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U.S. COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING OF THE COMMISSION

10:06 a.m.

Monday, November 5, 2018

CFTC Headquarters
Lobby Level Hearing Room
1155 21st Street, N.W.
Washington, D.C. 20581

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ATTENDEES

CFTC COMMISSIONERS:

- Chairman J. Christopher Giancarlo
- Commissioner Brian D. Quintenz
- Commissioner Rostin Behnam
- Commissioner Dawn DeBerry Stump
- Commissioner Dan M. Berkovitz

CFTC DIVISION OF SWAP DEALER AND INTERMEDIARY

OVERSIGHT STAFF:

- Matt Kulkin
- Jeffrey Hasterok
- Rajal Patel

CFTC DIVISION OF MARKET OVERSIGHT STAFF:

- Nhan Nguyen
- Roger Smith
- David P. Van Wagner
- Amir Zaidi

CFTC OFFICE OF THE CHIEF ECONOMIST STAFF:

- Michael Penick

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ALSO PRESENT:

Christopher Kirkpatrick, Secretary of the
Commission

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P R O C E E D I N G S

CHAIRMAN GIANCARLO: Good morning. This meeting will come to order.

This is a public meeting of the U.S. Commodity Futures Trading Commission. A warm welcome to everyone, members of the public, market participants, members of the media, as well as those participating in this by phone or webcast. Thank you all for your participation.

It's good to be joined by my fellow Commissioners. For the record, the last time a full five-member CFTC Commission met in a formal meeting was on May 16, 2013. So if we're a little rusty today, I hope you'll understand.

I thank the current Administration and Senate for nominating and confirming this full Commission seated here today, and I thank the Commissioners and their staffs for their consideration and feedback on the matters before us.

The subject of our meeting is to consider two important measures and a request for comments. The first is the final rule on amending the de

1 de minimis exception to the swap dealer definition.
2 The second is a proposed rule on amendments to
3 regulations on swap execution facilities and the
4 trade execution requirement. And the third is a
5 request for comment regarding the practice of post-
6 trade name give-up on swap execution facilities.

7 I thank the staff of the CFTC for their
8 efforts in today's rules and for what I'm sure will
9 be instructive presentations.

10 Aside from the underlying policy issues
11 being addressed, the quality of the work product and
12 written discussion and analysis is very high in each
13 of these proposals. Clearly the staff put in a lot
14 of hard work into the matters before us, for which
15 we are grateful.

16 In particular, I'm pleased that the
17 Commission will today consider the final rule on
18 amending the de minimis exception to the swap dealer
19 definition and provide needed certainty to swaps
20 market participants. And I'm also very pleased that
21 the Commission will consider a proposed rule to
22 amend the SEF regulations and a request for comments

1 on post-trade name give-up. These are all matters
2 worthy of our time and thoughtfulness this morning.

3 First, we will hear opening remarks of
4 each Commissioner and then presentations from the
5 staff. After the staff presentation, Commissioners
6 will have the opportunity to make more specific
7 remarks concerning the matters before us today after
8 the staff presentations.

9 So we will now turn to opening statements,
10 and I first turn, in order of seniority, to
11 Commissioner Quintenz.

12 COMMISSIONER QUINTENZ: Thank you, Mr.
13 Chairman. Thank you for calling this meeting. It
14 is a great pleasure to be here with you today and my
15 fellow Commissioners and the full complement of the
16 Commission.

17 The matters before us today are of
18 critical importance to the derivatives markets,
19 impacting two fundamental Dodd-Frank reforms: swap
20 dealer registration and trading on swap execution
21 facilities. I appreciate all the hard work staff
22 has put into these two rulemakings and support their

1 ongoing efforts to continue improving and refining
2 our regulatory framework.

3 Mr. Chairman, I know this day has been a
4 long day coming for you and for the staff, and I'd
5 like to congratulate you and the Division of Market
6 Oversight on all of your and their tireless work on
7 the proposed rule on SEF reform. I look forward to
8 hearing the staffs' presentations on these topics,
9 as well as my fellow Commissioners' comments and
10 questions.

11 Thank you.

12 CHAIRMAN GIANCARLO: Commissioner Behnam?

13 COMMISSIONER BEHNAM: Thank you, Mr.
14 Chairman.

15 I, of course, echo Commissioner Quintenz's
16 comments about the work of the staff and, of course,
17 your leadership in getting us here, Mr. Chairman.

18 I'd like to start by thanking all of the
19 Commission staff who worked to make today's meeting
20 possible, both those who will be presenting at the
21 table today and those who provided the knowledge and
22 analysis supporting their statements.

1 I'd also like to welcome Commissioners
2 Stump and Berkovitz to the dais. I look forward to
3 continuing to deliberate on these and other issues
4 on the agenda.

5 Today, the Commission puts an end to undue
6 and prolonged uncertainty in the swaps market and
7 acts decisively to set the aggregate gross notional
8 amount threshold for the de minimis exception at \$8
9 billion in swap dealing activity entered into by a
10 person over the preceding 12 months.

11 Staff will also be presenting proposed
12 rules that would constitute an overhaul of the
13 existing framework for swap execution facilities, or
14 SEFs.

15 The Commission's action today begins the
16 process of public notice and comment under the
17 Administrative Procedure Act. Given the breadth and
18 complexity of the rule before us, the process of
19 public comment is particularly important for this
20 rule. I look forward to receiving input from the
21 many market participants who will be impacted in any
22 way by a reworking of the SEF rules.

1 Thank you again, Mr. Chairman, and I look
2 forward to the presentations.

3 CHAIRMAN GIANCARLO: Thank you,
4 Commissioner.

5 Commissioner Stump?

6 COMMISSIONER STUMP: Thank you, Mr.
7 Chairman.

8 I am pleased to participate in my first
9 open meeting exactly 2 months to the day from my
10 swearing in. On the anniversary of my first month,
11 we had a TAC meeting. So I can hardly wait to see
12 what we do to mark my third month.

13 I would like to express my sincere thanks
14 to the staff who diligently worked on today's
15 efforts. As a former committee staffer myself, I
16 know how much effort goes into the development and
17 planning process long before the formal proceedings
18 can commence, and you're all to be commended for all
19 of your efforts.

20 I would also like to thank my fellow
21 Commissioners for welcoming me to the CFTC. You
22 gain a tremendous amount of respect for people whom

1 you encounter positively during times of crisis or
2 challenge, and that is exactly how I came to know
3 most of the Commissioners here, through past problem
4 solving exercises during the financial crisis, times
5 of energy market instability, and unfortunate
6 customer protection failures. While I hope this new
7 working relationship will be void of such uneasy
8 times, if the past 2 months are any indication, I
9 know the experience will certainly not be dull.

10 While previous commissions were tasked
11 with the enormous endeavor to set up a new OTC
12 regulatory framework, the current Commission has a
13 different task derived from the sometimes overlooked
14 component of the 2009 Group of 20 nation's agreement
15 in Pittsburgh, which stipulates that regulators
16 should -- and I quote -- "assess regularly
17 implementation and whether it is sufficient to
18 improve transparency in the derivatives markets,
19 mitigate systemic risk, and protect against market
20 abuse." It is noteworthy that in 2009, in the midst
21 of responding to the crisis, the G-20 leadership
22 admitted that as individual jurisdictions

1 implemented these monumental principles, a look-back
2 was needed to ensure that the objectives were being
3 met.

4 As I was pondering how best to carry out
5 this element of the G-20 reforms, my children
6 received their first quarter report cards. They
7 passed I know you're all happy to know. But I note
8 that as they mature, their academic success is
9 measured against knowledge previously assembled.
10 They're no longer graded as to how well they know
11 their math facts, but rather how they apply the math
12 facts in the current phase of their development,
13 say, for example, in geometry and algebra. We too
14 need to assess the agency's work product based upon
15 what we've learned from experience and current data
16 available, and we should measure our success against
17 established goals. For the purpose of today's
18 subject matter, the objectives to which we should be
19 graded are simply outlined in the G-20 directives --
20 to improve transparency in the derivatives markets,
21 mitigate systemic risk, and protect against market
22 abuse. You will continue to hear me speak and

1 reference our report card throughout my tenure as I
2 believe it is time for us to evaluate the
3 effectiveness of our authorities post-crisis.

4 Thank you again for holding the meeting.
5 I look forward to the presentations, and again,
6 thanks to the staff for all of your efforts.

7 CHAIRMAN GIANCARLO: Thank you,
8 Commissioner Stump.

9 Commissioner Berkovitz?

10 COMMISSIONER BERKOVITZ: Good morning, Mr.
11 Chairman, fellow Commissioners.

12 This is my first public meeting as a CFTC
13 Commissioner, but obviously not the first public
14 meeting of the CFTC that I have participated in. I
15 am pleased to be here in my new capacity to continue
16 the work of the CFTC to foster price discovery,
17 promote innovation and fair competition and reduce
18 systemic risks. This purpose is as important today
19 as it was at any other time in our history.

20 The final de minimis exception rule and
21 proposed SEF rule amendments before us today are
22 significant measures for participants in our

1 markets. I look forward to hearing from the staff
2 on these rules and having an opportunity to express
3 my views on them.

4 I want to thank the staff of the CFTC for
5 their efforts. Day in and day out, their tireless
6 efforts help shape and implement the Commission's
7 policy. This work is commendable. I was proud to
8 be a member of the CFTC staff, and I'm proud to be
9 here again to work with the staff.

10 I will have more detailed remarks when we
11 discuss each of the rules.

12 Thank you, Mr. Chairman. I look forward
13 to the meeting.

14 CHAIRMAN GIANCARLO: Thank you,
15 Commissioner Berkovitz.

16 So let's just briefly review today's
17 procedure, and it's as much for your benefit as it
18 is for us to review it.

19 So for each of the items on today's
20 agenda, the staff will make presentations to the
21 Commission. We will do the de minimis as one panel
22 presentation set of questions, but we will do the

1 SEF NPRM and the post-trade name give-up as one
2 presentation and set of questions because they are
3 related and it's the same staff team even though we
4 will vote on those separately as separate matters.

5 After each presentation but before
6 Commissioners' questions, there will be a motion to
7 adopt the rule or item before us. I will then open
8 up the discussion for questions to the staff from
9 each of the Commissioners and we'll do that in order
10 of seniority.

11 Following that, I will ask each of the
12 Commissioners to give their statements and comments
13 in the same order.

14 Following the close of discussion on each
15 matter, the Commission expects to vote on the staff
16 recommendation as presented. All final votes
17 conducted in this public meeting shall be recorded
18 votes. The results of votes approving the issuance
19 of rulemaking documents will be included with those
20 documents in the Federal Register.

21 At this point, I'd like to ask the
22 Commission for unanimous consent to allow staff to

1 make any technical corrections to the documents
2 voted on today prior to sending them to the Federal
3 Register. Is there any objection?

4 (No response.)

5 CHAIRMAN GIANCARLO: Without objection, so
6 ordered.

7 At this time then, I would like to welcome
8 the following staff for their presentations on the
9 final rule proposal on amending the de minimis
10 exception to the swap dealer definition from the
11 Division of Swap Dealer and Intermediary Oversight.

12 That would be Matt Kulkin, Director; Rajal Patel,
13 Associate Director; and Jeffrey Hasterok, Data and
14 Risk Analyst. Gentlemen, please proceed with your
15 presentation.

16 MR. KULKIN: Good morning, Mr. Chairman,
17 Commissioners Quintenz, Behnam, Stump, and
18 Berkovitz.

19 The Division of Swap Dealer and
20 Intermediary Oversight is pleased to present this
21 morning our recommendation for today's adopting
22 release amending the de minimis exception in

1 paragraph 4 of the swap dealer definition in
2 Commission regulation 1.3. I'm joined this morning
3 by my colleagues, Rajal Patel and Jeff Hasterok.

4 Before I begin, though, I'd like to single
5 out a few folks who contributed in DSIO. That
6 includes staffers Fern Simmons and Chris Cummings,
7 as well as former DSIO staff Erik Remmler; our
8 Office of General Counsel colleagues -- Dan Davis,
9 Carlene Kim, Mark Fajfar, and Paul Schlichting; as
10 well as Bruce Tuckman, Scott Mixon, Stephen Kane,
11 and David Reiffen in the Office of Chief Economist
12 for their contributions.

13 I'd also like to thank each of your
14 offices and your staffs for providing constructive
15 feedback and suggestions for our recommendations.
16 Establishing a permanent notional threshold will
17 give market participants much needed clarity and
18 certainty related to our swap dealer registration
19 requirements.

20 Before I hand the presentation to Rajal
21 and Jeff, I want to note two things.

22 First, in addition to the de minimis

1 threshold, the Commission's June notice of proposed
2 rulemaking solicited comments on four regulatory
3 proposals and requested feedback on three other
4 topics, as noted in both the June NPRM and today's
5 adopting release. The CFTC has made clear that it
6 may in the future separately propose or adopt rules
7 addressing any aspect of the NPRM that was not
8 finalized in this adopting release. Therefore, this
9 rule amendment may be the first in a potential
10 series of de minimis exception-related amendments,
11 and staff continues to work on the issues raised in
12 the June NPRM.

13 Second, with respect to certain
14 exceptions, whether or not a swap involves a
15 registered swap dealer, the swap and the swap's
16 counterparties are still subject to Commission
17 regulation, including our rules related to mandatory
18 clearing, trade execution, and trade reporting
19 requirements.

20 I'll now hand it over to Rajal and Jeff to
21 discuss the release in more detail. Thank you.

22 MR. PATEL: Thank you, Matt.

1 Mr. Chairman and Commissioners, today's
2 adopting release establishes a permanent aggregate
3 gross notional amount threshold for the de minimis
4 exception at \$8 billion in swap dealing activity
5 entered into by a person over the preceding 12
6 months.

7 The release originates with the definition
8 of "swap dealer" in section 1a(49) of the Commodity
9 Exchange Act, as added by the Dodd-Frank Act. The
10 definition explains what constitutes swap dealing
11 activity and also provides that the Commission shall
12 promulgate regulations to establish factors with
13 respect to the making of a determination to exempt
14 from designation as a swap dealer an entity engaged
15 in a de minimis quantity of swap dealing.

16 In December 2010, the CFTC and SEC jointly
17 issued a proposing release to establish a number of
18 definitions, including swap dealer. The commissions
19 finalized these definitions in a May 2012 rulemaking
20 establishing the definition of swap dealer and the
21 de minimis exception that currently reside in CFTC
22 regulation 1.3.

1 The May 2012 release established the \$8
2 billion threshold with a reduction to \$3 billion on
3 December 31st, 2017.

4 For each of the last 2 years, the
5 Commission has issued orders to extend the
6 termination date. The phase-in period is currently
7 scheduled to terminate on December 31st, 2019,
8 meaning that market participants must begin
9 calculating towards a \$3 billion threshold on
10 January 1, 2019, less than 2 months from now.

11 In adopting the swap dealer definition,
12 the commissions identified the policy goals
13 underlying swap dealer registration and regulation
14 generally to include reducing systemic risk,
15 increasing counterparty protections, and increasing
16 market efficiency, orderliness and transparency.

17 The commissions also recognized that,
18 consistent with congressional intent, an
19 appropriately calibrated de minimis exception has
20 the potential to advance other interests. The
21 commissions explained that these interests include
22 increasing efficiency, allowing limited swap dealing

1 in connection with other client services,
2 encouraging new participants to enter the market,
3 and focusing regulatory resources.

4 The policy objectives underlying the de
5 minimis exception are designed to encourage
6 participation and competition by allowing persons to
7 engage in a de minimis amount of dealing without
8 incurring the costs of registration and associated
9 swap dealer regulations.

10 This release is a culmination of years of
11 staff work, including data analysis, meetings with
12 registrants, and of course, input from
13 Commissioners. It also incorporates staff and
14 market participants' comments and feedback received
15 in response to the 2015 Preliminary Staff Report,
16 the Commission's Project KISS initiative, and most
17 recently the proposed rule that was published in
18 June of this year.

19 The NPRM relied on detailed analysis of
20 2017 data reported to swap data repositories and
21 exemplifies empirically driven policymaking.

22 I will now turn to Jeff to discuss the

1 data used to inform this rule amendment.

2 MR. HASTEROK: Thank you, Rajal.

3 Mr. Chairman and Commissioners, good
4 morning.

5 The release before you today was informed
6 by a data-driven and cooperative analytical process
7 utilizing part 45 transaction level swaps data. Our
8 analysis was designed to use the swaps transaction
9 data to identify likely swap dealers based on their
10 aggregate gross notional amounts, or AGNA, of swaps
11 activity and evaluate likely swap dealer market
12 coverage at various de minimis thresholds.

13 As Rajal mentioned, we used 2017 calendar
14 year data to analyze the -- and I'm sorry we didn't
15 come up with a better acronym here, but the AGNA of
16 swaps activity for interest rate, credit default,
17 foreign exchange, and equity swaps.

18 For the June proposal, we analyzed
19 lowering the threshold to \$3 billion, maintaining
20 the threshold at \$8 billion, or increasing the
21 threshold to higher levels of \$20 billion, \$50
22 billion, or \$100 billion. We believe that the \$8

1 billion threshold being adopted today is
2 appropriate. I will now walk you through a summary
3 of the analysis.

4 First, the current \$8 billion threshold
5 subjects almost all swap transactions - as measured
6 by transaction counts or AGNA - to swap dealer
7 regulations. A swap was considered to be subject to
8 swap dealer regulations if at least one counterparty
9 to the swap was a registered swap dealer. Overall,
10 approximately 98 percent of transactions across the
11 five asset classes involved at least one registered
12 swap dealer. Across interest rate, credit default,
13 foreign exchange, and equity swaps, greater than 99
14 percent of the AGNA involved at least one registered
15 swap dealer. Given these coverage statistics, in
16 our view the policy considerations underlying swap
17 dealer regulation are being appropriately advanced
18 at the current \$8 billion threshold. Only a low
19 percentage, or de minimis amount, of swaps activity
20 is not currently covered by swap dealer regulation-
21 related requirements indicating that the current
22 threshold is appropriate.

1 Second, our analysis also indicated that
2 at a lower threshold of \$3 billion or at a higher
3 threshold of \$20 billion, \$50 billion, or \$100
4 billion, there would only be small changes in the
5 AGNA or swap transaction counts subject to swap
6 dealer regulation, as compared to the \$8 billion
7 threshold.

8 Third and finally, for non-financial
9 commodity swaps, although the regulatory coverage as
10 measured by the number of transactions that include
11 at least one registered swap dealer was lower than
12 for the four other asset classes, we believe that
13 the lower regulatory coverage at the current \$8
14 billion threshold is acceptable given the
15 characteristics of the non-financial commodity swap
16 market.

17 With that, I'd like to turn it back to
18 Matt.

19 MR. KULKIN: Thanks, Jeff.

20 Before we conclude, Commissioners, I'd
21 like to add that maintaining the status quo signals
22 long-term stability of the de minimis threshold and

1 should provide for the efficient application of the
2 swap dealer definition, as it allows for the long-
3 term planning based on the \$8 billion threshold.

4 Mr. Chairman and Commissioners, with that,
5 we'd be happy to answer your questions. Thank you.

6 CHAIRMAN GIANCARLO: Thank you.

7 Before we go to questions, it's
8 appropriate for us to entertain first a motion to
9 adopt the Division of Swap Dealer and Intermediary
10 Oversight's final rule on amending the de minimis
11 exception to the swap dealer definition. So what
12 I'd like to do is accept a motion and a second from
13 my colleagues. Is there a motion?

14 COMMISSIONER STUMP: So moved.

15 CHAIRMAN GIANCARLO: And second? Thank
16 you very much.

17 So now the floor is open to allow the
18 Commissioners to ask any questions they may have,
19 and we will start with Commissioner Quintenz.

20 COMMISSIONER QUINTENZ: Thank you, Mr.
21 Chairman. I don't have any questions.

22 CHAIRMAN GIANCARLO: Commissioner Behnam?

1 COMMISSIONER BEHNAM: No questions. Thank
2 you.

3 CHAIRMAN GIANCARLO: Commissioner Stump?

4 COMMISSIONER STUMP: Just a few questions.

5 The continuing obligation for a 12-month
6 look-back acknowledges that dealing activity is
7 going to fluctuate over time and that those who can
8 avail themselves of the de minimis exception may
9 change such that the resulting list of swap dealers
10 is altered in the future.

11 Does DSIO plan to proactively review who
12 should and should not be registered as swap dealers
13 based upon SDR data at their disposal or is the
14 expectation that institutions will be expected to
15 proactively monitor and initiate registration on
16 their own?

17 MR. KULKIN: Commissioner, thanks for the
18 question.

19 So I think the answer is probably yes to
20 both. We certainly look at the swap data repository
21 information that we have to look at swap dealing
22 levels or swap activity, but at the same time, there

1 is a burden on the market participant to monitor
2 their activity for registration purposes. And then,
3 of course, as we're monitoring the data, if we do
4 see participants who appear to be exceeding the \$8
5 billion in dealing activity, we'll conduct further
6 analysis and work with colleagues either in the
7 Enforcement Division or at the NFA, as appropriate.

8 CHAIRMAN GIANCARLO: Commissioner
9 Berkovitz?

10 COMMISSIONER BERKOVITZ: Thank you, Mr.
11 Chairman. I just have a few questions to confirm my
12 understanding of the analysis that you presented.

13 First, as I understand it, with the
14 threshold currently set at \$8 billion, is it correct
15 that approximately 98 percent of reported swap
16 transactions are currently subjected to swap dealer
17 regulation?

18 MR. HASTEROK: That's correct,
19 Commissioner.

20 COMMISSIONER BERKOVITZ: And what would be
21 the additional number of swap transactions that
22 would be covered by swap dealer regulation if we

1 were to lower it to \$3 billion?

2 MR. HASTEROK: Sure. So thank you for the
3 question, Commissioner.

4 If we theoretically dropped the threshold
5 to 3, our analysis showed that it would be a very
6 small amount, approximately 0.01 percent, or to use
7 an interest rate term, about a basis point. In
8 terms of dollars, that's about \$19 billion in
9 additional AGNA and approximately 2,400 additional
10 trades.

11 COMMISSIONER BERKOVITZ: And from the
12 comments that you received in your discussions with
13 market participants, do you believe that you would
14 get additional dealers registered if the threshold
15 would have been lowered to \$3 billion, or would
16 people within that bubble between 3 and 8 just go
17 below 3? What was the feedback that you received?

18 MR. HASTEROK: The feedback is that it is
19 certainly possible that if the threshold were to be
20 lowered, that the reaction function would be that
21 some participants would lower their ancillary swap
22 dealing activities and would lower their activity

1 levels to be whatever threshold we set. So if we
2 drop it to 3, the feedback that we received from
3 participants was that they would lower it. There
4 were probably a couple, a handful of names that
5 would register as well, but we don't know. We can't
6 affirmatively tell you which firms would do that.

7 COMMISSIONER BERKOVITZ: Okay. Thank you
8 very much.

9 CHAIRMAN GIANCARLO: I have no questions.

10 And with that, we will now open the floor
11 to allow the Commissioners to make any statements or
12 comments before we call for a vote, and we'll begin
13 with Commissioner Quintenz.

14 COMMISSIONER QUINTENZ: Thank you, Mr.
15 Chairman.

16 I support today's final rule to rescind
17 the de minimis threshold's scheduled reduction to \$3
18 billion of gross notional swaps dealing activity.
19 Every iteration of data analysis conducted by the
20 CFTC staff on this issue, from the 2015 preliminary
21 report to the 2016 final report, to the updated data
22 and analysis in the 2018 June proposed rule, and to

1 the data presented in this final rule, clearly and
2 unequivocally support eliminating this ill-conceived
3 reduction. I'm pleased that today's action will
4 remove a large source of negative regulatory
5 uncertainty for market participants in managing
6 their swaps business and in serving their customers.

7 However, in my opinion this is just the
8 first of many necessary steps towards correcting
9 what I believe is a flawed swap dealer registration
10 policy. Therefore, it is my hope that today's final
11 rule is viewed with finality only in this one
12 regard.

13 As I have emphasized on many prior
14 occasions, given the significant costs of swap
15 dealer regulation, it is critical that the de
16 minimis exception be appropriately calibrated to
17 ensure that the correct market group, those who are
18 best situated to realize the corresponding policy
19 goals of registration, shoulders the burden of swap
20 dealer regulations.

21 As I have also said repeatedly in the
22 past, notional value is a very poor measure of

1 activity, and it is a meaningless measurement of
2 risk. Therefore, by itself notional value is an
3 incredibly deficient metric by which to impose large
4 costs and achieve substantial policy outcomes. A
5 one-size-fits-all notional value test for swap
6 dealer registration captures entities that engage in
7 low-volume, low-risk activity with high notional
8 amounts and places those firms under the same
9 regulatory regime as the nation's largest banks that
10 deal in trillions of dollars' worth of swaps. The
11 end result is that smaller firms are disincentivized
12 from engaging in lower-risk activity when faced with
13 justifying the costs of swap dealer registration.

14 In fact, I've heard anecdotally from small
15 to mid-sized players in the swaps markets that the
16 break-even point of the cost of swap dealer
17 registration and the level of notional swaps dealing
18 activity is much higher than the \$8 billion level in
19 this rule. If that is the case, the current \$8
20 billion notional threshold could still effectively
21 force some small players to curtail their swaps
22 dealing business, thereby limiting competition and

1 further concentrating swaps activity with their
2 larger competitors.

3 In my view, an appropriately calibrated de
4 minimis exception would better align the criteria of
5 the de minimis threshold with the costs of swap
6 dealer regulation, particularly the largest costs
7 tied to mitigating systemic risk, such as capital
8 and margin. A de minimis threshold based on metrics
9 more closely correlated with the risk of the
10 products traded, as opposed to the current risk-
11 insensitive notional value metric, would better
12 measure dealing activity and, therefore, in my
13 opinion, a de minimis quantity of swaps as our
14 statute says and, therefore, better capture entities
15 warranting Commission oversight.

16 In addition, many of the policy
17 recommendations discussed in the proposed rule, such
18 as better allowing insured depository institutions
19 to assist their clients' hedging needs and excluding
20 non-deliverable forwards from an entity's de minimis
21 count, would advance the policy goals of the de
22 minimis exception by encouraging greater

1 participation and competition in the swaps market.
2 I would eagerly anticipate the Commission's actions
3 on these important reforms. As the Commission's
4 recent no-action letter to a Main Street bank this
5 past August shows, the deficiencies of the current
6 de minimis exception are beginning to squeeze firms'
7 activity and constrain their ability to serve
8 clients.

9 Any de minimis threshold must always be
10 put into the context of the broader swaps market
11 regulatory regime. We are not establishing the de
12 minimis threshold in a vacuum. Since the swap
13 dealer definition was adopted in 2012, a broad range
14 of rigorous regulatory requirements have gone into
15 effect which also advance the goals of swap dealer
16 registration, such as mandatory clearing, SEF
17 trading, swap data reporting, and margin
18 requirements for uncleared swaps.

19 The Commission's regulatory framework for
20 the swaps market has greatly evolved from its state
21 six years ago. It is only common sense that the
22 swap dealer registration threshold should ultimately

1 evolve as well. It will be a great day when
2 financial regulators, including the CFTC, finally
3 move away from gross notional value as any sort of
4 metric or test of derivatives exposure activity or
5 risk. I look forward to that day, and I'm committed
6 to working with the Chairman and my fellow
7 Commissioners and our staff to make sure that we
8 ultimately get the de minimis exception policy
9 right.

10 In the meantime, I'm very pleased to
11 support this final rule.

12 Thank you, Mr. Chairman.

13 CHAIRMAN GIANCARLO: Thank you,
14 Commissioner Quintenz.

15 Commissioner Behnam?

16 COMMISSIONER BEHNAM: Despite opposing the
17 rule as proposed in June, I'm comfortable supporting
18 today's final rule because it is limited to
19 establishing a clear and certain de minimis
20 threshold.

21 My gravest concern with the proposal for
22 the de minimis exception was that the Commission may

1 have been using the rulemaking to redefine swap
2 dealing activity absent meaningful collaboration
3 with the Securities and Exchange Commission, as
4 required by the Dodd-Frank Act, and to the detriment
5 of market participants eager for regulatory
6 certainty. I was also concerned that the proposal's
7 multiple ancillary components might signify a
8 willingness to exploit the de minimis exception as a
9 means to further unilaterally alter the swap dealer
10 definition in clear circumvention of congressional
11 intent. In short, I was disappointed that the
12 Commission was not focusing on what it needed to do
13 -- provide regulatory certainty for a critical
14 cohort of market participants -- and instead was
15 exploring the limits of its authority and creating
16 impracticable expectations.

17 I appreciate the Chairman and staff's
18 willingness to address my concerns and for their
19 thoughtful consideration of the comments.

20 Inasmuch as I am pleased that the final
21 rule is narrowly focused purely on the numerical
22 setting of the AGNA threshold, I am concerned that

1 the Commission has yet to resolve longstanding
2 concerns with the IDI loan-related swap exclusion
3 referred to in today's final rule as the "IDI Swap
4 Dealing Exclusion." The IDI Swap Dealing Exclusion
5 codifies part of the statutory swap definition in
6 section 1a(49)(A) of the Commodity Exchange Act and
7 was jointly adopted with the SEC as paragraph (5) to
8 the swap dealer definition. This is not to be
9 confused with the proposed IDI De Minimis Provision,
10 which would have established an alternative to the
11 exclusion, absent SEC coordination, that would have,
12 in effect, revised the scope of activity that
13 constitutes swap dealing.

14 Today's final rule is vague regarding
15 whether the Commission will work with the SEC in its
16 ongoing commitment to continue considering issues
17 raised by commenters towards appropriately amending
18 the Swap Dealing Exclusion, consistent with the
19 Dodd-Frank Act, or whether it will continue to
20 attempt to finalize a separate exception. I stand
21 by my prior statement and continue to believe that
22 the only correct path forward is for the CFTC and

1 SEC to jointly consider and amend, as appropriate,
2 the IDI Swap Dealing Exclusion, and I would be happy
3 to participate in support of this effort.

4 The current data, absent consideration of
5 the non-financial commodity asset class,
6 demonstrates that allowing the AGNA to decrease to
7 \$3 billion may capture an additional 13 swap
8 dealers. Almost all are banking entities subject to
9 prudential or comparable regulation in their
10 respective jurisdictions, such that they are
11 examined for safety and soundness and required to
12 comply with customer protection rules. The few that
13 are not banking entities are financial entities that
14 are likely subject to regulation on a federal or
15 state level. Moreover, for all 13 entities, the
16 Commission was unable to exclude data regarding
17 swaps that fall under the IDI Swap Dealing
18 Exclusion, possibly lowering that number even
19 further.

20 I'm pointing this out because I'd like to
21 stress that, while I support today's decision to
22 maintain the AGNA threshold at \$8 billion, there is

1 still work to be done on improving our data. While
2 swap data repository data quality has improved, AGNA
3 data was unavailable for the non-financial commodity
4 swaps. Nevertheless, Commission staff used
5 counterparty and transaction counts and a series of
6 assumptions to analyze likely swap dealing activity
7 in the non-financial commodity swap market and
8 concluded that reducing the \$8 billion AGNA
9 threshold could lead to reduced liquidity in non-
10 financial commodity swaps, negatively impacting end-
11 users and commercial entities who utilize these
12 swaps for hedging. The Commission further relied
13 upon findings and comments that the unique
14 characteristics of the non-financial commodity swap
15 market poses less systemic risk than financial
16 swaps.

17 It is my hope that Commission staff will
18 continue to examine and monitor data and activities
19 in the non-financial commodity swap market to ensure
20 that concentrated activity by unregistered non-
21 financial commodity counterparties in segments of
22 that swap market, such as in energy-related swaps,

1 do not present outsized risk or harm to end-users
2 and, most importantly, the general public.

3 Thank you again to the team, and thank
4 you, Mr. Chairman.

5 CHAIRMAN GIANCARLO: Thank you,
6 Commissioner.

7 Commissioner Stump?

8 COMMISSIONER STUMP: I support finalizing
9 the numeric threshold in order to provide a level of
10 regulatory certainty.

11 Stabilizing the aggregate gross notional
12 amount of permitted dealing activity under the de
13 minimis exception for swap dealer registration
14 allows those impacted to focus on their key role in
15 the U.S. economy, providing liquidity and offering
16 risk management alternatives to their clients,
17 rather than worrying about being captured in a net
18 of regulations intended for those with swap dealing
19 activity many orders of magnitude greater than their
20 own.

21 Alternatively, casting regulations and
22 burdens on firms posing little, if any, systemic

1 risk due to their relatively small presence in the
2 swap markets would lead to some entities forgoing
3 this business altogether and does not further the
4 objectives of the G-20 standards. This is precisely
5 what Congress sought to avoid when they instructed
6 the CFTC to provide a de minimis exception.

7 Policy that would prompt firms to contract
8 business models and reduce dealing activity as a
9 strategic choice to avoiding registration is not a
10 prudent approach to ensuring the quality of U.S.
11 markets in the competitive global arena. Years ago,
12 we might have pled ignorance to the reason for such
13 an outcome, but today that would be tantamount to
14 willful, irresponsible regulation based on the
15 information at our disposal today. Today we have
16 the benefit of improvements in swap data reporting
17 and analytical capabilities to refine analysis of
18 swap dealing activity.

19 It is time for the Commission to finalize
20 a data-derived de minimis threshold. Market
21 participants have endured a rule proposal, adopting
22 release, two Commission orders extending the phase-

1 in, and two staff studies on de minimis exception.
2 Based on the data in those studies and the rule
3 before us today, I disagree with arguments towards
4 lowering the threshold for swap dealer registration
5 requirements and unnecessarily subjecting entities
6 with a limited swap dealing capacity to registration
7 and the associated rigorous obligations and
8 substantial costs. The intent is not to strangle
9 the activity of swap dealing operations, which would
10 bring no discernible benefit while increasing the
11 costs, diminishing the quality of service, and
12 limiting the hedging opportunities for end-users
13 that rely on these institutions. I cannot justify
14 such a regulatory application without a clear and
15 demonstrable policy reason.

16 To the contrary, the swap data now
17 available to the Commission underscores the large
18 regulatory capture preserved by this rule, and it
19 was outlined very nicely by Jeff earlier.
20 Approximately 98 percent of swap transactions
21 involve at least one registered swap dealer, and
22 greater than 99 percent of aggregate gross notional

1 amounts in IRS, CDS, FX, and equity swaps included
2 at least one registered swap dealer.

3 I'm not advocating for a rollback of the
4 Dodd-Frank Act or seeking loopholes for massive swap
5 dealing banks to escape oversight of the CFTC. What
6 I'm striving for in a future state of swap dealer
7 monitoring is a system that is true to the law and
8 properly applies the de minimis exception with which
9 the CFTC was tasked to design, an exception that
10 should adhere to the ultimate goals of the swap
11 dealer registration regime.

12 The narrowing of this rule from its
13 proposed form to the final product signifies that
14 difficult, yet critical questions remain unresolved.

15 If the ultimate concerns to be addressed
16 in defining and registering firms as swap dealers
17 are excessive bilateral counterparty exposure,
18 global systemic risk, and business conduct in
19 client-facing activities, then are we receiving a
20 passing grade against these benchmarks?

21 If the aim of the swap dealer registration
22 is to oversee and improve the interaction with

1 clients and apply business conduct standards, then
2 should those who do not face clients be in scope?

3 Similarly, if swap dealer oversight is
4 required for the purpose of monitoring bilateral
5 counterparty risk, then should those predominantly
6 engaged in cleared swaps, whereby counterparties
7 cease to face a dealer and rather face a
8 clearinghouse, continue to be included?

9 If portfolio compression exercises are
10 encouraged for the purpose of mitigating risk, then
11 is it not appropriate to consider such reductions in
12 notional exposures in this context?

13 I'm not suggesting that these activities
14 should go unmonitored and reporting elements of the
15 new regulatory regime should continue to apply. But
16 we must remind ourselves that swap dealer
17 registration is meant to serve a distinct purpose.
18 And are our rules fit for that purpose?

19 These unresolved questions will need to be
20 answered another day because calendar deadlines
21 sometimes serve as the driving force in the
22 Commission's actions. This slimmed-down final rule

1 will provide market participants with much needed
2 certainty as they plan to count their activity for
3 the 12 months prior to December 31, 2019, the
4 termination of the current phase-in period.

5 I am hopeful that in completing the
6 quantitative component of the de minimis rule today,
7 it will afford staff and my fellow Commissioners and
8 I the opportunity to refocus attention on the issues
9 that remain.

10 Again, I want to thank the staff for their
11 efforts and considerable time devoted to completing
12 thorough analysis based upon real data.

13 While I am pleased to offer market
14 participants this level of regulatory clarity, I
15 fear our report card on the more complex subject
16 matter shows a grade of incomplete. I look forward
17 to working with the staff of DSIO to further refine
18 the application of the swap dealer regime,
19 consistent with the established goals of the G-20 so
20 that we can very soon remove the incomplete score
21 from our report card.

22 CHAIRMAN GIANCARLO: Thank you,

1 Commissioner.

2 Commissioner Berkovitz?

3 COMMISSIONER BERKOVITZ: Thank you, Mr.
4 Chairman.

5 I support setting the swap dealer de
6 minimis exception threshold at \$8 billion. The
7 limited amendment before us relies on extensive data
8 analysis to achieve a balance between the policy
9 objectives of the de minimis exception and the
10 registration of swap dealers.

11 I would like to acknowledge the leadership
12 of Chairman Giancarlo and the efforts of my fellow
13 Commissioners to achieve consensus on this rule. I
14 look forward to continue working together to benefit
15 our markets and the American people.

16 In 2012, the Commission, jointly with the
17 SEC, adopted the swap dealer definition. At that
18 time, the de minimis threshold was set at \$8
19 billion. Recognizing the lack of swap trading data
20 at the time, the Commission implemented a long
21 phase-in period during which the threshold was set
22 at \$8 billion. The regulation directed Commission

1 staff to study the data that would be collected
2 through swap data repositories and publish a report
3 for public comment, thereby enabling the Commission
4 at a later time to make a data-based judgment
5 regarding the de minimis quantity threshold.

6 The staff, pursuant to that direction,
7 aggregated data from all four SDRs. Over several
8 years, the staff developed and refined techniques to
9 sort and evaluate the data, published two reports,
10 and refined and revised its analyses in response to
11 public comments. The staff worked diligently to
12 produce meaningful data-driven information. I want
13 to recognize the staff that undertook these efforts:
14 Jeff Hasterok, Rajal Patel, John Roberts, Margo
15 Bailey, my now chief of staff, Erik Remmler, and
16 Director Kulkin, and everyone else who contributed
17 to this undertaking for their remarkable efforts to
18 produce a well-reasoned, well-supported final rule
19 before us. Thank you.

20 The effort provided a highly significant
21 data point, as we heard in the questions and
22 answers: approximately 98 percent of all swap

1 transactions involved at least one registered
2 dealer. We now know that at the \$8 billion
3 threshold, nearly all swap transactions benefit from
4 swap dealer registration and regulation.

5 The staff's analysis also showed that
6 reducing the threshold to \$3 billion would add
7 dealer coverage to less than one-tenth of 1 percent
8 of reported swaps. This would be a small benefit.

9 On the other hand, decreasing the
10 threshold from its current level would impose
11 tangible costs on market participants. If the
12 threshold were lowered to \$3 billion, unregistered
13 dealers that are currently under the \$8 billion
14 level would have to reevaluate whether swap dealing
15 in excess of \$3 billion would continue to make
16 business sense. This issue is particularly
17 important in the non-financial commodity swap
18 market. Many of the smaller swap dealers for
19 physical commodities are commodity producers,
20 distributors, consumers, or merchandisers. Swap
21 dealing is an ancillary business for them. Where
22 the costs of registering as a swap dealer exceed

1 anticipated benefits, it is likely that many of
2 these entities would withdraw from swap dealing.
3 That would leave many end-users looking to hedge
4 their risks with either no, or very few large,
5 dealers to choose from and with terms and prices
6 that may be unfavorable for businesses in those
7 circumstances.

8 The Commission should foster competition
9 for swap dealer services. One of the fundamental
10 purposes of the Commodity Exchange Act is to, quote,
11 “promote fair competition among boards of trade,
12 other markets and market participants.” Unquote.
13 American businesses throughout the country that need
14 to use swaps to hedge their risks should not be
15 forced to rely only on large Wall Street banks.
16 Retaining the de minimis threshold at \$8 billion
17 will help preserve competition and choice for
18 American businesses for swap dealing services.

19 The data demonstrates that the current de
20 minimis threshold is accomplishing its intended
21 purpose. Regulatory stability is important where
22 the regulations are working. Accordingly, after

1 considering the results of the swap data analysis,
2 relevant policy implications, and limited benefits
3 and potential costs of altering the de minimis
4 quantity, I believe that maintaining the threshold
5 at \$8 billion is appropriate and sound public
6 policy.

7 I want to mention something else the data
8 showed. The proposal noted that measuring the
9 aggregate gross notional amount of physical
10 commodity swaps was not possible. Instead, staff
11 used counterparty and transaction counts to
12 approximate swap dealing activity for these swaps.
13 The staff's analysis indicated that 86 percent of
14 the physical commodity swaps likely involved at
15 least one registered swap dealer as opposed to 99
16 percent for other swap categories.

17 The market participants who use physical
18 commodity swaps for hedging include farmers,
19 ranchers, farm product processors, energy producers
20 and consumers, manufacturers, and other end-users.
21 These consumer-facing businesses need a properly
22 functioning physical commodity derivatives

1 marketplace to provide stable prices for their
2 customers and ultimately American consumers.

3 I am, therefore, calling on the Commission
4 to continue to improve our data collection and
5 analysis for these swaps. More robust data
6 collection will help us better balance the benefits
7 of de minimis swap dealing in physical commodities
8 with the need for customer protection and the other
9 benefits of swap dealer registration.

10 On a final note, I am voting today solely
11 on the final rulemaking before us to establish the
12 de minimis threshold at \$8 billion.

13 In the Dodd-Frank Act, Congress directed
14 the CFTC and the SEC to jointly further define the
15 term "swap dealer." At the same time, Congress
16 directed the Commission to exempt entities that
17 engage in a de minimis quantity of swap dealing.

18 I believe the other non-numerical changes
19 in the de minimis exception proposal that are not in
20 the final rule before us today are effectively
21 amendments to the swap dealer definition.

22 Accordingly, while I am open to considering

1 refinements to the swap dealer definition, I believe
2 that further changes can be accomplished only
3 through joint rulemaking with the SEC.

4 Thank you.

5 CHAIRMAN GIANCARLO: Thank you,
6 Commissioner Berkovitz.

7 I will now give my statement. And I will
8 begin by thanking my Commission colleagues for their
9 thoughtfulness and bipartisanship in which we
10 approach this issue.

11 And to the staff, you have done a fine
12 job. Good work on this. And I want to compliment
13 you for that. This is truly data-driven policy
14 development, which is a compliment to all of us.

15 If adopted, today's final rule on the
16 numeric threshold for swap dealer de minimis will
17 provide the market with certainty that the threshold
18 will not fall from \$8 billion to \$3 billion, and I
19 fully support the proposed final rule.

20 The action before us is without prejudice
21 to all other items in the Commission's June 2018
22 NPRM. That includes various proposed rule

1 amendments and other topics for consideration.
2 Those proposals and considerations are clearly of
3 wide-ranging interest, as evidenced by the public
4 comments received and Commissioner comments. They
5 remain under staff consideration pending further
6 Commission action.

7 Indeed, I will direct the CFTC staff to
8 continue their analysis of the range of matters
9 raised in the June 2018 NPRM and comments submitted
10 by the public.

11 I will specifically ask the staff to
12 conduct a study on possible alternative metrics for
13 the calculation of swap dealer de minimis threshold,
14 drawing upon proposals in the June 2018 NPRM,
15 including the feasibility of, one, removing cleared
16 swaps from the current de minimis calculation; two,
17 haircutting cleared swaps included in the current de
18 minimis calculation; three, adopting a new
19 bifurcated de minimis calculation that uses initial
20 margin amounts for cleared swaps and entity-netted
21 notional amounts for uncleared swaps; and applying
22 other risk-based approaches that the staff may

1 recommend. And I will be asking the staff for
2 specific deadlines and deliverables on this work.
3 Once staff has reviewed and analyzed the data, I
4 expect that the study will be made public for
5 further discussion and possible Commission action.

6 I deliberately decline at this time to
7 express any views on the appropriateness of whether
8 any of the proposals in the June 2018 NPRM not
9 before us today should be addressed by CFTC
10 unilateral rulemaking or joint consideration with
11 the Securities and Exchange Commission.

12 Be assured that SEC Chairman Clayton and I
13 and our fellow CFTC and SEC Commissioners are
14 committed to working together on robust
15 harmonization where appropriate and working jointly,
16 where necessary, on these and other matters.

17 With respect to IDIs, staff has informed
18 me that they would consider no-action relief for
19 IDIs pending formal Commission action should they
20 receive a meritorious request.

21 In sum, I'm hopeful that we will today
22 provide market certainty that the de minimis

1 threshold will not fall below its current level.

2 Surely it has taken a while to reach this
3 point. Yet, I am hopeful that we may achieve it
4 with a good degree of consensus across the full
5 Commission. And assuming so, then we have increased
6 market certainty, a very good thing in trading
7 markets. Sometimes things are worth the wait.

8 Thank you very much.

9 Having concluded the discussion, would any
10 Commissioner like to make any further statements
11 before we proceed to a vote on this matter?

12 (No response.)

13 CHAIRMAN GIANCARLO: Are Commissioners
14 prepared to vote? If so, Mr. Kirkpatrick, would you
15 repeat the motion and then call the roll?

16 MR. KIRKPATRICK: Yes. Thank you, Mr.
17 Chairman.

18 The motion now before the Commission is on
19 the adoption of the final rule on amendments to the
20 de minimis exception to the swap dealer definition.

21 Commissioner Berkovitz?

22 COMMISSIONER BERKOVITZ: Aye.

1 MR. KIRKPATRICK: Commissioner Berkovitz
2 votes aye.
3 Commissioner Stump?
4 COMMISSIONER STUMP: Aye.
5 MR. KIRKPATRICK: Commissioner Stump votes
6 aye.
7 Commissioner Behnam?
8 COMMISSIONER BEHNAM: Aye.
9 MR. KIRKPATRICK: Commissioner Behnam
10 votes aye.
11 Commissioner Quintenz?
12 COMMISSIONER QUINTENZ: Aye.
13 MR. KIRKPATRICK: Commissioner Quintenz
14 votes aye.
15 And Chairman Giancarlo?
16 CHAIRMAN GIANCARLO: Aye.
17 MR. KIRKPATRICK: Chairman Giancarlo votes
18 aye.
19 Mr. Chairman, on this matter, the ayes
20 have 5, the no's have 0.
21 CHAIRMAN GIANCARLO: Thank you.
22 At this time, I'd like to dismiss this

1 team -- thank you very much -- and welcome the
2 following staff from the Division of Market
3 Oversight for their presentation on the SEF proposal
4 and the request for comment on name give-up. We
5 welcome to the table the DMO team: Amir Zaidi,
6 Director; Nhan Nguyen, the lead presenter; Roger
7 Smith, Special Counsel; and David Van Wagner,
8 Special Counsel.

9 Please give your presentation when you're
10 ready.

11 MR. ZAIDI: Great. Thank you, Mr.
12 Chairman and Commissioners.

13 Before I turn it over to staff for the
14 presentation, I would like to thank the people at
15 the table. We wouldn't be sitting here today
16 without their hard work, dedication, and
17 thoughtfulness.

18 Dave Van Wagner is a veteran of the CFTC,
19 and in addition to his hard work, dedication, and
20 thoughtfulness, his good judgment and experience has
21 served us well as we developed this proposal. I am
22 grateful to David for his efforts and he is an

1 excellent Chief Counsel.

2 I thank Roger Smith, who has spent a lot
3 of late nights and weekends working on this
4 proposal. His ability to think through the details
5 of an issue, but also understand the larger policy
6 implications and develop solutions has been
7 immensely helpful.

8 I would especially like to thank Nhan
9 Nguyen, Team Leader of the SEF proposal. I've lost
10 count of the number of nights he has worked past
11 2:00 a.m. and the weekends to lead the team to this
12 point. He is the hardest working person in DMO. On
13 top of that, his mastery of the issues and his
14 ability to develop thoughtful and reasoned policy
15 responses that will enhance the swaps market is
16 unsurpassed. He is the reason the proposal before
17 you today is as well written and thoughtful as it
18 is.

19 With that, I'll turn it over to Nhan to
20 give the staff's presentation. Thank you.

21 MR. NGUYEN: Thanks, Amir.

22 I just want to note for the record I

1 disagree with that. Amir is the hardest working
2 person in DMO by a mile.

3 Good morning, Mr. Chairman and
4 Commissioners.

5 Today staff recommends that the Commission
6 approve two documents for publication in the Federal
7 Register: first, a notice of proposed rulemaking
8 that pertains to swap execution facilities and the
9 trade execution requirement; and second, a request
10 for comment on the practice of post-trade name give-
11 up on SEFs.

12 These documents reflect the hard work of
13 many team members and colleagues. On behalf of
14 those sitting here today, we would like to thank the
15 following DMO colleagues for their contributions:
16 Stephen Haidar, Matt Jones, Israel Goodman, Abigail
17 Knauff, David Steinberg, Swati Shah, Aleko
18 Stamoulis, Chris Goodman, Dana Brown, Riva Adriance,
19 Phil Raimondi, David Taylor, and our intern, Allison
20 Baker.

21 We would also like to thank our colleagues
22 from the Office of the General Counsel, the Office

1 of the Chief Economist, and the Division of Clearing
2 and Risk.

3 The current SEF regulations were designed
4 to foster the statutory goals of promoting trading
5 on SEFs and pre-trade price transparency in the
6 swaps market. In practice, they have been
7 successful in transitioning some swaps trading to
8 SEFs, but this success has been limited.

9 Today, these regulations are inhibiting
10 the further growth, innovation, and development of
11 SEFs. This lack of growth, innovation, and
12 development has been in part attributable to limited
13 execution methods, a venue-driven MAT determination
14 process, and operating complexities and costs.

15 First, under the current framework, SEFs
16 are limited to just two execution methods when they
17 offer swaps for trading that are subject to the
18 trade execution requirement: order books and RFQ to
19 3 systems. In practice we have found that these
20 limited methods may not be suitable for trading a
21 broad range of swaps, may not be appropriate to
22 facilitate a market participant's trading objectives

1 or trading strategies, and may not be appropriate
2 when trading under changing market conditions.

3 Second, the extent to which swaps are
4 required to be traded on a SEF or DCM essentially
5 depends on whether the trading venues make that
6 determination themselves first. Under the current
7 made available to trade, or MAT, process, a SEF or
8 DCM decides whether a swap's liquidity profile makes
9 it suitable for trading by an order book or RFQ to 3
10 system. In practice, the concerns of market
11 participants over the use of these restrictive
12 execution methods have led SEFs to refrain from
13 making additional determinations, and as a result,
14 the number of swaps that are currently required to
15 trade on SEF or DCM has been and continues to be
16 very limited.

17 Third, the current regulations have
18 imposed operating complexities and costs upon SEFs
19 which have hindered their ability to innovate and
20 grow their operations, as well as disincentivize
21 greater participation on SEFs. For these reasons, a
22 significant amount of swaps trading and meaningful

1 liquidity formation has occurred and continues to
2 occur away from SEFs and in other environments such
3 as introducing brokers.

4 Now, given the challenges described above
5 and our enhanced knowledge and experience from
6 implementing the existing rules, this proposal
7 strengthens the swaps trading regulatory framework
8 and better promotes the development, innovation, and
9 growth of SEFs. The proposed rules set forth an
10 approach that should attract greater liquidity
11 formation on SEFs, thereby better promoting the SEF
12 statutory goals.

13 The proposed rules would allow SEFs to
14 better adapt their operations to important swap
15 market characteristics while also mitigating the
16 complexities and costs that disincentivize greater
17 participation. They also represent a simple, yet
18 comprehensive approach that would allow SEFs to
19 calibrate their trading and compliance functions to
20 their respective markets.

21 Finally, where appropriate, the proposed
22 rules would adopt or codify existing staff guidance

1 and no-action relief.

2 Going into further detail, the proposed
3 rules would amend and clarify the application of the
4 SEF registration requirement.

5 First, the registration requirement would
6 be amended to codify footnote 88 from the current
7 SEF final rule release. Therefore, entities that
8 meet the SEF definition would be required to
9 register as a SEF regardless of whether the swaps
10 that they list for trading are subject to the trade
11 execution requirement or not.

12 Second, the SEF registration requirement
13 would be applied to swap broking entities, which
14 include interdealer brokers and certain aggregator
15 platforms that facilitate swaps trading between
16 multiple participants. This proposed application is
17 consistent with the SEF definition and the statutory
18 SEF goals and aims to bring more swaps trading
19 within the SEF regulatory framework. Domestic swaps
20 broking entities would have an additional 6 months
21 to register with the Commission while foreign-based
22 broking entities would have an additional 2 years.

1 The proposed rules would also withdraw the
2 MAT process and apply the trade execution
3 requirement to swaps that are both subject to the
4 clearing requirement and listed for trading on a SEF
5 or DCM. This approach would require more swaps, in
6 particular those that have episodic liquidity, to be
7 traded and executed on SEFs, which would promote the
8 statutory goal of promoting SEF trading.

9 Compliance with this requirement for these
10 additional swaps would be phased in over a period of
11 270 days -- up to 270 days. The trade execution
12 requirement, however, would be subject to certain
13 exemptions based on the nature of the counterparties
14 or the nature of the swap transaction itself.

15 To facilitate SEF trading, including the
16 additional swaps that would be subject to the trade
17 execution requirement, a SEF would no longer be
18 required to maintain an order book functionality for
19 all the swaps that it lists and would be allowed to
20 offer any method of execution for those swaps
21 consistent with the SEF definition. For swaps
22 subject to the trade execution requirement, this

1 means that a SEF could offer execution methods
2 beyond just an order book or RFQ to 3 system. The
3 proposed rules would set forth disclosure-based
4 requirements that apply to any of those execution
5 methods, which would allow market participants to
6 evaluate and compare the different methods that are
7 available and offered by SEFs.

8 With a more flexible approach, a SEF could
9 offer other methods that may promote more efficient
10 and effective means of trading and execution as
11 opposed to just the order book or RFQ to 3 system.
12 However, nothing in this proposed rule would prevent
13 a SEF from continuing to offer an order book or RFQ
14 to 3 system. Market participants would be able to
15 choose more appropriate methods to trade swaps, many
16 of which are episodically liquid and have unique
17 characteristics. A more flexible approach may also
18 promote more trading on SEFs and pre-trade price
19 transparency by allowing for trading protocols that
20 enhance SEF participation and concentrate liquidity
21 in episodically liquid markets. To further
22 participation and concentrate liquidity, the

1 proposed rules would also limit the types of
2 communications that participants may conduct away
3 from a SEF system or platform.

4 In conjunction with allowing SEFs to use
5 execution methods that are more tailored to swap
6 market dynamics, the proposed rules would revise the
7 impartial access requirement. Rather than strive
8 for an all-to-all market for market participants,
9 something that is not required under the statute, a
10 SEF would be allowed to structure participation
11 criteria and trading practices in a manner that is
12 more consistent and appropriate to the markets that
13 they serve.

14 With respect to trade processing, the
15 proposed rules would clarify and streamline the
16 requirements behind straight-through processing, a
17 concept that has been addressed at a staff level
18 over the last several years through various guidance
19 documents and no-action letters. Among other
20 things, the proposed rules would provide a more
21 practical standard for processing and routing swap
22 transactions to a clearinghouse, particularly in the

1 case where affirmation hubs are used.

2 To promote market integrity in SEF
3 trading, the proposed rules would require a SEF to
4 establish pre-execution credit screening
5 requirements for swaps that are intended to be
6 cleared. This screening requirement would apply to
7 all applicable SEF transactions, including block
8 trades. Therefore, block trades would be required
9 to be executed on a SEF trading system or platform.

10 In addition to pre-execution credit
11 screening, the proposed rules further promote market
12 integrity by requiring SEFs to adopt baseline
13 procedures for investigating and resolving
14 transaction errors in a fair, transparent,
15 consistent, and timely manner.

16 In addition to rules intended to enhance
17 SEF trading, the proposed rulemaking includes
18 standards and a SEF duty of supervision for certain
19 personnel: SEF trading specialists who constitute
20 part of a SEF's trading system or platform. These
21 specialists would not be subject to a separate
22 registration requirement, but a SEF would be

1 required to adopt minimum proficiency testing and
2 ethics training requirements to ensure that these
3 employees possess and maintain an adequate level of
4 technical knowledge and understand their ethical
5 responsibilities in facilitating trading on the SEF.
6 These requirements are intended to enhance
7 professionalism in the swaps market and to promote
8 market integrity and fairness, which would promote
9 more confidence among market participants in trading
10 on SEFs.

11 The proposed rules also include amendments
12 to streamline compliance and regulatory oversight
13 requirements for SEFs in a manner that better
14 reflects current technological capabilities and
15 practices in the swaps market. The amendments would
16 allow a SEF to tailor its compliance programs to its
17 trading operations and markets, which would help to
18 reduce unnecessary compliance costs while still
19 require the SEF to maintain a robust compliance
20 program and comply with the SEF core principles and
21 rules.

22 These proposed amendments in particular

1 include changes that would allow a SEF to tailor its
2 rule enforcement program, including audit trail
3 surveillance system and disciplinary sanctions to
4 its trading operations, select and utilize a broader
5 array of entities to assist with its rule
6 enforcement and compliance program, and provide
7 legal documentation for uncleared swaps that can be
8 supplemented by counterparties with additional terms
9 from previously negotiated underlying agreements.

10 Further, the proposed rules include
11 amendments to the financial resource rules that
12 would create more practical requirements for SEFs,
13 in particular, the calculation of operating expenses
14 and availability of liquid resources to demonstrate
15 that they have sufficient operating resources.

16 The proposed rules would also streamline
17 existing requirements for the chief compliance
18 officer position and simplify the preparation and
19 submission of the required annual compliance report.

20 And finally, the proposed SEF rules
21 include non-substantive amendments and various
22 conforming changes to relevant provisions in the

1 Commission's regulations.

2 As noted earlier, the staff is also
3 recommending the Commission approve a request for
4 comment pertaining to the practice of post-trade
5 name give-up on SEFs. Post-trade name give-up
6 refers to the disclosure of each swap
7 counterparties' name to one another after a trade
8 has been matched anonymously. This practice has
9 been used historically by swap counterparties to
10 perform credit checks on counterparties with respect
11 to uncleared trades, as well as maintain track of
12 credit exposures and payment obligations vis-a-vis
13 one another.

14 With ongoing developments in the swaps
15 markets such as the increase in swaps clearing, this
16 request for comment seeks public input as to the
17 necessity or utility of post-trade name give-up
18 practices in facilitating swaps trading where swaps
19 transactions are anonymously executed and intended
20 to be cleared.

21 The release notes that a variety of views
22 exist on this practice. Therefore, we are

1 encouraging commenters in the public to address the
2 broad range of issues implicated and to include
3 background, relevant data, and discussions on the
4 potential impacts on market structure and liquidity.
5 Staff intends to use any comments to form a view of
6 this practice and make recommendations to the
7 Commission.

8 At this time, we would be happy to answer
9 any questions that you may have regarding either
10 release. Thank you.

11 CHAIRMAN GIANCARLO: Does that conclude
12 your presentation? Okay.

13 Given that the SEF NPRM and the request
14 for comment on name give-up are related and were
15 presented together, I believe it most constructive
16 for the Commission to engage in a single period of
17 questions and discussions for both documents. Once
18 the Commission's discussion is concluded, though, I
19 will ask for individual motions and roll call votes
20 to approve each document in turn.

21 So with that, I would like to ask for a
22 motion and a second to accept the SEF NPRM.

1 COMMISSIONER QUINTENZ: So moved.

2 CHAIRMAN GIANCARLO: Thank you.

3 And then a motion and a second for the
4 request for comment on name give-up.

5 COMMISSIONER QUINTENZ: So moved.

6 COMMISSIONER BEHNAM: Second.

7 CHAIRMAN GIANCARLO: Thank you.

8 With that, I would like to open the floor
9 to questions from Commissioners to the staff, and
10 I'll begin with Commissioner Quintenz.

11 COMMISSIONER QUINTENZ: Thank you, Mr.
12 Chairman.

13 And thank you for all of your hard work in
14 getting this proposal to us today. I know it has
15 been a lot of work. So that work is, I think, very
16 well represented in the document you've given us.

17 So Dodd-Frank allowed for any means of
18 interstate commerce in the execution of swaps. Yet,
19 the rules that this proposal attempts to address
20 originally limited those means of execution to RFQs
21 and order books. Can you give me some sense as to
22 how limiting that regulation was? What are some

1 other means of execution that exist in the swap
2 marketplace?

3 MR. SMITH: So some of the execution
4 methods that come to mind are, for example,
5 auctions, risk mitigation sessions.

6 One of the more important aspects of this
7 rule is not only the execution methods that may
8 exist outside of RFQ to 3 or order book systems but
9 the fact that during the implementation of the SEF
10 registration requirements, Commission staff spent a
11 lot of time working and trying to shoehorn and fit
12 various execution methods within the prescriptive
13 definitions of order books and RFQ to 3, sometimes
14 forcing changes to those methods that various
15 applicants brought in and showed to us. This
16 proposal would allow, going forward, SEFs to
17 implement and deploy these trading methodologies as
18 they are intended to be employed, thereby we think
19 potentially increasing the effectiveness and
20 efficiency of those trading methodologies.

21 COMMISSIONER QUINTENZ: Thank you.

22 And this isn't a question, but I assume

1 that those execution methods exist because they
2 serve a certain market need.

3 MR. SMITH: Correct.

4 COMMISSIONER QUINTENZ: On financial
5 resources, I think one of the requirements from the
6 prior rule is that our regulations force SEFs to
7 hold as capital one year's worth of operating costs.
8 Is that correct?

9 MR. NGUYEN: Yes.

10 COMMISSIONER QUINTENZ: So, therefore, if
11 the proposal in front of us puts more costs into a
12 SEF, we could be penalizing that SEF in terms of
13 locking up capital that could otherwise be deployed
14 into their business.

15 Could you describe some of the types of
16 operating costs that a SEF would not have to
17 include? There are some exemptions that you've put
18 into this proposal. Is that correct?

19 MR. NGUYEN: Yes.

20 So the proposed rulemaking with respect to
21 financial resources sets forth certain types of
22 operating costs and acceptable practices that a SEF

1 would not need to include in its financial resources
2 calculations. The underlying objective here is to
3 ensure that financial resources that a SEF has are
4 sufficient on hand to meet its obligations under the
5 Act and the Commission's regulations. And so based
6 on that, the types of operating expenses that they
7 could exclude are types such as marketing and
8 development costs, variable commissions paid, and
9 certain non-cash costs such as depreciation and
10 amortization.

11 The proposed rulemaking also emphasizes
12 that a SEF can include operating expenses that
13 reflect what its true business model is. And so,
14 therefore, hypothetically speaking, were a SEF to
15 offer multiple execution methods, it could include
16 the operating expenses of one of those execution
17 methods. Presumably that would be the one method
18 that they would need to continue operating. But the
19 proposed rulemaking emphasizes that that method has
20 to be bona fide and it cannot be simply just a
21 hypothetical execution method that they would offer
22 just to minimize their -- or make their ability to

1 comply with the financial resources as simple as
2 possible.

3 COMMISSIONER QUINTENZ: Thank you for
4 that.

5 And lastly, can you provide us some
6 additional background on the proposed changes to the
7 confirmation requirement?

8 MR. NGUYEN: Yes.

9 So under the current SEF regulations, a
10 SEF is required to provide a confirmation document
11 to the counterparties which signifies a legally
12 binding agreement that includes all the terms of the
13 transaction. The current rules, however, do not
14 make a distinction between confirmations for cleared
15 swaps and confirmations for uncleared swaps. And
16 with respect to uncleared swaps, the existing
17 requirement requires a SEF to obtain all of the
18 underlying privately negotiated documentation that
19 counterparties may have with one another that form
20 the basis of an uncleared swap transaction. And
21 based on our experience with implementing the rules,
22 the SEFs have told us that from a technological

1 perspective, the capabilities currently don't exist,
2 or if they do exist, they come at a significant cost
3 to be able to not only obtain all this underlying
4 documentation for these uncleared swaps but to also
5 maintain a library as is currently required.

6 Over the last several years, we've
7 provided no-action relief to allow SEFs to
8 incorporate these documents by reference without
9 having to obtain this underlying documentation from
10 the counterparties. This proposed rule codifies
11 that relief but rather actually allows them to
12 provide a trade evidence record, which includes the
13 terms that the counterparties actually agree to on
14 the SEF themselves rather than having to provide all
15 that underlying documentation requiring the SEF to
16 have all those terms from those agreements.

17 COMMISSIONER QUINTENZ: Great. Thank you.
18 And thank you again for all of your work.

19 Thank you, Mr. Chairman.

20 CHAIRMAN GIANCARLO: Thank you.

21 Commissioner Behnam, questions for the
22 panel?

1 COMMISSIONER BEHNAM: Thanks, Mr.
2 Chairman.

3 Regardless of who works harder, you all
4 deserve a lot of credit. This is a massive task
5 that you took on. I know I could speak for
6 everyone, but I'm greatly appreciative to all of
7 you.

8 A quick question to start off is the
9 comment period, 75 days. Can we talk about the sort
10 of logic driving that? Thinking about the depth,
11 the complexity of this rule relative to other rules
12 that the Commission has taken on in the past 8
13 years, how did we end up at 75, and do you think
14 it's going to be enough time?

15 MR. ZAIDI: Yes. So obviously, a big
16 rule, like you said, a lot of issues. I think a lot
17 of these issues, through the Chairman's white paper
18 or white paper 2.0, have been telegraphed. There
19 have been a lot of discussions with market
20 participants over the years. Based on our
21 experience, we've learned a lot, talked to them a
22 lot about these issues. So 75 days seems right to

1 us. Obviously, we acknowledge there are some
2 holidays in there. So if the proposal gets
3 published, say, mid-November, that would take us to
4 early February.

5 COMMISSIONER BEHNAM: Regarding SEF
6 registrants, have you gamed out how many additional
7 SEF registrants we might have if the NPRM were to be
8 finalized?

9 MR. SMITH: So in the NPRM, we suggest
10 that there could be up to 40 to 60 additional
11 registrants. However, many of those included in
12 those numbers are affiliated with SEFs that are
13 currently registered. So there's a chance that
14 those affiliated entities may just come within the
15 umbrella of the already registered SEF.

16 COMMISSIONER BEHNAM: And then would you
17 expect, as a follow-up, concentration within the
18 market? Have you thought about that -- if you had
19 that increase following a finalization of the rule?

20 MR. SMITH: Are you referring to the --

21 COMMISSIONER BEHNAM: Concentration in the
22 market of the SEFs considering that we would have

1 many more after the fact.

2 MR. SMITH: Well, currently today I think
3 liquidity is primarily concentrated among the
4 interdealer broker entities and to possibly a third
5 D-to-C entity. So it's very limited in the
6 liquidity already. So I'm not sure that we're
7 projecting additional concentration.

8 COMMISSIONER BEHNAM: Okay.

9 Switching to the order book, the proposal
10 would eliminate the order book as a minimum trading
11 functionality. So with that said, could a SEF have
12 an RFQ to 1 system?

13 MR. SMITH: SEFs' execution methods have
14 to meet the SEF definition, which requires that
15 multiple participants have the ability to trade or
16 execute with multiple participants by accepting bids
17 and offers. If they had a system that was solely
18 RFQ to 1, assuming that they were able to send out
19 multiple RFQs to multiple other participants, they
20 would have the ability to do multiple-to-multiple.
21 The crux of the SEF definition is that ability of
22 multiple participants to reach multiple other

1 participants.

2 COMMISSIONER BEHNAM: Okay.

3 So I just want to peel that a little bit
4 out. Whereas today you would have RFQ to 3, given
5 the proposal and the fact that we would be creating
6 essentially any method of execution, you could have
7 a situation where there's one offer to one
8 participant on separate occasions and that would be
9 the multiple-to-multiple. That would be how you
10 would interpret it.

11 MR. SMITH: Yes.

12 COMMISSIONER BEHNAM: Okay.

13 Nhan, you mentioned impartial access in
14 your statement, and I think it's fair to say that
15 we're interpreting impartial access slightly
16 differently. At least that's my opinion. Can you
17 kind of drive to the logic behind it? I know you
18 mentioned the goal would be to increase liquidity.
19 Can you discuss that a little bit more and how you
20 envision liquidity increasing because of this change
21 in impartial access interpretation?

22 MR. NGUYEN: Sure. Happy to do that.

1 So as a bit of background, the current
2 impartial access requirement as set forth in the
3 current SEF rules, SEFs are required to offer access
4 criteria that are transparent and applied in a fair
5 and nondiscriminatory manner. The statute requires
6 impartial access but also contemplates the ability
7 of a SEF to offer limitations on access. So it's
8 been, in terms of implementing the existing rules, a
9 balancing act between determining the types of
10 discretion that SEFs can have in terms of setting
11 their access criteria based on their market
12 operations but also trying to enhance participation
13 on their platforms.

14 Under the proposed rule, the requirement
15 would be that a SEF has to continue to offer
16 impartial access criteria that are fair and
17 nondiscriminatory in nature, and those criteria
18 would have to be applied in a fair and
19 nondiscriminatory manner. And so the criteria would
20 have to be objective in nature and predetermined and
21 also not offered as a means to limit competition.
22 So the underlying philosophy in a lot of ways really

1 does remain the same.

2 I think the proposed rule reflects sort of
3 our experience in sort of trying to draw out that
4 balancing act over the last several years. I mean,
5 there have been instances where we've allowed
6 certain criteria to be established by the SEFs that
7 were offered up during the registration process.
8 Those criteria -- the reasons articulated to us were
9 largely based on the desire to facilitate markets
10 and participation for certain types of products or
11 through certain types of functionalities, but at the
12 same time, there have also been other instances
13 where those reasons have been offered to us, but
14 yet, we have looked at those types of arrangements
15 or proposed access criteria as discriminatory and
16 therefore inconsistent with impartial access.

17 So the approach in this proposed rule
18 really is to clarify that rather than trying to
19 establish an all-to-all market or use that as a
20 consideration in evaluating a SEF's access criteria,
21 it's really meant to allow the SEFs to give us an
22 opportunity to evaluate the types of business

1 considerations and market objectives that the SEFs
2 have in terms of running their operations and
3 facilitating trading in certain segments of the
4 market. And so by allowing the SEFs to do that, we
5 would anticipate that that would allow them to build
6 liquidity in the types of products that they want to
7 offer.

8 COMMISSIONER BEHNAM: Thanks.

9 And just a quick follow-up. As a measure
10 of what role the Commission would play vis-a-vis the
11 SEFs establishing new criteria, would that change,
12 would that be new? You mentioned that at its core,
13 we're still going to aim for those -- initially we
14 would still aim for those core sort of fundamental
15 goals of creating and establishing fairness and as
16 long as it's applied equally and
17 nondiscriminatorily. But what role would the CFTC
18 play? What role would the agency play or DMO in
19 that matter with respect to new criteria that is
20 established by SEFs?

21 MR. NGUYEN: So under the existing rules,
22 when a SEF devises new access criteria, those are

1 filed to the Commission under our rule filing
2 process under part 40 of our regulations. And the
3 proposed rulemaking would not change that approach.
4 So we would still have the opportunity to evaluate
5 those criteria to ensure that they met the standards
6 articulated here in this rule.

7 COMMISSIONER BEHNAM: Thanks.

8 And lastly, the name give-up request for
9 comment puts this issue on a different track than
10 the NPRM. Depending on what we find out throughout
11 the comment period, is there an expectation or a
12 plan at all that we would essentially create a
13 supplemental proposal to the SEF rule itself if we
14 found out certain information from the request for
15 comment?

16 MR. ZAIDI: Yes. So we would, based on
17 the comments received, evaluate that and then we
18 could offer a proposal to the Commission to
19 potentially finalize at the same time as a SEF final
20 rule.

21 COMMISSIONER BEHNAM: All right. Thanks
22 again to the entire team.

1 Thank you, Mr. Chairman.

2 CHAIRMAN GIANCARLO: Commissioner Stump,
3 questions for the panel?

4 COMMISSIONER STUMP: Thank you.

5 Thank you all for your tremendous work on
6 this, and congratulations to the Chairman for
7 getting it this far. I know this is something that
8 you've been wanting to do for a while. So I'm happy
9 that you have five of us here now to help you.

10 I have a few questions mostly surrounding
11 how this would work operationally given that the
12 market has developed somewhat since the rule was
13 originally put into place. I believe I heard you
14 mention that SEF trading specialists would not need
15 to register with the CFTC. Is that correct?

16 MR. NGUYEN: That's correct.

17 COMMISSIONER STUMP: So I expect that many
18 of the would-be SEF trading specialists are current
19 IBs registered with the NFA.

20 Would these individuals be allowed to
21 continue operating as an IB outside of the SEF, as
22 well as the SEFs' trading specialists, and if so,

1 who would conduct oversight over these individuals?
2 The SEF itself, the NFA, the CFTC? Is that
3 something that was contemplated?

4 MR. NGUYEN: Commissioner Stump, it was
5 contemplated, this question of registration, the
6 status they would have. I'd like to emphasize that
7 the SEF trading specialist definition set forth in
8 the rule is meant to identify those types of SEF
9 employees because based on our broadened approach to
10 the registration requirement, these are what these
11 brokers, who are currently associated persons of
12 IBs, would become. They'd become SEF trading
13 specialists. It's meant as a way to designate them
14 to be compliant or be subject to the proficiency
15 examination, ethics requirements that are set forth
16 in the rule.

17 With respect to your question as to
18 whether they could maintain and operate outside the
19 SEF as an IB while also serving as a SEF trading
20 specialist, the proposed rule would not preclude
21 that. To the extent that they are facilitating
22 trading on the SEF and therefore meet the definition

1 of a SEF trading specialist, they would be subject
2 to the SEF's oversight, and the SEF would oversee
3 them and implement those requirements, such as the
4 ethics and proficiency requirements, in their role
5 as SRO. To the extent that they maintain their IB
6 registration, they can do so, but with respect to
7 swaps, they would be SEF trading specialists.

8 COMMISSIONER STUMP: Thank you.

9 Related, I have one more question kind of
10 in this realm. Currently there are a number of non-
11 U.S. domiciled brokers routing arranged transactions
12 to SEFs for execution, and they are registered with
13 NFA. How will these brokers access the SEF on
14 behalf of their market participants without being
15 SEF trading specialists?

16 MR. SMITH: As discussed in this proposal,
17 non-U.S. swaps broking entities that are arranging
18 transactions for U.S. persons will have a 2-year
19 delay, and that delay is in part to allow them to
20 continue to operate as they are today while the
21 Commission evaluates important questions around the
22 application of its jurisdiction to foreign trading

1 entities, as well as continuing to seek to achieve
2 comparability determinations with other countries.
3 So they'll be able to operate, at least in the near
4 term, as they are today, which is they'll be able to
5 arrange transactions in this foreign IB and then
6 route them for execution at a U.S. SEF. However, as
7 Nhan mentioned, if they are truly just taking one
8 side of an order and routing it to a SEF doing a
9 true intermediary function, our proposal would not
10 affect that or change their operation in that
11 manner.

12 COMMISSIONER STUMP: A little bit
13 different. I'd like to learn more and better
14 understand the requirements surrounding the pre-
15 trade communications that occur on the SEF for swaps
16 that are subject to the trade execution
17 requirements. How would this work in practice,
18 considering that third-party functionality utilized
19 today, such as chat technology offerings, are not
20 owned or associated with the SEF directly? Do you
21 envision these types of conversations occurring on
22 SEF, and how would this be done operationally and

1 technologically?

2 MR. NGUYEN: That's a good question,
3 Commissioner Stump. And as you know from the
4 proposed rulemaking, we do ask a battery of
5 questions about the capabilities of the SEF to
6 accommodate these pre-execution communications and
7 the types of requirements or steps that market
8 participants would have to take to continue these
9 types of communications in trading on the SEF. So
10 we do ask, as I said, questions, pointed questions,
11 about what might be involved in this process.

12 But in terms of what we would anticipate
13 the SEFs doing based on the requirement that these
14 communications have to happen on a SEF trading
15 system or platform, we'd anticipate that they would
16 possibly build out chat functionalities. Although
17 our visibility is limited, because these
18 communications are currently happening away outside
19 the SEF regulatory framework, it's our understanding
20 they use electronic chat functionalities. In some
21 instances they use telephones, different voice
22 methods. And so we hope that through the public

1 comment, we'll get some input based on how they
2 facilitate these communications now, how they would
3 be transitioned onto the SEF.

4 COMMISSIONER STUMP: Thank you.

5 CHAIRMAN GIANCARLO: Commissioner
6 Berkovitz?

7 COMMISSIONER BERKOVITZ: Thank you, Mr.
8 Chairman.

9 I've got a number of questions on the SEF
10 proposal, but before I get into the SEF proposal, I
11 want to follow up on the discussion that you had
12 with Commissioner Behnam in response to his
13 questions on name give-up. And if I heard the
14 answer to Commissioner Behnam's questions correctly,
15 you said that you could actually go to a final rule
16 on name give-up at the same time we go to a final
17 rule on the SEF proposal?

18 MR. ZAIDI: So based on the comments that
19 we receive and after evaluating them, we could take
20 those comments and come to the Commission with a
21 proposal and then possibly finalize that along the
22 same lines of a final SEF rule just depending on how

1 the timing works out.

2 COMMISSIONER BERKOVITZ: I would just note
3 that the current state of the name give-up document
4 -- it's a little over seven pages. It seemed that
5 there's a lot of work that would have to go into
6 making that into a rule proposal -- it's a
7 significant issue. I mean, there's a lot of views
8 on it, a lot of analysis, and it's a significant
9 issue. Either that has to be sped up or the SEF
10 rule would have to potentially wait up for it to get
11 them on the same timeline. So I would encourage as
12 much work be done to do the background research to
13 form preliminary views and consider public comment
14 so that in fact we can consider them at the same
15 time.

16 MR. ZAIDI: Yes. Well, we don't want to
17 prejudge the comments. So we'll wait to see what
18 they say. But we have had conversations, and it's
19 been an issue that's been ongoing for a long time.
20 So we have done some of that background research.

21 COMMISSIONER BERKOVITZ: Well, I
22 understand you don't want to, but in the proposal

1 itself, we do prejudge the comments. We put forth a
2 proposal and you get comments on it. Right? The
3 Commission puts forth its view, and then we get
4 comments back and then we go and consider the
5 comments and go final. On the name give-up, there's
6 no view presented at all. So I'm suggesting maybe
7 we develop a view, consider the comments at the same
8 time, and then put out a proposal.

9 MR. ZAIDI: Yes. I think really this has
10 been an issue that was in the press and some market
11 participants talked about it back in 2013-2014.
12 Even at the time, some participants acknowledged
13 name give-up. Banning name give-up is not the end-
14 all/be-all. There's other issues like average
15 pricing and order books or other things that would
16 have to be looked at as well.

17 So since that time, we haven't really
18 heard much about it, and as you know, there are two
19 opposite views on this issue. So it's not like we
20 can craft a proposal that kind of splits things down
21 the middle. We really have to take one view or the
22 other. And I think at this time staff is really

1 just not in a position to come to a proposal.
2 That's why we want to see -- first, if people still
3 care about this issue, they should put it in writing
4 and, like Nhan said, back it up with data and
5 information so we can form a view, and then based on
6 those comments, we would look to proposing something
7 to the Commission.

8 COMMISSIONER BERKOVITZ: Okay. Thank you.
9 And I do want to thank you and the staff. All this
10 past several weeks since we got the big proposal,
11 you and everybody at the table -- Nhan, Roger, David
12 -- you've all been very helpful to me and my staff
13 in digesting the big document and being responsive
14 to our questions. So I do appreciate that and thank
15 you for the time you've spent helping us understand
16 what's in there.

17 So let me ask first about our G-20
18 commitments going back to 2009. And as you may
19 recall, in the aftermath of the financial crisis,
20 the G-20 leaders met in Pittsburgh to adopt a set of
21 policies and initiatives to recover from the crisis
22 and to modernize the global financial system.

1 At the Pittsburgh summit, the G-20 leaders
2 agreed on a series of reforms as to the way
3 financial markets should be regulated. With respect
4 to the trading of what were then the over-the-
5 counter derivatives markets, the G-20 leaders agreed
6 that -- and I'm quoting - "all standardized OTC
7 derivative contracts should be traded on exchanges
8 or electronic trading platforms, where appropriate,
9 and cleared through central counterparties by the
10 end of 2012 at the latest."

11 Does the proposal require that "all
12 standardized OTC derivative contracts be traded on
13 exchanges or electronic trading platforms, where
14 appropriate?"

15 MR. SMITH: Yes.

16 COMMISSIONER BERKOVITZ: And what are you
17 calling an exchange or an electronic trading
18 platform?

19 MR. SMITH: I believe we would call a SEF
20 an exchange.

21 COMMISSIONER BERKOVITZ: Let me read you
22 from the proposal. Quote: "a SEF would be

1 permitted to offer any method of execution." It
2 doesn't say "electronic trading platforms" or
3 "exchange." The proposed SEF definition would apply
4 for any swaps that are listed for trading
5 irrespective of whether a particular swap is or is
6 not subject to the trade execution requirement.

7 MR. ZAIDI: So we did look at the G-20
8 statement and the Pittsburgh commitments, but
9 obviously we also have to follow the Dodd-Frank Act
10 and our law here in the U.S. So as others have
11 said, the definition of a SEF is a multiple-to-
12 multiple platform for trading or execution by any
13 means of interstate commerce, and we think that the
14 proposal follows that approach.

15 COMMISSIONER BERKOVITZ: So let me ask --

16 MR. VAN WAGNER: Can I --

17 COMMISSIONER BERKOVITZ: Go ahead.

18 MR. VAN WAGNER: Yes. Can I just
19 supplement it?

20 So in the context now -- I mean, right now
21 we have SEFs and they trade a variety of
22 instruments. Some are subject to the trade

1 execution mandate and have to be RFQ to 3 or order
2 book. But there's also Permitted Transactions that
3 are being done on those platforms, and there's no
4 limitations on the trading methodologies that are
5 used. And I think that we would take the position
6 that those Permitted Transactions are being done on
7 a SEF and an exchange. And I think we were going
8 with the NPRM in a similar direction.

9 COMMISSIONER BERKOVITZ: I think that's
10 fully consistent with the G-20 as well. I don't
11 disagree with that statement. I think the G-20
12 statement goes to standardized instruments, that
13 there's a certain class of standardized instruments
14 that should be traded on exchanges or electronic
15 trading platforms.

16 MR. ZAIDI: Yes. I think you can make the
17 argument that the proposal is doing exactly that by
18 bringing more cleared products onto SEFs.

19 COMMISSIONER BERKOVITZ: So you're
20 defining a SEF such that it doesn't have to be
21 electronic. The proposal is very clear about that.
22 It can be voice. Correct?

1 MR. ZAIDI: Right, but the current
2 framework is also -- nothing says that the current
3 framework has to be electronic. SEFs could offer
4 voice order books or voice RFQ as well.

5 COMMISSIONER BERKOVITZ: But the G-20 said
6 exchanges or electronic. Are you calling a SEF, as
7 you've defined it, an exchange? Do you think that's
8 an exchange?

9 MR. ZAIDI: A SEF is a type of exchange.
10 Yes.

11 COMMISSIONER BERKOVITZ: Okay. So let me
12 take, Roger, the multiple RFQ to 1. You take
13 serially RFQ to 1 where you go to one dealer and you
14 get a price, and then you go to another dealer, you
15 get a price, and then a third dealer. Do you define
16 that as an exchange?

17 MR. SMITH: Yes.

18 COMMISSIONER BERKOVITZ: That seems not
19 how the word is commonly used -- "exchange". You
20 can think of multiple people going to multiple
21 people.

22 Let me give you an example. I can go to

1 buy a mattress on Rockville Pike. When I go to buy
2 a mattress on Rockville Pike, I go to Mattress
3 Discounters and Mattress Warehouse and
4 Bloomingdale's and whatever. I can go serially to
5 different places and then buy my mattress. Nobody
6 would call Rockville Pike a mattress exchange. It's
7 a place where you buy a mattress. It is not an
8 exchange, at least in my terminology.

9 MR. ZAIDI: I mean, like I said, I think
10 we consider the G-20 statement, but we also have to
11 look at the Dodd-Frank Act, and it says a trading
12 system or platform for multiple-to-multiple trading
13 or execution through any means of interstate
14 commerce. And we think that the proposal is
15 consistent with that definition.

16 COMMISSIONER BERKOVITZ: Let me turn to
17 impartial access. Following up there, I'd like to
18 ask about the proposed rewrite of that. Currently
19 the Dodd-Frank Act requires that a SEF establish and
20 enforce rules that would, quote, "provide market
21 participants with impartial access to the markets."
22 And the current regulations implementing this say,

1 quote, "[a] swap execution facility shall provide
2 any eligible" -- any eligible -- "contract
3 participant and any independent software vendor with
4 impartial access to its markets and market services,
5 including any indicative quote screens or any
6 similar pricing data displays" And the
7 criteria governing such access must be, quote,
8 "impartial, transparent, and applied in a fair and
9 nondiscriminatory manner."

10 As I understand it, the proposal would
11 change this regulation to limit the impartial access
12 requirement essentially to "similarly situated
13 market participants." You could discriminate except
14 unless they're similarly situated. Is that correct?

15 MR. NGUYEN: Well, under the existing SEF
16 regulations, particularly as articulated in the
17 preamble of the current final rule, the Commission
18 did specify that impartial access criteria should be
19 applied to similarly situated participants. So the
20 concept of similarly situated participants is not
21 necessarily a new one.

22 What this proposed rule tries to do is to

1 clarify and codify, rather, in the regulations that
2 that's how the impartial access criteria should be
3 applied.

4 COMMISSIONER BERKOVITZ: Well, I would
5 submit if it's current law, you don't need this
6 regulation. The proposal says, it quote, "would
7 allow each SEF to determine which market
8 participants are "similarly situated" in its market
9 and configure appropriate access criteria"
10 Furthermore, quote: "A SEF could premise these
11 criteria in different ways, such as limiting access
12 upon the type of the market participant or the swap
13 product itself." Correct? So SEFs could say we
14 want a dealer-only market.

15 MR. NGUYEN: Well, to the extent that the
16 SEFs are allowed to determine what its similarly
17 situated participants are based on the types of
18 markets they want to establish and based on their
19 historical understanding or knowledge or business
20 objectives, they could set forth criteria to create
21 a market or allow access for a certain set of
22 participants. Yes.

1 COMMISSIONER BERKOVITZ: Like dealers.

2 MR. NGUYEN: That could be one particular
3 category, but obviously it would depend on the
4 circumstances based on the type of criteria that
5 they would offer up.

6 COMMISSIONER BERKOVITZ: Right. They
7 could do dealers and other categories.

8 The proposal is very clear that it views
9 the current dealer-to-dealer market as a necessary
10 part of the swap market universe. It says dealer-
11 to-dealer markets are appropriate, and SEFs should
12 be able to create criteria to establish dealer-to-
13 dealer markets.

14 MR. NGUYEN: You're correct, Commissioner,
15 but the release also discusses some of the thought
16 behind -- or offers some discussion behind the
17 nature of the dealer-to-dealer versus the dealer-to-
18 client market. In particular, it talks about some
19 of the reasons why those markets exist and have
20 continued to exist, frankly, and developed even
21 under the existing rules.

22 COMMISSIONER BERKOVITZ: So for a SEF that

1 wants to establish a dealer-to-dealer market, they
2 can establish objective criteria to define what a
3 dealer is.

4 MR. NGUYEN: They could, yes.

5 COMMISSIONER BERKOVITZ: So could it be a
6 registered swap dealer? Could that be a criteria
7 for a dealer?

8 MR. NGUYEN: It could possibly be. Again,
9 it depends on -- you would have to look holistically
10 at the types of criteria, but that could be one
11 particular type of criteria. Yes.

12 COMMISSIONER BERKOVITZ: Exclude, for
13 example, registered floor traders who aren't
14 registered swap dealers?

15 MR. NGUYEN: A SEF could offer criteria
16 excluding one particular type of participant, but
17 again, based on their requirement that they'd have
18 to file these criteria with us, we would undertake
19 an evaluation and ensure that those designations are
20 fair and nondiscriminatory and not intended to be
21 anticompetitive in nature.

22 COMMISSIONER BERKOVITZ: But

1 nondiscriminatory within that class of similarly
2 situated. Correct? The nondiscrimination applies
3 to similarly situated participants. They can
4 discriminate against participants that aren't
5 similarly situated.

6 MR. NGUYEN: Access criteria would apply
7 to similarly situated participants. Yes.

8 COMMISSIONER BERKOVITZ: Okay.

9 One of the things that I emphasized in my
10 comments on the de minimis rule -- and I think there
11 were a number of comments on that -- was the extent
12 to which the rule was based upon solid data that's
13 been developed since the implementation of the Act.
14 And I think that was a commendable feature of the
15 rule we just voted to approve. I'm somewhat
16 disappointed that that approach, at least from my
17 perspective, wasn't followed to the same extent in
18 this rule. So I'm just puzzled why some of the
19 recent findings on the data -- the data on swaps
20 trading that has been examined - is not addressed.
21 Just like we have 6 years of SDR data that we use on
22 the de minimis rule, we've got 6 years of data on

1 swap markets, on interest rate swap trading, on
2 index CDS trading.

3 And I'd like to start with, in this
4 regard, a study which I think you're familiar with.
5 It's cited in a number of places in the proposal.
6 And this is a study by our own economists. This is
7 called "Swap Trading after Dodd-Frank: Evidence
8 from Index CDS." This is by our own economists,
9 Lynn Riggs, Esen Onur, Dave Reiffen, and Haoxiang
10 Zhu, if I pronounce his name correctly. I think
11 he's affiliated with the CFTC for purposes of this
12 study, but he's listed on the document, MIT National
13 Bureau of Economic Research and CFTC.

14 And so I saw this study, and I said this
15 is fantastic. We've got CFTC economists, our Office
16 of Chief Economist, looking at the data. And when I
17 was here in many rulemakings like you are, this was
18 something that was continuously brought up. Why
19 don't you get the economists involved? Let's look
20 at the economic data. Just don't base it on lawyers
21 or what you think. Let's look at the economic data.

22 This study is cited in a number of places

1 for certain characteristics and observations about
2 the CDS market, such as when an order book may or
3 may not be appropriate, how many bids people made,
4 and how many offers.

5 But the one conclusion that's in here,
6 which I couldn't find in the proposal -- let me read
7 this because this is a significant conclusion from
8 our own economists that I didn't see in the
9 proposal. "Judged from our evidence" -- by the way,
10 this is a report from January 26, 2018, and it's
11 several versions of this report. So this has been
12 reviewed by the academic community and commented on,
13 and this conclusion here has remained in this
14 document.

15 "Judged from our evidence, the SEF-traded
16 index CDS market seems to be working well after
17 Dodd-Frank -- dealers' response rates are high, the
18 vast majority of customer orders result in trades,
19 and customers' transaction costs are low." It seems
20 like a pretty significant conclusion from this
21 report.

22 Do you think this is something that we

1 should consider in our rulemaking, the conclusions
2 from our own economists that the market is working
3 well for index CDS?

4 MR. ZAIDI: And like you said, the study
5 is cited in the proposal, and we did consider it.

6 Just to be clear, we're not denying that
7 the current framework has gotten us to a position.
8 We're just trying to take it to the next level and
9 include more swaps trading on SEFs and bring more
10 liquidity onto SEFs.

11 COMMISSIONER BERKOVITZ: And I don't have
12 any quarrel with that. I think it's great to bring
13 more trading and more liquidity onto SEFs. But what
14 we've got on SEFs -- our Required Transactions on
15 SEFs, like index CDS, that are working well -- our
16 own economists say are working well as required
17 methods of execution. Why would we take away the
18 fact that there are required methods of execution?
19 The RFQ-3 for index CDS in our own economists' words
20 is working well, and this proposal takes away the
21 requirement that made it work well. That's my
22 concern.

1 MR. ZAIDI: And as you know, the current
2 final proposal says that RFQ to 3 was there before
3 the current final SEF rule. So RFQ to 3 was there
4 before. It's there now. We don't expect just
5 because we get rid of the requirement that it's
6 going to go away either. We think SEFs that have
7 order books or RFQ to 3's will still continue to
8 offer those products, and other methods of
9 execution, which the team discussed before, will
10 also be allowed to be able to be offered. We've
11 heard from many market participants that not much
12 has really changed with SEF trading and the costs
13 have just increased. So this proposal will allow
14 for that innovation and development.

15 COMMISSIONER BERKOVITZ: Well, a couple
16 things.

17 One is these studies -- the CFTC study, as
18 well as the next study I'm going to say -- compared
19 post-reform with pre-reform. It's not that it was
20 working well pre-reform. The studies show it was
21 working well post-reform and the cost savings and
22 the reduced costs are all post-reform. This wasn't

1 a continuously well working market. The studies
2 specifically state that the Dodd-Frank reforms are
3 working well. That's what they say -- "Judged from
4 our evidence, SEF-traded index CDS market seems to
5 be working well after Dodd-Frank." That's what our
6 own economists say.

7 Let me just quantify "working well." What
8 does quantify working well mean for highly liquid
9 index CDS? Quoting from page 43: "Overall,
10 transaction costs are small. The transaction costs
11 of on-the-run CDX.NA.IG and iTraxx Europe" -- these
12 are the most liquid index CDS -- "have a mean around
13 0.2 bps and a standard deviation of 1.4 bps, so the
14 average transaction cost is statistically and
15 economically close to zero." We've got a system
16 where the costs are statistically and economically
17 close to zero because of the Dodd-Frank reforms
18 according to our own economists. According to our
19 own economists, the Dodd-Frank reforms have led to a
20 system where the transaction costs are statistically
21 close to zero.

22 So I don't understand why we're removing

1 those requirements. That's all.

2 Lest you think that our economists are
3 somehow off the mark on this, let me take another
4 recent study, the Bank of England. This is a Bank
5 of England study, two staffers from the Bank of
6 England and another economist. The authors of this
7 paper investigated how the centralized trading
8 requirement -- which is their terminology for
9 Required Transactions; the requirement that cleared
10 swaps that are made available to trade be traded
11 through either an order book or an RFQ-3 method,
12 Bank of England study -- affected the interest rate
13 swap market. The authors first noted, quote,
14 "Historically, global swap trading was decentralized
15 and relatively opaque," but that "SEFs introduced
16 pre-trade transparency to a previously dark market
17 and reduced customers' costs of searching for
18 liquidity." Unquote.

19 The study examined data regarding interest
20 rate swaps. CFTC economists looked at CDS. This
21 does interest rate swaps traded on SEFs through the
22 required RFQ-3 trading method. The authors

1 concluded, quote, "We then demonstrate that the
2 introduction of centralized trading resulted in a
3 sharp increase in competition between swap dealers.
4 The average active U.S. client in this market trades
5 with a significantly greater number of dealers
6 after" -- after -- "the centralized trading mandate.
7 Thus, dealer competition rises and liquidity
8 improves, as one would expect." Unquote.

9 The study found that the improved
10 liquidity in this market resulting from the Dodd-
11 Frank reforms, quote, "amounts to daily savings" --
12 daily savings -- "in execution costs of as much as
13 \$3 million to \$6 million for end-users of U.S.
14 dollar swaps." The Bank of England says that our
15 current RFQ-3 process, as applied to interest rate
16 swaps, is saving end-users \$3 million to \$6 million
17 a day.

18 This study isn't referenced in the
19 proposal. I couldn't find it. Do you think that
20 this is important data, that the Commission should
21 be considering the effectiveness of the current
22 requirement, the Required Transactions requirement,

1 how it's saving money for end-users? Do you think
2 that we should be considering this?

3 MR. PENICK: This is Michael Penick from
4 the Office of the Chief Economist.

5 I think we acknowledge that the Bank of
6 England study did have those findings. And a couple
7 things that I would remark.

8 One is on SEFs today, we find that less
9 than 10 percent of interest rate swaps trading in
10 the United States is actually in these Required
11 Transactions that have the RFQ to 3. So we easily
12 have a universe of 10 percent or less of trades that
13 are actually Required Transactions. There's a whole
14 lot of interest rate swaps that are traded as
15 Permitted Transactions today. About 55 percent of
16 all interest rate swaps are traded on SEFs -- 55 to
17 60 percent. So almost half of interest rate swaps
18 are traded on SEFs without the RFQ to 3 and order
19 book requirement. And they get other benefits of
20 trading on SEFs and may have lower transaction
21 costs. The Bank of England study doesn't really
22 distinguish between these Permitted Transactions and

1 Required Transactions and sort of looking at all of
2 the interest rate swaps before and after.

3 So under our proposal, an even larger
4 universe of swaps would have to start trading on
5 SEFs, basically anything that's subject to the
6 clearing mandate. So it will pass that 55 percent
7 to maybe 75-80. I don't know exactly. But it would
8 be an increase of some amount. So they will benefit
9 from being traded on SEFs.

10 COMMISSIONER BERKOVITZ: And that's fine,
11 and I don't disagree with anything you say or take
12 issue with anything that's said. I think that's a
13 valid point.

14 The point being not that RFQ-3 is
15 appropriate for everything. That's not what I'm
16 saying. That's not what these studies say either.
17 The point being that RFQ-3 is appropriate for what
18 is currently being traded by RFQ-3 as demonstrated
19 by these studies.

20 If you want to bring Permitted
21 Transactions onto SEF and give them -- maybe some of
22 them. I don't know. I don't know. This is

1 something to consider. I don't know the extent to
2 which every single class of Permitted Transactions
3 or there's any class of those that might be suitable
4 for RFQ to 3. Maybe, maybe not.

5 But to get more on SEF, you don't
6 necessarily have to make it -- I'm not saying
7 bringing it on SEF, it then has to be RFQ-3. I'm
8 saying we have a universe right now. We have a
9 universe of Required Transactions. The market is
10 working well for those transactions. To get these
11 other transactions onto SEF, why do you have to take
12 away the requirements that underpin working markets?
13 You don't. You can keep the requirements that
14 underpin the working markets in place and bring the
15 other ones on with the flexibility that you want.
16 They're not inconsistent. But the proposal
17 dismantles what's in place and is working in the
18 name of getting everything on a SEF. And these
19 things are already on SEF. They're already working.
20 I don't understand why you need to take away the
21 benefits that we already have, which are \$3 million
22 to \$6 million in savings for end-users per day.

1 That's a billion dollars a year.

2 MR. PENICK: Well, I think one thing
3 that's also been going on is that while many market
4 participants are doing Required Transactions and RFQ
5 to 3 and are happy doing it and probably in many
6 instances do more than three RFQs, there's also a
7 significant part of the SEF market where -- it was
8 discussed earlier -- the people are arranging their
9 swaps on inter-dealer brokers and only using the SEF
10 as kind of a booking engine. And these are
11 sometimes in Required Transactions. They found a
12 way to get around our rules and have actually less
13 pre-trade transparency and less of the benefits of
14 SEF trading than they would if the trades were
15 brought under the SEF properly.

16 But just as a general matter, if the
17 industry wants to maintain the requirements for
18 execution methods on certain trades, they should
19 certainly tell us that in their comments. And if we
20 get a lot of comments from the industry participants
21 saying that they would prefer the status quo, we
22 would certainly have to consider that.

1 COMMISSIONER BERKOVITZ: I appreciate
2 that.

3 There's a third study as well, a recent
4 study. This one is cited in the proposal again for
5 statistics about the market and market structure but
6 not the central conclusion. This is a study by
7 Pierre Collin-Dufresne, Benjamin Junge, J-u-n-g-e --
8 I don't know if I pronounced it correctly -- and
9 Anders B. Trolle. They also studied the CDS market,
10 and their findings are consistent. And this finding
11 wasn't in the proposal either, but their finding is
12 consistent. Quote: "Our results show that the
13 current market structure delivers very low
14 transaction costs." I would submit that this also
15 should be considered. This finding here should be
16 considered in the proposal if it's not already in
17 there.

18 MR. NGUYEN: Commissioner, I just wanted
19 to clarify a couple things with respect to the three
20 studies that you have in front of you that you've
21 just cited. The ones in front of you were also in
22 front of us while we were drafting this proposed

1 rulemaking. And we considered them in full, not
2 only the original versions but all the updated
3 versions since then.

4 First, to address the lack of reference to
5 the Bank of England paper, I would just note that
6 during our process when we were evaluating the
7 content and looking at the fact that the paper was
8 being updated, particularly twice in this calendar
9 year, that there were some underlying concerns and
10 then some questions that we still had about the
11 methodology, the sample size data that the bank used
12 in coming to its conclusions. And also at the same
13 time, there are also a number of questions that it
14 raises and some conclusions that it acknowledges it
15 cannot, at this time, come to. So I just wanted to
16 clarify that we did take it into consideration. We
17 did read it in full, not only those sitting at the
18 table but also our other economists in the Office of
19 the Chief Economist.

20 But ultimately, I think at the end of the
21 day, to sort of reiterate what Amir and Mike have
22 said with respect to the proposed rule, the benefits

1 that you cited in the paper I think are not lost
2 upon us. They weren't lost upon us when we composed
3 this rule, and frankly, we don't think that those
4 benefits are lost upon market participants and SEFs
5 in particular. Really at the end of the day, what
6 this rule is about is to provide market participants
7 the ability to determine based on their own
8 objectives and changing market conditions the types
9 of methodologies that they find the most suitable to
10 achieve what it is they're trying to do in the swaps
11 market.

12 If RFQ to 3 or RFQ to 4 is more suitable
13 for them, then assuming that the SEFs don't take
14 away that functionality -- and we don't believe that
15 they would, given how far we've gotten to this
16 point. We'd anticipate participants be able to use
17 those methods in order to avail themselves of the
18 types of benefits that you cited.

19 In cases where there are high periods of
20 illiquidity or where they're trading additional
21 products that are going to be brought with the
22 broadening of the trade execution requirement where

1 RFQ to 3 or order book isn't suitable or may not
2 make the most sense, this proposed rule allows them
3 to make that decision.

4 So it's not necessarily a rule that
5 attempts to exclude the framework that currently
6 exists. It's simply trying to broaden not only the
7 products, but it's trying to encompass the types of
8 swaps market dynamics that we, frankly, see in
9 implementing the existing rule.

10 COMMISSIONER BERKOVITZ: I'll explain this
11 in my statement a little more. But my concern is I
12 think you need to look at -- and I appreciate what
13 you said, but I think you need to look at the
14 removal of the required methods of execution in
15 conjunction with the impartial access -- removal of
16 those restrictions too. Right now, RFQ to 3 works
17 for the transactions that it's required for because
18 the buyers, the buy-side -- they have to go to three
19 dealers. Dealers have to compete with each other
20 for those prices. That's why RFQ is working. That's
21 why you're seeing this because somebody has to go
22 out -- if you want one of these swaps, you've got to

1 go out and ask for three contemporaneous prices, not
2 serial prices. It's well established that you don't
3 get nearly the same price if you go one, then the
4 other, then the other. They're not
5 contemporaneously priced. There are search costs.
6 That's throughout the economic literature as well.
7 RFQ-3 is far superior to RFQ-1, then another RFQ-1,
8 then another RFQ-1. The dealers, given the
9 opportunity, would prefer that system -- serial
10 RFQs, one by one by one, where you go in dealer
11 markets -- and this is the way the equities markets
12 used to work and the SEC broke that up and costs
13 came down. People were forced to compete with each
14 other. So if you don't force dealers to compete,
15 it's going to increase prices and reduce
16 competition. That's my basic point.

17 I think I want to turn to a similar issue.
18 Did you want to respond?

19 MR. NGUYEN: No. To the extent we
20 acknowledge what you've said, Commissioner, and
21 obviously we're soliciting public comment on these
22 issues and whether there would be detrimental

1 effects removing the requirement. We anticipate
2 getting feedback on that.

3 COMMISSIONER BERKOVITZ: Let me turn to
4 the cost/benefit considerations. And I think this
5 is consistent with your statement just then, what I
6 was going to read from the cost/benefit
7 considerations, and I'm quoting here. "The
8 Commission recognizes that the overall amount of
9 pre-trade price transparency in swap transactions
10 currently subject to the trade execution requirement
11 may decline if the Order Book and RFQ-to-3
12 requirement under existing regulations are
13 eliminated." It acknowledges that it may decline if
14 the existing RFQ-3/order book requirement is
15 eliminated, and essentially it means RFQ-3 because
16 people aren't using the order book.

17 The quote continues: "This potential
18 reduction in pre-trade transparency could reduce the
19 liquidity of certain swaps trading on SEFs and
20 increase the overall trading costs. The Commission
21 believes that this increased cost may be most severe
22 for smaller customers that trade infrequently, and

1 may not be aware of current swaps pricing without
2 pre-trade price transparency."

3 So you acknowledge exactly that statement
4 that removing this requirement could reduce
5 liquidity and transparency and increase costs,
6 particularly for smaller entities. The cost/benefit
7 considerations acknowledges that.

8 As mitigation though, let me read --the
9 cost/benefit consideration also states "the purpose
10 of 37.9" -- which is the order book/RFQ-3
11 requirement -- "that transactions in swaps subject
12 to the trade execution requirement be executed using
13 an Order Book or an RFQ System is to ensure that all
14 activity in these swaps benefit from a baseline
15 amount of pre-trade price transparency, that is,
16 knowledge of multiple bids and offers that may be
17 available. While the proposal may result in a
18 reduction of the benefits from the existing system,
19 this cost may be mitigated because every SEF still
20 has the option of offering an Order Book and
21 continuing to offer market participants the ability
22 to submit RFQs to multiple liquidity providers on

1 the SEF.”

2 So the cost/benefit consideration says all
3 the costs of the proposal can be mitigated if they
4 don't follow it and they retain the RFQ, if the RFQ
5 is retained rather than eliminated, as the proposal
6 will permit. That's the way you prevent this loss
7 of transparency. It seems a rather circular
8 statement in the cost/benefit analysis.

9 MR. PENICK: Well, I mean, I think it is
10 circular in a sense, but there's a certain baseline
11 amount of multiple-to-multiple that has to be there
12 for something to meet the SEF definition. So if you
13 really could only do RFQ to 1 and that was it, then
14 it would no longer be a SEF. It would just be a
15 bunch of single dealer platforms in the same room.

16 So I think the concept is that SEFs would
17 allow some multiple-to-multiple ability, and maybe
18 it is serial RFQs. You may be right that it might
19 be a little bit less efficient for the customer than
20 doing all three at once, but it's probably not quite
21 as bad as having to walk up and down Rockville Pike
22 for mattresses.

1 COMMISSIONER BERKOVITZ: I have one more
2 question in one more area. I've taken up a lot of
3 time, I realize, but I think these are important
4 points. And I have one more question in one other
5 area. And this is regarding the discretion that the
6 SEF has in setting forth requirements for its
7 operation and its employees. And a lot of these
8 employees under the proposal -- these will all be
9 the introducing broker employees who are going to be
10 moved into SEF.

11 And one of the things the proposal
12 requires is a code of conduct for the SEF trading
13 specialists who are going to be essentially brokers.
14 The code of conduct requirement says a SEF "shall
15 establish and enforce policies and procedures that
16 require its SEF trading specialists in dealing with
17 market participants and fulfilling their
18 responsibilities to the SEF to satisfy standards of
19 conduct as established by the SEF." That's the
20 proposed regulation.

21 The proposal explains that the SEF has
22 quite a large, if not total, discretion regarding

1 what is in the code of conduct. A SEF's code of
2 conduct -- I'm quoting from the preamble -- "may
3 provide" -- "may" -- it's permissive -- "that, among
4 other things, a SEF trading specialist should, one,
5 act in an honest and ethical manner and observe high
6 standards of professionalism; two, handle orders
7 with fairness and transparency; three, not engage in
8 fraudulent, manipulative, or disruptive conduct.
9 The Commission includes these items for SEF
10 consideration, but a SEF may include different or
11 additional standards as well."

12 Shouldn't it be "must" in here? A code of
13 conduct must provide that the trading specialists
14 act in an honest and ethical manner and orders with
15 fairness and not engage in fraudulent, manipulative,
16 or disruptive conduct? The proposal says "may," but
17 shouldn't that be "must"?

18 MR. NGUYEN: So the proposed rule speaks
19 to the requirements for SEFs. And so in their
20 capacity as SRO, we would anticipate, being
21 consistent with the overall theme of the proposed
22 rulemaking, the SEFs would be allowed to tailor and

1 design their code of conduct requirements, among
2 other things, to fit the types of execution methods,
3 the types of discretion that they may use. The
4 requirement is consistent, based on our experience,
5 with -- it speaks to one particular constituency,
6 the swaps broking entities, the interdealer broker
7 community. In our experience, those brokers do have
8 codes of conduct and rules of behavior that they
9 currently set forth for their brokers. So this
10 requirement in a sense ought to be familiar to them.

11 Again, we're also asking for public
12 comment given that we're expanding or applying the
13 registration requirement to these entities on a
14 larger scale for the first time. And so we look
15 forward to getting any input on whether the
16 Commission should be more prescriptive about the
17 types of rules that the SEFs ought to impose.

18 COMMISSIONER BERKOVITZ: Do we really need
19 to ask for public comment on that? Can't we just
20 say your code of conduct should prevent manipulation
21 and fraud? Your code of conduct should require that
22 people act in an honest and ethical manner.

1 Shouldn't a code of conduct say "you must handle
2 orders with fairness and transparency"? The
3 proposal says "the Commission includes these items
4 for SEF consideration, but a SEF may include
5 different or additional standards as well." Why
6 can't we say your code of conduct has to require
7 that your SEF trading specialists don't engage in
8 fraud or manipulation, that they act in an ethical
9 manner, and they handle orders with fairness and
10 transparency? We don't need public comment on that.
11 We're the ones who set that requirement.

12 MR. NGUYEN: Acknowledged, Commissioner.
13 But also based on our experience, from what we've
14 seen in terms of these codes of conduct from these
15 entities, these are all essential elements that are
16 already there. What we're trying to say in the
17 proposed rule with respect to other different
18 criteria is to really allow the SEF, based on the
19 types of methods and participants they have, to
20 tailor these types of rules to their markets.

21 COMMISSIONER BERKOVITZ: I don't want to
22 beat this thing to death. I will just say that I

1 don't care what their methods of execution are. I
2 don't care how they trade, how they interact with
3 people. Whatever their previous codes of conduct
4 were, our requirement had better be that their code
5 of conduct say that the SEF trading specialists
6 don't engage in fraud or manipulation, they act in
7 an ethical manner, they observe standards of
8 fairness. That's got to be the minimum. You know,
9 if anybody comes with a comment from the public that
10 says -- well, they'll probably come back and say we
11 want flexibility just like the proposal says. But
12 that's not something I see that there's room for
13 flexibility.

14 Anyway, I thank the patience of my fellow
15 Commissioners for my questions and indulgence in my
16 line of questioning. Thank you.

17 CHAIRMAN GIANCARLO: Thank you,
18 Commissioner Berkovitz.

19 I have a few questions of my own, but
20 before I do, I want to say I agree with you that the
21 codes of conduct should state that we'll not
22 tolerate fraud and manipulation on their platforms.

1 Just a few questions in the areas of
2 methods of execution, impartial access, and academic
3 studies.

4 The question I have is, is the flexible
5 methods of execution in the proposal consistent with
6 Title VII of Dodd-Frank?

7 MR. SMITH: Yes.

8 CHAIRMAN GIANCARLO: Thank you.

9 Does Title VII of Dodd-Frank require
10 electronic execution methods?

11 MR. SMITH: No.

12 CHAIRMAN GIANCARLO: So if Dodd-Frank is
13 inconsistent with the G-20's requirement for
14 electronic execution, would you agree that that's
15 for Congress to resolve and not this Commission?

16 MR. SMITH: Yes.

17 CHAIRMAN GIANCARLO: Thank you.

18 In terms of impartial access, is it true
19 that Dodd-Frank allows SEFs to establish rules
20 regarding limitations on access?

21 MR. NGUYEN: Yes.

22 CHAIRMAN GIANCARLO: Is it true that our

1 requirements allow limitations on access currently?

2 MR. NGUYEN: They do.

3 CHAIRMAN GIANCARLO: Thank you.

4 Would limitations on access currently
5 allow limitations to registered dealers, and would
6 that be consistent with our rules today?

7 MR. NGUYEN: Perhaps. It depends.

8 CHAIRMAN GIANCARLO: Under our proposal,
9 however, before us today, would any such limitations
10 have to be done on a nondiscriminatory and
11 transparent fashion?

12 MR. NGUYEN: Yes. They'd have to fair and
13 nondiscriminatory.

14 CHAIRMAN GIANCARLO: Thank you.

15 In the area of the academic studies -- I'm
16 going to actually direct this to Amir because, Amir,
17 you were on my staff at the time that the Bank of
18 England study came out. Do you recall that we
19 contacted the Bank of England together to discuss
20 their study?

21 MR. ZAIDI: Yes.

22 CHAIRMAN GIANCARLO: Do you recall that we

1 brought to their attention that they had no hard
2 data as to the degree of pre-trade price
3 transparency before the crisis in which to form a
4 baseline for their calculations?

5 MR. ZAIDI: Yes.

6 CHAIRMAN GIANCARLO: Do you recall that
7 they said that they just assumed there was none?

8 MR. ZAIDI: Yes.

9 CHAIRMAN GIANCARLO: Do you also recall
10 that they admitted to us that they were not even
11 aware that a major SEF, at the same time as they
12 recalled prices decreasing, had unilaterally reduced
13 fees in SEF trading from \$700 per million per side
14 to \$10 a trade?

15 MR. ZAIDI: Correct.

16 CHAIRMAN GIANCARLO: Is it possible that
17 that could have caused the price reduction?

18 MR. ZAIDI: Yes.

19 CHAIRMAN GIANCARLO: Thank you.

20 And while price reduction is a good thing,
21 are you aware anywhere in the Dodd-Frank Act that
22 the reduction of costs of swaps trading for Wall

1 Street banks is a goal of Dodd-Frank?

2 MR. ZAIDI: That's not a stated goal.

3 CHAIRMAN GIANCARLO: Okay. Thank you.

4 That's all the questions I have.

5 It is now time for Commissioners to go to
6 their statements. I'd like to ask Commissioner
7 Quintenz if he would give his statement, please.

8 COMMISSIONER QUINTENZ: Thank you, Mr.
9 Chairman.

10 I'm going to vote in favor of issuing
11 today's proposed rule and the associated request for
12 comment on reforms to SEFs.

13 I personally believe it's very important
14 that this Commission issue regulations that follow
15 the law. The law clearly states swaps can be traded
16 by any means of interstate commerce. This proposal
17 follows that requirement.

18 Mr. Chairman, you've shown great thought
19 leadership and transparency in consistently and
20 fully articulating your vision for swaps trading
21 rules that would create a more cohesive, liquid
22 swaps market. Today's proposal represents a

1 significant step forward towards executing that
2 vision.

3 I look forward to hearing from market
4 participants about this very big proposal, one which
5 contains a number of reforms that will dynamically
6 interact with each other and how those reforms and
7 that dynamic interaction will change or alter SEF
8 trading and liquidity formation.

9 Again, I'd like to thank you, Mr.
10 Chairman, and the staff for your tireless work on
11 the SEF rule. Thank you.

12 CHAIRMAN GIANCARLO: Commissioner Behnam?

13 COMMISSIONER BEHNAM: As we start to
14 consider the direction and breadth of SEF reform, I
15 think it's very important that we first review how
16 we got where we are today. Prior to the 2008
17 financial crisis, swaps were largely exempt from
18 regulation and traded exclusively over-the-counter
19 rather than on a regulated exchange. The opaque
20 over-the-counter swaps market contributed to the
21 financial crisis because both regulators and market
22 participants lacked the visibility necessary to

1 identify and assess swap market exposures and
2 counterparty relationships.

3 In the aftermath of the crisis, Congress
4 enacted the Dodd-Frank Act in 2010. Dodd-Frank
5 largely incorporated the international financial
6 reform initiatives for over-the-counter derivatives
7 laid out at the 2009 G-20 Pittsburgh summit aimed at
8 improving transparency, mitigating systemic risk,
9 and protecting against market abuse.

10 Title VII of Dodd-Frank amended the
11 Commodity Exchange Act to establish a comprehensive
12 new swaps regulatory framework that includes the
13 registration and oversight of a new registered
14 entity, SEFs. A key goal of Title VII of Dodd-Frank
15 is to bring greater pre-trade and post-trade
16 transparency to the swaps market. The concept of
17 transparency runs throughout Title VII, starting
18 with the title itself, the "Wall Street Transparency
19 and Accountability Act of 2010."

20 As part of Dodd-Frank's effort to provide
21 more transparency, in 2013 the Commission adopted
22 the part 37 rules in order to implement the

1 regulatory framework for SEFs. In so doing, the
2 Commission emphasized that pre-trade transparency
3 lowers costs for investors, consumers, and
4 businesses; lowers the risks of the swaps market to
5 the economy; and enhances market integrity to
6 protect market participants and the public.

7 The SEF framework has, in many ways, been
8 a success. There are currently 25 registered SEFs.
9 Trading volume on SEF has been steadily growing each
10 year. The Commission's work to promote swaps
11 trading on SEFs has resulted in increased liquidity,
12 while adding pre-trade price transparency and
13 competition.

14 This is not to say that the SEF rules were
15 perfect from the start and would not benefit from
16 some targeted improvement. Most SEFs rely upon
17 multiple no-action letters granted by DMO, and while
18 the purpose of this form of targeted relief was
19 often to smooth the implementation of the SEF
20 framework, codifying or eliminating the need for
21 existing no-action relief would provide market
22 participants with greater legal certainty.

1 The current SEF rules have not brought as
2 much trading onto SEFs as intended or envisioned as
3 well. We can improve upon that, and I am hopeful
4 that this process will bring about a thoughtful,
5 inclusive, well-reasoned debate that limits changes
6 to those issues that will result in policy
7 consistent with congressional intent and the
8 overarching goals of supporting strong, liquid,
9 transparent markets.

10 Getting more specific, while I believe
11 targeted reforms could bring more products onto
12 SEFs, increase transparency, and lower costs for
13 market participants, today's NPRM is far from
14 targeted and in some instances may represent a
15 regulatory overreach. I therefore have a number of
16 very serious concerns with the NPRM's approach and
17 its far-ranging alterations.

18 First, it violates the clear language of
19 the Act, which states that one of the major goals of
20 the SEF regulatory regime is to promote pre-trade
21 transparency in the swaps market. As discussed
22 below, the NPRM does exactly the opposite.

1 Second, in addition to reducing
2 transparency, the proposed rule also increases
3 limitations on access to SEFs. The NPRM purports to
4 increase choice and flexibility for SEFs; however,
5 it simultaneously allows SEFs to limit choice and
6 flexibility for market participants.

7 Third, as commenters and the Commission
8 think about the NPRM, I think it's also important to
9 consider whether we would be creating a new
10 registration scheme that adds significant costs for
11 market participants, while failing to address the
12 fixable issues that exist in the market today.

13 Regarding pre-trade transparency, section
14 1a(50) of the Act defines a SEF as, quote, "a
15 trading system or platform in which multiple
16 participants have the ability to execute or trade
17 swaps by accepting bids and offers made by multiple
18 participants in the facility or system, through any
19 means of interstate commerce."

20 Section 5h(e) of the Act states that,
21 quote, "the goal of this section is to promote
22 trading of swaps on swap execution facilities and to

1 promote pre-trade transparency in the swaps market.”
2 The existing SEF rules establish two methods of
3 execution for Required Transactions: the central
4 limit order book and the request for quote system.
5 These methods were chosen specifically because they
6 provide pre-trade transparency.

7 And I’m concerned that the NPRM goes too
8 far by allowing literally any means of execution.
9 The NPRM’s preamble states that the approach “should
10 also promote pre-trade transparency in the swaps
11 market by allowing execution methods that maximize
12 participation and concentrate liquidity.” This
13 simply cannot be true. Absent a clear standard of
14 what constitutes pre-trade transparency, it’s fairly
15 easy to envision an execution method that would not
16 provide pre-trade transparency. One need look no
17 further than the over-the-counter system that
18 preceded the financial crisis.

19 But this is more than a case of what the
20 Commission should or should not do. The statute is
21 clear. The Commission must “promote pre-trade
22 transparency in the swaps market.” And today’s NPRM

1 would not do that.

2 That is not to say that expanding methods
3 of execution in a more limited and targeted way is a
4 bad idea or violates the Act. There are likely
5 other execution methods that fit within section
6 1a(50) and would promote pre-trade transparency.
7 And I look forward to hearing from commenters as to
8 what methods might be and debating with my fellow
9 Commissioners as to whether they are appropriate
10 within the confines of congressional intent and
11 ultimately the Act.

12 The made available to trade process is
13 seemingly broken. The Commission stopped receiving
14 MAT submissions after an initial set of submissions
15 for the most standardized and liquid swaps
16 contracts. The Commission has not received any MAT
17 submissions or made any MAT determinations since
18 2014. This is not what the Commission envisioned in
19 promulgating the Made Available to Trade rule. The
20 solution posited today is, in a sense, a simple and
21 elegant one. The NPRM states that the phrase "makes
22 the swap available to trade" in CEA section 2h(8)

1 should be interpreted to mean that "once the
2 clearing requirement applies to a swap, then the
3 trade execution requirement applies to that swap
4 upon any single SEF or DCM listing the swap for
5 trading." This would take both the SEF and the
6 Commission out of the determination process.

7 My concern, however, is that there may be
8 products that are more appropriately traded off SEF.
9 And in addition, tying the trade execution
10 requirement to the clearing requirement could have
11 unintended consequences. It could actually
12 discourage voluntary central clearing.

13 I look forward to hearing from commenters
14 regarding the appropriate interpretation of the term
15 "made available to trade," including how to improve
16 the existing process.

17 One of the most troubling aspects of the
18 NPRM is that it would alter the Commission's
19 interpretation of "impartial access" under SEF Core
20 Principle 2. Core Principle 2 of the Act requires
21 SEFs to establish and enforce participation rules
22 that, quote, "provide market participants with

1 impartial access to the market." Current Commission
2 regulation 37.202(a) states that a SEF "shall
3 provide any eligible contract participant with
4 impartial access to its market and market services."

5 The Commission was clear in the preamble to the
6 existing rules that "the purpose of the impartial
7 access requirement is to prevent a SEF's owners from
8 using discriminatory access requirements as a
9 competitive tool" against certain eligible contract
10 participants. The current rule provides that a SEF
11 can restrict access on disciplinary history or
12 financial or operational soundness if objective,
13 pre-established criteria are used. What a SEF
14 cannot do is restrict access to certain types of
15 participants.

16 Today's NPRM would roll back this
17 interpretation, leaving the term "impartial access"
18 an empty shell. The proposed rule would allow SEFs
19 to serve different types of market participants or
20 have different access criteria for different
21 execution methods." This is exactly the type of
22 discrimination that the impartial access provision

1 in the Act was intended to prevent.

2 I believe that all market participants
3 should have impartial access to a SEF whose access
4 criteria is applied in a fair and nondiscriminatory
5 manner. Rather than erecting new barriers to
6 participation, we should focus on applying our
7 existing regulations as they are clearly written.
8 It seems to me that impartial access theoretically
9 would go hand in hand with the proposed widening of
10 SEF execution methods. Instead, the Commission
11 seems to be bending over backwards to be impartial
12 regarding SEFs' modes of execution, while allowing
13 the SEFs themselves to discriminate. This threatens
14 to take us back to the world as it was pre-Dodd-
15 Frank and pre-financial crisis, undermining some of
16 the key successes of the existing SEF regulatory
17 regime regarding transparency and market access.

18 I'd like to turn for a minute to the
19 potential cost to market participants and the
20 Commission from this proposed rule. Currently,
21 there are 25 registered SEFs. The proposal will
22 drastically increase the number of SEFs, likely by

1 multiples. In the cost/benefit considerations of
2 the NPRM, the Commission estimates that
3 approximately 40 to 60 swaps broking entities,
4 including interdealer brokers, and one single-dealer
5 aggregator platform would need to register as a SEF.
6 That is the universe that we know, the market as we
7 understand it to exist today. There could be more,
8 perhaps many more, entities that will fall under the
9 expanded registration requirements. Just as
10 importantly, we do not know how these new rules will
11 incentivize SEFs and whether they will lead to
12 consolidation or myriad SEFs with myriad methods of
13 execution.

14 The new registration regime and the many
15 changes that come along with it will result in
16 substantial costs all around to both existing SEFs
17 and new SEF registrants and to their participants.
18 I note with some concern that while the preamble
19 provides a laundry list of what rule changes will
20 result in costs, there is no effort to quantify
21 them. Operating or participating in a regulated
22 market comes with costs, but these incremental costs

1 are offset in part by the benefits of having access
2 to a transparent, safe market ecosystem that demands
3 accountability and punishes wrongdoers. I do not
4 mean to suggest anything else. However, as the
5 Commission proceeds with this NPRM, I am hopeful
6 that the best, most cost-effective regulatory
7 solutions will prevail as the Commission seeks to
8 improve and advance the health and vibrancy of the
9 SEF marketplace.

10 I also want to quickly raise a non-
11 substantive concern but one that may greatly impact
12 the substance of the NPRM. The comment period for
13 the proposal is only 75 days, as was mentioned
14 earlier. As I have stated previously, this
15 rulemaking is complex and impacts a wide range of
16 market participants in fundamental ways. There are
17 105 numbered questions for commenters in the NPRM's
18 preamble, in addition to general requests for
19 comment. I think it's very important that we give
20 market participants time to carefully consider the
21 proposed rule and make reasoned comments. Recent
22 proposed rules that raised complex issues, like the

1 capital rule and Reg AT, had 90-day comment periods,
2 followed by extensions of at least an additional 60
3 days. The original part 37 notice of proposed
4 rulemaking ultimately had open comment periods
5 totaling 90 days, and market participants had 7
6 months between publication of the notice of proposed
7 rulemaking and the end of the final comment period.

8 Today's NPRM deserves careful consideration both
9 from the public and from the Commission, and I hope
10 that the Commission will give market participants
11 the time they need to respond thoughtfully and
12 thoroughly.

13 Before I conclude, I would like to turn
14 briefly to the name give-up request for comment that
15 is before us as well, as it is inextricably tied to
16 the SEF NPRM. Post-trade name give-up also relates
17 to the issue of impartial access, which I discussed
18 earlier. While today's SEF NPRM reworks the SEF
19 rules generally, the NPRM does not address the
20 longstanding practice of disclosing the identity of
21 each swap counterparty to the other after a trade
22 has been matched anonymously. Instead the

1 Commission is voting to issue a request for comment
2 seeking public comment on the practice. While I
3 appreciate the desire to be measured and thoughtful
4 on this issue, I fear that not taking a view at this
5 time in the proposal may function as an endorsement
6 of the status quo. The request for comment puts
7 name give-up on a slower track than the rest of the
8 rule. Any rule to address the issue will now be
9 well behind the process for the rest of the SEF
10 rules.

11 As outlined above, I have numerous
12 concerns about this NPRM, both in terms of what the
13 Commission should do as policymakers and in terms of
14 what the Commission can do under the law. Congress
15 was clear in Dodd-Frank. The Commission is tasked
16 with bringing greater pre-trade transparency to the
17 swaps market. Today's NPRM not only fails to
18 advance pre-trade transparency, it actually
19 undermines pre-trade transparency that has been
20 achieved through our existing regulations. In
21 addition to the few issues I raise today, the NPRM's
22 changes also demand thoughtful deliberation on

1 equally important issues related to cross-border
2 implications, investigations, audit trails,
3 recordkeeping, and disciplinary hearings, to name
4 just a few.

5 As I read through the NPRM, I noticed a
6 common thread that naturally aims to shift the
7 current part 37 regime to a less prescriptive and
8 more principles-based regime. The frequent weaving
9 of words into the text of the NPRM like "defer,
10 flexible," "reasonable," and "discretion" stand as a
11 clear declaration of where this proposal's authors
12 want it to go. I have long been a proponent of
13 sensible principles-based regulation, and I believe
14 our markets and, more importantly, this agency are
15 strongly rooted in a principles-based regulatory
16 regime. However, like the words of this NPRM, I
17 have myself woven my own thoughts on striking the
18 right balance between principles-based and rules-
19 based regulation. Principles-based regulation
20 certainly does not mean an absence of rules or the
21 absence of supervision.

22 In remarks I delivered in February of this

1 year, I stated, quote, "while I strongly oppose any
2 rollbacks of Dodd-Frank initiatives, I believe a
3 principles-based approach to implementation can be
4 suitable in certain circumstances. A principles-
5 based approach provides greater flexibility, but
6 more importantly focuses on thoughtful
7 consideration, evaluation, and adoption of policies,
8 procedures, and practices as opposed to checking the
9 box on a predetermined, one-size-fits-all outcome.
10 However, the best principles-based rules in the
11 world will not succeed absent clear guidance from
12 regulators, adequate means to measure and ensure
13 compliance, and willingness to enforce compliance
14 and punish those who fail to ensure compliance with
15 the rules."

16 If the Commission was voting on a final
17 rule today, my vote would be no. However, I fully
18 recognize that our existing part 37 rules are not
19 perfect. Bringing more activity on SEF is a
20 laudable goal, both from a policy perspective and
21 because Congress has tasked the Commission with
22 doing so. I will support today's proposed rule

1 because I believe that it's important that we hear
2 from market participants regarding what aspects of
3 the NPRM will improve the regulatory framework for
4 SEFs while staying within our responsibilities under
5 the law.

6 Thank you very much, Mr. Chairman.

7 CHAIRMAN GIANCARLO: Commissioner Stump?

8 COMMISSIONER STUMP: I just wanted to
9 point out we're building a new market structure in a
10 market that has both a legacy and a mandate to
11 adapt. Just think about that. It's very
12 challenging. They existed before. They need to
13 adapt based upon what the statute requires. It's
14 not going to be easy. So thanks to those of you
15 from DMO who stepped up to the plate to take on this
16 challenge, and I think all of us are willing to take
17 on this challenge too. And that's why I'm voting to
18 put forward the proposed rule and the request for
19 comments.

20 There's so much history here, and I won't
21 go into it. Commissioner Behnam spoke to it a bit.
22 But I would like to just say that I was uniquely

1 situated as a former legislative staffer with a
2 front row seat during the development of the Dodd-
3 Frank Act. There are a couple of people in the back
4 of the room who shared those seats next to me. So
5 they may have a different view on how things played
6 out. But we were tasked with creating a market
7 structure for swaps that would apply reporting,
8 clearing, and executing OTC transactions in a
9 different way. With consensus around the regulatory
10 benefit of reporting OTC derivatives contracts, my
11 recollection is that the bulk of the debate was
12 devoted to the complicated task of how the clearing
13 mandate would be applied and which types of market
14 participants would need to migrate positions into
15 the cleared environment. But the operational
16 aspects of the execution mandate were left to
17 finalization near the end of the process and,
18 unfortunately, received less attention due to the
19 quick push for the legislation to be finalized.
20 This is probably evident from the verbiage or the
21 lack thereof that appears in the statute on this
22 matter.

1 While I was not here at the CFTC when the
2 subsequent swap execution regulations were
3 established, it is not surprising that varying
4 statutory interpretations emerged among
5 Commissioners at that time. The resulting confusion
6 surrounding how best to implement congressional
7 goals resulted in the current part 37 rule set. The
8 Commission would likely have been disappointed if it
9 had objectively graded itself after the initial
10 rollout of SEF trading. Questions persisted and
11 uncertainty reigned as trading volume was slow to
12 materialize and numerous no-action letters for
13 relief were promulgated to address the shortcomings.

14 More recently, we've seen a considerable
15 uptick in the SEF activity and counterparties are
16 voluntarily coming to SEFs to execute swaps via
17 Permitted Transactions for products that are neither
18 cleared nor required to execute on SEFs. Today we
19 must heed the lessons learned and leverage our
20 knowledge from observing these markets in action
21 rather than the assumptions and unknowns that
22 constrained previous commissions. To the extent

1 that improvements and refinements can be made to the
2 SEF market structure, I support putting forward a
3 thoughtful proposal for public consideration, and I
4 look forward to learning from those who comment as
5 to whether a change in course is warranted for both
6 the execution mandate application and the
7 operational structure of swap execution facilities.

8 And just briefly on name give-up, I'm
9 looking forward to learning more and interacting
10 with all types of the entities impacted by name
11 give-up in the coming months. That being said, I'm
12 hopeful that the Commission might be able to opine
13 on a final SEF rule and a final rule on name give-up
14 at the same time, informed by today's request for
15 comment.

16 CHAIRMAN GIANCARLO: Thank you,
17 Commissioner.

18 Commissioner Berkovitz?

19 COMMISSIONER BERKOVITZ: Thank you, Mr.
20 Chairman.

21 I respectfully dissent from this notice of
22 proposed rulemaking. This proposal would reduce

1 competition and diminish price transparency in the
2 swaps market. It will increase systemic risks and
3 increase costs for end-users.

4 The proposal abandons the commitments the
5 United States made at the G-20 summit in Pittsburgh
6 in 2009 to trade standardized swaps on exchanges or
7 electronic trading platforms. It contradicts
8 congressional direction in the Dodd-Frank Act. It
9 would undo progress made in implementing those
10 reforms.

11 The proposal would reduce competition by
12 cementing the oligopoly of the largest bank dealers
13 in the swaps market. It would diminish transparency
14 by removing the requirement that highly liquid swaps
15 be traded through competitive means of trading. By
16 reducing competition and diminishing price
17 transparency, the proposal would increase systemic
18 risks and swap prices for end-users. Ultimately,
19 the millions of Americans who indirectly use swaps
20 through their investments in retirement accounts,
21 pension plans, home mortgages, and mutual funds will
22 pay that higher cost. Finally, the proposal would

1 provide SEFs with too much discretion to set their
2 own rules and, in so doing, weaken our oversight and
3 enforcement abilities.

4 The evidence is clear that the Dodd-Frank
5 reforms, including our regulations, have led to more
6 competition, greater liquidity, more electronic
7 trading, better price transparency, and lower prices
8 for swaps that are required to be traded on
9 regulated platforms. Numerous academic studies and
10 reports by market consultants have documented these
11 benefits.

12 The proposal would delete the requirement
13 that swaps that are subject to the trade execution
14 mandate -- "Required Transactions" -- be traded
15 either on an order book or by a request for quote
16 from at least three market participants. This would
17 undermine the congressional directive in the Dodd-
18 Frank Act that for Required Transactions, a SEF
19 provide multiple participants with, quote, "the
20 ability to execute or trade swaps by accepting bids
21 and offers made by multiple participants in the
22 facility or system." Unquote.

1 The proposal also would gut the impartial
2 access requirement in the Dodd-Frank Act. The
3 statute requires SEFs to establish rules that,
4 quote, "provide market participants with impartial
5 access to the market," unquote. Authorizing
6 discrimination based on type of entity or type of
7 swap will permit the largest bank dealers to
8 maintain exclusive pools of liquidity for
9 themselves. By denying other firms access to the
10 prices in the interdealer market, bank dealers can
11 prevent others from competing for customers.
12 Throttling competition will result in higher prices
13 for customers.

14 In pursuit of flexibility, the proposal
15 deletes or waters down key trading, access, and
16 compliance requirements for SEFs. The wide latitude
17 that would be granted to SEFs looks very much like
18 the "light touch" approach to regulation that was
19 discredited by the financial crisis.

20 The Commission should base its decisions
21 on the best available data and information.
22 Unfortunately, the proposal does not consider the

1 available data and market studies that demonstrate
2 the RFQ-3 system is working well. The proposal
3 ignores the following conclusions in recent studies,
4 as we discussed before. The study by the four CFTC
5 economists concluded, quote, "Judged from our
6 evidence, SEF-traded index CDS market seems to be
7 working well after Dodd-Frank -- dealers' response
8 rates are high, the vast majority of customer orders
9 result in trades, and customers' transaction costs
10 are low." Unquote. With respect to the most liquid
11 index CDS swaps, the CFTC's own economists found
12 that, quote, "the average transaction cost is
13 statistically and economically close to zero."
14 Unquote.

15 The recent Bank of England paper concluded
16 that the CFTC trade execution mandate, including the
17 RFQ-3 requirement, has led to a "sharp increase in
18 competition between swap dealers" and dealer-to-
19 customer transactions for interest rate swaps
20 subject to the trade execution mandate. The study,
21 which was released in January of this year,
22 concluded that this competition has led to, quote,

1 "a substantial reduction in execution costs,"
2 amounting to, quote, "daily savings in execution
3 costs of as much as \$3-\$6 million for end-users of
4 U.S. dollar swaps." Those are daily savings to end-
5 users.

6 In another study, three economists found
7 that the prices customers obtained in the dealer-to-
8 customer market through the RFQ system often were
9 better than the prices that were available on the
10 interdealer order book. Quote: "Our results show
11 that the current market structure delivers very low
12 transaction costs." Unquote.

13 Today a small number of large dealers
14 provide the bulk of liquidity to the swaps market.
15 Five very large banks were party to over 60 percent
16 of interest rate swap transactions.

17 One of the fundamental purposes of the CEA
18 is to, quote, "promote responsible innovation and
19 fair competition," unquote, among market
20 participants. The Commission should strive to
21 remove the existing barriers to broader
22 participation and fair competition in the swaps

1 market. The proposal bolsters existing barriers.

2 The current system is not perfect, but the
3 evidence is clear that the current system has
4 provided major benefits over the unregulated or
5 lightly regulated system that existed prior to the
6 Dodd-Frank reforms. The proposal would return the
7 swaps market to the dealer-dominated, trade-however-
8 you-want system heavily reliant on voice brokers
9 that existed prior to the financial crisis. The
10 G-20 leaders rejected this approach in Pittsburgh,
11 and the Congress rejected this approach in the Dodd-
12 Frank Act.

13 Many of the market participants I've
14 talked to do not want a major overhaul of the swaps
15 regulatory framework. They prefer that we consider
16 more targeted reforms. I agree.

17 Specifically, I support the following
18 measures to foster fair competition in the swaps
19 market.

20 One, abolish name give-up. The Commission
21 should prohibit the practice of name give-up for
22 cleared swaps. On many platforms that provide

1 anonymous trading, the identity of a counterparty is
2 provided to the dealer after the completion of a
3 trade. Name give-up is a major deterrent to non-
4 dealers seeking to participate on dealer-only
5 platforms as it provides the dealers with valuable
6 information about a counterparty's positions. Name
7 give-up is a relic of the pre-Dodd-Frank era when
8 most swaps were not cleared and the identity of the
9 counterparty was necessary to manage credit risks.

10 Two, expand floor trader registration.
11 The Commission should amend the floor trader
12 provision in the swap dealer definition to remove
13 overly restrictive conditions. This would help
14 enable a wider range of traders, including
15 proprietary traders, to provide liquidity and
16 compete with large bank dealers on price.

17 Three, revise capital requirements. The
18 Commission should work with the prudential
19 regulators so that capital requirements do not
20 unduly restrict the availability of clearing
21 services for swaps that are provided by futures
22 commission merchants.

1 Four, enable average pricing. The
2 Commission should work with market participants and
3 facilities to enable buy-side firms to obtain
4 average pricing for swap trades. Although average
5 pricing is available for futures, it currently is
6 not available for swaps, which limits the direct
7 participation of buy-side asset managers on SEFs.

8 This proposal would fundamentally rewrite
9 the SEF regulatory regime. The changes would create
10 a trading system that is so flexible that all swaps,
11 even the most liquid, could be traded the same way
12 they were traded before the Dodd-Frank reforms were
13 adopted. The proposal would allow the largest
14 dealers to discriminate against competitors and
15 establish exclusive pools of liquidity. Competition
16 would be strangled and transparency dimmed. This is
17 not what Congress intended or permitted when it
18 passed the Dodd-Frank Act.

19 I am open to targeted amendments to our
20 regulations. I have just suggested several of
21 these. I also support the goal of bringing
22 additional swap trading onto SEFs, but not at the

1 expense of the transparency and competition in the
2 market that exists today. Empirical studies have
3 shown that the existing SEF regulations have made
4 great progress in achieving the statutory goals of
5 promoting on-SEF trading and pre-trade price
6 transparency. With respect to what is working, we
7 should live by the adage, "if it ain't broke, don't
8 fix it."

9 Mr. Chairman, on a final note, although I
10 have some fundamental disagreements with this
11 proposal, I would like to recognize the work that
12 you and the staff have put into this document. I've
13 been in a few legislative and regulatory scrums in
14 my time here in this city, and I know that effecting
15 change is not easy. Disturbing the status quo
16 doesn't win you a lot of friends. It isn't the easy
17 path. There's no pot of gold at the end of this
18 rainbow, and there may not even be a rainbow on this
19 road. But whether I agree or disagree with this or
20 that proposal or policy, I nonetheless have a great
21 deal of respect for, as Teddy Roosevelt put it, the
22 man who is actually in the arena. Mr. Chairman, by

1 putting out this comprehensive proposal, you have
2 stepped into the arena, and I have a great deal of
3 respect for you for that.

4 I look forward to receiving the comments
5 from the public and continuing to work with you, my
6 fellow Commissioners, and the public on these
7 important issues you have placed before us. Thank
8 you.

9 CHAIRMAN GIANCARLO: Thank you, Dan. That
10 is most gracious. Thank you very much.

11 I'd like to give my statement, and I'd
12 like to start by referencing an important white
13 paper. No, not one written by a CFTC Commissioner.
14 I'm talking about a white paper that was written
15 back in 1970 by a young graduate student in
16 economics at UC Berkeley. That white paper,
17 entitled "Preliminary Design for an Electronic
18 Market," was written for the Pacific Commodity
19 Exchange, and it was the world's first written
20 conceptualization of a fully electronic, for-profit
21 futures exchange.

22 The white paper was written by Dr. Richard

1 Sandor, and it has now been republished in a new
2 book that just came out. In it, Dr. Sandor recounts
3 how his idea lay mostly dormant through the 1970s to
4 mid-1980s before being slowly developed in fits and
5 starts, first in Europe in the 1990s and then in the
6 United States in the 2000s. Dr. Sandor's book notes
7 that electronic execution of futures products with
8 continuous liquidity has become almost ubiquitous
9 today, while other exchange-traded asset classes
10 with more episodic liquidity, like options and
11 swaps, continue to trade largely by voice.

12 What I found fascinating in Dr. Sandor's
13 recounting of this 5-decade-long evolution from
14 trading pits to electronic trading of futures was
15 the absence of any grand plan behind the
16 transformation. Instead, it was a series of
17 incremental commercial developments and
18 technological innovations. At all times, the
19 impetus was the demands of market participants and
20 the response of market operators to reduce trading
21 costs and transaction friction. At no time did
22 government step in and say, "Henceforth, all futures

1 trading shall be on electronic exchanges." Instead,
2 market evolution happened because a good idea was
3 coupled with capable technology and mutual
4 commercial interest with enough time to catch on and
5 gain traction.

6 Now, before I joined the Commission, I
7 spent a decade and a half at a leading operator of
8 swaps marketplaces, and we launched many innovative
9 electronic platforms and some of them are still in
10 use today. And some of those platforms caught right
11 on with our customers, but others did not. Yet, we
12 designed all of them to increase efficiency and
13 reduce trading friction. It was just that sometimes
14 our competitors designed them better or cheaper or
15 they just got the timing right.

16 The point is that the design of trading
17 platforms and the evolution of market structure is
18 best done by platform operators, through trial and
19 error, customer demand, commercial response, and
20 technological innovation. By the way, there was
21 electronic trading of swaps before SEF reform.
22 There is today and there will be tomorrow.

1 Regulators, however, will never be close enough to
2 the heartbeat of the markets, the spark of
3 technology, or the cost of development to prescribe
4 the optimal design of trading platforms or business
5 methods. We regulators can never know which trading
6 methods will work best in the full range of market
7 conditions, from low to extreme volatility which we
8 see month after month.

9 And Congress understood this. That's why
10 Title VII of Dodd-Frank permits swap execution
11 facilities to conduct their activities through,
12 quote, "any means of interstate commerce." Dodd-
13 Frank does not say "by such means as may be chosen
14 by regulators."

15 Once regulators step in and dictate who
16 serves who and what type of service they can
17 provide, we are picking winners and losers. And we
18 are simply not authorized, nor are we competent, to
19 act in this way. If we do, the winners will be
20 invariably those with the most persuasive voices and
21 the most aggressive lobbyists.

22 Congress knew that swaps are not traded by

1 retail participants but by sophisticated
2 institutional traders. And by the way, Wall Street
3 banks, hedge funds, prop shops, and energy companies
4 have the wherewithal to demand the transaction
5 services they need without regulators holding their
6 hands. And the platform operators are not public
7 utilities but seasoned competitors. If there's
8 money to be made, trading efficiencies to be
9 achieved, customers to be served, or costs to be
10 saved, they will find them. If there's a better
11 mousetrap to be built, they will build it.

12 Unfortunately, we didn't listen to
13 Congress. Contrary to provisions of the Dodd-Frank
14 Act that permit SEFs to operate by any means of
15 interstate commerce, the current SEF rules constrain
16 swaps trading to two methods of execution, request
17 for quote and order book, as we all know. While
18 swaps not subject to the trade execution mandate can
19 utilize other methods, SEFs must, nevertheless,
20 provide an order book for such Permitted
21 Transactions. And all other Required Transactions
22 have to be executed exclusively on one of the two

1 options. And furthermore, the rules incorporate a
2 number of practices from futures markets that are
3 antithetical to swaps trading, such as the 15 second
4 cross and execution of block trades strangely off
5 platform rather than on platform. Additionally, the
6 SEF core principles are interpreted in ways that are
7 not conducive to environments in which swaps
8 liquidity is formed and price discovery is
9 conducted.

10 So one effect of this approach has been to
11 incentivize the shift of swaps price discovery and
12 liquidity formation away from SEFs to introducing
13 brokers, and SEFs have turned into booking engines
14 for swaps trades formulated elsewhere often on IBs.
15 Yet, IBs are inappropriate vehicles to formulate
16 swap transactions. The intended purpose of IBs in
17 our regulatory framework is to solicit orders for
18 futures, not swaps. Moving price discovery and
19 liquidity formation away from SEFs to IBs is not
20 what Congress intended. The point was to have the
21 entire process of swaps liquidity formation, price
22 discovery, and trade execution take place on SEFs,

1 not off them. IBs are not subject to conduct and
2 compliance requirements appropriate for swaps
3 trading. Their employees are not required to pass
4 exams for proficiency in serving institutional
5 market participants in over-the-counter swaps
6 markets. In fact, they're tested for proficiency in
7 serving futures customers when in fact futures
8 customers are prohibited from trading swaps. That
9 makes no sense.

10 Another effect of the current approach is
11 the paucity of platform innovation and new SEFs
12 competing for market share. The stagnation has
13 allowed a few incumbents to consolidate and dominate
14 market share. According to one large swaps trader,
15 "the biggest disappointment of SEFs is that nothing
16 has really changed. I'm still trading the same way
17 I was 10 years ago." And yet, the current rules
18 were supposed to have caused as much as a hundred
19 firms to register as SEFs.

20 I've written a few white papers of my own,
21 and I've called for revising our current
22 restrictions and allowing for flexible modes of

1 execution just as Congress intended.

2 And today's proposal does that. It will
3 allow SEFs to innovate to meet customer demand and
4 operate trading environments that are more salutary
5 to the more episodic nature of swaps liquidity. At
6 the same time, it will make the "made available for
7 trading determination" synonymous with the clearing
8 determination to include all swaps subject to the
9 clearing requirement and listed by a SEF or DCM.
10 And that's meant to bring the full range of
11 liquidity formation, price discovery, and trade
12 execution on SEFs for a broader range of swaps
13 products.

14 The promotion of swaps trading on SEFs
15 brings daylight to the marketplace by subjecting a
16 much broader range of products to SEF recordkeeping,
17 regulatory supervision and oversight, again just as
18 Congress intended.

19 Now, it's been argued that if mandates for
20 minimum trading functionality go away, so will the
21 current degree of electronic execution in the
22 market. Sorry, but that's just not how business

1 operates. The electronic SEF platforms that are
2 currently successful in the market represent
3 enormous sunk costs. They provide too much
4 competitive advantage and cost efficiency to be shut
5 down simply because they're no longer subject to a
6 regulatory mandate. No SEF is going to give up
7 electronic trading market share and profitability
8 because regulation suddenly becomes less
9 prescriptive.

10 Today's proposal would also enhance the
11 professionalism of SEF personnel who exercise
12 discretion by adopting proficiency requirements and
13 conduct standards suitable for swaps as opposed to
14 other products.

15 Now, a word about impartial access. SEFs
16 are currently required to have rules to provide
17 market participants with impartial access to the
18 market and, however, may establish rules regarding
19 any limitation on access. Impartial access means
20 just that, impartial. It does not mean that SEFs
21 must serve every type of market participant from
22 sophisticated to under-sophisticated in an all-to-

1 all environment. If it did, then SEFs would not be
2 allowed to establish rules for limitation of access.

3 Today's proposal would establish what is
4 meant by impartial. It would define impartial as
5 transparent, fair, and nondiscriminatory as applied
6 to all similarly situated market participants in a
7 fair and nondiscriminatory manner based on
8 objective, pre-established requirements.

9 Now, on the international level, we have
10 approached today's proposal on the principle that
11 the CFTC always engage its regulatory counterparts
12 overseas with respect and due consideration. The
13 staff of the CFTC and I have made every effort to
14 ensure that non-U.S. authorities had the opportunity
15 review and discuss my SEF white papers that set out
16 the concepts underlying today's proposal. I see no
17 reason why this proposal would be viewed as
18 inconsistent with the regulatory systems of other
19 G-20 jurisdictions, and we certainly welcome further
20 dialogue with them.

21 In fact, today's proposal is entirely
22 consistent with and anticipated by recent

1 discussions with foreign authorities about the
2 CFTC's SEF regime, including the equivalence
3 agreement for swaps trading platforms with the
4 European Commission that EC Vice President
5 Dombrovskis and I announced one year ago in this
6 very room. That agreement, which focused on an
7 outcomes-based approach toward EU equivalence and
8 CFTC exemptions, was made by both parties with full
9 knowledge and understanding of the changes that I
10 advocated in my white papers and that are developed
11 in the proposal before us.

12 Let me briefly address the market practice
13 of name give-up in today's request for comments.
14 There are a range of perspectives on this issue, but
15 I want to assure everyone I have a very open mind
16 and I look forward to the comments about the current
17 impact of this practice in the marketplace. And if
18 that results in a rule proposal, that would be a
19 good thing.

20 One final point. Today's proposal will
21 invariably be slammed by opponents of change as a
22 rollback of Dodd-Frank. Any such characterization

1 would be disingenuous.

2 Those who examine my record know that I
3 have been a consistent supporter of the swaps
4 reforms embodied in Title VII of the Dodd-Frank Act.
5 Heck, of my colleagues here, I may have been the
6 first to publicly state my support for Title VII in
7 July of 2010, and I've not wavered since. Congress
8 got Title VII right. There, I said it again.

9 My support for the Title VII reforms,
10 swaps clearing, swaps dealer registration and
11 requirements, trade reporting, and regulated swaps
12 execution, is not based on academic theory and it's
13 not based on political ideology. It's based on 15
14 years of commercial experience in the marketplace.
15 Done right, these reforms are good for American
16 markets.

17 And so is today's proposal. It's not a
18 rollback but a policy improvement, a step forward to
19 enhance market health and vitality that is true to
20 congressional purpose and congressional intent. I
21 trust that market participants and interested
22 parties will fairly consider this proposal with the

1 good faith with which it is presented. And I look
2 forward to a broad and active discussion with the
3 public and with my fellow Commissioners.

4 So in closing, I compliment the DMO staff
5 for many hours of hard work, the quality of this
6 written proposal, and their thoughtfulness and
7 engagement throughout.

8 You know, it's satisfying to see how an
9 old white paper, with ample time and reflection, can
10 become a formal proposal before this esteemed
11 Commission.

12 I look forward to the public's comments, a
13 healthy discussion, and a final rule in 2019.

14 Thank you all very much.

15 Okay. Do my fellow Commissioners have any
16 final comments they'd like to make before we call
17 for a vote?

18 (No response.)

19 Mr. Kirkpatrick, could you please state
20 first the one proposal, then the other as a motion?
21 And then we'll take the vote.

22 MR. KIRKPATRICK: Yes. Thank you, Mr.

1 Chairman.

2 So the particular motion upon which the
3 Commission will now vote is on the approval of the
4 proposed rule on amendments to regulations on swap
5 execution facilities and the trade execution
6 requirement.

7 Commissioner Berkovitz?

8 COMMISSIONER BERKOVITZ: No.

9 MR. KIRKPATRICK: Commissioner Berkovitz
10 votes no.

11 Commissioner Stump?

12 COMMISSIONER STUMP: Aye.

13 MR. KIRKPATRICK: Commissioner Stump votes
14 aye.

15 Commissioner Behnam?

16 COMMISSIONER BEHNAM: Aye.

17 MR. KIRKPATRICK: Commissioner Behnam
18 votes aye.

19 Commissioner Quintenz?

20 COMMISSIONER QUINTENZ: Aye.

21 MR. KIRKPATRICK: Commissioner Quintenz
22 votes aye.

1 Chairman Giancarlo?

2 CHAIRMAN GIANCARLO: Aye.

3 MR. KIRKPATRICK: Chairman Giancarlo votes
4 aye.

5 So on the motion with respect to the
6 proposed rule on SEF amendments and the trade
7 execution requirement, the ayes have 4 and the no's
8 have 1.

9 Turning next to the motion, the Commission
10 will now vote on the approval of the request for
11 comment regarding the practice of post-trade name
12 give-up on swap execution facilities.

13 Commissioner Berkovitz?

14 COMMISSIONER BERKOVITZ: Aye.

15 MR. KIRKPATRICK: Commissioner Berkovitz
16 votes aye.

17 Commissioner Stump?

18 COMMISSIONER STUMP: Aye.

19 MR. KIRKPATRICK: Commissioner Stump votes
20 aye.

21 Commissioner Behnam?

22 COMMISSIONER BEHNAM: Aye.

1 MR. KIRKPATRICK: Commissioner Behnam
2 votes aye.

3 Commissioner Quintenz?

4 COMMISSIONER QUINTENZ: Aye.

5 MR. KIRKPATRICK: Commissioner Quintenz
6 votes aye.

7 Chairman Giancarlo?

8 CHAIRMAN GIANCARLO: Aye.

9 MR. KIRKPATRICK: Chairman Giancarlo votes
10 aye.

11 Mr. Chairman, on the matter of the request
12 for comment regarding the practice of post-trade
13 name give-up, the ayes have 5 and the no's have 0.

14 CHAIRMAN GIANCARLO: Thank you, Mr.
15 Kirkpatrick.

16 I'm going to turn to my fellow
17 Commissioners for any closing statements.

18 Before I do, I just want to thank the
19 staff. You know, good rule writing is hard work,
20 and preparing for these hearings is no picnic
21 either. So thank you all very much. You came very
22 well prepared, and we look forward to work going

1 forward. Thank you.

2 Would any of my fellow Commissioners like
3 to give any closing remarks?

4 (No response.)

5 CHAIRMAN GIANCARLO: Well, thank you all,
6 panelists, and thank you all, ladies and gentlemen.
7 Thank you, fellow Commissioners.

8 The meeting is adjourned.

9 (Whereupon, at 1:07 p.m., the meeting was
10 adjourned.)

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