

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

TECHNOLOGY ADVISORY COMMITTEE MEETING

Washington, D.C.
Thursday, September 12, 2013

1 PARTICIPANTS:

2 Commission Members:

3 GARY GENSLER, Chairman

4 BART CHILTON, Commissioner

5 SCOTT D. O'MALIA, Commissioner

6 MARK WETJEN, Commissioner

7 Panel No. 1: Swap Data Reporting:

Update on SDR Harmonization Efforts

8 JOHN ROGERS, Director, CFTC Office of Data and
Technology

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Perspective on Federal Coordination

10 RICHARD BERNER, Director, Office of Financial
Research

11

International Perspective on Cross-Border Data
Rules

12

13 NICOLAS GAUTHIER, Policy Officer, Internal Market
and Services DG, European Commission

14 Explanation of Commission's Part 45 Rules

15 LAURIE GUSOW, Special Counsel, CFTC Division of
Market Oversight

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17 Panel No. 2: Commission's Concept Release on
Automated Trading

18

Concept Release Overview

19 SEBASTIAN PUJOL SCHOTT, Associate Director, CFTC
Division of Market Oversight

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

2 (10:00 a.m.)

3 COMMISSIONER O'MALIA: All right. I'd
4 like to welcome all our TAC members and members of
5 the Subcommittee from our Data Working Group and
6 High Frequency, and Automated Trading Working
7 Group as well. And obviously thank all of our
8 witnesses who have agreed to participate on this
9 panel and future panels, including our staff, that
10 are going to provide some background on all this.

11 This is our 12th full TAC meeting since
12 its reconstitution in July of 2010. Our
13 discussion today will include three panels. First
14 is the SDR Data Harmonization, second is the
15 Commission's recently published Concept Release on
16 Automated Trading, and third is SEF registration
17 and compliant and MAT submissions, which are the
18 made available for trade submissions.

19 When I reinstated the TAC Advisory
20 Committee not long after I joined the Commission,
21 I did so with the goal of providing a means by
22 which the industry and the Commission could work

1 together to discuss and resolve issues related to
2 technology. And for the past two years, I've held
3 regular meetings of this organization to foster an
4 open discussion and find innovative solutions to
5 technology issues with respect to pre-trade
6 functionality, data standards, automated and high
7 frequency trading, and, most recently, customer
8 protection, which is going extraordinarily well.

9 Our first panel discussion today will be
10 on making improvements to the data reporting to
11 SDRs. We've been confronted by serious problems
12 related to the CFTC's acceptance, aggregation, and
13 analysis of data submitted to the repositories.

14 In July 2012, the Commission finalized
15 Parts 43 and 45 of the Commission regulations for
16 both real-time and regulatory reporting for swaps
17 transactions. However, because of the
18 inconsistencies and errors in these rules and in
19 the data, the Commission has not been able to
20 effectively utilize the reported data.

21 Accordingly, at the April 30th TAC
22 meeting, I asked the Commission staff and the

1 three temporarily registered SDRs to work on
2 harmonizing the data and improving the reporting
3 process field by field to ensure that the data is
4 inconsistent, it is usable regardless of how this
5 data is submitted to the SDRs.

6 Further, I've asked that this work be
7 carried out through the TAC so that the process
8 can be open to the public and benefit from
9 thoughtful consideration by market participants.
10 Using this feedback, we can hand over the work
11 done by the TAC to the Commission for possible
12 adoption in the future.

13 Today we will post the data
14 harmonization chart, which John Rogers will
15 present today. And our TAC website -- I've
16 modified the TAC website to not only provide
17 updates on the data harmonization efforts, and
18 we're going to create an opportunity for anybody
19 who wants to comment on that effort, provide an
20 area where we can accept letters. We've also
21 taken the opportunity to link in all the existing
22 SDRs and link them directly to their real time

1 reporting feed so you can get everything you need
2 in one-stop shopping right there on the TAC
3 website.

4 So I'm pleased that our first panel
5 today will begin with John Rogers, director of
6 Office and Data Technology, to report on the
7 progress made by the harmonization efforts, and
8 he's joined by the three SDRs. Next, we'll hear
9 from Richard Berner, director of Treasury's Office
10 of Financial Research, to discuss federal agency
11 coordination, which is a very important issue.
12 And then we'll hear from Nicolas Gauthier, the
13 policy officer of International Markets and
14 Services with the European Commission, who will
15 provide the European perspective on our
16 cross-border data issues. Mr. Gauthier has
17 provided the international perspective, and we're
18 honored to have him since he's come quite a ways
19 to participate in this.

20 Our second panel will address the
21 Commission's recently published Concept Release on
22 "Risk Controls and System Safeguards for Automated

1 Trading Environments." We will begin this second
2 panel with an overview of the Concept Release by
3 our staff, Sebastian Pujol Schott, who is the
4 associate director of Market Oversight, and then
5 begin a general discussion of the TAC Concept
6 Release, which was published earlier this week and
7 asked over a hundred questions about very specific
8 controls and their deployment in the market. I
9 realize the TAC and the Subcommittee members may
10 not have had a chance to engaged in a full
11 analysis. However, we've spent a considerable
12 amount of time on this issue in the past, and I
13 believe that this will certainly give us an
14 opportunity to explore the issues we've already
15 addressed.

16 And I think on all of your tables, we've
17 put a summary, a 20-page summary of all the issues
18 that we've discussed previously at TAC meetings on
19 pre-trade functionalities and different
20 presentations we've received. We've attempted to
21 summarize those in order to help you review that.

22 You know, I believe this is a very

1 important topic, and the TAC has been working to
2 understand the impact of automated and high
3 frequency trading in our markets. I'd also note
4 the SEC is holding a hearing today on the recent
5 NASDAQ trading troubles to better understand their
6 negative impacts technology has had on their
7 markets as well.

8 I'd like to thank our TAC members as
9 well as the Subcommittee on Data Standards and
10 High Frequency Trading for their hard work on
11 issues related to the automated trading and
12 pre-trade functionality. This body of work
13 includes a working definition of high frequency
14 trading, as well as recent TAC documents, which I
15 referenced. I'd like to build on that work and
16 understand how these issues will be affected by
17 our Concept Release.

18 A couple of questions I'd like to ask,
19 and I'd pose them right now, is I'd like to learn
20 more about the technology that is deployed today,
21 as well as its effectiveness. I think we provided
22 a cursory overview in our testing and supervision

1 document, but I know there's a lot more work and a
2 lot more effort, especially at the exchange levels
3 that are deployed today to make sure that our
4 markets operate effectively. So I'll certainly
5 look to the exchange leaders to kind of reflect on
6 that.

7 Second, I'd like to understand whether
8 there is a need for regulatory action with regard
9 to any of these measures currently in the market.
10 In other words, should the Commission act to
11 federalize current industry practices?

12 Finally, it would be beneficial to
13 receive feedback on the possibility of a
14 registration requirement for firms' operated
15 trading systems that are not otherwise regulated
16 by the Commission. The Concept Release cites the
17 definition of "floor broker" as a potential basis
18 for such a requirement. I'm interested to get
19 public input on whether this provision or any
20 other provisions in our statute or regulation can
21 serve as a legal basis for that registration.

22 Finally, I'd like to -- an issue that

1 should be very exciting and that we've been
2 receiving a lot of feedback very recently is on
3 the swap execution facilities and the made
4 available for trade determinations. The third
5 panel will raise a variety of issues that I have
6 heard, I hopefully will hear from, and SEF and the
7 SEF participants that are facing due to the
8 rapidly-approaching SEF trading compliance date.
9 We're only 20 days away from our October 2nd
10 deadline. This means that we only have a few days
11 before ribbon cutting ceremonies and to get
12 everybody up and running. And obviously with that
13 comes the shutdown of exempt commercial markets
14 and exempt boards of trade.

15 As of today, the staff has registered
16 temporarily three SEFs from two entities, and we
17 have about 15 more applications to review and
18 complete by the October 2nd deadline. We've heard
19 concerns from different market participants
20 regarding various interpretations of the SEF rules
21 and a number of operational challenges that
22 they've raised. I'd like to have an open

1 discussion on the number of issues surrounding
2 onboarding, clearing certainty, uniformity of SEF
3 rulebooks, and the status of the made available
4 for trade determinations, which we have not yet
5 seen.

6 And, of course, finally we'd like to
7 have some understanding and discussion on the
8 recognition of foreign trading platforms, and we
9 will call on Nicolas again to provide the European
10 perspective. To address these issues, we'll have
11 David Van Wagner and, I believe Ananda
12 Radhakrishnan will also present from our staff as
13 well.

14 Let me thank everyone for attending
15 today, and I look forward to addressing these
16 issues on all three panels. And let me turn to
17 the Chairman for his remarks.

18 CHAIRMAN GENSLER: I want to thank all
19 of the participants of this Advisory Committee for
20 participating today. But more than just your
21 participation today, your advice to us comes at a
22 very interesting time in the swaps market. Your

1 advice, it's always interesting, but today it's a
2 particularly interesting time.

3 I want to thank Commissioner Scott
4 O'Malia for his thoughtful leadership of this
5 committee, not only bringing it back to life,
6 Scott, but I think you've really brought the best
7 of market participants' advice to this Commission.
8 I say that just thinking about one thing we did
9 this week. This Concept Release we put out was so
10 informed. I know we put out 124 questions, so it
11 seems like your work has just begun, and others in
12 that regard.

13 I want to thank my fellow Commissioners.
14 I don't know if Bart is on the phone, but Mark
15 Wetjen, who is here, and Bart Chilton. Bart, also
16 remarkable amount of time and effort into the
17 Concept Release that we just put out. So I want
18 to thank him as well.

19 I look forward to each of the three
20 panels that Scott reviewed: Swap Data Reporting,
21 the Commission Concept Release, and Swap Execution
22 Facilities.

1 In terms of data, it's a remarkable time
2 where we are. The public and regulators are now
3 benefiting from a new market transparency. Let's
4 think about it. The public, starting last
5 December 31st and through a series of
6 implementation dates that ran through August 19th,
7 now can see the price and volume of each swap
8 transaction as it occurs, sometimes with some time
9 delay. Sometimes it's all the way up to a 48-hour
10 time delay if it's an energy swap between two end
11 users. But sometimes it's as soon as
12 technologically practicable were the words that
13 Congress used for the marketplace.

14 And with most of these compliance dates
15 behind us, there is \$410 trillion notional value
16 of swaps reporting into the data repositories. I
17 will repeat that again. It's \$410 trillion, and
18 that's with no double counting. So if
19 Commissioner O'Malia entered into a trade with me
20 and we happened to clear it on any of the
21 clearinghouses in this room -- I want to just to
22 pick you out, Tom. By the way, welcome to Tom

1 Farley who has just joined the Committee. But it
2 could be to Bryan's clearinghouse, and is LCH
3 here? I don't know. All right. But no double
4 counting. So that's \$410 trillion notional amount
5 are in the data repositories, and that means the
6 real-time reporting is on that body as well. And
7 for the first time the public is getting to see
8 that.

9 There is another compliance data on
10 September 30th. These are for the transactions
11 for far-flung affiliates of U.S. persons, the
12 so-called guaranteed affiliates that will come in
13 on September 30th. But by and large, that's a
14 pretty big data set.

15 Now, there's still work to be done as
16 this Committee will advise us, as other Committees
17 will -- John Rogers is working so closely with the
18 three registered swap data repositories, and that
19 our friends from the Treasury, OFR, are helping us
20 out so much on.

21 It's really, to me, at a core about
22 making sure that the data that it's in the data

1 warehouses is, one, reliable, and, two,
2 accessible. That regulators can access it, that
3 there's a way to sort it, filter it, come to some
4 judgments, whether it's by counterparty, whether
5 it's by trade date, whether it's by product. And
6 that's going to be a journey. I mean, we might be
7 nine months into this, but there's still work to
8 be done.

9 Second, I'm very much looking forward to
10 hearing from you on the Concept Release, the
11 release, I think, a thoughtful set of questions
12 intended to stir public debate. And I have no
13 doubt there will be some public debate about that,
14 but that's, I think, good.

15 The goal of the CFTC is to best protect
16 the functioning of the markets for the benefits of
17 farmers, and ranchers, and merchants, and other
18 end users who rely on the markets to hedge risk.
19 But we've witnessed a fundamental shift in markets
20 from human-based trading to highly- automated
21 trading. Automated trading systems, yes,
22 including high frequency trading, but this Concept

1 Release was largely just focused on automated
2 trading systems, enter the market and execute in a
3 matter of milliseconds without human involvement.
4 And our statistics show that electronic trading is
5 now over 91, nearly 92 percent of the future's
6 market. And as we move to swap execution
7 facilities, as we move to centrally-cleared swaps,
8 one could expect similar ratios in time in the
9 swaps market as well.

10 So in our oversight of the derivatives
11 markets, both futures and swaps, I think the CFTC
12 must look continually to adapt our regulations in
13 changing times, and our mission to promote
14 transparency and ensure market integrity to
15 prohibit abuses is just as important in a fast-
16 moving electronic world as it is when it's by
17 phone or even when it was on a pit or in a pit or
18 on a trading floor.

19 We've already taken a number of steps.
20 You're familiar with them. You've debated them.
21 I think we've been trying to keep abreast of the
22 rapidly-changing environment in the 21st century.

1 We've adopted rules on pre-trade risk filters.
2 You all have helped debate 1.73, 1.74, and your
3 friendly comments on those rules have helped us.
4 We've adopted many other rules around designated
5 contract markets and swap execution facilities.
6 But I daresay I don't think our work is done, and
7 that's why we put out the Concept Release to get
8 your public feedback in this ever-changing world.

9 And as sure as computers and programs
10 have had technical glitches in the past --
11 Commissioner O'Malia mentioned the NASDAQ, though
12 that was in the securities field -- I believe
13 there will be glitches in the future.

14 I think that's just the nature of this
15 reality we're in. And, thus, I think we have to
16 look for risk controls and system safeguards to
17 protect markets when such glitches occur
18 inevitably. I don't think we can sort of just
19 say, oh, we won't have them, the same way I think
20 there will be firms that fail from time to time,
21 and that's part of capitalism, and that's part of
22 having a freedom to fail. So I think it's a

1 matter of making sure that clearinghouses, the
2 trading venues, yes, the data repositories as well
3 are robust enough and resilient that when somebody
4 has a glitch or fails, that we ensure that the
5 central functioning of the markets continue.

6 Commissioner O'Malia was good enough to
7 put on a panel on swap execution facilities. And
8 with swap execution facilities, we will have
9 additional transparency in the market for
10 pre-trade transparency. In essence, all market
11 participants will be able to have access because
12 the two core features of swap execution
13 facilities: Impartial access and that there is an
14 order book that somebody can leave a live
15 executable bid or offer in. They may choose not
16 to use it, and they might go the RFQ route or
17 another route, but there will be impartial access
18 and order books for those who want to use it. I
19 think it really does help competition and access
20 in the market.

21 The key compliance date is October 2nd,
22 20 days away, as we know. We have three swap

1 execution facilities registered. I think overall
2 we have 17 facilities applications, meaning 14
3 plus the 3. We've heard from 3 or 4 others, so we
4 now have that universe of approximately 15 to 20.

5 What does it mean? In October, given
6 that all these platforms will have impartial
7 access and order books means anyone who wants to
8 come into the market and compete with these new
9 tools will be able to do so. This is truly a
10 paradigm shift, and we understand that there are
11 going to be issues that arise. And just as we
12 have for the clearing mandate, just as we have for
13 swap dealer registration that started nine months
14 ago, just as we continue to do with the three swap
15 data repositories here, we want to work with
16 market participants to smooth this transition.

17 And as you have -- you know that once
18 the SEFs become live, there's going to be some
19 data reporting changes, that the traditional
20 reporting of the last nine months from the
21 dealers, some of that will shift to the SEFs. So
22 we're going to need to work through that. We

1 might find that there's time issues and other ways
2 that we'll need to smooth those issues as data
3 reporting protocols change. Clearing protocols
4 may change, and so forth. Participant -- as I was
5 walking around, I heard some issues about
6 participant agreements.

7 We want to hear from you, and if you
8 have an issue, that's David Van Wagner and Nancy
9 Markowitz. I just want to make sure you know.
10 And that's at cftc.gov, please. I encourage
11 everyone to please let us know of your issues
12 because we want to smooth this transition. We
13 appreciate it is a very fundamental shift.

14 Before I close, I want to do a bit of
15 shout out to both market participants and the
16 CFTC, and it's about central clearing. We worked
17 together over four plus years on bringing a
18 central clearing mandate together. Congress, the
19 President, the international community, the
20 European Union that's represented well here, and
21 Japan, and so forth, now all have clearing
22 mandates. Our clearing mandate had three key

1 trade implementation dates. The last and final
2 one passed September 9th of this year. So the
3 interest rate market and credit index market by
4 and large we've implemented these mandates.

5 The four interest rate curves represent
6 approximately 90 percent of the interest rate
7 curves. I mean, there are other currencies, but
8 that's about 90 percent of the interest rate
9 curves. And what have we found? When we look in
10 the data repositories today, about half of the
11 interest rate market in our jurisdictions -- I
12 said there's about \$410 trillion in the data
13 repositories. I don't recall their exact number,
14 but it's between \$360 and \$370 trillion of that is
15 interest rate swaps. And about half of that is
16 cleared or a little bit more than half. In 2008,
17 looking at data on the ISDA website, so I'll quote
18 them, 21 percent of the market was cleared in
19 interest rate swaps in December of 2008. Five
20 years later, it's half.

21 We have one additional compliance date
22 -- it's October 9th -- when the far-flung

1 operations of U.S. Enterprises, their guaranteed
2 affiliates and branches will come into central
3 clearing, as well as the P.O. Box hedge funds.
4 This is basically if you have a principal place of
5 business here in the U.S., but you happen to be
6 incorporated in the Cayman Islands, which is
7 probably three-quarters or 90 percent of the U.S.
8 hedge fund community. That, too, has to come into
9 clearing. So I would anticipate that as we move
10 into 2014, you will see this number grow to closer
11 to two-thirds of the market, two-thirds of the
12 interest rate market, being in the central
13 clearing.

14 A big shout out to the market because it
15 wasn't easy. There are still issues. We need to
16 hear those issues. But a particular shout out to
17 the CFTC staff and my fellow Commissioners and a
18 thank you. Scott?

19 COMMISSIONER O'MALIA: Thank you, Mr.
20 Chairman. I believe we have Commissioner Chilton.

21 COMMISSIONER CHILTON: Yeah, I'm here,
22 thank you. Thank you, Commissioner O'Malia,

1 Chairman O'Malia, for this, and I appreciate the
2 Chairman's comments, too.

3 I just want to make a couple of real
4 quick points. One, I've been concerned that with
5 all the technology out there, I mean, they're
6 doing a great job. There's all sorts of wild
7 things going on. They're killing it. I just want
8 to make sure that they're not killing end users or
9 killing markets or killing consumers. And I think
10 all too often, we've just accepted that technology
11 is all good.

12 And, you know, look, at times technology
13 has made a big, hot mess of markets. And I think
14 this Concept Release goes a long way to helping us
15 figure out what we need to do to be a little ahead
16 of the curve. We're not ahead of the curve now,
17 and there are some basic that I hope don't take a
18 year. I hope we can get something out by the end
19 of this year with regard to what we may do. And
20 that's what I'm interested in hearing about today.
21 Those things are registration, testing, and
22 creating an environment, by the way. The

1 exchanges, I think, should create an environment
2 for testing by the CHTAs by the HFTs, and ASTs,
3 and then finally, kill switches. So those three
4 things -- registration, testing, kill switches.

5 And then, I'd be remiss if I didn't
6 mention I continue to be concerned about things
7 that look to me, and I think to a lot of others,
8 like they may be wash sales. I think those have
9 the possibility. I think at times they have
10 contorted markets. I was pleased to learn that
11 the intercontinental exchanges requiring mandatory
12 self-trade prevention mechanisms, mandatory,
13 that's huge and it's important. And I think that
14 may be sort of the industry best practices
15 standard. So I'm interested in learning about
16 that and hearing more about that today.

17 So thank you again, Commissioner
18 O'Malia, Chairman O'Malia, and thanks to my
19 colleagues. I've got Chris Hehmeyer with me here
20 is going to participate, too, but we're pleased
21 that he was able to join me here in Chicago.
22 Thank you, Scott.

1 COMMISSIONER O'MALIA: Thank you.

2 Welcome, Chris.

3 COMMISSIONER WETJEN: Thanks,
4 Commissioner O'Malia. Thanks to the panelists and
5 participants today. I'm looking forward to a good
6 series of discussions on all these different
7 topics. I'm going to limit my remarks to just one
8 of the topics, and that's SEFs. And the Chairman
9 and I had talked about this issue this morning,
10 and there have been a number of conversations in
11 light of the SEF applicants now coming in and
12 submitting their forms, and also making a number
13 of different interpretations about what our rules
14 regarding SEFs actually mean. And so, that's
15 creating a host of questions and issues for the
16 Commission.

17 But I want to talk just a minute about
18 the cross- border element to all of this and to
19 the trading platforms. And I think all of us
20 Commissioners shared this view when we adopted the
21 guidance that what we're trying to accomplish in
22 the guidance as it related to execution was to

1 where we could avoid liquidity fragmentation.
2 That was something that I talked about quite a bit
3 over the summer. It was part of the discussions
4 we had internally here in the waning weeks before
5 we finalized the guidance.

6 And given the applicants that have come
7 in so far, it would seem that this shouldn't be
8 much of a concern. It would seem that the vision
9 of the guidance seems to be materializing, but we
10 have picked up some anecdotes here and there that
11 might be a platform or two or perhaps more located
12 outside the United States that might have concerns
13 about permitting access to their platform out of
14 fears that some other obligation by the CFTC might
15 be triggered.

16 And so, the only thing I wanted to say
17 about this is that, again, I think our policy is
18 designed to prevent fragmentation. And to the
19 degree there are any sort of concerns, be it with
20 registration or anything else, I would hope that
21 those platforms approach the Commission and begin
22 a dialogue with the staff and with the

1 Commissioners to see if there's not some way we
2 can figure out whatever issues they might have and
3 find a solution to them.

4 And, in fact, there's a conversation
5 regarding the specific platform outside the United
6 States that's already under way here at the
7 Commission. And the Chairman and the staff have
8 been able to consider a lot of different novel
9 ways of addressing a variety of problems
10 concerning compliance and implementation that this
11 platform presented to the Commission.

12 So that was just the one message I
13 wanted to relay here in this public setting that,
14 again, if there are platforms outside of the
15 United States that have liquidity providers from
16 the United States and have one issue or another,
17 that they should really come talk to the Agency
18 and figure out some way, enter into a new dialogue
19 to see if we can't figure out some way to address
20 whatever problems they might have, because we want
21 to make sure that these platforms that have
22 liquidity providers from all parts of the globe

1 are competing on something other than regulation,
2 so long as the regulation is equal or comparable.
3 We don't want platforms competing with each other
4 based on regulation. Again, that was what we
5 expressly tried to avoid in the guidance.

6 And there might be some circumstances in
7 some places where that's not going to be the case,
8 but by and large it should be the case that any
9 given platform should be able to attract
10 participants from all over the globe and do so and
11 comply with home country regulations, but also
12 match up pretty well with CFTC regulation, again,
13 all in an effort to make sure that they're
14 competing on services and technology, these
15 platforms, instead on regulation.

16 So again, I'd just encourage every
17 platform that has any of these sort of issues to
18 approach the Commission. And we look forward to
19 having those conversations.

20 COMMISSIONER O'MALIA: Thank you,
21 Commissioner Wetjen.

22 We're going to begin with our first

1 panel. We're going to lead with John Rogers, and
2 then we'll go to Richard, and then Nicolas. So,
3 John, you and the three SEFs or the three SDRs.
4 We look forward to your presentation. Take it
5 away.

6 MR. ROGERS: All right. Thank you very
7 much, Commissioner O'Malia. Good morning,
8 everyone. I should start by noting that all
9 statements and opinions expressed by me do not
10 represent -- are my own and do not represent the
11 views of any Commissioner or the Commission.

12 And now that I've gotten that out of the
13 way, I want to take you back to where we were on
14 April 30th just to start the conversation. We
15 have an effort going on that we call a data
16 harmonization effort. But really it is four
17 components rolled into one, and these are the four
18 components. And this is a slide from the last
19 presentation.

20 So there is the harmonization in and of
21 itself, and I think of harmonization from the
22 perspective -- from multiple perspectives.

1 Harmonization within an asset class -- is the
2 information represented in a consistent within an
3 asset class. Within an SDR, is that
4 representation consistent across asset classes
5 within an SDR -- within an SDR, I should say. And
6 then across SDRs, is the information represented
7 the same way, because ultimately our goal is to be
8 able to use information both within in an SDR and
9 then across SDRs for our regulatory purposes.

10 Data quality. You know, what exactly
11 are we doing to ensure data quality? How can we
12 improve data quality? It's a constant issue.
13 There are different levels of validation that
14 occur as would be expected, and there's a constant
15 move to improving data quality. Accessibility,
16 which is how do we get access to the data? You
17 know, there are really two methods: Data
18 delivered to us versus data on the portal -- on
19 each SDR's portal, and how do we improve that
20 accessibility so that we can do the aggregation
21 that Chairman Gensler mentioned.

22 And then analytics. So in that sense,

1 there are two categories of information. There
2 are operational statistics: How much information
3 are we getting in, what are the issues, what are
4 the changes that we're making from a capability
5 perspective, but then also the analytics from the
6 business perspective in terms of the analysis that
7 our Chief Economist's Office might do or from a
8 surveillance perspective.

9 So those are the things that we have
10 been focusing on since we began this effort and
11 since we presented in April.

12 The effort has been a highly
13 collaborative effort between CFTC and all of the
14 SDRs. There has been really two tracks as it
15 relates to that as well. The first is CFTC has
16 been working on a regular basis with each SDR
17 individually on specific circumstances related to
18 the data in their SDR, whether it is on quality,
19 whether it is on harmonization, whether it is on
20 understanding how their portal works and how to
21 use it, or how to utilize the data. And those are
22 regular conversations that go on.

1 But then there are cross-SDR meetings
2 where we're talking about the phase one field list
3 that Commissioner O'Malia mentioned and talking
4 about what those fields are, what our
5 understanding is of why those data elements are
6 important in making sure that we have a common
7 understanding of how that information is
8 represented so that we can bring information and
9 make use of it across the different SDRs.

10 Both of those activities, I would say,
11 certainly on a weekly basis we've been getting
12 together. But I would actually venture to say
13 that it's for the most part on a daily basis that
14 we've been getting together working through these
15 issues.

16 Our efforts have focused on the data
17 elements that are in multiple parts of the
18 regulation. There's been a lot of focus in our
19 internal conversations and probably elsewhere
20 around Part 45 and the PET fields that are in the
21 appendix on Part 45. But our focus is also on 43
22 and 49, basically all of the rules where data

1 would be flowing into the SDRs and how we can
2 harmonize based on that. Granted, is the biggest
3 component of that, but it's just one set of the
4 data. We're not limiting our discussion about
5 that.

6 One of the key components in our effort
7 has been, though, to focus on the data that is
8 already in the SDR, not necessarily focusing it
9 from the submitter to the SDR, but rather our view
10 -- CFTC's view -- of what information that it
11 needs to perform its regulatory function, and how
12 can the SDR data be harmonized so that we can make
13 use of that data in the most effective way? It's
14 a nuance, but it's an important nuance as we think
15 about the relationship of how data flows into the
16 SDR and how the Commission uses it.

17 Ideally, of course, if the information
18 flowing in is 100 percent harmonized and
19 standardized flowing into each SDR exactly the
20 same way, it's easier to use on the back end. But
21 it's something that we're working towards, but our
22 focus has been on the relationship of the CFTC to

1 the SDR part of that interface.

2 In the interest of getting through
3 actually discussions and having meaningful
4 dialogue on it, we've been focusing on credit as
5 the first asset class. When we first started
6 looking at information, we were thinking about all
7 of the data everywhere all the time, and that
8 becomes problematic because there's such high
9 volumes of data. But then you when you think
10 about different assets classes, there are
11 differences, of course, in that data.

12 So in the interest of moving away from
13 the notion of having conversations about how one
14 particular element is different in its
15 representation in the other commodity asset class
16 versus the credit asset class versus the interest
17 rate asset class, we focused on the credit space.
18 But the notion was when we picked our first set of
19 phase one fields, the fields that we've been
20 focusing on harmonizing right now, we've been
21 saying all along insomuch as these -- this
22 harmonization activity can be applied to all asset

1 classes, please do so. And I believe that that
2 effort is under way as well, but we will be
3 turning our attention, as we move forward with
4 this initiative, towards the other asset classes
5 in earnest, but hopefully be gaining leverage from
6 the existing phase one activities to apply so that
7 we're not having each phase take the same amount
8 of time.

9 It's important to focus on or to talk
10 about what things we're really not focusing on,
11 though, because we've been asked questions about
12 the notion of when you talk about harmonizing
13 data, are you talking about it from the
14 perspective of data that is being sent to CFTC or
15 data that is available on the portal? And the
16 answer to that question is actually both. We're
17 not trying to make a -- we're not trying to
18 distinguish between where the data is presented.
19 If the data needs to come back here, we want it to
20 be represented exactly the same way as it would be
21 on the portal.

22 There are different uses for this data

1 with people of different, you know, technology
2 skill sets or different complexities in terms of
3 manipulation. So when CFTC is wanting to look at
4 particular information, the portal representation
5 should be an exact reflection of the data if they
6 exported the data from the SDR and brought it back
7 to the Commission.

8 The other thing that has come up is, are
9 we talking about a particular schema? Are we
10 talking about a flavor of FIXML or FBML? We're
11 really focused on the content of the data and
12 understanding the meaning of the field and how
13 that meaning is represented more so than whether
14 it's delivered to us in FBML or FIXML. That will
15 come with time, but the method of transport to us
16 is not nearly as significant as understanding how
17 to make the most effective use of the data. So
18 that's where our focus has been.

19 The other thing that has been happening
20 with this effort, we've identified a number of
21 fields. I remember when we talked on April 30th,
22 I was referring to a list of 22 fields. Well,

1 we've moved away from that because in the dialogue
2 with the SDRs, 22 -- that number has changed, so
3 we coined the term "the phase one element of
4 fields" instead of saying, well, the 22 is really
5 33 now and that sort of thing.

6 What we are doing is developing an
7 action plan on a field by field basis. If we
8 understand how to harmonize this information, how
9 is that harmonization going to be implemented on a
10 field by field basis across the SDR? We achieve a
11 common understanding. If that common
12 understanding means that there is no change in the
13 SDR at all, then that is great. If it turns out
14 that there is a change, well, when is that change
15 going to be implemented? So we've been working
16 towards action plans in collaboration with the
17 SDRs on that effort.

18 The other thing that I want to mention
19 just as an outcropping of the last TAC meeting was
20 we had industry participants helping us with this
21 harmonization activity, and I wanted to thank them
22 because their help has been very valuable.

1 Specifically FIA has contributed to working with
2 us on the harmonization effort. ISDA has worked
3 with us as well, NFA and others. And I appreciate
4 that because they've been helping from the
5 perspective of looking at things from an XML
6 schema perspective or thinking about how elements
7 get broken down. So that's a very much
8 appreciated effort.

9 I wanted to get into the next phases of
10 this. The phase two effort will be to identify
11 additional elements, and we've identified more,
12 but we haven't begun that effort. We will
13 consider to focus on the credit asset class. We
14 are not working this effort in a serial manner.
15 We are working on phase one. We will start phase
16 two before phase one ends so that we can continue
17 to move things along.

18 One of our keen focuses has been on
19 certain core issues, for example, the impact on
20 the entities submitting the data so that we
21 understand and are trying to work within the
22 CFTC/SDR framework, but be mindful of the impact

1 of who is submitting the data. We're very mindful
2 of the release cycles that the SDRs have in terms
3 of making improvements to their portal, not just
4 for us, but for others in trying to work within
5 their release cycles. Very mindful of the notion
6 that for some of these areas, especially UPI in
7 particular, there are global standards that will
8 emerge, and thinking about how those are utilized,
9 leveraged. In other words, not trying to invent
10 standards for CFTC only to have them have to
11 change from a global context. And embracing
12 things like LEI.

13 And, of course, a lot of our
14 conversation has been to talk about what is the
15 data we need at CFTC, not necessarily how it's
16 implemented at an SDR. So we're really thinking
17 of it from the perspective of CFTC requirements as
18 a regulator to utilize data. The implementation
19 aspects of that are for the SDRs to work out.

20 There will be future phases. Phase
21 three will focus again on additional fields.
22 Phase four we anticipate will be a shift to

1 another asset class, and we will continue on this
2 effort. It's going to be an ongoing effort as we
3 move along, and we'll be thinking about additional
4 data elements as they come up.

5 So the process going forward will be to
6 take the best capabilities of each SDR, make them
7 ones that we would like each of the SDRs to adopt
8 from a functional perspective so that we're
9 getting the best of all of them, leveraging that,
10 to focus on the requirements of CFTC, as I
11 mentioned before, and to continue to work through
12 the action plans that we've already started to
13 line up.

14 So with that, I'm going to turn it over
15 to the SDRs so that they can give you their
16 perspective on the harmonization effort.

17 MR. TUPPER: Thank you. My name is
18 Bruce Tupper. I manage ISIS Global Repository
19 Services. I'd like to thank the Commission and
20 John's team for the opportunity to present a joint
21 update of the harmonization effort.

22 This first slide really speaks to just

1 the topics of what we've covered in this effort.
2 John mentioned many of the points in regards to
3 our efforts to harmonize data, and I'd like to
4 just as a background. Many of the SDRs up until
5 the April TAC meeting were really focused on
6 developing our systems, integrating customers, and
7 "standing up an SDR."

8 So to the Chairman's point, you know,
9 today we've successfully taken in over \$4 trillion
10 of data. That was the big focus prior to the
11 April meeting. And I think collectively I can
12 speak for all the SDRs. We heard the message very
13 clearly that there hadn't been given enough
14 attention to the data outputs that we give to
15 staff.

16 I believe that all the data truly is
17 there. It's just we hadn't had the opportunity to
18 actually collaboratively work together and John's
19 team to figure out how we should disseminate that
20 data to staff. So I do agree that that topic
21 probably wasn't given its attention.

22 I think to the point that we're all very

1 focused on, how do we get all this data in, and,
2 more importantly, how do we assist our customers
3 with their integration efforts? I think we all
4 can agree that SDRs are an entirely new market
5 infrastructure. Each of us had reporting
6 capabilities, but there was no "system," I think,
7 that adhered to hundreds of pages of the reporting
8 rules, Part 45, 43, and 46. So that was really
9 the focus at the beginning of the year. I do want
10 to just bring to our attention.

11 I think in regards to data quality John
12 had mentioned, we'll speak a little further about
13 that, but there's been a lot of strides made to
14 improve the data quality.

15 This was a topic of the April meeting,
16 and I always data quality to an SDR as the level
17 of margin of a clearinghouse. So when you're
18 operating as an SDR, you can ensure data quality
19 by having very high standards in regards to the
20 validation and the sort of bar you set for
21 participants to submit data into your repository.
22 And obviously, then the outputs are going to be

1 much better for staff, and it'll give them ability
2 to really aggregate the data amongst the three of
3 us easily because we're all working off sort of
4 common data elements.

5 In regards to accessibility, this has
6 been a very interesting topic. As a result of the
7 harmonization effort, I think it was an unexpected
8 benefit of working with John's staff. And up
9 until this date, we had worked with the attorneys
10 primarily with DMO in registration and compliance.
11 And we had never really had the benefit of
12 actually talking to the users here at the
13 Commission of the data. For example, you know,
14 the Office of the Chief Economist, they had
15 certain requirements as to the, you know, the data
16 sets and how they wanted to aggregate. The actual
17 oversight and analyst people who are looking at
18 the data, each of us had, I think, different
19 elements of our own regulatory component or user
20 interface, and we got a lot of feedback from the
21 users in regards to how we can improve each of our
22 modules so that it would have the ability to get

1 staff to search uncertain data fields, be able to
2 drill down on the data. So that's been an ongoing
3 process, and one I think that was, you know, a
4 very positive benefit that we hadn't planned on.

5 In regards to analytics, this has been
6 one where we've worked very hard with particularly
7 the Office of the Chief Economist and DMO. I
8 think there's two very specific examples we can
9 cite in regards to the analytics for the weekly
10 SDR operational report. This was requested by DMO
11 in regards to the type of data we take in. So
12 specifically, we each provided statistics around
13 the submissions, but we broke down submissions by
14 the rule type.

15 For example, we had Part 43, 45, and 46
16 submissions, which that was a little challenging.
17 But I think the benefit was leading up to the goal
18 live of the, say, end users, staff could track the
19 amount of submissions coming in for historical
20 reporting, and it gave them a real indication in
21 regards to are the end users making efforts to
22 adhere to their upcoming compliance date by

1 reporting all of their, you know, swap data back
2 to the passage of Dodd- Frank.

3 And the last report we're working on,
4 which is one that's more of an analytical report
5 -- obviously it's with the Office of the Chief
6 Economist -- is the CFTC swaps report. And that's
7 going to be focused on CDS for first phase. It's
8 a very comprehensive report that pulls, I would
9 say, a lot of data in regards to swaps that are
10 reported, and that's an ongoing process, but
11 that's one that I think we'll hopefully release in
12 the near future. But those are two specific
13 examples of our efforts.

14 I think in -- so this slide really
15 speaks to just our work from April until present.
16 I think, you know, the two main issues we
17 identified were obviously aggregation of data and
18 obviously the need for standardization of values.
19 So we spoke to that first point pretty well.

20 In regards to data values, an example I
21 can give is the adherence to the CC utility. So
22 in this point, I think really what the goal is

1 we're trying to do is we're trying to standardize
2 -- when you look at reporting the actual values
3 that you report on the low level, on the high
4 level the field or, you know, what is in the
5 report. So if we try and drill down to that
6 second level and we say, okay, how good is the
7 quality of the data, and John mentioned this
8 earlier.

9 One of the first areas that we tackled
10 were the CC -- adherence to the CC utility or the
11 use of LEIs. This was challenging because of the
12 staggered dates of reporting where you had the
13 swap dealers obviously reporting their data well
14 ahead of the end user community. They were
15 reporting trades on behalf of the end users, and
16 not all of those end users had registered for an
17 LEI or their temporary CC.

18 So we worked with the Technology Office
19 to develop a report that would show who had
20 registered, who hadn't. And it was really a
21 helpful report in order to create a list of end
22 users who needed to go and actually register their

1 CC or either update the name because the name had
2 been incorrectly been registered by the swap
3 dealer.

4 I think some key outcomes of all this
5 harmonization effort has been really series of
6 meetings that John's team has organized with the
7 SDRs. I can speak for myself. This is not
8 something we would've done without the
9 organization of the Commission.

10 I can honestly say that it has been a
11 very collaborative effort. I believe it's been
12 one that we've seen many more results than we
13 expected. I think at the beginning we were all
14 sort of leery to get in a room and work with our
15 competitors on this effort. But I do believe we
16 all recognize the need to have -- provide staff
17 with data that is in a format that can be easily
18 aggregated and that also would give the Commission
19 the information it needs to provide oversight of
20 the markets.

21 I would like to make just one point in
22 closing. I think in regards to rulemaking, early

1 on the SDRs were very involved with the rulemaking
2 process, particularly Parts 43 and 45. Recently
3 with the block rules, there were about seven page
4 amendments at the back of that rule set that
5 related to the real time ticker of Part 43. We
6 were never consulted on those rules. We're
7 supportive of more data, particularly with the
8 real time ticker and the importance.

9 What we would request is just that we be
10 consulted. There was only 60 days given to
11 implement, I'd say, a fairly substantial
12 technology change. At this stage of the game,
13 we're also trying to manage the real time ticker
14 in the systems, but also implement new rules. So
15 I really would hope that staff would engage us
16 early in the process so we can have the proper
17 amount to do that and give guidance and input into
18 how we can best achieve those, you know, future
19 rulemakings.

20 MS. COLLAXO: Hi. I'm Marrisau Collaxo.
21 I'm responsible for the U.S. swap data repository
22 at DTCC. So I'm actually going to cover the

1 actual effort that we've undertaken in terms of
2 reviewing the data fields. I would concur
3 obviously with what John mentioned in terms of the
4 harmonized effort and also Bruce. I'm a newer
5 member to the team, and, you know, I have
6 witnessed for myself the collaborative effort.
7 I've been in sessions where actually the
8 Commission staff was asked to leave so that we
9 could collaborate on fields. And we presented
10 back to John and his team that collaboration
11 effort.

12 So I would say certainly my observations
13 coming into it is that there is very much a real
14 desire to want the Commission and to be able to
15 utilize this data effectively. And the group is
16 certainly working towards that effort.

17 We have -- as three SDRs, we have
18 actually looked at the data. We have proposed
19 back recommendations where we had certain issues
20 in terms of description. And we also looked at it
21 from the perspective that whether -- you know,
22 some of the fields we looked at are not

1 necessarily expressly defined in Part 45 or Part
2 43, but we did see it as an effort that we can
3 derive those values and we provide them to the
4 Commission, and, therefore we proposed them as
5 data elements going forward that we can report.

6 So I think that, you know, demonstrates
7 a commitment that we do have in terms of ensuring
8 that staff can have this information available to
9 them, whether on the portal or through any other
10 output mechanism.

11 One of the key things that we want to
12 ensure, and John mentioned this in his update in
13 terms of the key outcomes, is that we are not
14 impacting our market participants as we're going
15 through this review. And obviously, you know,
16 with new regulations coming into play, we've got
17 the SEF rules coming forward, and, you know, the
18 block rules, as mentioned, and others, we want to
19 ensure that the market participants are able to --
20 to confidently rely on what's been there. And if
21 there are changes down the road that do impact
22 market participants, that that goes through a

1 rulemaking so they have the opportunity to respond
2 to that.

3 But again, as John mentioned, the focus
4 has very much been on what are the data elements
5 that the SDRs can derive from the information that
6 it already has? And how do we present that back
7 in a harmonized way so that the CFTC can utilize
8 the information and aggregate the information
9 across the SDRs?

10 I guess in terms of next steps, we want
11 to ensure that we're -- we've gained consensus
12 with John's team in terms of the final scope of
13 the data field's phase on and the definition so we
14 can proceed with our action plans.

15 The other key piece of that is we also
16 want to ensure that the action plans are tied to
17 the usability, so Bruce made some example of the
18 efforts with the economist's group. But we want
19 to ensure that there's actually results driven to
20 this, so that whether it's economists, or the
21 surveillance team, or DCR from the risk side that
22 the action plans that we're developing are tied to

1 those results. So when you ask what has happened
2 since then, we can actually show some results from
3 that.

4 That's it.

5 MS. GUSSOW: Hi. Thank you for this
6 opportunity to present to this panel. I will try
7 and make this brief. I know we're pressed for
8 time.

9 So my fellow panelists talked to all the
10 enhancements that we've made and all of the
11 progress that's been made to date. I get the
12 dubious honor of talking about the challenges as
13 we move forward as new rules become implemented,
14 and as we move forward and deeper into the
15 harmonization effort.

16 So I just wanted to reiterate that the
17 phases that we're doing are not for new data
18 fields. They are for values that are currently
19 being -- data that's currently being submitted to
20 the SDRs. However, there is discussions within --
21 there's been requests for -- from staff for
22 additional fields. We are in discussions with

1 respect to that. I would ask that the Commission
2 ensure that should we decide to put new fields
3 into place, that the industry be -- the industry
4 input be taken into account.

5 I know there were comment letters
6 provided by some of the end user community with
7 respect to their request for the same type of
8 latitude to be able to provide comments on those
9 fields, the cost and the complexity to them.
10 We're very sensitive to all of the efforts that
11 have been made to the end user community. We know
12 how hard it has been for them to implement some of
13 these changes, so additional fields are additional
14 challenges that they'll have to overcome and would
15 connected with additional costs to them.

16 Multiple resource demands. So we as an
17 SDR do not have unlimited resources, so we have to
18 balance new rules coming up. Bruce mentioned the
19 black trade rules. Some of the implementations
20 with respect to those with requests from the
21 Commission, as well as harmonization. So I just
22 wanted to highlight the fact that going forward we

1 have additional demands on our time, and any
2 demands will then, therefore, push back any of the
3 other issues that are being asked.

4 The Chairman mentioned the swaps
5 execution facilities. The go live date for them
6 is October 2nd. This will have an impact on our
7 data quality. That impact at this point is
8 unknown. The SEFs ultimately, when they go
9 online, will help with data quality as far as the
10 fact that when they go online, you'll have a
11 smaller subset of reporting counterparties. So to
12 the degree where there are problems with data
13 quality, we can work directly with those SDRs and
14 quickly get the data quality up to speed.

15 Having said that, there has been some
16 concern that has been expressed within the
17 marketplace that some of the participants are not
18 in a position to suppress data. So when the
19 reporting obligations shift to the SEFs, there are
20 -- particularly within the end user community,
21 there's concerns that they haven't built their
22 systems to be able to suppress reporting, so

1 there's the potential for dual reporting that
2 obviously would harm data quality at the SDRs.

3 COMMISSIONER O'MALIA: And I think one
4 of the things we mentioned as part of -- we did
5 receive some comments from the end users, which
6 has kind of forced me to rethink how we're going
7 to make sure we get public comment on all this.
8 We have a letter from EEI in specific, the Edison
9 Energy Institute. And I mentioned in my opening
10 statement that we want to make sure we have a form
11 in which people can comment and feel that they can
12 review the developments thus far.

13 John did not put the slide that
14 everybody has collaborated on the phase one.
15 We're going to put that on the TAC website, so you
16 can go there. It's got some descriptions about
17 the changes, the fields, et cetera. That's the
18 venue in which we want people to comment. We will
19 put the letters up there. We will put up the EEI
20 letter to make sure that they're reviewing it, and
21 make sure that this process is done as transparent
22 as possible.

1 Now, this is not guaranteeing a rule
2 change. This is the process that John is working
3 with the SDRs to really enhance our ability to see
4 the data. If we're going to make a requirement to
5 change data fields and to change requirements of
6 reporting entities, we will have to do that
7 through a rule change, correct, John?

8 MR. ROGERS: That's my understanding,
9 yes.

10 COMMISSIONER O'MALIA: And that requires
11 notice and comment. But what we're trying to do
12 using the website is to vet these changes so
13 people are informed and aware before they're
14 surprised by rulemaking or some sort of change by
15 the Commission.

16 So the goal is transparency, and the
17 best way we figured out how to do this without
18 obligating the Commission through a rulemaking, a
19 formal rulemaking, is to use the TAC website. So
20 again, another example of where the TAC can serve
21 a good interface between the market and the Agency
22 in vetting these things.

1 I'm going to go to the next
2 presentation. If you have any questions, just
3 write them down and we'll come back to this panel.
4 But I'd like to go to Richard to summarize where
5 we are and the goals and objectives of where we're
6 going to be broadly with federal coordination on
7 data. Richard, thanks for coming today.

8 MR. BERNER: Okay. Commissioner
9 O'Malia, thanks very much for having me. Thanks
10 also to the other Commissioners and to Chair
11 Gensler for having me today. I also want to thank
12 John Rogers for his leadership not just in this
13 work that's been discussed, but also for his
14 leadership in the study group that he is
15 co-chairing with Benoit Coeuré from the ACB, and
16 who is now chair of the CPSS, to achieve the
17 ability to harmonize data, to standardize them,
18 and to aggregate them across SDRs and
19 across-borders, because we live in a world of
20 global markets and global institutions. And
21 there's no escaping the fact that if we don't
22 standardize data and harmonize them across those

1 borders, then we won't be able to use them.

2 The title of my slides today, and I
3 don't know if you have them up on the screen.
4 But, you know, I labeled it "SDR Data Collection:
5 Coordinating and Moving Forward." I think the
6 punch line is going to be that federal
7 coordination, primarily through the Financial
8 Stability Oversight Council, and I'll talk about
9 that in just a second, really involved the same
10 kind of harmonization and standardization of data
11 from cradle to grave that is so important for all
12 of our data efforts. So I think this is just a
13 metaphor, you know, for doing that.

14 Just to step back a little bit on the
15 first slide, answer questions that you should all
16 be familiar with, why are we collecting these data
17 on a granular basis in the first place? Obviously
18 there's a statutory requirement. But from the
19 perspective of the Financial Stability Oversight
20 Council, the goal is to assess and monitor threats
21 to financial stability. And from our perspective
22 at the Office of Financial Research, our goal is

1 to serve the needs of the Council and to fill in
2 the gaps in data collection and analysis, and in
3 data standards among and between all the members
4 of the Council, which, of course, includes the
5 CFTC, the other regulators, and the other
6 supervisors. So this is true across all asset
7 classes, and it's true all borders. It's also
8 from the perspective of doing analysis and for
9 monitoring from a supervisory perspective.

10 Our goal is to look at exposures, to
11 look at interconnectedness and concentration, all
12 of which we think in combination may be things
13 that we want to look at to assess and monitor those
14 threats. We need, therefore, very granular,
15 detailed data, transaction level and position
16 data. We need to be able to aggregate those data on
17 swaps and in other derivatives in a whole range of
18 asset classes.

19 We've been looking forward to the
20 implementation of the SDRs, which are obviously
21 changing the game at this point, and I'll talk
22 about that in a moment. But the ability to

1 compare and aggregate those data across the SDRs,
2 across-borders, is absolutely critical to our
3 ability in the Council and to our counterparts
4 around the world, to asses and monitor those
5 threats. And the ability to share those data with
6 and across the Council and across the globe is
7 absolutely essential, and standards are a key in
8 enabling us to do that in a way that makes them
9 intelligible and also preserves the data's
10 confidentiality.

11 So on the next slide, the potential for
12 -- from SDRs is clear. They are high quality, low
13 cost data collection points, and can give us data
14 in a way we've never gotten before. They allow us
15 sufficiently and coherently to collect very
16 granular data and to use them and to store them
17 both on transactions levels and positions, and
18 also the terms and conditions into which those
19 transactions were entered.

20 When we lack data standards, we clearly
21 don't have the ability to aggregate, to compare,
22 to analyze, to process or to report those data.

1 When we lack standards, we can't assess the
2 quality of those data when we lack data standards.
3 Therefore, basically we can't do our job in the
4 Council in order to assess and monitor threats
5 that might arise in these markets, or in their
6 connections with other markets around the world.

7 Standards are clearly the remedy. I
8 think that's something on which we all agree. And
9 from a global perspective, I mentioned John's work
10 on the study groups that's working now under the
11 auspices of the FSB. The other co-chair is Benoit
12 Coeuré. Benoit gave a speech today in Paris that
13 I commend to your attention that deals with some
14 of these issues, and that speaks to the need to
15 use standards to avoid the data fragmentation
16 across-borders that otherwise will occur.

17 Implementation early in the process of
18 data standards is critical. They allow us to
19 coherently collect data in any SDR and to
20 aggregate and compare data across SDRs and
21 across-borders. The implementation reflects the
22 need to use standards for entity identification.

1 Bruce mentioned the use of the CC and the LEIs.
2 Obviously those are important. Equally important
3 will be the use of instrument and product
4 identifiers, some of which exist, but not all of
5 which exist. And the use of hierarchies to
6 organize those data in a coherent framework and
7 those identifiers in a coherent framework so that
8 we can compare and aggregate similar, but not
9 exactly alike, either entities in a particular
10 industry segment or instruments in a particular
11 asset class, and both with respect to entities and
12 instruments.

13 And we're not seeking to replace those
14 or wipe those off the map. Rather, any coherent
15 set of standards that are developed need to have a
16 crosswalk between what exists already and those
17 which will be developed and agreed upon so that we
18 can leverage those existing standards, which were,
19 after all, developed by industry to meet their
20 specific needs. Hopefully by doing that, we can
21 achieve more standardization, more commonality and
22 definition, more precision and definition of

1 instruments and entities, and more ability to
2 achieve the kind of quality and scope and data
3 that we're all looking for.

4 So I want to keep my remarks brief so
5 that we can get back on track here, and I welcome
6 any comments and questions you have.

7 COMMISSIONER O'MALIA: Thank you,
8 Richard, very much. Nicolas?

9 MR. GAUTHIER: First of all, I would
10 like to thank the CFTC, and in particular,
11 Commissioner O'Malia, for inviting the European
12 Commission to speak today on these important
13 issues.

14 What I would like to do in my
15 presentation on this first panel is to explain
16 where the EU in the definition of an international
17 framework for trade repositories and the reporting
18 obligation. Then I would like to explain why we
19 are in the implementation of this framework. And
20 to finish, I'd like to say a few words about the
21 challenges ahead of us in the implementation of
22 this new framework.

1 So MEA sets out a full-fledged system of
2 cross-border recognition of trade repositories and
3 the reporting obligations. First, MEA defines the
4 recognition procedure for trade repositories
5 established outside the EU. This procedure is
6 very important because it will enable EU
7 counterparties to non-use EU trade repositories to
8 fulfill the reporting obligation. The recognition
9 of a trade repository is subject to three main
10 conditions. The first one is equivalence
11 decision. It means that we will check that
12 requirement in the third country equivalent where
13 your requirements apply to the supervision of the
14 trade repository. The second one are related to
15 the requirements guaranteeing that the protection
16 in the third country. And the last one -- last,
17 but not least -- the conclusion of an
18 international agreement guaranteeing the direct
19 access to trade repository data by EU
20 counterparties.

21 The second element of our international
22 framework in the field of reporting and trade

1 repositories is a guarantee that foreign
2 authorities can access (inaudible) in EU trade
3 repositories. The condition is the conclusion of
4 the international agreement I mentioned when we
5 refer to authorities of countries where a trade
6 repository is established. When no trade
7 repository is established, a cooperation
8 arrangement between ESMA and the foreign competent
9 authorities is necessary.

10 The third piece of this framework
11 includes (inaudible) provisions that apply to the
12 reporting obligation. The purpose of these
13 provisions is simple. It's to enable
14 counterparties entering into cross-border trades
15 to comply with one single set of rules with regard
16 to the reporting obligation. So the condition to
17 that is the (inaudible) of an equivalence decision
18 by the European Commission. This decision will
19 recognize that there is a similar equivalent
20 reporting obligation in the third country's
21 jurisdiction. And once this decision has been
22 adopted, if you had a trade between a counterparty

1 in Madrid and a counterparty in Philadelphia, they
2 can choose to -- the European counterparty can
3 choose to comply with a MEA or CFTC requirements
4 to meet its obligations.

5 Now, where are we in the implementation
6 of these requirements? The European Commission,
7 in cooperation with the European Securities Market
8 Authority, is actively working on the development
9 of the equivalence decisions needed for the
10 recognition of trade repositories and reporting
11 obligations. On the 2nd of September, ESMA
12 developed technical advice on these issues for a
13 number of jurisdictions, including the United
14 States of America. ESMA's advice establishes that
15 the U.S. supervisory framework for trade
16 repositories, as well as the reporting obligation,
17 is to a large extent similar to the EU framework.

18 However, the advice mentioned certain
19 issues, such as the fact that the U.S. framework
20 does not include similar provisions on the
21 operation or separation of ancillary services of
22 TRs. However, this solution will not enable EU

1 authorities to access data that are not deemed
2 reported in accordance with the EU reporting
3 obligations. So, for instance, if you have a
4 trade contract with the EU underlying, concluded
5 between EU entities not subject to the reporting
6 obligation in the EU, European regulators
7 identified in this advice in the coming weeks and
8 months.

9 Regarding the international agreement,
10 we have already prepared recommendations to the
11 Council of Ministers with a view, in addition, to
12 shortly open negotiation with third countries,
13 including the U.S., on mutual access to trade
14 repositories data.

15 Now, let's turn to the other challenges
16 ahead beyond the implementation of this framework.
17 I think here I will concur with a couple of points
18 that have been already mentioned by the previous
19 speakers. Reporting and access to data are
20 extremely important, but the harmonization of data
21 is no less crucial.

22 The future landscape of the trade

1 repository industry is likely to be quite
2 fragmented worldwide. We'll have several TRs for
3 the same class of products. Hence, regulators
4 will need to be able to reconcile data collected
5 from multiple TRs if they want to have
6 comprehensive and meaningful information.

7 In the European Union, the
8 counterparties to a trade are required to generate
9 unique trade (inaudible) to enable to trade
10 repositories to aggregate and compile data across
11 different trade repositories. We have this
12 obligation, however, to make it real. We will
13 need to work further on global aggregation of data
14 across trade repositories established in the
15 jurisdiction in cooperation with the other
16 relevant authorities. In that respect, the
17 working group that has been established recently
18 by the FSB will do a very important job to
19 harmonize reporting and trade formats.

20 Thank you.

21 COMMISSIONER O'MALIA: Thank you very
22 much, Nicolas. Anybody have any questions

1 regarding any of the presentations? While you're
2 think about it, I have one quick question,
3 Richard. How does OFR get access to the data in
4 the trade repositories, in U.S. trade
5 repositories? Do you have direct access when
6 you're look the data today, or are you working
7 with, and maybe you might comment on other bank
8 supervisors, OCC, the Fed, et cetera.

9 MR. BERNER: Sure. It's a great
10 question, Commissioner O'Malia, and I think it's
11 an important one. We entered into memoranda of
12 understanding. There is a blanket MOU that covers
13 all members of the Council of the Financial
14 Stability Oversight Council. But it's generic.
15 And really in order to cover the specific needs
16 for specific data, we enter into MOUs.

17 Thanks to the good work of people like
18 Marissau Collaxo, we've entered into, for example,
19 an MOU with DTCC to obtain access to the trade
20 repository data in DTCC and the trade warehouse.
21 That required approval from you and from the
22 Federal Reserve and from the SEC as the three

1 primary regulators for DTCC.

2 And that process is something that we
3 pursue in basically all of our MOUs. So it's a
4 process that really respects the differentiation
5 among different data types. It's a process that
6 specifies who has access to the data, who will get
7 access to -- with whom we can share the data or
8 not, and, therefore, protects the confidentiality
9 of the data while permitting accessing for the
10 analysis that we do and the financial stability
11 monitoring that we do on behalf of the Council.

12 COMMISSIONER WETJEN: Richard, just so
13 I'm clear, there's just one MOU that gives all of
14 the regulators access? You referred to it as a
15 blanket MOU?

16 MR. BERNER: Commissioner Wetjen,
17 there's a blanket MOU, but each specific set of
18 data usually requires a, unless it's so generic
19 and anodyne that it really doesn't require any
20 other specifics. Typically, we enter into other
21 memoranda of understanding on a bilateral or
22 multilateral basis, which accommodate the

1 specifics of the data in question, so.

2 COMMISSIONER WETJEN: And so one that's
3 more specific, is that just OFR then that enters
4 into the MOU with the FTR?

5 MR. BERNER: It may. It depends on the
6 circumstances. It may be OFR. It may be
7 multilateral. It may be bilateral. Each one is
8 crafted in order to give access to the right
9 people and prevent the wrong people from getting
10 access to the data.

11 COMMISSIONER O'MALIA: On the issue --
12 Congress required indemnification of the SDRs. Is
13 that a factor for you, and maybe, Nicolas, maybe
14 you could respond, how does that impede
15 international cooperation?

16 MR. BERNER: I'm glad you asked the
17 question because it is an issue. In other words,
18 had you downloaded data, for example, that we
19 could look at together with John and his team, you
20 know, to try to work together to assess the
21 quality and where the problems might be, in order
22 to get access to the SDR, there needs to be some

1 kind of waiver of the indemnification procedure,
2 and that is an issue.

3 COMMISSIONER O'MALIA: Nicolas, is this
4 something that you -- the EU have concerns or
5 thoughts about?

6 MR. GAUTHIER: Yes, indeed. I think we
7 have exactly the same issue with regard to the
8 indemnification requirement because it could
9 prevent direct access -- direct and unfettered
10 access to data by EU authorities because it would
11 mean that EU authorities would have to enter into
12 an indemnification agreement with TRs. And the
13 problem we have is that in accordance with the
14 rules to recognize a foreign TR, there must direct
15 access.

16 So it is questionable whether we could
17 consider that this condition is met if we have an
18 indemnification requirement.

19 COMMISSIONER O'MALIA: Any thoughts or
20 questions for this panel? If not, we're going to
21 move to the HFT discussion.

22 Oh, Wally?

1 MR. TURBEVILLE: Just a quick question.
2 Ms. Torphy, you mentioned, and this is for
3 everybody because it's a subject you mentioned,
4 you talked about resource constraints as things
5 are developed and responsive to new regulatory
6 matters. I'm just sort of interested in how that
7 works in that if there's a new regulatory
8 requirement, all of the SDRs would have to comply
9 with it, and it would not be a competitive
10 disadvantage for anybody.

11 MS. GUSSOW: I was just merely pointing
12 out that harmonization as an effort has to be
13 weighed against all of the new regulatory rules
14 coming online and all of that, that there is a
15 balance between all of that. And a push in
16 bringing harmonization to the forefront quicker
17 means, you know, there's a balance.

18 MR. TURBEVILLE: And that's all I'm
19 interested in --

20 MS. GUSSOW: Yeah.

21 MR. TURBEVILLE: -- understanding better
22 how the balance should be measured.

1 MS. GUSSOW: I see.

2 MR. TURBEVILLE: And so, the question
3 is, is it effects on the SDRs, is it effects on
4 the customers of the SDRs?

5 MS. GUSSOW: I think it could be both,
6 right? So the -- the harmonization that we're
7 talking about now is really contained within the
8 SDR community. So, for instance, what we're
9 talking about is either presenting fields in a new
10 way, so data that we already get that's produced
11 in a way that is similar throughout the SDRs or
12 driving value.

13 So from our perspective, what we're
14 talking about here when we talk about
15 harmonization really has to do with data we
16 already get. So when we're talking about resource
17 constraints with respect to the phases that we're
18 talking about, it's -- I think it's specific to
19 the SDRs.

20 To the degree where additional fields
21 are required, that would also impact end user
22 community and other entities that were reporting.

1 MS. GUSSOW: If I could just add, the
2 Chairman mentions an evolution, right, and I think
3 the key thing is as we are navigating this
4 landscape, as new rules are coming and additional
5 implementations are under way, we want to ensure
6 -- and I mentioned tying it to results -- that the
7 priorities that are set by the Commission by John
8 and so forth, will be tied to, I guess, the most
9 impactful results, right? And so, if the DCR
10 team, for example, is benefiting from the
11 harmonization effort, then we know that that's a
12 key priority, and we should continue on those
13 efforts.

14 So it's a matter of balancing priorities
15 both within our own organizations, but also with
16 the Commission in terms of where they're going to
17 get the, you know, biggest bang for the buck, so
18 to speak, in terms of our effort.

19 MR. TURBEVILLE: I understand. I'm just
20 asking whose buck. Maybe I'm being simplistic
21 about your business model, but I should've thought
22 that all these that all these costs would be

1 passed through. And I'm wasteful with
2 expenditures, but my point is, to be very clear,
3 that it's really not a constraint of the SDR since
4 there's no competitive advantage associated with
5 it. But ultimately the cost gets passed through
6 the rest of the industry.

7 I'm trying to just understand exactly
8 where the costs and benefits lie.

9 MS. GUSSOW: It's cost and timing.

10 COMMISSIONER O'MALIA: Pierre?

11 MR. LARNY: Yeah. Can you comment on
12 the topic of -- speak to data validation as a way
13 to improve data quality? And what has been done
14 so far over the past months to improve that?
15 Because I think that's the key to improve the
16 overall quality of the data. And I think we --
17 you voiced very well the concern about the SEF
18 coming into play and the risk of duplicate
19 reporting in the working session that we had with
20 the DM Office recently. For example, if you know
21 that a trade has been reported that has been done
22 on the SEF, the fact that you could reject those

1 threads you've reported by reporting participants.

2 So that's maybe something which might
3 not be doable for October 2nd, but those type of
4 things could go a long way to improve the data
5 quality. Can you comment on what has been done
6 and what will be further done in that respect?

7 MR. TUPPER: Yes. In regards to the
8 validation, I mean, all the SDRs are going to
9 validate the U.S. side that comes in. So you get
10 a trade, you validate it.

11 I think the earlier point that was made,
12 that Laura made is that, okay, now we're going to
13 implement the SEF reporting. Now the PET
14 reporting obligation is going to shift to the SEF.
15 And the swap dealers are probably in a position
16 where they could potentially handle a delay. A
17 number of our customers primarily are end users.
18 They coded their systems with the expectation that
19 the SEFs would be reporting that value for them.

20 So we definitely -- all of us validate
21 USIs and we know whether a duplicate USI is trying
22 to be resubmitted, or we could reject that.

1 That's part of, you know, our initial, our
2 essential validation on a trade submission.

3 I think the issues is going to be if
4 there's changes with that existing rulemaking, how
5 the industry as a whole will handle that change
6 and how they could potentially handle a delay with
7 SEF reporting for particularly the Part 43
8 message.

9 MS. GUSSOW: And I do think there are
10 process flow challenges, right, and perhaps, you
11 know, I've spoken on this topic before, and I know
12 -- I don't want to jump ahead because I do know
13 you're having a SEF panel later today on this
14 subject. But when you look at the whole universe
15 of what has to be reported and we're looking at
16 the permitted transactions, in terms of
17 validations, you need to understand process in
18 order to understand what validations you're going
19 to have in place.

20 And there are scenarios, you know. You
21 have to work through all the scenarios. And there
22 are scenarios where validations are going to be

1 challenging if we don't understand exactly how
2 these trades are executed. So, for example, if a
3 SEF is executing a permitted transaction that it
4 executes as two trades, the dealer still has a
5 reporting obligation on the continuation data.
6 Are they holding that trade as one or two trades
7 in the system?

8 Now, remember they're reporting already,
9 so there are scenarios that need to be worked
10 through and that need to be understood in terms of
11 what impact is this going to have as an -- in its
12 entirety. What are the steps that the dealers are
13 taking? What are the steps that the SDRs are
14 taking? And how quickly is that being taken into
15 account, because I think without understanding
16 that, we are going to have data quality issues,
17 and this implementation is going to actually
18 really, you know, make much more difficult some of
19 the work that we're already doing in terms of the
20 harmonization.

21 COMMISSIONER O'MALIA: Bryan?

22 MR. DURKIN: Thank you, Commissioner.

1 And I want to commend the panel for all the work
2 and the progress that's been achieved. I know
3 it's been a daunting exercise for all of you.

4 There was just a point, if I may, that I
5 just wanted to call out to the Committee. And we
6 have been working closely with the European
7 Commission on this issue. But I think it's a good
8 point to be raised when we're seeking clarity and
9 resolution of this matter.

10 There's a cross-border reporting issue
11 that has surfaced related to the reporting of our
12 U.S. futures under EMIR. And due to the lack of
13 EU level recognition for non- EU trading venues,
14 the concern is U.S. futures will not benefit from
15 the benefit that ESMA has proposed for European
16 Commission approval.

17 Nicolas, we've spoken with your
18 colleagues, members of the European Commission
19 counterparts of ESMA. And all are understanding
20 of the concern. They're receptive to the concerns
21 and the issue that we've raised. But this is one
22 of two major issues that has surfaced that people

1 need to be mindful of. The other is that U.S.
2 futures -- because of this lack of recognition,
3 U.S. futures will count towards the OTC thresholds
4 as a result. And that creates a great deal of
5 consternation among our customers and those that
6 fall under that category.

7 So we're imploring both the CFTC and the
8 European authorities to collaborate on a solution
9 that will recognize exchange-trade derivatives
10 that are listed outside of the EU. And, again,
11 you know, we're very, very encouraged that the
12 authorities are receptive to these concerns. And,
13 you know, we believe they're trying work towards a
14 resolution, but we don't have any understanding of
15 where that is.

16 MR. GAUTHIER: I think you are raising
17 two slightly different questions. The first one
18 is about the date of -- the implementation date of
19 the reporting obligations for futures in Europe,
20 because this is a European specificity that we
21 have a reporting obligation to trade repositories
22 for futures. And the second one, which is

1 slightly different, is the recognition of U.S.
2 exchanges in Europe that has an impact on the
3 nature of the contract, because without this
4 recognition it would be considered as (inaudible)
5 contract from the perspective of EMIR and,
6 therefore, would be subject to all the
7 requirements (inaudible). With regard to the
8 first one, ESMA, I sent to the Commission a
9 request to amend the date of entry and to force
10 this obligation to report futures. We received
11 this request one month ago, I think. We are still
12 in the process of analyzing the demand and see if
13 we can amend the requirement on that. So I cannot
14 say if it will be on that at this stage because
15 this is still a work in progress.

16 On the other issue of the recognition of
17 U.S. Exchanges, it is an issue which relates
18 actually not to EMIR, but to MFIT. And actually
19 in MFIT, too, there will be this recognition
20 procedure for exchanges will be maintained, and it
21 will be implemented. I think with regard to the
22 U.S., the procedure has even been launched to have

1 a recognition of U.S. exchanges. So we are in the
2 process of addressing this issue.

3 MR. DURKIN: Thank you.

4 COMMISSIONER O'MALIA: We're going to
5 close off this panel, but, John, you raised when
6 the next phases are. You don't have any
7 timetables on that. So I want to talk to you --
8 we'll do this separately, but, you know, quickly
9 we can move to the next set. I know you're taking
10 this in a deliberate fashion, but there are many
11 fields, many products, that really need, you know,
12 to have the benefit of having the standardization
13 and complete review so we can pass this over to
14 potentially the Commission action if necessary,
15 which I do believe is necessary to fix some of the
16 flaws in Part 45 and other reporting rules.

17 But I want to make sure we get this
18 right, and having your work completed is essential
19 to that. So you're doing a great job, and to the
20 SDRs, I compliment you as well. But there's a lot
21 more to do, and let's make sure we keep it on an
22 aggressive timetable to the extent we can.

1 We're going to try to put up all the
2 comments, all the thoughts, all the data on the
3 TAC website. If you have any concerns about it --
4 if it's not working, it's unclear -- let me know.
5 I don't want to put up data that doesn't help you.
6 So it's just an invitation to call, write, yell,
7 if that's not as clear as it could be.

8 But with that, let me thank our
9 witnesses, and we're going to switch to a
10 presentation on automated trading. Thank you very
11 much. Are you ready to go? Everybody knows
12 coffee in the back, restrooms down the hall.
13 You've all sat through a budget meeting that has
14 been much longer than this, so we're going to keep
15 moving. But as soon as Sebastian gets set up. Do
16 you have slides, Sebastian?

17 MR. PUJOL-SCHOTT: Good morning,
18 Commissioner O'Malia and members of the Technology
19 Advisory Committee. Thank you for the opportunity
20 to present the Commission's Concept Release on
21 "Risk Controls and System Safeguards" during
22 today's meeting of the TAC.

1 whether existing risk controls and system
2 safeguards in automated trading environments are
3 sufficient and properly calibrated to match
4 current and foreseeable market technologies and
5 risks.

6 The Concept Release was informed by a
7 number of factors, including controls already in
8 use by one or more market participants or
9 platforms, existing CFTC regulatory requirements
10 that address automated trading, and best practices
11 developed by expert groups, including the TAC,
12 FIA's Principal Traders Group, FIA's Market Access
13 Working Group, and others who have also addressed
14 risk controls in automated markets, for example,
15 IOSCA.

16 In this regard, the Concept Release
17 acknowledges and seeks to better understand
18 progress made to date and asks whether or not
19 additional measures are necessary. The Concept
20 Release begins with an overview of automated
21 trading environments, including the development of
22 automated order generation and trade matching

1 systems, advances in high speed communication
2 networks, the changing role of humans in markets,
3 and the growth of interconnected automated
4 markets.

5 The Concept Release also highlights the
6 importance of automated trading systems, or ATSS,
7 as tools for the generation and routing of orders.
8 Further, it notes that in 2012, almost 92 percent
9 of on exchange trading in U.S. Futures market was
10 executed electronically, and discusses the sub
11 second speeds of dedicated communication networks
12 now available between geographically dispersed
13 market centers.

14 The Concept Release addresses these
15 developments through a series of risk controls and
16 measures broadly grouped into four categories.
17 The first is pre-trade risk controls, including
18 controls designed to prevent potential errors or
19 disruptions from reaching trading platforms, or to
20 minimize their impact once such orders have
21 reached the market.

22 The second category is post-trade

1 reports and other post-trade measures, including
2 reports that promote the flow of order, trade, and
3 position information to market participants and
4 clearing firms.

5 The third category of risk controls is
6 system safeguards, including safeguards for the
7 design, testing, change management, and
8 supervision of ATS's.

9 Finally, a fourth category of additional
10 measures is also presented.

11 The Concept Release seeks extensive
12 public comment regarding each risk control, system
13 safeguard, or other measure presented in the
14 document. The Concept Release provides a platform
15 for discussion in several respects, first, for
16 describing relevant changes in Commission
17 regulated derivatives markets, particularly as
18 they relate to the increased automation of
19 markets; second, for cataloguing the Commission's
20 regulatory responses to date, as well as existing
21 industry practices that address automated trading
22 and risk controls; third, and this is a very

1 important purpose, for determining the
2 effectiveness of existing industry practices and
3 the extent of their implementation at present; and
4 fourth, for determining the need, if any, for
5 additional measures or regulatory action.

6 Finally, as the Chairman noted in his
7 statement of support, the Concept Release is
8 intended to further public discussion and debate
9 on how to best protect the functioning of today's
10 highly automated and interconnected markets.

11 As a threshold matter, the Concept
12 Release recognizes and trades in automated
13 environments pass through multiple stages in their
14 life cycle, from order generation, to execution,
15 to clearing, and steps in between. Accordingly,
16 it solicits public comments regarding the
17 appropriate stage or stages at which risk controls
18 should be placed in the order and trade life
19 cycle.

20 Focal points for implementation of risk
21 controls described in the Concept Release include
22 ATSS prior to order submission, clearing firms,

1 trading platforms prior to exposing orders to the
2 market, clearing houses, and other risk control
3 options, such as third party hubs through which
4 orders or order information could flow to
5 uniformly mitigate risk across various platforms.

6 The appropriate focal point for risk
7 control may depend on the type of control or its
8 intended purpose. The Concept Release seeks
9 public comment on this question and desirability
10 of a layered or defense in depth approach that
11 places the same or similar risk controls at more
12 than one stage of the order and trade life cycle.

13 The Commission's Concept Release
14 presents a total of 23 risk controls and other
15 measures, including pre-trade risk controls, four
16 post-trade posts or other post-trade measures,
17 seven system safeguards, and five additional
18 measures for discussion. As detailed in the
19 appendix, some risk controls include one more
20 subpart.

21 Specific examples of risk controls
22 presented in the Concept Release include: Message

1 and execution throttles, self-trade controls,
2 maximum order sizes, post- order and post-trade
3 drop copies, and uniform trade adjustment or
4 cancellation policies. They also include ATS
5 order cancellation capabilities, such as kill
6 switches, auto cancel and disconnect, and repeated
7 automated execution throttles. Further includes
8 are ATS design, testing, change management and
9 supervision standards, as well as incoming market
10 data and other data type of feasibility checks.
11 Additional risk controls and measures are
12 described in the document in some detail.

13 The Concept Release also solicits
14 comment on the total of 124 questions distributed
15 throughout the document. These questions address
16 the 23 enumerated risk controls and measures
17 summarized above, as well as related matters of
18 interest to the Commission. Notably, the Concept
19 Release asks market participants to comment on the
20 implementation and effectiveness of their existing
21 risk controls. As noted previously, thorough
22 cataloguing and understanding of existing industry

1 practices is an important objective of the
2 document.

3 The Concept Release further asks market
4 participants to identify the uses and benefits of
5 each risk control they currently implement, and to
6 identify the types of market participants that
7 would generally benefit from such a control.
8 Conversely, it also asks whether certain risk
9 controls or other measures presented in the
10 document are unnecessary, impractical for
11 technological reasons, or otherwise inadvisable.
12 The Concept Release also solicits detailed
13 comments on the costs associated with implementing
14 each control.

15 The Commission's Concept Release further
16 solicits public comment on definitions developed
17 by the Tax Subcommittee on Automated and High
18 Frequency Trading, including, for example, with
19 respect to the definition of high frequency
20 trading. It also requests public comment
21 regarding the registration of firms operating ATSS
22 and not otherwise registered with the Commission.

1 Further, the Concept Release seeks public input
2 regarding any additional risk controls that would
3 be particularly helpful in protecting the
4 financial integrity of clearinghouses and any
5 additional risk controls that should also apply in
6 the case of direct market access or DMA.

7 While soliciting public comment
8 regarding the need for additional measures, if
9 any, the Concept Release also provides a summary
10 of steps already taken by the Commission and
11 market participants to address automated trading.
12 For example, in April 2012, the Commission adopted
13 rules requiring futures commission merchant, or
14 FCMs, swap dealers and major swap participants
15 that are clearing members, to establish risk-based
16 limits based on position size, order size, margin
17 requirements, or similar factors. These rules
18 also require entities to use automated means to
19 screen orders for compliance when such orders are
20 subject to automated execution.

21 The Commission also adopted rules in
22 2012 requiring swap dealers and major swap

1 participants that are clearing members to ensure
2 that their use of trading programs is subject to
3 policies and procedures governing the supervision,
4 maintenance, testing, and inspection of the
5 program.

6 The Commission has also adopted rules
7 with respect to trading platforms, including rules
8 with respect to DCMs adopted in June 2012 that
9 require DCMs to establish and maintain risk
10 control mechanisms and prevent -- to prevent and
11 reduce the potential for price distortions and
12 market disruptions. These include, but are not
13 limited to, market restrictions that halt trading
14 in conditions prescribed by the DCM. The
15 Commission finally has also adopted trading
16 policies and halt requirements for swap execution
17 facilities similar to those for DCMs.

18 The DCM rules also create new risk
19 control requirements for exchanges that provide
20 DMA. These rules require DCMs to have effective
21 systems and controls reasonably designed to
22 facilitate an FCM's management of financial risk.

1 Finally, the Concept Release notes that
2 the Dodd- Frank Act itself addresses disrupted
3 trading practices and other market abuses.

4 In addition to Commission actions, the
5 Concept Release also provides an overview of
6 existing industry practices designed to mitigate
7 risks in automated trading environments. It notes
8 that certain measures or variants of them have
9 been discussed by industry associations and other
10 organizations, or may already be in operation at
11 one or more exchange, clearing members, or other
12 market participants.

13 For example, the Concept Release's
14 system safeguards pertaining to the cancellation
15 of orders or disconnecting a market participant in
16 emergency situations are similar to proposals made
17 separately by FIA's Principal Traders Group and
18 Market Access Working Group, and by the TAC's
19 Pre-Trade Functionality Subcommittee. Examples of
20 existing risk controls within a sample of futures
21 exchanges are also discussed. In this regard, the
22 Concept Release notes significant work already

1 done by the TAC to catalog industry practices and
2 available on the Commission's website.

3 Finally, before concluding, I just would
4 like to remind parties reviewing the Concept
5 Release, because it is a lengthy documents, that
6 the questions presented throughout are all
7 repeated in order at the end. Similarly, the
8 appendix includes charts summarizing all the risk
9 controls and other measures discussed in the
10 document. These compilations may make it easier
11 for you to prepare your comments to the
12 Commission.

13 Commissioner O'Malia, that is staff's
14 summary of the Concept Release. Thank you.

15 COMMISSIONER O'MALIA: All right. I'm
16 going to open up it up to questions of the floor,
17 thoughts, concepts, concerns. Our opening bid
18 with Cliff Lewis down there on the end.

19 MR. LEWIS: And this is an observation.
20 I'm looking at Bryan Durkin, and before he turned
21 gray, I remember when we were basically working
22 together on taking the bond contract electronic.

1 And I think my general point is while it's
2 commendable, particularly given the great work
3 that the TAC Subcommittee has done on this, that
4 the current release suffers from what I'll
5 characterize as are you still beating your wife
6 kind of public policy analysis.

7 And the key question, of course, is, do
8 the high frequency traders -- and I've got no
9 horse in this race. I'm not a high frequency
10 trader. But I am a student and, frankly, fan of
11 electronic trading, and I'm a huge fan of the CFTC
12 regulatory framework, which puts the emphasis on
13 Central Limit Order Book trading as the
14 fundamental foundation for what I think is a huge
15 advancement over open outcry trading or manual
16 trading, which is electronic trading.

17 And my general point is, don't forget
18 the benefits of the high frequency trader
19 community. In the old days in open outcry, these
20 guys were basically called locals if you were
21 polite, scalpers if you were not being so polite.
22 A hundred years of research demonstrates that the

1 market would not have functioned in its primary
2 role of providing liquidity to end users absent
3 that market-making liquidity.

4 Now, today much of that function is
5 provided by the high frequency traders. And I
6 think as you undertake, you know, an exhausting
7 120-plus questions, I think it's very important to
8 identify the benefits from high frequency trading
9 because, in effect, you really don't want to throw
10 the baby out with the bathwater on this.

11 Electronic markets will not work absent
12 electronic trading, as the definition that the
13 Subcommittee struggled with demonstrates. There
14 is really no easy way to separate by-side
15 algorithmic execution, which is essential to get
16 size done, with what the high frequency guys are
17 doing on the market making side. So it's a
18 double-edged sword that you're doing.

19 And one last important point. I also
20 would urge the CFTC to not conflate their, I
21 think, extremely well- considered framework of
22 looking at electronic exchanges and incentives to

1 clod-style trading with the SEC world, which
2 absolutely makes no sense. Basically it's the
3 difference between an economically and technology
4 rational consideration of what constitutes an
5 efficient market versus one that's designed for
6 the full employment of lawyers.

7 And many of the so-called problems in
8 the marketplace relate to the fact that the CFTC
9 framework works fine, but the SEC framework really
10 doesn't work. So don't give ground on this is my
11 advice to the Commission. I think you guys have
12 really done yeoman service. You know, this is a
13 big victory, and I don't think you want undermine
14 your own success.

15 MR. GORHAM: I have a slightly different
16 take on this from Cliff. First of all, I'm really
17 happy that this is a concept release instead of a
18 proposed rulemaking. Secondly, I thought the
19 document was actually pretty nicely to confess
20 that I have not had a chance to fully read and
21 digest it, but I just have one thought.

22 And that is, you raise the issue about a

1 definition, coming up with a definition of high
2 frequency trading, which has been really difficult
3 to do. And the only thing I would say is that you
4 only need a definition of something if you want to
5 regulate that thing. And it's possible that there
6 are components to high frequency trading that you
7 care about, like the just number of transactions
8 per unit of time, the various ratios that you've
9 looked at and that kind of thing.

10 You can actually write rules about those
11 characteristics without having to come up with a
12 definition for something that is really pretty
13 elusive and changing, for whatever that's worth.

14 COMMISSIONER O'MALIA: Thank you very
15 much. To the point on getting a definition, as
16 you well know, the Subcommittee, one of the
17 charges was to come up with a definition. And
18 what is it relative to an automated trading
19 system, an ATS? And it took a long time. It is a
20 very difficult situation, and we still have not
21 put in those thresholds that many people were
22 looking for.

1 Hoping that we would get comment from
2 the TAC definition, which really didn't come, we
3 decided to put it in here. I think there are many
4 people that are for it or against it, identified
5 the challenges with it. So I thought this would
6 be as good as any in terms of an opportunity to
7 get comments and really thoughts on it as a
8 Concept Release, and so that's kind of how it
9 ended up in the document.

10 Wally, your card is up. I guess the
11 best way to do it is put your cards up. I'll
12 start trying to get around the room as quickly as
13 I can.

14 MR. TURBEVILLE: Thanks. This is sort
15 of a complementary question to Mr. Lewis'. It
16 occurs to me that one of the things I'm trying to
17 understand, if you can give us some help, about
18 how to evaluate the work here and some of the
19 questions.

20 As I understand it, almost
21 definitionally speed, there's a relationship
22 between speed and risks of things going wrong, and

1 that's imbedded in your work here. So the faster
2 things move, the greater challenges there are, if
3 you will, in terms of risks of things going wrong.

4 It also occurs to me that speed, as it
5 relates to its value to people engaged in trading,
6 speed is valuable because of relative speed. In
7 other words, if I'm faster than others in the
8 market, that's a value to me. But absolute speed
9 doesn't necessarily have particular value -- you
10 can correct me if I'm wrong here -- to individual
11 traders. It's this relative speed to other
12 participants in the market.

13 So I've got a question for you as we go
14 through this, and I'm just going to pose it and
15 see if you can help. If I'm thinking about what
16 is the value to the public -- to the public, not
17 to an individual trader because that's about
18 relative speed, I think -- the value to the public
19 of round trip trade that takes 125 milliseconds as
20 opposed to 25 milliseconds, how should we think
21 about that in terms of the value to the public and
22 speed when balancing off against the inherent

1 risks of increased speed?

2 COMMISSIONER O'MALIA: I think that's
3 probably a question for the TAC and anybody who
4 wanted to reflect on that question. Bryan, I'm
5 just going to -- if you want to respond to another
6 TAC member's individual concerns and it can't
7 wait, let me know. But we'll try to get these
8 issues out there and just try to keep a tally on
9 your notepads, if you would.

10 MR. DURKIN: Thank you, Commissioner,
11 and thank you, gentlemen, for the fine work that
12 you did on this Concept Release.

13 It did -- and I've just done the first
14 blush review, so forgive me. But it really did
15 leave a question hanging in our mind in the
16 context of because a number of these things have
17 been presented or represented in the document as
18 concepts, I really don't think that it does
19 justice to the work that the Commission, that the
20 exchanges, that the industry has done to evolve
21 over the years in the context of the excellent
22 mechanisms that have been put in place to address

1 a number of the issues that are, you know, the
2 subject of this Concept Release.

3 And so, you know, I just really need to
4 emphasize the importance of recognizing that, you
5 know, many of -- most, I would say, of the items
6 that have been addressed in the Concept Release
7 were posed as concepts, and should we be doing
8 these different items have already been addressed
9 in the context of risk management controls that
10 the exchanges have put in place, credit controls
11 that the exchanges have put in place, many of
12 these things through either best practices or
13 rulemaking of the Commission itself. But these
14 markets have evolved, and we've taken some very, I
15 think, proactive, aggressive steps to ensure the
16 integrity of these markets.

17 And I would just like that somehow to be
18 noted or reflected because for those that aren't
19 as clearly related to these topics as many of us
20 are, you know, one could read this and suggest
21 that we really haven't made progress on many of
22 these issues. And that's just simply -- it's

1 simply not the case.

2 You know, when you talk about credit
3 controls, messaging controls, stop logic
4 functionality, velocity logic functionality,
5 circuit breakers, price protections, air trade
6 policies, we've been pretty methodical in putting
7 those mechanisms in place. And so, you know, I
8 just simply that that effort and that progress
9 that the Commission and that the exchanges working
10 together, that that's not lost in the context of
11 the progress.

12 And this will continue to evolve. I
13 mean, we've all proven that as the innovation
14 continues, we are doing our work as an industry
15 working with all of our partners around the table
16 to further augment these strong mechanisms that we
17 have in place.

18 COMMISSIONER O'MALIA: Chairman?

19 CHAIRMAN GENSLER: Well, this Chairman's
20 permission, I just want to say I agree with you,
21 Bryan. I think there's remarkable efforts that
22 have been put in place, not just by the exchanges

1 and clearinghouses, clearing members, but the
2 Commission itself.

3 But one of the things that I felt, and
4 I'm so pleased that Commissioner O'Malia and
5 Commissioner Chilton, who really took the lead in
6 getting this document together, but why we're
7 putting it out and to spur public debate, is to
8 see if there's anything, one, additional that we
9 need to do. And, two, to go to Chris' point, as
10 we're moving to environment with swap execution
11 facilities, which is more fragmented than we
12 traditionally had in the past in the futures
13 market, are there any rules that we might need to
14 put in place so there's not a race to the bottom,
15 because everything that you just went through, an
16 organization like the CME might put in place. But
17 then what if somebody else doesn't, and if there's
18 some jockeying?

19 So that's, to me, two of the fundamental
20 questions: Is there anything additional, and
21 secondly, is there any sort of just across the
22 board that we might need that's -- even if you

1 already have it, or ICE has it or somebody, just
2 is there something that we already just need at a
3 federal level so there's not a race to the bottom?

4 MR. CONCANNON: Thanks. First, I do
5 want to commend the Commission and the staff on
6 the Concept Release. I think it was well done and
7 raised some very important issues. The issues
8 that I'll focus on are the pre-trade controls and
9 the what I call the post-trade controls. Those
10 are two fundamental protections that I think we
11 see them adopted in Europe, in Australia, in
12 Canada, and in the U.S. Securities markets.
13 Pre-trade controls are imbedded into all the
14 obligations of registered entities.

15 So I thought it was important that
16 rather than focusing on market structure type
17 issues, like minimum quote life, which we'll
18 debate for quite some time, or other complicated
19 issues, like definitions of HFT, pre-trade
20 controls and risk controls is an area that should
21 be carved out and moved forward on because they
22 are important.

1 I do recognize that the exchanges have
2 adopted a lot of credit controls, but those are
3 credit controls from the viewpoint of the exchange
4 and not the firm itself. And the firm should be
5 obligated to have their own credit controls. So
6 if I have one leg on the CME and one leg on ICE, I
7 need to calculate that in my own pre-trade credit
8 control. So I think firms having pre-trade
9 controls and filters and order filters before they
10 enter an exchange is an important concept that the
11 Commission should recognize. It's recognized
12 throughout the globe.

13 The second piece is the importance of
14 post-trade. It's rare that you see a regulator
15 talk about the importance of drop copies. It's
16 not a topic that you hear about a lot.

17 Just a reminder: Pre-trade control
18 obligations were in place for the Goldman event
19 and the Knight event. Both firms were under those
20 pre-trade obligations when they had an issue.
21 There was no post-trade obligation, meaning
22 real-time reconciliation of what you think you

1 traded and what the exchange is telling you you
2 traded. This is an important concept that we all
3 focus on pre-trade and pre-trade filters.
4 Post-trade is critical in these events, and that
5 real-time reconciliation.

6 So I think those two concepts are
7 concepts that we as an industry should move
8 forward and think about and some of the other
9 concepts while we should continue to debate them.
10 I don't think they should be slowing down the
11 importance of pre-trade and post-trade.

12 MR. BATES: Thanks, Commissioner. And
13 I'd like to also say I thought the document was
14 very good, and there was a lot of work gone into
15 it. So that was very good.

16 I have, I guess, an observation and a
17 question on the document, and maybe it's one for
18 Sebastian or you, Commissioner. But I think
19 there's a convergence happening in the market in a
20 lot of projects I've certainly been working on
21 with large institutions between what you might
22 call, you know, the real-time risk and pre-trade

1 that's part of this, and market surveillance, sort
2 of real-time surveillance. And it's all, if you
3 like, real-time analytics and response on big data
4 and motion.

5 So one of the examples in this document
6 is you might include in real-time risk to try and
7 see if a wild algorithm has gone outside of its
8 operating parameters and shut it down because it's
9 placing too large orders, too many orders, going
10 outside of its specification, if you like. And
11 you might be able to shut that down, and, indeed,
12 that kind of thing may have helped Knight Capital.
13 So worked lots of systems like that.

14 But then, so that's automated, but what
15 about things where humans come into the loop? And
16 you can get -- you know, I've been seeing lots of
17 interest recently post LIBOR problems around, you
18 know, expending surveillance systems so they're
19 very real time, so they track things like
20 communications between traders in ways that might
21 go outside of, you know, unusual events, unusually
22 large trades, unusual events, unusual types of

1 communications, just spotting unusual events. But
2 that's something a human has to judge on.

3 So is that outside the scope of this
4 document? Is this only limited to what we can
5 automate and shut down, or should there be things
6 around what you can spot whereas you might flag up
7 very quickly to a human for their opinion, if that
8 makes sense.

9 COMMISSIONER O'MALIA: I think, you
10 know, the broader the comments, the better. And
11 to your point, we do have both a risk control and
12 some questions around supervision of ATSS, and the
13 idea around the supervision elements is, in fact,
14 a real-time human monitoring of a machine and an
15 alert capability so that, as you say, human
16 operators can be notified and it's not presented
17 as an either/or. It's just another idea.

18 But there is room for that concept, that
19 humans are notified and then humans react in
20 addition to whatever automated processes might be
21 in place mitigate or control the situation.

22 COMMISSIONER O'MALIA: Greg Wood next,

1 and we'll kind of work the way down the line on
2 this side.

3 MR. WOOD: Thank you very much,
4 Commissioner O'Malia. I'd like to echo, you know,
5 the comments already made. This is a paper that
6 we've been waiting for quite a long time for. I
7 think we first heard about it when we did the
8 presentation of the TAC in June last year. And,
9 you know, my first impression of reading it was
10 this is very good. It's obviously made a lot of
11 reference to industry papers. It makes a lot of
12 reference to industry practices.

13 You know, as I was reading, referring to
14 Bryan's point, I was going, okay, I know which
15 exchanges do this already. I know, you know, what
16 particular cases are being referenced here.

17 So in terms of scope, it's brave. It is
18 a very good paper. And the fact that it's
19 presented as a request to comment I think is a
20 great opportunity for us within the industry to
21 provide you with feedback about the areas that we
22 think need to be addressed. And that isn't

1 necessarily the whole range of automated trading
2 because, you know, the markets have evolved to a
3 certain way. There are now a number of
4 participants. You know, at my firm, you know,
5 it's not just high frequency traders that are
6 using automated tools.

7 I talk to pension funds. I talk to
8 corporate. I talks to CTAs, you know, a lot of
9 participants who are now using automated trading
10 technology of one sort or another to participate
11 in the market to work their orders smarter into
12 the market, to give their end users better results
13 and more fiduciary responsibility over what, you
14 know, the trade is trying to do in the markets.

15 I think one of the things that I just
16 wanted to say with regard to the HFT definition
17 that we put together, it's easy to take it out of
18 context. There were several parts of that
19 Subcommittee working on automated and high
20 frequency trading. We came up with what we felt
21 to be a very neutral mechanical definition of HFT,
22 which is nice to see has also been adopted in

1 other jurisdictions, such as Germany, where it was
2 very much verbatim, you know, recognition of that
3 definition.

4 But I think one of the things that the
5 concept piece will allow us to do is also
6 highlight the other parts of what the Committee on
7 Automated and High Frequency Trading was aiming to
8 do, was to recognize that high frequency trading
9 is a mechanism, and there are other aspects that
10 we need to look at: Risk controls, quality
11 control is very important. There is a human
12 oversight always to automated trading. No one,
13 you hope, ever turns on a machine and walks away
14 and gets a copy. You know, when there are
15 failures, there is human responsibility for those
16 failures.

17 And then, there are, you know,
18 accidental disruptions to the markets, and there
19 are abusive practices to the markets. And they
20 have to be very carefully controlled, and
21 surveilled, and recognized accordingly and the
22 appropriate action taken. And I think we have the

1 chance to do this Concept Release to highlight
2 that they're the areas that need to be looked at
3 more than any sort of broad brush regulation
4 around automated trading.

5 Thank you.

6 MS. VEDBRAT: You know, I reiterate like
7 this document is very much needed by the industry.
8 And I hope that, you know, the comments that we
9 receive is going just, you know, further enhance
10 the document for all of us.

11 I'm going to actually focus on a
12 different aspect of the document, and that is
13 related more with the software development and the
14 software testing. I think that in this area, it's
15 very critical that we continue to enhance it.
16 Given the fact that, you know, the world is moving
17 a lot more electronic and also technology
18 enhancements is allowing, you know, speed to help
19 trading basically happen at a much higher speed,
20 it's very important that the interoperability risk
21 is also considered when any release is made, when
22 any change is made.

1 That is something that, you know,
2 internally at Black Rock we're looking at very
3 seriously because, you know, oftentimes you'll
4 have individuals components of the market. They
5 will develop policies and procedures that work.
6 But then when you connect it into the entire trade
7 flow, there may be a break.

8 I mean, just as an example, you know, if
9 we're going to look at SEF trading that, you know,
10 is imminent for all of us, it does involve being
11 able to trade and participate with multiple
12 entities. So the interoperability risk and the
13 ability to have proper quality testing, you know,
14 front to back is so critical before, like, day of
15 mandatory, you know, trading. So if we could
16 just, you know, put some focus as we comment in
17 that area, I think we will all benefit from it.

18 And then, you know, the definition of
19 what is actually a trading firm and a customer is
20 also going to be important. Is it just the next
21 user in the chain, or it actually the end user
22 who's taking the risk?

1 MR. FARLEY: I, too, want to say that I
2 thought the staff did a very nice job on the
3 concept release. As we're making our way through
4 the document, we're reading it, looking at it,
5 trying to find opportunities we can improve. As
6 an operator of futures exchanges, I take great
7 comfort in going through the document and
8 realizing, you know, wow, we've implemented most
9 of this stuff, and that wouldn't have been the
10 case five, six, seven years ago. So I can see the
11 evolution of the industry that Bryan alluded to.

12 And, by the way, as I go through it, I
13 have the same thought that Bryan does, which is
14 that it's not just ICE, but it's CME that's been
15 implementing these things along the way, and that
16 gives me great comfort in terms of the risk
17 management framework for futures exchanges.

18 However, as the Chairman mentioned --
19 Chairman Gensler mentioned, we now have the advent
20 of SEFs. And clearinghouses, and we operate an
21 OTC clearinghouse, are required by law to accept
22 trades from SEFs. And as Chairman Gensler was

1 enumerating, something like 20 SEFs. Some of
2 those we may not have ever even heard of before
3 they filed the application. And in the CFTC
4 rules, it is suggested that a clearinghouse accept
5 trades for clearing and not have the ability --
6 and even on the sidelines we're hearing and
7 furthermore that clearinghouses shouldn't even
8 have the ability to reject trades from a SEF.

9 So I agree with the spirit of Chairman
10 Gensler's comments, which I think were -- I'm
11 paraphrasing, feel free to tell me if I'm not
12 getting it right, which is, we should take a look
13 at this. And I think the idea of being more
14 prescriptive or at least persuasive about how SEFs
15 set up their risk controls is probably a good
16 idea.

17 In the case of the futures exchanges,
18 being more prescriptive would most likely largely
19 be a codification of the practices that we already
20 engage in, and perhaps not time well spent,
21 although I'll leave it to the wisdom of the
22 Commission in that regard. And I'm not suggesting

1 we can't improve. In fact, we've seen several
2 ideas in the last year or two that we liked and
3 that we intend to implement, whether from the FIA
4 recommendations or even as recently as this week
5 from the Concept Release.

6 The last thing I'd like to say just
7 briefly, I just want to differentiate between fast
8 and slow. The report talks a lot about what's a
9 high frequency trader, and how should we measure
10 it? I've never spoken to Bryan about this, but I
11 bet he's the same way I am and our colleagues are,
12 which is we don't stay up at night thinking how
13 are those fast traders going to get us. We stay
14 up at night thinking, how are traders going to get
15 us. What is a risk problem that's going to occur?

16 And as I sit here thinking about what
17 are the biggest problems I've seen in my time at
18 ICE, the four biggest that I can think of at least
19 with U.S. exchanges are a guy or a woman, although
20 it was a guy in all cases, of course (Laughter) --
21 in Calgary, in London, in Memphis, in San Paolo,
22 pointing and clicking and disrupting the markets

1 and not having the proper risk controls. So let's
2 not lose sight of that. The important
3 conversation is how do we have more risk
4 management? It's not who's a fast trader and
5 who's a slow trader.

6 MR. GORELICK: Thank you. First, I do
7 want want to echo what everyone is saying here in
8 thanking the Commission for putting out a really,
9 thoughtful and comprehensive document. I think it
10 will be the beginning of a very good and
11 beneficial process in which we can have a good
12 discussion about how the markets have evolved.

13 At the risk of, you know, repeating what
14 a lot of people have said here, I agree with what
15 we've heard that there are a lot of existing
16 practices in the industry today. The Concept
17 Release goes part of the way in cataloguing those.
18 I think the responses to the Concept Release will
19 be helpful in filling out the picture.

20 I do want to make the point that we need
21 to keep in mind market quality. That's sort of an
22 important function. Cliff started by talking

1 about this, that the markets today, the U.S.
2 futures markets are very good by just about every
3 metric that I'm aware of, and we need to keep that
4 in mind. That's one of the important goals of a
5 market, and we want to make sure that whatever
6 rulemaking comes out of this, that it helps to
7 preserve some of those gains.

8 A couple of other observations that I'd
9 like to make. One is that there is an incredible
10 amount of detail in this document, and it makes me
11 a little bit uncomfortable that what might come
12 out of this is very detailed, very specific, and
13 very static rules about what risk controls and
14 safeguards should be. And I think that would
15 ultimately make things less safe than they are
16 currently.

17 So I would urge more of a thoughtful,
18 principled- based approach to what risk controls
19 should be in the market. And as we go forward, I
20 think that'll be an important part of the
21 discussions.

22 Commissioner O'Malia has asked whether

1 we should federalize some of the existing
2 practices. And I think that's going to be an
3 important part of the discussion about where are
4 there gaps between current practices. Where are
5 there races to the bottom, as Chairman Gensler
6 mentioned, that need to be managed through a
7 regulatory process? I think that will be an
8 important, fruitful part of the discussion that's
9 to follow.

10 One last observation that I wanted to
11 make sort of in response to Wally's comment a
12 little bit earlier. You know, he made the point
13 that speed -- absolute speed is inherently
14 dangerous. And I know that in the physical world,
15 that's very much case. I think about it the same
16 way. We all know intuitively if we drive our car
17 real fast, it's going to be more dangerous.

18 Last year, I remember seeing a news
19 article about some experimental military aircraft,
20 some unmanned aircraft, that was traveling seven
21 times the speed of sound, and it exploded. And,
22 you know, my first reaction was, well, of course

1 it did. It was going seven times the speed of
2 sounds. And, you know, I think our physical world
3 recognition is that speed is dangerous.

4 I'm not sure that's inherently true with
5 computer processes, and I think that'll be another
6 good part of the discussion. I don't think about
7 it that way. I think if we've got humans who are
8 chasing computers to do the risk management and
9 the surveillance without using computers, then
10 clearly that's a real issue. But if we've got the
11 right automated computerized risk checks and
12 surveillance capabilities, then I think it's a
13 good discussion. I'm not convinced that faster is
14 inherently more dangerous in an electronic
15 automated environment, and I'm looking forward to
16 talking about that.

17 Thanks again for the opportunity to talk
18 about this, and I look forward to sort of a very
19 thoughtful and evidence-based response to the 124
20 questions in the document.

21 COMMISSIONER O'MALIA: We're going to go
22 with Evelyn next, then Gary, Keith, Irene, and

1 then John.

2 MS. FUHRER: Okay. Thank you so much.
3 I just have a couple of points being towards the
4 end of the table, a lot of the things I had wanted
5 to say have already been expressed. But just a
6 few things.

7 First of all, I do want to thank the
8 Commission for the well-thought out paper. I did
9 read the first 100 or so pages, and then was glad
10 to see that the rest was a sort of reiteration of
11 some of the questions because I just ran out of
12 town. And I do want to take -- I will take the
13 opportunity when I get back to the office to go
14 through it in more detail.

15 There is one thing that I would cull
16 out, and I think Commissioner Gensler mentioned it
17 in the opening statements. But I think it
18 probably is important to cull out in terms of the
19 Concept Release. It's mentioned in there, but I'm
20 not sure if it's mentioned with enough emphasis.
21 And that is a managing of the expectations. And
22 what I mean by that is, if we were to go ahead and

1 implement everything that's in the Concept
2 Release, would that prevent the types of errors,
3 technology issues, that have been listed in the
4 Concept Release? And I would daresay probably
5 not.

6 And as we read -- and the Concept
7 Release does an excellent job of giving a
8 historical view of some of the recent events that
9 have happened. People could read it potentially
10 as, you know, technology run amuck. And when you
11 think about the amount of technology that we have
12 in the marketplace compared to the amount of
13 events, it really is not the case.

14 And I guess what I'm trying to say is
15 that I think we need to let people know that as we
16 continue to use technology in the markets, things
17 are going to happen. We could do as much testing
18 as we want, and I was going to make some comments
19 that echoed what Supuma was saying about testing,
20 and the highly-integrated marketplace, and the
21 need for, you know, interconnections, types of
22 testing as well.

1 But there are unanticipated events and
2 unanticipated combination of events either
3 internal or external, that no matter how much we
4 do, we're not going to be able to anticipate. And
5 I think it's important for people who read the
6 Concept Release, comment on it, and actually as we
7 progress in implementing a lot of things that are
8 in there, there is an understanding that things
9 are going to continue to happen, and that we
10 should expect it.

11 MR. DEWAAL: Thank you. And I also want
12 to echo what's been many times. I thought the
13 Concept Release was just excellent and very, very
14 thoughtful. And certainly the Commission staff,
15 which probably has lots to do these days to take
16 on that task, too, that's tremendous.

17 I guess one of the advantages that I
18 have in my new position is I get to step back and
19 be more holistic on matters. And when I read the
20 Concept Release, I was sort of thinking about a
21 recent enforcement action brought simultaneously
22 both by the CFTC and the Financial Conduct

1 Authority in the UK, and the press releases that
2 were issued simultaneously announcing that action,
3 which had to do with the trade of putting orders
4 into the market and pulling them very quickly.
5 And the CFTC's headline prominently used the word
6 "spoofing," and the FCA's headline prominently
7 used the word "layering."

8 And I thought about the amendments to
9 the Commodities Exchange Act, which used the word
10 "spoofing." And the only reason I use that is
11 because to me it's the danger, and I think Tom has
12 said this really, really well, it's the danger of
13 labeling, categorizing, and getting much too down
14 in the specifics and micromanaging, because, you
15 know, we can look at the same thing and we can
16 call it different words. And you don't want to
17 end up with rules that are so specific to specific
18 words that you actually miss the conduct that
19 you're trying to get at.

20 Whether we call it "spoofing" or
21 "layering" or whatever, we don't like people to
22 place orders into the marketplace and pull them

1 out without the intent of ever executing them. We
2 don't like people to put orders, you know, that
3 match on both sides of a trade for the purpose of
4 giving appearances without actually wanting to
5 take a market position. Whatever you call it is
6 irrelevant at the end of the day.

7 And I think that one of the things that
8 worried me as I read through the Concept Release
9 was the eagerness to look at micro names as
10 opposed to holistic conduct. Even the section on
11 registration, which I thought was interesting, and
12 I thought that would be something that ultimately
13 would be controversial. You know, to me the issue
14 isn't whether you register high frequency traders
15 or even some subcategory of automated traders.
16 You know, the question is, you know, are you going
17 to extend the process that has begun with the
18 registration of swap dealers and major swap
19 participants, and actually say that there's
20 categories of traders that should be registered,
21 because they do something in the marketplace that
22 has a big impact. You know, what they're called,

1 to me, is irrelevant.

2 And I think, you know, that's just one
3 thing, you know, I think that's important because
4 I do think the Concept Release sort of predisposes
5 the current fact pattern. You know, onto Cliff's
6 point, forget the introduction of e-trading, the
7 electronic marketplaces. I remember when the big
8 controversy was whether brokers should wear
9 headsets or not because it was considered that the
10 brokers that had headsets had an advantage. You
11 know, folks have always been trying to figure out
12 a better speed. The issue, again, is equality.
13 Can everybody access the market or have the
14 potential to access the market the same way?

15 So, again, my only thought is, as
16 everyone goes through Concept Release, you know,
17 are we getting overwhelmed by our own titles? Are
18 we getting overwhelmed by our own names? You
19 know, let's just concentrate on the conduct and
20 the problems, whether it's a slow guy or a fast
21 guy, and if it will be a woman someday also, you
22 know. You know, problems are problems, and let's

1 just think more holistically.

2 CHAIRMAN GENSLER: I think Keith is
3 next.

4 MR. FISHER: Thank you for having the
5 opportunity to comment. I was, you know, waiting
6 quite a while, as Greg mentioned, to see what the
7 Concept Release released said, and I have to say
8 that I was generally pleased. And one of the most
9 important facets that I found in the Concept
10 Release was that it took the overall view of
11 looking at automated trading and didn't focus on
12 -- it does have, you know, areas that talk about
13 high frequency trading. But overall, you know, it
14 started with issue of automated trading, which I
15 think is the right -- you know, the right circle
16 on the Venn diagram to look at.

17 I wanted to just echo, you know, the
18 comments that were made around the table. I won't
19 repeat them, but I did want to go back to some
20 comments that were made about kill switches. And
21 just in general, you know, as you solicit
22 comments, you know, it's interesting. You know,

1 we say kill switches. Well, yes, we absolutely
2 have to have kill switches. But when you start to
3 look at the details of any of these particular
4 risk management features, they're not so easy, you
5 know.

6 If I kill someone's trading strategy, am
7 I killing their orders that are risk taking or
8 risk mitigating? And if I've killed their
9 activity that's risk mitigating, what other, you
10 know, trickle down effects am I causing by doing
11 that? So it's not always so easy to just say,
12 yes, we have to have this parameter, yes, we have
13 to have this feature that's going to kill
14 something, and all will be good if we use when we
15 need to use it.

16 There's a lot of nuances and intricacies
17 in the things that are in this Concept Release
18 that you're going to get comments, and you might
19 miss some of those details depending on where
20 those comments come from.

21 The other thing I'll say is I'd just
22 like to add onto what Evelyn said. You know, you

1 could do everything that is not currently being
2 done, and, yes, there are a lot of things in the
3 Concept Release that are currently being done.
4 But you could do everything and you're still going
5 to have issues that are going to come up. And I
6 think you even mentioned that, Chairman Gensler.

7 But I think one of the things that that
8 means is this really speaks to the need to do
9 careful -- very careful -- cost-benefit analysis
10 of any proposal; that, you know, maybe it costs
11 too much, and the benefits that we actually get
12 just don't materialize. And so, I hope that as
13 anything progresses to proposed regulation that
14 there's going to be some very careful cost-benefit
15 analysis of anything proposed.

16 Thank you.

17 COMMISSIONER O'MALIA: Irene?

18 MS. ALDRIDGE: Thank you very much. I
19 really appreciate this release, and being a high
20 frequency trader, this may be a dubious compliment
21 in the eyes of the press, for the Commission. But
22 I think it was very well balanced.

1 One thing I would like to -- two things
2 I'd like to point out. First of all, from my
3 perspective, commodities right now are way ahead
4 of equities in terms of market structure and as
5 applied to mitigation of risks of high frequency
6 trading. And I think I'm echoing Cliff's point
7 there.

8 The second point I'd like to make is
9 there is a lot of emphasis on speed and who is
10 fast and who is not fast. And we have a lot of
11 debate going on whether fast means bad, but it
12 doesn't go beyond that.

13 So I think what would be really
14 interesting is to identify and perhaps with
15 industry participation. There are a lot of
16 industry practitioners who have observed bad
17 behaviors, specific bad behaviors, that may be
18 caused by high speed traders or low speed traders,
19 but something that would actually constitute
20 examples of manipulation, and spoofing is
21 definitely is one of them.

22 But basically at this point, there's a

1 lot of negative connotation as it is associated
2 with fast traders, but the examples of what these
3 fast traders can do are very few and far between.
4 So I think it would be interesting even without
5 naming names, if, Eric, you don't want to name
6 names, it's fine, call them names. But it would
7 be interesting to catalogue a set of examples,
8 exactly what is there that people are doing that
9 is wrong, and then somehow structure risk
10 activities around that, because I think there is
11 right now there is one catch-all net, and a lot of
12 people do believe that all high frequency trading
13 is negative. And without really going into
14 granularity about what high frequency trading
15 activities are bad and which are good.

16 Thank you.

17 COMMISSIONER O'MALIA: Thank you. Mr.
18 Lothian?

19 MR. LOTHIAN: As I was reading this, I
20 was trying to think of myself as a perhaps a prop
21 trader who was thinking about starting his own
22 particular group. And as I was going through all

1 of the 137 different pages of it, I said to
2 myself, you know, starting that car wash looks
3 like a lot more interesting right now.

4 This is a lot, and I really worry,
5 particularly as we get into the weeds of some of
6 the different specific rules for all these
7 different things, as to whether we're making
8 things so complex as to drive new, smaller
9 entrants out of it. And what are the rules that
10 are going to be applied to a new entrant? You
11 know, is it a doctor opening a doctor's office, or
12 is it a doctor that has to fill the whole hospital
13 in order to be able to support everything that you
14 want that doctor to be able to do, kind of thing.
15 So I'm worried about the impact on the new
16 entrants to the marketplace coming in.

17 I'm also worried about, you know, what's
18 the implication to -- just what is the definition
19 of a customer, and where does this apply? If you
20 have a retail customer, for example, using
21 automated trading tools from an ISB, okay, at what
22 point does that begin and who's responsible for

1 that, because that's -- you know, certainly
2 there's greater and greater tools for building
3 algorithms. It doesn't have to be high, you know,
4 frequency trading, or fast trading, or slow
5 trading. It's just automated trading.

6 And, you know, the other thing that, as
7 we were talking about kill switches and all this
8 kind of stuff, I'm reminded of a case, you know,
9 unintended consequences of where you just -- stuff
10 happens, you know, kind of thing. A broker in my
11 office had a computer that was frozen, okay?
12 Well, what do you do? Well, you push the off
13 button, come on. I mean, that's what you do.
14 It's the kill switch. You turn it off, right?
15 Except it's Microsoft Windows and it won't turn
16 off. So what do you do, all right? Well, you use
17 a little bit of logic, and I told him to unplug
18 the machine, okay?

19 Sometimes even, you know, great
20 engineering tools and stuff like that, you're just
21 not going to come up with every necessary
22 scenario, you know, kind of thing. So getting too

1 specific about some of this in terms of what it
2 has to kill and how it has to kill can do more
3 harm than good sometimes. So I'm a little bit
4 concerned about that.

5 So the cost-benefit analysis. You know,
6 we built an entire site, Markets Reform, where we
7 help people manage all of this regulatory change
8 that has occurred since Dodd- Frank. And, you
9 know, the more and more -- you know, the prospects
10 of getting into a career in regulation look better
11 and better all the time just because you have to
12 have that element to be able to get into these
13 markets. And so, now you're talking about a much
14 larger organization, more capital, those kinds of
15 things.

16 And, you know, we've already seen a
17 consolidation of sorts in the prop trading area,
18 okay? Okay. So, you know, with all the
19 connectivity that you have and the compliance that
20 you have and everything, are you going to see the
21 same thing in the prop trading area that you saw
22 in the FCM area, which was a consolidation

1 concentration to the point where we have so few
2 FCMS, that it's very difficult to be able to find
3 the places to be able to do certain types of
4 business. Too big to fail, you know, comes into
5 mind as well with that kind of thing.

6 So how you're treating the lesser, the
7 smaller with all of this is a big question in my
8 mind.

9 CHAIRMAN GENSLER: I'm going to have to
10 sneak out, but I just wanted to -- I'll be back
11 for the SEF panels later. But just a little bit
12 of reaction from this one Commissioner. This
13 debate, just this discussion here, tells me this
14 was the right thing to put out. I mean, you don't
15 all agree, and we wouldn't expect you all to. But
16 we're going to benefit as a Commission from
17 hearing this.

18 I think we -- a couple of things. I
19 think we put out kind of at the right time. I
20 mean, if we had done it a year ago, that would've
21 maybe been the right time. But we've now
22 completed the rule set on the swaps reform where

1 we could. I mean, there were a couple of rules
2 where we have to work with other agencies. But
3 that which we could do, we got out. And the
4 markets are largely adjusting.

5 So there's some real big thematic
6 changes happening, and I'm not talking about
7 electronic trading. I'm talking about central
8 clearing. I'm talking that we might have 15 to 20
9 SEFs initially. I'm talking about that we won't
10 have just the market structure around ICE, and
11 CME, and, of course, Minneapolis and Kansas City.
12 But, we're going to have a lot more
13 interconnectivity, a lot more interoperability, as
14 Supuma and others have pointed to.

15 So I think this is a really good time to
16 hear your views. John, no, I don't think a doctor
17 should have to build a whole hospital to open a
18 doctor's office, but that's why there's also
19 questions about is there something that exchanges
20 and clearinghouses do in an environment so that
21 others don't have to do it, or maybe it's the
22 Futures Commission merchants in some cases, so

1 that others don't have to do it, so we can learn
2 from that.

3 And I'd be very interested in the debate
4 as to whether we need to define high frequency
5 traders. I've tended to be, with all respect to
6 Commissioner O'Malia's work, I tend to think of
7 this more about automated trading or people who
8 have direct market access, somebody who has a pipe
9 directly into Globex, somebody who has a pipe
10 directly into a clearinghouse, that's where I sort
11 of thing, okay, are there more risk filters that
12 we need.

13 But I thank you all, and I know you've
14 got about another half-hour or something before
15 lunch comes, so.

16 COMMISSIONER O'MALIA: Thank you. Let
17 me take the question and go to the next level.
18 Cliff brought up the point about principles-based
19 regulation. We have two exchanges here, which I
20 think defend themselves and probably are quite
21 proud of their risk controls that they have in
22 place today.

1 At what point do we say, you know, we
2 need some of this and some of that, you know?
3 What is the minimum? If they have two different
4 control systems, are they both good, or do we
5 mandate them both, or do we say, no, ICE must
6 adopt the CME standards? And what about every SEF
7 out there, to Tom's point? What controls are we
8 expecting there?

9 So we need to begin to ask the tougher
10 questions and looking for your advice on this.
11 You know, how flexible can we be? How tolerant
12 can we be? What do we have to do to validate that
13 we're okay with what's in the market today. Even
14 if we don't federalize them or we decide them, do
15 we federalize both CME and ICE controls and then
16 apply them to every SEF? What's everybody's
17 thinking on this? Cliff?

18 MR. LEWIS: Don't do it. You know, the
19 exchanges have done a -- you know, it's a tribute
20 to the supremacy of the way the U.S. futures
21 markets work is, again, you guys can't deal with
22 success. And the fact of the matter is, I would

1 think a public policy purpose would be to
2 encourage a little competition.

3 So having the scope for exchanges or
4 clearinghouses, differentiating their product
5 offering through different techniques or different
6 controls is the right thing. And obviously, you
7 know, what you do for oats trading is not probably
8 what you want to do for the bond contracts, so
9 that there's going to be a good deal of
10 differentiation in the solution that, frankly,
11 government regulators should steer clear of
12 because that's really the purpose. I mean, unless
13 you want to take over the whole industry and make
14 it a subsidiary of the United States government.
15 There's ultimately a point where listed for-
16 profit companies have to engage in competition.

17 And the other thing that I think that's
18 a little bit striking is the ultimate penalty for,
19 you know, trading gone bad is the guy loses money
20 and goes out of business. Now, the government has
21 a legitimate interest as the regulations and as
22 the legislation stipulate for market manipulation

1 for abuse of conduct. But other than that, the
2 ultimate sanction for computers gone wild is the
3 guy has to close up shop, or the FCM loses some
4 money.

5 I mean, again, I think your point on
6 federalizing this is a very important one.
7 Clearly you have to look at it, but I think where
8 you are now, which is essentially trusting your
9 designated contract markets and others, is the
10 right place.

11 MS. VEDBRAT: I think, you know, we
12 probably end up more in a hybrid situation where
13 certain rules or whatever, they'll be more
14 subjective or principle based. You know, if you
15 look at CME and ICE, I would imagine, like, a lot
16 of the controls, even if they're different,
17 they're kind of trying to achieve the same thing.
18 So, you know, something like that, you know, if
19 it's more principled base or subjective, you know,
20 basically highlighting that, you do need to
21 address it, but leaving it up to the entity on how
22 they address it, is, you know, good.

1 But then when you go down the chain and
2 you look at, like, entities like SEFs that are
3 smaller and not necessarily able to stand on their
4 own, but yet have the ability to introduce
5 substantial amount of risk just by having, you
6 know, the wrong procedure in place. You know, at
7 that level you may want to have a little bit more
8 granularity. Like, you know, what we're dealing
9 with right now is we have, like, you know, so many
10 different SEFs. So we're focusing on about, you
11 know, 60 weight of them and essentially having to
12 write down, okay, these are the 7 or 8 critical
13 pieces that we need to see from a risk management
14 perspective, from a controlled perspective, and
15 building those matrices ourselves versus, like, if
16 there was, you know, a list that was given to
17 every SEF just because they're new in the market
18 saying that you need to have something in place
19 that is able to have either, you know, risk
20 mitigation or control depending what, you know,
21 what the criteria is in place that is transparent
22 to the market.

1 So you're going to end up a hybrid so
2 you don't, you know, in any way -- you know, the
3 competition is allowed to exist, you know, but yet
4 at the same time, you're providing, you know, a
5 safer environment, you know, for the rest of the
6 world that has to co-exist.

7 MR. WOOD: The thing that I was
8 concerned, it's a shame (inaudible) actually just
9 walked out of the room, is that we've just gone
10 through an exercise about pre-trade controls and
11 access -- direct access -- to marketplaces as part
12 of that. So with Rule 173, which is obviously a
13 rule focused on the clearing members as opposed to
14 the actual end users, yeah, it provides to us a
15 framework that we spend a lot of time interpreting
16 and asking for guidance on from people like Ananda
17 and the rest of the Division at the CFTC.

18 But the nice thing about it was it
19 wasn't necessarily prescriptive. It put in place
20 that there needed to be risk management. It put
21 it out there that we need to have risk management
22 in place. And we had to get an extension for

1 certain exchanges in the U.S. to put pre-trade
2 controls in place. Other exchanges already them.
3 It was deemed that that was suitable under Rule
4 173, and other exchanges had to put those same
5 controls in place.

6 I think with that framework, and maybe
7 just an extension of that framework, that will
8 cover probably most of the concerns coming around
9 risk management onto the SEFs.

10 MR. MACDONALD: I think from my
11 perspective, it's a hybrid problem because on the
12 one hand, I think the SEF doesn't have a view of
13 the kind of credit risk. It really has more of a
14 view of the kind of operational risk. We only
15 know one piece of the puzzle, and I think that
16 ultimately, you know, clearly there needs to be
17 controls at a SEF level around kind of what's
18 going through the pipes and making sure that, you
19 know, to the extent possible, we're avoiding any
20 issues.

21 And we've long, you know, we've
22 advocated using NFA and other methods like that to

1 try to kind of avoid a race to the bottom because
2 I think we have a real responsibility to make sure
3 that, you know, our systems aren't creating
4 problems. But I also think that, you know, from a
5 risk perspective, it does belong in the
6 clearinghouses as well because, you know, they
7 have more of a holistic view as to what individual
8 participants are doing.

9 And so, you know, I think it's a very
10 hard problem, and I think it has to be more
11 principles-based because I think we're entering a
12 brand new world where, you know -- I mean, I'm
13 sure it will come up this afternoon, but there's a
14 lot of open debate right now within this space.
15 And I think that, you know, having a
16 principles-based approach is the only real way to
17 kind of ensure that people are thinking about
18 these problems holistically and not just trying to
19 manage rule by rule as well.

20 COMMISSIONER O'MALIA: Sebastian, can I
21 just ask one final question? The floor trader
22 definition, what is the thinking behind why that's

1 the appropriate regulatory hook to make -- to
2 require registration? Floor trader, you might
3 want to walk through why you or OGC, whoever came
4 up with it, is the appropriate hook.

5 MR. SRINIVASAN: I think, Commissioner,
6 the intention really was to solicit comment on
7 whether there should be registration of a category
8 of participants that are not currently registered,
9 but that might, you know, in the view of some,
10 benefit the system, might benefit from their
11 registration. I think the floor trader category
12 is an option that we're soliciting comment on, but
13 I think as with the rest of the Concept Release,
14 its document doesn't particularly, you know, pitch
15 it as the solution. It simply solicits comments.

16 COMMISSIONER O'MALIA: Well, if we say
17 it does pitch it a bit, if it comes out in a
18 document, no matter what you think, but it does
19 make that kind of our position a little bit. But
20 thank you for that.

21 Commissioner Chilton, I don't know if
22 you have any questions for the panel?

1 COMMISSIONER CHILTON: I don't have any
2 questions, but, I mean, just a general comment. I
3 mean, you know, so everybody should be patted on
4 the back, fast is good, kill switches are already
5 in place or they're not needed. The cheetahs are
6 just like the floor traders. They should be just
7 treated the same. We shouldn't be big government.
8 We should just go back to principles.

9 I mean, I just come from -- of course
10 we've thrown everything but the kitchen sink in
11 this -- kitchen sink in this Concept Release.
12 We're not going to do everything. But the decade
13 of deregulation is over. I mean, we've seen where
14 that took us. And the question is finding the
15 right balance.

16 The deal with dilemmas is always trying
17 to get ahead of that because most problems are
18 solved as a result of bad actions. So from my
19 perspective, we need to come up something ahead of
20 time before we see problems that result in an
21 overzealous Congress coming after the cheetahs or
22 ATSS. So that's what, at least from this

1 Commissioner's perspective, is trying to find what
2 the right balance is. But doing nothing, that's a
3 non-starter with me.

4 I really appreciate the comments, and I
5 look forward to hearing more. And thank you
6 again, Mr. Chairman.

7 MR. HEHMEYER: Can I chime in? I've got
8 something on the SEFs from the PTG perspective
9 this afternoon. But one thing I'd like to say is
10 that this video thing in Chicago is very good.
11 And it's a good way to participate, and I think
12 it's possible if we promoted this a little bit,
13 we'd get more participation here in Chicago,
14 because this has been a good way to part of all
15 this this morning.

16 And Bart and I have debated a couple of
17 his points that he just made a little bit. We
18 have a good, healthy debate here occasionally.

19 But I just wanted to let you all know
20 that the community here in Chicago, which is
21 echoing what many people have said -- again, I
22 have something else this afternoon. But the PTG

1 Group has been favorably impressed and disposed
2 with regard to all of the questions that you all
3 ask, and it's a good, healthy debate for the
4 industry.

5 So, but this video thing has been a good
6 thing.

7 COMMISSIONER O'MALIA: I would point
8 out, Chris, the room is full.

9 MR. HEHMEYER: Sorry?

10 COMMISSIONER O'MALIA: We actually have
11 people in our seats.

12 MR. HEHMEYER: We have them. They're
13 just not clouding the camera to you. They're all
14 there. But, you know, there are people in Chicago
15 that would come and participate, I think, if this
16 was promoted a little bit. There are lots of
17 interested people and the Chicago Fed on this
18 issue and such who would participate if it were a
19 little bit better known, I think.

20 COMMISSIONER O'MALIA: We took the show
21 to Chicago, if you recall, in a hurricane here.
22 So it was our safety location. What did we call

1 that, our backup?

2 MR. HEHMEYER: Well, and is your next
3 one going to be at the FIA thing, the 2nd of
4 November?

5 COMMISSIONER O'MALIA: No.

6 MR. HEHMEYER: No.

7 COMMISSIONER O'MALIA: We haven't
8 scheduled the next one, you know. We did that
9 before. So we got to share with other important
10 cities.

11 If there are no further questions, lunch
12 has arrived, I'm told. We can take -- we've got
13 some time this afternoon. We have a good SEF
14 discussion, I expect, coming up. But if you want
15 to turn back to this, let me know. Everybody is
16 going to be at the table. This is really -- this
17 high frequency and automated discussion is a TAC
18 debate right now. We're not debating witnesses
19 here. We're just kind of thinking out loud. So I
20 greatly appreciate everyone's thought on this.

21 I apologize that we weren't able to give
22 it to you earlier. I think, Sebastian, you

1 mentioned it hits the Federal Register today, so
2 everybody -- more people can read it. We gave it
3 to you as we gave to the TAC members as soon as we
4 sent it to the Federal Register. So I do
5 appreciate further reflections, your comments, on
6 it. So thank you again for this morning's debate.

7 For TAC participants and witnesses,
8 we're providing the usual TAC lunch upstairs. So
9 please proceed to the elevators. We'll start
10 again at 2:00.

11 (Recess)

12 COMMISSIONER O'MALIA: Take their seats.
13 We have our lead off speaker here so we can get
14 started. Today we have our third and final panel,
15 SEF panel, and we have selected a handful of
16 people that have raised concerns or issues that we
17 have heard from, we've got the NFA, who's going to
18 have a big role in surveilling the SEFS here
19 today, and we've kind of got -- we have all manner
20 of different representations of either SEFS or
21 market providers.

22 We're going to start off the day with

1 David Van Wagner, who I think you all know and who
2 the chairman delivered his email to the entire
3 world and said if you have a problem, call David.
4 This is who you call.

5 David's going to give us a quick
6 overview of the rule and the issues that you're
7 dealing with and the path forward. Obviously, as
8 I noted earlier, we're 20 days away, we've got a
9 number of SEFs to do. I think he's going to touch
10 on what is made available to trade determination,
11 and then I'd like to recognize after that Nicholas
12 to give a brief EU perspective on trading. I
13 think we've had some significant challenges in
14 terms of the international front with the October
15 2nd deadline and what that means for the previous
16 agreed upon proposal between Barnier and Gensler
17 and then we'll just -- we'll start with Scott and
18 then we'll kind of -- actually, I think we're
19 going to go with Jane next with NFA to kind of
20 give a perspective on that, and then we'll get
21 into the market participant issues from there.

22 So, David Van Wagner, please kick us

1 off.

2 MR. VAN WAGNER: Thanks very much,
3 Commissioner O'Malia. I'm not quite sure if there
4 are other commissioners listening in, but
5 greetings to the chairman, Commissioners Chilton
6 and Wetjen as well and the members of the
7 Technology Advisory Committee.

8 Yeah, I was just going to give a quick
9 overview of the SEF rulemaking, and a little bit
10 of the context of where it sprung from in the CEA,
11 been made available for trading or match
12 rulemaking, and I'm going to quickly segue into
13 using acronyms entirely, so hopefully people are
14 up to speed on those, and basically our progress
15 in reviewing SEF applications and some upcoming
16 key dates.

17 The SEF rulemaking, of course, comes out
18 of the CEA. Section 5H basically sets forth basic
19 registration and compliance requirements for SEFS,
20 including 15 core principles that all SEFS have to
21 comply with to attain and maintain registration.

22 And of course the goal of one of -- one

1 of the overarching goals of the section is to
2 promote the trading of swaps on SEFS and to
3 promote pre-trade transparency in the swaps
4 market.

5 Part -- well, 1A50 of the act defines
6 SEFS, and it's a fairly broad definition,
7 basically a trading system or platform in which
8 multiple participants have the ability to execute
9 or trade swaps by accepting bids and offers made
10 by other multiple participants through any means
11 of interstate commerce.

12 Also, Section 2H8 is key here. It
13 basically establishes what we call the trade
14 execution mandate whereby swaps that are subject
15 to the clearing mandate and have been made
16 available for trading on a SEF or a contract
17 market, a DCM, become subject to that mandate and
18 have to be traded from that point forward on a DCM
19 or a SEF.

20 So, our SEF rules set forth -- they have
21 a fairly broad registration requirement, which
22 essentially states that, any person who operates a

1 facility that meets the SEF definition, that is a
2 many to many platform, has to register as a SEF.
3 To be clear here, that registration requirement is
4 not tied to the trading of swaps that are subject
5 to the trade execution mandate.

6 I've got a little notation here, it's
7 number 88, which corresponds with a footnote in
8 our rulemaking, which makes this, I think, pretty
9 clear, along with 37.3, and basically also in our
10 preamble we give some examples of markets which
11 would trigger -- in our view, which would trigger
12 this registration requirement, and probably more
13 importantly, some of the platforms which wouldn't
14 trigger the SEF registration requirement.

15 Essentially, we really set forth only
16 two examples and they are a pure dealer market
17 where a dealer sets up a market, posts bids and
18 offers, and stands ready to be the buyer to every
19 seller and the seller to every buyer. And also,
20 of course, continued private negotiation between
21 two parties who contact each other in whatever way
22 they might, but they basically privately negotiate

1 and consummate the transaction between the two,
2 but that's a pretty small sliver of the universe,
3 we think, of where swaps are executed now.

4 Upon registration, SEFS have to comply
5 with all the core principles and the related
6 rules, and they also have to -- to emphasize one
7 point -- they also have to meet what we call the
8 minimum trading functionality, essentially they
9 have to have an order book, that being a trading
10 system in which all market participants have the
11 ability to enter multiple bids and offers, observe
12 or receive bids and offers entered by others, and
13 to transact against those bids and offers. That
14 is a minimum functionality. It is not one that
15 has to be followed for all trading on the first
16 days of SEF registration, because it's not likely
17 to be a trade execution mandate.

18 We actually divide transactions into
19 SEFS into sort of two classes, basically required
20 and permitted transactions, which correspond with
21 those swaps that are subject to a trade execution
22 mandate, i.e. required transactions, and those

1 that are not subject to trade execution mandate,
2 and those are permitted transactions.

3 When it comes to permitted swaps with
4 permitted transactions, really anything -- any
5 trading methodology that the SEF wants to
6 establish can be used. However, when a swap
7 becomes subject to the trade execution mandate,
8 essentially its transactions in those swaps are
9 considered to be required transactions and
10 required transactions really can only be executed
11 in two ways -- well, three ways, because block
12 transactions are still permissible, but
13 essentially you have to -- the trading is limited
14 to either an order book, as described earlier, or
15 an order book plus an RFQ functionality.

16 We basically in our rulemaking, we
17 establish that the RFQs have to go out to a
18 minimum of three market participants. There's a
19 phase-in period for that requirement, one year
20 from the compliant -- up until one year from the
21 compliant state, the minimum can be RFQs to two.
22 When responses come back from market participants

1 who have been issued RFQs, the SEF is expected to
2 basically convey that information along with
3 anything that's outstanding in the order book,
4 which has to exist side-by-side with any RFQ
5 mechanism, and that's conveyed to the market
6 participant who asked for the quotes.

7 So, so far we've been handling
8 registration applications from SEFS. Most of them
9 have availed themselves of our temporary
10 registration avenue. That is, you submit your
11 application and ask for temporary registration.
12 We will review the application for -- essentially
13 for completeness. We do not do any sort of drill
14 down on substance. We make sure that you are
15 answering the questions in an appropriately
16 responsive manner, but we are not drilling down
17 with any depth on substance.

18 That will be done after temporary
19 registration is granted and when we are able to
20 conduct a full review of all the applications.

21 But upon the grant of temporary
22 registration, the SEF itself, when it begins

1 operations as a SEF, is expected to comply with
2 all the requirements applicable to SEFS, and just
3 to make sure that that message is clear and you're
4 at risk -- so, for instance, if there are
5 problematic things in your application, which we
6 might not have caught because we only really did a
7 complete application review, you're potentially at
8 risk if you try to get away with something. I
9 mean, hopefully most of these things are questions
10 of, you know, some judgment issues and we'll work
11 through it with SEFS, but if people try to do
12 something blatant, we, I think, always have it
13 within our discretion to ring our friends in
14 enforcement and let them know about things like
15 that.

16 So, just to let you know, you don't get
17 a free pass with temporary registration. You're
18 expected to comply with everything that's
19 applicable to SEFS.

20 So, so far we've got 17 SEF applicants,
21 which corresponds with the number that we thought
22 we'd see. All of them are asking for temporary

1 registration. To date, three of them have been
2 granted temporary registrations. And we expect
3 that we're going to be able to roll forward with
4 most of the remaining applications by October 2nd.
5 Most of the perspective SEFS are already swaps
6 trading platforms, so prior to Dodd-Frank they
7 were essentially relying on the number of
8 exclusions and exemptions from -- in the CEA as a
9 result of the CFMA in 2000.

10 Those operations are continuing to rely
11 upon those exemptions and exclusions pursuant to a
12 DMO no action letter that we issued in June, 1328,
13 but that no action letter essentially comes to an
14 abrupt stop on October 2nd, which is also,
15 fortuitously, the compliance date for the SEF
16 rulemaking, so, obviously orchestrated to
17 transition entities to the SEF rules.

18 So, that's really about it on the SEF
19 rulemaking and some of the aftermath. Just a few
20 words about the made available for trading
21 rulemaking, which was done on the same day as the
22 SEF rulemaking.

1 Essentially, again, this is the trigger
2 for the trade execution mandate. Under the CEA, a
3 swap that is subject to the clearing mandate must
4 be traded on a DCM or a SEF unless no DCM or SEF
5 makes it available. So, the mechanism we set up
6 to determine whether something has been made
7 available, a MAT determination, we'll call it, is
8 the DCMs or SEFS would make a filing with us under
9 our Part 40 rules, which are basically the rule
10 filing procedures, and they would make their case
11 that they are listing a swap that's been made
12 available for trading.

13 Basically, the two fundamental
14 prerequisites for making the filing is -- are,
15 rather -- the swap in question has to be subject
16 to the clearing mandate, you can't do it in
17 advance of the clearing mandate being subject --
18 the swap being subject to the clearing mandate,
19 and also the DCM or the SEF -- because the DCMs
20 could make this filing as well -- the DCM or SEF
21 actually has to have listed this swap. And we've
22 set out a number of factors that the DCM or SEF

1 should address when they make that filing and
2 they'll be considered by the commission.

3 You can make this filing either as a
4 self-certified filing, a rule filing, or you
5 could affirmatively ask for commission approval.

6 In the MAT rulemaking, the commission
7 essentially committed, that at least in the early
8 days of MAT determinations, it would take the full
9 amount of time that's going to be available to it
10 under the Part 40 rule processing procedures,
11 which essentially means it's approximately a
12 90-day review period, whether you go either route.

13 We've also made a commitment that we
14 would publish the filing itself and ask for
15 comment via our website.

16 And then, upon either the commission
17 approving a self-certified filing -- excuse me,
18 the filing -- or the self-certification passes and
19 the commission doesn't object, that that's the
20 trigger for the trade execution requirement.
21 Actually, 30 days after that event is when the
22 trade execution mandate would apply and, of

1 course, the knock on effect would be that
2 particular swap has to be traded on a DCM or a SEF
3 and when it is traded, at least on the SEF, it can
4 be only traded according to those functionalities
5 I described earlier, the order book or the order
6 book plus the RFQ.

7 So, I guess the last point to quickly
8 make is that is that most SEFS have indicated that
9 -- even the ones that have already gotten
10 temporarily registered, have said that they're
11 going to be pushing off their start date until
12 approximately October 2nd, no later than that, and
13 so even assuming immediate made available for
14 trading filings by a SEF on October 2nd, it is --
15 if you project -- if you do the math, that the
16 earliest trade execution -- the earliest date that
17 a trade execution mandate could kick in would be
18 on or about February 1, 2014.

19 So, that basically concludes my remarks.
20 Thanks very much.

21 COMMISSOINER O'MALIA: Thank you, Dave.
22 Nicholas, can we ask you to provide a brief

1 summary of the international or the EU
2 perspective?

3 MR. GAUTHIER: Thank you. The European
4 Union is engaged in the implementation of the G-20
5 commitments on the trading of what is their chief
6 contracts. The training obligation is a major
7 component of a MiFID II negotiation in Europe.
8 MiFID II includes an obligation to trade OTC
9 derivatives on trading venues, it introduces a new
10 category of trading venues, the so-called OTF,
11 Organized Trading Facilities, and it defines a
12 stringent, transparency regime for swaps.

13 In terms of objectives, the EU and U.S.
14 regimes are very much aligned. I'd like to
15 underline that on certain aspects the member of
16 OES MiFID II regime isn't as strict as NCFC
17 requirements.

18 First of all, regarding the trading
19 obligation determination, the difference is that
20 in Europe the decision will not be made by the
21 exchanges but the decision will be made by SMA and
22 the European Commission, who will decide when a

1 contract is subject to central clearing, whether
2 it is appropriate for mandatory trading.

3 In the field of pre-trade transparency,
4 we contemplate a higher degree of materiality for
5 the trading platforms that will be used to comply
6 with the trading obligation. On those trading as
7 well, we think that it will leave less room
8 towards trading in Europe. And we also have
9 significant differences between the OTF regime and
10 the SEF regime.

11 In particular, in Europe, an OTF will
12 not be allowed to match clients' trade against its
13 own book, whereas I understand that it's possible
14 in the U.S., although it's true that there will be
15 safeguards when it's done in terms of timing for
16 execution in -- of governance of the SEF.

17 There are other issues we look carefully
18 in the U.S. Regime such as the block trade
19 exemption, because we didn't like that by
20 introducing a similar approach, we would open
21 significant loopholes.

22 So, despite these differences, I think I

1 can safely say that the objectives are there and
2 we are pretty much aligned.

3 This is the reason why in July we have
4 recognized the similarities in the pass forward
5 agreed between the European Commission and the
6 CFTC and we have recognized the need for an
7 internationally consistent implementation of these
8 regimes.

9 To quote the pass forward, we wrote that
10 "Regulatory relief to trading platforms that are
11 subject to requirements that achieve regulatory
12 outcomes that are comparable to those achieved by
13 the requirements for SEFS should be considered by
14 January 2014."

15 To us, this aspect, this commitment to
16 consider a specific regime for non-U.S. SEF is a
17 very important aspect of the path forward
18 completed in July.

19 We think that the registration
20 requirement is not in line with the objectives of
21 this path forward and could potentially raise
22 significant issues, first of all practical issues

1 because it might be very difficult for non-U.S.
2 SEF and European SEFS to register by the 2nd of
3 October and if they were not able of doing so, it
4 could have market implications, and more
5 fundamentally we think that the model -- a model
6 of dual registration and dual supervision of SEFS
7 is not the optimal model to have a globally
8 integrated market.

9 We think that a dual regime of
10 supervision of SEF could cause serious and durable
11 market fragmentation because it would imply that
12 the trading venue active in the EU and the U.S.
13 would need to accept duplicate regulatory
14 requirements and dual supervision with potentially
15 conflicting rules.

16 As a result, some market will probably
17 fragment, participants would seek only to interact
18 with non-U.S. Person to avoid the duplicative or
19 contradictory requirements, and more worrisome,
20 trading venues could decide to split markets
21 between a SEF pool and a non-SEF pool.

22 Split pools would mean unequal

1 competition between EU and U.S. venues and users.
2 Moreover, split pools would significantly
3 undermine the efficiency and functioning of
4 international markets and at a time when growth
5 may be returning and the need for international
6 capital flows will become more acute, this could
7 affect investors and ultimately the real economy.

8 Still, this is the reason why we think
9 that we should really continue a discussion on
10 this topic and get further in the definition of
11 this non-U.S. SEF regime and I would like to note,
12 to complete, that this is also in line with the
13 recent call on regulators of the G-20 leaders in
14 St. Petersburg who said that regulators should
15 defer to each others rules when it is justified by
16 the quality of the respective regulatory and
17 enforcement regimes, and that they should set
18 rules on any remaining issues relating to
19 overlapping cross-border regulatory regimes and
20 regulatory arbitrage. Thank you.

21 COMMISSIONER O'MALIA: Thank you,
22 Nicholas. We're going to go to Jane from NFA to

1 report on kind of the integration, so to speak,
2 the surveillance responsibilities. I think just
3 about everybody has signed up that has applied to
4 be a SEF has signed up with the NFA to conduct
5 their surveillance. Maybe a few that have not,
6 but by and large, most people are going through
7 NFA. So, NFA's participation here is pretty
8 relevant.

9 MS. CROESSMANN: Okay, great. So, thank
10 you, Commissioner O'Malia, for the opportunity to
11 present here today.

12 To date, NFA has signed regulatory
13 services agreements with 15 applicants as
14 permitted by commission regulation 37204 that
15 allows a SEF to contract with a registered futures
16 association to assist in complying with the SEF
17 core principles.

18 All 15 of those, as of this week, now
19 have applications before the commission for
20 temporary registration, three of those have been
21 granted temporary registration, as David
22 mentioned, and two of those SEF applicants also

1 intend to operate DCMS for the transacting of
2 swaps.

3 So, today I want to give to you an
4 overview of the technology and specific data
5 element requirements necessary for NFA to conduct
6 regulatory services for those SEFS under contract.

7 As most of you know, NFA currently
8 utilizes electronic systems to conduct
9 surveillance for both DCMS trading futures
10 contracts and retail OTC currency trading
11 facilities, the RFEDS since February of 2011. So,
12 we have used these existing systems and the CFTC's
13 proposed and now final SEF and DCM regulations as
14 our guide in developing a new surveillance system
15 for swaps.

16 Additionally, prior to my joining NFA,
17 the NFA market regulation group spent several
18 months in New York and New Jersey visiting some of
19 the larger potential SEFS in order to learn just
20 how these swaps markets operated.

21 From those meetings, NFA market REG and
22 our IT department developed an 80-page data

1 specification that all potential SEF applicants
2 need to map to in order for NFA to conduct
3 surveillance. The commission was consulted and
4 offered several good suggestions that we
5 incorporated into that.

6 So, regulation 37203 requires a SEF to
7 have an automated trade surveillance system.
8 That's actually the service that we're providing
9 to the SEFS under contract. It also provides 24
10 hours to load and process those transactions, so
11 what we're doing is we're getting nightly files
12 from the different SEFS and we're actually getting
13 21 files that can be categorized in four general
14 categories.

15 So, the first one, exchange activity,
16 this is actually what happened in the markets
17 yesterday. The first file that we receive is a
18 deals file. This captures all the primary
19 economic terms of all the required and permitted
20 transactions.

21 Next file is a messages file. This is
22 all the bids, offers, cancellations, modifieds.

1 This is really the nuts and bolts of the audit
2 trail. And in order for us to do trade practice
3 surveillance, we need to capture those elements so
4 that we can recreate that audit trail and replay
5 that daily market activity.

6 We get connection activity. If a trader
7 has been logged -- this is how we're going to do
8 our rule enforcement program -- if a trader has
9 been logged on for more than 24 hours, we take
10 note of that. There might be other traders using
11 one trader ID. We're going to look into that. We
12 also get a daily activity file. This is actually
13 the open, high/low close of the markets, so that
14 will show the impact of a deal. If there was a
15 large transaction, we want to know if it moved the
16 market 5 percent versus 50 percent.

17 So, this next slide, this is static
18 data. This just really tells us who is accessing
19 the system and in what capacity.

20 Next we have our relationship files.
21 Some traders are only allowed to trade certain
22 products. We want to know what those are. We

1 want to know a firm's relationship with its
2 clearing FCM so we'll know their clearing CME, ICE
3 or LCH. The really important part of this slide
4 is probably these bottom two bullets. 37.9
5 provides the methods of execution on a SEF. As
6 David mentioned, that's the order book and the
7 RFQs.

8 37.9(a)(3) is that RFQ requirement to
9 three participants, two initially and those should
10 not be affiliates of or controlled by the
11 requester or each other. So, for example, if we
12 see a request for quote go out to JP Morgan London
13 and JP Morgan New York, not to pick on anybody,
14 but those are affiliated firms and that's where
15 the request for quote only went out to, we would
16 look into that.

17 So, the next files we receive, the
18 product files, these files are probably the really
19 big learning curve for NFA. As I mentioned, we
20 were out in New York several months learning how
21 these markets traded and the complexity of the
22 products.

1 As you know, there's a much larger
2 universe of tradable instruments in the swaps
3 world than there is in the futures world. So,
4 what we did in order to make sense of all this
5 information that we're getting, clearly we needed
6 a taxonomy to effectively analyze and surveil this
7 data. So, we created what we call a product
8 matrix, and that's actually just the same as the
9 product taxonomy, that's shorthand for how we
10 group these products together.

11 So, I think that's more clear on this
12 following slide. So, this is the product matrix
13 that NFA developed. So, 45.7 requires unique
14 product identifiers for each product and also
15 those products have to be sufficiently
16 standardized in order to receive a UPI.

17 So, in advance of the commission
18 determining what is an acceptable UPI, we had to
19 make sense of this information. So, we decided to
20 go to what was already out there, so we went
21 initially to the DCOs already clearing swaps so
22 that we could see how they defined the structure

1 of their products.

2 So, if you look over on the left here,
3 that's these gray boxes, this is what we took from
4 the DCOs already clearing transactions and this is
5 the basic framework for our product matrix, and
6 here we're not trying to recreate the wheel or
7 anything, we wanted to use what was already out
8 there, as in the industry standard.

9 So, then we go over across the asset
10 classes and these blue boxes. This is the current
11 industry taxonomy and this actually came from the
12 ISDA OTC taxonomies. So, again, we don't want to
13 create anything new, we want to use what the
14 industry is already using.

15 So, now while this is effective for Part
16 43 and Part 45 reporting purposes, this doesn't
17 really get us to where we need to be for trade
18 practice and market surveillance. This required
19 us to drill down further.

20 So what we did, you can see this in the
21 red boxes. We filled in the gaps here and again,
22 we didn't do anything new. We used FPML

1 representations, red codes, and isocodes to fill
2 this in. And this gets us down to a UPI level.

3 So the reason this slide is important is
4 because, as David mentioned, the required and
5 permitted transactions for all the mandated to be
6 clear trades, the MAT, the transactions that are
7 going to be MAT and become required transactions,
8 for the SEFs to meet this data specification, that
9 really hasn't been an issue to date. They've been
10 able to map to this very well. And for the
11 permitted transactions that have not been mandated
12 to be cleared but are already clearing, this
13 really isn't an issue either. But where we've had
14 issues, and the SEFs have had to spend some time
15 mapping to us is for these transmitted
16 transactions there to be spoke, the not cleared
17 transactions, and I'm sure we'll hear from SEFs
18 later on on how that's going for them.

19 So as I mentioned, this gets us down to
20 a UPI level, but in order for NFA to do
21 surveillance, we actually need to get down to
22 what's called a tradable instrument level. That's

1 the order book level. So as you can see by this
2 slide, many tradable instruments will fit under a
3 similar UPI. And what we're doing, each one of
4 these tradable instruments actually has its own
5 order book. So the five-year, the two-year, and I
6 think I didn't mention the spread transactions,
7 the strategies earlier, but if a five-year and a
8 two-year actually trades as a strategy rather than
9 an individual leg to that spread, that's going to
10 have its own order book as well. And that's what
11 we need to map to.

12 An easy analogy that really brought this
13 home for me was if you think of a UPI contract as
14 like a corn contract in the futures markets,
15 that's not actually what we're surveilling. What
16 we're surveilling is the September 2013 corn
17 contract and the December 2013 contract. And if
18 any of those would trade as a spread transaction
19 and have its own order book, that's how we're
20 drilling down. So that's an overview of where we
21 are today, and of course, we'll enhance our
22 surveillance systems as the markets evolve and we

1 gain more experience in these areas.

2 COMMISSIONER O'MALIA: Thank you very
3 much. Now we're going to go to the market
4 participants.

5 We're going to start with Scott. We'll
6 work down -- Michael, Paul, and Tom.

7 MR. FITZPATRICK: Commissioner O'Malia,
8 thank you again for the invitation to attend
9 today's TAC meeting.

10 My name is Scott Fitzpatrick, executive
11 director of Strategy and Business Development at
12 the Tradition Group. Tradition is one of the five
13 founding members of --

14 COMMISSIONER O'MALIA: Scott, can you
15 pull the microphone closer, please?

16 MR. FITZGERALD: Usually I'm told I'm
17 talking too loud.

18 So I'm Scott Fitzpatrick, the executive
19 director of Strategy and Business Development at
20 the Tradition Group. Tradition is one of the five
21 founding members of the Wholesale Market Brokers
22 Association. We are operational in over 28

1 countries, covering products in all of the main
2 asset classes -- rates, credit, FX, equities, and
3 of course, energy and commodities. Each of the
4 WMB member services applied, as David said, for
5 temporary registration as a SEF and we hope to
6 receive approval prior to the October 2nd SEF
7 compliance date. Each of our firms will operate
8 according to the requests for court systems and
9 other platforms to foster liquidity and provide
10 markets for our customers. We operate through any
11 means of interstate commerce using a variety of
12 modes of communication and execution as required
13 by the unique characteristics of each product.
14 For the last few years, the industry has focused
15 its preparations on what we currently refer to as
16 required transactions. Namely, those trades and
17 products have been identified by the Commission
18 mandated for clearing and those that we expect to
19 identify for made available to trade and as such,
20 are subject to the execution mandates for swap
21 market participants. These are also the products
22 in which we typically see the most volume, trade,

1 and most frequency.

2 When the final rule came out we were
3 surprised to see for the first time in the
4 preamble that the Commission was not expected to
5 implement the SEF regime for all permitted
6 transactions in a timeline of October 2nd
7 compliance date, which in effect gave us three to
8 four months to implement an infrastructure from
9 any products when our focus had been on a few
10 products over the previous couple of years.

11 As a result of Footnote 88 as it is
12 affectionately called, this has raised some
13 serious concerns for the industry. Despite best
14 efforts, we are less than three weeks from the SEF
15 rules compliance date and there remains a lot of
16 work left to do with our customers, testing new
17 infrastructure, for example, for SDRs with
18 clearinghouses and, of course, with the NFA.

19 I think it's fair to say that WMBA
20 member firms are ready for SEF trading of the
21 aforementioned required transactions on October
22 2nd. Three Wednesdays from now their platforms

1 will allow trading through any means of interstate
2 commerce in compliance with the SEF rules. We
3 will all have fully functional audit books, audit
4 trails, trade reconstruction capabilities, and be
5 reporting those swaps to registered SDRs. The
6 sole concern is the uniform implementation of the
7 vast array of permitted transactions and having
8 all of them ready to go live in such a short
9 period of time.

10 The reason Footnote 88's impact is so
11 acute for WMBA member firms but not necessarily
12 all SEFs is the breadth and depth of products
13 offered and facilitated through our platforms for
14 customers, whereas other SEFs, as is common in the
15 industry, will offer a much smaller subset of
16 products and maybe even (inaudible) deemed for
17 required transactions. Many SEFs act as a source
18 of liquidity for those swaps that trade
19 infrequently or have unique characteristics. The
20 product set that will fall within permitted
21 transactions on Footnote 88 simply does not have
22 the liquidity characteristics to trade on a screen

1 through the plethora of actionable bids and
2 offers. They require more finesse and rely
3 frequently on an intermediary to negotiate terms
4 between counterparties on an anonymous basis.
5 This distinctive role is carried out globally by
6 firms like Tradition.

7 Today, I'd like to raise three primary
8 concerns. First, we have earlier in the data
9 reporting panel of some of the issues around SDR
10 reporting, so I mention this is a concern voiced
11 by others and currently pre-SEF dealers and market
12 participants are reporting data to the SDRs and
13 CFTC pursuant to parts 43 and 45. The CFTC is
14 using that timely and accurate and complete set of
15 information for efficient surveillance and
16 enforcement purposes.

17 There is concern that the transactions
18 with SEF reporting regime, as contemplated by the
19 CFTC's rule, will not go smoothly for permitted
20 transactions on October 2nd. In a nutshell, SEFs
21 must continue to build out the necessary
22 technology, populate it with each possible

1 permutation of all of the good swaps, test and
2 ensure connectivity to SDRs and another market
3 services, form into all systems internally. And
4 at the same time, swap dealers or current
5 reporting parties have to be sure they stop
6 reporting at exactly the same time to avoid the
7 risk of duplicative reporting.

8 After careful consideration among all
9 market participants, the Commission risked
10 duplicative reports and complete reports, and as
11 such, arguably a suboptimal dataset, one that will
12 be of lesser quality than they are receiving
13 today. I think it would be prudent and helpful to
14 all of the CFTC who we have been and continue to
15 work closely with and have been very accommodating
16 in trying to understand the issues or to bring the
17 new regime to the marketplace in such a way that
18 does not disrupt the scope and quality of data it
19 has come to enjoy.

20 Second, while our members are working
21 closely with the NFA, we have similar concerns
22 that necessary systems across all asset classes

1 will not be in place for the NFA to receive,
2 catalogue, and analyze the volume and breadth of
3 information on all permitted transactions to
4 appropriately monitor trading activity, an
5 important piece of which is static data generated
6 during client on-boarding which I shall touch on
7 in a moment.

8 We have been in close touch with our
9 colleagues at the NFA, and Jane and Ed have been
10 very accommodating, who have been very helpful
11 working way more hours than any person should
12 probably need to with our data reporting teams and
13 will continue to make sure that we transition as
14 smooth as possible for these products. However,
15 with 20 days to go, I can conservatively say that
16 more time would be helpful to make sure everything
17 is done right providing a risk-free transition
18 into the new regime.

19 Finally, as I mentioned a moment ago, I
20 wanted to raise the issue of on-board bill of
21 clients. As of October 2nd, as David mentioned,
22 the current systems and platforms will be obsolete

1 and our customers will begin trading at Tradition
2 through a then-temporary registered SEF. Under
3 the SEF rule, a platform must be registered.
4 However, we risk that some, a few, but
5 realistically not all of our customers will have
6 signed the necessary legal documentation agreeing
7 to rubrics, accepting a new legal entity as an
8 authorized trading venue and having provided all
9 of the information we require for our own
10 regulatory obligations.

11 This problem is compounded when you
12 consider the number of customers and SEFs. There
13 simply aren't enough lawyers even in Washington,
14 D.C., compliance staff and technologists for
15 system testing to get it done in less than three
16 weeks. As an example, some of our current
17 customers may not even begin to consider our
18 on-boarding packets until we have a provisional or
19 temporary registration from the CFTC.

20 And from a business perspective, I don't
21 disagree with the decision on how to allocate
22 limited time resources, particularly when they are

1 not compelled or obligated to use SEFs until
2 they're made available to trade determination has
3 been which could, as David mentioned earlier, be
4 at minimum a few months away.

5 That's all I have to say. Thank you
6 very much. And I look forward to questions.
7 Thank you.

8 COMMISSIONER O'MALIA: Thank you very
9 much. Michael?

10 MR. YARIAN: Thank you, commissioners.
11 I do have some visuals. I don't know how to get
12 them up there. Sorry. My name is Michael Yarian.
13 I work for Barclays Capital. I'm here
14 representing the FIA and we want to get into a few
15 of our concerns regarding SEF limitation.

16 We have concerns about the impending
17 October start dates. What we're most concerned
18 with, being the FCM, which is at the center, I
19 think, of the ecosystem and being asked to provide
20 assurances and guarantees, if you will, and using
21 that word it tends to put the hair up on bankers'
22 necks. It's not one taken lightly and it's a big

1 responsibility.

2 But there is a major difference
3 listening to all the different market participants
4 between being technically ready and being
5 operationally ready. Various aspects of the
6 derivative are ready, technically speaking, but
7 there has not been a single front to back, soup to
8 nuts, rigorous testing regime carried out on this
9 entire system.

10 FCMs provide clearing services and are
11 comfortable providing a guarantee that trades will
12 clear after execution if capacity exists. But we
13 continue to read through SEF rules and understand
14 what the SEFs and the CFTC thinks the FCM is
15 guaranteeing by providing clearing services on a
16 SEF platform. So what we're being asked to
17 provide is analogous to the payment card industry.
18 If you think of the merchant -- the SEFs as
19 merchants, FCMs as issuing banks, clients, and
20 cardholders are the -- sorry, the clients are
21 cardholders. There is a transaction network made
22 up of middleware, limit hubs, SEFs, CCPs, FCMs,

1 pipes and plumbing and so on and so forth. And
2 most importantly, there is an electronic
3 verification system.

4 A transaction starts with an
5 authentication or authorization. Credit or
6 clearing certainty is extended and funds
7 guaranteed once the transaction is authorized via
8 electronic credit check. Credit is reserved until
9 clearing and settlement or returned to the
10 cardholder. Disputes occur. It's important, and
11 chargebacks happen. We're not sure if that's
12 allowed in the new world. They tend to get passed
13 back to the merchant who is incentivized to ensure
14 that they are doing everything they can to
15 mitigate the risk. While limit checks are
16 required by rule 173, we do not believe
17 functionality exists to allow the FCMs to
18 simultaneously guarantee activity of a customer
19 across multiple platforms. So to use the credit
20 card analogy further, think of shopping on the
21 Internet. Speed is introduced. Multiple family
22 members might be shopping all at once against the

1 same credit line.

2 We believe that credit hubs may
3 eventually provide the functionality but we are
4 not there and true end-to-end testing has not been
5 completed. We understand that the CFTC staff
6 believes that because limit checks are required,
7 no trades will break. Therefore, there should not
8 be any concern on the part of the FCM providing
9 complete guarantees. In the absence of credit
10 hubs, we do not agree that this is true.

11 It's important to note that FCMs are
12 supportive of SEF trading. It's a major market
13 structure change that requires intensive reworking
14 of existing processes and flows and testing to
15 ensure the least disruption to market functioning
16 as possible. Most of the risk resides with the
17 FCM, apparently. It is accountable to its
18 shareholders, customers, SEFs, CCPs, regulators,
19 and the broader market. As such, we have to get
20 this right and are well on our way, but it's
21 unreasonable to ask this community to guarantee
22 what it can't control.

1 So this is a diagram of the pre-SEF,
2 post- mandatory clearing world. Clients do
3 trades. They are alleged and matched and flow
4 down to BACCP to the clearing broker who then
5 checks to ensure that line exists. If we actually
6 move to the right -- this is the post-SEF world.
7 Sorry, one more note on the left side. The market
8 is functioning well. We had some panic as we
9 moved into Rule 174, but again, the market
10 absorbed it and has dealt with it well. And I can
11 speak for Barclays, specifically, but I do believe
12 I speak for the industry. All trades that have
13 been rejected and resubmitted have cleared. So
14 again, the market functions well.

15 Moving on to the post-SEF world, you
16 introduce SEFs. You introduce potential
17 anonymity, and you introduce multiple trading
18 venues trading fungible products. This is
19 acceptable, and I'll go back to the market being
20 technically ready but not operationally ready.
21 Everything works if there's one SEF and every
22 client wants to trade on one SEF. I don't believe

1 it's my job to choose who that SEF is. If there's
2 only one SEF, and I take all of that limit and
3 stick it at that SEF, I'm comfortable delegating
4 my limit-checking responsibility to that SEF.

5 The problem is that this is what the
6 real world looks like. On the left you can see
7 what we're entering into once products are made
8 available to trade in a world without a limit hub.
9 SEF trading by definition is DMA. The major
10 difference between SEF trading of cleared products
11 is product fungibility. So if you think about a
12 euro dollar futures contract, I can place a limit
13 at the Exchange and be comfortable that it can't
14 be trading anywhere else and it's controlled in
15 that venue. But again, you can see the complexity
16 introduced by SEFs.

17 Two major factors introduce race risk
18 where race risk is a condition or hazard. It's a
19 behavior of an electronic or software system where
20 the output is dependent upon the sequence or
21 timing of other uncontrollable events. I can't
22 control where the client is trading unless I can

1 control it. A limit hub will allow me to control
2 everything except for voice trading. I don't
3 think we'll ever get there but voice trading is
4 slow. It's deliberate. What I'm concerned with
5 is electronic trading. I'm concerned with
6 mistakes being made and being forced to guarantee
7 those trades.

8 This is a comparison of the SEF
9 rulebooks that was drawn up by the FIA. These are
10 double-side pages so it's quite significant and
11 there's a big section at the beginning on limited
12 liability. So this isn't about me saying anyone
13 in particular is supposed to be liable but it's me
14 saying for the FCM community that we shouldn't
15 solely bear the burden of any mistakes happening
16 in the system. If you actually get into these,
17 there's no liability or very limited liability I
18 think in most instances. And this is public
19 information. The liability can be capped at
20 \$5,000 in a day, \$100,000 in a year. That doesn't
21 cover very much. We're not trading peanuts here.
22 These are -- this is a significant marketplace

1 trading large flows. All we're saying is that
2 risk should be borne by those who have the
3 information. The FCM community, once we move to
4 the right and we have a limit hub and we have
5 connectivity to all the SEFs and we can reduce the
6 race risk to only voice trading and we're willing
7 to accept more risk. We're willing to accept the
8 risk because we go back to the credit card
9 analogy. Every single order that will be placed
10 onto a SEF will have reserved credit or clearing
11 capacity against it, therefore, removing the need
12 for that backend credit check. Until we get there
13 we're basically saying we want to have the ability
14 to ensure that clearing capacity exists post-
15 trade.

16 The limit hub does several other things
17 as well. It translates various FCM and SEF limit
18 language and structures -- IM, notional DVO1,
19 CSO1. It has a heartbeat to ensure connectivity,
20 provides a central view for clients of clearing
21 capacity across multiple FCMs. And it vastly
22 limits race risk across screen products by

1 centrally managing capacity across multiple
2 trading venues by reserving limit upon order
3 entry.

4 I think I'm out of time. There's
5 another summary slide here. But this is very
6 important to the FCM community going forward and I
7 just wanted to make that point. It is solvable
8 though. Serious work and investment is being put
9 towards this problem and progress is being made.
10 It's not a blueprint. Foundations have been laid,
11 the house has been framed, and we're working very
12 closely together to work towards a solution.

13 COMMISSIONER O'MALIA: Thank you very
14 much, Michael. Paul?

15 MR. HAMILL: Thank you, Commissioner.
16 So I guess we also looked at some of the issues
17 and the pre-trade limit check was one of them so I
18 won't reiterate many of those points but we will
19 cover a couple of others. What we did think was
20 important around any discussion of SEFs was
21 continued focus on what we think are bigger
22 picture issues, as well as just those for October

1 2nd. We clearly see October 2nd as the first step
2 in many as we roll out what is going to be a very
3 complicated and multi- step market structure
4 change.

5 Clearly, in the big picture we remain
6 very focused in ensuring that SEFs maintain
7 compliance with the core principles, particularly
8 around impartial access as we continue to think
9 that's a fundamental component of how SEFs are
10 built out. We appreciate the efforts the CFTC
11 staff are undertaking to ensure that the SEF
12 rulebooks, including those submitted for temporary
13 registration, are consistent with the final rules
14 and certainly welcome Mr. Van Wagner's comments
15 today around how that's being addressed because we
16 certainly feel as we get through to any kind of
17 public comment period as it relates to MAT
18 determinations, if there were meaningful
19 inconsistencies in some of those rulebooks that
20 that would come to the surface in a way that would
21 be complicated around how those determinations
22 were made.

1 For October 2nd, we think there are
2 definitely real issues that exist, primarily
3 related to on-boarding and operational workflow.
4 We think there is some case to recognize the
5 distinction between different markets and we would
6 certainly highlight that we think the on-boarding
7 issues are particularly acute for FX. Overall, I
8 think we believe that considering any action
9 around this is really important to the CFTC
10 considering that a competitive market for our
11 customers is pretty critical. The feedback we
12 have for most of our customers continues to be a
13 desire to see a very competitive, innovative
14 market where they can access a range of liquidity
15 pools and get the benefit of innovation and
16 creativity.

17 On the on-boarding side, I think it's
18 clearly an issue, perhaps less so for dealers,
19 considering we're somewhat more used to this kind
20 of way of doing things. But certainly, for
21 clients, our end clients, for the first time for
22 them, I think considering direct participation in

1 a regulated venue and the things associated with
2 that such as disclosures, inspections by the SEF,
3 liability rules, disciplining rules, and trading
4 protocols and how they implement that through
5 policies and procedures internally and how they
6 monitor it and track it is clearly something that
7 is starting to become more clearly understood by
8 our end clients.

9 I think partly in relation to that we
10 would link that back to the impartial access
11 standard as being critical. I think it's
12 essential that customers have the option as was
13 laid out in Rule 37, 202, to access SEFs in a
14 variety of different ways, including indirectly,
15 and I think that would alleviate -- I think the
16 ability to do that would certainly alleviate some
17 of the issues we're seeing right now with
18 customers as it relates to on-boarding.

19 I think it's certainly clear -- and I
20 think Michael showed the rulebook comparison chart
21 -- I think it's certainly clear from our
22 discussion that many of our customers have neither

1 the appetite nor the resources to connect directly
2 to 20 SEFs and do the kind of complex, legal, and
3 operational and compliance reviews required to do
4 so.

5 On the workflow pieces, I think we would
6 highlight -- well, I won't say any more about the
7 pre-trade check other than the robust
8 implementation of a pre-trade check is fundamental
9 to the market working. I think the clearing
10 workflow, the direct through clearing workflow is
11 clearly a challenge, certainly in terms of getting
12 that implemented in time. And if I look at where
13 our firm is and others and the SEFs, that's
14 certainly one area where we're struggling to get
15 there on time in every case. I think punched
16 orders is a big issue for many of our accounts,
17 and I think the fact that there is no real central
18 clearing solution and what we call kind of
19 stand-by clearing, fully ready and available for
20 customers, know that there's definitely some
21 challenges that are bigger customers are going to
22 face who would typically trade punched orders and

1 then allocate post-trade. And I think that
2 clearly is something that needs to be addressed.

3 And then I think our last key issue is
4 reporting. I think Scott mentioned that. I think
5 ISDA submitted a no action letter on that, and
6 again, if there were an area of targeted relief,
7 we think that's one which would be crucial.

8 I think we would note when we consider
9 the impact, in conclusion, we think the
10 dealer-to-dealer market can probably operate okay.
11 I think there's clearly latency in getting
12 rulebooks out and having access to those platforms
13 but I'm confident we could get through some of
14 that stuff. We certainly anticipate that there
15 would be some impact to the dealer-to-client
16 market on screens, and I think we would certainly
17 note an important distinction between FX and rates
18 and credit. I think for rates and credit we
19 certainly observe the existence of other methods
20 of execution, voice, or across platforms not
21 subject to the SEF registration requirement which
22 could facilitate that trade workflow, but we would

1 be careful to note that for FX I think that would
2 be a huge problem seeking to push clients to
3 revert back to any kind of voice trading.

4 And I think in conclusion, since I'm out
5 of time, I think, we think targeted relief
6 specifically in the areas of reporting and punched
7 orders is crucial for October 2nd and special
8 consideration for FX, while bearing in mind the
9 commercial reality of many of the new entrants and
10 SEF platforms out there and the need for them to
11 get operational as soon as possible if we're to
12 have a vibrant and innovative and competitive
13 landscape for SEFs.

14 That's the end of my remarks. Thanks.

15 COMMISSIONER O'MALIA: Thank you, Paul.
16 Tom?

17 MR. ZIKAS: I'd like to thank the
18 Commission on behalf of State Street for letting
19 us be represented here. For my sins, I'm saddled
20 with the responsibility for swap X, our SEF.

21 State Street remains very supportive of
22 the CFTC's objectives and all the work that's been

1 done, and the timelines that have been finally
2 issued have really served to focus the market and
3 move the market from theory to actual practice.
4 So that's been a great result. And we understand
5 the magnitude and complexity for all the
6 participants and the regulators of the challenges
7 of sifting through what's wheat and what's chafe
8 and really being able to hone in and focus on the
9 things that are important to operationalize the
10 regulatory regime.

11 I'm representing our cumulative
12 experience developing, operating e-trading
13 platforms across multiple asset classes and swap X
14 looks at life through two prisms, which include
15 both foreign exchange and interest rate swaps.

16 So as I go through my remarks there's
17 kind of two undertones that I want to kind of
18 throw out there. You know, whenever you're
19 subject to a mandated timeline, inevitably not
20 every participant is poised and ready in the right
21 sequencing. Technologies aren't there and they
22 may not be able to promptly comply with the letter

1 or the spirit of the regulations. So as such,
2 everybody is always going to look for promoting
3 some form of stop-gap solution, solving today's
4 problem and the near term problem, and that's just
5 practical. We have to do that. However, as a
6 market, we need to be careful that these
7 compensatory and bridge gap solutions don't embed
8 flaws that become kind of part of the foundation
9 that as we build on top of the foundation, the
10 foundation will crack and crumble afterwards. So
11 sometimes the loudest voice in the room isn't
12 giving you necessarily the right answer.

13 I'm going to address the practical
14 challenges from a technology perspective
15 associated with the compliance state and provide
16 some illumination on our experience with the task
17 of on-boarding.

18 So the first thing is as everybody
19 knows, the October 2nd date from a SEF's
20 perspective means one of two things -- you either
21 are a registered SEF or DCM or you cease and
22 desist. Period. And you have that exemption for

1 the single-dealer platforms where they can
2 continue to operate until made available for
3 trading determination. So the rigid timeline has
4 been great in serving the purpose of focusing the
5 industry on the practical realities to enable
6 people to continue trading. So that's one good
7 result. Whenever you do such kind of a big blunt
8 instrument swipe there's also unintended
9 consequences.

10 So when you look at the implementation
11 obligations from my colleagues here it's daunting.
12 And inevitably they have limited resources so
13 they're just going to have to practically
14 prioritize what they do. So logically speaking,
15 they're going to have to prioritize what's
16 looming, what's going to be a required
17 transaction, what's going to be made available for
18 trading.

19 So even if best will in the world you
20 wanted to get everything sorted out, some things
21 will have to take a back seat. From our
22 perspective, one of our kind of incumbent areas of

1 operation is in foreign exchange. In the absence
2 of having the resources to adapt to the statutory
3 workflows, just even simple things like capturing
4 USI codes, reporting party designations and the
5 like, existing mature e-trading activities will
6 inevitably, they have no choice, they're going to
7 have to shift back to old school voice or migrate
8 to the exempted single dealer platforms. And
9 you're going to have this kind of market asymmetry
10 where you have an existing, robust, liquid
11 electronic trading environment which now will have
12 to, just for practical limitations, devolve and
13 revert back to kind of old school techniques.

14 That will also be exacerbated by the
15 extraterritorial questions. U.S.-non U.S.
16 persons, there was a huge lobby from even existing
17 customers of ours saying, hey, you know, we're not
18 ready. Can you just do something outside of the
19 U.S. and cut the market in bits and do the
20 non-U.S. stuff out here so we can keep on trading
21 and catch up later? So that's kind of one point.

22 The second point is just kind of my

1 experience in supporting the on-boarding processes
2 and we're poised and ready to go. But I wanted to
3 dispel the notion of a sign up and trade kind of
4 process. There is a lot of technology- driven
5 workflows that must precede SEF trading. Because
6 of the resource consumption for each SEF
7 implementation, SEFs themselves will be
8 prioritized or sequenced in how they're adopted.
9 We need to be careful that we don't inadvertently
10 pick winners based on how they're being
11 provisionally registered. And I'll be honest, I
12 see my Bloomberg colleagues. I'm really jealous
13 of those guys because they've had a two months,
14 three months head start and everywhere you go say,
15 oh, I'll get to you but I'm working on that
16 Bloomberg stuff because they're the only SEF. So
17 just throw it out there.

18 But the process is as follows: There's
19 definitely -- the first process is legal. I'm not
20 going to comment on that here because this is a
21 technology panel, but you've got to get through
22 these guys' legal reviews and they're not going to

1 take it trivially. You know, we've received six
2 pages of minute comments from dealers about our
3 participant agreement and rulebooks. So they're
4 taking it very seriously and that's the first
5 process.

6 The second is the establishment of
7 credit relationships. So the credit
8 relationships, we as a SEF, we have the full
9 capability to receive and enforce on a pre- trade
10 basis those credit limits. Now, we need to be
11 careful, and I know that the deal hubs and the
12 central credit hubs are definitely a focus today
13 and we're supportive of that focus because it's
14 practically impossible to wave a magic wand and
15 have my colleagues be ready to support dynamically
16 every SEF directly. However, we also need to be
17 careful that we don't embed flaws or flawed models
18 that perhaps will not withstand the test of time
19 where you have electronic trading meeting
20 electronic trading and have protocols of credit
21 verification where by the time the answer of
22 approved for credit comes the market has moved and

1 there is no trade. So we need to be careful about
2 that.

3 Just to practically illuminate the tasks
4 that individuals have to undertake, you have to
5 connect to a SEF for order routing. That means
6 for the buy side you have order management systems
7 that you need to connect. A lot of buy side
8 people say I'm not going to let my trader just
9 trade. He's got to go through the order
10 management checking process. Sell side folks have
11 to connect their pricing models and they have to
12 interpret our instrument models and they have to
13 connect their pricing models through that. That
14 takes some effort. On a post-trade basis,
15 straight through processing. For audit trail
16 purposes, capturing your USI, recons, and
17 reporting party designations, you have to get that
18 right. And then from an operational perspective,
19 people have to also map their instruments such
20 that it corresponds to the instruments as we've
21 defined them on our SEF. So there's a tangible,
22 technological process that people have to go

1 through. So that's going to impact how SEFs are
2 adopted, the sequence in which they're adopted,
3 how quickly they're adopted, and inevitably, it
4 will disrupt trading patterns.

5 So that constitutes my comments. Thank
6 you.

7 COMMISSIONER O'MALIA: Thank you very
8 much. While you all think about your questions
9 for any of the panelists, Ananda, you're welcome
10 to take a seat up here. I think everybody knows
11 Ananda Radhakrishnan, the director of -- what do
12 we call your division anymore? Clearing --

13 MR. RADHAKRISHNAN: Clearing and Risk.

14 COMMISSIONER O'MALIA: Clearing and
15 Risk. I'll answer and defend his clearing --
16 straight-

17 Through clearing provisions and probably
18 shed a little light on them. I don't know if you
19 want to make a comment, Ananda, beforehand, but
20 I'm going to make a couple observations.

21 It is interesting to me that we're not
22 debating whether it's right to have SEFs.

1 Everybody wants SEFs. Everybody wants them to be
2 successful. Everybody wants the pre-trade
3 transparency and price discovery that comes with
4 SEFs. The timetable is a theme that has come up
5 here quite a bit and the aggressiveness of the
6 timetable. And a variety of the issues, and
7 Michael's slide right here leaves it up. We have
8 some legitimate technology questions that were
9 raised today, things like reporting was raised in
10 the first panel, DTTC brought it up, Marisol
11 brought it up -- the quality of the data being
12 reported and the shift from swap dealer to the
13 SEF. Michael's points about the credit checks and
14 the certainty of clearing. Obviously, a
15 technology solution. Michael said it's not if it
16 will happen, it's when it happens and how it
17 happens and the process in which it happens is
18 probably compounded by the October 2nd deadline.
19 There are on-boarding issues, whether it's a delay
20 in our ability to approve rulebooks or offer
21 temporary registration of which people can say,
22 oh, yes. Now I get it.

1 I think it was interesting to see the
2 comparison of the rulebooks, Michael, you had
3 there. And I assume that's a summary. That's
4 actually not the rulebooks; right? All of you?
5 Okay, small font.

6 And then there's the international
7 gotcha. The international rules provided some
8 review of the international rules march which I
9 think was what Mr. Barnier signed up for and now
10 we have an October 2nd sign up which I think, Tom,
11 you touched on the fact that that forces a lot of
12 clients and a lot of U.S. persons all over the
13 world to figure out whether they're going to be
14 trading on SEFs or MTEFs or OTEFs, and I think
15 that was surprising to many of us that that
16 requirement moved, that there is a registration
17 distinction versus an execution distinction that
18 we're going to work with Europe on.

19 So these are the issues that I've been
20 hearing, not only from this panel but
21 conversations -- anything since post-August when
22 people came back and really focused on these

1 issues and really started sharing with the
2 Commission.

3 So Ananda, why don't we -- there was a
4 lot of discussion before you got here, none of it
5 a surprise to you, so why don't you go ahead and
6 make a couple of comments about what your
7 expectations are and your needs are.

8 MR. RADHAKRISHNAN: The Division of
9 Clearing and Risk and the Division of Market
10 Oversight sent communication to all already
11 registered SEFs applicants about the importance of
12 certainty of clearing. And I want to try and
13 explain what we meant by that.

14 Certainty of clearing of SEF-executed
15 transactions the staff believes is essential
16 because it also results in certainty -- what I
17 would call certainty of execution, knowing that
18 your execution actually took place because if your
19 execution is not clear, then what good is your
20 execution?

21 So now the question is how do you get
22 there? And I'm going to ask you guys a couple of

1 questions. I'm going to first suggest the state
2 where you should get to and I'm going to find out
3 whether you're going to get there by October 2nd,
4 and if not, why not? The state that SEFs should
5 get to is whatever is executed has to be cleared.
6 No exceptions. For credit. I understand
7 sometimes someone can make a fat finger error or
8 some kind of operational error and I can
9 understand why you may have to bust a trade if it
10 was an error. But if it's not an error, whatever
11 is executed has to be cleared. And I'm thinking
12 especially in the context of required transactions
13 because then if this doesn't happen, why did the
14 Commission go to the trouble of saying that
15 certain transactions have to be required?

16 I'm saying also the importance of doing
17 credit checks -- we have a regulation on our books
18 called 1.73 which obliges FCMs, growing FCMs to
19 have pre-execution credit controls and engage in
20 credit checks, and just in case anybody is under
21 the impression that you don't have to use
22 automated means to do credit checks for an RFQ

1 system on a SEF, let me tell you the division
2 disagrees with that. You have to use automated
3 systems. Okay?

4 Now, the other question is you have a
5 credit check before execution on the SEF, and then
6 there's been a suggestion that there should be
7 another credit check at the clearinghouse to see
8 whether a trade is going to be accepted or
9 rejected. I want to know why. Why can the
10 industry -- why cannot the industry come to a
11 state where you engage in all of these checks
12 before an order is executed in the first place?

13 Whoever wants to respond is free to
14 respond.

15 MR. YARIAN: I completely agree with you
16 that it can with the exception of a major change
17 to voice trading, which would mean that a voice
18 trader -- a voice trade would need to reserve some
19 clearing capacity before. So let's set that
20 aside. I think that's a condition I think we're
21 willing to accept as an industry.

22 But with regard to providing clearing

1 certainty across many venues, it's just simply a
2 case of technology. It's not a case of unsolvable
3 technology or unsolvable market structure. It's
4 just that there are 17 SEFs and two solutions have
5 been identified, two vendors, and people are
6 building to them, so it's a matter of time. So
7 the reason you need it is to shrink your race risk
8 if there's clearing capacity. And I'm going to be
9 clear. If a client has clearing capacity, the
10 trade will clear. But I don't know what that
11 client's doing. Only the client knows what the
12 client is doing. So I can tell them what their
13 capacity is but at this point, if they want to
14 trade on 17 SEFs, which is a stretch, but more
15 than one or two, somebody would need to ration
16 that credit. What the limit hub provides is the
17 ability for the client to trade where he wants, he
18 or she, whenever they want. And it's self-
19 rationing. They put an order in to SEF 1, credit
20 capacity is reserved. A token, if you will, a
21 heartbeat will exist between the FCM and the CCP,
22 so I can't use that as an excuse for the trade not

1 clearing because there's a live wiring there to
2 the CCP. Barclays's good, Barclays's good,
3 client's good, client's good. I'm happy to apply
4 a guarantee in that instance. The technology is
5 not there. We will get there. It's being built.

6 COMMISSIONER O'MALIA: Supuma?

7 MS. VEDBRAT: I actually don't know who
8 I'm addressing this to, but as with regard to
9 certainty of clearing, Ananda, what we've been
10 told from the SEFs, we do not have certainty of
11 clearing as clients because if we were to execute
12 against a counterparty that's self-clearing -- so
13 if it's any of the dealers or like a self-clearing
14 buy-sell client, there is no check for credit
15 limits at the SEFs, so that's why almost all the
16 SEFs we've spoken to have said that you do not
17 have certainty of clearing at time of execution.
18 So to some extent we've gone through this effort
19 for the last 18 months on coming up with
20 solutions. It seems to have been focused only on
21 the buy side. And the reality is that if we're
22 going to have some sort of systemic issue, it's

1 not going to be a buy-sell that's going to cause
2 it.

3 So that's a big concern for us that you
4 have that October 2nd date, and after all this
5 work and effort, we still will not have certain of
6 clearing if we execute with many of the
7 counterparties on the street.

8 MR. RADHAKRISHNAN: I'm sorry, why would
9 there not be executions? Is it because you may go
10 to -- you'll probably go through a credit check.
11 The self-clear does not and --

12 MS. VEDBRAT: Yes.

13 MR. RADHAKRISHNAN: -- and then the
14 trade will be cleared?

15 MS. VEDBRAT: Yes, if the CCP rejects it
16 after you have executed it, then essentially we
17 hold the risk of the trade or the break, you know,
18 whichever way we look at it. And the explanation
19 given to us is that the CCPs have not made
20 available a checking mechanism, whether it's in
21 the form of a payment or anything to the SEFs. I
22 mean, this explanation comes from the SEFs.

1 Mr. FARLEY: Yeah, hey, Ananda. I want
2 to say thanks, genuinely. There is a good deal of
3 confusion around this issue so I appreciate you
4 being here today and listening.

5 Let me just speak for a moment from the
6 perspective of the clearinghouse because I think
7 when you asked the question it was both -- it
8 could be either directed to the --

9 MR. RADHAKRISHNAN: Everybody.

10 MR. FARLEY: Right. So a trade can
11 happen on a SEF and theoretically it could be
12 rejected by the FCM or when the FCM passes it
13 along to the CCP it can be rejected by the CCP. I
14 think your industrial logic is irrefutable. That
15 is, as we move from higher transactions -- fewer
16 transactions, higher notional to more
17 transactions, lower notional, automated trading,
18 we want as few hurdles as possible. And so a
19 world where I execute on a SEF and I know it's
20 cleared, that's where we want to get it. It's
21 very similar to the futures model, although in the
22 futures model there are some caveats.

1 Clearinghouses can reject trades in certain
2 instances but it is very much in line with your
3 vision.

4 The issue we have is that's not what the
5 rule requires and so we want to get there but, for
6 instance, and I don't have the rules committed to
7 memory as you do but in one of the 39 rules it
8 says very clearly a clearinghouse can accept or
9 reject a trade as long as it does it as soon as
10 technologically possible. And so that's the way
11 we built the first instance of the SEF and the SEF
12 workflow with the idea, hey, let's start there.
13 Let's go live and let's evolve to this place of
14 complete clearing certainty. If the rules of the
15 game are you need to get to clearing certainty at
16 the risk of sounding cavalier, it's not a big
17 deal; it's just going to take more time because
18 that's not what we prepared.

19 MR. ZIKAS: And so from the perspective
20 of the SEFs, you know, the technological
21 capability is there. We have the ability to
22 enforce the limit that the FCM gives through any

1 of its customers. And how that gets to us, if it
2 goes through a centralized mechanism that delivers
3 it to us or if it's given directly, it's a matter
4 of preference from the FCM. I think the missing
5 piece is how does the clearinghouse expose its
6 credit limits and credit availability with that
7 clearing layer? So we run a marketplace on spot
8 FX where this exact model lives and operates
9 correctly. A central counterparty exposes its
10 limits to each prime broker, who in turn exposes
11 its limits to every customer, and that's
12 mathematically adjudicated on a pre-trade basis.
13 So therefore, nothing matches that's beyond the
14 credit limits, and therefore, everybody knows
15 that's a good trade. Lacking that exposure,
16 again, you can't wave a magic wand and just wish
17 it to be there on day one, but like in that
18 exposure, you're always going to have this gulf to
19 bridge.

20 I wanted to respond also to my
21 colleague, to Michael. The credit methodologies,
22 and I understand the central distribution needs

1 for credit. It's a practical consideration. It's
2 impossible for you to do that today with
3 everybody, but we also have to be careful not to
4 marry ourselves to a process that will not
5 withstand the test of time. And when you look at
6 circumstances where you're pre- consuming allotted
7 credits and creating egg timers and tokens that
8 follow every order, that's simply -- what happens
9 in the case of a market maker? What happens in
10 the case of someone who's trying to protect orders
11 that they have by putting a lot of stop orders in?
12 If you each one of them consumes available credit,
13 they're not going to be able to trade at some
14 point.

15 So we're happy, and I think most SEFs
16 are happy to receive those credit limits
17 dynamically and adjust to them, but to kind of
18 marry the market to a single token-driven solution
19 may not be the right answer for the long run.

20 MR. MACDONALD: I mean, I guess from my
21 perspective, just kind of more broadly to start
22 with, I think fundamentally there are two things

1 at issue here. One is really the ultimate debate
2 is about liability. And the regulation goes to
3 some extent to basically say, and Ananda, you said
4 earlier, whatever is executed has to be cleared.
5 Right? And so the problem is that because the
6 venue of execution is different than your clearing
7 and you can further compound the issue by throwing
8 middleware discussions into the middle of that, to
9 the extent that the SEF is on the hook for being
10 responsible for that and the CCP is on the hook
11 for being responsible for that, you have this kind
12 of confusion which reigns today; right? And I'm
13 very receptive to the points that the FCM
14 community is making because at the end of the day,
15 to the same degree that as a SEF I'll make the
16 argument that I don't have control over credit
17 because I can only see what's being done in my
18 SEF. The FCM is going to make the argument that
19 they have to understand what's going on in the
20 broader universe and across different SEFs to
21 understand what the credit line actually is.

22 And I think you have this debate going

1 on at the moment, which is actually driving
2 fundamentally a lot of these discussions. The
3 reality is that today we're in a model where the
4 buy side comes onto the SEF and the SEF is
5 dependent on information going back and forth, and
6 we don't know that the trade is cleared until we
7 hear from the CCP that the trade is cleared. And
8 so just to touch on the middleware debate a little
9 bit, the issue with the middleware is that to the
10 extent that the SEF is responsible for kind of
11 that process in the eyes of the client and in the
12 eyes of the CFTC, not from a credit perspective,
13 then clearly from our perspective we want to make
14 sure that to the extent that we are using any
15 middle ware, which we don't have a problem with,
16 that that middleware doesn't expose us to any
17 issues in that chain. Every time you add another
18 component in this daisy chain you introduce risk
19 into the system.

20 So the reality is that the way the
21 system is designed right now, which is not the
22 ping model and maybe we'll get there, but I think

1 a lot of pieces have to fall in place for that to
2 actually happen. I think in the short run we're
3 in a world which is actually quite inefficient,
4 and I think that one of the concerns you have is
5 I'm curious to see what's going to happen on
6 October 2nd.

7 I also admit that the second part of
8 kind of a thing that people are talking about is
9 there is an incredible structural amount of
10 processing which is going on at the moment. I
11 mean, you have a whole community that all of a
12 sudden is being assailed by 17 different SEFs and
13 FCMs and CCPs, with all of this documentation.
14 They've got a process to try and get through. I
15 think that's what human nature is such, especially
16 in this environment, that now that we're three
17 weeks away everybody's starting to focus on it,
18 but I think that everybody is kind of hair raising
19 the concerns around that because this is a very
20 complex business with a lot of moving parts. So
21 you know, I think they're all very, very valid
22 points.

1 COMMISSIONER O'MALIA: I put up a slide
2 we did over a year ago. We talked about this
3 issue, kind of the 1.73 discussion. What is the
4 right answer? What is -- what do you prefer out
5 of this that would be optimal? Or is it something
6 not on this page that you're expecting in order to
7 achieve your objective?

8 MR. RADHAKRISHNAN: I have never seen
9 this before, but I think the model should be --
10 even before the audit goes to the platform for
11 execution, first of all, the FCM does the check
12 against the customer, which you have to do right
13 now. So the order goes. And once it's executed
14 it goes to the CCP. Now, I'm not saying CCP
15 shouldn't do their own risk management. Please
16 don't get me wrong. You've got to do your own
17 risk management. We expect you to. The question
18 is how you do it. Potentially, you could do it
19 upfront as well. And what I'm saying, I guess, is
20 that's the best way to do it, to address Supuma's
21 point. Right? Because I think -- I don't want to
22 speak for Supuma, but it's awful that she doesn't

1 know whether she's going to have a transaction or
2 not. Right? She doesn't know -- at the time that
3 she did the transaction, she doesn't know whether
4 it's actually going to be a live transaction. So
5 I guess what I'm saying is the best scenario would
6 be everything is done upfront, sort of like the
7 futures model. And then for those of you who are
8 accusing me of trying --

9 COMMISSIONER O'MALIA: Is that actually
10 the futures model? Bryan, can I --

11 MR. DURKIN: Forgive me but I'm just a
12 little confused, Ananda, on that particular point
13 because to have that credit check done upfront,
14 how is the SEF going to have a picture of what an
15 FCM's post-trade exposure is to a DCO? Wouldn't
16 the DCO be the one that has that full picture of
17 the exposures of an FCM into them?

18 MR. RADHAKRISHNAN: Correct. Correct.
19 So what I'm suggesting is that before -- and you
20 guys tell me whether this cannot be done, although
21 I would be kind of suspicious if you say you
22 cannot -- why -- let me ask the question. Why

1 can't the check be done -- the FCM check and the
2 DCA check be done before the order even hits the
3 central limit order book or the RFQ system?

4 COMMISSIONER O'MALIA: Supuma?

5 Ms. VEDBRAT: Yeah. I think that the
6 credit hub would solve the pre-check of limits by
7 the FCM for the client or whomever they're
8 servicing. It's for the check between the
9 clearinghouse and the FCM that is missing right
10 now. So, I mean, if there's time for the hubs to
11 actually finish this last leg of work, we'll get
12 to it for anyone who is using an FCM and is
13 willing to use the hub.

14 MR. RADHAKRISHNAN: Scott, I think the
15 top left, that would be the model if the CCP
16 communicates the limits to the SEF for the
17 clearing member, right? Because that's the key.
18 The key is, like, Mike could be offered clearing
19 across, say, 15 cents. Right? So the CCP, they
20 need to know what his exposure is in a process of
21 15 cents.

22 MR. YARIAN: I think what's missing

1 there is my credit availability to the client. So
2 if you put the hub and -- two things have to
3 check. That I have capacity with the CCP and that
4 my client has capacity with me. Those two things,
5 boom. And it's not slow. So I'm very happy for
6 you to take this risk as a SEF, if you like, but I
7 don't think you're willing to. That's our
8 purpose. We just need to be able to check it to
9 provide the guarantee.

10 COMMISSIONER O'MALIA: Michael, you're
11 saying that FCM be -- needs to go -- there needs
12 to be some additional lines between the FCM and
13 the client?

14 MR. YARIAN: Yes. The hub should take
15 lines in from the CCP, so they should be saying
16 FCM A is good. And the hub should also take in
17 that FCM A is good with this client. Now, those
18 two pieces of information are sitting there. So
19 we can get into whether that's a push or a ping.
20 Ultimately, you want the fastest push and then the
21 push could sit so it doesn't slow down trading and
22 so on and so forth. But it needs to take two

1 pieces of information.

2 Now, as important is as it goes up
3 through the food chain, transactions matched, it
4 needs to communicate back to the hub to say you
5 took 100,000 in '01 and that was reserved when the
6 trade went up, just like a credit card, or when
7 you put gas in your car it reserves 75 bucks
8 whether you put gas in or not. Okay, it needs to
9 come back in and say, yeah, gas went in or no
10 trade, return that credit or that capacity. This
11 is where the CCP reg comes in because the trade
12 drops within the CCP. They can say, yes, that
13 trade has cleared. Every party has fulfilled
14 their obligation. Trade cleared, boom.
15 Communication (inaudible) it says, okay, there's
16 only 900,000 left as opposed to a million and
17 we're back to business.

18 MR. TERRY: Yeah, I just have a basic
19 question here.

20 So we were talking to counsel the other
21 day about the on-boarding process and all the
22 documentation that goes with it, and our counsel

1 mentioned to us that just curious if there is a
2 break, how is the industry, how are the SEFs
3 dealing with it in the interim?

4 I was told by counsel that the worst
5 case scenario is that we might have to negotiate
6 thousands of break agreements -- they're playing
7 it out a little bit. Is that true? And if so, I
8 mean, that's a pretty significant barrier to entry
9 for a guy like me who is a small hedge fund who's
10 just trying to put some trades on. So just a
11 point of clarification because I've heard that
12 rumor numerous times over the course of the last
13 couple of weeks that there's some potential for
14 some serious backlog of agreements potentially and
15 negotiation.

16 COMMISSIONER O'MALIA: Well, Michael,
17 when you were explaining the relationships between
18 clients A and B and FCM, what kind of
19 documentation to Marshall's point does all of this
20 require in order to achieve all of these
21 objectives?

22 MR. YARIAN: You have an FCM. So once

1 we get to the solution -- you have an agreement
2 with your FCM. You would then choose a limit hub.
3 I would argue you don't have to choose one
4 because, honestly, all the ecosystem cares about
5 is that NCFM actually is providing clear capacity
6 and that the CCP has line to that FCM. So
7 arguably, you don't have to choose a limit hub but
8 you might want to engage with one because you want
9 to get extra services or view your picture across
10 your FCMs. But the engagement with the hub itself
11 -- and I'm not going to speak -- the SEFs can
12 answer their own questions with regard to what
13 kind of documentation is necessary. It will just
14 be a mapping exercise.

15 MR. TERRY: I get that, but in the
16 interim, if there are breaks, and I think
17 historically -- I mean, this might be a bit of a
18 red herring because I don't know how many breaks
19 are true in the futures markets per se but I've
20 been told by counsel that this could lead to a
21 staggering number of negotiations across the SEFs
22 for these "break agreements" which is very akin to

1 the argument I made -- the issue I raised last
2 time, which was just trying to put the execution
3 agreements in place for purposes of clearing for a
4 small guy like myself who has a pretty significant
5 barrier to entry. So I just want to get a sense
6 of whether this is true, that there's potentially
7 this significant potential for my having to
8 negotiate a significant number of breakage
9 agreements. And if so, how are we going to deal
10 with that?

11 MR. ZIKAS: On Monday, the FIA hosted a
12 SEF showcase and the SEF showcase, the moderators
13 tended to focus on what happens if a trade fails
14 to clear. So where does the FCM obligation lie?
15 So there essentially were two camps. So there was
16 one camp that said if the trade is delivered to
17 the DCO and they DK it, there's a camp that says,
18 okay, there was never a trade. No trade. Because
19 it can't revert to a bilateral obligation if it's
20 a required transaction. There's another camp that
21 said we're going to have a nexus of underlying
22 bilateral agreements to which we will fall back on

1 in order to adjudicate that, and that's the second
2 camp. So I think your question is really -- it's
3 relating to that second camp where you would
4 potentially be obligated to have a nexus of
5 agreements.

6 MR. TERRY: When does that all come to
7 reality? October 2nd? Like, am I going to have
8 to have this all sorted by October 2nd? Am I
9 going to have to figure out who's in the first
10 camp; who's in the second camp? It's a big issue
11 for me because I have very limited resources.

12 COMMISSIONER O'MALIA: Ananda or David,
13 do you want to answer that?

14 MR. RADHAKRISHNAN: I think the answer
15 has to be the trade never existed. It cannot go
16 back to a bilateral trade. If it's something that
17 has to be cleared and has not --

18 COMMISSIONER O'MALIA: It wouldn't be a
19 contingent, would it?

20 MR. RADHAKRISHNAN: No. No. Just off
21 the top of my head. So just so I got the facts
22 right. Execution of a SEF, it goes through the

1 FCM filter; right? The FCM says fine, boom. It
2 goes to the clearinghouse. It doesn't go past the
3 clearinghouse filter because the clearing member
4 has gone above a limit or in Supuma's case, you
5 know, she's opposite a clearing member who is not
6 an FCM, for some reason (inaudible) member. So I
7 think the trade has -- I think -- I think, and
8 don't hold me to this. I need to consult with
9 David -- but I think the rules of the SEF will
10 have to say the trade never took place.

11 MR. VAN WAGNER: I think that's right.
12 I mean, honestly -- well, in either case it's
13 going to have to occur on the SEF anyway, right?
14 You either failed the clearing mandate, but even
15 if you failed the clearing mandate, the
16 transaction ultimately, because it's being done
17 through a mechanism, it can't be done away from
18 the SEF either. So it's going to be on the SEF.
19 So I think the alternative is in that case it
20 fails.

21 COMMISSIONER O'MALIA: Ben?

22 MR. MACDONALD: I just wanted to --

1 there's two things here in the SEF. There's an
2 RFQ and the order book and I think they're
3 different because the RFQ is disclosed. And so in
4 an RFQ mode you can actually have a waterfall
5 where if the trade goes DK you can fall back on
6 the bilateral relationship of the two parties
7 assuming it exists. And our view on that is that
8 it should so you have that guarantee ultimately.

9 In the order book mode, you don't have
10 that because by definition it's anonymous and
11 that's where I think there's a lot of confusion
12 because there really isn't anything to fall back
13 on and that's kind of what this debate is about, I
14 think.

15 MR. RADHAKRISHNAN: By definition, if
16 the trade involves a product that the Commission
17 has said it has to be cleared, it cannot remain as
18 a bilateral trade.

19 MR. MACDONALD: But if it gets DK'd from
20 clearing, then our view on that stays. If the
21 parties want to fall back on the bilateral
22 agreement then they should have the right. .

1 MR. RADHAKRISHNAN: No, I'm saying you
2 cannot do that. By law, you cannot do that. By
3 law, you cannot engage in a transaction that you
4 have to clear, which is not clear for whatever
5 reason, it cannot remain as a bilateral
6 transaction.

7 MS. VEDBRAT: I think, Ananda, the
8 bilateral agreement of what happens if the trade
9 doesn't clear, because you can't fall back on a
10 bilateral swap, it would fall into breakage. And
11 depending on who was responsible for the cause of
12 it not clearing, that body would be responsible
13 for breakage. I don't think Ben meant a bilateral
14 swap; it was a bilateral agreement and breakage
15 which is I think what Marshall's point is, like do
16 I need to have to separate --

17 MR. RADHAKRISHNAN: So that's what
18 happens now. Pre-SEF you had the mandate begin;
19 right? So what you're saying is you've got these
20 breakage agreements in case something doesn't
21 clear?

22 MS. VEDBRAT: Yes. It's in the

1 execution agreements themselves but I think one
2 thing that the SEF brings to the table for us is
3 that we can execute beyond like, you know, the 10
4 counterparties we are normally allowed to face.
5 So this piece, and it's somewhat linked to
6 certainty of clearing because in your final state,
7 if we apply the pre-check, there should be almost
8 no instance of breakage, it works. The problem
9 right now is that there is uncertainty of clearing
10 given the infrastructure that we have in place.

11 MR. RADHAKRISHNAN: So what I don't know
12 is whether -- what we think, staff thinks about a
13 situation where it's -- if I understand your
14 question -- signing an RFQ, let's assume that it's
15 a required transaction. All right? Done on an
16 RFQ as opposed to a CLOB. It doesn't clear
17 because the clearing house says, sorry, I'm not
18 clearing this. The question is instead of it
19 being declared void ab initio, does it go into
20 some kind of a breakage arrangement? My initial
21 answer is no but I'll have to talk to David.

22 MR. VAN WAGNER: I mean, because

1 ultimately you're talking about -- you're positing
2 a scenario where there's an order book and an RFQ.
3 So you're positing a swap that's subject to the
4 trade execution mandate; right?

5 MR. RADHAKRISHNAN: That's correct.
6 Yeah.

7 MR. VAN WAGNER: And the trade execution
8 mandate, I mean, fundamentally is -- has to be
9 executed on a SEF and it as to be executed in
10 those limited, you know, or a DCM. And it has to
11 be -- when executed on a SEF, it has to be
12 executed through those limited methodologies.
13 It's either being done through the order book or
14 it's being done through the RFQ. And if there's a
15 failure, I don't think you can fall back on a
16 bilateral. I mean, honestly --

17 MR. RADHAKRISHNAN: It has to clear as
18 well; right? Required transactions have to be
19 cleared as well.

20 MS. VEDBRAT: Ananda, like right now
21 they could potentially be a couple of minutes --
22 five, 10 minutes between when you think you

1 executed it or the SEF said that it was executed
2 and then you get a message back saying for some
3 reason the trade hasn't cleared. The market moves
4 in that time so for like anyone, it's not only the
5 buy side, it's also the dealer side, to just sit
6 there and not know if they have market risk or not
7 for that period of time. It's going to basically
8 impact the efficiency of the market, the way
9 trades. If there is breakage, and I'm not saying
10 there should, because we should like reduce the
11 ability for any breakage to happen, at least you
12 know if you have a position or not. You may not
13 like the fact that the position has to be broken
14 or it goes to breakage, but at least you know that
15 the risk is on or if it's not.

16 MR. RADHAKRISHNAN: What you're asking,
17 if I understand you correctly, even assuming the
18 SEF rule says if it doesn't clear, the trade never
19 took place, whatever term they use, it makes it
20 very clear, can we contemplate a situation where
21 the two parties somehow get into a negotiation
22 about one party compensating the other because

1 it's unclear. Is that what you're asking?

2 MS. VEDBRAT: It's for RFQ and it's only
3 till we get the state of certainty of clearing
4 where both sides are pre-checked and the market
5 feels comfortable that this is working
6 efficiently.

7 MR. VAN WAGNER: You have to have some
8 process in place to manage an event where clearing
9 doesn't occur. I mean, the two parties of the
10 trade are bearing market risk in between the time
11 that the trade was struck and the message comes
12 back that it doesn't clear. There's potentially
13 an economic impact around that. I misspoke. I
14 wasn't really talking about that being a bilateral
15 trade. It's really a breakage agreement and
16 having some mechanism in place that allows
17 resolution of that.

18 MR. OLESKY: I think the way we handle
19 it is if for whatever reason something doesn't
20 actually clear, the bilateral agreement basically
21 says cancel the trade or you resubmit. So it's
22 one of the other. So it's ultimately -- it's not

1 a bilateral trade that's put on I think as Ben was
2 saying and Supuma. It either gets cancelled and
3 it's void or it goes back in.

4 COMMISSIONER O'MALIA: Is there anything
5 other than liability that tends to be covered in
6 these breakage agreements? Yeah, you made the
7 point that the market will move, okay, but the
8 agreement should deal with it; right?

9 MS. VEDBRAT: Yeah. I mean, there is --
10 you have a breakage waterfall and a determination
11 of what the price would be. But other than
12 liability for required transaction you don't have
13 anything.

14 MR. YARIAN: Commissioner, there's
15 another agreement behind that one which is the
16 clearing agreement. And all things point to that
17 agreement, and the main reason a trade wouldn't
18 clear would ultimately come down to the FCM
19 rejecting that trade. And then it's just a food
20 fight over whose FCM has to pay for the breakage.
21 So hence the reason that we are so interested in
22 getting to the ideal state which is where we can

1 technologically practically provide clearing
2 certainty. So it really comes down -- so Tom, I'm
3 sure it's true. If I chose for a client or if the
4 client chose to take the entire limit and stick it
5 at his SEF, happy days. They can do that. Most
6 clients don't want to do that. They don't want to
7 only be limited to a single SEF. And, or utilize
8 that sum capacity and then enter dates and
9 practicable, again, for FCMs to have an army of
10 people on the phone with 200 clients saying, hey,
11 I just used up that limit at SEF A. Can you move
12 some of it over to SEF B? And moving it might be
13 sending another spreadsheet over or logging into
14 Bloomberg terminal or, again, 17 different ways.
15 That's translated by the limit hub. It gives us a
16 red button to reject all trades or to reject
17 certain client trades on all SEFs. We're just not
18 there yet.

19 And today, it's still post-trade.
20 Technologically practicable it's post-trade. But
21 we're nearing a point, and again, whether it's
22 October 2nd or in January at some point where it

1 seems the definition of technologically
2 practicable may not -- it may exist for one
3 individual SEF, but from the FCM's perspective,
4 which is one to many, it's not there yet.

5 COMMISSIONER O'MALIA: Ananda, can I?
6 This is the e-mail you sent which kind of created
7 this issue and I'm kind of wondering if it's not
8 available by October 2nd and whether we have two
9 SEFs or five SEFs or 15 SEFs and you say in the
10 second paragraph it's one way in which this can be
11 achieved is for SEFs to use pre-execution credit
12 checks. I guess what are we going to do if (a)
13 they technologically can't meet that objective, or
14 (b) if one way they try doesn't meet your
15 regulatory kind of view, and since this is an
16 e-mail and not part of a rule, where do we stand
17 on all of this come October 2nd?

18 MR. RADHAKRISHNAN: So there are a
19 couple of choices. I don't think I'm hearing
20 everybody dispute the fact that clearing certainty
21 is important; right? Nobody is disputing the
22 fact. Okay, so the question is you've got this

1 date and I guess the policy question is whether
2 the Commission feels comfortable allowing people
3 to stop business as SEFs knowing that they may be
4 not quite certain. Because we could say nobody
5 can start business as a SEF until you sort this
6 out. I can imagine the noise that we would get in
7 response but I'm just thinking in the range of
8 possibilities that is one possibility and some
9 might argue the most responsible possibility. Why
10 are you letting people transact business in what
11 might be required transactions if you cannot
12 achieve the objective. I'm not saying this is
13 going to happen.

14 MR. MACDONALD: I think the one nuance
15 is that you have a market that is operating today
16 and that market is going to go through a migration
17 on the 2nd of October. I think if you were to say
18 if the SEFs can't guarantee certainty of clearing
19 of October 2nd, then you can't be a SEF, then I
20 think that the whole electronic trading market
21 probably comes to a standstill because of the
22 issues with the SEFs, I think that the FCM

1 community have a very valid issue, which is around
2 this concept of credit hub and how do they manage
3 credit. And so yeah, there's a market (inaudible)
4 wouldn't lose. The (inaudible) market is
5 efficient and we talked about it early on.
6 There's no probably that exists today for October
7 2nd.

8 MR. RADHAKRISHNAN: So that's the
9 comeback, right? That why are you interfering
10 with the operation of a market that's of some use?
11 The response could be, I guess, what? Life has
12 changed. If you won't change with it, tough.
13 Okay, so that's one response.

14 The other response is we give people
15 time to come into compliance with what we call the
16 -- what I would call the desired state, right?
17 And in order to do that I think I need information
18 from market participants as to when they can get
19 there and whether that period of time is something
20 that the Commission can live with.

21 COMMISSIONER O'MALIA: Any idea when the
22 timeframe is? Potentially you could let a SEF

1 begin operating on the 3rd of October and get to
2 the so-called desired state by the time the
3 required transactions are subject to (inaudible).

4 MR. RADHAKRISHNAN: That's a great
5 point. Yeah. That's a great point.

6 COMMISSIONER O'MALIA: Just another
7 three or four months.

8 MR. RADHAKRISHNAN: That's a great
9 point. We could do that because I believe
10 currently on the 3rd of October there will be no
11 such thing as a required transaction.

12 MR. VAN WAGNER: Right. There would be
13 no such thing as a required -- right. Anything is
14 going to be permitted transactions on October 3rd,
15 and I would point out though that the wording of
16 the statement is that are -- that must be cleared
17 or that are voluntarily cleared. So in certain
18 ways that doesn't have anything to do with the
19 trade execution mandate.

20 MR. RADHAKRISHNAN: That's right.
21 That's right. The other thing is, and I'm not
22 going to anticipate -- we also have to keep in

1 mind that this doesn't just involve required
2 transactions, i.e., the trade execution
3 requirement. This also involves the clearing
4 requirement.

5 COMMISSIONER O'MALIA: That's a great
6 point because all of these are required to be
7 cleared. David said anybody who is trading on a
8 multilateral trading facility has no choice but to
9 trade on a SEF so we're right back where we
10 started.

11 MS. VEDBRAT: Ananda, the other piece,
12 you know, just to bring up the rulebooks that, you
13 know, every firm has to go through in order to
14 like, you know, either agree to sign up through
15 their market participation agreement or not.
16 We've had very, very little time and there is not
17 one rulebook that has come through to my desk that
18 hasn't come out with at least 10 issues that we
19 need to look at. So, you know, we have a lot of
20 concern that the choice on October 2nd is either
21 we are going to be taking on -- knowingly take on
22 some legal risk that we don't feel comfortable

1 risk or we're going to have to go backwards in
2 time and revert back to voice trading, which is
3 really not like the outcome that any of us want.

4 MR. LEWIS: Two points. One is it seems
5 to me listening to this discussion if the
6 objective of the Commission is to have a repeat of
7 what happened in energy, which is everybody stops
8 OTCs and goes over to futures, you're doing
9 excellent work. If you have Commission staff
10 that's qualified and knowledgeable as anyone in
11 the world sort of debating here, it's fun to
12 listen to but I think you as commissioners have an
13 obligation to exercise in loco parentis at some
14 point. You can't expect -- the chairman proudly
15 reported the hundreds of trillions of dollars of
16 outstanding positions. This is a big deal.

17 And let's face it. The stress of
18 breakage, as Ananda knows very well from futures,
19 it is not uncorrelated to periods in markets where
20 you most need risk management. To get my point,
21 this is going to break when it's going to really
22 hurt. As Supuma says, if the markets are locked

1 and aren't moving anywhere, well, you can hang out
2 for a while to figure out what's going on. If
3 markets are really moving, which is not
4 inconceivable given the rates environment that
5 people are looking at, right? Or what we could
6 see in foreign exchange or have seen in foreign
7 exchange where you have -- where you see a couple
8 percentage point move and thinking about how that
9 translates then into the amount of money that Tom
10 or Bryan have to collect in the way of margins and
11 some of the other things that are being changed in
12 terms of the capital requirements associated with
13 SEG funds and so and so forth, I think that it is
14 really incumbent on the Commission, and I say this
15 as somebody representing ERIS, hey, great. Force
16 it all to the Futures exchanges. God bless.

17 If you want to preserve an opportunity
18 for RFQ, then it seems to me you've got to have
19 more of your ducks in a row, and I think that the
20 Commission second -- two other points -- should
21 really -- I think two things were observed by a
22 couple of the speakers. One is you have an

1 obligation under the principles for a level
2 playing field. And to the extent that you're
3 already skewing the way this is going to get
4 rolled out with some guys being approved earlier,
5 other guys later, the legal guys controlling
6 essentially what's going to actually be able to
7 get papered, you've got to go back and make sure
8 that it's a reasonable jump ball on these things.
9 And secondly, I think you really have an
10 obligation to make sure the practice, as Supuma
11 said, you don't go backwards. You don't make it
12 worse than it is now, even for an interim period.

13 MR. VAN WAGNER: Just on the on-boarding
14 issue in particular. This is not the first time.
15 This is not the first forum where we've heard the
16 issues around on-boarding. I can tell you that
17 the Commission, in fact, the requirement of only
18 being able to -- market participants being able to
19 trade on a SEF only after they've consummated a
20 use agreement is something that very specifically
21 we put into our regs. So we understand the
22 importance. We understand the importance of

1 having market participants on day one when day one
2 happens. So I can tell you we've heard it.
3 Decision-makers are making decisions but we've
4 heard the issues. Thanks.

5 MR. FITZPATRICK: There's nothing more
6 -- oh, Michael. I'm sorry.

7 MR. YARIAN: Scott, I apologize. Just
8 one last thing.

9 I just want to challenge the contention
10 that was left off that it's the FCM's fault that
11 this is not ready. Again, pointing to the
12 rulebook, 17 of these, one of them, they can be
13 ready. I have to deal with 17 different
14 protocols, so, the clearing industry does, so I
15 just wanted to politely challenge that contention.
16 Thank you.

17 MS. VEDBRAT: Also, some of the
18 middleware is not yet ready to deal with
19 everything that's needed for trading on a SEF and
20 certainty of clearing.

21 MR. MACDONALD: I just want to be clear.
22 I'm not trying to lay blame on any particular part

1 of the industry. I think this is a very complex
2 problem at a time when the cliff point in the
3 market is, you know, you go to the end of QE
4 tapering and all that stuff. I think what's
5 happening is that as we get closer to the deadline
6 a lot of this stress is starting to come out in
7 the system and I think it's all about problems to
8 solve. Certainly, as a SEF, the last thing we
9 want is to be the front end to an architecture
10 that (inaudible) clients don't feel comfortable
11 trading on or where FCMs feel they have undue
12 exposure. So I think it's a collective issue and
13 we're certainly willing and want to be at the
14 table to help resolve it in the most efficient
15 manner possible.

16 MR. RADHAKRISHNAN: Can I just suggest
17 -- for people to think about which is the FCMs
18 have pre-execution controls which you're supposed
19 to do right now. And if the SEFs would have a
20 provision in their rulebooks that said, you know.

21 And sorry, the second thing is the DCAs,
22 pursuant to our rules, have time to accept or

1 reject as soon as technologically practical. And
2 I hope that you don't take the full 60 seconds,
3 but assuming the DCAs can do it as quick as
4 possible. But if you would tell the SEFs and the
5 firms that a particular trade execution was not
6 going to be cleared, which I assume that you would
7 right now, and if the SEFs would have provisions
8 in their rulebooks that said if this happens, the
9 trade never took place, I'm wondering whether that
10 might be a fairly reasonable, temporary solution
11 while we get to what I would call the good state,
12 which is full certainty of clearing.

13 MS. VEDBRAT: I think that what you
14 might end up with is that people are going to just
15 trade with parties that they know very well and
16 are very comfortable with, which, you know, I
17 thought that one of the reasons we wanted to have
18 like SEF trading and clearing was to encourage
19 broader market participation. So you might lose
20 that.

21 MR. RADHAKRISHNAN: Okay. That's a good
22 point. Because to me the other alternative -- I

1 don't know what the other -- the other alternative
2 is nobody trades on October 2nd unless you can do
3 this.

4 MS. VEDBRAT: Well, you can voice trade.

5 COMMISSIONER O'MALIA: Speaking of voice
6 trading, Footnote 88.

7 David, there's a couple questions around
8 this I'm trying to understand. People said, well,
9 you know, this is a viable competitor to SEFs
10 without mandatory trading requirement. It also
11 changed the way we dealt with international
12 trading platforms. Can you walk us through the
13 thinking of Footnote 88 and what it's objective
14 is?

15 MR. VAN WAGNER: Well, just to make --
16 and just so we're clear, I guess I'll summarize
17 it, too, the SEF registration requirement is, of
18 course, here, tied to essentially whether you're
19 operating a facility for the trading of swaps, as
20 opposed to be tied only to trading swaps that are
21 subject to trade execution mandate. The thinking
22 was, and we looked at a number of different things

1 here, 5(H)(a)(1), which, of course, is the
2 congressional mandate to us and to the industry
3 basically says if you operate a facility for the
4 trading and processing of swaps you must register.
5 Okay? So what's a facility? We looked around on
6 that. We do know that at least SEFs have a
7 definition which exists in (1)(a)(50) and that
8 essentially is when you operate a many to many --
9 basically it sets forth a many to many facility.
10 We combined that with other provisions, again, in
11 the CEA, congressional directive that this
12 provision -- this provision meaning the SEF
13 provisions in the act -- were to encourage swap
14 trading on SEFs. And accordingly, we put that
15 together.

16 MR. FITZPATRICK: We wanted to encourage
17 as much as possible to be on SEF'S as we think
18 Congress basically told us when we read the CEA.
19 So that's essentially where we were. I mean I
20 think the alternative of tying into the trade
21 execution mandate, we, you know, there's a bit of
22 a chicken and egg thing in that case because the

1 trade execution mandate only comes about once
2 something has been made available to trade on a
3 SEF or a DCM query.

4 If there's no requirement necessarily to
5 establish yourself as a SEF or a DCM in the first
6 place, whether that made available for trading
7 basically requirement could basically be abated
8 fairly easily if people wanted to stay outside and
9 not register as a SEF. So I mean that's in large
10 part where we got to, how we got there.

11 COMMISSIONER O'MALIA: Thank you. Now,
12 I don't know what kind of conflict, I've heard a
13 lot of concern about it previously, I don't know
14 how big a deal it is and I offer the market
15 participants to really reflect on, you know,
16 leaving single dealer platforms or with this one
17 to many system outside, how does that effect
18 trading immediately? I'd be interested to hear
19 what people think about that.

20 One of the ramifications is certainly
21 that anybody, any U.S. person thinking about
22 trading overseas now has really been told that

1 they need to be on a SEF, they can't be on
2 anything else. That seems inconsistent with the
3 Barnier Gensler letter that didn't talk about the
4 registration required, didn't seem to reflect this
5 footnote that talked about in January, we're going
6 to review the trade execution requirements. It
7 never said anything about the registration
8 requirement and if anybody wanted to trade on a
9 multi lateral - if they were trading on a multi
10 lateral trading facility, they'd have to do it
11 here in the United States subject to the SEF
12 rules. How did that get missed in the letter?

13 MR. FITZPATRICK: In the path forward
14 statement?

15 COMMISSIONER O'MALIA: Whatever - yeah,
16 the Gensler Barnier letter, whatever that --

17 MR. FITZPATRICK: Right. Well, I mean -
18 and again, I mean the two principals involved cut
19 the letter. The statement itself, one particular
20 paragraph, does talk about the possibility of
21 relief. I would point out the relief that's
22 discussed there, it is actually not explicitly

1 tied to anything if you read it fairly closely and
2 parse the words.

3 It is tied -- the only thing that really
4 is kind of clear is, it's tied to the trade
5 execution mandate in the sense -- the trade
6 execution mandate requirement in the sense that
7 it's referred to and it's referred to relief being
8 issued if the trade execution mandate occurs
9 before, I've forgotten the date, March 14th. So
10 the reading on our part is that it's relief from
11 the trade execution mandate. And again, footnote
12 88 stands for the proposition that the trade
13 execution mandate and SEF registration are
14 distinct concepts. And that's basically an
15 explanation for the statement.

16 COMMISSIONER O'MALIA: The SEF rule was
17 done before - footnote 88 was there before we did
18 the letter.

19 MR. FITZPATRICK: Right. Well, I mean I
20 think all the more reason to reinforce that
21 they're two distinct concepts.

22 COMMISSIONER O'MALIA: Anybody have an

1 opinion on the viability of these one to many
2 platforms going forward?

3 MR. FITZPATRICK: If I could take a
4 point now. I mean I think - the only thing I
5 would seek to add to that is that I thought the
6 objective overall was to encourage trading on
7 SEF's, as David says, but I think the reality of
8 fitting with you is -- where it brings in more
9 products than anyone I think ever expected at day
10 one into the mandate of SEF's, the amount of work
11 and leg work that has to be done by SEF's to get
12 those platforms ready, there's almost a
13 disincentive to execute on a SEF on October the
14 second.

15 MR. GAUTHIER: Just a quick correction
16 on the previous point on the CFTC European
17 Commission letter. I think beyond the question of
18 interpretation does it cover registration on the
19 trading mandate, sorry. I think the important
20 point of the letter was that we need to work on
21 the regime that avoid dual supervision of trading
22 venues, on the regime that arose trading venues to

1 comprise with one single set of rules. And I
2 think that the conversation I have heard today
3 concerns that this principal is right, because
4 when you see the degree of complexity of the
5 solutions that have to be built to make this work,
6 I think that if you add to that the need to make
7 sure that the solutions you set up here comply
8 with a certain set of rules which may be slightly
9 different, I think this just increases a little
10 bit of risk. So, in my view, this comes from the
11 need to work on a consistent international
12 implementation of these rules.

13 MR. ZIKAS: From a SEF perspective, you
14 know, I don't know how detrimental a single dealer
15 platform would be vis-à-vis a SEF, but kind of the
16 asymmetric application of the rules is kind of
17 difficult, right.

18 So if you have permitted transactions
19 that aren't eligible for clearing and will not be
20 so until deep into 2014, then you have a situation
21 where, you know, new patterns of trading, new
22 habits of trading get established at the

1 disadvantage of a SEF. So you are
2 disincentivizing SEF adoption for those types of
3 instruments.

4 MR. FITZPATRICK: Yeah. A couple of
5 things, you know, to talk maybe briefly about the
6 cross border, but also from a personal
7 perspective, maybe - probably the best analogy is
8 to use is a green card holder here in the U.S.,
9 whether I have taxation without representation
10 would be probably a decent analogy to use in terms
11 of permitted transactions under footnote 88 on
12 SEF's, where we have the taxation of being and
13 operating and having to be a SEF, but we don't
14 necessarily have any representation in terms of
15 the markets having to come to execute on those
16 facilities for anything other than required
17 transactions.

18 The second point just to address across
19 border which is just an added layer of complexity
20 to the whole thing, quite frankly, is, you know, I
21 wouldn't even like to guess how many hours are
22 being spent on telephones, between not only just

1 the five members of the WMBA, but every SEF in
2 this room and every counter party to swap
3 execution on trying to assess.

4 Come October the 2nd, when is a SEF not
5 a SEF in Europe? And the natural development of
6 those conversations, when you spend an hour on the
7 phone where people are represented in the swaps
8 markets internationally is, how quickly does this
9 become a bifurcated market and how quickly do you
10 get to companies traditionally operating on the
11 books in Europe that delineated through arenas for
12 anyone who's prepared to take the opposite side of
13 a trade from any counter party and those people
14 who do not want to see a U.S. Person as a counter
15 party because they don't want to be subject to SEF
16 rules and CFTC regulations. So there's a definite
17 risk of liquidity bifurcation in that respect
18 unless we can get some recognition of MTF's, for
19 example, as a substituted compliance, which to my
20 understanding, by the way, is not necessary that
21 straight forward. I think it was more directed at
22 FBOTs in terms of immediate relief, but MTF's

1 would have to effectively apply. And I don't know
2 how you do that, but you would effectively have to
3 apply to the CFTC for recognition of the MTF under
4 the substituted compliance rules.

5 COMMISSIONER O'MALIA: And I believe we
6 have exactly - how many do we have? We don't have
7 any? We have SEF's that have applied. I don't
8 think an MTF have applied for --

9 MR. VAN WAGNER: Right, yeah. The SEF's
10 that have applied, I don't know that any of them
11 are MTF's rather as determines a defined term as
12 used in --

13 MR. FITZPATRICK: Certainly I mean some
14 of the other guys here, but certainly all those
15 WMBA members operate MTF's in Europe.

16 MR. VAN WAGNER: But I mean our door is
17 open to those MTF's who want to come to us and
18 talk through this provision. But we actually have
19 not been approached by anybody directly for proofs
20 based in Europe. We have had discussions with EC
21 representatives around interpreting and
22 implementing this paragraph, the statement and

1 path forward statement. But we have not been
2 approached by the foreign platforms yet.

3 COMMISSIONER O'MALIA: David, the
4 statute provides for an exempt SEF. Can you tell
5 us how we're dealing with that?

6 MR. VAN WAGNER: Well, as you recall, in
7 the SEF rulemaking that the Commission adopted in
8 May, at that point in time, and the statement was
9 made by the Commission - I guess, I'm sorry, can
10 we back track. You're correct. There is a
11 provision in the Act which basically says you can
12 be exempt from SEF registration if you operate as
13 a SEF, but you are regulated by a prudential
14 regulator or a foreign regulator, and your level
15 of regulation is comparable and comprehensive
16 compared to the level of regulation that pertains
17 to SEFs.

18 At that time, the Commission essentially
19 said we've scanned the landscape and we don't see
20 any regulatory regime out there that's like -
21 that's comparable and comprehensive to ours at
22 this point in time.

1 And so we're not - we decided not to
2 adopt a set of exempt SEF rules, comparable I
3 guess, I don't know if people are familiar with a
4 set of FBOT rules, Part 48, but we actually have a
5 regularized process. So we didn't feel the need
6 to put out a set of regulations. Now, if an
7 individual SEF wanted to approach the Commission,
8 excuse me, an individual entity who got caught up
9 in the circumstance and wanted to point to their
10 regulator and say we're comparable and
11 comprehensive to what the CFTC is requiring of
12 SEF's here in the States, I mean we could take it
13 on board on a case by case basis. We have not
14 been so approached.

15 MR. FITZPATRICK: Yeah. And I just want
16 to put things into context, too, here, when you
17 talk about the MTF regime in Europe and
18 substantively will transition into an MTF regime
19 at some point maybe next year, probably the year
20 after that. You know, there's also a
21 differentiation in how platforms are recognized in
22 Europe between pseudo electronic platforms and

1 voice booking licenses which are authorized firms,
2 not MTF's.

3 And that only speaks to Europe. I mean
4 as a firm, you know, traditions represented in 28
5 countries, we run electronic platforms in most of
6 them. I don't know what the regimes are in Tokyo,
7 in Singapore, in Hong Kong, in Sydney and many
8 other countries around the world.

9 But, you know, substantive compliance
10 relief in Europe where there's an element of
11 sophistication in terms of market knowledge and
12 understanding of infrastructure, and then you go
13 further and further out, and we have endless
14 amounts of calls currently with clients on an
15 international level, trying to work out and
16 predominantly the Asian countries as to exactly
17 what regime they're dealing with come October the
18 2nd, and there's a huge amount of confusion in
19 that respect.

20 COMMISSIONER O'MALIA: I don't know if
21 there are any questions from Chicago. Chris
22 Heymeyer or Commissioner Chilton.

1 MR. HEYMEYER: Hey, Scott, can you hear
2 me?

3 COMMISSIONER O'MALIA: Yes, we can.

4 MR. HEYMEYER: That's a lot today. And
5 everybody is focusing now on all these issues
6 that's been said before. And there's another one
7 that I'd like to put in here, that's taking my NFA
8 hat off. We've heard from the NFA and you've
9 heard where they are on the regulation of these
10 SEF's. And taking my FCM hat off, you certainly
11 heard a lot from the FCM's today, lots of issues
12 there.

13 But I'd like to put on my hat from HTG
14 Capital Partners and the principal trading group,
15 because the firms in Chicago have been the market
16 making firms and have been very supportive of the
17 concept of trying to move bilateral OTC swaps to a
18 cleared, anonymously traded, futures-style
19 structure, something that I believe and that we
20 believe the public has been expecting as a result
21 of Dodd-Frank and something the Commission has
22 worked so hard to bring about.

1 participants to be able to trade on these
2 products.

3 So while the PTG's recognize and fully
4 appreciate the Commission's attempts to allow
5 firms to register as floor traders, which has
6 taken a lot of work on the part of the NFA and the
7 CFTC, for exchange liquidity provision, there's a
8 lot of ambiguities and unanswered questions and so
9 many that I don't know of a single firm in Chicago
10 in the PTG group, I think of which there are 27,
11 not a single one of those firms is going to
12 attempt to use the floor trader registration and
13 begin to compete with the current incumbents in
14 this swap space. And I don't believe that's one
15 of the intentions.

16 I think that the idea, as Chairman
17 Gensler said in his opening remarks, competition
18 and access will be good for the market. And I'm
19 afraid that we're not seeing any of these firms
20 currently coming in to participate. I have a
21 number of questions. I have six of them. I'm not
22 going to read these now because it's late in the

1 day and I appreciate you letting me chime in here
2 at the end.

3 But I'd like to send these questions in
4 and have them be, I don't know, part of the record
5 or whatever you want to call it. But again,
6 there's so much work here between the NFA, the
7 FCM's, the buy side participants, the SEF's, and
8 of course the Commission. And I just want to make
9 this point, that the PTG's are not at the table,
10 they're not participating, and a lot of that is
11 because of the uncertainty.

12 So with all of that, again, I complement
13 all of the work on the concept release. That was
14 well received here in the Chicago trading
15 community. And we need to promote this video
16 thing in Chicago so we can get more participation
17 at these meetings. Thank you.

18 COMMISSIONER O'MALIA: Thank you, Chris.
19 And I will make sure -- I have your questions
20 right here. They have been sent to me. I will
21 make sure that they are made part of the record.
22 So thank you for that.

1 MR. HEYMEYER: Thank you.

2 COMMISSIONER O'MALIA: I have a
3 question, probably the last question, not of me,
4 but made available to trade. The first SEF - no,
5 we have three SEF's registered, are eligible to
6 make a mat submission. What is everybody's
7 opinion of that? We haven't seen one yet. When
8 will we see one? How soon will we see one? When
9 does this discussion move forward? Any thoughts
10 on that?

11 MR. MACDONALD: I mean, yeah, from
12 upstate, we're waiting until October 2nd to come
13 and see where you want to push forward. But
14 there's nothing that's driving us to push anything
15 in particular right now.

16 MR. OLESKY: We're no different. I
17 think, you know, listening to all the issues that
18 need to be resolved, I think it would be a bit
19 dangerous for us to jump ahead, push the execution
20 mandate earlier given the uncertainty that we've
21 been talking about with respect to a whole handful
22 of issues. Once we get a little clarity on that,

1 we're going to be ready to go.

2 COMMISSIONER O'MALIA: -- thoughts
3 before we close the 12th meeting of the TAC?

4 MR. MACDONALD: I mean I'm just curious.
5 I've got a passport, so I don't have
6 representation. But I'm curious where we go from
7 here. I mean you've heard today from just about -
8 I don't think there's anybody in this room who's
9 sat here and said, you know -- October 2nd and
10 everybody is, you know, for different reasons got
11 some pretty material concerns about it. We're an
12 environment where, you know, it's likely that the
13 end of the year is going to be, you know, read to
14 be volatile in the markets. I'm just curious as
15 to kind of what happens next. Do we, you know, do
16 you have a sense of that - am I allowed to ask
17 that?

18 COMMISSIONER O'MALIA: You are allowed
19 to ask that. The good news is, Ananda did show
20 some interest in - proposed to me - what were some
21 specific ideas, some concepts?

22 MR. RADHAKRISHNAN: Just some ideas,

1 because I suspect you wouldn't want us to say all
2 of you shut down until you can get to --

3 COMMISSIONER O'MALIA: It's really not
4 in our interest to do that based on how few people
5 are going to be in compliance with all of our
6 rules based --

7 MR. RADHAKRISHNAN: So I'm assuming that
8 nobody wants that, right? Okay. So realize this.
9 What do you want? A novel question - I've never
10 asked that question before.

11 MR. MACDONALD: I mean what makes sense
12 to me intuitively, from an industry perspective,
13 the thing where you're hearing from the industry
14 is that we need more time to put certain
15 components in place to make sure this transition
16 happens in an effective way. I don't think
17 there's a problem today. I think that you have
18 clearing in place. I think that, you know, part
19 of Dodd-Frank has already been achieved. And I
20 think that, you know, I don't understand why - I
21 understand that today is the day and there's a
22 process behind that, but I think that, you know, a

1 smooth transition has to be in everybody's
2 interest. And it feels to me that, you know, we
3 as an industry need to get around the table to
4 resolve some of these interoperability issues so
5 that we can do that.

6 MR. RADHAKRISHNAN: But do you accept
7 the fact that you've got to get to a state by a
8 certain point in time, otherwise they'll just
9 continue and, you know --

10 MR. MACDONALD: Absolutely. And I
11 think, you know, what you have heard is that
12 there's an incredible amount of dialogue amongst
13 all of us here in terms of getting there. I just,
14 you know, I think we're very close, but we kind of
15 need to push it over the finish line so this
16 happens well.

17 MR. RADHAKRISHNAN: Scott, I think I
18 started to ask also, not just the SEF's, but the
19 FCM's, the clearinghouses, and, you know since
20 Supuma right there, you know, somebody who is not
21 one of them, but who is going to be an integral
22 part of SEF participation. So can I ask what the

1 clearinghouses want, what the FCM's want, and then
2 lastly, what Supuma, any other member of the buy
3 side - what they want.

4 COMMISSIONER O'MALIA: Do you have a pen
5 to write it all down?

6 MR. FARLEY: You know, we filed for - we
7 filed to be a SEF, and we have a clearinghouse for
8 OTC. The U.S. Specifically from a clearing
9 perspective.

10 SPEAKER: Yes.

11 Mr. FARLEY: I'll start with the
12 clearing perspective. The clearing perspective we
13 have a strong view because, as I mentioned
14 earlier, if all else fails, we reserve the right
15 to reject a trade if, from a clearing perspective,
16 risk management is sacrosanct and so we have some
17 flexibility. From the SEF perspective, I agree
18 with Ben, there's a lot of unknowns, as Ben I
19 think manifest in the session today. We're
20 prepared to go live on October 2nd. But if the
21 industry had more time, it's not something we
22 would rail against certainly.

1 MR. DURKIN: No, that's okay. I agree
2 with exactly what Tom said. I mean there was
3 concern early into this discussion about the
4 clearinghouse's ability to maintain its
5 obligations and rights to do that post trade
6 check, and I think we've clarified and cleared
7 that up. There's a number of issues here that
8 need to get resolved. And we all want to make
9 sure that people have the opportunity to do it
10 right.

11 MR. YARIAN: Thank you. Somebody said
12 court, and I don't think this is a court. Anyway,
13 if that's been clarified that I do have the right
14 to reject a transaction, and keeping in mind there
15 are reams of contracts that I have with each and
16 every single client that governs why I can reject
17 the trade, it's not just for the fun of it,
18 there's a good reason behind it. If I preserve
19 that ability until we're technologically ready to
20 actually put that guarantee on up front, and we
21 will get there, this isn't a foot dragging
22 exercise forever, then I think there are bigger

1 problems just around all the other things. We
2 talk about documentation, on boarding, so on and
3 so forth, then the problems that the FCM's have.

4 MR. RADHAKRISHNAN: Reject post
5 execution - just not take --

6 MR. YARIAN: So if the trade comes
7 through anyone of the 17 SEF's, and there is no
8 limit available as contractually agreed by my
9 client and I, then I can reject the transaction.

10 MR. RADHAKRISHNAN: Even though it went
11 through a sort of pre-execution?

12 MR. YARIAN: Again, until I can close
13 the loops and make sure that that trade isn't
14 happening on four SEF's and we close the loop on
15 it, if you don't have the back end, honestly,
16 there's no point for the front end because of the
17 risk condition.

18 MR. RADHAKRISHNAN: So what you're
19 saying is, let's say I'm your customer and I place
20 a trade on State Street SEF, right, and it
21 simultaneously send a trade to the Bloomberg
22 SEF --

1 MR. YARIAN: Yes.

2 MR. RADHAKRISHNAN: -- you're saying
3 that you want to have the ability to cut me off at
4 one place or another?

5 MR. YARIAN: I can ration their credit.
6 So if they have a million bucks, I can put - and
7 there are 10 trading rates, I can put 100K in each
8 of them --

9 MR. RADHAKRISHNAN: Right.

10 MR. YARIAN: -- and then just let it go.

11 MR. RADHAKRISHNAN: Okay.

12 MR. YARIAN: Okay, fine. From a
13 manpower perspective, I don't have the people to
14 pick up the phone and say, hey, I finished here,
15 move some of this over there and - it's not
16 practical.

17 MR. RADHAKRISHNAN: Okay.

18 MR. YARIAN: Technically speaking, I
19 believe every single one of them when they say
20 that they can do this. But when you look at it
21 from the one to many relationship that I have, and
22 from the client's perspective, not wanting the FCM

1 to choose and ration their credit, we're not there
2 yet.

3 MR. RADHAKRISHNAN: Okay.

4 MR. YARIAN: But if a client has limit
5 to clear, it's clear.

6 MR. RADHAKRISHNAN: It's clear, okay.
7 All right.

8 COMMISSIONER O'MALIA: Okay. Go ahead,
9 Supuma.

10 MS. VEDBRAT: So, you know, SEF and any
11 of the trading requirements, they should follow
12 clearing. And in particular, if you look at the
13 NDF market, just because, you know, the nature of
14 them being permitted, you know, we would like to
15 be able to come to trade on FX connect without
16 having to register as a participant on both SEF's.
17 From an infrastructure perspective, you know, we
18 would like to see the limit up and functioning,
19 the CCP's being able to handle post-trade
20 allocations, and, you know, most importantly, the
21 industry given enough time to test this
22 interoperability, and it's not like the day before

1 that, we get to do our first trade.

2 And then, you know, if there's still
3 time, we'd like all the CCP's to be able to accept
4 partial allocations because some of them are not
5 there yet. And it's very important from a buy
6 side perspective. We're now taking market risk on
7 a full block just because like one small
8 allocation may not have been accepted by the FCM.

9 COMMISSIONER O'MALIA: Two areas that I
10 think were mentioned earlier that didn't get
11 mentioned right here was data reporting, and I
12 think, Scott, you brought that up. The continuity
13 of data was brought up in our first panel. And
14 then I think, Jane, you brought up kind of
15 standards in terms of data and obviously what
16 we've gone through in terms of our swap data
17 repositories and the precision that's necessary to
18 make sure that those are functioning well and we
19 can utilize that data.

20 There's a big issue that I've heard
21 surrounding making sure when the SEF's come on,
22 that all the data can flow, and if the data can't

1 flow, who's going to provide it absent, you know,
2 good connections with quality data for all
3 products, right. You know, we haven't phased any
4 of this. And the other one I think, Scott, you
5 also mentioned was, and I don't think it was one
6 of your main points, but you did talk about some
7 sort of phasing. Banks are ready to go, and
8 similar to the way we adopted clearing, is that
9 something that - is there, you know, with regard
10 to this on boarding issue that I think a number of
11 people have raised?

12 MR. FITZPATRICK: Yeah. I mean on
13 boarding and reporting are two sort of completely
14 different things. I mean at the moment, you know,
15 there is a reporting and mandate in place and that
16 reporting activity is getting to the SDR's.

17 We have spoken with, you know, the
18 Commission staff and I think there's an
19 understanding of kind of sort of an idea of how
20 you've acted - be a phased approach taken to the
21 reporting mandate for SEF's.

22 I think, you know, we've been very up

1 front certainly from a WMBA perspective saying
2 that for the "required transactions that we talk
3 about", we are pretty much there and good to go,
4 because we've been working on that for a while,
5 but when you bring in a lot of the other more
6 esoteric products, then, you know, the
7 infrastructure is just not quite there to support
8 that yet.

9 And we've looked at, you know, sort of
10 tearing different types of products over time and
11 trying to work with the staff to maybe understand
12 a way that that could be potentially phased in.
13 On boarding, you know, I think we've heard about
14 that from a number of people today, you know.
15 Michael has got his small form two sided wad of
16 paper. I have - with its main SEF rule book
17 plastic platform. So I'm convinced that we have
18 for the multiple sort of platforms, that we
19 operate under the SEF is over 100 pages.

20 And thumbs around the table, and Supuma
21 has referenced that have, you know, it's not a
22 three week job to go through, you know, 100 plus

1 pages of the 15 SEFs or the rule books that you
2 want to look at because you may want to consider
3 to have access to that platform.

4 And, you know, I think Paul mentioned
5 earlier that, you know, different SEF's today
6 operate in different types of markets, and there's
7 a prioritization that goes on in the community,
8 and I think we would be okay on boarding some of
9 our clients because clearly we're going to focus
10 on those clients because it's the lion's share of
11 liquidity.

12 But at the end of the day, you know, we
13 service hundreds of customers here in North
14 America alone, never mind the rest of the world,
15 and on boarding all of those clients, signing up
16 to new legal entities, because it's not the ID's
17 that they're dealing with anymore, it's the SEF
18 entity, and the rule book that comes with that is
19 not a small feat at all.

20 COMMISSIONER WETJEN: I'm glad you spoke
21 to that and I'm glad that Commissioner O'Malia
22 asked that question, because we were talking about

1 this a little bit over lunch, as well. The major
2 success stories I think as far as compliance with
3 the new Dodd-Frank rules, it seems to me that
4 there's been some sort of phasing in approach
5 taking to the compliance dates. And so it's not
6 clear to me today based on what we've heard what
7 the most appropriate or sensible way to phase
8 compliance in with the trade execution mandate
9 would be.

10 Maybe it's based on market participants,
11 or maybe it's based on some of these different
12 processes related to clearing, I'm not sure. But
13 I think it has to be something we need to explore.

14 If you look at the clearing mandate as
15 being the best example, I think the fact that we
16 took an incremental step there made a real
17 difference. There are other reasons why, you
18 know, it went as smoothly as it did. But I think
19 the fact that we sort of focused on market
20 participant's categories and built-in compliance,
21 it made a lot of sense.

22 And so it just seems to me there's

1 probably some analog we can use for the context of
2 the trading execution mandate, as well. So I
3 think we need to solicit more ideas on that and
4 see if we shouldn't change course on these
5 compliance dates for trade execution.

6 COMMISSIONER O'MALIA: Any final
7 comments or thought?

8 MR. HAMILL: I've just got one question
9 for Mark that would be, Given the sort of somewhat
10 frothy environment already, due to uncertainty
11 October the 2nd, when you say, Mark, that you're
12 thinking about looking at things and changing
13 course, what sort of time frame do you think - are
14 you thinking about that? Because like until there
15 is some sense of clarity around that, the message
16 to clients has to be continue to try to head for
17 that October the 2nd deadline. That's a pretty
18 grueling task.

19 So I'm just curious to know as we leave
20 here today and as we're asked by clients,
21 especially following this important meeting, what
22 we think comes next. I mean it has to be like a

1 week before we would we have clarity? Is that a
2 fair question?

3 COMMISSIONER WETJEN: It is a fair
4 question. And let me answer. I'm not trying to
5 deflect it, although I sort of am. Ultimately,
6 it's not really up to us. I think the input from
7 the staff and what they learned today is going to
8 be important. The Chairman was here this morning.
9 And I think it's fair to say Scott and I are
10 probably going to follow up with the other
11 Commissioners about this and follow up with the
12 staff some more.

13 But I guess it's hard for me to give
14 advice. But probably the best thing to do for now
15 is to continue planning for October 2nd and then
16 we'll continue these conversations after today and
17 see where we end up. But I guess I would ask
18 Ananda and David if they have anything else to
19 add. I mean I sense that there's an appreciation
20 for some of these challenges on the part of both
21 David and Ananda, but whether or not you guys are
22 prepared to recommend something to the Chairman is

1 a different matter.

2 MR. RADHAKRISHNAN: We will both discuss
3 it and --

4 MR. VAN WAGNER: I can tell you that
5 this has already been discussed with the Chairman.
6 I mean this reinforces things that we --

7 MR. RADHAKRISHNAN: Has already you
8 said?

9 MR. VAN WAGNER: The concerns about on
10 boarding, concerns about data reporting, the
11 concerns about quality of data that would be
12 coming to NFA, they've been in front of us for a
13 number of weeks now, and so I'm confident the
14 Chairman is well aware of the concerns, that's
15 what I'll say.

16 COMMISSIONER O'MALIA: Paul, if I could
17 just say, there's no coincidence in the day we've
18 had this and the time we've had it, you know.
19 Could we have had it earlier? I would have liked
20 to. But getting everybody's schedules, you know,
21 this is right in between the initial staff
22 applications that could have been approved. And

1 where we are today is obviously just 20 days short
2 of when these things go live. I wanted to have a
3 good, robust discussion, we've done that. I think
4 we've raised a bunch of questions around
5 technology, feasibility, work flows, throughput,
6 capacity, et cetera, all good discussions, so I'm
7 very pleased with that. I think we've clarified a
8 lot of points. This whole credit debate was very
9 useful to me. I think there's more to the
10 reporting issues that I did not appreciate earlier
11 that I have a better appreciation now. And I
12 continue to be reinforced on, you know, the
13 capacity of the variety of different SEF's, all
14 trying to get to the same goal, not necessarily
15 getting the same direction from the Commission.

16 So I appreciate the challenges everybody
17 is going. And why I started this was, nobody is
18 resisting this. They want to meet the dates, they
19 want to meet the goals, they want to be
20 successful, competitive trading SEF's, and I want
21 to help them achieve that.

22 Can we do it by October 2nd? I think

1 we'd probably break a lot of eggs to get there.
2 And I don't know that that's a magical date. It's
3 an arbitrary date, in fact. So let's do something
4 that makes sense. Let's think about where we're
5 going and what we will achieve, and we will get
6 there, I'm quite confident. So with that --

7 MR. HAMILL: So for what it's worth, I
8 just think understanding how you're going to trade
9 in a market as big as some of the markets we're
10 talking about is not something you can find out at
11 like 11:00 p.m. the night before the day, the
12 thing. Actually that's a very meaningful concern
13 that everyone will have if there's not information
14 coming out fairly quickly.

15 COMMISSIONER O'MALIA: Mark and I
16 appreciate that, there's no doubt about that. I
17 greatly appreciate everybody's participation. I
18 thank you for the witnesses, for their efforts and
19 to provide the testimony and the Powerpoints, et
20 cetera. So thank you very much. We'll regroup on
21 the next TAC meeting. But thank you very much for
22 attending today.

1 (Whereupon, the PROCEEDINGS were
2 adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

(Signature and Seal on File)

Attorney, in and for the District of Columbia

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