UNITED STATES OF AMERICA

COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING OF THE COMMISSION

Washington, D.C.

Monday, June 4, 2018

PARTICIPANTS:

Commissioners:

CHAIRMAN J. CHRISTOPHER GIANCARLO

COMMISSIONER BRIAN D. QUINTENZ

COMMISSIONER ROSTIN BEHNAM

First Staff Presentation: Final Rule - Amendments to the Swap Data Access Provisions of Part 49 and Certain Other Matters:

AMIR ZAIDI
Division of Market Oversight (DMO)

DAVID E. ARON
Division of Market Oversight

DAN BUCSA
Division of Market Oversight

OWEN J. KOPON
Division of Market Oversight

Second Staff Presentation: Proposed Rule -- Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds:

MATT KULKIN
Division of Swap Dealer and Intermediary Oversight (DSIO)

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Division of Swap Dealer and Intermediary Oversight

ERIK REMMLER
Division of Swap Dealer and Intermediary Oversight

PARTICIPANTS (CONT'D):

Third Staff Presentation: Proposed Rule - Amendments to Swap Dealer Registration De Minimis Exception:

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Other Participants:

CHRISTOPHER KIRKPATRICK
Secretary of the Commission

ROBERT SIDMAN
Deputy Secretary

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P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN GIANCARLO: Good morning, this meeting will come to order. This is a public meeting of the Commodity Futures Trading Commission. I'm pleased to be joined today by my colleagues, Commissioner Quintenz and Benham, in our first public meeting together as a Commission. We are here today to consider one final rule amending the swap data access provisions, and two proposed rules amending the Volcker Rule and swap dealer de minimis calculations. We will not address the TAC committee charter, which will move through seriatim. Since this is the first meeting of the new commission, I will first review the order of proceedings. We will start with opening statements from each Commissioner. We will then have staff presentations for each of the items on today's agenda. After each presentation, there will be a motion to adopt the rule or item. Then I will open the floor to comments from each of the Commissioners and questions. Following the close

of discussion on each matter, the Commission expects to vote on the staff recommendation as presented. All final votes conducted in this public meeting shall be recorded votes. The results of votes approving the issuance of rulemaking documents will be included with those documents in the Federal Register. That is our procedure. Lastly, before our opening remarks, I note that these hearings require great preparation by CFTC staff. On behalf of myself and my fellow Commissioners, I thank the staff for their hard work and careful preparation.

My statement: I turn first to the swap data repository indemnification rule. Eight years ago Congress included in Dodd-Frank a requirement that foreign and domestic regulators indemnify SDRs and the Commission for any expenses arising from litigation relating to the information provided by the SDRs. Since then, foreign and domestic regulators have been unwilling to provide this indemnification, hindering our mutual ability to share swaps data and assess systemic risk

across global markets. I'm pleased that Congress has since amended Dodd-Frank to take out the indemnification provisions. Today, we propose to amend our regulations accordingly. The Dodd-Frank Act's original insistence on an indemnification requirement may have been well-intentioned to protect the safety of data held in SDRs. Yet, any such benefit is outweighed by the greater public interest in allowing international regulators to share and access information to carry out the regulatory and supervisory functions necessary to protect global financial and derivative markets. It is essential that policymakers in other jurisdictions make determinations similar to these before us today concerning current legal barriers to information sharing. Even a law like the new EU General Data Protection Regulation -- the GDPR -- which has laudable objectives, must not be applied in ways that hinder the sharing and access of information between European and U.S. regulators for regulatory and supervisory purposes. Such a

result could have dangerous implications for our global markets.

I hope today's action by the CFTC will encourage international regulators and policymakers to take affirmative steps to address other existing legal barriers to information sharing and regulatory access to data.

I turn next to amendments to the Volcker Rule. As we know, the rule is named for former Fed Chairman, Paul Volcker. The basic premise is to restrict use of insured depository's money for bank proprietary trading, but allow it for market-making, hedging and other traditional financial service activities. It is a sound premise, but one that relies on correctly identifying and separating these activities -- a task that is far from simple. Recognizing that the devil is in the details, Congress left the finer points of developing Volcker Rule regulations to five agencies: the Fed, the FDIC, the OCC, the SEC and our agency, the CFTC. Those five agencies issued the current rule in December of 2013. So we now

have four years of experience with the initial version of the Volcker Rule. In that time, concern has grown that U.S. regulators' first pass at the rule was not ideal in several respects.

Specifically, the rule causes confusion as to what is acceptable activity. It presumes unacceptable activity in various cases, and it imposes highly intensive compliance burdens in all cases; unfairly benefitting large Wall Street banks over smaller regional ones. A year-and-a-half ago I had the opportunity to speak about the rule with Chairman Volcker, who, incidentally, hails from Bergen County, New Jersey, where both Commissioner Behnam and I also grew up. Chairman Volcker said that he was proud of the rule that bears his name, but he also told me that regulators should have come up with something more straightforward than what is currently in place, especially for smaller banks. Well, the proposal before us today addresses that concern. It seeks to simplify and tailor the Volcker Rule to increase efficiency, right-size

firms' compliance obligations, and allow banking entities -- especially smaller ones -- to more efficiently provide services to clients. It takes a risk-based approach that relies on a set of clearly articulated standards for both prohibited and permitted activities and investments. It also reduces reporting, recordkeeping and compliance program complexity, where appropriate. And it addresses the implicit bias against market-making that is in the current version of the rule. Last year, I testified to Congress that the 2013 Volcker Rule presumes that some activities are impermissible proprietary trading that really should be permissible market-making. That presumption creates a bias against market activity and healthy trading liquidity, which is a first order concern for this agency.

Today's proposal would remove that bias by allowing banking entities the ability to engage in routine market-making without having to prove that each trade was not on the wrong side of that presumption. Why do these changes matter?

Because as monitored by the CFTC Market Intelligence Branch, current market conditions are becoming increasingly volatile as a result of a range of factors, including changes in U.S. monetary policy, strong U.S. economic growth and global political uncertainty. In higher volatility markets, such as we saw last week in European sovereign debt, durable trading liquidity and vigorous market-making are essential to smooth out trading gaps in price and supply, and avoid potential market panic. In fact, it was widely reported that last week's brief crisis in European sovereign debt markets was exacerbated, at least in part, by the reluctance of large banks to commit trading capital due to regulatory constraints like the Volcker Rule. That is why these amendments, simplifying legitimate market-making activity, are important to enhance market orderliness and resiliency in times of market stress. Yet, as important as these improvements are on their individual merits, perhaps more significant, is that we and the other

agencies are today re-endorsing, as a foundational element of US financial market regulation, the Volcker Rule, and its prohibition on bank proprietary trading with depositor funds. This fact must not go unrecognized in hyperbolic accounts of the significant, but still relatively modest, amendments before us today. Today's proposal is the product of the collaborative effort with the Federal Reserve, the FDIC, the OCC and the SEC. And I thank my fellow regulators for their close cooperation, especially my fellow agency Chairman and friend, Martin Gruenberg, who will soon step down. Marty worked with us to make sure today's amendments do not disrupt the core principles of Volcker and that its prohibition of propriety trading remain robust. And I take this opportunity to thank Martin Gruenberg for his fine public service.

Finally, I turn to the swap dealer de minimis definition. As you know, last year I requested that the Commission postpone a decision on the de minimis threshold for a year. That

decision was understandably disappointing to some, including my fellow Commissioners, who said they were then ready to vote on it. Yet, as I told Congress at the time, I did not just want to address the de minimis threshold; I wanted us to get it right. The CFTC staff have now had adequate time to analyze the most current and comprehensive trading data and arrive at a recommendation for the best path forward. They've provided the Commission with full access to the data they've used in that analysis. And they've also conducted additional and specific data analyses requested by my fellow Commissioners.

The data shows quite clearly that a drop in the de minimis definition from 8 billion to 3 billion would not have an appreciable impact on coverage in the marketplace. In fact, any impact would be less than one percent -- an amount that is truly de minimis. On the other hand, the drop in that threshold would pose unnecessary burdens for non-financial companies that engage in relatively small levels of swap dealings to manage

business risks for themselves and their customers. That would likely cause non-financial companies to curtail or terminate risk hedging activities with their customers, limiting risk management options for end-users, and ultimately consolidating marketplace risk in only a few large Wall Street banks. In my travels around the country over the past four years, I've met numerous small swaps trading firms that make markets in local marketplaces or in select asset classes. These firms are often housed in small community banks, local energy utilities and commodity trading houses. And they all trade below the 8 billion dollar level. Almost all of them told me that if the de minimis threshold were to drop to 3 billion, they would reduce their trading accordingly. They say that they just cannot afford to be registered as swap dealers. So, who would be the winners if these small firms reduce their market-making activities -- big Wall Street banks. Who would be the losers if these small firms reduce their market-making activities --

small regional lenders, energy hedgers and ag-producers, who would then become more dependent on Wall Street trading liquidity. And who would be the really big loser -- the U.S. economy, which would be become more financially concentrated and less economically diverse. That is why I think the proposed rule rightly balances the mandate to register swap dealers whose activity is large enough in size and scope to warrant oversight without detrimentally affecting community banks and agricultural co-ops that engage in limited swap dealing activity and do not pose systemic risk. Leaving the threshold at the 8 billion dollar level allows firms to avoid incurring new costs for overhauling their existing procedures for monitoring and maintaining compliance with the threshold. Eight billion is the right number. It fosters increased certainty. Let me say that again, it fosters increased certainty and efficiency in determining swap dealer registration by utilizing a simple objective test with a limited degree of complexity. And it ensures that

smaller market-makers and the counterparties with which they trade can engage in limited swap dealing without the high cost of registration and compliance, as intended by Congress when it established the de minimis dealing exception to begin with. This proposal incorporates feedback and input from my two fellow Commissioners and their fine staffs. We now look forward to feedback from the public and market participants.

I remain committed to finalizing this rule at 8 billion before the end of this year. I recognize that market participants need certainty. Today's proposal is a major step forward in doing just that. Thank you. I now recognize Commissioner Quintenz for his opening remarks.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman and thank you for calling this meeting. It's a great pleasure and privilege to be here with you this morning at my first open meeting as a Commissioner and first open meeting under your chairmanship. The matters before us today are important and timely. I think I'm going to pick

up exactly where you left off on the de minimis exception.

This rulemaking, which governs swap dealer registration, is fundamental to the Commission's effective oversight of the swaps market. Swap dealers are subject to extensive and costly regulatory requirements: Registration fees, minimum capital requirements, posting margin for uncleared swaps, IT costs for trade processing, reporting, confirmation and reconciliation, costs to create and send daily valuation reports to clients, costs for recordkeeping obligations, third-party audit expenses, legal fees to develop business conduct rules, expenses to implement them, and many, many more. If that sounds like a big bill, it is. A prominent economic research firm estimated the present value of the cost to registering as a swap dealer for a non-financial commodity firm at $390 million per firm. Those significant requirements and costs are imposed to advance equally significant policy objectives, such as the

reduction of systemic risk, increased counterparty protections and enhanced market efficiency and integrity. Therefore, the registration threshold, as the trigger mechanism for those costs and objectives, must be appropriately and specifically calibrated to ensure that the correct group shoulders the burdens of swap dealer regulations, because they are the best situated to realize the corresponding policy goals of that registration. I've stated previously in great detail and with considerable evidence the importance of appropriately calibrating the de minimis threshold so that entities posing no systemic risk and with a relatively small market footprint are not regulated under a regime that is more appropriate for the world's largest and most complex financial institutions.

If we fail to calibrate this threshold appropriately, firms at the margin will likely reduce their activity to avoid registration, as the Chairman just described, as opposed to serving their clients' interests and accepting the burdens

of registration. A public policy choice which drives away market participants and which reduces market activity is undeniably flawed. From my first confirmation hearing in 2016 to the present day, in meetings with elected representatives, in my second confirmation hearing, in interviews with the press and discussions with market participants, and in public remarks at event forums, I have been adamant that notional value is a poor measure of activity and a meaningless measure of risk and therefore, by itself, is a deficient metric by which to impose large costs and achieve substantial policy outcomes. Therefore, I have some reservations about this proposal's continued reliance on a one-size-fits-all notional value test for swap dealer registration.

I still believe, and will continue to believe, that the criteria for determining swap dealer registration should be more closely correlated to risk. However, if any final rule is going to settle for an activity-based threshold, a

notional value metric should at least, in my opinion, be combined with additional measures such as dealing counterparty count and dealing transaction count, to determine what constitutes a truly de minimis quantity of swap dealing activity. Including additional measures should mitigate the instances of false positives that could result from the use and deficiencies of any one activity-based metric. While it would have been my preference that this concept appear in the proposal's rule text as the operative standard, I am very grateful to the Chairman and DSIO for including a very robust discussion in the preamble on the merits of replacing the current notional value de minimis threshold with a three-prong test.

Specifically, the preamble suggests an entity could qualify for the de minimis exception if its activity is below any of the following three criteria: A notional value threshold; a proposed dealing counterparty count threshold; or a proposed dealing transaction count threshold.

Said differently, in other words, an entity would have to surpass all three hurdles collectively in order to lose the de minimis exception's safe harbor. I've included several questions in the proposal that ask for feedback on this approach, particularly with respect to the dealing counterparty and transaction count thresholds, which I believe would provide market participants with additional flexibility to serve their clients' needs without triggering a very costly and burdensome registration process.

I thank the staff of DSIO for including my questions in the proposal and welcome market participants' feedback on this potential approach. I also welcome comments on the proposed rule's preamble discussion on accounting for exchange-traded or cleared swaps in an entity's de minimis calculation. Many of the policy goals of swap dealer regulation are accomplished when a swap is exchange-traded or cleared. For example, systemic risk concerns are diminished with respect to cleared swaps: The swaps are standardized; the

executing counterparties do not incur counterparty credit risk, because they face a clearinghouse; and each side is required to post margin that helps guarantee performance and prevent unfunded losses from accumulating. Removing such swaps from the de minimis calculation would better align the registration threshold with risk and would also, I believe, encourage additional liquidity on SEFs. I'm hopeful that with the benefit of additional industry comment and further analysis by the Commission, that the Commission will either adopt an exclusion for exchange-traded and cleared swaps or adjust their notional weighting in an entity's de minimis calculation.

We must remember that the Commission is not establishing the de minimis threshold in a vacuum. Subsequent to the adoption of the swap dealer definition, other regulatory requirements have gone into effect which also advance the goals of swap dealer registration, such as mandatory clearing, SEF trading, reporting swap data to repositories, and margin requirements for

uncleared swaps. For example, regardless of whether or not an entity is registered as a swap dealer, its swap activities are transparent to the Commission because of the swap data and real-time reporting obligations that are applied to all market participants.

Finally, I would like to commend the Chairman and DSIO for including many important improvements, which I fully support, to the de minimis exception in this proposal. For instance, I support an appropriate IDI exemption that will allow banks to serve their clients' needs by removing unnecessary timing restrictions and expanding the types of credit extensions that qualify for the exclusion. The proposal should improve the ability of IDIs to help customers hedge loan-related risks as the statute intended. I also support the proposed rule's clarification that swaps that hedge financial risks may be excluded from an entity's de minimis calculation. Market participants should be able to use swaps to manage their financial and physical risks without

concern that such activity may trigger swap dealer registration.

When the Commission first established the $8 billion de minimis threshold in 2012, it did so without the benefit of any swap data. Now, almost six years later, staff has conducted a comprehensive analysis of the available data that's collected by the Commission registered SDRs and has presented estimates about the impact that a lower or higher notional threshold would have on swap dealer registration. Although much work remains to be done to further refine that data, particularly with respect to the non-financial commodity asset class, I commend the staff for their hard work, progress and thoughtful analysis. I also believe the data in the proposed rule clearly supports maintaining the de minimis threshold at $8 billion or higher. I will vote in favor of issuing this proposal to the public for feedback and look forward to hearing from market participants about how these proposed amendments can be further refined or calibrated to increase

the efficacy of the de minimis threshold to meet the goals of swap dealer registration.

Regarding today's consideration of the Volcker Rule, I support today's proposal to amend the Volcker Rule and efforts to recognize core elements of a banking entity's trading activity in a manner consistent with the statute. I'm pleased that the proposal would revise elements of the prohibition on proprietary trading to provide banking entities, including CFTC-registered swap dealers and FCMs, with greater flexibility in their trading activities, and to simplify their compliance with the rule. I think we all need to remember that banks and financial intermediaries are in the business of taking risk. When a bank extends a mortgage to a homebuyer, it is taking a proprietary risk. When a bank provides working capital to a farmer, it is taking a proprietary risk. When a bank provides a revolving credit facility to a small business, it is taking a proprietary risk. And in the context of the CFTC's jurisdiction, when a financial firm allows

a client to hedge its exposures so the client can focus on its core competency and better predict its operations, that financial institution is taking a proprietary risk. All of these financial functions provide crucial support to our economy and go to the heart of the complexity of implementing the Volcker Rule, which is the distinction between taking a proprietary risk that serves clients and a proprietary trade that is generated purely by the financial institution.

This proposal intends to tailor the requirements of the Volcker Rule to focus on entities with relatively large trading operations, and to simplify regulatory requirements by clarifying prohibited and permissible activities. I'm particularly pleased that the proposal requests public input regarding key exceptions to the proprietary trading ban, concerning market-making, loan-related swaps and risk-mitigating hedging. I would like to highlight that today's proposal serves as an example of effective cooperation among five

regulators: The CFTC, the SEC, the Federal Reserve, the OCC and the FDIC. I firmly believe in interagency cooperation over areas of joint jurisdiction and I applaud the Chairman for his hard work to develop productive and positive relationships with our fellow regulators. Finally, I'd like to thank the staff of DSIO for their efforts on this matter.

Lastly, turning to indemnification, I'd like to thank the staff of DMO for their work to amend part 49 of our regulations to implement provisions of the FAST Act. The FAST Act repealed Dodd-Frank's requirement that to obtain data from swap data repositories registered with the CFTC, domestic and foreign authorities must indemnify the CFTC and SDRs from any claims arising from an SDR's production of information to those authorities. Foreign regulators unfamiliar with the U.S. tort law concept of indemnification, which is inconsistent with their traditions and legal structures, have opted against requesting any information from SDRs. Domestic regulators

have also opted against requesting information from SDRs because of the indemnification requirement. Removing this requirement will facilitate the sharing of SDR information with domestic and foreign authorities and better enable regulators in the U.S. and abroad to monitor risks of the global financial system. Thank you again, Mr. Chairman, and to the staff for bringing these important rules to our consideration.

CHAIRMAN GIANCARLO: Thank you, Commissioner Quintenz. Commissioner Behnam for your statement.

COMMISSIONER BEHNAM: Thank you, Mr. Chairman. I'd like to start with a very big thank you to all the Commission staff who worked today to make today's meeting possible; both those who will be presenting at the table today and those who work tirelessly behind the scenes. Very pleased to be here this morning for the Commission's first open meeting since 2016. I am optimistic that this will be the first of many public meetings as the Commission begins to move

to propose and implement important rules such as the ones we are discussing today. I came to the Commission in September 2017 with great excitement and anticipation about the chance to roll up my sleeves and participate in this endeavor. Last October when we moved the phase-in date for the de minimis threshold back another year, I said that we should have dealt with the issue then. I am glad that today's meeting is finally here to discuss the de minimis threshold in a public forum and begin the process of engaging with the public and market participants to hopefully formulate a final rule on this important issue and finally provide long needed regulatory certainty. Also on the schedule today is the final rule amending part 49 and the Commission's regulations regarding swap data access. The Fixing America's Surface Transportation Act of 2015, also known as the FAST Act, modified CEA section 21 to remove a requirement that entities requesting access to swap data repository data execute a confidentiality and indemnification agreement. In

January 2017, the Commission issued proposed amendments to part 49 related to the FAST Act removing references to the previously required indemnification agreement. I'm very happy that we're discussing a final rule today nearly two-and-a-half years after passage of the FAST Act and nearly a year-and-a-half after our own proposal. I'm hopeful that this is a indicator that we will be addressing some long outstanding proposals and issues in the coming months. I also want to compare this to our timeline for the de minimis threshold and point out that the indemnification rule has taken us more than 16 months to go from proposal to final rule -- on a rule where we address one industry comment that was nine pages in length. Making strong effective final rules takes a lot of time and hard work, as staff can attest. I'm not saying that we have moved too slowly on indemnification. I think we have moved at an appropriate pace and I know that staff was working hard throughout the past 16 months. My point is that this is how long good

rulemaking often takes. We have our work cut out for us on the de minimis if we want to get a final rule done by October. The longest item on our agenda for today is proposed amendments to the Volcker Rule. The rules under section 13 of the Bank Holding Company Act related to prohibitions and restrictions on proprietary trading. Under the statute, authority for developing the regulations is divided among the Fed, the FDIC, the OCC, the SEC and the CFTC. Last week, the Fed, the FDIC and the OCC all voted to issue the same proposed amendments that we vote on today. Following the 2008 financial crisis, Congress adopted Title VII of Dodd-Frank, which improved transparency through mandatory clearing and exchange trading of standardized swaps, and comprehensive record keeping and reporting requirements. The Volcker Rule is one of the core reforms in response to the financial crisis. My concern is that our action may encourage a return to the risky activities that led to the financial crisis or perhaps further consolidate power within

a few financial institutions. I would like to close my opening remarks the same way I started them, by thanking Commission staff for their hard work both on these rules and in their daily work despite limited resources. I look forward to their presentations. Thank you.

CHAIRMAN GIANCARLO: Thank you, Commissioner. At this point, pursuant to standing practice, I ask for unanimous consent to allow staff to make any technical corrections to the documents voted on today prior to sending them to the Federal Register. Any objection?

COMMISSIONER QUINTENZ: [Shakes head no.]

COMMISSIONER BEHNAM: None.

CHAIRMAN GIANCARLO: Without objection, so ordered. At this time I'd like to welcome the following staff for their presentations on the final rule making amendments to the swap data access provisions of part 49 and certain other matters, also known as the indemnification rule. First from the Division of Market Oversight, Amir

Zaidi, the Director and Dan Bucsa, Deputy Director, David Aron, Special Counsel and Owen Kopon, Special Counsel. Please proceed.

MR. BUCSA: Thank you, Mr. Chairman and Commissioners, for the opportunity to discuss the amendments to the swap data repository, or SDR, swap data access provisions of the Commission's regulations. Interesting non-jurisdictional fact of the day -- today is the anniversary of the allied liberation of Rome on June 4, 1944, after struggling through Italy for almost one year. Many folks are not aware of this monumental event, as it was quickly overshadowed by D-Day and the allied invasion of Western Europe in Normandy two days later on June 6th. Today is also a big day for the Commission, with three rules on the docket, and I presume that everyone has buzzwords like Volcker and de minimis in mind rather than indemnification, and rightly so. That being said, one should not ignore or take for granted the benefits of this rulemaking or forget its contribution, similar to the military history

example. I make that statement with almost zero subjectivity and minimal conflict of interest since our team worked on this particular matter. The part 49 final rules are a result of considerable time and effort and I would like to thank all parts of the agency that assisted. I'd especially like to recognize two members of the Division of Market Oversight: Dave Aron, who served as team lead and Owen Kopon, whose hard work and stick-to-itiveness got us to this point. The rule before the Commission is based upon three key pillars. One, regulators need to be deemed appropriate either via statute or a Commission order. Two, regulators must define their scope of jurisdiction in order to facilitate SDRs providing them access to the relevant data. And three, regulators must sign a confidentiality arrangement to ensure the protection of the data being accessed at the SDR. Now, I will turn it over to Dave and Owen to summarize some of the key provisions of the rule and comments the Commission received in response to the proposed rule. Then I

will discuss some of the high level benefits of the rules before answering any questions you may have.

MR. ARON: Thanks Dan. The adopting release under consideration today would amend part 49 of our regulations relating to access to swap data maintained by SDRs. The final rules seek to promote effective and consistent global regulation of swaps while continuing to protect the confidentiality of swap data maintained by the SDRs. The final rules are driven by amendments to the CEA contained in the FAST Act. The FAST Act removed the requirement that an entity requesting data from an SDR indemnify both the CFTC and the SDR for litigation expenses relating to the data provided. To date, no regulators were willing or able to agree to that indemnification, so the SDRs have not given them access to swap data. While today's rules would facilitate such access, the protections of CEA section 8 remain in place to safeguard the confidentiality of SDR swap data. The CEA requires SDRs, subject to certain

confidentiality requirements, to make swap data available to certain enumerated entities and to any other domestic and foreign entities the CFTC determines are appropriate. These appropriate entities are called appropriate domestic regulators, or ADRs, and appropriate foreign regulators, or AFRs. SDRs are required to make such data available on a confidential basis pursuant to CEA section 8, but may make such data available only after receiving a written agreement from the ADR or AFR stating that it will abide by the confidentiality requirements of section 8. These section 8 confidentiality requirements were not modified by the FAST Act amendments. Swap data maintained by SDRs are highly sensitive and proprietary in nature. Consistent with the requirements set forth in section 8, it's critical that such data are made available only to ADRs and AFRs and only to the extent of swap data within their scope of jurisdiction. Robust systems safeguards and policies are necessary in order to continue to protect the confidential SDR swap data

shared with ADRs and AFRs. In order for market participants whose swap data are housed in SDRs to remain confident in the confidentiality of such data, ADRs and AFRs must appropriately access and diligently protect such data. One of the ways that the final rules would protect confidentiality is by establishing a process by which the CFTC may determine an entity is an appropriate recipient of SDR swap data. Congress and the CFTC have already enumerated certain U.S. regulators as appropriate recipients of SDR swap data. If adopted, the final rules would set forth a process for other regulators to receive a determination order from the CFTC stating that they're appropriate SDR swap data recipients. The final rules state that the CFTC will evaluate certain factors before granting appropriate status. These factors include, but are not limited to, whether we receive access to swap data housed in trade repositories subject to the oversight of the ADR or AFR and whether an MOU or other arrangement is in place to assist us in obtaining data from other jurisdictions and our

experience, if any, in dealing with an entity seeking swap data access. Staff believes that reciprocal access to swap data will increase transparency in regulated markets, which will improve global oversight. The final rules also address the scope of SDR swap data the ADRs and AFRs may access. In order to implement Congress's requirement that SDRs provide access to swap data, subject to the confidentiality and use requirements of CEA section 8, the final rules would require each ADR or AFR to execute a confidentiality agreement with the CFTC that sets forth the scope of the ADR's or AFR's jurisdiction as it relates to the swap data they seek from SDRs. The final rules would further protect the confidentiality of SDR swap data by defining the scope of data access by ADRs and AFRs in terms of the scope of an ADR's or AFR's jurisdiction. The final rules would also allow the CFTC to control the process of granting access to SDR swap data and avoid forcing SDRs to assume a gatekeeper role. The final rules also would require the CFTC

to be a party to the confidentiality agreement, which would allow us to evaluate the description of the ADR's or AFR's scope of jurisdiction. Additionally, the final rules would allow the agency to direct SDRs to suspend or revoke access to swap data in certain circumstances, such as in the event of a breach of confidentiality by an ADR or AFR. This will allow us to evaluate and adjust access as appropriate, further protecting the confidentiality of swap data. In order to facilitate timely and efficient access to SDRs' swap data, while still preserving confidentiality, the final rules include a confidentiality agreement form to be used by ADRs and AFRs. By publishing this form, staff hopes to streamline the process for ADRs and AFRs to gain access to SDRs' swap data and to allow them to receive data sooner rather than later. The form seeks to reduce the burden on ADRs, AFRs and SDRs and to preserve limited staff resources while still ensuring adequate confidentiality assurances are in place. To protect the confidentiality of SDR

swap data, the form includes a number of undertakings by ADRs and AFRs designed to prevent unauthorized disclosure and misuse of the swap data. Now, I'll turn it over to future Chairman Award winner, Owen J. Kopon, to discuss the comments we received in the rulemaking process.

MR. KOPON: Thanks, David. In response to the proposed rulemaking, the Commission received one responsive comment letter that was submitted jointly by three swap data repositories: The Chicago Mercantile Exchange; DTCC Data Repository and Ice Trade Vault. The SDRs were supportive of the modification to the confidentiality arrangement process that would reduce regulatory burdens by making the Commission rather than the SDRs party to the confidentiality arrangement. Additionally, the SDRs were supportive of the publication of a form of confidentiality arrangement promoting consistency and further reducing regulatory burdens. The SDRs were also supportive of applying the appropriateness determination process to any

entity that is not already enumerated as an appropriate regulator in 49.17(b). One of the main concerns that the SDRs raised in their comment letter was related to how to determine whether particular swap data falls within an ADR or AFR scope of jurisdiction. The SDRs' concern was that they do not have sufficient information to make such a determination and that the Commission is in the best position to determine whether swap data is within a particular regulator's scope of jurisdiction. The SDRs also expressed a concern that the Commission provide sufficient lead time for the SDRs to come into compliance with the final rules. Staff engaged in a number of conversations with the SDRs relating to these concerns, and the final rules address the SDRs' concerns in the following ways. With respect to the determination of whether a data request falls within a requesting entity's scope of jurisdiction, the final rules make clear that the SDR's role is limited to applying the specific parameters that are set out in the confidentiality

arrangement and agreed to by the Commission and the requesting entity. In order for the SDRs to be able to efficiently process data requests from other regulators, they must be able to automate the data queries that they receive. Requesting entities should describe their scope of jurisdiction in terms of the existing part 43 and 45 data fields. Specifically, legal entity identifiers and product identifiers will be important elements for other regulators to utilize to describe their scope of jurisdiction in a way that allows SDRs to automate their swap data access. With respect to compliance lead time, the required compliance timeframe for SDRs to provide access to swap data in the final rules is tied to when an SDR receives an executed confidentiality arrangement. The adopting release requires that an SDR would provide swap data access to a requesting entity no later than six months after it receives an executed confidentiality arrangement. Staff looks forward to continuing to work with the SDRs to ensure a smooth

implementation of the swap data access final rules. And with that, I'll turn it back to Dan to discuss some of the benefits of the final rules.

MR. BUCSA: Thanks, Owen. This rulemaking is expected to assist other regulators in performing their supervisory functions by providing them, for the first time, access to SDR swap data. This access would help them better understand the risks their regulated entities are assuming and the impact on the broader markets. Swap data access could improve early warning systems that might ultimately reduce the probability and/or severity of a crisis. While predicting the nature of the next market event is a challenging task, broader access across the regulatory community to this swap data will more likely generate a better-informed, calculated and successful response to whatever comes to pass. Access to SDR swap data may also facilitate collaboration among the Commission, ADRs and AFRs, which sometimes use data in isolation given their different mandates in comparing the results with

the respective SDR swap data analyses. The benefits of regulatory collaboration are likely to persist, if not expand over time, as regulators gain experience working together regarding swaps data. We believe this rulemaking represents a critical element of effective market oversight. Performing systemic risk analysis is difficult as a result of the fragmented regulatory structure that exists both domestically and internationally. The financial markets are global in nature and contain correlated instruments dispersed across different authorities. Regulating markets utilizing only information available through one particular regulator's regime is sub-optimal due to the various instrumentations of the same underlying risks. For instance, regulating the credit and equity asset classes would benefit from combining information concerning single name, index, basket and equity exotic activity in both cash and synthetic markets. The same applies to conducting comprehensive risk analysis within particular conglomerates or across the financial

ecosystem, since risk is not limited to only futures and swaps. Regulators may face challenges analyzing market, counterparty or systemic risk with only the data at their disposal pursuant to their individual mandates. These limitations presumably impact similarly situated regulators across the globe. This rule should generate substantial benefits by expanding the accessibility of SDR swap data to other regulators, thereby supporting holistic oversight and data-driven policymaking. Similar to the Italian campaign history lesson, where D-Day would not have been as successful without the presence of other fronts, the work of the international regulatory community will not be optimized without regulators helping each other. Regulators will be afforded a more complete picture of the global financial system as more ADRs and AFRs access SDR swap data and incorporate it into their work. Although this rule only provides other regulators access to swap data maintained in SDRs regulated by the Commission, we expect it to foster access

by the Commission to the swap data maintained at trade repositories regulated by other authorities, which will further increase the benefits of the rule. The rule amendments provide a process by which appropriate entities may access, use and maintain the confidentiality of SDR data. If the Commission adopts the final rules, other regulators would have a clear path to follow in order to be able to access SDR swap data. Staff has been working diligently via guidance, rulemaking and enforcement to improve the quality of swaps data. In order to ensure these efforts by staff to expand its swap data access results in effective global oversight, it is critical the reporting counterparties and SDRs commit the necessary attention and resources to provide timely, complete and accurate data. Thank you for your time, and we look forward to any questions you may have.

CHAIRMAN GIANCARLO: I thank you for your presentation and I thank you for the reminder of the importance of today's date. To begin our

discussion and consideration of these rulemakings, I will now entertain a motion to adopt the Division of Market Oversight's final rule making amendments to the swap data access provisions of part 49 and certain other matters, as presented by the staff. May I have a motion?

COMMISSIONER QUINTENZ: So moved.

CHAIRMAN GIANCARLO: Second?

COMMISSIONER BEHNAM: Second.

CHAIRMAN GIANCARLO: Now I'd like to open the floor to allow the Commissioners to make any statements and ask any questions that they may have. I have no questions. Commissioner Quintenz?

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman. I just have two quick questions. I would like to build on your discussion, Dan, of the importance of this rule and the importance in bringing transparency to the swaps market. As a bank analyst during the financial crisis, it was my opinion and strong view that it was the opacity surrounding the derivatives markets, not

necessarily the exposures of financial institutions in the derivatives market, that created the situation for investors and the general public to assume the worst that fed into a panic that exacerbated the crisis. So I believe that bringing transparency to this market is, in my opinion, the most important reform of Dodd-Frank, and I compliment your work in bringing that to a reality here with this rule. But in terms of the questions, I think -- could you give us a little color as to why you carved out certain ADRs and AFRs that have swap data reporting rules or oversight of SDRs out of the otherwise applicable requirements?

MR. ARON: I'll take that. Thanks for the question. So, we're actually taking the same approach that the Commission took in 2012 and the interpretative statement. So, basically we didn't think that Congress intended to subject regulators who have their own independent authority over swap data and SDRs to our final rules. In other words, if an SDR is dually registered with us and with

another regulator, we thought that the regulator should be able to access the swap data and that SDR pursuant to their own regime.

COMMISSIONER QUINTENZ: Okay, thank you. And just really quickly, the final rule says that we're requiring other regulators to sign a specific form of confidentiality arrangement but we have the discretion to permit some deviation from that form. Can you explain that a little further for us?

MR. ARON: Sure. The basic requirement is that all ADRs and AFRs seeking swap data from SDRs have to sign the form but we realize some regulators might have specific concerns and want to make some tweaks to the form, so as long as we feel we're not losing any protections that are built into the form, we'll keep an open mind and try to find a solution that both lets us give access to appropriate regulators and protects the confidentiality of swap data pursuant to CEA section 8.

COMMISSIONER QUINTENZ: Okay. Thank you

very much.

CHAIRMAN GIANCARLO: Commissioner Behnam.

COMMISSIONER BEHNAM: I'm going to take a quote from the single comment letter that we received requesting "sufficient lead time for SDRs to implement the necessary technology safeguards to limit access according to a regulator's scope of jurisdiction, purchase additional hardware, or hire additional staff, if needed." How does the final rule address that concern in terms of implementation timeline and transition?

MR. ARON: Well, we spent a lot of time talking to the SDRs during the process after they sent that letter, so, it's all listed in our communications. So we came to believe that they were comfortable with six months and it's hard to set a specific deadline because they all have competing obligations and we don't know exactly which regulators are going to get through the process first and how many at the same time. And so, we basically -- that's why we work so much

with them to make sure we arrived at a compliance time-frame that we thought would work, while at the same time assuring that other regulators who have been waiting quite some time, as you pointed out in your opening statement, will be able to get the swap data sooner rather than later for the reasons that Dan mentioned in his presentation.

COMMISSIONER BEHNAM: How many ADRs and AFRs do you anticipate are going to request swap data?

MR ARON: Ever or initially?

COMMISSIONER BEHNAM: I think initially in these first few months. And I guess a follow-up is this all going to come flood gates or do think it's going to be --

MR. ARON: No.

COMMISSIONER BEHNAM: -- spread out over time?

MR ARON: Well, we think that the -- we've been speaking to the U.S. regulators, the prudential regulators in particular, and the SEC for some time -- we're required to coordinate with

them. So, we think that they will be first. We know some of them have concerns so we'll work with them and we don't think it will be floodgate, we need to work through their description of the scope of jurisdiction. So, it's not going to be like they send it in and we just ship it over to the SDR but it'll be manageable.

MR. BUCSA: In addition to that, not just the scope of jurisdiction that they have yet to create since they haven't seen the final approved Commission rule, but, they have to create the scope of jurisdiction, they have to define it in a way using data fields that exist in the data to facilitate the SDR in providing access, which is expected to save some time. We have to review and analyze their submission of their scope of jurisdiction. And in addition, they have to either agree to sign the form of confidentiality agreement or negotiate a separate one. So, for that reason, our expectation is, even though there are a handful of enumerated appropriate regulators, it will take some time to process each

and every one, most likely.

COMMISSIONER BEHNAM: Thanks and I guess finally, this isn't going to be a resource burden; this is a new additional sort of work load that DMO's going to have to take on. Have you thought about what that might look like in the future as we start receiving these requests and agreements?

MR. BUCSA: It's likely more of a resource burden for the Commission and the agency as a whole, not just DMO necessarily, but, we have envisaged this as we drafted the final rules. And you are correct, it is a new burden and we'll just have to see what comes to pass and how quickly they apply, how difficult it is, how willing they are to sign the form. But obviously, any description of a scope of jurisdiction that is not sufficient or is not clear is going to require more time and effort and delay their access. Any wish to negotiate away from the form is going to require more time in the end, further delaying their access as well. So, that's a determination that every regulator applying will have to make on

their own.

COMMISSIONER BEHNAM: Thank you. I want to thank staff for their presentation, answers and hard work on this rule. As I said in my opening remarks, reforms established in 2009 by the G20 leaders and later included in Title VII of Dodd-Frank have shed much needed light on the previously unregulated swaps market. The CFTC and our foreign counterparts are in a much better position today to consider and evaluate data, and ultimately, identify market risk as a result of today's final rule. Additionally, today's final rule will further enhance our position by making it easier for regulators to share data. Greater access to data and cooperation among regulators domestically and internationally furthers the goal of transparency established by the G20 leaders in 2009 and codified in Dodd-Frank. It is a critical tool in preventing future financial disruptions, big and small. I do, however, want to briefly highlight and follow-up on my question -- the additional responsibilities the Division of Market

Oversight and the CFTC more generally will inherit because of this rule. The CFTC has dedicated staff who will never say that a job cannot be done regardless of budget constraints. However, this rule creates additional responsibility for an agency that is operating on a shoestring budget. I am hopeful that Congress will provide us with the budget we need to fulfill our mission and be the best regulators we can be. Thank you, Mr. Chairman.

CHAIRMAN GIANCARLO: Thank you for that statement; I couldn't agree more. The challenges of this rule and others in turn on our shoestring budget, as you put it, are considerable. Before we go to a vote on this, I just note that I support this final rule. At the time Dodd-Frank was passed, Chairman Barney Frank said if we get some things wrong we will fix them. This is an example of Congress having fixed it. Former CFTC Commissioner Mike Dunn also said if we get some of our rules and regulations wrong, we can fix them. So today before us is an opportunity to fix that

as well. So I hope that June 4th marks not only the date that Rome was liberated but the day we liberate our data and enable us to share it with our overseas counterparts. Commissioner Quintenz, do you have any final statement to make before we call for a vote?

COMMISSIONER QUINTENZ: No, I don't. Thank you, Mr. Chairman.

CHAIRMAN GIANCARLO: You're sure?

COMMISSIONER QUINTENZ: No, I don't, thank you very much.

CHAIRMAN GIANCARLO: Okay, are Commissioners prepared to vote? Okay, Mr. Kirkpatrick would you please call the roll?

MR. KIRKPATRICK: Thank you, Mr. Chairman. The motion now before the Commission is on the adoption of the final rule making amendments to the swap data access provisions of part 49 and certain other matters. Commissioner Behnam.

COMMISSIONER BEHNAM: Aye.

MR. KIRKPATRICK: Commissioner Behnam

votes, aye. Commissioner Quintenz.

COMMISSIONER QUINTENZ: Aye.

MR. KIRKPATRICK: Commissioner Quintenz votes, aye. Chairman Giancarlo.

CHAIRMAN GIANCARLO: Aye.

MR. KIRKPATRICK: Chairman Giancarlo votes, aye. Mr. Chairman, on this matter the ayes have three the no's have zero.

CHAIRMAN GIANCARLO: Thank you, Mr. Kirkpatrick. Okay, at this time then I'd like to dismiss the panel. Thank you very much for your fine work and fine presentation. We'll now take up the Volcker Rule, and for presentations we have the Division of Swap Dealer and Intermediary Oversight.

Before us today we have Matthew Kulkin, Director; Erik Remmler, Deputy Director and Cantrell Dumas, Special Counsel. Please proceed when you're ready.

MR. KULKIN: Good morning, Mr. Chairman, Commissioners Quintenz and Behnam. The Division of Swap Dealer and Intermediary Oversight is

pleased to present for your consideration, the notice of proposed rulemaking entitled, "Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in and Relationships with Hedge Funds and Private Equity Funds." The proposal would amend part 75 of the Commission's regulations that implement what is commonly known as the Volcker Rule. Before summarizing the rule's particulars, I'd like to recognize the hard work of the staff sitting here with me today -- Erik Remmler and Cantrell Dumas. Erik helped develop the current Volcker regulations in 2013 and he and Cantrell are the staff leads for overseeing implementation of the regulations and coordinating with the other four agencies also involved in implementing the Volcker Rule. I'd also like to recognize the significant contributions of Jeffrey Hasterok in DSIO, who led our Volcker Rule metrics work, Mark Fajfar and Carlene Kim in the office of General Counsel, and Steve Kane in the office of the Chief Economist. The Volcker Rule resides in section 619 of the

Dodd-Frank Act and is codified as section 13 of the Bank Holding Company Act. The statute generally prohibits banking entities from engaging in proprietary trading and from owning or controlling hedge funds or private equity funds, which are called covered funds in the regulations. The regulations established the parameters of permitted exceptions to the prohibitions, specified banking entity compliance program requirements and provide for metrics reporting by certain banking entities. The current Volcker regulations were adopted as part 75 in December 2013 and are virtually identical to the regulations adopted by the other four agencies. Experience has shown that the complexity of the regulations has created compliance uncertainty for firms subject to the rule. The proposed changes are intended to streamline the rule by eliminating or modifying requirements that are not necessary to effectively implement the statute, without diminishing the safety and soundness of banking entities. At this time I'd like to turn it over

to Erik, who will describe the development of the proposal and summarize the amendments therein.

MR. REMMLER: Thank you, Matt. Good morning, Commissioners. I'll begin by describing why the amendments are being proposed, then talk about the CFTC registrants that are affected by these amendments and finish with a note about recent legislation that has amended the Volcker statute. Cantrell will then do the heavy lifting today by providing a summary of the amendments.

The Volcker statute requires the five agencies charged with administering it to coordinate closely on developing and implementing the regulations. The proposal before you today was jointly developed with the other agencies, and an identical document has either been adopted or will be adopted soon by the SEC. Since the existing Volcker regulations were developed, the staffs of the agencies have had several years of experience with their practical application. This experience has included examinations and regular daily oversight of banking entities for Volcker

compliance and numerous meetings with banking entities and industry groups regarding the significant practical implementation issues. The staffs of the agencies regularly, often weekly, discuss the issues and concerns that arise from these implementation activities. Through that process, concerns have developed that some parts of the existing regulations are unclear and difficult to implement in practice. The changes proposed today would have identified -- have been identified as opportunities consistent with the statute to tailor and simplify the regulations based on the trading activities and risks arising therefrom for the wide variety of banking entities subject to the Volcker Rule. The proposal is intended to improve the effective allocation of compliance resources by both the banking entities and the agencies charged with administrating the regulations. Importantly, these proposals seek to allow the banking entities to more effectively provide services to clients in a manner consistent with the requirements of the statute. We've

mentioned the term "banking entities" many times already this morning, and these are the entities that are subject to Volcker. To help put this effort into context here today, I will briefly describe the CFTC regulated entities that are banking entities as defined. The definition includes insured depository institutions and their holding companies, certain foreign banking organizations subject to oversight in the United States, and notably, all affiliates and subsidiaries thereof. Many of these banking entities are not subject to CFTC regulation, but are subject to regulation by the prudential banking regulators or the SEC and those are the regulators that oversee those banking entities. CFTC registrants subject to the definition include swap dealers and FCMs that are IDIs or more commonly, affiliates of the IDIs or foreign banking organizations. We estimate that there are approximately 105 swap dealers and FCM's that are banking entities. In addition, certain types of commodity pools are included in the definition of

covered funds and so those pools and their operators may be impacted to the extent the banking entities are prohibited from owning or sponsoring the pools or having certain relationships with them. Most of the changes that are proposed tailor the compliance obligations to the size of the entity's trading activities or streamline and simplify the requirements of permitted market-making and hedging activities. The CFTC registrants that will be most affected are the swap dealers that are banking entities. The changes will streamline the day to day compliance requirements for swap dealers in the dealing and hedging activities that are fundamental to their businesses. These changes are intended to increase compliance efficiency and reduce compliance uncertainty without diminishing the intended benefits of the rule. This will help the swap dealers to better serve their customers in a timely and cost efficient manner. And finally, a note about the Economic Growth, Regulatory Relief and Consumer Protection Act

adopted on May 24th. That act amends the Volcker statute primarily by excluding from Volcker small banks with limited trading activity. These banks are much less likely to undertake the activities Volcker was intended to regulate. No changes are proposed in the draft release before you today that would implement the new statutory amendments. The five agencies plan to address the statutory amendments through separate rulemaking. Importantly, the regulatory amendments proposed today would not be inconsistent, though, with the statutory amendments in the act. So, with that I will now turn the presentation over to Cantrell Dumas to provide a summary of the proposal before you.

MR. DUMAS: Thank you, Erik. As Erik mentioned, we have gained substantial insight in experience since 2013. Based on implementation experience, we believe Volcker can be simplified and tailored to reduce the cost of compliance in a manner consistent with the statute and without negatively effecting the safety and soundness of

banking entities. The proposal would address a number of targeted areas for potential revision to the 2013 final rule. First, the proposal would tailor the application of the rule based on the size and scope of the bank entities trading activities. In particular, this proposal aims to further reduce compliance obligations for small and mid-size firms that do not have large trading operations and therefore reduce the costs and uncertainty these firms face in complying with the 2013 final rule. This proposal also seeks to streamline and clarify for all banking entities certain definitions and requirements related to the proprietary trading prohibition, risk-mitigating hedging requirements and compliance program requirements. Finally, the proposal asks numerous questions regarding covered fund activities and investments. To better tailor the application of the rule, the proposal would establish three categories of banking entities based on their level of trading activity. The first category would include banking entities with

significant trading assets and liabilities, defined as those banking entities that have trading assets and liabilities equal to or exceeding $10 billion. These banking entities, which generally have large trading operations, would be required to comply with the most extensive set of requirements under the proposal. The second category would include banking entities with moderate trading assets and liabilities. Banking entities with moderate trading assets and liabilities are those entities that have trading assets and liabilities less than $10 billion, but above $1 billion. These banking entities would be subject to the reduced compliance requirements and a more tailored approach in light of their smaller and less complex trading activities. The third category includes banking entities with limited trading assets and liabilities. These banking entities have less than $1 billion of trading assets and liabilities. These firms would have significantly reduced specific compliance program requirements and would enjoy a rebuttable

presumption of compliance with the rule. The purpose of this presumption of compliance would be to further reduce compliance costs for small and mid-size banks that either do not engage in the types of activities subject to Volcker or engage in such activities only on a limited scale. The proposal would make several changes to the definitions of the 2013 final rule. Notably, the proposal would revise, in a manner consistent with the statute, the definition of trading account in order to increase clarity regarding the positions included in the definition. The definition of trading account is a threshold definition that tells a banking entity whether the purchase or sale of a financial instrument is subject to the proprietary trading restrictions and requirements of Volcker in the first instance. The proposal would retain the market risk capital and dealer prongs in the trading account definition and replace the short-term intent prong with a prong based on the accounting treatment of a position. The proposal would retain the market risk capital

and dealer prongs because both provide clear lines and well-understood standards that are familiar to banking entities. The accounting prong, which replaces the short-term intent prong, would provide that the Volcker Rule trading account includes any account used by a banking entity to purchase or sell one or more financial instruments that is recorded at fair value on a recurring basis under applicable accounting standards. The accounting prong would generally cover derivatives, trading securities, and available-for-sale securities. Since the accounting prong is replacing short- term intent, the proposal would eliminate the 60 day rebuttable presumption. Further, the proposal would add a presumption of compliance for trading desks that are subject to only the accounting prong and operate in compliance with the $25 million prescribed profit and loss threshold. This proposal also makes several changes to the underwriting and market-making section of Volcker with the intention to improve the practical

application of these exemptions. In particular, the proposal would establish a presumption that trading within internally set risk limits satisfies the statutory requirement that permitted underwriting and market-making-related activities must be designed not to exceed the reasonably expected near term demands of clients, customers or counterparties; better known as rent D. This presumption would allow for a clearer application of these exemptions and would provide banking entities with more flexibility and certainty in conducting permissible underwriting and market-making related activities. In addition, the proposal would make nearly all the exemptions' compliance program requirements applicable only to banking entities with significant trading assets and liabilities. In addition to improving the practical application of the underwriting and market-making exemptions, this proposal seeks to improve the practical application of the risk mitigating hedging exemption by reducing restrictions on the eligibility of an activity to

qualify as a permitted risk mitigating hedging activity. The proposal seeks to, one, eliminate the current requirement that the hedging activity demonstrably reduces or otherwise significantly mitigates risk. Two, reduce documentation requirements associated with certain risk mitigating hedging transactions, and, three, eliminate the 2013 final rule's correlation analysis requirement. These changes are intended to reduce costs and uncertainty and improve the utility of the hedging exemption. The 2013 final rule adopted a definition of covered fund that includes hedge funds, private equity funds, and certain commodity pools. This proposal would seek comment on whether the definition should be further tailored and exclude certain additional types of funds. Furthermore, the 2013 final rule outlines requirements that apply when a banking entity engages in underwriting or market-making-related activities with respect to a covered fund. This proposal would modify these requirements with respect to a covered fund ownership interests for

third party covered funds to generally allow for the same types of activities as are permitted for other financial instruments. This proposal would also make changes to the 2013 final rule by expanding a banking entity's ability to engage in hedging activities involving an ownership interest in a covered fund. The proposal makes a number of changes to the compliance program. Banking entities with significant trading assets and liabilities would be subject to a compliance requirement that are similar to the 2013 final rule, but which has been streamlined and in some cases reduced. Banking entities with moderate trading assets and liabilities would be required to include in its existing compliance policies and procedures appropriate references to the requirements of the Volcker Rule. Banking entities with limited trading assets and liabilities would be presumed to be in compliance with the Volcker Rule. These banking entities would not be required to establish a special Volcker compliance program unless an appropriate

agency determines that the banking entity must establish a simplified compliance program. In addition to changes to the compliance program, this proposal would streamline the metrics reporting and recordkeeping requirements by tailoring the requirements based on a banking entity's size and level of trading activity. The proposal also would provide certain firms with additional time to report metrics data. And finally, the proposal would eliminate appendix B of the 2013 final rule, which specifies enhanced minimum standards for compliance programs of large banking entities and banking entities engaged in significant trading activities. However, the proposal would maintain the CEO attestation requirement that would apply to all banking entities with significant trading assets and liabilities and moderate trading assets and liabilities. Mr. Chairman and Commissioners, this concludes the summary of the proposed changes to the Volcker Rule. We would be happy to answer any questions and we thank you for your time and

consideration.

CHAIRMAN GIANCARLO: Thank you very much. To begin the Commission's discussion and consideration of these rulemakings, I will now entertain a motion to adopt the Division of Swap Dealer and Intermediary Oversight's proposed rule related to Volcker as presented by the staff. Do I have a motion?

COMMISSIONER QUINTENZ: So moved.

CHAIRMAN GIANCARLO: Second?

COMMISSIONER BEHNAM: Second.

CHAIRMAN GIANCARLO: Thank you. I would now like to open the floor to allow the Commissioners to make any statements and ask any questions and I will proceed first with just one simple question. And that is, if these changes are adopted, will the Volcker Rule still prohibit proprietary trading using banks' depository money?

MR. REMMLER: Yes, that is the case, Mr. Chairman. The changes that we are proposing today in no way conflict with the statute. In fact, they're consistent with the statute, which

provides for the prohibition against proprietary trading.

CHAIRMAN GIANCARLO: Thank you very much. Commissioner Quintenz.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman, and thank you to the staff for your hard work on this very important rule. I think it's obvious that when this was originally issued it was a one-size-fits-all approach. I applaud your effort for trying to risk tailor the compliance obligations, while still making sure that the ban on proprietary trading in the statute is effective. Two quick questions. We have a lot of different levels of entities under our jurisdiction. Can you talk a little bit about how we see these changes altering compliance with the Volcker Rule for entities under our jurisdiction -- CFTC registered swap dealers and FCMs?

MR REMMLER: Thanks for the question, Commissioner. We believe that many, in fact, probably a large majority of the swap dealers and FCMs that are subject to the Volcker Rule fall

within the significant trading activities grouping in this proposal. Those entities are still subject to fairly comprehensive compliance requirements, albeit, in a much streamlined and more easily implemented way. So these entities will continue to have to comply with many of the compliance requirements that were originally adopted in the Volcker Rule. Some of the swap dealers and FCMs fall within the moderate and limited trading activity groups. These entities would have reduced compliance requirements, which are more calibrated to the level of trading activity that they undertake and that Volcker was intended to cover.

COMMISSIONER QUINTENZ: So it is the case that there will be small entities under our jurisdiction for whom we are creating a more reasonable compliance regime.

MR. REMMLER: That is correct.

COMMISSIONER QUINTENZ: Okay. Both the proposed Volcker Rule and the upcoming swap dealer de minimis proposal discuss swaps entered into by

banks in connection with loans they've made to clients. Does the discussion of potentially excluding loan-related swaps from the definition of proprietary trading -- in the preamble of the revised Volcker Rule -- does that in any way conflict with the proposed exemption from the de minimis threshold for swaps entered into by banks in connection with loan-related swaps?

MR. REMMLER: No, we don't think they conflict. In fact, we as staff who worked on the Volcker Rule with the other agencies to prepare the proposal before you today worked to make sure that the description of the loan-related swaps and discussion of them in the Volcker preamble would not conflict with the IDI exclusion for loan-related swaps in the de minimis proposal that we will discuss later today in the swap dealer definition. And so, no we don't think they conflict and in some respects, they're complementary because they talk about excluding those loan-related swaps from regulation in recognition of their importance to the basic

lending activities that banks undertake.

COMMISSIONER QUINTENZ: Okay, thank you. One more quick question. The proposal describes CFTC Staff No-Action Letter 17-18, and I had some related questions. That staff letter provides relief to FCMs subject to the Volcker Rule so they can provide clearing services to customers of their affiliates without inadvertently violating the Volcker Rule. Can you just describe the significance of addressing Letter 17-18 in this proposal?

MR. REMMLER: Yes, 17-18 is a staff letter providing relief to an FCM. By including a discussion of that letter and having the Commission confirm that they believe -- that you all believe -- that that relief is appropriate, it reinforces the relief provided in the staff letter. I'll also note that the discussion in the preamble includes the statement by the other four agencies that they do not object to the relief being provided in the letter.

COMMISSIONER QUINTENZ: Okay, excellent,

thank you. Thank you, Mr. Remmler.

CHAIRMAN GIANCARLO: Commissioner Behnam.

COMMISSIONER BEHNAM: Thanks, Mr. Chairman, and a little bit of a follow-up to your question about proprietary trading and what the proposed rule intends to do. In my mind, hedging has always been a challenge, I think, for our markets to sort of wrap our heads around what constitutes hedging and thinking about part 75, with respect to risk mitigating hedging activities. Currently there are two factors. First, and I'm quoting, it must be "designed to reduce or otherwise significantly mitigate" specific identifiable risks and, second, the actions must "demonstrably mitigate" specific identifiable risks. The proposal strikes the "demonstrably mitigated" language. Can you help me understand a little bit why this language was removed and what the consequences will potentially be?

MR. REMMLER: Sure, the statute requires

that the hedging activity be designed to reduce risk. It doesn't require that it demonstrably reduce risk; that was added in the regulation when it was first adopted. In -- during the implementation process, we've learned from the banking entities that by requiring that it be demonstrably reduced risk, the hedging activity, the banking entities have struggled to implement that requirement primarily because it can delay their hedging activity because they need to determine whether they can demonstrate that not only before they enter into the hedge but after they enter into the hedge that they are reducing risk, and it has created concern for them that subsequent to undertaking hedges that a regulator could come in and question whether the hedge demonstrably reduced risk. When they're entering into the hedge, they can certainly design the hedge to reduce risk, but of course markets change after they enter into the position and whether they can demonstrate risk reduction, it's difficult after the fact.

COMMISSIONER BEHNAM: So, consistent with, I think, the proposal, or at least, the intent of the proposal by the drafters, this is meant to clarify. Do you suspect or is there a concern that this will lower the bar of what constitutes hedging activity?

MR. REMMLER: No, I don't have that concern.

COMMISSIONER BEHNAM: Okay. Second question relates to the tiered, the three buckets that were sort of entering into the proposal. In the definitions of "significant trading assets and liabilities" and "limited trading assets and liabilities" in part 75, there's an intentional difference in how foreign banking organizations or their subs are treated. Could you please walk me through that difference in the calculations? I think it's, at least at my first reading, it seemed a little bit counterintuitive. I think it's important for people to understand what's there and then more importantly, why it's done.

MR. REMMLER: Sure. The definition of

significant trading assets and liabilities requires that U.S. entities look at their consolidated worldwide trading assets and liabilities. And similarly for the limited trading assets and liabilities definition, you would look at all entities consolidated worldwide trading assets and liabilities. For foreign banking organizations, to determine whether they fall in to the significant bucket, they only look at their activities in the U.S. The intent there is to recognize the fact that these non-U.S. Entities undertake a lot of activity outside the U.S. that is not, and probably should not be, subject to our Volcker Rule requirements, because we don't really have a touch with those activities. So, the difference in the definition is to recognize that difference in regulatory oversight.

COMMISSIONER BEHNAM: So, domestic -- regardless of limited or significant -- the entire entity, and if it's a foreign entity, only the domestic activities are counted, is that correct?

MR. REMMLER: That's correct.

COMMISSIONER BEHNAM: I want to thank staff again for their presentations, answers, and of course their hard work on this rule. As I said in my opening statement, my biggest concern is that our action today will encourage a return to the risky activities that led to the financial crisis and perhaps further consolidate trading activity in a few institutions. However, as I have often stated, I am a strong believer that regulators, myself included, must constantly evaluate the efficacy of the rules we implement and enforce. The Volcker Rule is no exception. Regulators must strive to ensure that our rules protect customers and the public more broadly, but also allow market participants to operate and conduct their business in an efficient manner with clear rules of the road. On page 15 of the 494 page document before us, it says "with this proposal, and based on experience gained over the past few years, the Agencies seek to simplify and tailor the implementing regulations, where

possible, in order to increase efficiency, reduce excessive demands on available compliance capacities at banking entities, and allow banking entities to more efficiently provide services to clients, consistent with the requirements of the statute." Simply put, we are trying to make things clearer and easier for banking entities. My concern is that we are missing the mark. In fact, we are actually further complicating the Volcker Rule and calling it simplification. Where once there was one set of rules for all banking entities, there will now be three categories of banking entities with different rules for each. Banking entities with significant trading assets and liabilities; banking entities with limited trading assets and liabilities; banking entities in between with moderate trading assets and liabilities. We will have different ways of calculating assets and liabilities depending on which tier we are establishing, treating foreign banking organizations differently depending on whether we are considering them for a limited or

significant designation. And then at the end, when we have determined what bucket each bank is in, there is still a safety valve that will allow regulators to move the entity into a different bucket under regulation 75.20. Let me be perfectly clear: I support the idea that regulators will be able to determine that a banking entity with limited or moderate trading assets and liabilities may be treated as a banking entity with significant trading assets and liabilities, where the size or complexity of their activities or risk of evasion does not warrant a presumption of compliance. If we are going to have this unnecessarily complex tapestry, the back stop in regulation 75 is imperative. But I question whether we should have this complex tapestry at all. There are other potential issues here that give me pause; the expansion of what constitutes risk mitigating hedging activities potentially provides a method to evade oversight. Specifically, here at the CFTC, we need to think very carefully about how the definition of hedging

activity in the proposal compares to our definition of hedging activity in the context of other critical rules, like the de minimis threshold or position limits. I look forward to hearing from the commenters on this important issue. I also find that I'm a little befuddled as to exactly what a presumption of compliance is, at least in the context of this rule. It seems clear to me from the rule that the idea is not that a bank with limited trading assets and liabilities is actually any less likely to violate the Volcker Rule by engaging in prohibited proprietary trading. Instead, the idea behind today's rule is to reduce the impact of the Volcker Rule's restrictions on banks below the 10 billion dollar threshold. That may be a laudable goal and the right result, but it also is one that ultimately may require a statutory change. What we should not be doing is presuming compliance for entities that we don't think are any more likely to be compliant than other entities that do not receive the presumption.

Finally, I would like to talk a little bit about process. Back in 2014, when we issued the original final Volcker Rule regulations, Commissioner Scott O'Malia wrote a dissent lamenting the process that led to the vote. He pointed out that he only received a near final draft for review six days before the vote; that no term sheet or other information was provided to aid in digesting a massive document; that he had only received a partial draft three weeks before the vote. He said, "I am disappointed that today's vote on the final rule is besmirched by the purposeful circumvention of measured review by each Commissioner's office." Four years later, the story is largely the same. My office received a near final draft for review five days before the agencies began voting on these rules. Like Commissioner O'Malia, I received a partial draft three weeks before voting began. Worse, I was blocked from the process. I was told, in no uncertain terms, that the document we were seeing had been negotiated by the agencies, including the

CFTC, without my input, and that, essentially, what I was seeing was a fait accompli. Some may hear me say this and think, good. That what is good for the goose is good for the gander. That the transgressions of past chairmen should be felt by new Commissioners. My message is that we are better than this. I came to this agency ready to roll up my sleeves and work together with the Chairman and Commissioner Quintenz to make our rules better. I remain optimistic that we can find ways to do so. Quite frankly, the more viewpoints are represented in our deliberations, the better the outcomes will be for our markets. Unfortunately, the concerns I have outlined and my exclusion from the process leave me unable to support this proposal. I look forward to hearing from the commenters on my concerns and I'm sure many others. And I hope that we can have a fulsome dialogue that leads to agreement on a sensible final rule. Thank you, Mr. Chairman.

CHAIRMAN GIANCARLO: Commissioner Quintenz, do you have a closing statement?

COMMISSIONER QUINTENZ: No I don't, Mr. Chairman.

CHAIRMAN GIANCARLO: I will close with just, for the record that the final rule text, the initial rule text and preamble were delivered to my fellow Commissioners on May 5th and the final rule text was delivered on May 25th. With that, are Commissioners prepared to vote?

COMMISSIONER BEHNAM: Yes.

CHAIRMAN GIANCARLO: Thank you. Mr. Secretary, would you please call the role?

MR. KIRKPATRICK: Thank you, Mr. Chairman. The motion now before the Commission is on the adoption of the proposed rule related to Volcker. Commissioner Behnam.

COMMISSIONER BEHNAM: No.

MR. KIRKPATRICK: Commissioner Behnam votes no. Commissioner Quintenz.

COMMISSIONER QUINTENZ: Aye.

MR. KIRKPATRICK: Commissioner Quintenz votes, aye. Chairman Giancarlo.

CHAIRMAN GIANCARLO: Aye.

MR. KIRKPATRICK: Chairman Giancarlo votes, aye. Mr. Chairman, on this matter the ayes have two, the no's have one.

CHAIRMAN GIANCARLO: Thank you, Mr. Secretary. Thank you to the panel, as well, for you fine presentations. Can we now call up the third panel please? We're ready to proceed.

MR. KULKIN: Thank you, Mr. Chairman. I'll kick things off and let Erik catch his breath for a minute. DSIO is pleased to present our recommended amendments to the de minimis exception in paragraph four of the swap dealer definition in Commission regulation 1.3. Before I get too far, I'd like to thank my fellow DSIO team members, Erik Remmler, Rajal Patel, Jeffrey Hasterok, Jennifer Highland, Chris Cummings and Fern Simmons, as well as our Office of General Counsel colleagues Dan Davis, Carlene Kim and Mark Fajfar, and Bruce Tuckman, Scott Mixon, David Reiffen and Stephen Kane in the Office of the Chief Economist, all for their significant contributions to today's proposal. The proposal today before you

originates with the definition of swap dealer as set forth in CEA section 1a(49) as amended by the Dodd-Frank Act. The definition explains what constitutes swap dealing activity and also provides that the Commission shall promulgate regulations to establish factors with respect to the making of a determination to exempt from "designation as a swap dealer, an entity engaged in a de minimis quantity of swap dealing." In December 2010, the CFTC and SEC jointly issued a proposing release to establish a number of definitions, including swap dealer. The Commissions jointly finalized these definitions in a May 2012 rulemaking and established a definition of swap dealer and the de minimis exceptions that we currently have in our rules. The May 2012 release established the $8 billion threshold with a reduction to $3 billion on December 31, 2017. For each of the last two years, the Commission has issued orders to extend the termination date. The phase-in period is currently scheduled to terminate on December 31, 2019. Meaning that

absent further Commission action, market participants must begin calculating towards a $3 billion de minimis threshold on January 1, 2019. In adopting the swap dealer definition release, the Commissions identified the policy goals underlying swap dealer registration and regulation generally to include reducing systemic risk, increasing counterparty protection and increasing market efficiency, orderliness and transparency. The Commissions also recognized that consistent with congressional intent, an appropriately calibrated de minimis exception has the potential to advance other interests. The Commissions explained that these interests included increasing efficiency, allowing limited swap dealing in connection with other client services, encouraging new participants to enter the market and focusing regulatory resources. The policy objectives underlying the de minimis exception are designed to encourage participation and competition by allowing persons to engage in a de minimis amount of dealing without incurring the cost of

registration and associated swap dealer regulations. Today's proposal has four key components. First, establishing a permanent aggregate gross notional amount threshold for the de minimis exception at $8 billion in swap dealing activity entered into by a person over the preceding 12 months. Second, establishing three exceptions from consideration when calculating the aggregate gross notional amount of a person's swap dealing activity for purposes of the de minimis threshold. They include one, swaps entered into with a customer by an insured depository institution in connection with originating a loan to that customer. Two, swaps entered into to hedge financial or physical positions, and three, swaps resulting from multilateral portfolio compression exercises consistent with CFTC Staff No-Action Letter number 12-62. The third component would establish that the Commission may determine the methodology to be used to calculate the notional amount for any group, category, type or class of swaps and delegates that authority to

the Director of DSIO to make such determinations. And finally, the proposal explores three potential additional changes to the de minimis exception that I'll address at the end of our presentation. This proposal is the culmination of years of staff work, including data analysis, meeting with registrants, and of course, input from the Commission. It also incorporates staff and market participants' feedback received in response to the 2015 preliminary staff report and the Commission's Project KISS initiative. The proposed rule before you relies on detailed analysis of 2017 calendar year swap data repository data, and exemplifies empirically driven policymaking. I'm pleased to report, and Jeff will discuss in more detail, that DSIO staff benefitted from improved SDR data compared to what was relied upon, both in the November 2015 preliminary report and the August 2016 final staff report related to the swap dealer de minimis exception. With that, I'll turn it over to Jeff to discuss some of the data analysis that we used to inform today's recommendation.

MR. HASTEROK: Thank you, Matt. Mr. Chairman and Commissioners, good morning. The proposal before you today was informed by a data driven, analytical, collaborative process utilizing Part 45 transaction level swaps data only now available to the Commission because of the Dodd-Frank Title VII reforms. Since we published the De Minimis Exception Preliminary and Final Staff Reports a few years ago, the swap data available to the CFTC has steadily improved, evidence of the continued hard work of DMO and ODT staff who are dedicated to improving the quality and reliability of swap data. We're very thankful for their efforts, which have helped make this analysis possible. It's also evidence that market participants continue to improve their swap data reporting, and their efforts are paying dividends. Our goal was straightforward: Use the swaps transaction data to identify likely swap dealers, calculate the number of likely dealers based on their aggregate gross notional amount (and, since we love acronyms around here, "AGNA") of swaps

activity, and evaluate the depth and breadth of likely swap dealer market coverage at various de minimis thresholds. For the Staff Reports, we completed a notional-based analysis of swaps activity for interest rate and credit default swaps. For this proposal, staff used 2017 calendar year data to analyze the AGNA of swaps activity for interest rate, credit default, foreign exchange and equity swaps. The addition of two asset classes demonstrates our improved ability to use data to analyze the impact of the de minimis threshold on the swap market. We used a variety of methods to identify likely swap dealers. First, we classified firms by entity type, allowing us to exclude outright those entities that were not likely to be trading as dealers, such as most investment funds, cooperatives, government sponsors entities and commercial end-users. Second, we used transaction filters to exclude inter-affiliate swaps and swaps between two non-U.S. counterparties. Third, since the swap data currently lacks a field to

differentiate dealing trades from hedging and investing trades, staff turned to a heuristic informed by the data; a minimum counterparty count of 10 counterparties to help us isolate those remaining entities that appeared to be dealing. With respect to non-financial commodity swaps, staff continued to encounter a number of challenges in calculating notional amount. Lacking notional amount, staff instead turned to counterparty counts and transaction accounts (plus the previously mentioned entity and transaction filters) to analyze likely swap dealing activity for participants in the non-financial commodity swap market. Our analysis for all five asset classes indicates that higher counterparty and transaction counts are generally associated with registered swap dealers. With that, I'll turn to my colleague Rajal to continue the discussion of the proposal.

MR. PATEL: Thank you Matt and Jeff. Mr. Chairman and Commissioners, based on analysis of the SDR data and related policy considerations,

one of the key components of the proposal is establishing a permanent aggregate gross notional amount threshold for the de minimis exception of $8 billion of swap dealing activity entered into by a person over the preceding 12 months. For the proposal, we analyzed lowering the threshold to $3 billion; maintaining the threshold at 8 billion or increasing the threshold to higher levels of $20, $50 or $100 billion. We believe that maintaining the current $8 billion threshold is appropriate. The proposal includes 15 tables that present our data analysis and indicate the potential effects of raising or lowering the threshold. I will now walk you through a summary of that analysis. First, the current $8 billion threshold subjects almost all swap transactions, as measured by transaction count and aggregate gross notional amount, to swap dealer regulations. A swap was considered to be subject to swap dealer regulations if at least one counterparty to the swap was a registered swap dealer. Overall, approximately 98 percent of transactions across

the five asset classes involved at least one registered swap dealer. Additionally, across interest rate, credit default, FX and equity swaps, greater than 99 percent of the aggregate gross notional amount of swaps involved at least one registered swap dealer. Generally, as stated in the proposal, given these regulatory coverage statistics, the policy considerations underlying swap dealer regulation are being appropriately advanced at the current $8 billion threshold. Only a low percentage of swaps activity is not currently covered by swap dealer regulation-related requirements, indicating that the current threshold is appropriate. Second, the data analysis also indicated that at a lower threshold of $3 billion or at higher thresholds of $20, $50 or $100 billion, there would only be small changes in the aggregate gross notional amount and swap transactions subject to swap dealer regulation, as compared to the $8 billion threshold. Third, for non-financial commodity swaps, although the regulatory coverage, as

measured by the number of transactions that include at least one registered swap dealer as a counterparty, was lower than for the other asset classes, we believe that the lower regulatory coverage at the current $8 billion threshold is acceptable given the unique characteristics of the non-financial commodity swap market. Additionally, as stated in the proposal, maintaining an $8 billion threshold would foster the efficient application of the swap dealer definition by providing continuity and addressing the uncertainty associated with the end of the phase-in period. With that, I'd like to turn it over to Erik to continue the discussion.

MR. REMMLER: Thank you, Rajal. Hello again Commissioners. As Matt mentioned in his introduction, the proposal contains three changes to the de minimis provision in the rule regarding what swaps must be counted towards the notional threshold. These proposed changes were developed based on staff implementation experience and comments received on the preliminary staff report

and from the Project KISS initiative. First, the proposal would except from counting swaps entered into by insured depository institutions in connection with loans. Before describing the proposed exception, I'll note that the CEA provides that an IDI shall not be considered a swap dealer to the extent swaps are entered into by the IDI with customers in connection with originating a loan; that's a provision that's required by the statute. Market participants have indicated that conditions imposed on this exclusion in the swap dealer definition regulation are not clear in all circumstances, and are too restrictive for the intended purpose. These issues make it more difficult for IDI's, particularly small and mid-sized banks, to provide swaps related to loans without the concern that the swaps would cause the IDI to have to register as a swap dealer. The proposed exception is similar to the IDI exclusion in the regulation, but would soften the conditions while still only excluding swaps entered into in connection with a

loan. Specifically, the proposed exception: One, has no time limit for when the swap must be entered into after the loan is executed, and allows for swaps more than 90 days prior to the loan execution, if a forward loan agreement or signed commitment is in place. Two, the exception identifies a wider range of swaps that are eligible so long as they are in connection with a loan. Three, the exception has a lower minimum five percent loan syndication percentage requirement. And four, provides for a range of loan structures that would qualify. Next, the proposal would except from counting towards the threshold, swaps that use -- that are used by an entity to hedge risk. The existing regulation already excludes swaps that hedge physical positions from being considered as swap dealing. However, the absence of an explicit exclusion for other hedging swaps has caused uncertainty in the marketplace regarding whether swaps hedging financial risks, for example, interest rate or FX risk, would need to be counted towards the dealer

threshold. The proposed hedging exception is intended to address that uncertainty by clearly identifying when these hedging swaps are excepted from counting. The exception provides a number of conditions that are similar to the existing physical position hedging exclusion to clarify what constitutes hedging swaps for this purpose. Finally, the proposal would except from counting swaps resulting from multilateral compression exercises. This exception would effectively codify Staff No-Action Letter 12-62, that was issued in 2012. Multilateral compression allows a group of swap market participants with large swap portfolios to net down the size and number of outstanding swaps among them. The exercise results in new swaps but is principally undertaken for risk reduction and it does not involve attributes indicative of swap dealing activity. Counting the new swaps toward the threshold discourages this risk reducing activity. This proposal seeks to address that concern by excepting from counting the swaps resulting from

the multilateral compression exercises. At this time, I will hand the presentation back to Rajal to talk about non-financial commodity swaps.

MR. PATEL: Thank you, Erik. Mr. Chairman and Commissioners, given the potential variety of methods that could be used to calculate the notional amount of certain swaps, particularly for swaps where notional amount is not a contractual term of the transaction, for example, non-financial commodity swaps, the proposal provides that the Commission may determine the methodology to be used to calculate the notional amount for any group, category, type, or class of swaps for purposes of determining whether a person exceeds the aggregate gross notional amount threshold. Further, the proposed rule would delegate to the Director of DSIO the authority to make such determinations. Additional information regarding the appropriate notional amount calculation methodologies for purposes of the swap dealer de minimis threshold would be beneficial since market participants have requested clarity

on this topic. Further, it is important to provide timely clarity regarding calculation methodologies to ensure that persons are fully aware of whether their activities are subject to swap dealer registration requirements in the event of market or regulatory changes. The proposed delegation of authority should help to provide clarity on a timely basis. The rule requires that any determinations made by the Commission or the Director of DSIO be economically reasonable and analytically supported. Additionally, the determinations would need to be published on the CFTC website. And now I'll turn it back to Matt.

MR. KULKIN: Mr. Chairman, before we conclude, I just want to touch on three additional considerations that we seek comment on in the proposal. The first area relates to adding a minimum dealing counterparty count and a minimum dealing transaction count threshold, in addition to a notional threshold test. The second explores excepting swaps that are exchange-traded and/or cleared from the de minimis threshold calculation.

And finally, the third consideration asks for comment on excepting non-deliverable forwards from the de minimis threshold calculation. Our staff looks forward to receiving public comment on these factors as we develop recommendations for a final rule later this year that provides certainty for market participants on this issue. Thank you. We'll be happy to answer your questions.

CHAIRMAN GIANCARLO: Thank you for your presentation. To begin the Commission's discussion and consideration, I will entertain a motion to adopt the DSIO's proposed rule relating to the de minimis exception as presented by the staff.

COMMISSIONER BEHNAM: So moved.

COMMISSIONER QUINTENZ: Second.

CHAIRMAN GIANCARLO: I'd now like to open the floor to Commissioners to make any statements and ask any questions they may have. Commissioner Quintenz, would you please?

COMMISSIONER QUINTENZ: Thank you. Well, first I'd just like to applaud all the hard

work that went into this. I think we've had three or four different data reports that have come out analyzing the information that we have on this issue over the last two to three years. From my perspective, I think they've all said the same thing, which is, that relying on notional value has its deficiencies, and then compounding that by reducing the threshold, does not give you a beneficial outcome, does not align this threshold with the costs that it imposes. And I would argue there's no guarantee that reducing the threshold actually would capture the entities that have current activity in between the two thresholds since we would be adding those additional burdens and costs, and disincentivizing that registration. But I would just like to start with a quick question on the various filters and the underlying assumptions in the proposal's analysis. Do you think that those filters and assumptions significantly or sufficiently enable staff to identify potential likely dealers?

MR. KULKIN: I think the short answer

is, yes. This is the first time for purposes of this release that we have the benefit of notional value for four asset classes. And so, when we do our analysis and we look at the potential impact of a lower or higher threshold, we're able to more accurately predict the number of swap dealers, the AGNA of coverage for the market and we were able to use that analysis to inform our recommendations today.

COMMISSIONER QUINTENZ: Okay. I know that there is not a swap dealing field in the data that gets reported to the Commission and, I think there are some conflicting benefits and costs to doing that. Could you describe how you view the usefulness of adding that field, as well as the burden it would impose?

MR. KULKIN: Sure thing, thank you for the question. You're right that there's not a field in part 45 for whether or not a swap is entered into for dealing purposes. It would -- for our analysis, for de minimis, it would certainly be helpful if we had that field, but

that decision needs to be balanced against the burden it would put on market participants who need to effectively report their intent at the time of execution, which would be an outlier to the other data fields that are currently reported.

COMMISSIONER QUINTENZ: Okay. Can you talk a little bit about the counterparty count threshold that was used for non-financial commodity firms. Why was a 10 counterparty count used to try to draw a line?

MR. KULKIN: So, because we don't have the same quality notional data that we have for the four other asset classes, we had to, Jeff used the word, heuristic. We had to sort of build a model that would simulate capturing counterpart, excuse me, capturing swap dealers. And so, we ultimately settled on a filter of 10 because when you look across all five asset classes, and you exclude inter-affiliate and non-U.S. transactions, about 83 percent of the currently registered swap dealers have 10 or more counterparties. And when you look at the unregistered entities, 97 percent

of them have fewer than 10 counterparties. So, counterparty count is one filter that we used, it's not determinative of whether an entity is engaged in swap dealing, but it helped us to better identify what's in the universe; those that are likely swap dealers.

COMMISSIONER QUINTENZ: Okay. One of the core policy goals of the de minimis exception is to allow limited dealing in conjunction with providing other commercial services so that small businesses don't have to go out and establish entirely new trading relationships with large dealers. Based on the staff's analysis, it appears that in the non-financial commodity asset class, there were a number of small end-users that had no trading relationships with registered dealers. Am I reading that right, can you -- do you think the current de minimis exception is advancing the policy goal of allowing entities under this threshold to provide liquidity and access to the swap market for those small end users?

MR. KULKIN: So, I'll try and unpack this one at a time. So first we agree with your observation about allowing entities engaged in limited dealing and that limited dealing be related to other commercial services, and that's really what's driving some of the proposed amendments today, is that we want to further promote ancillary dealing in connection with other lines of businesses, particularly, in the non-financial commodity swaps space. You're also right that there is that relationship where there's the lack of a relationship between some of the larger institutions for commodity swaps dealing. And we observe that these end-users do generally rely on firms that are engaged in dealing activity but it's generally dealing activity below the de minimis threshold amount. And so, for that reason, we think the amendments today further the policy goals that you're discussing. To answer the last part of your question about the current regime, we think it does go a long way towards furthering those policy

goals, promoting ancillary dealing, efficiency, certainty. But we think that it could be done better. And so, what's driving a lot of the amendments that we've recommended today is to help streamline, simplify, provide efficiency and clarity to market participants so that they can further service their customers and end-users can continue to access the markets that they need and engage in this de minimis quantity of swap dealing.

COMMISSIONER QUINTENZ: And I compliment you and your team on those amendments. I do think they improve the de minimis exception. I think that it would -- I have other improvements that I would like to see but I think from the opposite perspective, that if this threshold should reduce, and if these non-financial commodity firms make a cost benefit analysis of the obligations and the costs and the burdens that they would have to undertake to register as a swap dealer, and got out of the market, they would leave customers and clients with no relationship with a registered

entity with whom they could hedge their risks. And these small businesses and small end-users would have to go Wall Street to try to create that relationship, if they could create that relationship, or choose to not hedge their activity. So, I'm very supportive of the flexibility that you've added to this proposal, thank you. Thank you, Mr. Chairman.

CHAIRMAN GIANCARLO: Thank you, Commissioner Quintenz. Commissioner Behnam?

COMMISSIONER BEHNAM: Thanks, Mr. Chairman. First, I want to start with the gross notional level set at eight. Something I've heard for years -- I think we've all heard since 2012 -- is who would fall -- given that the level's currently set at eight phasing in at three. Larger agricultural and energy companies and smaller financial institutions are in this space between three and eight, and as Commissioner Quintenz pointed out, I think none of us want this sort of liquidity crunch or not providing counterparties for some of our smaller end-users,

but, have you analyzed the potential risks -- and risk is a broad word that can imply many different things. But I want to kind of focus on customer risk, and thinking about the agricultural and energy companies, if the level stays at eight, what potential real sort of life risks, whether -- for every day Americans, folks who consume energy or agricultural products. If you have some of these larger companies which are -- they're not mom and pop shops, they're sophisticated global companies that have a footprint everywhere and we want to make sure that any risks that they enter into or any risks that they're exposed to don't sort of fall through to customers. Have you examined, sort of, what potential risks might lie in that space and whether or not if one of these entities were to have financial issues or otherwise, how that might downstream affect individuals or customers?

MR. KULKIN: Thank you for the question, Commissioner. So, just to put things in perspective. In 2017, based on our SDR data, the

over-the-counter swaps market is about $221 trillion, 4.4 million transactions and about 39 thousand unique counterparties. When we did our analysis, we really looked specifically at the data; we looked at the coverage to determine what different thresholds would capture. And so, when we looked at the different coverage between $3 billion and $8 billion, we identified that at $3 billion you cover about 0.01 percent increased notional market coverage. When you look at it from a transaction count, it increases coverage by about 0.06 percent. When you look at it from a counterparty count, you get under two percent increased coverage. And so, as we're formulating our recommendations we had to sort of balance that increased coverage versus what the, what a $3 billion threshold would do in terms of entities engaged in ancillary dealing, entities engaged in -- or potentially new entrants in to the market. And so those are the factors that we had to weigh as were considering the alternatives.

COMMISSIONER BEHNAM: I appreciate that,

I appreciate the data that you've provided and worked hard on collecting and analyzing but, yes, sure in some of these entities play a small part in the larger picture but still individually they do play a role for sort of the other side of the token, right? Who they serve, what customers are consuming whatever products they produce and that's kind of, I think, a concern I'll have and as we move forward to be thinking about that as well; that sort of other side of the coin, not just the role that company plays within the larger pie of the swaps market.

MR. KULKIN: So, if I may, Commissioner?

COMMISSIONER BEHNAM: Sure.

MR. KULKIN: So, we identified 13 entities that have ten counterparties or more, which is one of the filters we used, and were between $3 and $8 billion, and if you consolidate their activity for purposes of analysis, they collectively amount to 0.01 percent notional of the market and about 0.06 percent of the trades. So, again, when we were looking from a systemic

risk standpoint, we had to sort of balance that.

COMMISSIONER BEHNAM: Okay. I'm going to shift to the IDI for a second. I think it's clear and as you pointed out, this exemption for insured depository institutions is fairly expressly stated in statute, notwithstanding, caveats and conditions, most notably, loan origination. If I look at the statute and the sort of four prong test that section 1a(49) provides, the IDI exemption is within that four prong test. This proposal seems to say, and I will put this as simply as possible, if you're an IDI that is originating loans and hedging on the backside of them, then you are permitted not to count those swaps or that dealing activity towards your de minimis activity. As opposed to what I view in the statute is that activity is not dealing. So, can you help me clarify that, and if I'm right or wrong?

MR. KULKIN: Yes, I think that's correct. So, the 1a(49)(A) talks about both the characteristics of what a swap dealer is and it

does include the proviso that the IDI is not considered a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan to that customer. And then under 1a(49)(D), the Commission has the authority to promulgate regulations and establish factors. And so, we are proposing additional factors here that would except from the de minimis calculation counting swaps entered into in connection with the loan.

COMMISSIONER BEHNAM: Was there a reason you didn't want to go with, I suppose, the former where you would propose to amend the dealer definition for those certain circumstances. I am fully sympathetic to some of the challenges that the IDI's have faced; I've listened to them for a number of years. But from their compliance perspective, it seems like it would be better if they were -- for those activities that should be carved out from the dealing definition as opposed to -- okay, you're a dealer, but then you have this second part exemption which may apply under

the de minimis exception.

MR. KULKIN: Yes, so activity that meets the current exclusion will also satisfy the proposed exception, and our goal in proposing this section in part four; the exceptions, it's really to give that certainty to market participants that, for example, they can enter into a swap with a customer 181 days after the origination of the loan without having to worry about it triggering swap dealer registration. So, our recommendations today are largely driven by providing that clarity and certainty to market participants in a way that anecdotally they have told us they have not found our current regime to provide.

COMMISSIONER BEHNAM: Given the important role that IDI's play within the broader, sort of, regulatory landscape among regulators in town, can you please sort of describe what work was done with our counterparts at the SEC or prudential regulators?

MR. KULKIN: Sure. As you know, this proposal has gone through several drafts with

comments from each of the Commissioner's offices. We talked with Trading and Markets staff about two weeks ago about the proposal. We shared a draft with them last week. We shared a draft with the prudential regulators, as well, last week. We had a call with SEC senior staff last week as well. I have committed to continue dialogue and work with them, particularly as this rule moves towards a final, from a proposal to a final. And consistent with a lot of the work we're doing with the SEC on Title VII rulemakings, we'll continue to work with them.

COMMISSIONER BEHNAM: I appreciate that and would encourage, as you pointed out, as much dialogue as possible. Especially given, I think, a little bit of a grey area with the IDI exception, whether or not it is truly de minimis or does it touch at all on the dealer definition; the scope of the dealer definition. Quickly turn to delegation authority that is provided in the proposal. Can you -- I think at a -- first glance, can you just kind of walk through what

goes on today in terms of methodology calculation?

MR. KULKIN: Sure, so the proposed delegation of authority is particularly important for the non-financial commodity swap market, where there's not necessarily a consistent application of how to calculate notional, given just the complexities and the different arrangements that those contracts often have. So, we currently, through part 140, issue interpretative guidance or staff no action. DSIO has also historically issued a frequently asked question document. Those are all publicly available on the Commission website. And the idea behind the delegation of authority, is to give market participants certainty that they can conduct certain swap activity pursuant to a specific notional approach and we thought that the delegation allows for the most timely way to respond to those inquiries. We thought publishing those responses to the website, in response to a written petition, gives the transparency that the process requires. We thought putting them out for public viewing, also

allows market participants to benefit from those releases in an easy way rather than seeking their own response. And, particularly in the non-financial commodity swaps space, we have a lot of market participants who just aren't familiar with CFTC rules and regulations. And so, rather than rely on existing practice, we thought better to put it into the definition so that when they look at the -- really the beginning of our rule set, they see that they have this tool at their disposal.

COMMISSIONER BEHNAM: I've probably heard the same thing as you have with respect to the non-financial commodity swaps and the challenge there from a methodology standpoint. But the delegation is broader than that, it goes to all asset classes, I believe. In which case, what was the determination there to have that large scope as opposed to limiting it to non-financial commodities?

MR. KULKIN: So there are instances in the equity swap space where notional calculations

can also appear and we didn't want to preclude some novel instance arising in the future, where because we hadn't recommended across the board this authority that we'd then be hamstrung and have to go to the Commission for an order or official Commission action. In practice, this will largely be limited to two asset classes, but we thought that that level of detail wasn't necessary within the proposed framework.

COMMISSIONER BEHNAM: Thanks. Finally, I'll just mention, with respect to the comment requests and not the proposed language changes which include the NDFs, the entity count and then the cleared and exchange traded swaps. I'm going to focus on that last one -- the exchange traded and cleared swaps. I don't -- this issue has, in my mind, this issue has been discussed, it was discussed in 2012. It was determined that this exemption should not be provided, but more importantly, if I take a step back and I look at the statute, the four prong test about a swap dealer includes market-making. So even if a swap

is executed on exchange, there's market-making. So, I don't understand how that would be pulled off or exempted from the count itself. Further, there is legislative letters from 2010 and quite frankly, going back to the statute, Congress created exemptions for, as we've discussed, IDIs in other spaces, end-users, margin in exchange trading as well. So, it seems pretty clear to me, absent express language, this issue is actually not an issue at all.

As I mentioned during my opening statement, I arrived at the Commission ready to participate in discussions and ultimately a rulemaking to amend the de minimis exception and set a threshold where the facts and data take us. Be it $8 billion, $3 billion or some other amount of swap dealing activity. All along, I've been open to hearing from Commission staff regarding their analysis of the swap data repository data and have been very impressed and intrigued by our own Office of Chief Economist's proposal to use entity-netted notional amounts as an alternative

risk-focused measurement of the swaps market. I've prepared by meeting with stakeholders, reviewing the paper trail created since the finalization of the swap dealer and other entity definitions in 2012, and reflecting on the dominance this issue played during my six years on the Senate Agriculture, Nutrition and Forestry Committee. In other words, I've prepared for and anticipated the contents of today's proposal to be both consistent with this record and mindful of the tremendous time constraint that the Commission and stakeholders are working under. Additionally, I assumed that the Commission would fully observe all requirements to collaborate and consult with our fellow regulators and avoid a temptation to use this particular rulemaking vehicle as an opportunity to simultaneously address matters ancillary to the critical time sensitive issues before the Commission following two deferrals of the phase-in termination date. When first briefed on the contours of this proposal, I committed to reviewing the supporting data and analysis in

support of setting the aggregate gross notional amount threshold for the de minimis exception at $8 billion in swap dealing activity entered into by a person over the preceding 12 months. Early on, I agreed with Commission staff that with sufficient data as support, it was appropriate to expand and clarify activities excluded from the de minimis threshold for the insured depository institution exclusion and financial hedging. These issues represented long-standing, well-reasoned concerns. At the same time, I also agreed that we should codify existing no action relief related to the de minimis exception for swaps resulting from portfolio compression exercises and swaps between non-US counterparties and international financial institutions based in the United States. Regarding Commission staff proposals to clarify calculation methodologies for "notional amount" for certain swaps and give the Director of the Division of Swap Dealer and Intermediary Oversight unfettered authority to issue notional amount calculation guidance, I

immediately indicated my concerns, having neither been confronted by market participants with such issues nor informed of the Commission's practice in providing such guidance or any rationale for delegating Commission authority to a Division Director. I immediately thought about how this specific delegation would have been viewed under the old agency leadership or conversely how it will be viewed in the future under new leadership. I was also skeptical of initial Commission staff recommendations to include seeking comments on ancillary issues pitched as changes to the de minimis threshold. Though not entirely unreceptive to considering other changes to the de minimis threshold, given the looming deadline for automatic termination of the phase-in period, I do not believe the Commission or the industry should be expending precious time and resources on ancillary matters that could be considered in separate rulemaking or discussed more exhaustively within different CFTC venues. When adopting the regulatory mechanism for altering the requirements

of the de minimis exception by rule or regulation, the Commission stated that, in determining whether to exercise its authority, it intended to focus on whether the de minimis exception results in a swap dealer definition that encompasses too many entities whose activities are not significant enough to warrant full regulation or alternatively, whether it leads to "an undue amount of dealing activity to fall outside of the ambit of the Title VII regulatory framework, or leads to inappropriate reductions in counterparty protections." It's not clear that the Commission is observing this well-reasoned and forward thinking strategy to preserve the purpose of the de minimis exception and limit the temptation to engage in regulatory overreach. As it is, I have serious concerns regarding the Commission's apparent intent to use its authority to revise the de minimis threshold as a measure to alter the "swap dealer" and perhaps even the "swap" definitions in contravention of a statutory obligation to do so jointly with the Securities

and Exchange Commission. Although I remained open-minded to supporting today's proposal, I cannot. The proposal was rushed, and based upon review of the three complete drafts my office received between May 24th and June 1st, it seems Commission staff has been more focused on addressing the ancillary matters than on addressing concerns I consistently expressed throughout the last several weeks. These concerns do not represent points of partisan policymaking nor do they seek to detract from the Chairman's message. Rather my concerns focus on matters of both legal sufficiency and permissibility and on concerns that we will miss our deadline and be forced to issue yet another order extending the termination of the phase-in period to address the new and completely avoidable legal and policy issues created by today's proposal. These concerns include the proposal's breadth, the Commission's decision to address the IDI and hedging exclusions as exemptions from the de minimis threshold calculation instead of engaging

with the SEC to address them as exclusions from dealing activity, the creation and immediate delegation of authority to issue notional calculation guidance absent any kind of Commission exploration or deliberation, and the proposal's apparent reliance on the Commission's authority to change the requirements of the de minimis threshold to seek comment on potential changes outside the scope of that authority. I want to thank again Commission staff for your hard work and your presentation. I'll submit my written dissent for publication in the Federal Register. Thank you, Mr. Chairman.

CHAIRMAN GIANCARLO: Thank you, Commissioner Behnam. Commissioner Quintenz, do you have any final statements?

COMMISSIONER QUINTENZ: No, other than I fully support this proposal and I believe that there are a number of very crucial and important questions for comment that are absolutely central to how to appropriately judge a de minimis quantity of swap dealing. Notional value has a

lot of deficiencies. There are ways, there are plenty of different ways to try to judge that, and I would welcome all comments as to the best way to do that. And thank you, Mr. Chairman, for your leadership. I, for one, am glad we're not under the old leadership.

CHAIRMAN GIANCARLO: Thank you. And I do want to say, Commissioner Behnam, I do respect your concern that we meet our year-end deadline on this and that we make sure that we're able to do it in a streamlined fashion and with this rule proposal, so thank you for that. At the end of the day, I really struggle with this one. At the end of the day it was the Wall Street reform act and makes me wonder why we're even considering including small community banks, local energy utilities and small community trading firms to get to a level that is 0.1 percent of dealing activity in the marketplace. And that's why I do support retaining the level at 8 billion. I think it is the right level in this and I look forward to commentators' comments and moving this as

expediently as we can to complete this by the year-end so we provide the marketplace with the certainty they require. So, with that, I'd like to ask the Secretary to call the roll please?

MR. KIRKPATRICK: Thank you, Mr. Chairman. The motion now before the Commission is on the adoption of the proposed rule on the de minimis exception. Commissioner Behnam.

COMMISSIONER BEHNAM: No.

MR. KIRKPATRICK: Commissioner Behnam votes, no. Commissioner Quintenz.

COMMISSIONER QUINTENZ: Aye.

MR. KIRKPATRICK: Commissioner Quintenz votes, aye. Chairman Giancarlo.

CHAIRMAN GIANCARLO: Aye.

MR. KIRKPATRICK: Chairman Giancarlo votes, aye. Mr. Chairman, on this matter, the ayes have two, the no's have one.

CHAIRMAN GIANCARLO: Thank you for that. On the topic of any other business? Okay. I did just want to add with a final note, we've managed to get through this meeting without the building

shaking, without the air being full of the sounds of construction next door, so I do have to thank our Office of the Executive Director, Tony Thompson, for his great work in getting our next door neighbor to cease construction this morning so we can have this morning's meeting in the relative peace and quiet, so, thank you. I'm sure as we walk out the door the jackhammers will start right again, but thank you for that. This meeting is adjourned.

(Whereupon, at 11:52 a.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

(Signature and Seal on File)

Notary Public, in and for the District of Columbia

My Commission Expires: May 31, 2022