.

MR. BUSSEY: And, also, to be clear, the footnote that John referred to was actually jointly adopted by the banking regulators, as well as the CFTC and the SEC, in the context of the Volcker Rule.

And I think -- you know, I can't speak to the CFTC's approach to defining these terms in the context of Title VII, but I think there's some indication in the Volcker release, in that footnote that John cited, that kind of gives gloss that would suggest that a reading -- at least in the Volcker context -- that (inaudible) may not be what they were thinking.

So, they specifically talk about, you know, back- office functions not being included in -- again, for purposes of Volcker -- what would be considered arranging, executing, and negotiating a transaction.

MR. RAMSAY: I mean, I guess I would offer the thought that, you know, in the range of the pantheon of issues that the industry has to deal with in parsing through regulatory requirements and understanding what terms mean, this one seems to me to be not all that difficult to, you know, come to some reasonable understanding on.

I sort of assume -- or I would take that the larger objection to many folks in the industry to be -- not that you can't figure out what that means, but just the process of having to make that determination on a trade-by- trade basis, and then figure out which trades are, in fact, in one bucket versus another, and try to design compliance systems around that is certainly a point that we get, and we understand.

You know, again, speaking only for myself, one possible approach is that if one were to confine the approach to, you know, transactions -- if you were capturing transactions that took place within the U.S. only, in the circumstances where you have dealing activity where there is regular dealing activity, front office activity at a location in the U.S., with, you know, overseas clients, U.S. Clients -- in those circumstances, perhaps it wouldn't be too difficult to determine that those operations are falling within the scope, and then you'd still have to address the question of, do you permit substituted compliance in appropriate circumstances?

Again, in our proposal, we have proposed to do so, subject to certain conditions.

MR. HILL: In the context of the SEC thinking about these things -- I wonder, did you guys look at the difference in the jurisdiction of the SEC versus the CFTC and the statute?

So, the CFTC's jurisdiction is set forth in Section 722, and it is limited expressly by the language in the statute, whereas the SEC's jurisdiction is set forth in Section 772, a different section, using much broader language.

Did you guys evaluate that, and consider why Congress would have done it differently?

MR. BUSSEY: Do you want me to --

MR. RAMSAY: Yeah.

MR. BUSSEY: Yeah, we certainly did look very closely at the language. I think one of the things that's curious to us, though, in listening to the conversation thus far today is, actually, one of the significant differences between the two sets of language is, as many people know, we do not have the direct and significant language.

So, the way that we set out -- or that our commissions set out in our proposing release -- in thinking about this issue, it's a two-step process.

One, is the activity without the jurisdiction of the United States? And I think there's some differences in language between the CFTC's statute and our statute, but, in general, that concept of that first-level question -- is it within or without the jurisdiction of the United States?

Once you make a decision about whether a particular activity is within or without the jurisdiction, then you get to the second question, to our mind, of, is there a direct and significant effect? So, a situation where it is without the jurisdiction of the United States, the CFTC can then ask, even though it's without the jurisdiction, does it have a direct and significant effect in the United States, as an additional basis of asserting jurisdiction.

We don't have that prong. What we have is an anti-evasion prong when the activity is without the jurisdiction of the United States.

MR. TURBEVILLE: And just to reiterate -- what you're saying is that there's an equivalency, in terms of jurisdiction, about within the United States, bounds of the United States, it's an activity-based -- that particular section doesn't address that.

MR. BUSSEY: Well, I can't speak --

MR. TURBEVILLE: That's why I changed it. That particular section doesn't address activities within the United States, which are possibly equally broad.

MR. BUSSEY: Yeah, I mean, there's definitely differences in the language. I think ours speaks to both persons and activities, and the CFTC's speaks to activities.

I'm not sure -- you know, as I read the CFTC release, they did not spend a lot of time on this issue. We spent a significant amount of time on the issue. I'm not sure how they would read their statute if faced with the question, but we certainly view the first question being, is the relevant activity within or without the jurisdiction of the United States, for purposes of the particular provision at issue.

That is the first question, and then the next question --

MR. RAMSAY: Right. And then you never even get to the other question about whether it has a significant effect or not.

MR. BUSSEY: Right.

MR. TURBEVILLE: Right. And the other thing I believe is true is that the SEC has experienced some guidance from the courts, in terms of extraterritorial jurisdiction over time. And, as I recall, long ago and far away, there was a roundtable here about this issue -- a joint roundtable between the two of you.

And that was argued then by someone -- it was me, actually -- that, in fact, you can go through a parsing of the language and court decisions that are associated with you guys, and there may not be that much difference, really, in terms of extraterritorial.

I'm not asking you to comment on that, but, indeed, there is a gloss on your extraterritorial jurisdiction that's been provided to you by the courts; am I right?

MR. BUSSEY: That's right. The recent -- or not so recent now; time has flown in the last few years -- the Morrison decision, but that was not in the regulatory context. It was in the context of an enforcement -- excuse me -- not even enforcement; it was a private litigation matter.

MR. TURBEVILLE: Yeah, I understand. But it's a gloss of --

MR. RAMSAY: And again -- important, again, to make the point that it's two very different questions. It's very different, on the one hand, whether an agency has jurisdiction to regulate in a particular area, and whether it makes good sense or good policy to do so, with respect to particular sets of transactions.

But, you know, to an SEC lawyer or somebody -- you know, a broker-dealer kind of regulatory lawyer -- outside the swap space -- and certainly appreciate and understand that, given the global nature of the swaps market, there are, you know, factors that you need to consider in that context.

But, you know, to our mind, the proposition that, for example, with trading and securities, that you could have whoever it is -- an offshore entity -- negotiating, arranging, executing, performing all of those key functions out of an office in the U.S. with whoever, regardless of who it is -- without having the ability to regulate that activity, we would view as kind of an astonishing proposition.

So, we didn't view the jurisdictional piece of this to be that much of a stretch. One still has to get to the question of, does it make good policy sense to regulate, and how should you regulate that activity?

MR. BUSSEY: Just to go to -- John made a comment about the weight of the comments in his initial remarks. Actually, one of the comments that was supportive was actually the Federal Securities Committee of the ADA -- people that are very familiar with the way that SEC jurisdiction has been thought about in years past -- so just to kind of back up John's point.

But I think the discussion earlier in the day, where folks were trying to bring it to the issue of substituted compliance and the scope of substituted compliance, which is, I think, a theme that both David and Hannah brought up -- at least one of their points -- that seems to be one where a lot of good thought needs to be done to make sure that we're -- at least from the SEC perspective, as we think about the comments that we've received, and think about the dialogue that we've had, how do we think about substituted compliance in this space, so that the regimes work together?

We got good comments on it, as John said

-- including from the EC -- and we're definitely taking that comment into account, as we work towards a final adopting release on these issues.

We're taking up all the airspace, John, I think.

CHAIRMAN WETJEN: Oh yeah. I wanted to ask a question of David and Hannah.

I'm just curious -- if the tables are turned, so to speak, and you have a U.S. dealer involved in a swap, booking the swap, but they have personnel in London, let's say -- I'm just curious how you guys are thinking about how to treat that transaction, and whether to asset jurisdiction -- or maybe assert jurisdiction over certain parts of it, as some others have suggested earlier.

But just generally speaking, how would you guys approach that hypothetical?

MS. RAYNER: So, the scope of the transaction- level requirements under EMIR are limited by EMIR itself. The obligations of EMIR fall on E.U. entities only, to the extent that any

E.U. entity is transacting with an entity that's incorporated in a third-country jurisdiction.

So, if an E.U. bank is transacting with a U.S. Bank -- or, indeed, a Japanese bank -- and the regulations in that third country -- in U.S. or Japan -- have been deemed to be satisfactorily comparable -- equivalent is the terminology that we use -- then the E.U. bank can choose to comply with the regulation in the jurisdiction of its counterparty.

So, the EMIR would not, in the first instance -- there's one exception that I'll talk to in a moment -- would not apply to non-E.U. entities. And to the extent that obligations attach themselves to a cross-border transaction, the E.U. entity can comply with the regulations in the third country in which its counterparty is based.

CHAIRMAN WETJEN: So, I gather that means, then, that if there's personnel in the E.U., working on behalf of a third country-located firm, that in and of itself does not render that entity an E.U. entity. Is that right?

MS. RAYNER: No, no -- exactly; it wouldn't. The exception that I spoke to -- EMIR gave a mandate to the European Security Markets Authority -- ESMA -- to develop rules setting out when obligations under EMIR -- with, specifically, clearing and margin requirements -- could attach themselves to transactions between two third-country entities.

And the tests there are -- so there's a first prong around anti-evasion, and a second prong around risk being back into the E.U. above a certain threshold.

But even in those instances, if the third-country counterparties to that transaction are based in a jurisdiction where there is comparable regulation, then they can choose to comply with third-country regulations. There is always a possibility for substituted compliance under EMIR.

MR. BAILEY: So, just to come in on this and support what Hannah said -- a lot of the discussion today has been about what to regulate -- like, what matters, what needs regulation.

But an equally important question is, when you've decided what matters, how to regulate it. And we've very clearly taken the view from a European perspective -- that, if there is a regime in a cross-border trade that provides for similar outcomes, then participants can satisfy the European obligations via using the overseas regime.

From an FCA perspective, that's the only way that we see the cross-border business being done on a sensible and level regulatory playing field. And that's why we'd like to see substituted compliance or equivalence from our perspective extended as far as possible.

MR. RAMSAY: I should add -- and either Hannah or David, you can correct me if I'm wrong -- but the draft technical standards under EMIR -- there's another particular provision. I don't know if you classify it as an exception to the general rule, with respect to transactions done by third branches.

So, as I understand it, anyway, the proposal there is that a contract between -- well, I can just read the language. OTC derivative context shall be considered having a direct, substantial, and foreseeable effect within the union when the two counterparties enter into the OTC derivatives contract via their branches in the union.

And so you could have two foreign entities, non- U.S. entities, through their branches entering into a contract, a union, and the rules would apply.

And the description here, anyway, suggests that that approach was taken into order to ensure a level playing field, with respect to activity conducted in the E.U.

MS. RAYNER: Yeah, John, you're right. That's the proposal that ESMA has put forward to the European Commission. We're still going through the process of adopting those standards internally, but, as I outlined, in that instance, substituted compliance would, nonetheless, be available.

MR. TURBEVILLE: In terms of level playing field, I'm a little bit confused. If people pick, they are likely to pick what's in their interest, right, their self-interest to pick. Is that about level playing field, or is that about something else? I mean, it sounds to me like there's not one consistent set of rules; it's a question of people picking and choosing, which means that there'll be different outcomes, depending on what the interests of the parties are.

I'm confused. A level playing field would be all rules are all the same everywhere. And if they're going to pick, they must have some interests.

MR. BAILEY: As we've heard from committee members sitting around the table today, across different jurisdictions, we're never going to be in a situation where the words on the page say exactly the same things, but it can be the case that they deliver the same or very similar regulatory outcomes. And defining you've got that situation in place, why wouldn't you not let the other regime apply?

Why would you not let substituted compliance apply? That's exactly the approach we've taken from a European perspective.

MR. TURBEVILLE: Well, because there might be -- you know, it strikes me that most of the legal regime and regulatory regime isn't just getting close enough for government work; it's actually trying to reach a result.

So, there are two differences of opinion about how things should come out between the E.U. and ourselves. And --

MR. BAILEY: But in terms of result, we're saying substantially similar regulatory outcomes. So, the output is substantially similar.

MR. TURBEVILLE: No, I understand, but, again, this agency went through a long and involved process trying to define what a transparent market, as mandated by the law, is. And so there are differences.

And it just strikes me that, again, in terms of level playing field, letting people pick all over the place is not a level playing field; it's a question of people optimizing their own regulatory -- and maybe tax -- results.

MR. HILL: With all due respect to the CFTC, who did, I think, a very good job, and worked very hard to get these rules right, I don't think they have a magic crystal ball such that they invented the only perfect rules in the world.

And I do think that their colleagues in Europe, I suspect, will do a very good job of coming up with similar -- although not identical -- rules, such that it is reasonable for the CFTC to conclude that they can defer to those rules that their European colleagues have come up with as reasonable, to comply with when engaging in cross-border transactions.

I don't think anyone wants to suggest that only the CFTC is capable of getting this right.

CHAIRMAN WETJEN: I agree with all those points. The only other thing I was going to add, in response to what Wally said, was that there's a history at the agency, continued through the guidance, of embracing substituted compliance. And there is a significant history before the guidance was issued last summer in taking that approach, which is something that, in fact, is provided for, allowed for under the statute.

I had one other question for the panelists. Looking again at the chart, we have a different approach under certain hypotheticals for how we deal through our guidance with a foreign branch versus other non-U.S. swap dealers. And I'm curious for a reminder from the group how you all address those two different types of legal entities in your cross-border policies.

MS. RAYNER: So, just to be clear -- sorry -- you're talking about how the E.U. would regulate a U.S. Branch of an E.U. bank.

CHAIRMAN WETJEN: That's right.

MS. RAYNER: Yeah. So, the branches are considered to be an extension of the legal entity -- so a U.S. branch, a Japanese branch, a Malaysian branch of an E.U. bank would be -- any transactions executed by them but back to the E.U. entity would be governed by EMIR, but, again, substituted compliance would be available if any transactions executed through those branches were with their country counterparties.

So, if the EUNC is transacting with a U.S. client through its New York branch, then it can choose the code to comply with -- the Dodd-Frank Act, CFTC rules -- subject to an equivalence, determination having been undertaken, to give it that optionality to comply with either the U.S. or the E.U. regime.

MR. BUSSEY: For the SEC, we did not go as far as the CFTC in the proposal. So, in thinking about the issue of how we should apply our rules to non-U.S. branches of U.S. banks, we were considering, among other things, looking at how certain types of businesses in this room structure their business through guaranteed subs versus foreign branches.

And we're called on under our statute to consider competitive effects in our rulemaking; take those requirements under our statute very seriously. Did a lot of thinking about competitive effects.

And at least proposing stage --

CHAIRMAN WETJEN: John, I don't mean to interrupt -- or Brian; sorry -- but we also have a similar statutory provision.

MR. BUSSEY: I won't speak again to CFTC provision, but that's helpful to hear.

So, we thought about it from a competitive perspective, for those U.S. dealers that were structured currently in a branch way versus a guaranteed sub way.

One of the things that's come out in the comment process, and in the E.U. approach, is that if we're in a situation where we're not applying our rules to the foreign branches of U.S. banks, in a sense, the way the CFTC does -- which is pretty much across the board -- in Europe, the London branch of a U.S. bank doing a transaction with a non- E.U. counterparty that's not the London branch of a non-E.U. Counterparty, there's a potential gap there, right, because the E.U. has, at least in their final technical standards, has made a decision that they are not going to apply their transaction-level requirements to the London branch of a U.S. bank, unless -- you know, if they're doing it with a Cayman hedge fund or, you know, some non-E.U. counterparty.

So, that's an issue that we definitely need to take into account.

MR. RAMSAY: So, if we don't apply the rules in that context, then they just may not be covered by anything.

MR. BUSSEY: That's right. But I think, similar to the E.U., similar to the CFTC, we proposed -- or our commission proposed -- a pretty liberal approach to substituted compliance. I mean, in general, we didn't go as far as the EC did; we went farther than the CFTC. Got a lot of comments on it. We're thinking about how far we should be taking substituted compliance at the adopting stage.

And then just to pick up on Wally's point -- you know, substituted compliance, unlike the CFTC, this is new for us. We do not have a history of substituted compliance at the SEC. We're going farther, even proposing, in when we would consider applying substituted compliance, right?

So, the true London dealer -- putting aside the whole issue today -- London dealer, doing a transaction with a U.S. counterparty, we would provide for substituted compliance; the CFTC would not.

So, we're going farther with substituted compliance, but you have to believe with substituted compliance that it's not pick-and-choose, Wally. I think you have to believe that it's truly outcomes-based, and you only grant substituted compliance when it provides comparable outcomes.

If you think it's something other than that, you've got other issues.

MR. BAILEY: Just to come in on that -- I think it's really important to appreciate that substituted compliance is not a license to trawl the globe, looking for the lowest possible regulatory standard. It's where two cross-border counterparties are dealing. The cross-border counterparty can apply its domestic rules -- which have been assessed and deemed equivalent -- or to deliver equivalent regulatory outcomes to the other regime. It really is not -- and if anyone thinks it's a license to just trawl around, looking for the lowest standard, it really isn't.

MR. ALLEN: If I may just make a couple of comments on that -- on Brian's point about the potential gap that exists in circumstances where you have, for example, the London branch of a U.S. entity -- an entity that is not itself the counterparty -- that obviously does point to a difference, which is why I made the comment I did earlier.

When you look at the table -- and the second and third rows on the far right column -- you potentially get a different outcome, which justifies a different way of thinking about that question from a CFTC perspective, in terms of the application of its rules.

But I was also just going to make the point that David just made, which is that, actually, the concept of sort of pick-and-choose, I don't think it can or should be viewed that way.

If we were talking about a choice which presented itself in terms of a lower standard of regulation or a higher standard of regulation, then equivalence and the optionality simply wouldn't exist, because the regulatory agencies would not have determined in those circumstances that the alternative regime was equivalent, and, therefore, there would no question of applying the third-country regime. It would have to be achieving substantially similar regulatory outcomes.

And, in fact, the reasons why it's so

important to have that kind of flexibility, albeit that the rules may well be providing for similar regulatory outcomes, of course, is a combination of factors. But one of them, most obviously, is the risk, alternatively, of duplicative rules applying to the same transaction being applied by two sets of regulators.

And the second, which I think sometimes gets disregarded, is the expectation and mindset of the clients and investors, in terms of the regulatory regime they were to expect to be applying to activity there, conducting in certain geographies.

So, just to take that one step further -- if you're talking about, as we have done -- particularly on the previous panel, but it follows through to this one -- about activity which is, first and foremost, conducted in Europe, in, say, London, where the activity on the part of a bank is being conducted there -- and, also, the client is based there -- there will be an expectation on the part of most of those clients that it will be the European system of rules that will apply to that relationship and that transaction.

MR. O'CONNOR: Can I follow on from Doug? Question for David and Hannah, actually.

You mentioned the global economy and the impact there, David. In the context of the international arena, the G20's focus on global growth, FSB Chairman Mark Carney has said that market fragmentation is harmful to global growth. I think there is some consensus, at least in part, of this room that some of these rules -- building duplicate sales forces, having other types of barriers -- cause fragmentation.

And then, on top of that, if you take the most extreme views that we've heard today as to what is CFTC jurisdiction, you have activity that's traded in the U.S., you have U.S. entities. Transactions executed by a U.S. Entity will be captured, and then, perhaps, U.S. product gets traded about.

And then, on top of that, if you add from the other -- from the stuff that's not already captured, anything that's arranged, or negotiated, or executed in the U.S., you get a very large proportion of global OTC activity -- which, you know, is untenable, I think.

And my question, though, is, David and Hannah, if you imagine a world where we've moved to a situation where the rules are exactly the same between the U.S. and Europe, if not word for word but mostly, and, also, that people agree that dual regulation is harmful, where would you draw the line, in terms of who would be the primary regulator for activity? Would it be the traditional entity risk model?

MR. BAILEY: That's quite a broad question there, which I'll try and unpick.

I think the problem here is, when you have got two sets of rules applying to the same trade or the same entity, that's when you get the chance of conflicts. That's when you place dual regulatory burdens. You might even do reporting burdens on individual counterparties, and you will see parties trying to avoid dual regulation, which leads to the fragmentation that I talked about earlier -- which is a problem, and I think it's a real problem that already some of the reports are showing.

And I think it will be a real problem in terms of market resilience. If we enter a period of stressed markets, having that kind of fragmentation is really unhelpful, and that's where the substituted compliance or equivalence comes into play, because it allows the participants on both sides of the trade to meet one set of rules, not both sets of rules.

I mean, typically, the way the EMIR has been set up talks about looking at things at the entity level -- either European participants or what is captured by the European regulation -- and then for the cross-border trades, there is substituted compliance available.

If that were replicated, then that seems like a pragmatic solution on which a global market can actually operate.

MR. PARSONS: I have to say, I'm a

little bit coming from a different place than some other people -- what's a boogeyman, and what I should be comforted about.

Certainly, I would be happy if we didn't have any fragmented markets, but my recollection was, people did not like Wally's world of one government. So, we're going to have fragmentation. We're going to have seams. Seams, in any market, are always a bit of a problem.

It's now a question of, where do you draw the seams? And I'm not sure I see the places where the seams are being drawn. I just don't see the horrific events.

I mean, I've grown up in a globe where we've had fragmentation. The whole Euro-dollar market was created because of regulations in the U.S. that moved it over there. It was expensive. You had to do some extra transactions and the like, but it didn't ruin global commerce, that you had that kind of fragmentation. So, I don't quite get that boogeyman.

And, at the same time, when we're

talking about substituted compliance and the worry that people are going to pick and choose, I hear it being asserted that it's all going to be comparable, nobody's going to talk about a world where there's regulatory arbitrage. But we've had substituted compliance among our supervisors for banks in the United States, and there certainly was regulatory arbitrage.

So, there's good reason for people to be worried. There's substantive problems that come about when people can pick and choose.

So, I'm not saying that we should work hard to get substituted compliance; I just don't understand belittling that problem, and I don't understand exaggerating so significantly the dangers of fragmentation.

One of the things I think we overlook is the value of a high-quality market. And the United States has had high-quality securities markets for a long, long time that has attracted transactions to be executed inside the United States, because of excellent regulation.

Sometimes, we've slipped and let that go, but we have the opportunity in the swaps marketplace to assure transparency, to assure executions happen in a certain way.

And the only way to actually do that is to have somebody who has a defined jurisdiction of the market. If people have the ability to just pick and choose on a transaction-by-transaction basis, you don't have a coherently defined market.

So, I think we should also look at these questions of which transactions are going to be covered, in terms of, how is it viable for the CFTC, or any supervisor in the EC, or anywhere in Japan -- how is it viable for that supervisor to define a marketplace, and to have some standards of conduct to which business can then flow, in search of good locations for execution?

MR. TAKAYAMA: Well, I have one comment and one question.

The first one is, in terms of the global economy and the instability of the financial market, obviously, having a smaller number of opportunities -- ideally, one -- and, you know, to be used to buy different types of the product trades in different regions. And that would obviously benefit because of the diversification benefit, as well as, you know, (inaudible) type of things.

So, this would benefit financial institutions in stability; then hence, the study through the financial market, I think.

So, introducing a conduct-based (inaudible) test to put those, you know, entities subject to the (inaudible) of the regulations may lead to the fragmentation of the entities, and that would not be, you know, ideal for, you know, financial institutions', you know, management, and stability, I think. That is one point.

Another point -- and this is actually a question -- and I recall that Mr. Ramsay said that, you know, you having appropriate rules is consistent with, you know, traditional securities space or traditional securities market.

So, my question is, in comparison to

the, you know, traditional securities market, where we have to be concerned with the market (inaudible), or insider trading, or other (inaudible) misconduct, do we have, you know, same (inaudible) using the conduct- based test?

So, you know, a swap market where, you know -- like an aggregation of the positions to get the most diversification benefit or (inaudible) benefit would be kind of prevalent.

Thank you.

MR. RAMSAY: I appreciate the question. If I interpret it correctly -- and as I think I said -- the fact that there certainly are relevant differences in terms of the characteristics of the swaps markets versus traditional -- although traditional securities markets have become much more globalized than they have in the past, but there are certainly significant differences that ought to bear on questions about how broadly one might apply the rules of any one jurisdiction to activities outside, and how you consider questions of substituted compliance, et cetera -- no question.

I was really just using that to make the point that, you know, from our perspective, looking at the traditional kind of jurisdictional question, even post- Morrison, you know, it's hard for us to understand why the jurisdictional question is a real question.

The question about kind of how broadly you should apply the rules is, of course, still a very significant one.

MR. BUSSEY: And then, on the other part of your question about -- I assume you're not suggesting that there's not fraud in the swaps market. I mean, you know, to the extent you can insider-trade on an equity security, or you can use some sort of derivative tied to that equity security to trade on that information -- and that's not speculation; that actually happens, and it happens cross- border.

I mean, and nobody should be skeptical about that. You know, that does happen.

And, in fact, getting to Steve's point

about -- we're not asserting that, you know, this -- I forgot who came up with intergalactic -- you know, this notion of, if it's a U.S. underlier, wherever it is in the world, whoever's doing it, it's, you know, somehow subject to U.S. Jurisdiction.

I think the point that Wally made -- you know, if it's a U.S. underlier -- frankly, if it's a French underlier for the French -- even if it's being done by two people in Asia, it could have an effect on their market -- not to say that they can assert jurisdiction, but they may have a regulatory interest in it.

And, in fact, I think some of the agreements that we've worked on internationally in the data space suggests that regulators have an interest in that information, in situations where they can't require the reporting of it.

But I think we need to be realistic, that there is, in fact, an ability -- at least in the security-based swap space -- to have fraud and manipulation through the derivatives markets, and those activities will impact U.S. Markets. I mean --

MR. RAMSAY: Right. Yes. And I definitely should add that, in distinguishing the characteristics of different markets, I don't know that I would single out the absence of the potential for fraud or manipulation as, you know, something that would uniquely characterize derivatives markets.

I mean, it wasn't -- just speaking of improprieties -- generally, it wasn't all that long where, you know, probably if somebody had suggested that there was the potential for inappropriate conduct in setting LIBOR rates or other rates like that, people might have found that a surprising proposition, until not so long ago.

MS. COHEN: I'd like to return, for a moment, to a point that John made that I thought was very powerful and so important, and that is the concept of high-quality regulation and the importance of definitions, which I think is very closely related to something else we've talked about, which is transparency and customer expectations.

So, I would say two things. First, returning to your question earlier, Mark, about those verbs -- for me, personally -- and I think, you know, I speak institutionally -- we don't think it's a very easy thing at all, and we don't think that we have enough detail to understand how to apply those three verbs in the context of a functioning marketplace.

And in the days between November 17 and January 3, we were spending a tremendous amount of time pouring through numbers of use cases and deciding, do we have to program it here, or here, or here? And those problems are actually going to continue to increase in a market that's electronifying, with new forms of conduct being introduced -- you know, some of them next week, and more over the months to come. So, I think that getting these definitions right and clear is critically important.

And then, of course, I want to point to something that, you know, is probably obvious to everybody, but is so important I think it bears remembering -- the SEC proposed a rule, took comments, is clearly listening to those comments, prior to going live with any meaningful derivative rules.

So, the important thing here is that customers who are going to deal in securities-based swaps will come to the market with clear transparency and expectations of what rules are going to apply to them, and in what context.

And to the context there's any consideration being given to such a meaningful change in the cross-border regime that's being applied to a, you know, functioning, you know, transformed derivatives market at this point, the confusion and disruption that it will create just must be taken into account, in terms of, you know, phasing something like that in, if it's determined to be good policy.

MR. HILL: And just to give you a real-world example of something like that -- when the November guidance came out, there was at least one, maybe several, electronic trading platforms in London that said, "If our prices were coming from a mainframe located in the United States, we would not be permitted to trade on their platform," because they were concerned about having to register as a SEF, because now we're in the context of, you know, are you negotiating whatever the requirements are? Literally, they wanted to know that the price was coming from a mainframe located outside the U.S.

So, it's clear that those rules are not clear, if we're getting questions like that.

MR. RAMSAY: I would just want to -- I've been wanting to make this point for a while, too, and I think that's a good sort of trigger for it -- is that I do think -- there, obviously, in this area, are a host of interpretive questions that have arisen, will continue to arise -- issues that are and will continue to be shared jointly by our agencies.

So, whether it's a question of, you know, the meaning of "arrange," "execute," or, you know, a host of other things, you know, it's certainly our hope, going forward -- we have a fresh opportunity to coordinate and, you know, to the extent possible, issue interpretations on relevant terms jointly with the CFTC, so that people may still be groping, to a certain extent, but there will be a narrower range of things, hopefully, that people will need to wonder about.

CHAIRMAN WETJEN: I was going to make just one other observation about the substituted compliance process -- and this point was made, at least indirectly, by others before.

~~But w~~We, at the CFTC, have already issued some determinations, and the European Commission has begun working on some, as well, and there's been a nice dialogue between the CFTC and the European Commission on those different matters.

And I'm not sure how it was done before at the CFTC, in regards to bringing to life this comparability and comprehensiveness approach that's, again, provided for in the statute. But the way it's been done more recently -- at least as long as I've been at the Commission -- has been with a great deal of rigor -- in fact, in a way, that probably has been, if not frustrating, a little bit -- at least has caused some anxiety, let's say, among some, because with that additional rigor, it's not always clear what the outcome will be, and whether it'll be as easy to find comparability.

But at least with respect to the determinations we've done already -- which relate to our entity-level requirements, and we issued those last December -- there is a great deal of rigor and careful analysis. And it might've been something just shy of line-by-line analysis of another country's regime, but, ultimately, the outcomes, I think, were what people would've expected -- in which to say there was comparability found for the six major jurisdictions. And where there was not comparability, it tended to be in the areas of some type of reporting obligation -- in which case -- and, again, it could be something redundant -- we required that reporting obligation of the entity located in that particular jurisdiction.

So, I think that's a good way to do it, because it's more difficult, and it takes more time. It doesn't, perhaps, lead to the outcome a lot of folks might wish, with the level of certainty they might want, but at least a very good, rigorous analysis.

And I think it's having the effect -- and I'd love to hear David and Hannah share their views on this, in terms of whether they agree -- but it seems to be having a good effect in terms of how other countries are implementing their reforms in the wake of -- if I can say it that way -- the CFTC putting its reforms in place. And we just happened to be, with a lot of that effort -- we're further through it.

And so that's my observation. It seems to be a pretty good approach. The comparability determinations are not being done willy-nilly, but we're, in fact, finding comparability in the jurisdictions you would expect, with just a little bit of added redundancy by way of reporting, for instance, at least in the entity space.

So, it seems to be working, but I want to hear the reaction or views of David and Hannah on that particular --

MR. BAILEY: Thanks, Chairman. And I'll agree. I think the two important aspects of an equivalence or a substituted compliance assessment are rigor and collaboration. So, that needs to be done in detail, and it needs to be done seriously, so it can provide confidence to market participants that it's been done to a high standard.

That reflects everything we've seen of the process so far -- certainly between the U.S. and Europe; a great deal of analysis. I think the last time this committee met on this topic, it was described as rocket science. And a lot of technical work has gone into that.

And the second point is, it needs to be done with a great deal of collaboration. I am no expert on the U.S. Statutes. I need the CFTC. I need the SEC's help to understand your rules -- and, actually, how you apply them in practice. And I know it's the same the other way round. And we spent a lot of time talking and understanding how you apply your rules.

So, with those two factors in place, then the process can work well. And, certainly, that's been our view of how things have worked to-date.

MS. RAYNER: Yeah, I would agree with what David says. I mean, it sounds like, you know, a much more simple approach to say, "Well, we'll look at the outcomes achieved, rather than looking for line-by-line equivalents." But, I mean, in actual fact, you do almost have to take a bottom-up approach, and examine your rules line-by-line to really get a good understanding as to what the content of the rules in another jurisdiction are, I think.

We're actually quite lucky, between the E.U. and the U.S. -- and particularly the CFTC -- because we did collaborate very closely as we developed our rules. We all know it was slightly behind in terms of implementation in Europe, but the CFTC and the Commission were going through the rule development stage largely at the same time, so we were able to share ideas, to share texts, and in some places, we've come out with essentially identical rules.

But, nonetheless, it needs to be a very, very thorough analysis as regulators, to get the comfort. But the outcome is that we've achieved the same regulatory objectives, and, you know, there does need to be a post- dialogue between regulators to really understand how we're applying our rules in practice.

And that's certainly the approach that we've been taking at the EC, and the approach that the CFTC has taken thus far.

Yeah, and we're seeing some progress. So, yeah, it's encouraging.

CHAIRMAN WETJEN: ~~Yeah, I mean,~~ ~~o~~Obviously, the details matter. And I'm thinking, at the moment, in particular about the details around our SEF regime, for instance. And we, of course, have been talking a great deal in recent weeks about that, and some of these details around our regime for SEFs have a lot of consequence.

So, it just would not be appropriate to, with a broad brush, take a gander at some other country's regulation, say, "That looks roughly the same," and be on with it. I just don't think that would work. I presume you guys would agree with that, too.

MS. RAYNER: It would save us a lot of time, but, yeah, we need to be thorough. I agree.

MR. BAILEY: I'll agree. And I think the announcement you mentioned earlier on the issuance of some no-action letters by the CFTC today in the trading space -- if you look into the detail of those, they indicate some of the level of detail that's had to be gone into, looking at how regimes can be made to work together.

And that's just one example. I think that's a positive step in taking forward some of the commitments outlined in the path forward.

So, we're very supportive of the Commission and the CFTC working together on taking those path forward commitments forward.

Obviously, I need to read the no-action letters in detail. And one thing that I think we've all learnt is, you've got to look at the footnotes. And so I will certainly be doing that on the flight home.

CHAIRMAN WETJEN: It'll be some number fewer than 1500 -- 52 or whatever it was.

MR. SERAFINI: Well, this seems like a good time to maybe call the meeting to a close. We'll end it on a high note.

I don't know, Chairman Wetjen, if you have any closing comments you want to make.

CHAIRMAN WETJEN: I don't, other than to thank all the members and, also, our panelists, our special guests from Europe and from the SEC. I think that your presence today added a lot of value to this conversation, and so I very, very much appreciate you being able to come join us today.

One other thing I might mention -- I think Teddy made the membership aware of this, but we're going to have a debriefing after the open meeting today upstairs for the membership and the panelists. So, we hope as many of you are able can join us upstairs.

And thanks again for everyone being here. Scott, do you have anything?

MR. SERAFINI: Great. At this point, as the GMAC DFO and temporary Chair of the committee, I adjourn the GMAC meeting. Thanks, everyone.

(Whereupon, at 5:08 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

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