Exhibit H

Closed Commission 220526
Quinn Emanuel Urquhart & Sullivan, LLP
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Transcript by TransPerfect

CHAIRMAN BENHAM: I call this meeting of the Commodity Futures Trading Commission to order, and of course, good morning to everyone. We are meeting today, May 26, 2022, to allow for the discussion of enforcement matters. As is the standard practice for closed meetings, this proceeding is being audio recorded for the purpose of maintaining a record of the meeting. To confirm on the record that a quorum is present, I ask that the commissioners, in order of seniority, who are in attendance, please [INDISCERNIBLE].

COMMISSIONER JOHNSON: Kristen Johnson.

COMMISSIONER GOLDSMITH-ROMERO: Commissioner Goldsmith Romero.

COMMISSIONER MERSINGER: Commissioner Mersinger.

COMMISSIONER PHAM: Commissioner Pham.

CHAIRMAN BENHAM: Before proceeding further, given the nature of the matters to be discussed, I ask the General Counsel if he is prepared to certify that this meeting may be closed by the Commission, pursuant to the Government in the Sunshine Act, and the Commission's regulations implementing the Act.

GENERAL COUNSEL: Thank you, Chairman. I certify that in my opinion, this meeting may be closed by the Commission, pursuant to Section 522bd4 of the Government in the Sunshine Act, and Section 147.6 of the Commission's regulations, because matters that are specifically exempted from disclosure under the Act and the Commission's regulations will be discussed during the meeting.

CHAIRMAN BENHAM: With that, I'll entertain a motion to close this meeting.

FEMALE 1: So moved, I move to close the meeting.

CHAIRMAN BENHAM: Can I get a second?

FEMALE 2: Second.

CHAIRMAN BENHAM It's been moved and properly seconded, that this Commission meeting be closed. Is there any discussion? If there is no discussion, we'll proceed to the vote. All in favor, please say aye.

COMMISSIONERS: Aye.

CHAIRMAN BENHAM: Opposed, please say no. The vote is unanimous. This meeting is now closed. So this morning, the Division of Enforcement has one matter before the Commission. In a moment, I'll invite Gretchen Lowe to introduce the division staff team. After that, we'll move directly to Commissioners' questions and discussion, and I will start with Commissioner Pham. Following the discussion, a vote will be called on the matter. So with that, the case before us

today is the Gemini Trust Company. Gretchen, please take a moment to introduce the responsible team on this enforcement, and then we'll open it up to the commissioners.

GRETCHEN LOWE: Thank you, Mr. Chairman, and thank you to the Commission. This is an important case for the Division of Enforcement, and we think for the Commission, given the nature of the allegations, and we really appreciate the interest that each of you have taken in the case and the thoughtful questions, and really, we just appreciate the interest, so thank you for that. I'm going to turn it over to Manal, who will introduce the team. I guess we can't see them. Can you hear them? Manal? I'll start, so you all know Manal Sultan is the Deputy Director. We have [PH] Alex INDISCERNIBLE], sorry. She's been a primary attorney on the case, I think you all met her at the briefings, and Brent Tomer, who is also a chief trial attorney and has been with us for a number of years now, and you all met him through the briefings as well. Lenel Hickson is the Deputy Regional Counsel, but I think he is out for his graduation week. Brent, can you see Manal?

BRENT TOMER: She just texted that she's having trouble gaining access to the Zoom. It's not letting her in the room.

GRETCHEN LOWE: Okay. Okay. Well, this is the team, and you've all met them before, so they're available if you have any additional questions on the matter.

CHAIRMAN BENHAM: Thanks, Gretchen. I don't think there's any reason to do a summary of the case right at this point, everyone should be pretty familiar, so Commissioner Phan, if you're ready, I'm going to start with you to ask any questions, and then we'll go to Commissioner Mersinger.

COMMISSIONER PHAM: Sure. I have had the opportunity, and I thank the Division's time, to have a number of discussions with the Division of Enforcement on my concerns on this matter, and so I think perhaps what would be most expedient is if I share some of my concerns on this matter, and then how we can proceed to see if there's any further discussion. I have serious concerns about this case. The right outcome is to pursue settlement efforts and not pursue public litigation. The Commission should not file a complaint in this matter because this case relies on efficient facts that do not support the charge, and presents unacceptable litigation risks, fails to hold registered entities directly accountable for alleged violations, and distorts the CDC's regulatory framework,

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would have a chilling effect on public engagement with the Commission on market oversight, and undermines the integrity of the Commission and public trust. First, the facts in this case, no policy of control is 100% effective, and stating that something is prohibited does not prove that it is false or misleading if a breach occurs. An effective compliance program will include the following minimum comments: policies and procedures, controls, monitoring and testing, audits and assessment. If there is a breach, it may mean that the control or the overall compliance program is ineffective, but it does not necessarily mean that someone has intentionally lied to the

Commission. Typically means typically. If something is not defined, it's not defined, and a loan that is legally documented as such cannot be transfigured into leverage to [PH] arbitrate or something else. I previously requested more details on the facts, to see if there's anything else that might be more persuasive, but did not receive such. Second, this case pursues charges against a third party as the actual registered entity that was submitting a self-certified contract to the Commission. That registered entity had an obligation, under the core principles, to ensure that the contract is not susceptible to manipulation. It is a distortion of our regulatory framework to pursue direct accountability of the registered entity or registrant that should be liable [INDISCERNIBLE], and instead allow that registered entity to blame someone else who was not registered with the Commission in any capacity. Third, the pursuit of complaints in this case would have a chilling effect on the public's engagement with the Commission of Market Oversight. I would note that it seems that some of these [INDISCERNIBLE] statements that is basis for the allegations were contained in drafts that were submitted by the registered entity, Cboe Futures Exchange, to the Division of Market Oversight. If every statement that was inaccurate in a draft was pursued by the Commission through an enforcement, nobody would ever send us any drafts ever again. I think that the level of [PH] standard needed for a case such as this [INDISCERNIBLE], or should have known, which is pretty low, and it's very difficult to make sure, particularly at a preliminary stage, that everything in your draft is accurate. I also feel that because those drafts were submitted by the registered entity, this just, again, goes to underscore how it's the registered entity who should be accountable and liable in this case. Finally, this case, to me, undermines the integrity of the Commission and public trust, because it's coming to us where the facts at issue, the conduct, the alleged misconduct, was in 2017, we are now in 2022, at the same time that we must make a decision on a related affiliate's application for a DCM registration. I think the fact that these two things are happening together, particularly if we pursue filing a public complaint in this matter, really casts doubt upon the integrity of the Commission, could make the Commission look hypocritical if there is no reason to reject the DCM application, and furthermore, makes the Commission look weak, frankly. If we file a complaint, and then we settle after that complaint has been filed, and then we later approve the DCM application, what does that make us look like? It feeds into a lot of unfortunate narratives about the Commission that are out there in the public right now, and I just feel that this is not the right outcome, that we should be pursuing further settlement efforts. Thank you.

CHAIRMAN BENHAM: Thanks. Commissioner Mersinger?

COMMISSIONER MERSINGER: Thank you, and I want to thank [INDISCERNIBLE] for all the time that you took answering a lot of questions. I think we spent maybe 45 minutes or one hour on the phone, and I greatly appreciate that. I myself, like Commissioner Pham, had a lot of concerns with this case. I agree that it is hard to reconcile the idea that we are going after the third party, when there was a registered entity who was the one certifying that the contracts in this matter were not subject to manipulation and all the other, that they met the core principles, and it was their job to certify, so that concerns me. I also am a little concerned as far as whether or not statements made were in fact made as, you know, if they were made with a misunderstanding of the questions asked.

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Also, when we talk about prohibiting and preventing, I kind of look at it that you could try to prohibit action, but it can still happen. I think we see that with a lot of our registered entities, where they say they prohibit activity, and it happens, and that's why we have enforcement, so I don't think that if someone says an action is prohibited, you can assume that they're going to have 100% control over whether or not it could happen, and I think there are a lot of facts in this case that are going to be difficult to litigate and convince the jury to fully believe the facts that we're putting forward. I think if we were voting on a settlement today, I would feel much differently, but I do have concerns about voting to move forward with allowing filing in this case. I think another one of my biggest concerns here is this isn't just an enforcement matter. This is going to be our Division of Market Oversight, so the General Counsel's office. Any litigation in this matter is going to take a lot of staff beyond enforcement, and I know the workforce in those divisions, and I would not want someone pulled from the work that they are assigned to do. So with that, again, I think I asked a ton of questions when we were on the phone, and I really appreciate all the time. I know that the enforcement team has put a lot of work into this, I know it has not been easy, but unfortunately, I can't support moving forward with this matter. Thank you.

CHAIRMAN BENHAM: Thanks, Commissioner Mersinger. Commissioner Goldsmith Romero?

COMMISSIONER GOLDSMITH ROMERO: Thank you. I am supportive of the enforcement action today in order to promote market integrity. The self-certification process has to rely on the truthfulness of the representations made. I do think it is extremely unfortunate that this case comes at the same time as other matters within this building, however I have to look at the enforcement case on its own, and there I'm concerned about accountability, and Gemini needs to be held accountable for their misrepresentations. This is particularly true given that this was the first listed crypto derivative and was setting precedent. I won't vote to approve a settlement if I would not be okay with filing a complaint, although I am cognizant of decisions and issues related to litigation risks and use of resources, so I have a couple of questions. I would be concerned, whenever there are misrepresentations in the self-certification process, it seems foundational to that process being effective. Can you please put these misrepresentations in context at the CFTC? I would think, as this was to be the first listed crypto derivative on a CFTC regulated exchange, it would have been very important for Commission staff to understand how the auction worked and other facts like liquidity and trading volume. Can you please talk to that point?

GRETCHEN LOWE: Thank you, Commissioner. Before I turn it over to Brent and Alex, who are best situated to answer your question thoroughly, I would just say that yes, for us, this goes to the heart of whenever someone comes to the Commission to ask something, whether directly or in conjunction with another entity, a registrant or not a registrant, asking to be in our [PH] space and to be subject to your oversight, staff has the right and the Commission has the right to expect that there will be truthful statements, wholesome statements, whether it's in a draft or not, it's their responsibility to ensure that the Commission understands what the operations are about, and I will note that we did think this was important for us to pursue, in part because this came from

DMO. DMO had concerns about how the conversation with Gemini went. I also wanted to note that we actually agree that everyone who has responsibility should be held accountable, and in every single case, we are evaluating who has liability, and whether we can prove it, and what are those litigation risks. It doesn't mean that we necessarily charge everyone, because sometimes we can't establish the evidence to meet all the elements.

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It could be at times that there is a case where we actually think it's important to bring this one action, because that's what we want the focus on, but I just want to reassure each of the commissioners that we are always looking to see who should be held accountable and can we prove that case, and that very much it is a principle that we do not approach settlement if we're not willing to file a case, so when we are recommending a filing or a settlement, if we recommend a settlement, that means that we would recommend filing a complaint, and we are going to explore that. The only way we can explore it, given the way the negotiation went before, was to have this [INDISCERNIBLE], which is why we presented it this way, so with that, I'm going to turn it over to Brent or Alex. I don't know if Manali has managed to get on yet.

BRENT TOMER: Sure, thank you. Thank you for your question, Commissioner. I think what you're really asking is related to the materiality of the statements at issue. I'll note that in the Wells submission made by Gemini, they argued that materiality wasn't met here or could not be met here because the Commission did not have a quote-unquote "decision to make," and that's because the case law suggests that materiality relates to a decision of the agency, then the standard cannot be met. Frankly, we find that argument to be laughable. Nothing in the case law requires the existence of a formal decision-making process to be taking place, nor does that decision even have to relate to the party making the statement. Here, Gemini and Cboe put countless resources into convincing the Commission that this contract, the first of its kind, was not readily susceptible to manipulation. Cboe has said that if any serious concerns would have been raised about the contract by the Commission, they would have pulled the plug immediately, and in fact, they did pull the plug after the investigation began and the facts came to light. As to the particular statements at issue, it's of course somewhat difficult to, you know, Monday morning quarterback the issue, right? We don't know. We have some idea as to what the individuals and DMO would think, but collectively, we don't know that if the facts that are underlying our complaint were given to them, that they would have said to Cboe, "Don't list the contract, Gemini, you have to change the auction," and so forth. We can't say that here, but what we do know is that our DMO witnesses will testify that the actual facts that we set forth in the complaint made the statements that Gemini made to DMO misleading, and that those topics were important to evaluating the contract, and importantly, very importantly, whether the volume generated during the Gemini auction was organic or not, and Cboe witnesses will confirm that Gemini knew that the issues going into trading volume were material to the CFTC. We do not believe, under these circumstances, that a court or jury would find the statements failed the materiality test. Misleading statements went to the core principle, most important to the listing process, whether the contract was susceptible to manipulation, or they were otherwise responses to specific questions asked by Gemini staff in evaluating the contract. I also want to point out that with respect to whether the Commission had a decision to make, the Commission was

evaluating a new contract to be listed, never before, in a new product, in a new spot commodity, that had only two years prior been determined to be a commodity by the Commission. Under those circumstances, these discussions with DMO were vitally important to the success of the contract going forward and to the Commission's evaluation of whether these types of contracts should exist in our marketplace. Finally, I'll note that DMO did indeed ask for changes to be made to the contract, and those changes were made by Gemini. That I hope answers your question on materiality. I did just want to address real quickly the issue of responsibility for Cboe. As I mentioned before, Cboe did pull the contract after learning of the facts that were underlying our complaint. We engaged in extensive discovery and investigation of whether Cboe had any liability here. We understand that they engaged in a fulsome process

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in evaluating the contract at Gemini, and we found no evidence that they had any knowledge whatsoever of the underlying facts of our complaint.

COMMISSIONER GOLDSMITH ROMERO: Thank you, that was actually going to be my next question. I was going to ask why you're not recommending charges against Cboe. I know they took steps to delist the product after you talked to them, but they were the ones self-certifying the product. I'm concerned that we might be sending a message on the level of due diligence that is required of a registrant, they can't just sort of merely pass things through to us without doing the research, so maybe if you can just go back to that a little bit more as to why they're not being charged with something.

BRENT TOMER: Sure, I can.

GRETCHEN LOWE: Yeah, I was just going to make the point that we have to meet the scienter standard, right, so it's knowing, or [INDISCERNIBLE] what we interpret to be a recklessness standard, and so I think that that's what their investigation was going to. Could we find evidence of scienter?

BRENT TOMER: That's right, I mean, we have no evidence whatsoever that they knew that these statements were false or misleading or otherwise were material omissions, and I'll note in addition to what I already mentioned, that all of these facts are off-book facts, right? The Pearl Street loans were provided by the Gemini principals primarily. They were not conducted on book. The off sort of market advances were provided, you know, they were in the books and records, but you would have to dig extremely deeply to recognize that those had occurred at Gemini. We do not, at this point, have seen any evidence whatsoever that Cboe failed to do its duty and due diligence in reviewing the contract, although I'll note that our investigation wasn't primarily about whether Cboe conducted the appropriate due diligence in this matter, but we did dive deeply into that fact as part and parcel to our case, and saw no evidence that Cboe was at fault here for these statements, and I'll note that the statements made were drafted and directed primarily by Gemini. In some cases, there were questions directed directly to Gemini, and Gemini responded directly. The presentation was made directly by Gemini, created by Gemini

on the auction process, so in many instances, these statements were direct statements of Gemini and not Cboe.

GRETCHEN LOWE: I would also add, I appreciate the point about creating [INDISCERNIBLE], of what's the message, that Cboe is not being held responsible for its role in the self-certification process, and so that one is front and center, and what message is going to be received by that. I think that the case will put the exchanges on alert about the issue, and they know, because we brought actions against exchanges, that we bring the case that we're able to bring and that we're looking closely at it, Cboe knows that they were asked a lot of hard questions and it was uncomfortable for them, and that message is going to be sent. I think about it like I brought an action against a bank, and we had in there very harsh words about the level of cooperation, it was kind of up and down like this, so we really couldn't rely on anything that was said, and we were very explicit about that. Then I was talking to somebody else who represents another bank, and it didn't even matter, and he said, "Everyone's talking about that sentence," yeah, because that's a message that they need to do better in cooperating. So I think in bringing the action against Gemini, those who want to self-certify contracts are going to say, next time, they actually could bring charges against me, because now I'm on notice that they were really looking to make sure that people who come to the Commission to ask for something, that they have to be fulsome, truthful, and complete in their responses, otherwise they face potential action, so I think that message is going to be sent even without an action against Cboe itself.

COMMISSIONER GOLDSMITH ROMERO: Chairman and Commissioner, is there an opportunity for me to ask more questions?

CHAIRMAN BENHAM: Yeah, why not? [INDISCERNIBLE]. Can someone just step in and you should go?

GRETCHEN LOWE: Yeah, I have a little time.

CHAIRMAN BENHAM: But you should go, and someone can step in.

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GRETCHEN LOWE: Okay.

COMMISSIONER GOLDSMITH ROMERO: [INDISCERNIBLE] Okay, continuing on the context of this, thank you for addressing the context within the CFTC, I'm sort of looking at this within the larger, if you look at the timing of this process, it comes immediately after the SEC disapproves Gemini's ETF that would [INDISCERNIBLE] the price of bitcoin on the Gemini exchange. There are indications SEC was concerned with the level of trading volume on the Gemini exchange. There's also suggestions in the SEC's first disapproval order, in March 2017, which is shortly before the self-certification discussions began with CFTC staff, that it might have been beneficial if the ETFs listing exchange could enter into a surveillance sharing agreement with regulated markets that were offering futures on bitcoin. There were none at that time. So I do worry that Gemini lost at the SEC, and then was trying to come into the derivative

markets to get the trading volume up, the SEC's suggestion to go back to the SEC, and then they make misrepresentations to us specifically about the trading volume. You don't necessarily have to comment on all that. I know you don't have to prove that. I'm just putting this case within the larger context, but this is my question, and it's going to go to individuals, which is something I'm always going to ask about. There are a number of references in the memo regarding the founders, particularly a number of footnotes. Can you please talk about how far up the chain this went, and why you're not recommending charges against any individuals?

GRETCHEN LOWE: Brent, Alex?

BRENT TOMER: Sure, I think I can turn it over to Alex for some of the specifics, but just to put a broader point on it, I think your remarks are very insightful, and certainly a potential motive that we investigated and looked into. We don't have a smoking gun that says, "Hey, let's go to the CFTC, let's pump up our volume and get a contract so that we can go back and get an ETF." We don't have that evidence, but it's certainly a potential motive, certainly something that we have thought about a lot during this investigation, and as you might have noted in our complaint, we did indicate that the ETF loss came directly before they reached out to the CFTC here, so in terms of a temporal association, we have included that in our interactive complaint. As for responsibility for the principals of Gemini, you're right, there are a lot of statements included in our complaint, in our memo, that address responsibility for them. We looked at them intensely on a potential control person charge or direct statements themselves. At the end of the day, we felt that the evidence just wasn't there to charge them directly, based on the required standard for control person or direct liability, but I can turn it over to Alex to address some of those specific facts.

ALEX: The statements that we're relying on in our complaint are primarily written submissions. In many instances, they are in documents that say, "Answers from Gemini," or they have the Gemini logo on them. They do not say, "This is a statement by the COO" or "This is a statement by Cameron or Tyler Winklevoss." However, in all of these instances, for all of the documents that these statements were contained in, we have traced back the origins and the genesis of those documents, and we do see that in every instance, they are being reviewed, edited, commented on, or approved by the principals of Gemini, Cameron and Tyler Winklevoss. When the period of statements to the CFTC began, starting in the July 25th meeting and presentation, Cameron and Tyler Winklevoss came in, as well as the COO, and made a presentation. They talked to the slide desk. They were there, they had reviewed it. They did not, as far as we know, object to any of the statements or any of the statements in the presentation slide deck. Thereafter, there was a Q&A where DMO submitted a bunch of questions in writing. Gemini responded in writing. Again, we see that they are there reviewing the draft, editing the draft, assigning persons to answer questions, and ultimately being the ones who review and approve it to send it over to Cboe before it's finally submitted. Another important fact is that as of August 30th, the COO was suspended.

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Now the COO – Cameron and Tyler Winklevoss were the primary people on essentially the Bitcoin Futures Project – on August 30th, when the COO was suspended, he was sent home and he never returned to the office. He never had any further input into the Bitcoin Futures Project. At that point, the principals of Gemini, Cameron and Tyler Winklevoss, took over as the point people on this project. They brought in additional engineers and staff from Gemini to help with particular issues, but they were really the point people for the rest of the process through September, October, and November, up until the self-certification in December. One of our most important documents that we really focus on is a memo that was submitted in September 12th. It was particularly designed to like hit right at core principle 3. It's a memo on why the auction should not be susceptible to manipulation. It makes arguments about pre-funding and the cost of capital, it makes a very comprehensive statement about how there is no self-trading, and that self-trading is not possible, either intentionally or unintentionally, and that document was drafted and edited almost exclusively by Cameron and Tyler Winklevoss, there was absolutely no input from the COO who had been suspended, and that's what you can see. As we continue into the fall, it's really Cameron and Tyler Winklevoss who are the point persons on sort of seeing it through to the end and all the additional statements that were made during the fall.

COMMISSIONER GOLDSMITH ROMERO: Thank you. I know we talked about that, and I appreciate you going into great detail on that. That's very, very, very important as we look at this, and I understand you had to make a decision as to [INDISCERNIBLE] for individuals too. I probably would have supported charges against Cboe and individuals, to be honest. The principals are so deeply involved here, and Cboe has got to be responsible, so I will support the case, and I would have supported additional charges, so thank you for your hard work.

BRENT TOMER: Thanks.

COMMISSIONER GOLDSMITH ROMERO: [INDISCERNIBLE]. It will take a while to get to her.

COMMISSIONER KRISTEN JOHNSON: First, I want to acknowledge all of the tremendous hard work of the enforcement staff. Regardless of the decision of this body, the massive effort in compiling this case and presenting a complex matter in a comprehensible manner should be recognized. From my perspective, the veracity of market participants when communicating with the Commission is of the utmost importance. The Commission relies on this information when assessing any number of risks to market participants that may be joining that particular platform or many others. We are charged with a significant task under that [PH] limit, and I believe this matter reflects an assignment of responsibility and accountability that's consistent with the task this Commission is assigned to oversee. The Commission cannot execute its mission to ensure a safe and secure marketplace if market participants are less than truthful and honest, and offer anything short of complete information to the staff tasked with oversight of any particular market or specific platform. Not much can get accomplished, and even if it is accomplished, it might be deeply concerning if people are permitted to lie or tell half-truths to the staff. That said, in assessing whether a market participant has made misleading statements or omitted material facts, such that charging a violation of 6C is warranted, the Commission must ensure that the underlying facts support every element of the charge. I don't think that's something anyone

would argue with. This case is strong in many respects, but I have a few questions. I think the Division of Enforcement has put forth a strong case with respect to the pre-funding issue based on the loans through Gemini affiliate Pearl Street and appears to have ample support through documentary evidence. It was really lovely to hear from Alex, in particular, in response to Commissioner Goldsmith Romero's question, and highlighting the September memo. Susceptibility to manipulation is a critical element of our thoughtfulness about whether or not products are allowed to function in the market. It is something we're charged with so significantly, that in response to a tweet recently, an entire thread suggesting to me that we have failed in our charge to be aggressive enough in terms of pursuing manipulation overwhelmed me. I'll just say that. I would like to also highlight here and thank the staff for really bringing to light, in conversations that we had with the office, the choice to reduce the evidence offered to the written evidence. In other words, the September memo and other written evidence support the notion that the corporate entity knew or should have known a number of matters,

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but in particular, this question of whether or not contracts were susceptible to manipulation seems to be well supported by evidence that was proffered. My questions actually go to a number of issues that Commissioner Goldsmith Romero raised and things we've talked about, but I think it's worth including them here directly in the record. The fragility of the self-certification process in markets, when we think about risk management and risk management oversight, is critical. What we're essentially doing is truncating a process, and we're unique to the SEC in this, to expedite opportunities for market participants to roll out financial products. If this is something that we're going to allow, for purposes of preserving the safety and soundness of markets in this particular space, it is particularly imperative that we are partnered with or at least working in parallel, walking side-by-side, with market participants to ensure that the information that we have, that permits them to move forward, really is the [INDISCERNIBLE], right? To that point, with respect to materiality, how would you handle the defense that the false statements that were made to DMO were casual in nature, not the type of statements that should rise to the level of warranting a section 6(c)(2) charge, and we talked about this.

GRETCHEN LOWE: Yeah, I know [INDISCERNIBLE]. You know, in litigation, right, [INDISCERNIBLE] litigation experts, you have to simplify everything. For me, this is the easiest thing to simplify. We are the government. They are coming to ask for something, and they want to be in our space, so I think it's difficult to have casual speech in that context. There could be, there are times like when DMO puts a call in and says, “Hey, we're a surveillance group, I'm seeing some stuff going on in the market, what are you seeing?” Well, you know, if they've made a misstatement there, I don't think we're going after that, because that is an ad hoc call asking for information in the moment. This is a process, someone coming in, someone discussing with our internal experts about a particular contract, and so for me, I think that that will be easy to convey, that this is not a situation where there is casual speech, or if you are speaking casually – and we tell this all the time to people coming in who want to get cooperation [INDISCERNIBLE] – put your litigation in context. Let us know. I don't have all the facts. We have a prevention program, but I actually don't know how it's working yet because we're just running a test on it, whatever that might be, and you can put context around what you say, and I

don't think that there were any qualifying statements when they were speaking with us, but I'm not the one closest to the fact, so Brent, Alex, Manal?

BRENT TOMER: I think we had trouble hearing the actual question on the phone or over the Zoom. I think it went to materiality of the statements, whether they rise to the level of the 6(c)(2) standard?

COMMISSIONER KRISTEN JOHNSON: That's correct.

BRENT TOMER: Okay, so just as an example, right, in this case, we do not have a sort of red flag comment, a hot document where Cameron and Tyler Winklevoss or even Ben Small says, "Hey, we're telling the CFTC this, but we know we have these other issues. No one bring it up, no one say it." Right, but that's not the standard that we have to meet here. The standard is no one should have known. For example, just to give one example, we have the cost of capital concept, which was raised for the first time in the September 12th memo, whereby Gemini's pre-funding requirement was promoted as one of the attributes that promote the integrity of the auction price and discourage manipulative conduct. In other words, by requiring participants to lock up their capital in order to trade in the auction, it made it more costly. Meanwhile, just a couple of weeks prior, Cameron Winklevoss remarks in an internal chat that "a number of market makers are using my capital, which makes up a material amount of their balance sheet. To be honest, they are most concerned about what I do with that, including Circle, who is worried that I will yank it." So these statements, what that means is that the below market terms that Circle was provided so that they could trade in the auction was in effect Gemini's money, and it allowed Circle to not lock up its capital when trading in the auction, in direct contravention of the statement made two weeks prior in that September 12th memo. Now this isn't a third-party loan or credit. This was a trading incentive that increased market volume and allowed these traders to not lock up their capital,

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in direct contravention of the cost of capital statements made by the very people who provided the fund. So that's an example of, particularly in the Pearl Street loans, where we believe we easily meet the standard, and I think that the same kind of contemporaneous discussions within the company on the various factual issues that are raised in our complaint occur throughout. We have statements concerning what exactly the self-trading prevention allows, and that comes at the same time as these statements are made, that there is no self-trading, that self-trading is prevented and not possible on the exchange, so we think we meet that standard using the contemporaneous statements that directly contradict the statements made to the Commission. So again, no red flag, but contemporaneous evidence suggests that they knew or should have known.

GRETCHEN LOWE: Brent, could you address a little bit about how you'll respond to this is just casual speak, and you're holding me to a level of accuracy that one having a normal conversation, even if you are the government, I shouldn't be held to misstatements made in casual speak.

BRENT TOMER: Yeah, so in terms of the statements made directly to the Commission, they weren't casual statements. These were not drafts provided, you know, there was some drafts going back and forth on the actual final self-certification statements, but most of the statements that we're taking from are direct answers, written answers that were vetted, reviewed, and then provided to the Commission in connection with this review of this process, so I think we're not talking about casual statements made in a phone call or not in a formal setting. We have specific meetings, a lot of time and energy that Gemini and Cboe put into providing to the Commission that these statements were made. They weren't off-the-cuff remarks.

COMMISSIONER KRISTEN JOHNSON: This is really helpful. Thanks, Brent. You actually answered my second question when you were responding initially to my first question, which is I'm really thoughtful about what it means to have a first-of-its-kind contract on the market, and what we might know or need to know about entering into new asset classes, and understand about how the market for those asset classes might work, and my second question was about the organic nature or non-organic nature of the trading volume data. I thought that you answered that really helpfully, actually, in speaking to what the misrepresentations were, or sort of the contemporaneous nature of statements that sort of speak to the issue, and then simultaneously there's knowledge that what's been represented to the Commission was inaccurate. I'd also just say really quickly, and I'll pause there, because I think Commissioner Pham has more questions, that it was helpful to hear Commissioner Goldsmith Romero's reminder, because I think we talked about this extensively at the very beginning of our exploration of this matter, a reminder of the timing between the attempt to gain approval for an ETF in this space with the SEC, and then the forum shopping that took place, shifting to a regulator perhaps that might be presumed to be sleepier or weaker, less well-resourced, and less likely to catch on to some of what was happening. I think this is deeply disconcerting, and though there may not be a legal framework for addressing this matter, increasingly, I think we're thoughtful, particularly in the first-of-its-kind new asset class space about the potential for certain cultures to emerge and develop. I think it's a very important thing to sort of keep this in mind, and I would say in fact that there is no actionable step you can take to enforce accountability or responsibility for that kind of forum shopping. I wouldn't want us to look weak in having essentially acquiesced to this kind of misconduct with respect to someone's engagement with DMO, after it's been very clearly established that the SEC was having no part of it.

CHAIRMAN BENHAM: Go ahead.

MANAL SULTAN: I'd like to add one statement to address [INDISCERNIBLE] point, I think it's just important to know that the information that was being provided is addressing questions by DMO that go to Gemini's ability to meet the core principles, I mean they're not just casual questions. They are addressing things that are going to inform of their ability to meet the core principles. It's hard to classify those as casual.

CHAIRMAN BENHAM: Thanks, Manal. This reminds me of 2017,

[00:45:00]

and when these products first came here, and the exhaustive conversations that DMO, and I think Amir was DMO director back then, had with Cboe and CME. We had an MRAC advisory committee meeting in January of 2018, specifically about the self-certification process, and 40.2 versus 40.3, correct me if I'm wrong, as it relates to underlying digital asset economies, and I would actually recommend folks to watch that because we had Chris Concannon from Cboe as one witness, we had CME and others participate, because of this exact issue that everyone's raising about the novelty of digital assets, the relationship between the CFTC registered exchanges and the underlying commodity, the data feeds that we would get or the exchanges would get, and any agreements that we would have as a regulator to have some sort of access to information flow, so all these issues really were dug in, and ultimately, my predecessor, the former chairman two-ago decided – well, I'm not going to take that [INDISCERNIBLE] – in the end, they went through a self-certification process, despite the fact that there could have been an approval process executed, and from what I heard anecdotally, the exchanges were willing to do that, but we went through self-certification. We don't have optionality in the self-certification process. Congress required it in the CFMA, and it is what it is, and we have to go through it. It obviously has potential weaknesses, especially in novel commodities, which we're now dealing with, but we've gotten accustomed to it, I think it's a better fit in the market, and we do what we can. I say all that in the context of Cboe and the work that they did, and the relationship that they have with Gemini, and what we could have done as it relates to this enforcement action in terms of bringing charges against them for what information they knew or may have known. I'm not going to sit here and support them and what they did, but it was pretty clear at that time back in 2017, probably going to early 2017 when these contracts were first being considered by both Cboe and CME, that they worked exhaustively with DMO, and we did elevate sort of the criteria, and this can be at least manifested or known through the margin requirements for the contracts, so I agree that if there was an opportunity, I have no doubt that enforcement would have brought the case against Cboe, but I just don't think in this case we should assume that they would have known, they should have known, or they could have done anything as it relates to Gemini to know what actions were being brought. Notwithstanding the fact that we had a non-ideal whistleblower, the fact of the matter is that we had a whistleblower, and that's who brought us the case, so notwithstanding the whistleblower, we would not have known about it either. So just some thoughts, [INDISCERNIBLE], well, they may be in terms of historical context with what this agency went through five years ago. The accountability and the ETF issue, I don't disagree with Commissioner Johnson or Commissioner Pham, but this has been pretty clearly, at least by the current chair of the SEC – I don't know what Jay Clayton thought. I know there were a number of ETFs that were put before his desk – but clearly, if there's a registered CFTC Futures product, the current chair feels more comfortable listing or approving an ETF as opposed to having an ETF listed on cash market, so I don't think it fills into this narrative. I don't agree that there's a narrative of us being a weak agency. Quite frankly, I think it's the opposite. We've been the strongest cop on the beat in town since 2014 or 2015, I think this week's Glencore case demonstrates how strong of an enforcement division and agency we are, and I think it was a calculated arbitrage by Cboe to take advantage of an opportunity to say, if we can generate sales and get a registered CFTC product, we have a better chance with the SEC to have an ETF, and that, again, goes back to the self-certification process and the limitations, quite frankly, we have in terms of how we have to deal with products being listed. It is a very good process in many

respects, but it's a bit of a curse in some respects. I believe that strongly. Especially with these particular commodities

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or with these particular assets, we have to be very careful about what the relationship is between the cash market as it's unregulated, and this discussion, obviously, has been timely. I'll stop on that. The one question I do have, or at least a point I want to make, and this goes to Commissioner Pham's point about the timing between this case and the DMO matter. This is not like us bringing this simultaneously because we feel like doing it, right? Quite frankly, defense counsel has done – and I'm going be generous here, I think, but I would gladly hear from others – a bit unsavory and unorthodox in their practices towards the Commission, and I emphasize the Commission as opposed to the Division of Enforcement. It's not, I would think, a total leap to suggest that maybe this was even calculated by them, but nevertheless, we're doing our job, both from a DMO perspective and a DOE perspective, and yes, the fact that this is happening within a week, and I think up until a few weeks ago, it was happening within a few days, is not ideal, but this is us, in my view, just doing our job, and we need to deal with simultaneous issues within two different divisions, but I'm sure [PH] Stump and I had to deal with this months ago, but every step of the way, this has been dragged out, punted, and the idea that they would settle, I just don't think is likely, and we are almost being forced to do this, and it's, again, not ideal, not something that is standard or common practice for the agency or the division, but in many respects, I would welcome, again, response to this, we were almost forced to do this. This was a situation that we did not choose to go into, but by action of the defense counsel and the respondent, we're here, and this is the best strategy to go forward.

GRETCHEN LOWE: Yeah, I think that's right. The team worked really hard to reach a settlement with Gemini, and initially thought that it wasn't an issue of money, [INDISCERNIBLE] agreement about money, but it was going to be about the wording of the order, and worked really hard over a process that got extended by months to try to get the order where it was appropriate for us to recommend to the Commission and was acceptable to Gemini, only then to find out that Gemini – couldn't quite get to [INDISCERNIBLE]. You know, this case, we're not even in the same ball park, so here's how we would evaluate that case, which just showed us that either this was just a game that they were playing, and they were trying to extend this out to, I assume, post Commission consideration of the self-certification, and the team ultimately did the right thing. I mean, the team was just like, we're done. We've been negotiating in good faith, and we're not moving forward, we're moving backwards, and we're done, and we'll move forward with our recommendation, and they followed through on that. The team got extremely frustrated with Gemini, and I think I've said this to everyone. We all think that this is a case that should have settled, and the only thing that makes sense to me is that Gemini was hoping to make it a smaller case, or that it would happen months afterwards, after consideration of the self-certification, but the team could not have worked any harder to try to get an appropriate settlement. And asking for authority, it is because we believe this case should be filed, regardless of whether it could be settled, but having said that, when Manal and I were discussing the case a few weeks ago, it was like, okay, I actually do think it's in the best interest of the Commission to have this settled, and if I was advising Gemini, I would say the same thing

to them, but the only way we can do it is if – at this point, anyway, [INDISCERNIBLE] Gemini had conducted itself in the negotiations – is if they know that we have the authority and that we're going to file, and that we are going to control how the negotiations go. I was talking about 24 hours, I didn't mean 24 hours, that was used to mean that we're going to keep it on a short leash,

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because they've proven that they will drag it out to try to control the timing of a Commission enforcement action.

CHAIRMAN BENHAM: Thanks, Gretchen, so I'm going to go in reverse order, we'll do a second round, essentially, and you can wrap up, but I'm going to pass on the second round, and I'll go to Commissioner Johnson, if she has second round questions.

COMMISSIONER KRISTEN JOHNSON: I don't know that you guys have to answer this question, I think it's just something I was thoughtful about. First, it was great to hear the Chair bring up an issue I had in my notes that we didn't talk about, which is how long this has gone on. I think it's easy to look at the timeline and be a little bit frustrated because of the length of the timeline, but it's common practice in negotiation. First, investigation, it took you all some period of time to get the investigation off the ground, and then the negotiations are failing and/or just stall tactics are being used to [INDISCERNIBLE] things up, so it was helpful to hear that expressed directly on the record, sorry, helpful to hear that expressed directly on the record in terms of rationale for why this timing now. I have to concur with Commissioner Pham, and I think Commissioner Goldsmith Romero also expressed the unfortunateness of the timing between this and the application, but alas, we are where we are. I did have a lot of thoughts about the advanced credits discussion. I guess one of the things I'm wondering, without going into great detail, I have three-part questions about those, but I didn't want to go into detail about that because one, [INDISCERNIBLE], but also I'm thoughtful about the reality, it sounds like, from what you just described in responding to the chairman's reflections, it sounds like there will be a strong effort, and it would be very helpful to just have this on the record and to have this piece of the conversation. It sounds like there will be a strong effort after this vote to bring this matter to a close using settlement as the sort of priority strategy, right? That is very helpful to hear and very clear to hear. I don't feel the need to dig into the facts and find the places where one might need to shore up the case ahead of litigation, if the goal is to recognize the risks of litigation and to essentially just empower you all with the sword needed to sort of bring this matter to a close, so rather than delving into my three- or four-part question, I'd rather just have you say a little bit more about that, about the goal of bringing this to a settlement.

GRETCHEN LOWE: Well, it's just what I said. The team drew a line appropriately because Gemini was not – I don't know if they [INDISCERNIBLE] – but they weren't negotiating the way we expect people to negotiate, so they drew the line and said that we're done, we're moving forward. To have integrity in our negotiations, we have to follow through, unless something that we didn't realize and discover makes us change our recommendation, and that didn't happen, right, so we were going to be coming to you in any event at this point. If Gemini was concerned

about the impact of this on your consideration of the self-certification process, it could have been over months ago, but the team and I are in agreement that when we think about what's in the best interest of the Commission, we want to do the right thing, so we're like we're going to make our recommendation file, and we're going to take some time to try to get an appropriate resolution. That doesn't mean a resolution at any terms that we don't think are appropriate to recommend, but we are going to make a strong effort, and this puts us in the best position and sends the clearest message to Gemini as to where the Commission is, if we get the authority to file the proposed complaint, and we'll see. I can't believe how many members we've had in the day that you all walked in the building, where we said we need this within x-amount of time. This is why we moved up and put a request date on this, which we were actually trying to create some distance for the Commission from the DMO recommendation, which luckily they got an extension, and we're mindful that that time is shrinking and it takes time to do it, but the team is going to be on it right away. I think I actually heard them have a call scheduled today to initiate that conversation, or to find out whether [INDISCERNIBLE]. It could be a pretty short conversation. They haven't approached.

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They had requested to meet with me as the new person sitting in the director's chair, and I asked the team, what's the agenda, and they said they want to talk about the merits. I said, that's not the meeting that we're going to have, right, so they had that opportunity. The team conveyed it. Gemini had the opportunity to say we want to combine it with a discussion about how we can get to the resolution, close, and whatever, they chose not to do that, so we're recommending this approach because I think it's in the best interest of the Commission to try, but we can't let it go for a long period of time because of the way they conducted the conversations before.

COMMISSIONER KRISTEN JOHNSON: I'm all set.

COMMISSIONER GOLDSMITH-ROMERO: Thank you, chairman, for the historical reference and the importance of this, and I appreciate the comments that you said. The discussion I was having about the SEC with ETF was really just about the individual charges, because it was the Winklevoss twins that were having those discussions with the SEC, so then, given when Alex talked about them, they were deeply involved weeks later with us in similar discussions and that kind of thing, so just putting it all into context. Let me also say this, I am completely grateful for all the hard work and the judgment causal you have to make. When I say I would be supportive of additional charges, I very much understand that you have to look at the evidence and you have to decide whether it's there, and I look at your judgment. I'm just signaling for the future. I have had done, I don't know, thousands of enforcement actions, and had to look at scienter requirements, and given all of the details and evidence I saw, I just want to say when I would support charges, it's really about as you make decisions in the future, just know that you've got a commissioner who's always going to be asking about individual charges and other charges against registrants and everywhere we can get them, essentially, everywhere I think it's merited, and I'm going to ask it every single time, and I'm never going to miss an opportunity to do that, so I'll say that, but I always, always respect the team has to make the judgment in what you recommend to us. I will always respect that. Just always know that as you make future

judgment calls, that you will certainly have support from this commissioner when I believe the evidence is there.

GRETCHEN LOWE: Message received, and already been discussing the view with the deputy director, so they think about those issues going forward.

COMMISSIONER MERSINGER: Just real quick, I guess my one question would be, should there be a settlement offer after you are granted the ability to move forward? Is that something that would be brought before the Commission? Is there some threshold that you would say, okay, if it's below this, we won't bring it to you, if it's above this...? Because I do think that's the other part here is we don't see those settlements until it's [INDISCERNIBLE] kind of your judgment call on whether or not [INDISCERNIBLE] a reasonable settlement. This may be a case where we see a reasonable settlement that may not seem reasonable to those who have been fighting this for as long as they have, and I understand that it has been a fight, so I guess my question would be is that something that enforcement would be willing to do, if there is a settlement offer, you know, bring it to us for consideration before turning it down offhand? Because I do think you've got a pretty small group here, and if it was really unreasonable, I don't think it would pass this group, but I think it would be helpful to see where they come in with a possible settlement.

GRETCHEN LOWE: I appreciate that comment. As a programmatic issue, I feel like it's really important for the Division of Enforcement to maintain independence and put its considered judgment into what it thinks is an appropriate recommendation. I think that we would be going into some negotiations with a lot of information already, you know, [INDISCERNIBLE] individual commissioners about their concerns, and that we will be thinking about that to figure out how we think that we can resolve this, and if Gemini is serious about negotiations,

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I think we could actually pretty quickly reach agreement on a post-penalty, I think is largely what you're thinking, what you're talking about. I am hesitant about kind of changing the historical process here, that's worked pretty well for the Commission since it started. That's been the process, and I'd like to honor that, but I'm not unmindful of what you're saying. Does that help out?

COMMISSIONER MERSINGER: Yes, thank you.

COMMISSIONER PHAM: Thank you for the opportunity to speak with you again. Something that I wanted to do is to make sure that I put more of my background and thinking and discussions with the Division on the record, just to share for everybody here, and so that way it helps provide more of a perspective as to where I'm coming from, frankly, and I want to thank the other commissioners for some of their very thoughtful comments, many of which I share. For example, I appreciate that Commissioner Goldsmith Romero had highlighted some of the questions that I had raised in my bilateral discussions with the division regarding charging Cboe, and the specific facts around Cboe, as well as individual accountability of the principles and so forth, because one of the things that I will be very focused on as a commissioner is management

accountability, so that's something that I do appreciate. One of the things about this case is that it is, as many of our cases, highly fact specific, and so a lot of my questions and engagement – and I do thank the Division very much for speaking with me – but many of my questions about the facts, I just felt like I wasn't getting more of the information that I really needed to be able to evaluate this, so I think that if I'm able to get the information that I need, then of course that plays a role into whether or not I feel prepared to vote on a matter and to do so expeditiously, so I welcome, and I have said many times, to please feel free to come to me early, and I want to engage in a very forthcoming and fulsome discussion of the facts, because that is how I can understand what is the basis of the Division's actions and make the most informed vote that I can. I also want to just kind of highlight for the Commission and for the staff, that the Commission has much more leverage than perhaps we are giving ourselves credit for. We hold – I don't think this is an understatement, or an overstatement – we hold the future of their company and their business in our hands. For what their business strategy is, they have to be able to obtain registrations from us, and the opportunity costs and the reputational risk of litigation is very high, and so I just think that we have a lot of leverage there. I also think – and this is just sort of a general thought – I have been very vocal in my support of enforcement because I think it's absolutely essential that we have a strong enforcement program. It is one of the best tools that we have. The prosecutorial power of the Commission really cannot be understated, and we should wield it wisely. So just to share a little bit about my perspective, I think I'm probably the only person who has both had to decide upon bringing cases as well as to decide to settle cases, so in my experience, even though it was early in my career, I have been in enforcement divisions of three different agencies, the CFTC, the SEC, and the OCC, each of which has a different way that they approach enforcement, but ultimately it is to serve the public interest and to uphold the agency's mission. I spent two years with a judge, working on opinions and damages trials of over nine figures, and then in the private sector, I was part of management that would evaluate whether to settle investigations. I was not the main person, but I was part of those discussions and in that decision-making process. I am completely sympathetic with the Division of Enforcement about what sounds like underhanded tactics of defense counsel, and if I were a registrant, I would find myself new defense counsel,

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since they seem so unsuccessful in resolving something that is so important to the future of the company, but then these seem to be highly litigious principles anyway, so it is most unfortunate. Some of the questions that I asked previously, extensive questions about the role of Cboe, and I think that this does go to the central element, because “knew or should have known” is a pretty low standard. In my experience of both sides, at other agencies, as well as in the private sector, “should have known” really goes to the heart of did you conduct reasonable due diligence or not. You have to have performed such extensive due diligence that it can be like without question that you would have rooted out anything that there was that was possible in order to, I think, fail that standard, it's so low, so I don't know. Honestly, if I were in the private sector and we were Cboe, I probably would have gone over and done an onsite examination, which is part of third-party risk management and is part of standard due diligence processes, of Gemini and the conduct of their auction, how do they conduct the auction, in order to give myself reasonable assurance that the contract was not susceptible to manipulation. So that's one question of something that’s just

fairly basic and straightforward, that is a standard part of industry-wide due diligence when onboarding a third party or relying upon something that is so critical and essential to their contract. One of the things that I want to just highlight here is I want to caution that the Commission is not applying inconsistent standards to market participants. We must ensure that we are treating market participants fairly and equally, so I'll just provide one example from my personal experience. A number of registrants have submitted to DOE that they've relied upon representations from vendors after reasonable due diligence, including year-long, year-and-a-half-long onboarding processes, and that they would have had no reason to know that the representations from vendors, third parties, were false or inaccurate, but nonetheless, the Commission has pursued vigorous enforcement against those registrants, and by the way, I think that is completely appropriate given the international standards and credential regulation of third-party risk management. The whole world has standards around third-party risk management, which they're actually enhancing due to operational resiliency policy initiatives with the Basel committee, the FSB, and IOSCO, so I think it's very important that we have robust accountability of registrants and registered entities for third-party risk management. So it seems that we may be applying an inconsistent standard that on the one hand, for certain registrants, essentially, they're always liable, which by the way is the accepted practice, they're always liable with the vendors or the third parties that they use or they rely upon, but on the other hand, here for Cboe as a registered entity, they are the ones who gave the documents to us. It is their contract. Even if they received it from Gemini and then forwarded it to us, they have the obligation to conduct due diligence, to assure themselves, and to ensure that those statements were true and accurate and complete. I also would have supported other charges that were focused more on a pattern or practice or scheme by Gemini to deceive the Commission, so that is the question that I have after all of my expository. Is that something that the Division looked into? Was there other charges that would have been more about, you know, because it does seem like, for example, with the drafts, perhaps that was a pattern or a practice or scheme of trying to deceive the Commission, because they kept repeatedly sending things to us that the Division feels was not true or complete or accurate.

GRETCHEN LOWE: I'll let the team answer the question of whether they considered other charges. I mean, this very much came in, you know, were the statements made to the Commission truthful. As far as the standard, we don't consider the [INDISCERNIBLE] standard low.

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Basically, the [INDISCERNIBLE] standard for proving fraud, or scheme to manipulate or deceive, is knowing a reckless behavior, and recklessness is not easy. We joked – joked – we talked about [INDISCERNIBLE] authority. It's great. We do have the recklessness standard, and there is some comfort, but that's still pretty hard to prove, you know, it's not a negligence standard. As the team already explained, vis-a-vis Cboe, they looked at the level of due diligence that they did. It's an interesting concept of going on site, what a due diligence is comprised of, and I would not be able to speak to that, but for sure proving a scheme to deceive would be as difficult, probably more difficult under these circumstances than the false statements, but the

scienter doesn't give us any easier case to bring. Team, did we look at any other charges that might fit here?

BRENT TOMER: So just real quickly on the Cboe front, just one thing that I didn't note before, that I thought I should raise, is that we did conduct interviews of all of the Cboe personnel that was involved in this process, we did those jointly with the SDNY and FBI, and had very thorough discussions concerning what their knowledge is, what they did to determine the appropriateness of the contract, and their due diligence, and in our view, they conducted more than appropriate due diligence, but I certainly understand the concerns and it's always a close call. I think under the circumstances, given what Gretchen was saying, we're not looking at regulatory violations here. We're looking at false or misleading statements that they knew or should have known, and under that standard, from a litigation standpoint, we do not believe that that would be met with Cboe. In terms of other charges, particularly as to scheme liability, that is a method of liability as opposed to a particular charge or an act. Often, we use that when we can't go directly against the person, based on the jurisdiction that we have as an agency, or whether we have an issue with the statute of limitations. Neither of those are present here, so we didn't consider a scheme liability necessary to bring the charges here. Other charges we did look at, yes, we looked at charges for the underlying, certainly. There are some parallels between this case and the Coinbase charge that was made a few years ago, but under these circumstances, the level of knowledge and the timing of the underlying, we didn't find those charges to be appropriate here. In other words, they were not, for example, publicly listing the results of the auction or posting those to an index that was used for a future contract, or for other purposes such as the contracts that are [INDISCERNIBLE] with CME, future ultimately made. We looked at individual liability. I don't know, maybe I might be missing something on other charges. Alex, can you think of anything else that we reviewed and considered? Some of these, by the way, were addressed in the Wells Commission, as you might have seen. We did end up rejecting those charges, based in part on some of the responses they had, but also based on our own misgivings going into it, but we wanted them to address it, in case we were missing something.

CHAIRMAN BENHAM: Hey, Brent, just on that, just so I have it, so there was discussion with me asking questions about whether there was possible false reporting to the extent that there was reporting of the auction information out at the Gemini spot platform, and then I think there was some conversation just around whether there was any provisions under Section 9 in connection with false statements in connection with the registration application, but the focus of the investigation is the team articulated, but some of those were questions that I had more recently.

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COMMISSIONER PHAM: Thank you very much for sharing that with me and walking me through some of your thinking. I appreciate it. Like I said, I think that for the alleged misconduct here, there should be consequences, and so I appreciate, as always, the Division of Enforcement's work in trying to achieve the right outcome, although sometimes we don't have enough evidence to bring some charges that we would have liked to, but I appreciate your efforts to produce a just outcome. Thank you.

GRETCHEN LOWE: Thank you.

CHAIRMAN BENHAM: So if there's no further discussion regarding this matter on the part of the commissioners, is there a motion to approve the Division of Enforcement's recommendation in the Gemini trust case, as stated in the voting copy of the matter circulating for this meeting?

FEMALE 1: So moved.

FEMALE 2: Second.

CHAIRMAN BENHAM: The pending question has been moved and properly seconded. Will the secretary please call the roll for this matter?

SECRETARY: Thank you, Mr. Chairman. The motion now before the Commission is on the approval of the Division of Enforcement's recommendation in the Gemini trust case, as stated in the voting copy of the matter circulating for this meeting. Commissioner Pham?

COMMISSIONER PHAM: No.

SECRETARY: Commissioner Pham votes no. Commissioner Mersinger?

COMMISSIONER MERSINGER: No.

SECRETARY: Commissioner Mersinger votes no. Commissioner Goldsmith Romero?

COMMISSIONER GOLDSMITH-ROMERO: Yes.

SECRETARY: Commissioner Goldsmith Romero votes yes. Commissioner Johnson?

COMMISSIONER JOHNSON: Yes.

SECRETARY: Commissioner Johnson votes yes. Chairman Benham?

CHAIRMAN BENHAM: Yes.

SECRETARY: Chairman Benham votes yes. Mr. Chairman, obviously, the ayes have [INDISCERNIBLE], the nos have two,

CHAIRMAN BENHAM: Thank you, Mr. Kirkpatrick. The ayes have it, and the action recommended by the Division of Enforcement in the Gemini trust company case, as stated in the voting copy of the matter circulating for this meeting, is approved by the Commission. Before concluding, thank you, Gretchen, and thank you, team, Manal, and everyone else involved, this was great work, and thanks, colleagues, everyone, this was a great discussion. Thank you, [INDISCERNIBLE]. So if there's nothing further, I'll entertain a motion to adjourn this meeting.

FEMALE 1: I move to adjourn the meeting.

FEMALE 2: Second.

CHAIRMAN BENHAM: All in favor, please say aye.

COMMISSIONERS: Ayes.

CHAIRMAN BENHAM: All opposed, please say no. The vote is unanimous, and the meeting is adjourned.