

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

COMMODITY FUTURES TRADING COMMISSION

Global Markets Advisory Committee Meeting

10:00 a.m.

Monday, April 15, 2019

CFTC Headquarters Lobby-level Conference Room

1155 21st Street, NW, Washington, D.C. 20581

1 PARTICIPANTS

2 Angie Karna (GMAC Chair)

3 Nomura Securities International, Inc.

4 Managing Director, Legal Department and Head of

5 Legal for Global Markets, Americas

6

7 Chris Allen

8 Standard Chartered Bank

9 General Counsel, Clients & Products

10

11 Ted Backer

12 Morgan Stanley

13 Global Head of Listed Derivatives Execution

14

15 Ashley Belich

16 RBC Capital Markets

17 Head of Global OTC Derivatives & Dodd-Frank Advisory

18

19 Shawn Bernardo

20 TP ICAP SEF

21 Chief Executive Officer

22

## 1 PARTICIPANTS (CONTINUED)

2 Darcy Bradbury

3 D.E. Shaw &amp; Co., L.P.

4 Managing Director

5

6 Clive Christison

7 BP

8 Senior Vice President Pipelines, Supply &amp;

9 Optimization for Fuels North America

10

11 Joseph Cisewski

12 Better Markets

13 Consultant

14

15 Jim Colby

16 Coalition for Derivatives End-Users

17 Representative

18

19 Gerry Corcoran

20 R.J. O'Brien &amp; Associates, LLC

21 Chairman of the Board and Chief Executive Officer

22

## 1 PARTICIPANTS (CONTINUED)

2 Sunil Cutinho

3 CME Clearing

4 President

5

6 David Goone

7 Intercontinental Exchange, Inc.

8 Chief Strategy Officer

9

10 Alexandra Guest

11 Cargill Risk Management

12 Chief Compliance Officer

13

14 Paul Hamill

15 Citadel Securities

16 Global Head of Fixed Income, Currencies and

17 Commodities

18

19

20

21

22

1 PARTICIPANTS (CONTINUED)

2 Amy Hong

3 Goldman Sachs

4 Head of Market Structure Strategy

5

6

7 Adam Kansler

8 IHS Markit

9 President - Financial Services

10

11 Robert Klein

12 Citigroup Global Markets

13 Managing Director & General Counsel

14

15 Stephen Li

16 Barclays

17 Managing Director & Head of U.S. Agency Derivative

18 Services

19

20

21

22

1 PARTICIPANTS (CONTINUED)

2

3 Erik Tim Müller

4 Eurex Clearing AG

5 Chief Executive Officer

6

7 Joseph Nicosia

8 Louis Dreyfus Company

9 Global Platform Head of Cotton

10

11 Christopher Nikkel

12 Bunge Global Agribusiness

13 Senior Director - Global Risk Trading

14

15 Muthukrishnan Ramaswami

16 Singapore Exchange Limited

17 President

18

19

20

21

22

1 PARTICIPANTS (CONTINUED)

2 Thomas Sexton

3 National Futures Association

4 President & Chief Executive Officer

5

6 Jessica Sohl

7 HC Technologies

8 Partner & President

9

10 Supurna VedBrat (Via Telephone)

11 BlackRock

12 Managing Director & Global Head of Trading

13

14 Mark Wetjen

15 DTCC

16 Managing Director, Head of Global Public Policy

17

18 Masahiro Yamada

19 JP Morgan Securities LLC

20 Managing Director & Head of America's Cross Asset

21 Structuring

22

1	A G E N D A	
2		Page
3	Welcome and Opening Remarks:	11
4	Commissioner Dawn D. Stump (GMAC Sponsor)	12
5	Chairman J. Christopher Giancarlo	19
6	Commissioner Brian D. Quintenz	24
7	Commissioner Rostin Behnam	26
8	Commissioner Dan Berkovitz	27
9		
10	Introducing New GMAC Chair:	29
11	Commissioner Dawn D. Stump	29
12	GMAC Chair Angie Karna	30
13		
14	Panel 1: Overview of Financial System Issues for	
15	the 2019 G20 Japan Presidency	
16	Presenter:	
17	Shunsuke Shirakawa, Vice Commissioner for	
18	International Affairs, Japan Financial Services	
19	Agency	31
20		
21		
22		

	A G E N D A	
		Page
1		
2		
3	Panel 2: Regulatory-Driven Market Fragmentation	
4	Presenter:	
5	Steven Kennedy, Global Head of Public Policy,	
6	ISDA	46
7		
8	Panel 3: Trading on Exchanges or Electronic Trading	
9	Platforms and Clearing Through Central	
10	Counterparties	
11	Presenters:	
12	Nicolette Cone, Counsel and Director, ISDA	87
13	Colin Lloyd, Partner, Cleary Gottlieb Steen &	
14	Hamilton LLP	97
15		
16	Panel 4: Initial Margin for Non-Centrally Cleared	
17	Derivatives Contracts	
18	Presenters:	
19	Rafael Martinez, Senior Financial Risk Analyst,	
20	Division of Swap Dealer and Intermediary	
21	Oversight, CFTC	136
22		

	A G E N D A	
		Page
1		
2		
3	Panel 4: Initial Margin for Non-Centrally Cleared	
4	Derivatives Contracts [CONTINUED]	
5	Richard Haynes, Supervisory Research Analyst, Office	
6	of the Chief Economist, CFTC	145
7		
8	Panel 5: OTC Derivatives Reporting to Trade	
9	Repositories	
10	Presenters:	
11	David Aron, Special Counsel, Division of Market	
12	Oversight, CFTC	184
13	Kate Delp, Executive Director and General Manager,	
14	GTR Americas, DTCC	191
15		
16	Closing Remarks and Adjournment	219
17		
18		
19		
20		
21		
22		

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

2 (10:07 a.m.)

3 MS. GOLDSMITH: Good morning everyone and welcome.

4 My name is Andrée Goldsmith and I am the Designated

5 Federal Officer for the Global Markets Advisory

6 Committee.

7 As the DFO it is my pleasure to call this  
8 meeting to order. We're very much looking forward to  
9 today's presentations and discussions and we welcome  
10 the new members of the GMAC and the new Chair.

11 There's just a couple of small logistical  
12 items I'd like to go over before we get started.

13 First for anyone who needs it, the WIFI  
14 information is printed on the back of today's agenda.  
15 Second, the microphones are push-to-talk. Please keep  
16 the microphones a few inches away. When you wish to  
17 speak press the button on the base. When your  
18 indicator light appears red, your microphone is on.  
19 When you finish talking, please press the microphone  
20 again to turn it off. A limited number of microphones  
21 can be active at one time. Please turn your microphone  
22 off after speaking to allow others to speak without

1 issue. Be advised that this meeting is being recorded.  
2 Please speak into one of the provided microphones so  
3 that recording devices can capture the meeting content.

4 Lastly, if you would like to be recognized  
5 during the discussion, please change the position of  
6 your name tent so that it sits vertically on the table  
7 in front of you and the Chair of the meeting will  
8 recognize you and give you the floor.

9 The GMAC sponsor Commissioner Stump will now give  
10 her opening remarks.

11 COMMISSIONER STUMP: Good morning and welcome to  
12 the first Global Markets Advisory Committee meeting of  
13 2019 -- or '18 or '17 or '16.

14 (Laughter.)

15 COMMISSIONER STUMP: I am very excited to sponsor  
16 the GMAC, and I believe that the importance of the  
17 Committee in today's increasingly interconnected  
18 marketplace cannot be overstated. The objectives of  
19 the GMAC are many, and including helping the Commission  
20 determine how it can avoid unnecessary regulatory and  
21 operational impediments to global businesses while  
22 still preserving core protections for customers and

1 other market participants.

2 Another objective of the GMAC is to assist the  
3 Commission in assessing the impact on U.S. markets and  
4 firms of the Commission's international efforts and the  
5 initiatives of foreign regulators and market  
6 authorities. Given today's global marketplace and the  
7 multinational nature of business, I believe that the  
8 reconstitution of the GMAC has come at a critical time.

9 I am delighted to host the first GMAC meeting in  
10 several years. Getting the GMAC up and running has  
11 been a goal of mine since I first joined the  
12 Commission, and I am hopeful that today's meeting will  
13 be the first of many under my sponsorship.

14 Before I move to the substance of today's program,  
15 I want to thank the new members of the Committee.  
16 You've all been enthusiastic to be appointed as members  
17 of the GMAC, and I have no doubt that this enthusiasm  
18 will translate into robust participation and spirited  
19 discussion on the complex matters that we will cover  
20 today. Your time and service on the GMAC is greatly  
21 appreciated.

22 I would also like to thank the Chairman and my

1 fellow Commissioners for being here today and for their  
2 contributions to the discussion. I would especially  
3 like to thank Commissioner Quintenz for his efforts to  
4 manage the Committee's updated charter and organization  
5 while serving as the GMAC's temporary sponsor prior to  
6 my arrival at the Commission, and I would like to  
7 recognize Andrea Musalem who served as the temporary  
8 Designated Federal Officer to ensure a seamless  
9 transition.

10 In addition, I would like to thank our panelists.  
11 We have gathered a distinguished group of speakers, and  
12 their eagerness to participate is greatly appreciated.  
13 The presentations are critical to today's discussion,  
14 and will provide a jumping off point for what I can  
15 only assume will be a very engaging discussion among  
16 the members.

17 Lastly but certainly not least, I would like to  
18 thank Andrée Goldsmith, the Committee's current  
19 Designated Federal Officer, for her efforts in making  
20 today's meeting a success. I am grateful for her  
21 tireless work in organizing the group and also the  
22 benefit of her tremendous experience which is reflected

1 by today's meaningful agenda designed to set the stage  
2 for the Committee's work ahead.

3 Now turning to the agenda, we have a full day  
4 ahead. We are focusing the meeting on the examination  
5 of the status of the key pillars of the Group of 20  
6 directive regarding the OTC derivatives markets.  
7 Specifically, today's agenda revolves around the  
8 sometimes-overlooked component of the G-20 agreement in  
9 2009 in Pittsburgh, which stipulates that regulators  
10 should "assess regularly implementation and whether it  
11 is sufficient to improve transparency in the  
12 derivatives markets, mitigate systemic risk, and  
13 protect against market abuse." It is noteworthy that  
14 in 2009, in the midst of responding to the crisis, that  
15 the G-20 leadership admitted that as individual  
16 jurisdictions implemented the G-20 principles, a look-  
17 back was needed to ensure that the G-20 objectives were  
18 being met.

19 In that spirit, this morning, we will start with a  
20 presentation from Shunsuke Shirakawa, Vice Commissioner  
21 of International Affairs at the Financial Services  
22 Agency in Japan, on Japan's priorities for its G-20

1     presidency in 2019.

2             The Vice Commissioner will focus on the three  
3     goals of Japan's G-20 presidency: first, addressing  
4     market fragmentation; second, addressing the challenges  
5     that come with regulating in the area of technological  
6     innovation; and third, addressing the issue of  
7     financial inclusion in an aging society. We are  
8     pleased to have the Vice Commissioner here with us  
9     today, and we look forward to his presentation.

10            Second, Steve Kennedy from ISDA will pick up on  
11     one of the themes in Vice Commissioner Shirakawa's  
12     presentation, and present on ISDA's work on regulatory-  
13     driven market fragmentation. Steve's presentation will  
14     include a discussion of the sources of market  
15     fragmentation, some real-life examples of  
16     fragmentation, and potential solutions.

17            In the afternoon, we will turn to an examination  
18     of the status of the key pillars of the G-20 directive  
19     regarding the reforms of the OTC derivatives markets.  
20     The third panel will explore cross-border issues with  
21     respect to trading venues and central counterparties.  
22     Nicolette Cone of ISDA will walk us through some of the

1 cross-border issues that have arisen with new trade  
2 execution requirements and the effect of the October  
3 2017 announcement of a common approach between the CFTC  
4 and the European Union regarding derivatives trading  
5 venues.

6         Then, Colin Lloyd of Cleary Gottlieb Steen &  
7 Hamilton will present on the current framework for U.S.  
8 access to non-U.S. swaps counterparties, some of the  
9 issues created by the current framework, and a proposal  
10 for a new framework for allowing U.S. customer and  
11 proprietary access to non-U.S. CCPs for swaps.

12         Both presentations raise a number of interesting  
13 points for discussion, and I have no doubt that the  
14 GMAC members will have plenty of thoughtful comments  
15 following the presentations.

16         Next, we will hear from the CFTC's own Rafael  
17 Martinez and Richard Haynes on initial margin for non-  
18 centrally cleared derivatives. Rafael will provide a  
19 general background on the margin rules and then delve  
20 into the Working Group on Margin Requirements, an  
21 international group under BCBS and IOSCO tasked with  
22 developing margin standards for uncleared swaps.

1 Richard will then present the CFTC's Office of the  
2 Chief Economist study on the implementation of Phase 5  
3 of the uncleared margin rules, including a number of  
4 characteristics of the entities that will be pulled  
5 into scope with the implementation of Phase 5 in 2020.

6 The last panel will focus on swap data reporting.  
7 I have long believed this to be one of the most  
8 critical components of the reform agenda. With the  
9 post-crisis implementation of comprehensive trade  
10 reporting requirements and the creation of trade  
11 repositories around the world, new issues have arisen  
12 with respect to swap data harmonization and data  
13 sharing.

14 David Aron will first present on the CFTC's work  
15 regarding the implementation of a public swap data  
16 roadmap and the CFTC's leadership in global data  
17 harmonization efforts. Next, Kate Delp from DTCC will  
18 provide DTCC's perspective on progress made to date and  
19 what the future holds with respect to swap data  
20 reporting.

21 So as you can see, our agenda today is quite  
22 packed. We cover a variety of topics and I am very

1 excited to delve into these issues with the GMAC and I  
2 again want to recognize the tremendous amount of work  
3 that has gone into planning this meeting and thank  
4 everyone for being here.

5 MS. GOLDSMITH: Chairman Giancarlo.

6 CHAIRMAN GIANCARLO: Thank you. And thank you  
7 Commissioner Stump. Good morning everybody. A warm  
8 welcome to all the GMAC committee members, presenters  
9 and participants both here and on the telephone. It's  
10 good to have you with us at the CFTC today.

11 Today GMAC will discuss how regulators are  
12 fulfilling the 2009 G-20 directive regarding the over-  
13 the-counter derivative market. It will consider how  
14 these reforms are being implemented at the G-20 nation  
15 state level in a fashion that is consistent, though not  
16 identical. The concern, of course, is whether  
17 disparate implementation of the reforms is causing  
18 undue market fragmentation of what prior to the reform  
19 implementation, were global markets for derivatives  
20 trading.

21 The concern is that such fragmentation exacerbates  
22 the already inherent challenge in swaps trading;

1 adequate liquidity and increases market fragility as a  
2 result. Fragmentation leads to smaller disconnected  
3 liquidity pools and less efficient and more volatile  
4 pricing. Divided markets are more brittle with  
5 shallower liquidity, posing a risk of failure in times  
6 of economic stress or crisis.

7       Fragmentation increases firms' operational risks  
8 as they structure themselves to avoid the rules of one  
9 jurisdiction and be subject to the rules of another  
10 while managing multiple liquidity pools in different  
11 jurisdictions through different affiliates. As  
12 structural complexity increases, operational efficiency  
13 is reduced.

14       The issue, of course, is how to conduct reform  
15 implementation in ways that are well-calibrated to  
16 systemic risk mitigation without undue market  
17 fragmentation. And like all things in market  
18 regulation, and in fact, in life, the goal is achieving  
19 proper balance.

20       Fortunately, attention to market fragmentation is  
21 taking place at the highest levels of global  
22 cooperation. Japan has placed it on the current

1 agenda, the G-20 Presidency for discussion at the  
2 upcoming June summit in Osaka as Mr. Shirakawa will  
3 describe to us.

4 The Financial Stability Board has assigned a  
5 fragmentation review to a key committee focused through  
6 the lens of financial stability. And IOSCO has had a  
7 longstanding concern about fragmentation of financial  
8 markets.

9 In fact, in 2013, it set up a Cross-Border Task  
10 Force to examine ways to assist member authorities with  
11 the challenges of cross-border regulation to promote  
12 sound and effective domestic regulation without unduly  
13 constraining cross-border trade, investment, and risk  
14 mitigation.

15 The Task Force's report was published in 2015 and  
16 identified three basic tools used by regulators to  
17 regulate cross-border financial market activities.  
18 Those were: national treatment, recognition, and  
19 passporting.

20 This year IOSCO decided to revisit the work of the  
21 Cross-Border Task Force, forming the so-called "Follow-  
22 Up Group." And I'm pleased to be Co-Chair of the

1 Follow-Up Group with my JFSA colleague Jun Mizaguchi.

2 The Follow-Up Group has three important tasks:

3 One, to examine instances of market fragmentation in  
4 securities and derivatives markets and the potential  
5 reasons why fragmentation has developed. To take stock  
6 of members' experiences using the cross-border tools  
7 identified in the 2015 report, including lessons  
8 learned and areas for improvement, and any policy  
9 implication from those experiences. And third, to  
10 build a central repository of supervisory memoranda of  
11 understanding to strengthen collaboration and  
12 cooperation between IOSCO regulators and to increase  
13 transparency around supervisory arrangements between  
14 jurisdictions.

15 IOSCO has coordinated with the FSB to ensure that  
16 our endeavors are not redundant. In this regard IOSCO  
17 has provided input to the FSB on fragmentation with  
18 respect to the securities and derivatives markets,  
19 which will be reflected in the FSB report.

20 Now in the last few months, the Follow-Up Group  
21 has surveyed IOSCO members about instances and possible  
22 regulatory drivers of market fragmentation and the use

1 of cross-border tools identified in the 2015 report;  
2 focusing on deference and recognition decisions. And  
3 the IOSCO Follow-Up Group has also consulted with  
4 industry and other stakeholders in a workshop organized  
5 by the FSB in January 2019 and organized a separate  
6 roundtable this past March at FIA Boca with senior  
7 members of the derivatives industry.

8 The IOSCO Follow-Up Group is now in the process of  
9 writing up its observations and considerations for  
10 presenting at the IOSCO meeting next month in Sydney.

11 So that's why today's meeting could not be more  
12 timely. Concerns addressed at GMAC will help inform my  
13 contribution to the IOSCO Committee report and I look  
14 forward to today's discussion of how regulators are  
15 fulfilling the 2009 G-20 directive regarding the over-  
16 the-counter derivatives markets.

17 As we confront the challenges ahead, in particular  
18 the fragmentation of global swaps markets, we will look  
19 to the thoughtful discussions of advisory committees  
20 like this one.

21 Before I end, let me say that I am particularly  
22 pleased to be here with you this morning. You see, I

1 was in the office for a few hours this past Saturday,  
2 April 13th. As I left, one of our security officers  
3 asked me if he would see me on Monday morning. And I  
4 said, of course, there's an important meeting. And he  
5 said, "Okay, good, because today is the last day of  
6 your term of office, you know?" I said, "Yes, I know,  
7 but thereafter I continue to serve at the pleasure of  
8 the president." And he said, "And is that his  
9 pleasure?"

10 (Laughter.)

11 CHAIRMAN GIANCARLO: And I assured him it was.  
12 And then he said, "Good, then we'll see you on Monday  
13 morning." And so my friends, I'm very glad to be with  
14 you this morning and if you ever think you're going to  
15 get something past CFTC security think again.

16 (Laughter.)

17 CHAIRMAN GIANCARLO: So thank you Commissioner  
18 Stump for this meeting. Thank you all.

19 MS. GOLDSMITH: Commissioner Quintenz.

20 COMMISSIONER QUINTENZ: Thank you. I'm very glad  
21 to have you Mr. Chairman and let me commend  
22 Commissioner Stump for her leadership with this

1 committee and with the very robust agenda that we have.  
2 Forgive the use of a Texas phrase, hopefully not for  
3 the wrong school, but you've taken this by the horns  
4 and it really shows these are some of the most  
5 important, if not the most important issues that we,  
6 that we are currently dealing with. And so, I'm very  
7 much looking forward to hearing all of our  
8 distinguished members' thoughts on these issues, as  
9 well as, our panelists'.

10 And let me just take a minute to welcome Vice  
11 Commissioner Shirakawa. I had very much -- I had the  
12 pleasure of being with you on a panel two weeks ago at  
13 EUROFI, where we discussed all of these issues from a  
14 very high level and I was going through your  
15 presentation -- I think it's -- if you'll forgive me, I  
16 think it's just important to repeat that there was  
17 language in the G-20 agreement that reflected all the  
18 leaders' commitments to insuring against protectionism  
19 and the fragmentation of markets and regulatory  
20 arbitrage.

21 And while everyone can make their own judgments as  
22 to which other jurisdictions are following that, I

1 would hope that if you look at the CFTC you would find  
2 that we are and that to the extent we are embracing a  
3 deference-based approach and will continue to embrace a  
4 deference-based approach to unharmonized rules and I  
5 think you will further find the advantages of the  
6 global efficient allocation of capital, the positive  
7 attributes for the diversification of risk, the  
8 standards to which we all harmonize are only as good as  
9 those standards themselves, the appropriateness of  
10 them.

11 So I think it is crucial that we have this panel  
12 and this discussion now to make sure that we  
13 rationalize those with the CFTC to the extent we can  
14 and that we use this opportunity to rationalize them at  
15 the international level, as well.

16 So thank you all for your participation. Welcome  
17 to our panelists and thank you again, Commissioner  
18 Stump.

19 MS. GOLDSMITH: Commissioner Behnam.

20 COMMISSIONER BEHNAME: Good morning. Welcome to  
21 everyone. Good to see familiar faces. A special  
22 welcome to Vice Chair Shirakawa. It's good to see you.

1 Like Commissioner Quintenz, I saw the Vice Chair last  
2 week in his office and we had a lot of these  
3 discussions as well. Special thanks to Commissioner  
4 Stump for her leadership and holding this meeting. I  
5 think it's important as the Chairman said and  
6 Commissioner Quintenz said, that we discuss these  
7 issues now. It's the right time to revisit some of the  
8 G-20 reforms, but we should also be -- let the past  
9 sort of inform the future as we sort of reflect on the  
10 crisis and what was done wrong and what we were missing  
11 and how we can shape new policy to make sure that  
12 systemic risk is kept out of the system and that we  
13 have a sort of robust, transparent, global marketplace.

14 So looking forward to today's discussion. Again,  
15 welcome to everyone and looking forward to the work of  
16 the GMAC in the future. Thank you.

17 MS. GOLDSMITH: Commissioner Berkovitz.

18 COMMISSIONER BERKOVITZ: Thank you. Thank you  
19 Commissioner Stump for hosting this meeting and I'd  
20 like to welcome Angie Karna as our new Chair.

21 I'm pleased to be here today and look forward to  
22 hearing from all the presenters on the various panels

1 that are that are very timely and relevant.

2 The CFTC has been focused lately on collaborating  
3 with its international counterparts to harmonize  
4 regulations for derivatives trading.

5 We're consistent with our congressional mandate.  
6 We have granted substituted compliance for Australia's  
7 and Japan's margin requirements for uncleared swaps;  
8 recognize swaps trading platforms in Singapore as  
9 comparable and comprehensive on a consolidated basis;  
10 and worked with European and UK regulators to provide  
11 reassurance to market participants that they will have  
12 access to the same derivative markets and services  
13 immediately following the UK's withdrawal from the  
14 European Union -- whenever that occurs and whatever  
15 form that may take.

16 All of these actions have taken place under the  
17 CFTC's cross-border regulatory approach that has been  
18 in place now for about six or seven years. As other  
19 countries are finalizing their rules for derivatives  
20 trading, our cross-border guidance and approach has  
21 provided us with a flexible framework to continue to  
22 streamline access to international derivatives markets

1 while simultaneously minimizing the risks that could  
2 come back to the U.S.

3 I look forward to discussions today and amongst my  
4 colleagues as to how to build on this framework going  
5 forward. Again, I look forward to the panelists and  
6 our discussion today. Thank you.

7 MS. GOLDSMITH: Now I'll turn it back over to  
8 Commissioner Stump to introduce the Chair of the GMAC.

9 COMMISSIONER STUMP: I am extremely pleased that  
10 Angie Karna has agreed to serve as Chairman of the  
11 GMAC.

12 Angie is Managing Director in the Legal Department  
13 at Nomura Securities International. She joined Nomura  
14 in September 2009 and is the Head of Legal for Global  
15 Markets-Americas. Angie is the Chair and Sponsor of  
16 Nomura's global Dodd-Frank program and leads other  
17 market structure regulatory initiatives as well. Prior  
18 to joining Nomura, Angie was a Senior Attorney at  
19 Barclays Capital and Lehman Brothers in New York. She  
20 also practiced law in New York and Toronto.

21 Additionally, Angie serves on the National Futures  
22 Association's Business Conduct Committee, and she has

1    been elected to serve on the Swap Dealer Subcommittee  
2    of the NFA's Nominating Committee.  Angie is on the  
3    Executive Committee of the Board of Trustees of the  
4    Institute of international Bankers and was a Co-Chair  
5    and Vice Chair of SIFMA's Swap Dealer Committee from  
6    2014 to 2018, where she continues to Co-Chair the Swap  
7    Dealer Committee's Cross-Border Subcommittee.  She's  
8    the Chair of Nomura's Diversity and Inclusion  
9    Committee, and an executive sponsor of the Nomura's  
10   Women's Network.

11           Additionally, Angie is a founder and board member  
12   of Women in Derivatives, a nonprofit organization whose  
13   mission is to attract, retain, and educate and develop  
14   female leaders in the financial industry.  No doubt  
15   GMAC will benefit from Angie's tremendous experience  
16   and we are well-served by her leadership.

17           CHAIRWOMAN KARNA:  Commissioner Stump, thank you  
18   very much for your kind introduction and thank you for  
19   the honor and the privilege of serving as Chair of this  
20   very important committee.  I also want to thank some of  
21   the Commissioners' comments, really thanking all of our  
22   panelists and our committee members today for

1 contributing to this incredibly timely and important  
2 discussion and literally bringing your very diverse  
3 perspectives to the table today.

4       The GMAC, as was highlighted, serves a very  
5 important role at this time in providing guidance and  
6 recommendations to the CFTC on critical issues. I look  
7 forward to a robust discussion including all viewpoints  
8 to fulfill the mandate of the GMAC. With that, I'd  
9 like to turn over our very packed agenda, and robust  
10 agenda, to our first speaker Vice Commissioner for  
11 International Affairs Shirakawa from the JFSA.

12       MR. SHIRAKAWA: Thank you very much for your kind  
13 introduction and for inviting me to the Global Markets  
14 Advisory Committee of the CFTC. It is my great  
15 pleasure and honor to be here to talk about our  
16 priorities on financial sector issues for the G-20  
17 Japan Presidency of this year.

18       Let me start my presentation by looking at where  
19 we are in the history of the G-20. G-20 leaders met  
20 here in Washington in November 2008 to enhance  
21 cooperation and work together to restore global growth  
22 and to begin much-needed reforms of the world's

1 financial systems.

2 At the third G-20 summit in Pittsburgh in 2009,  
3 leaders provided a blueprint for the post-crisis reform  
4 program.

5 It had four pillars: First, stronger prudential  
6 regulations to make banks more resilient by holding  
7 more capital and liquidity. Second, an effective  
8 resolution framework to allow authorities to resolve  
9 financial institutions in an orderly manner without  
10 taxpayer exposure to loss. Third, making the  
11 derivatives market safer by introducing central  
12 clearing for standardized contracts, as well as higher  
13 capital standards and minimum margining requirements  
14 for non-centrally cleared derivatives. Fourth,  
15 strengthening the oversight and regulation of shadow  
16 banking, a cause of the financial crisis.

17 The goal of these reforms was to address financial  
18 stability risks and transform shadow financing into  
19 resilient market-based finance.

20 More than 10 years have passed since the crisis,  
21 and core reforms were largely in place by the end of  
22 2017. Now, regulatory focus is shifting from new

1 policy developments to evaluating past reforms, and  
2 addressing new and emerging vulnerabilities.

3 So at this critical juncture, what are the goals  
4 of Japan's G-20 presidency?

5 As agreed to by G-20 Leaders in Buenos Aires, we  
6 remain committed to the full, timely, and consistent  
7 implementation and finalization of the agreed upon  
8 financial reform agenda. And we remain committed to  
9 the evaluation of its effects.

10 On the evaluation of the effects of reforms, the  
11 FSB has, using its framework for the evaluation of  
12 reforms, begun to analyze whether they are achieving  
13 their intended outcomes, and to help identify any  
14 material unintended consequences. During our  
15 Presidency, this evaluation work is focusing on SME  
16 financing.

17 As part of our efforts to monitor and address new  
18 and emerging financial system vulnerabilities, Japan  
19 proposed three priorities under its Presidency. First,  
20 fragmentation; second, innovation, and third; aging.

21 Before using the rest of my presentation to  
22 explain these three priorities, let me briefly touch

1 upon our roadmap. As you may well be aware, a G-20  
2 Deputies' meeting, as well as a Ministers' and  
3 Governors' meeting, was held last week here in  
4 Washington, D.C.

5 The standard-setting bodies, or SSBs, and other  
6 relevant organizations reported on the progress made  
7 since the Deputies' meeting in January, and were  
8 provided with guidance on the way forward. A  
9 roundtable on AML/CFT issues was also held the week  
10 before, as part of our efforts on financial innovation.

11 Japan will also host a symposium and a seminar on  
12 aging and financial inclusion, two of our priorities,  
13 in Tokyo and Fukuoka, respectively, in early June. We  
14 will then host the Ministers' and Governors' meeting on  
15 June 8th and 9th in Fukuoka, where most of the  
16 financial system deliverables will be submitted. The  
17 Leaders' summit will follow later that month in Osaka.

18 Returning to our three priorities. First, market  
19 fragmentation.

20 The G-20 has long been committed to implementing  
21 financial reforms in a way that supports an integrated  
22 global financial system. When G-20 Leaders set out the

1 global reform agenda at Pittsburgh in 2009, they  
2 said: "We are committed to take actions at the  
3 national and international level to raise standards  
4 together so that our national authorities implement  
5 global standards consistently in a way that ensures a  
6 level playing field and avoids fragmentation of  
7 markets." At the latest Summit Meeting in Buenos Aires  
8 last December, they again stressed that they  
9 would address fragmentation through continued  
10 regulatory and supervisory cooperation.

11 Thanks to almost 10 years of effort by the G-20,  
12 the FSB and other standard-setting bodies, we have  
13 largely put in place reforms to enhance the resiliency  
14 of the global financial system. These include Basel  
15 III, OTC derivatives reforms and resolution frameworks.  
16 On the other hand, our progress has been  
17 unremarkable with respect to promoting an open and  
18 integrated global financial system, despite the  
19 individual efforts of G-20 members.

20 Regulations and supervisory practices that are  
21 inconsistent, overlapped, or incompatible across  
22 jurisdictions are putting an excess burden on some

1 financial institutions. This could give rise to market  
2 fragmentation along national lines. Against this  
3 backdrop, we proposed market fragmentation as one of  
4 the priorities of Japan's G-20 Presidency. The FSB and  
5 IOSCO have launched an initiative to identify the  
6 sources of harmful market fragmentation and to explore  
7 ways to address any financial stability risks.

8 The FSB discussion highlighted that some types of  
9 market fragmentation may, however, be intentional and  
10 can have a positive effect on financial stability.

11 Such fragmentation may reflect differences in domestic  
12 policy mandates and responsibilities.

13 Other types of market fragmentation, on the other  
14 hand, are often unintended and may reduce financial  
15 system resilience both domestically and globally. This  
16 could be the case if fragmentation limits  
17 cross-border diversification and risk management,  
18 impairs market liquidity, or prevents the cross-border  
19 flow of capital and liquidity during  
20 times of stress.

21 In other words, it is important for authorities,  
22 when developing and implementing regulatory and

1 supervisory frameworks, to consider the trade-offs  
2 between the benefits of increased cross-border activity  
3 and a need to tailor them to local conditions.

4 In that case, what should we expect by discussing  
5 market fragmentation? We are not intending to re-open  
6 agreed upon international standards. Rather, we would  
7 like to discuss practical and pragmatic solutions for  
8 addressing market fragmentation. Our focus will be on  
9 market fragmentation driven by regulatory and  
10 supervisory measures which negatively impact financial  
11 stability or market efficiency.

12 Potential sources of market fragmentation driven  
13 by regulatory and supervisory measures can be broadly  
14 classified into three categories.

15 The first category is inconsistencies in the  
16 implementation of international standards, either in  
17 timing or substance. The second category is  
18 extraterritorial application of market regulation, or  
19 location policies requiring certain activities to be  
20 conducted in a specific jurisdiction. The third  
21 category is incompatibilities between home and host  
22 regulatory or supervisory requirements.

1           In order to seek valuable input from stakeholders,  
2 including market participants and academia, the FSB and  
3 IOSCO hosted workshops in January and March of this  
4 year. Stakeholders took the opportunity to highlight  
5 examples where supervisory and regulatory policies may  
6 give rise to market fragmentation.

7           The first area identified was cross-border trading  
8 and the clearing of OTC derivatives, which are  
9 sometimes segmented along geographic lines. The second  
10 area was banks' cross-border management of capital and  
11 liquidity, which can be affected by local ring-fencing  
12 or prepositioning measures. The third area was  
13 barriers to information sharing across borders,  
14 including differences in data reporting requirements.

15           Now, how can we address market fragmentation?  
16 This is a challenging task because we need to tackle  
17 this global issue mainly through the collective actions  
18 of national authorities. To come up with practical,  
19 concrete solutions, it can help to look at the various  
20 phases of regulations: the development of  
21 international standards, national rule making,  
22 deference and/or recognition of foreign regulatory

1 framework; and daily supervisory activities. It may be  
2 useful to design processes and approaches fitted to  
3 each of these phases.

4 For example, when developing international  
5 standards, the FSB and standard-setting bodies could  
6 put additional focus on implementation and operational  
7 challenges to help prevent inconsistencies in  
8 implementation. More attention should also be paid to  
9 the burden on firms facing similar, but different  
10 requirements in multiple jurisdictions.

11 National authorities may be able to prevent  
12 unintended regulatory conflicts through the meaningful  
13 exchange of information on national rule-making  
14 processes. Timely input from foreign stakeholders on  
15 the potential impact on cross-border activities could  
16 help pre-empt regulatory conflicts.

17 With regards to recognition or, more broadly,  
18 deference, authorities need comparability assessments  
19 of foreign regulatory frameworks. For such  
20 assessments, they tend to conduct line-by-line  
21 comparisons of domestic rules on a bilateral basis,  
22 which often result in duplicative and inefficient

1 processes. Against this backdrop, IOSCO is going to  
2 consider whether there are ways to further improve the  
3 process of comparability assessments, based on its  
4 previous work on a toolkit for cross-border regulation.  
5 We appreciate that the CFTC is leading IOSCO's work in  
6 this area.

7 Last but not least, we need to explore how  
8 supervisory cooperation could be improved for  
9 mitigating fragmentation. Insufficient cooperation  
10 often leads to excessive conservatism in comparability  
11 assessments of foreign regulatory frameworks, or  
12 excessive prepositioning of capital and liquidity. We  
13 should discuss cross-border supervisory cooperation  
14 more so that we can enhance mutual trust among  
15 authorities.

16 Sometimes, small and practical steps can make a  
17 difference. We look forward to discussing practical  
18 ways to address market fragmentation at the FSB and  
19 IOSCO, and to presenting something tangible at the June  
20 G-20 meetings.

21 The second priority under the Japanese Presidency  
22 is technological innovation in the financial sector.

1           In Buenos Aires, leaders declared that they will  
2           step up efforts to realize the benefits of new  
3           technology while mitigating the risks. So, which  
4           efforts specifically should we step up?

5           The more immediate needs are to mitigate the risks  
6           posed by crypto-assets. Since multilateral responses  
7           are needed given their borderless nature, standard-  
8           setting bodies have started working on addressing  
9           crypto-asset issues in line with their mandates.

10           First on AML/CFT, the Financial Action Task Force,  
11           FATF, has been making progress in its work. Following  
12           the revision to the FATF Recommendation in October of  
13           last year, the FATF plenary agreed at its February  
14           meeting on a new Interpretive Note, part of which is  
15           now going through public consultation. The new  
16           Interpretive Note is expected to be submitted to the G-  
17           20 in June.

18           The FSB compiled and published a directory of  
19           crypto-regulators, which is expected to form a basis  
20           for cross-border supervisory cooperation and policy  
21           dialogue. The FSB is also working to identify possible  
22           regulatory gaps in this area.

1           And finally, IOSCO is preparing a report for  
2 public consultation on regulatory approaches to crypto-  
3 asset trading platforms. It will include key  
4 considerations on issues such as consumer and investor  
5 protection, as well as market integrity. The report  
6 will also outline a toolkit of measures for regulatory  
7 authorities to consider.

8           From a longer-term perspective, the FSB is  
9 exploring the use cases of the underlying decentralized  
10 financial technologies and their implications for  
11 financial stability, regulation and governance. Such  
12 technologies may reduce or eliminate the need for  
13 intermediaries or centralized process; this poses  
14 challenges as current financial regulations are based  
15 around these arrangements.

16           In this regard, as shown in the previous slide on  
17 our roadmap, Japan will host a high-level seminar in  
18 Fukuoka on the margins of the Ministers' and Governors'  
19 June meeting. A panel discussion will be held to  
20 discuss the governance of the future financial  
21 landscape brought about by block chain. It will  
22 include stakeholders from the regulatory community,

1 academia, industry and the tech community.

2           The final topic is aging. In collaboration with  
3 the Ministry of Finance and Bank of Japan, we will  
4 comprehensively examine the implications of aging for  
5 fiscal and monetary policy, as well as for the  
6 financial sector. The JFSA's particular focus is on  
7 financial inclusion in an aging society.

8           Look at the left chart. Aging is a global  
9 phenomenon. Both developed and developing countries  
10 are experiencing growth in the number and proportion of  
11 older people. The United Nations predicts that  
12 globally there will be over two billion people aged 60  
13 and over in 2050. Eighty percent of these are expected  
14 to live in low-and middle-income countries.

15           Population aging is particularly challenging for  
16 less developed economies with limited financial  
17 infrastructure. It may be difficult for adults in such  
18 economies to access the financial products needed to  
19 plan for a long-life. They are less likely to be aware  
20 of how such products can help them navigate through the  
21 stages of life.

22           Look at the center chart. Cognitive and physical

1 decline are more likely later in life. The graph in  
2 the middle shows that there will be 130 million people  
3 with dementia globally in 2050. Others estimate that  
4 by 2030 around 200 trillion yen of Japanese financial  
5 wealth will be in the hands of people with dementia.

6 Financial decision-making becomes harder as  
7 cognitive skills decline, making it increasingly  
8 difficult for older people to choose and manage  
9 financial products or stick to financial plans.

10 Physical decline also makes banks and other financial  
11 institutions less accessible. Travel becomes more  
12 difficult, and reading or hearing information or using  
13 digital tools can be problematic, leading to exclusion  
14 in later life.

15 Look at the right-hand chart. The more longevity  
16 people enjoy, the more financial needs they need to  
17 plan and manage. However, wealth formation is failing  
18 to keep pace with increased longevity. There will be  
19 an estimated retirement savings gap of \$400 trillion  
20 U.S. dollars by 2050 for the eight advanced economies  
21 shown in the right hand graph.

22 As people age, medical expenses and other costs,

1 like adapted housing and physical assistance, may grow  
2 significantly. Many will not be sufficiently prepared  
3 for, or even aware of, these expenses as they often  
4 arise unexpectedly.

5       As such, we have a lot of issues to address to  
6 ensure financial inclusion in an aging society: How  
7 should financial services be provided to those elderly  
8 with low cognitive or physical capacity? How should  
9 financial products and services, including asset  
10 management services, be adapted for greater longevity?  
11 Can emerging digital technologies facilitate financial  
12 inclusion, or does it raise the risk that the elderly  
13 will be excluded?

14       Japan is a frontrunner in experiencing an aging  
15 society. During our presidency, we will chair the  
16 Global Partnership for Financial Inclusion, GPMI, and  
17 identify emerging issues and potential policy  
18 responses. The GPMI will submit a report on the topic  
19 at the Ministers' and Governors' meeting in Fukuoka in  
20 June.

21       To deepen the discussion, Japan will also host a  
22 high-level symposium in Tokyo in June. We will have

1 leaders in financial services and regulations,  
2 gerontology and geriatrics, life planning, development  
3 economics and others.

4 To wrap up, Japan is focusing our priorities  
5 related to the financial sector on addressing the  
6 remaining issues of the global regulatory reforms  
7 proceeded in the past decade, and exploring new policy  
8 agendas looking towards the coming decade.

9 We look forward to discussing and promoting these  
10 agendas with U.S. colleagues and other G-20 members.

11 Thank you very much for your attention.

12 CHAIRWOMAN KARNA: Thank you Mr. Shirakawa for  
13 your very informative presentation and thank you for  
14 highlighting the three key financial sector priorities  
15 for the G-20 this year.

16 Now we're going to shift to our second panel.  
17 Where we'll take a deeper dive on one of those  
18 priorities market fragmentation. And with that I'll  
19 welcome our next presenter, Steven Kennedy, the Global  
20 Head of Public Policy for ISDA.

21 MR. KENNEDY: Good morning. I'll explain the  
22 voice in a minute.

1 CHAIRWOMAN KARNA: We were wondering.

2 MR. KENNEDY: Thank you Angie. Thank you.

3 Commissioner Stump, Chairman Giancarlo, Commissioners  
4 Quintenz, Behnam, and Berkovitz. I hope you can hear  
5 me okay. I'm going to speak very closely to the  
6 microphone.

7 Last week I was in Hong Kong where we held -- ISDA  
8 held its 34th Annual Meeting. Commissioner Behnam was  
9 there, we were very happy to host him. I moderated a  
10 panel on market fragmentation and was honored that  
11 Shirakawa-san participated on it.

12 The good news here is that we got to spend some  
13 time together and share mutual concerns. The bad news,  
14 at least for him, is that he's already heard what I'm  
15 going to say. So my apologies to him and my apologies  
16 to all of you, because I picked up a bug on the flight  
17 back and that's the reason for my, for my raspy voice.

18 When I was in Hong Kong, I started off the panel  
19 on market fragmentation by asking a question. And the  
20 question was, have you ever heard of the Golden Arches  
21 Doctrine? You know, McDonald's Golden Arches doctrine?  
22 Well, it was a term coined not that long ago in the

1 1990s by author and commentator Thomas Friedman who  
2 brought us "The World is Flat."

3       And just to summarize it, the Golden Arches  
4 doctrine stipulates that no two countries with a  
5 McDonald's franchise have ever been in armed conflict  
6 with each other. And the reason according to Friedman  
7 is because countries with middle classes large enough  
8 to sustain a McDonald's franchise, have reached a level  
9 of prosperity and global economic integration that  
10 makes war risky and unpalatable to its people. So  
11 that's the Golden Arches Doctrine.

12       And the larger point here, of course, is that not  
13 too long ago there was a deep and a wide belief in the  
14 virtues of globalization and the benefits of global  
15 markets and insurance for capital flows; any  
16 integration of economies and that's regardless about  
17 whether you actually liked a Big Mac or not.

18       Now, since that time, 20 years ago, two  
19 things have happened. Two countries with the  
20 franchise, McDonald's franchise, have actually gone to  
21 war with each other. It's sad, but true. And maybe it  
22 means the benefits of globalization weren't as

1 advertised. But more importantly, and more seriously,  
2 came the financial crisis, and to some, the crisis  
3 exposed the flaws in a global financial market  
4 approach.

5       Former Bank of England Governor Mervyn King, once  
6 famously quipped global banks are international in  
7 life, but national in death. All of this has caused  
8 many to question the virtues of global financial  
9 markets and to think more about safety and soundness  
10 and competition within their own individual markets.  
11 And that's what brings us here today, because obviously  
12 this issue has risen in priority for both market  
13 participants and global financial regulators.

14       Shirakawa-san alluded to -- this is the G-20  
15 Leaders' declaration which affirms their support for  
16 globalization of markets and for addressing the  
17 problems of market fragmentation. And what are those  
18 problems? The problem is that it can trap capital and  
19 liquidity and risk in local markets. It makes the  
20 financial system and financial firms much less  
21 efficient and therefore it makes the financial system  
22 work less well, and therefore there's less capital and

1 liquidity to support economic growth.

2           So I think there's a direct correlation between  
3 some of the problems of market fragmentation and the  
4 concerns of market participants and policymakers to  
5 stimulate global growth. So that's what's driving the  
6 issue.

7           Now we in the derivatives market are, as you might  
8 imagine, especially sensitive to market fragmentation  
9 issues because our market has long been one of the most  
10 global in the world. A 10-year fixed floating interest  
11 rate swap based upon some common reference benchmark is  
12 the same whether it's in New York or London or Brussels  
13 or Frankfurt or Sydney or Singapore or Hong Kong or  
14 Tokyo and artificial obstacles that get in the way of  
15 that, that make it more expensive or reduce the  
16 availability are obviously not good for either of the  
17 financial system or for market participants.

18           The Financial Times, I think, laid this case out  
19 pretty well and it all comes down to the impact on end-  
20 users, which I think sometimes gets forgotten by  
21 putting up barriers to entry or to competition within  
22 markets. It becomes more expensive for end-users to

1 hedge their risk and perhaps increases risk in the  
2 financial system.

3 Shirakawa-san went through the sources of  
4 regulatory fragmentation and I think that the speech  
5 that Himino-san gave in October at the ISDA conference  
6 in Tokyo was to me over the last 30 years so  
7 interesting and open, that regulators would actually  
8 come together and say that they are the source of some  
9 of the risk that we're dealing with in the market and  
10 that it's in their power to try to address it. I won't  
11 go into this in too much detail, but if you haven't had  
12 a chance to read Himino-san's speech, it's on our  
13 website.

14 So we've recently -- early this year, we at ISDA,  
15 published a paper on giving specific examples of  
16 regulatory driven market fragmentation and there are  
17 two things I want to point out and we'll go through  
18 some of them, examples for some of them. One is you  
19 can find sources of regulatory driven market  
20 fragmentation in virtually any aspect of the  
21 derivatives market. Second, this is not just about  
22 deference and substituted compliance. Some of these

1 issues affect capital and margin rules, which need to  
2 get addressed on a global level and then implemented on  
3 a local level.

4 So let's talk about some specific examples.

5 Obviously, extraterritoriality, substituted compliance,  
6 deference -- these are all big issues. I think,  
7 Commissioner Berkovitz or Commissioner Quintenz  
8 mentioned some of the recent positive developments that  
9 we've been seeing in that regard. Those are welcome  
10 developments. Obviously there's still much more work  
11 to be done. We understand that these concerns are  
12 being fueled by things like Brexit and other concerns.  
13 But at the very least, there seems to be -- we take  
14 heart in the fact that there seems to be willingness  
15 amongst policymakers to try to make the system work on  
16 an operating day-to-day basis.

17 I want to spend a little more time talking about  
18 capital, just to make sure that people here are aware  
19 of it. And I would headline in the capital area that  
20 there's a fundamental apprehension between participants  
21 in the EU and participants in the U.S. about the  
22 implementation of the new market risk capital rules.

1           In Europe the rules are being embedded in  
2   legislation and there's no going back once that  
3   happens. So naturally they're very concerned about the  
4   scope and the timing of when and how the U.S. is going  
5   to implement those capital rules. And I think that  
6   there's still some lingering uncertainty about what our  
7   intentions are.

8           The net stable funding ratio, this is an area with  
9   a Basel Committee, kind of surprised market  
10   participants by putting an add-on for derivatives  
11   liabilities in the rules. It was originally set at 20  
12   percent and after much consultation with the industry  
13   they then changed it and said it can be between five  
14   and 20 percent. Australia, for example, is going to  
15   implement it at 20 percent. Most other jurisdictions  
16   have indicated that you can do it at five percent and I  
17   know that they may cite reasons for why they provided a  
18   range, but just having a range in the regulation kind  
19   of indicates, you know, the case for market  
20   fragmentation here.

21           The credit valuation adjustment is there's an  
22   exemption for counterparty credit risk for corporates

1 and sovereigns in Europe. There is no such exemption  
2 in the U.S., which means firms operating here would  
3 face higher costs and potentially end-users, as well.  
4 So I know these are kind of technical issues but from a  
5 very real sense it shows the divergence in rules in a  
6 very important area.

7 The same is true when it comes to initial margin  
8 for margin for non-cleared swaps. And the differences  
9 here range from everything from in Europe you can do  
10 T+2. In terms of exchanging margin in the U.S., it's  
11 T+1. If you're doing business in an Asian time zone,  
12 T+1 can become very problematic. There are differences  
13 in jurisdictions for what qualifies as eligible  
14 collateral. In the U.S. it's a requirement for inner  
15 affiliates of a depository institution to post margin.  
16 There's no such requirement in Europe.

17 And just to give you an idea of the scope of this  
18 issue, U.S. banks that post -- according to a recent  
19 survey we did, are now posting \$40 billion in inter-  
20 affiliate initial margin, where there's no risk.

21 Another big area of concern is regarding the  
22 initial margin modeling and back testing. In Europe

1 and in Japan, end-users are required to validate and  
2 test the model. There's no such requirement in the  
3 U.S., that's imposing a really severe obligation on  
4 end-users overseas. And obviously there'll be knock-on  
5 effects for the margin for non-cleared derivatives.

6 Clearing, obviously very sensitive issues for many  
7 of the people in this room.

8 Some jurisdictions have clearing location  
9 policies. And if you're a jurisdiction with a closed  
10 currency system and a clearing mandate, the only  
11 solution is a clearing location policy because it can't  
12 be cleared in any other jurisdiction. I'll come back  
13 to this in a minute, but this means like places like  
14 Indonesia, which have a closed currency. If they were  
15 to implement a clearing mandate, that means there would  
16 be a clearing house in Indonesia and I'm not sure  
17 anyone in this room would support that measure. So a  
18 host of other issues in clearing, but let me get  
19 through this.

20 Trade execution, trade location policy, the  
21 location policy of trading personnel. Obviously  
22 sensitive issues that the Commission has been

1 addressing. And data and reporting may be the most  
2 obvious area where there's significant market  
3 fragmentation and the practices that vary from  
4 jurisdiction to jurisdiction, both in terms of what  
5 data is required, as well as, the way in which it has  
6 to be presented. All of which just needlessly increase  
7 costs and inefficiencies for market participants and  
8 doesn't yield good data for policymaking.

9         Just a quick word on netting. Many jurisdictions  
10 recognize netting and it's legally enforceable. Many  
11 others don't. Netting is probably the single biggest  
12 reducer of counterparty credit risk that exists today.  
13 So greater consistency in netting practices across  
14 jurisdictions would be important.

15         And in benchmarks this issue just got fixed, but  
16 there's a new EU benchmark regulation coming into  
17 effect in two years' time, which would probably have  
18 met many benchmarks, wouldn't be able to be used within  
19 Europe. However, the regulators there have pushed it  
20 back for two years. So there's, there's some time to  
21 sort it out.

22         So hopefully that gives you an idea as to some of

1 the very real and very important issues that market  
2 participants are dealing with in terms of market  
3 fragmentation.

4 In our paper, we also articulated a series of  
5 potential solutions and I'd like to briefly go through  
6 those here.

7 Number one is, and this goes back to the  
8 discussion of the Golden Arches Doctrine. In this day  
9 and age, it's really important for policymakers to  
10 articulate the benefits of global markets and the  
11 dangers of market fragmentation. It really can't be  
12 said enough. And I think that in some people's minds -  
13 - in some market participants' minds, we doubt whether  
14 or not regulators in every jurisdiction are really  
15 committed to this and led to some of the geopolitical  
16 issues that are going on. So that's obviously  
17 important.

18 Secondly, when policy -- and policymakers we  
19 recognize have a very difficult job, but when they are  
20 meeting to discuss global standards, it's important  
21 that they consult with other national regulators within  
22 new jurisdictions to make sure that it's possible to

1 implement those standards because many times there'll  
2 be agreement on a global level, but there'll be no  
3 agreement on a local level, which is just going to lead  
4 to regulatory arbitrage and market fragmentation.

5 I was at a FSB workshop in January in which we  
6 talked about this subject. And, of course, the  
7 rejoinder by central bankers to the market  
8 fragmentation issue is like if you want to talk about  
9 fragmentation and regulatory arbitrage, it's really the  
10 work of local market participants that are pushing  
11 policymakers into that. And that is probably true on  
12 some level. The fact that -- and somebody from the  
13 Basel Committee said this last week in a meeting that  
14 it's the work of local and national trade associations,  
15 which really drive market fragmentation. But that's  
16 only really if there's inconsistency on a global basis  
17 in the rural setting. That's the only way in which  
18 local advocacy can work. And certainly we at ISDA  
19 would never do that.

20 Smaller jurisdictions. What does it mean for them  
21 to implement global standards?  
22 Should there be clearing in Indonesia? Is a

1 jurisdiction so small that it doesn't require certain  
2 rulesets to be implemented?

3       You know, the FSB does a semi-annual report on the  
4 implementation to G-20 reforms. They have a checklist.  
5 They send out a questionnaire and we know because we've  
6 talked to policymakers and local jurisdictions and  
7 they're like, we have to fill this out. What do we do?  
8 And obviously everybody wants to comply with the global  
9 standards, but maybe there should be a realization  
10 amongst the global policymakers that it's not  
11 appropriate for smaller, where there's a de minimis  
12 amount of derivatives activity. Maybe it should be  
13 done a little bit differently on a different timescale.

14       I think the next three things are pretty well-  
15 established so I won't go into detail on them.

16       We've called before and we know that there's  
17 others who feel that a risk-based framework for the  
18 evaluation and recognition of regime comparability is  
19 the way to go. I think everyone here would agree that  
20 a line-by-line analysis isn't going to work, ever, even  
21 with the best of intentions. So there needs to be a  
22 kind of a fallback position, a bigger picture based on

1 risk and then take it from there.

2           And then lastly, I would add that we understand  
3 that the process of policymakers putting these reforms  
4 into effect, it's slow and painstaking and very  
5 thorough. which makes the willingness to review the  
6 policies that much more difficult. But there really  
7 needs to be, just like banks and financial market  
8 participants every day review the consequences of  
9 actions they've taken in the past, there really should  
10 be -- I think we would posit that just kind of an  
11 ongoing regulatory review process that's just embedded  
12 into the process, so that policymakers periodically  
13 take a look at the regulations they've put in place to  
14 see whether they're working as advertised.

15           And we take great comfort from an initiative last  
16 year and this year, when the FSB did an incentives to  
17 clear study, and I think many people in this room were  
18 involved, and they looked back after a decade of  
19 clearing to say, what's working, what's not working,  
20 what do we need to modify? That should be really the  
21 rule. That kind of process would be great if that was  
22 the rule and less the exception.

1           And thank you. My voice has held out this far,  
2           but I'm not sure how much longer, so I'll stop there.

3           CHAIRWOMAN KARNA: Thank you Mr. Kennedy for your  
4           very helpful overview of this important topic and we  
5           will give your voice a rest hopefully for the next  
6           couple of minutes.

7           I'd like to start off really with the question for  
8           the entire group of why? We've talked about this  
9           morning that market fragmentation is a key priority for  
10          market participants, as well as global regulators. And  
11          I'd like to understand from your perspectives, what do  
12          you see as the reason why market fragmentation has  
13          really come to the forefront as such a key priority.  
14          And what are some of the concerns that impact your  
15          organizations directly or your members in the area of  
16          market fragmentation that's really driving why it's  
17          such a key priority.

18          Mr. Colby.

19          MR. COLBY: Hi, Jim Colby. I'm representing the  
20          Coalition for Derivatives End-Users. I'm the Vice  
21          President-Treasurer of Honeywell. So we are a  
22          commercial end-user.

1           A couple of points and I agree with much of what  
2           Steven had to say. I thought it was a very good  
3           presentation. We've seen -- first of all, we  
4           appreciate the support over the years from the CFTC and  
5           providing the exceptions from clearing and margin for  
6           commercial end-users who use derivatives to hedge risk.  
7           Many of those benefits are undermined by some of the  
8           things that Steven mentioned and lack of coordination  
9           between jurisdictions globally. Also lack of  
10          coordination between some of the regulators in the U.S.  
11          So, for example, if the prudential regulators are  
12          requiring commercial end-users, banks who trade with  
13          commercial end-users to put aside more capital for  
14          transactions with uncleared transactions with end-  
15          users, those costs impact us. So we may not have to  
16          clear trades and we may not have to post margin, but if  
17          we don't, it costs us more money to hedge. And there  
18          are also, some of those issues are cross-border in  
19          nature. Steven mentioned the CVA.

20                 So in Europe, banks aren't assessed an additional  
21          CVA charge for uncleared swaps with end-users, whereas  
22          in the U.S. they are. And with respect to derivatives

1 reporting there are big differences between regions.  
2 So in Europe for example, we are required to report all  
3 of our inter-affiliate derivatives transactions where  
4 we received an exception from that from the CFTC. So  
5 because 30 or 40 percent of our derivatives  
6 transactions may be with our European subsidiaries, it  
7 significantly undermines the benefit of the exception  
8 and the exception from reporting that we received from  
9 the CFTC.

10 Also, although in the United States when we  
11 transact with third-party counterparties and if that  
12 third-party is a swap dealer, they have the reporting  
13 requirement. In Europe, we have dual-sided reporting  
14 and both counterparties have to report the transaction.

15 So under some of the proposed changes that are in  
16 process at EMIR, we're going to be getting some relief.  
17 Nevertheless, that's not going to be full relief. So,  
18 for example, if a European subsidiary of Honeywell  
19 trades with a U.S. bank, they would still have the  
20 legal requirement to report.

21 So all of those inconsistencies increase costs for  
22 commercial end-users and undermines some of the

1 benefits that we've received through the regulatory  
2 efforts of the CFTC.

3 Thank you.

4 CHAIRWOMAN KARNA: Mr. Allen.

5 MR. ALLEN: Thank you. I'm just going to make two  
6 points. One relates to cost and one relates to risk  
7 and where it potentially resides within financial  
8 markets in answer to your question Angie.

9 On the point about cost, I'm going to repeat all  
10 of the items that were raised by the first two  
11 speakers. I agree with them all. I think they're  
12 highly relevant in terms of driving potential liquidity  
13 fragmentation, and specifically, kind of a remapping of  
14 aspects of the financial markets, particularly within  
15 complex banking groups. So as to try and optimize or  
16 address some of the challenges that flow from the  
17 issues that have been raised today by having customers  
18 and clients segmented geographically according to  
19 particular markets, but also according to different  
20 legal entities within their group in a way that perhaps  
21 historically was not done.

22 And I think that that is not just a function of

1 market structure reforms, I think a huge driver of that  
2 is also capital, which has been raised already. And  
3 that isn't just about substantive differences in  
4 approach to some of the capital rules that we see  
5 across different markets or even attributable to slight  
6 differences in phasing, in terms of the implementation  
7 of those rules.

8       It's also a function, I think, of how in the new  
9 world the optimization of capsule liquidity within  
10 groups and subgroups within a complex banking  
11 organizations is a key driver of how we think about  
12 returns and ultimately therefore pricing to customers  
13 for a lot of the products which are made available  
14 generally. I think that the point about resilience  
15 that that drives is that, I think, it's probably fair  
16 to say that most banks have become safer, more robust  
17 over the course of the last few years. A lot of  
18 prudential reforms, in particular, have seen banks  
19 increase their amounts of quality and the quality of  
20 that capital very substantially over the last few  
21 years.

22       But at the same time, the capacity of those banks

1 to facilitate risk transition, movements of risk  
2 through the financial system, has arguably not gone up  
3 as a consequence of many of those reforms. And it does  
4 worry me to some degree over and above the points about  
5 cost, that in circumstances of significant market  
6 stress, to the extent that we're operating in a market  
7 which is perhaps more fragmented geographically and  
8 legal entity-wise than perhaps historically it has  
9 been, it's unclear whether or not the capacity to move  
10 risk across the financial system will be as efficient  
11 as ideally it should be. It may well be that the banks  
12 are not necessarily the entities within the financial  
13 markets which are weaker in those circumstances.

14 I worry more about risk being trapped within real  
15 money accounts, pension fund sector, other users of the  
16 financial sector who historically may have had greater  
17 access to bank liquidity and balance sheet capacity to  
18 move that risk around in times of stress.

19 I don't have a specific answer to that, but I  
20 think it's an area that should be looked at closely.

21 Thank you.

22 CHAIRWOMAN KARNA: Thank you. I'd like to shift -

1 - we've talked a little bit about why and what are some  
2 of the key issues impacting both end-users, as well as  
3 banks. And in our first two panelists' presentations,  
4 they talked about a number of areas where there is  
5 evidence of potential concerns regarding market  
6 fragmentation. All of you have the entire CFTC  
7 commission in front of you. So this is your  
8 opportunity to help them prioritize. What are some of  
9 the areas that they should be prioritizing? Is it  
10 capital? Is it margin? Is it trade execution? Is it  
11 reporting? Extraterritoriality? All of the things  
12 that have been mentioned this morning, what's your wish  
13 list? What should they focus on first?

14 Mr. Hamill.

15 MR. HAMILL: Good morning, thanks for the invite  
16 to attend.

17 So, perhaps not the exact way you asked the  
18 question, but I think it's just as important to  
19 prioritize ensuring we keep our gains in certain areas  
20 of the rules that do work and which have not led to  
21 fragmentation. I think one area in particular where  
22 we can see, which I think this concept of liquidity

1 fragmentation, it's quite important to break that down  
2 and understand it. Some of what Chris talked about is  
3 banks' abilities to continue creating and producing and  
4 participating in liquidity provision.

5 That isn't about fragmentation, that's about  
6 typically about capital rules and the commercial  
7 realities of continuing to do business as a bank.  
8 Separate from that is the distribution of liquidity and  
9 the access of liquidity that is there for end-users who  
10 wish to participate in the swap market and see it  
11 operate in an efficient and cost effective way. And I  
12 think it's abundantly clear that the implementation of,  
13 for example, trading venues like swap execution  
14 facilities or OTFs and MTFs under MIFID II have helped  
15 dramatically avoid fragmentation of accessing liquidity  
16 for end-users.

17 So as one of the largest market makers in dollar  
18 swaps for example, which we are, it's actually --  
19 surely we do have to deal with different regimes and  
20 geographies in which we operate, but I think those  
21 particular trading rules have allowed customers to  
22 enjoy pools of liquidity, which seamlessly operate

1 between Europe and the U.S. We price the dollar swap  
2 the same, whether it's on a SEF, whether it's on an  
3 NTF, whether it's over the phone to someone is not  
4 trading on either.

5 So liquidity provision is there and these trading  
6 venues and the trading rules have dramatically helped  
7 with the consolidation of liquidity in letting the end-  
8 user, which I think is who we should be talking about,  
9 continue to access the swap market in a seamless way.

10 So I think it's important that we certainly  
11 recognize and in particular no one would argue that  
12 things like capital and margin have been highly  
13 fragmented, but it's important that we recognize that  
14 some of those trading execution and clearing rules have  
15 been very, very positive for end-users and keeping the  
16 market fuel like a single, global, and more efficient  
17 market since the implementation of the rules.

18 CHAIRWOMAN KARNA: Mr. Cutinho.

19 MR. CUTINHO: I was worried for a moment how you  
20 would pronounce my last name, but you did very well.

21 Thank you.

22 You know, I wanted to take this opportunity to

1 actually thank the CFTC. My comments are very specific  
2 to cleared markets, both listed and OTC.

3 I think this Commission has done quite a bit in  
4 terms of proposing a way forward, especially in the  
5 white paper, as listed in the white paper.

6 So to take a step back, you know, these issues are  
7 not new. There have been crisis in the past. So post-  
8 1987, post the crash in 1987, the CFTC -- the  
9 Commission then also took on an approach to actually  
10 looking at regulations, not only in the home  
11 jurisdiction in the U.S., but across the world because  
12 markets are global. And even in that case, you know,  
13 there was a transmission effect. It started in Tokyo  
14 and the crash. You could see it actually transit along  
15 time zone and come back to the U.S., and the Commission  
16 took a very reasoned and rational approach at that time  
17 and is also taking that now.

18 You know, it is hard for a given regulator to  
19 regulate every market, but there is -- everything is  
20 based on trust and there should be some level of trust.  
21 So I feel that the approach then and the approach now  
22 proposed, what they have in common is an element of

1     deference.  Okay.  There is a risk-based evaluation  
2     that comes before and the CFTC did that then and  
3     created the Part 30 regime.  They evaluated many  
4     jurisdictions around the world and they have granted  
5     that so-called equivalence, because they've evaluated  
6     from multiple perspectives, not just from the  
7     perspective of the market itself but from the  
8     perspective of intermediaries as well.

9             So we feel that, to your question very directly, I  
10    think we encourage the CFTC to continue its work.  More  
11    importantly, we encourage regulators around the world  
12    to reciprocate.  That is important.  Especially in a  
13    crisis, it's not reasonable or rational to expect  
14    regulators to cross jurisdictional boundaries and take  
15    actions that will only create systemic risk.  So, you  
16    know, a foundation of deference, a foundation of risk-  
17    based evaluation, and then cooperation amongst  
18    regulators, continuous discussions amongst them and  
19    trust is important for future financial stability.

20            CHAIRWOMAN KARNA:  Chairman.

21            CHAIRMAN GIANCARLO:  Thank you.  I'd like to just  
22    offer an observation.  In the area of bank capital

1 rules, which I thought Steve was quite articulate on.  
2 What's interesting there is that the leadership on  
3 that, most of the setting of that, is set by bank  
4 prudential regulators and central banks. And that at  
5 the global level in terms of FSB has a really important  
6 influence on those decision makings. It's not really  
7 led by market regulators like ourselves. In fact, the  
8 only market regulator in the world that's implemented  
9 the full suite of swaps reforms is not a member of the  
10 FSB, and that's the CFTC.

11 And so, one of the areas that that's difficult for  
12 us is to try to influence those issues of dealer  
13 capital, which have such an impact on the markets we  
14 regulate when we're not -- we don't have a leading role  
15 in that. We're really in the back seat on many of  
16 those capital requirements and we've been quite  
17 articulate as a Commission in areas like the SLR, for  
18 example, which is not a partisan issue for this  
19 Commission. One which affects our markets and we've  
20 been quite articulate consistently, going back years  
21 and into the present on this very issue. And yet, it's  
22 difficult for us to prevail because prudential and bank

1 regulators that look at the world, not from a market's  
2 point of view, but from a bank balance sheet, from a  
3 fortress balance sheet, in many cases point of view,  
4 have such an outsized role in setting those capital  
5 requirements. And yet, those capital requirements have  
6 such an outsized role in the functioning of our  
7 markets. The efficient functioning and the healthy  
8 functioning of our markets.

9 Many, as I've said before, many of those capital  
10 rules are biased against derivatives. They're biased  
11 against clearing and yet clearing was one of the core  
12 mandates of the G-20 itself. So it's a challenging  
13 issue for us as market regulators to have a proper  
14 impact on capital requirements. So just an  
15 observation.

16 CHAIRWOMAN KARNA: Thank you Chairman. I know the  
17 banks and the non-banks around this table appreciate  
18 you articulating your views on those issues.

19 Ms. Bradbury.

20 MS. BRADBURY: Thank you. I won't echo the points  
21 too much about liquidity because I do think those are,  
22 as an asset manager, having deep liquid markets for our

1 -- to be able to invest in and to execute swaps are  
2 very important. And I think most of the reforms have  
3 worked pretty well at promoting liquidity.

4 I think efficiency also matters. And there were  
5 some comments in Steve's remarks and others about data  
6 and I feel that the regulators and the markets need  
7 better data and yet we're all producing reams of what  
8 seems to be somewhat useless data all the time, or at  
9 least it's not as useful as it could be. So that's  
10 just so boring and prosaic and hard to get people  
11 excited about. But I think if the global regulators  
12 could actually sit down and agree on at least some  
13 basic standards and maybe start there and then over  
14 time, elaborate.

15 The other thing I'll say which goes a little bit  
16 against this fragmentation argument is, you do in the  
17 G-20's sort of philosophy about review. You now have  
18 an opportunity to step back and look at what's been  
19 working and what's not. And so, the only advantage to  
20 fragmentation as you had a sort of natural controlled  
21 experiment in some of these markets and you compare  
22 what's been working better than not. And I think the

1 CFTC actually has taken an important step. Your Chief  
2 Economist group in particular bringing some data to  
3 bear.

4 We didn't have a lot of data, you know, about the  
5 size of the market and who participated, and what it  
6 looked like back when these rules were originally put  
7 forward. And I would love to see the global regulators  
8 really looking at that information and thinking about  
9 things like how should we calibrate, you know, not to  
10 get ahead of ourselves on the agenda, but margin for  
11 non-cleared or how should we think about, you know,  
12 margin and capital more generally based on information?  
13 And so, that would be a really nice way to use the  
14 fragmentation at least and benefit from it going  
15 forward.

16 CHAIRWOMAN KARNA: Thank you. Mr. Müller.

17 MR. MÜLLER: Yes, thank you very much. I  
18 represent Eurex Clearing in Europe. So we have one of  
19 the large CCPs in the world and I wanted to also build  
20 on some of the comments that we heard from Mr. Hamill  
21 where there is, I think, a better definition needed of  
22 where exactly do we see fragmentation.

1           So there might be some fragmentation in the rule  
2 books that is harmful to markets, but this shouldn't be  
3 confused with, you know, CCP fragmentation. I think in  
4 the CCP world we have the opposite of fragmentation.  
5 We have concentration. So if you look at some of the  
6 major asset classes that became more clearing became  
7 mandatory, they essentially ended up in one CCP. So I  
8 think we can ask ourselves now with a clearing mandate,  
9 we have made the world safer because we apply these  
10 very useful risk management techniques in the CCP to a  
11 broader set of markets and asset classes, but this has  
12 led to a lot of concentration.

13           So we are out there to promote also a competition  
14 in the field of CCP. So we are one of the CCPs that  
15 just entered one of these asset classes to provide an  
16 alternative. And this is for Euro swaps in particular,  
17 but when I observe other CCP offerings, we have also  
18 seen in the last 12 months, one CCP retreat, for  
19 example, an offering for credit default swaps. We have  
20 seen also round this table one of the CCPs in Asia to  
21 not offer interest rate swap clearing anymore. And  
22 this has economic foundation because to offer this as a

1 CCP, of course, you need a viable business model and  
2 therefore I think choice and optionality is important  
3 on the CCP level.

4 And I'm not talking about, you know, forced steps  
5 or forcing the market to do something, but we should  
6 promote and have an open eye to avoid too much  
7 concentration both on the CCP layer, but also the  
8 follow-on to what Chris Giancarlo, the Chairman,  
9 mentioned. Some of these capital rules just make it  
10 tougher for our clearing members to continue offering  
11 their services. And we want a diverse field of people  
12 offering clearing services. So I think also that angle  
13 is not necessarily fragmentation, but it's a critically  
14 important point for the CCP worlds.

15 CHAIRWOMAN KARNA: Thank you. I'd like to end  
16 this session with one last question and end it on a  
17 high note. Let's start focusing on solutions. So Mr.  
18 Kennedy in his presentation highlighted a number of  
19 potential solutions at the end of his presentation  
20 including reducing the gap between global standards and  
21 national regulations to ensure greater consistency in  
22 implementation.

1           He also noted the possibility of establishing a  
2 process by international standard-setting bodies to  
3 enable national regulators to implement equivalency and  
4 substitute compliance determinations in a more  
5 predictable manner. And he highlighted the possibility  
6 of regular review by international standard-setting  
7 bodies of reform initiatives to ensure that they remain  
8 relevant and appropriate and are efficiently and  
9 effectively achieving their goals.

10           So those are three options.

11           Which of those would you suggest is most important  
12 and/or what are some other solutions to help us address  
13 some of these market fragmentation issues we focused on  
14 this morning?

15           Mr. Müller, just so you know, your sign is still  
16 up. So I may call on you again.

17           Miss Hong.

18           MS. HONG: Hi, thank you. I would actually -- I  
19 would fully agree with ISDA's recommendation, that  
20 there ought to be an ongoing regulatory review process;  
21 really globally and across all different types of  
22 regulators, spanning trading and markets, as well as,

1 prudential. I think it's really important for all of  
2 us to note that our markets are dynamic. They're  
3 constantly changing. They respond to various  
4 regulations that are affected, as well as, market  
5 conditions.

6 And now that we actually do have a track record of  
7 various sets of regulations having been effected, and  
8 in place for a number of years, as well as data to  
9 actually evaluate the efficacy of these requirements, I  
10 think it's quite timely for us to take a step back,  
11 review how the market has actually reacted, how  
12 behavior may have changed in trading. And, you know,  
13 take a look across all different types of regulations  
14 and evaluate the compounding nature of these different  
15 types of requirements that have been imposed upon the  
16 markets.

17 CHAIRWOMAN KARNA: Thank you. Ms. Belich.

18 MS. BELICH: Thank you. So I think I would turn  
19 to the second item that was mentioned on implementing  
20 equivalency and substitute compliance. You know, as a  
21 Canadian bank with a large footprint in our home  
22 jurisdiction, we find that the approach from a U.S.

1 perspective with the EU regulators versus the way the  
2 Canadian regulators tend to approach things, is very  
3 fragmented. So from that perspective, we find  
4 ourselves trying to pivot between various regulators to  
5 hopefully, you know, encourage them to take the same  
6 approach from an equivalency perspective.

7 So for us as a non-U.S. bank, that would certainly  
8 be on our priority list. You know, again, kind of also  
9 having that clarity in terms of where we can rely on  
10 that substituted compliance, how far that determination  
11 actually goes and as we can, you know, continue our own  
12 global footprint, you know, with trading that happens  
13 increasingly on a cross-border basis. Again, you know,  
14 what the applicability is, where regulations tend to  
15 overlap.

16 CHAIRWOMAN KARNA: Thank you. Mr. Colby.

17 MR. COLBY: Hi. With respect to your question,  
18 I'm not sure it's quite as simple as to say I'm going  
19 to prioritize substituted compliance and equivalency  
20 over implementing a risk-based framework. I think they  
21 need to be done together. I'll just use interaffiliate  
22 reporting as an example. So EMIR requires it, at least

1 for now, and in the United States, we're exempt from  
2 inter-affiliate derivative reporting. The reason that  
3 we're exempt from it is that we've, it's been  
4 determined that these are low-risk trades.

5 And so, the benefit of the extra costs and burdens  
6 of reporting these trades outweighs, you know, the  
7 potential risk from having that information. So I  
8 think they go together and as we work towards  
9 substituted compliance and equivalency, I think we need  
10 to evaluate the regulations in the different  
11 jurisdictions with a risk-based approach and be  
12 sensible about it, because the last thing we want to do  
13 as we head into the later stages of this economic  
14 expansion is put in place regulations that discourage  
15 market making and risk reducing use of derivatives  
16 transactions.

17 And many of the benefits of the Dodd-Frank reforms  
18 have made our counterparties safer. But we don't want  
19 that to come at the expense of creating new problems in  
20 the market, which in my opinion, our liquidity. I  
21 think that's the big thing that we all worry about  
22 going forward. And we've heard that from several of

1 the commentators today.

2 CHAIRWOMAN KARNA: Thank you. Mr. Klein.

3 MR. KLEIN: I'd just like to follow up on that and  
4 say, to answer your question, it's all of the above  
5 really. And part of the reason for that is that  
6 fragmentation results, not just from what I would refer  
7 to as macro-prudential decisions about capital and the  
8 scope of jurisdiction and where you want to stop your  
9 jurisdiction or assert your jurisdiction. It results  
10 from the nuts and bolts of some of these decisions,  
11 too. It's not just how much capital do you have to  
12 have, but it's how many data fields do you have to  
13 report. How do you report them? Which entities are  
14 exempt from your mandatory margining or your mandatory  
15 clearing determination?

16 And so, you really have to be cognizant of both  
17 the big picture items and the smaller details of how  
18 national regulators have implemented the overall  
19 objectives of the G-20 principles.

20 CHAIRWOMAN KARNA: Thank you. Mr. Christison.

21 MR. CHRISTISON: I just wanted to actually support  
22 the last two points, as well. I think it's all about

1 equality in all those three priorities. As an end-  
2 user, it's all about risk management and particularly  
3 our business is global in nature and all those  
4 activities take part in different jurisdictions. So  
5 you need liquidity to manage risk. Without liquidity,  
6 standardization of capital, margin requirements and  
7 standardization jurisdiction requirements, then it's  
8 very hard for that physical activities take place and  
9 manage risk. And you'll find risk, I think, forming in  
10 other places that you -- potentially you increase risk  
11 for activities and the financial markets beyond some of  
12 the good steps that Dodd-Frank's actually achieved.

13 CHAIRWOMAN KARNA: Chairman.

14 CHAIRMAN GIANCARLO: So please don't take the  
15 remarks I made a moment ago about capital requirements  
16 as any way reducing what we feel is the importance of  
17 getting the details of our own rules right and taking  
18 very seriously our obligation in rules for which we are  
19 directly responsible for, to try to make them as  
20 consistent with global standards. And yet, not  
21 creating market friction to make them as  
22 straightforward as we possibly can.

1           I did want to turn to a point that I think Darcy  
2     made, that I thought was a very good one on data and  
3     trying to move to more risk-based approaches to data.  
4     You know, our Chief Economist's office under Bruce  
5     Tuckman did what I think is really groundbreaking work  
6     in establishing a new way of measuring size of markets  
7     using entity netted notionals as more of a risk-based  
8     approach and helping to try to move away from the gross  
9     notional amount that's been traditionally used in the  
10    markets, which in many ways is a fairly meaningless  
11    figure.

12           I would like to encourage market participants to,  
13    if they agree with the approach, to start moving in  
14    that direction. Going back to my days running a public  
15    company, I like to read annual reports. I haven't seen  
16    much adoption of the entity netted notionals approach  
17    in people's annual reports. I think I'd like to  
18    encourage you.

19           I think the more that becomes a standard of  
20    measuring derivative books, at least for letting your  
21    shareholders and others know what exposures are out  
22    there, the more we can all start talking in terms of

1 risk-weighted numbers rather than, you know, fairly  
2 meaningless gross notional. And I think that will also  
3 in turn have a positive effect of helping regulators  
4 think in terms of risk as resetting various thresholds,  
5 standards as we go forward in the future, and moving  
6 away from standards that were adopted eight years ago,  
7 10 years ago, when we had nothing better. And we use  
8 those standards and yet we're still struggling with  
9 them today to make sense of them and determine their  
10 continued relevancy.

11 So if the market could adopt a risk-weighted  
12 measure, and we've put some ideas forward in terms of  
13 entity netted notionals I think we can all start  
14 talking in terms of risk terms when we talk about  
15 market size, market exposure, data thresholds, et  
16 cetera. Thank you.

17 CHAIRWOMAN KARNA: Thank you. And with that, I  
18 think we should end on a positive forward-looking note.  
19 So thank you all to our panelists and to our GMAC  
20 Committee participants for your active engagement this  
21 morning. I look forward to continuing the dialogue and  
22 on additional panels this afternoon. We will return

1 here at one o'clock.

2 (Whereupon, at 11:42 a.m. a luncheon recess was

3 taken.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22



1 with sort of the historical issues of cross-border  
2 centralized derivatives trading, take stock of where we  
3 are now, talk about the significant steps the  
4 Commission has taken to reduce some of the complexity  
5 in this space, and then sort of talk about the road  
6 ahead or what we have in store.

7 So historically there have been three issues or  
8 three key issues really with the CFTC SEF and trading  
9 rules in the context of cross-border trading. The  
10 first is that it has led to liquidity being fragmented  
11 across pools, across platforms, and across border lines  
12 resulting in separate liquidity pools for similar  
13 transactions.

14 Now Steve's slides in the previous presentation  
15 touched on this earlier when he talked about trading  
16 location policies. And by that we mean requirements to  
17 execute certain contracts, not just on designated  
18 platforms, but designated platforms within a particular  
19 jurisdiction. And those kinds of rules, like the SEF  
20 rules, also kind of contribute to global market  
21 fragmentation.

22 The second is what has been commonly known as the

1 "Footnote 88" problem. So under the current SEF rules,  
2 a facility would be required to register as a SEF or  
3 obtain an exemption from SEF registration if it  
4 operates in a manner that meets the SEF definition,  
5 even though it's not listing swaps that are subject to  
6 U.S. mandatory trading rules.

7 Now what this has historically led to is non-U.S.  
8 trading platforms denying access to U.S. persons for  
9 fear of being captured by the SEF registration regime.

10 Now less access obviously means less opportunities  
11 to hedge and an increased risk. And notably the  
12 current SEF proposal will actually hardcode this  
13 requirement into the SEF rules.

14 Now the third is sort of a newer problem as  
15 opposed to the other two I just talked about and it's  
16 the potential for global or firms that operate globally  
17 to face overlapping trading mandates. So if you could  
18 recall when the U.S. first implemented its rules, we  
19 were way ahead of the curve. We were the first  
20 jurisdiction to implement mandatory trading rules, but  
21 now that other jurisdictions have sort of caught up,  
22 there's this potential for a firm that operates

1 globally to be subject to overlapping mandates and  
2 forced with the decision to execute the same trade, but  
3 requirements on different platforms. And this could be  
4 a real problem very soon for traders in Japan because  
5 the CFTC's current SEF proposal would expand the scope  
6 of products required to be executed on the SEF to  
7 include products that are already subject to Japanese  
8 mandatory trading obligations.

9 But enough with the negative. And now on, let's  
10 talk to some of the positive achievements that we've  
11 had.

12 So the CFTC has recently taken significant steps  
13 to reduce the cost and complexity of cross-border  
14 derivatives trading. First, last year we had U.S.-EU  
15 trading venue recognition. And just a few months ago  
16 we had Singapore trading venue recognition. I know  
17 it's not on the slide, but a few weeks ago we actually  
18 got EU-Singapore trading venue recognition.

19 So what this all means is that now for the first  
20 time ever, traders in the U.S., Singapore, and Europe  
21 can now all use each other's electronic platforms to  
22 satisfy their own mandatory trading obligations. So

1 all of the problems I mentioned earlier are no longer  
2 going to be problems for traders in these  
3 jurisdictions. We also understand that the CFTC is  
4 working with Japanese regulators to hopefully achieve  
5 trading venue recognition soon. So hopefully we have  
6 more good news to come.

7       Apart from that, we also want to take or commend  
8 the Commission for sort of taking immediate action and  
9 providing clarity to the market. The trading venue  
10 recognition would stand for venues in the UK under a  
11 no-deal Brexit scenario. So a lot of great work has  
12 been done, but as the saying goes, whatever it takes to  
13 finish things finish, we hope the Commission will  
14 continue working with foreign regulators to achieve  
15 trading venue recognition in these other non-U.S.  
16 jurisdictions.

17       Now when the U.S.-EU trading venue recognition  
18 came out last year, we received a lot of questions from  
19 our members. Just sort of practical questions. How  
20 would it work? Like if I access this trading venue in  
21 Europe, how is my clearing flow going to look? How's  
22 my reporting flow going to work?

1           So we decided to publish the paper, which we have  
2 up there on the screen, to answer those questions but  
3 also to sort of take a step back and kind of analyze  
4 what has trading venue recognition done to reduce the  
5 overall complexity of cross-border trading. And from  
6 that we came up with these charts and I apologize that  
7 you probably can't see the text, but that's okay  
8 because we're going to go by colors.

9           So what does this meant to diagram is a U.S.  
10 person accessing a recognized MTF or OTF pursuant to  
11 the recognition and meeting on that platform an EU  
12 counterparty. So you'll see at the top of the chart,  
13 it's a lot of green and that's where we have trading  
14 venue recognition. There's less boxes and you won't  
15 see many asterisks, that's because there's not really  
16 any compliance issues.

17           Now as you go towards the end of your trade flow,  
18 when you start to talk to clearing and reporting,  
19 that's when more boxes pop up and that's because more  
20 complexity arises. So first I'm going to briefly cover  
21 the clearing thing and I'm not going to spend too much  
22 time here because I know my co-panelist is going to get

1 into these issues more deeper, but even though we don't  
2 have full recognition in terms of clearing because CCPs  
3 that service these types of trades are actually dually-  
4 registered both in the U.S. and in Europe, they've been  
5 able to facilitate clearing through both models, even  
6 though the U.S. and EU clear under different models.  
7 We don't know if this is going to be true with  
8 Singapore. Stay tuned, we'll have another paper for  
9 you on that, but for now that's where it stands with  
10 the EU.

11 If you move down towards the chart, this is where  
12 the complexity becomes even greater because you see all  
13 these boxes popping up for all the reporting  
14 obligations because there really is no recognition in  
15 the reporting space. And I just want to highlight two  
16 things, which is we're talking about the same trade  
17 here, but it's probably going to have to be reported by  
18 each entity to four different places under four  
19 different timeframes with different reporting fields  
20 required by each entity.

21 So it does get really complex.

22 Now when we look at the reverse side, so this is

1 now an EU person coming to the U.S. SEF and executing  
2 its trade on the SEF with a U.S. counterparty. We see  
3 sort of the same thing. In the green area, everything  
4 seems okay, but as you move down or even to the side of  
5 the chart, complexity arises.

6 Now you will notice that reporting, if you look  
7 just quickly, the previous one compared to this one,  
8 reporting is much cleaner, right? And that's because  
9 we have the EU has to recognize the U.S. real-time  
10 reporting rule. So what that means when an EU trader  
11 now accesses our SEF, he doesn't have to send the trade  
12 back for post-trade transparency purposes, obligations.  
13 He just allows the SEF to report it for him. So it  
14 does show that even a small amount of recognition can  
15 go a long way to reduce a lot of the complexity.

16 So what did we find?

17 Well, we found that trading venue recognition has  
18 had an overall positive effect on cross-border  
19 centralized trading and that it has led to increased  
20 access of liquidity, but of course, the overall lack of  
21 global harmonization still poses compliance challenges  
22 and incurs operational costs and frustrates the overall

1 goals of global derivatives trading. ISDA therefore  
2 advocates, as Steve mentioned in this panel earlier,  
3 that encourages regulators to issue wholesale, holistic  
4 comparability determinations using our risk-centered,  
5 outcomes-based approach.

6 Now I know we've talked about risk-centered and  
7 outcomes-based a lot throughout the day, but I want to  
8 spend a few moments talking to -- saying what we mean  
9 at ISDA when we say that. And basically, this comes  
10 from another ISDA white paper where we propose that in  
11 issuing comparability determinations, regulators should  
12 evaluate and grant comparability to a foreign  
13 jurisdiction's entire derivatives regulations if they  
14 find that the jurisdiction has comparable risk-based  
15 rules or meets certain risk-based principles.

16 So in other words, the focus of granting  
17 comparability should really be on whether does that  
18 foreign jurisdiction possess the necessary tools to  
19 address and mitigate systemic risk within its  
20 jurisdiction. And from there that's where the inquiry  
21 we feel should end. And I encourage this Committee to  
22 take a look at that paper, too.

1           So overall what are our key takeaways from this?

2           We think it's the trading venue recognition has  
3           certainly been positive and we encourage the Commission  
4           to achieve trading venue recognition in other non-U.S.  
5           jurisdictions; to adopt a holistic outcome, risk-  
6           centered, outcome-based approach, in issuing  
7           compatibility determinations. That way people can  
8           really make use of recognition if you have it  
9           wholesale.

10           And what about those jurisdictions where  
11           comparability is probably not possible because they're  
12           still a little behind in implementing the G-20  
13           commitments? Well for that, I think it was suggested  
14           here earlier, also, that we believe that there should  
15           be de minimis trading activity for those emerging  
16           markets and have some kind of exception there.

17           On a final note, I just wanted to say that we've  
18           closely read Chairman Giancarlo's cross-border white  
19           paper and we look forward to the Commission's further  
20           revision of its cross-border rules and thank you for  
21           your time. I look forward to answering your questions.

22           CHAIRWOMAN KARNA: Thank you very much Ms. Cone.

1 Colin Lloyd from Cleary Gottlieb. He's now going to  
2 take the floor for the second part of this panel, to  
3 take us through some clearing issues. And in  
4 particularly, they're very tentatively and  
5 tantalizingly entitled "A Roadmap to Reverse  
6 Fragmentation." The issue we've been talking about all  
7 morning.

8 So Colin, please take us through that roadmap.

9 MR. LLOYD: Thanks Angie. Thanks Commissioners,  
10 members of the Committee, for giving me the opportunity  
11 to speak today and I very much look forward to the  
12 discussion we're going to have. Just by way of an  
13 introduction for this presentation I'm about to give,  
14 this is based off of a white paper. White papers are  
15 very much in vogue these days. So this is based on  
16 another white paper, one from December 2017 from FIA  
17 and SIFMA. And I'll also be weaving in a little bit  
18 about what we see in Chairman Giancarlo's cross-border  
19 white paper, which has some themes that are consistent  
20 with the FIA-SIFMA paper.

21 So I'm going to first start by taking a little bit  
22 of a step back. Although I'm presenting today about

1 the swaps markets, I think it's important given the  
2 general thrust of the G-20 mandates to look at the  
3 futures markets. Once swaps are subject to centralized  
4 trading and central clearing, from a market structure  
5 perspective on a cross-border basis, they start to  
6 behave in many ways consistently with the futures  
7 markets.

8       People talk about the swaps markets as being very  
9 global. The futures markets are very global, as well  
10 as this slide shows using some data that FIA has  
11 prepared, looking at some of the major futures  
12 exchanges, both from the United States, Europe and  
13 Asia. There's a very significant volume of trading  
14 activity that takes place with an origin from outside  
15 of the exchange's home country jurisdiction. That's  
16 very important. It contributes to vibrant global  
17 markets, to liquidity.

18       And what we see here is that the futures markets  
19 are, if anything, not fragmented and one of the main  
20 reasons for that is that the CFTC put some very forward  
21 thinking regulations in place, in the late eighties,  
22 the Part 30 regulations, which greatly contribute to

1 the ability for U.S. firms to participate in foreign  
2 markets and also set a very good precedent for allowing  
3 reciprocal access to the U.S. markets.

4 So where are we for swaps?

5 So I think it's important to note that for the  
6 swaps regime, most of the attention as Dodd-Frank was  
7 implemented as parallel reforms were implemented in  
8 other jurisdictions is very much focused on a U.S.-  
9 European access. And that makes good sense because  
10 that's where the vast majority of cross-border trading  
11 activity took place. The Commission and its  
12 counterparts in Europe have taken an extraordinary  
13 number of very positive steps, sometimes of halting  
14 progress, but generally in a good direction to  
15 facilitate cross-border trading between the U.S. and  
16 Europe. And that's quite important, but it's not the  
17 complete picture.

18 Particularly when we think about ongoing  
19 macroeconomic changes throughout the global economy,  
20 it's important not to forget markets in Asia, Latin  
21 America and other non-U.S., non-European marketplaces.

22 It's also important to note that currently there

1 is a significant outlet for interest by U.S. firms buy-  
2 side and sell-side to transact in those non-U.S., non-  
3 European markets through the OTC bilateral swaps  
4 market, which does not exhibit the same types of issues  
5 that I'm going to discuss today. That's not  
6 necessarily going to continue to be the case. There  
7 are some significant developments which will make the  
8 cleared swaps markets much more important in coming  
9 years.

10 Those include, for example, the expansion of  
11 initial margin requirements, which will make it much  
12 more expensive to transact in the bilateral uncleared  
13 swaps markets, creating significant incentives to seek  
14 to access exposure in those other markets through  
15 cleared swaps. In addition, we are starting to see  
16 additional clearing mandates take place in some of  
17 those other jurisdictions. U.S. firms who are  
18 significant liquidity providers in those markets  
19 therefore need to be able to access local CCPs.

20 So where do we stand today?

21 So today I'm thinking about customers and the  
22 regime -- the Commission's regime is bifurcated between

1 its treatment of customer clearing versus proprietary  
2 clearing. Now for swaps, in order for a U.S. customer  
3 to access a foreign CCP there needs to be what the  
4 staff sometimes refers to as a chain of registration,  
5 the customer must clear for a registered FCM and that  
6 registered FCM must clear at a registered DCO.

7 Currently of our five non-U.S. CCPs that are  
8 registered at the Commission, dually-registered as  
9 DCOs, only one of those is outside of Europe, which is  
10 important given the trends that I mentioned earlier.

11 The consequences of this are quite significant.  
12 So as the slide explains, in order to provide access to  
13 these dually-registered non-U.S. CCP-DCOs, a U.S.  
14 clearing firm, or any clearing firm, needs to have a  
15 U.S. FCM, which handles its U.S. customer business and  
16 very often needs to have a local firm, a local  
17 affiliate which handles the local business. Those are  
18 both members of that foreign CCP. That significantly  
19 increases the exposure, the liquidity, the funding risk  
20 that the firm has to that marketplace.

21 And something that's not on the slide but worth  
22 noting is that means that the clearing firms who can

1 provide this type of access have to be the firms, that  
2 have the ability to have their U.S. FCM in addition to  
3 a local affiliate in all the markets where their  
4 customers want to transact.

5 I know it's a key priority of the Commission to  
6 ensure a vibrant, healthy market, for FCMs. It's not  
7 necessarily the case that every FCM has the wherewithal  
8 from an operational, financial, and other perspectives  
9 to access every local foreign CCP. We don't see that  
10 in the market for foreign futures. There it is more  
11 easy for an FCM to provide access to foreign markets  
12 through a local clearing firm without being a direct  
13 member of that foreign CCP.

14 In addition, the CCP, of course, itself needs to  
15 submit to Commission regulation. That sometimes  
16 presents conflicts with foreign law and indeed the  
17 Commission has had to work hard. Staff has devoted  
18 significant resources to mitigating and managing those  
19 conflicts.

20 So looking at this situation, what we considered  
21 was we have one marketplace, one asset class, which  
22 from an economic perspective, it's very similar to

1 futures markets. It's functioning quite well. The  
2 swaps markets, although functioning reasonably well due  
3 to the steps the Commission has taken and its European  
4 counterparts have taken to preserve a transatlantic  
5 market, does not exhibit the same degree of cross-  
6 border trading, particularly outside of Europe.

7         And there we fought to address those issues and to  
8 future proof the markets, no pun intended. We thought  
9 it would be appropriate to look to the precedent in the  
10 futures markets. And so, that would mean adopting two  
11 different approaches and in addition to, not as a  
12 substitute for, but in addition to a direct access for  
13 a U.S. FCM. One would be indirect access for a  
14 correspondent clearing structure, which involves a U.S.  
15 FCM carrying the customer positions but in turn  
16 carrying those positions at a local non-FCM clearing  
17 member.

18         And the second is a direct clearing model that  
19 involves the U.S. customer accessing a foreign market  
20 for a comparably regulated foreign clearing firm.  
21 Again, these are drawn directly from the experience of  
22 the U.S. futures markets and the foreign futures

1 markets were depending on the nature of a foreign  
2 market -- in the nature of a customer either or both of  
3 these models, is important.

4       There are implications as well for CCP  
5 registration. So under these models, the customers'  
6 access to the CCP is not what's driving whether the CCP  
7 needs to register or not because there is no direct  
8 nexus to the United States under either of these models  
9 for the CCP having a U.S. member.

10       But you do have the protections of either a  
11 comparably regulated clearing firm handling the U.S.  
12 customer business or a U.S. FCM handling that business  
13 to ensure adequate U.S. customer protections. In  
14 addition to that, however, you still have the overlay  
15 of a mandatory clearing requirement which necessitates  
16 in order for a U.S. person to satisfy that requirement  
17 of a foreign CCP be registered or exempt on the basis  
18 of comparable regulation.

19       Now laid out in that December white paper that I  
20 described is a very detailed blueprint for how the  
21 Commission would go about implementing this proposal.  
22 We believe the Commission has more than adequate legal

1 authority to do so. There are some questions, I will  
2 admit, in relation to the U.S. Bankruptcy Code analysis  
3 of at least the indirect access model. The model  
4 that's based on CFTC Rule 30.7, but we think that said,  
5 even though there are some questions, they are  
6 questions the Commission has ample authority to address  
7 and I'd be happy to discuss how it could do so, at an  
8 appropriate time.

9 Now, as I mentioned, the Chairman's Cross-Border  
10 2.0 paper does address many aspects of these issues,  
11 however, importantly, it focuses on some but not all of  
12 the recommendations that FIA and SIFMA put forward. In  
13 particular, it focuses on a model where U.S. customer  
14 access as the foreign CCP for a comparably regulated  
15 foreign clearing member. It does not, however, address  
16 the indirect access model that I described.

17 Now that's an important difference because we  
18 think that a number of U.S. customers will strongly  
19 prefer, at least it's a case in the U.S. futures  
20 market. They strongly prefer to maintain their  
21 positions with a U.S. FCM. That means that for  
22 customers who want to have the protections of a U.S.

1 FCM from the segregation, from a bankruptcy  
2 perspective, they would need to go through the existing  
3 model of U.S. FCM at a registered, dually-registered  
4 DCO-CCP, as I mentioned, that creates risk and  
5 competition issues for the U.S. FCM market. And we  
6 would like to, I think, to see the Commission continue  
7 to consider additional approaches to facilitate that  
8 type of indirect model that is so important to the  
9 futures markets.

10 Now the other piece of this as I mentioned, is  
11 clearing on a proprietary basis. So this is  
12 principally important for the U.S. dealing firms who  
13 would like to access a local foreign CCP. Many of  
14 those firms operate through global branch networks, as  
15 is commonly the case in the banking industry.

16 Currently the way it works is that a non-U.S. CCP  
17 that has a foreign branch of a U.S. bank clearing its  
18 proprietary business must register or obtain an  
19 exemption from registration with the Commission. Those  
20 exemptions have been adopted based off of compliance  
21 with PFMIIs as well as compliance of certain Commission  
22 reporting requirements. And there's an open notice of

1 proposed rulemaking from last August, which would  
2 codify this approach.

3 Now, this approach has been generally successful  
4 in many respects in facilitating U.S. bank access to  
5 these foreign markets, but it's not perfect. In  
6 particular, experiences found that there are some CCPs  
7 who find the additional reporting requirements as well  
8 as potential conflicts of local law to be impediments  
9 to obtaining these exemptions. And U.S. banks seeking  
10 to access those markets are therefore forced to  
11 subsidiarize, subsidiarization resulting in needing to  
12 segregate pools of capital in those jurisdictions.  
13 That is not ideal from a funding, from a risk  
14 management perspective, from the ability of a firm to  
15 provide liquidity in those jurisdictions.

16 Indeed, very similar considerations were raised in  
17 2013 when the Commission was looking at its swap dealer  
18 registration requirement and developing the cross-  
19 border framework that exists today. In that context,  
20 the Commission recognized that foreign dealers would be  
21 deterred from transacting if U.S. banks' local foreign  
22 branches were about to trigger swap dealer

1 registration.

2 On the other hand, the Commission and U.S.  
3 prudential regulation of those U.S. banks provides very  
4 significant oversight of any risks that might get  
5 imported back into the United States, and the  
6 Commission determined and balancing the considerations  
7 and weighing how to apply Section 2(i)'s "direct and  
8 significant" test that it was not necessary to regulate  
9 those foreign firms, and therefore, allowed those firms  
10 to exclude their transaction to the local bank branches  
11 of those banks from a de minimis threshold.

12 We think the same logic should apply to foreign  
13 CCP registration. That the locus of the Commission's  
14 regulatory oversight should be with a U.S. bank -- a  
15 U.S. bank that is registered as a swap dealer that is  
16 the vector for transmission of any risk to the United  
17 States. And indeed, to the extent that the  
18 Commission's approach either deters clearing in these  
19 foreign jurisdictions or forces the U.S. bank to  
20 subsidiarize that business, in fact presents greater  
21 risks to the U.S. financial system by making it more  
22 fragile, preventing clearing, and it would be more

1 appropriate instead to adopt the same approach to  
2 foreign CCPs as the Commission has adopted for foreign  
3 swap dealers.

4 Now, as I mentioned, this is another area that the  
5 Chairman's Cross-Border 2.0 paper took some steps to  
6 put forward some additional ideas. It took up this  
7 idea of permitting U.S. banks' foreign branches to  
8 access foreign CCPs, but still layered on top of that a  
9 number of additional conditions including satisfaction  
10 of Commission reporting requirements and satisfaction  
11 of Commission access to information.

12 It is in fact these precise issues that seem to  
13 have prevented some of the foreign CCPs from obtaining  
14 exemptions from registration with the Commission. And  
15 so, it was our concern that these conditions could, in  
16 turn, even under the white paper's approach, deter  
17 those CCPs from affording access to U.S. banks' local  
18 branches, therefore leading to the fragmentation that I  
19 described.

20 So that concludes my presentation. I'm very happy  
21 to take any questions.

22 CHAIRWOMAN KARNA: Thank you both very much for

1 your very informative and detailed presentations and  
2 proposals. I'd like to start off, both of you as well  
3 as Commissioner Berkovitz this morning, referenced the  
4 existing cross-border framework that the CFTC put in  
5 place back in 2013, the cross-border guidance, that  
6 really provides a framework not just for trading and  
7 clearing but also for the implementation of the full  
8 suite of Title VII rules.

9 So the question six years into the implementation  
10 of the cross-border guidance is how's it going? Should  
11 we be thinking about some changes? And when you think  
12 about answering that question, Colin and Nikki also  
13 referenced the Chairman's recent white paper around  
14 cross-border issues. And I'm curious if that approach  
15 offers some guidance about where we should be going in  
16 the views of people sitting around this table.

17 Mr. Ramaswami.

18 MR. RAMASWAMI: Thank you. You know, in the  
19 spirit of looking back and learning from where we have  
20 been, right? I think, the Singapore Exchange was the  
21 first DCO to kind of register itself as a foreign CCP  
22 to work under the U.S. regulations and the single

1 biggest impediment to, you know, that moving forward is  
2 in some ways the reluctance or inability of clearing  
3 members to have both their FCMs and their local GCMs  
4 clearing two different kinds of businesses; one  
5 originating for U.S. customers and one for the others.

6 And I think that, you know, we haven't seen in the  
7 few years we've been a registered -- a DCO, any ability  
8 for any of the global clearing members of the U.S.  
9 clearing members to take up two sets of memberships for  
10 all the reasons that you just highlighted. So I don't  
11 think that, you know, the current set up where a DCO is  
12 kind of a registered -- a foreign CCP is registered as  
13 a DCO, will really end up serving the U.S. customer for  
14 what it's intended. And therefore, a form of mutual  
15 recognition or, you know, the third-party recognition  
16 as in the future's world, I think, is kind of probably  
17 the best solution moving forward. And it has worked  
18 well in a similar asset class in terms of risk  
19 behaviors, and therefore, there's not much reason to  
20 not pursue that to its logical conclusion. So that's  
21 kind of having been a DCO for three years with no  
22 particular added activity or business because of that.

1 That's the perspective that we have.

2 CHAIRWOMAN KARNA: I would note now that the  
3 Chairman's back, feel free to talk about his white  
4 paper.

5 (Laughter.)

6 CHAIRWOMAN KARNA: Mr. Cutinho.

7 MR. CUTINHO: I second the comments of Rama from  
8 SGX. I think the framework that exists for futures,  
9 you know, can be extended to swaps and would really be  
10 beneficial to our members, to U.S. customers, as well.  
11 The one thing I would add is that reciprocity is  
12 important, as well. So, in addition to that, I think  
13 that that forms a good basis for reciprocity, but it is  
14 important that other jurisdictions respond in kind as  
15 well.

16 CHAIRWOMAN KARNA: Mr. Cisewski.

17 MR. CISEWSKI: Thanks to Commissioner Stump, our  
18 sponsor, for furthering this important discussion and  
19 since the Chairman's back -- thank you also Chairman  
20 Giancarlo for your papers and speeches on cross-border  
21 topics and to your fellow Commissioners as well. I  
22 know personally how much work and thought goes into

1 even a single speech, so I have read with great  
2 interest, several over the past few months.

3       Unfortunately, unlike the complexities  
4 acknowledged by some of those, the papers under  
5 discussion today dramatically oversimplify policy  
6 issues and perhaps characterizing 200-plus pages of  
7 derivative speak as oversimplified seems a little  
8 comical, but I do believe the conversation thus far has  
9 omitted some obvious public interest concerns and I do  
10 believe therefore the discussion is a bit over-  
11 simplified and that might be expected given the sources  
12 of the materials before us today. The papers were  
13 published by three prominent trade associations, which  
14 exist to further the industry's own interests and at  
15 risk of stating the obvious, we're sitting around a  
16 table with 30 or so executives of the financial  
17 industry to discuss them. So you can understand why  
18 the public might look back at this proceeding at  
19 sometime in the future in the event of a crisis and  
20 think, you know, where was the balance in all of this  
21 discussion and to wonder perhaps even whether this has  
22 some of the hallmarks of regulatory capture.

1           So I'm concerned about the appearances here and  
2   it's shaking confidence in our regulators and I feel  
3   compelled also to raise a few serious concerns about  
4   the industry's papers and to challenge the framing of  
5   the discussion overall. When at all possible we should  
6   seek to avoid fragmentation. I think that's really not  
7   in question, but it's a concern to be balanced with  
8   other competing policy objectives as well. And in many  
9   cases, demonstrably more important policy objectives, I  
10  would say.

11           Moreover, it's very possible that we're chasing a  
12  theoretical phantom here because there's no independent  
13  empirical basis that I'm aware of or that is mentioned  
14  in about 200 pages or so of materials that established  
15  the reality of negative effects from so-called  
16  fragmentation.

17           And on the other hand, there is a strong empirical  
18  basis to suggest that negative consequences simply have  
19  not manifested or at a minimum have not outweighed the  
20  positive effects of financial reforms. But for the  
21  sake of argument, if I set aside our need for evidence  
22  and proceed to consider the proposition that

1 fragmentation has the potential to harm markets, and I  
2 think the Chairman rightly pointed to balance in his  
3 opening remarks.

4       You know, where is the balance in that discussion?  
5 Because importing unknown risks to the U.S. financial  
6 system carries the potential to harm markets, as well,  
7 and so does facilitating regulatory arbitrage.

8       So where good thoughtful regulations have a  
9 consequence of fragmenting markets to a degree, but  
10 serve other compelling public interest objectives,  
11 fragmentation may be unfortunate, but it's an  
12 unfortunately welcome consequence if it means that U.S.  
13 firms and other firms that are posing risks to the  
14 United States and their transactions are conducted in a  
15 properly transparent, competitive, and risk-managed  
16 trading environment.

17       And you know, fragmentation's always going to be a  
18 potential when one jurisdiction puts reasonable  
19 constraints on financial activities and another does  
20 not. So that alone can't be the sole focus of the  
21 conversation. And I think focusing on that alone,  
22 obfuscates critical policy concerns and the keys to

1 ensure that the constraints are reasonable, that they  
2 serve valid objectives and I think that the U.S.  
3 constraints are and do.

4       So just to note, a few imprecise concepts are  
5 thrown around in this context and I know that Nikki  
6 referenced some of them in her opening -- did a very  
7 nice job, you know, the idea of risk-based or outcomes-  
8 based regulation and so on. But what risks or outcomes  
9 are we talking about? That's an absolutely critical  
10 question to answer.

11       So do we think about regulations at the high level  
12 of an execution suite and provide in essence unfettered  
13 discretion to the foreign regulators to decide, you  
14 know, what precisely does that mean? ISDA says yes  
15 and actually even goes further with respect to public  
16 reporting, trading external business conduct standards,  
17 position limits, and more or do we look at impartial  
18 access specifically? Do we look at pre-trade  
19 transparency specifically and trade reporting timeline  
20 specifically and so on. And in our view, the latter  
21 focus on specifics is really the only way to avoid  
22 regulatory arbitrage.

1           And ISDA's proposal for a wholesale comparability  
2           that focuses on outcomes and not specifics, really just  
3           categorical deference would simply facilitate avoidance  
4           of U.S. financial reforms and at its core it outsources  
5           customer protections and transparency measures to  
6           foreign regulators that at best have a questionable  
7           track record of protecting U.S. financial stability.

8           So going to Ms. Karna's initial question, you  
9           know, all of this is unnecessary.

10           The CFTC already has a workable regime for  
11           recognizing comparable comprehensive regulations across  
12           jurisdictions and without taking, in our view, an undue  
13           deference approach or a functional objectives analysis  
14           as ISDA proposes, and it is not overreach when we're  
15           talking, for example, about foreign branches of U.S.  
16           banks or guaranteed affiliates with financial  
17           arrangements with U.S. persons with a clear financial  
18           and risk nexus to the United States. Those are  
19           legitimately for the U.S. to regulate.

20           And perhaps this is especially so looking forward  
21           to the CFTC's April 23rd meeting with respect to  
22           clearing houses. Having these types of firms as

1 members where the losses can be allocated to U.S.  
2 persons or to affiliates. And of course, such losses,  
3 if they manifest, are likely to be very correlated with  
4 distress elsewhere in the markets and elsewhere within  
5 those very firms.

6 So the U.S. is not overreaching, and indeed, it  
7 must reach at least that far to abide by its statutory  
8 mandate to protect the U.S. financial system. And you  
9 know, I've heard a lot, I think earlier Sunil or  
10 someone else had mentioned this word "trust." There  
11 are good reasons to consider the conflicts of interest  
12 that non-U.S. regulators have in establishing and  
13 especially in enforcing, even apparently comparable  
14 laws, because light touch regulations, let's face it,  
15 attract jobs. Light touch regulations attract revenues  
16 to their jurisdictions. And it's especially important  
17 for industries like finance in certain jurisdictions,  
18 and nevertheless, when things go wrong, firms under  
19 those jurisdictions' oversight will impose risks on the  
20 U.S. financial system.

21 So from a public interest perspective, the key  
22 consideration is how can the CFTC avoid incentivizing

1 lower standards and delays -- strategic delays, while  
2 cooperating on global standards. And we submit, it can  
3 best do so by applying U.S. law strictly and not  
4 deferentially, which encourages all of the people in  
5 this room and their firms to push for comparable  
6 requirements elsewhere.

7 And so, I've taken enough time. I just want to  
8 say one more thing about timing because we struggled a  
9 lot with this issue during my time at the Commission.  
10 And, you know, it's challenging given differences in  
11 the mechanics of making law and policy decisions in  
12 different political systems. But it's been more than  
13 10 years since the financial crisis and the G-20  
14 commitments, it's been nine years or so since the  
15 passage of Dodd-Frank, and about six years since the  
16 Swap Dealer Regime went online. So I pose this to the  
17 group, you know, how long can we be expected to suspend  
18 the direct application of U.S. law while others work  
19 through procedural and in some cases political hurdles?

20 And I would just submit that this is a case again  
21 where imposing U.S. law strictly might actually  
22 encourage a race to the top as jurisdictions seek to

1 meet the letter of U.S. regulatory requirements.

2 CHAIRWOMAN KARNA: Thank you Mr. Cisewski. Mr.  
3 Klein.

4 MR. KLEIN: I guess debate is healthy so, I think  
5 it, it helps when there's a disagreement about  
6 specifics to step back to principles and the CFTC  
7 didn't adopt its Dodd-Frank rules in a vacuum, nor was  
8 Dodd-Frank adopted in a vacuum. It was based on a set  
9 of core principles that the G-20 developed and those  
10 core principles were largely intended to take what was  
11 viewed as a not sufficiently transparent dealer-to-  
12 dealer and dealer-to-customer swap market and try to  
13 get as much of it as possible into a cleared  
14 environment and a more transparent trading facility  
15 environment.

16 And I think that goal is undermined by the kind of  
17 market fragmentation we've been talking about. I don't  
18 think the public interest is being sacrificed by  
19 pointing out that market fragmentation is not a good  
20 thing. It's not a good thing for the public. It's not  
21 a good thing for end users and it's not a good thing  
22 for the dealers. It's a shared problem.

1           So, I think, it is a false dichotomy to set up a  
2           distinction between U.S. regulation and inadequate  
3           regulation. Anyone working in-house at any of the  
4           firms who have had to look at implementing MIFID II,  
5           EMIR, GDPR, and the whole suite of European regulations  
6           would be hard pressed to say that they are in any way,  
7           shape, or form less prescriptive, onerous or  
8           comprehensive than the U.S. regulatory regime. I think  
9           the issue that we've been -- the issues that we've been  
10          trying to point out here are issues around not goals  
11          but specifics that different national regimes have  
12          adopted in trying to reach a common set of goals. And  
13          in some instances, as has been pointed out here today,  
14          those specific choices actually have impeded  
15          achievement of the overall arching principles. And I  
16          think that's what we ought to be focusing on. And I  
17          think we are focusing on that.

18           CHAIRWOMAN KARNA: Mr. Goone.

19           MR. GOONE: Yes. I'd like to also raise, you  
20          know, just to add on to the last comment by Mr. Klein  
21          is that, you know, one thing you got to remember about  
22          fragmentation is also the cost of market fragmentation

1 to the entire industry and therefore ultimately to the  
2 end-user. I don't know any firm that hasn't spent  
3 beyond a significant amount of, not just money, but  
4 management time, trying to grapple with all the things  
5 due to all the market fragmentation. So, you know,  
6 it's a difficult thing for the regulators to  
7 coordinate, but you know, the overall costs to the  
8 industry, not just capital cost but you know, human  
9 capital, legal costs, which may be good for some, bad  
10 for others, has just been an extreme toll on the  
11 industry and I don't know that it's made the industry  
12 any safer trying to do that, in trying to comply with  
13 sometimes conflicting laws across all the market  
14 fragmentation we're seeing.

15 But I think something to think about is also the  
16 overall costs to the entire industry, your time as  
17 well, of all the market fragmentation. So while I  
18 appreciate and maybe not agree with everything in the  
19 FIA/SIFMA issues, I think it's a movement in the right  
20 step of trying to simplify a process that's making it  
21 very difficult to be in the business. I mean, you  
22 stated earlier that one of the concerns, I think, the

1 entire industry has is, is it even cost-effective to be  
2 a clearing member, for example, in this industry? I've  
3 had this discussion with many people.

4 And as you keep raising the, not you, but as the  
5 industry has raised the cost due to regulation, I think  
6 that's one of the biggest costs. What's happening is  
7 you're going to see fewer and fewer people being able  
8 to participate in the industry and without the clearing  
9 firms then we have, you know, we have a much bigger  
10 problem. So those are my comments.

11 CHAIRWOMAN KARNA: Mr. Hamill.

12 MR. HAMILL: Thanks. Just listening to some of  
13 the comments, I think it's worth, I mean sitting here  
14 listening to them, I think we seem to start a lot of  
15 these points talking about fragmentation of liquidity  
16 and then it sort of fairly quickly leaks into the sort  
17 of compliance challenges and costs of running a global  
18 business. They're fundamentally very different things.

19 So again, I would urge that we really break down  
20 when we talk about fragmentation of liquidity and what  
21 that really means because I know there was some  
22 mentioned earlier in the ISDA presentation about

1 fragmented pools of liquidity and I just want to  
2 reiterate that as a practical day in, day out matter  
3 for end-users, it's just not even a real thing, you  
4 know? So there are trading venues around the world  
5 such as Tradeweb and Bloomberg. Market makers like us  
6 get up every morning and switch your prices on and  
7 streamed onto those trading venues.

8       It's the same swap. It's the same price. It's  
9 available to anyone. Yes, there is some burden in  
10 setting up the operational initial lift to stream to an  
11 MTF versus a SEF. But a lot of what we've seen  
12 presented here is a very, very bank-centric set of  
13 concerns. And I was surprised by how little mention  
14 there was of protecting some of the key tenets, which I  
15 think end-users would be, you know, distraught to hear  
16 we are not being considered such as impartial access  
17 and ensuring their ability to access and choose from  
18 trading venues.

19       The fairly incredible efficiencies that STP rules  
20 have brought to the buy side and through the  
21 elimination of complex bilateral documentation, and the  
22 clear and tangible and quantified benefits, of better

1 price discovery and better price execution that pre-  
2 and post-trade transparency have brought to the buy  
3 side, those seem to be nowhere in these presentations.

4 So, you know, we would certainly urge that a  
5 broader set of perspectives are taken when we talk  
6 about these fragmentations in distinguishing between,  
7 you know, the commercial realities for big banks  
8 choosing or not to operate businesses. You know,  
9 versus the end-user's experience in accessing liquidity  
10 and where there are real or not real problems.

11 And certainly this elusive concept of fragmented  
12 liquidity. It's clear to me, at least from sitting  
13 here today, that needs further deliberation and  
14 discussion so everyone can get on the same page as to  
15 what we're actually talking about when we talk about  
16 liquidity versus commercial challenges for clearing and  
17 the like.

18 CHAIRWOMAN KARNA: Thank you. Mr. Cutinho.

19 MR. CUTINHO: So, my responses to some of the  
20 points Joe made. First let me -- there is an  
21 assumption, at least, in that statement that when we  
22 talk about deference that we are talking about diluting

1 standards and that's not the case. The CFTC's approach  
2 of recognizing Part 30 jurisdictions is quite prudent.  
3 They haven't expanded that list. That is an  
4 evaluation.

5       You know, we run into this risk if we say, well,  
6 you know there is a presumption that the U.S.  
7 regulatory structure is far stronger than the rest in  
8 your statement. You have to be very careful with that.  
9 You know, if you're outside the United States you're in  
10 the global financial crisis, one could point out that  
11 the U.S. transmitted the risk to the rest of the world.  
12 And it was lax U.S. standards that resulted in the  
13 risk. So it can go -- your argument can cut both ways.  
14 So we have to be very careful with that.

15       A lot of jurisdictions, for example, Australia,  
16 Canada, Singapore, Japan, they have recognized the fact  
17 that markets are global and you know, there is, there  
18 is a lot more debate. There is a lot more discussion  
19 about global standards and if you look at PFMI's, there  
20 is continuous reevaluation of those standards at a  
21 global level.

22       What we are pointing out in terms of deference is

1 to make sure that, you know, if an institution is  
2 regulated and the regulators sit at the table and they  
3 recognize each other's implementations, then why should  
4 we focus so much on multiple regulators overseeing the  
5 same institution? We don't do that to banks. Our  
6 prudential regulators for banks will not accept,  
7 regulate another country saying that you present risk  
8 and come here and you serve the regulatory oversight of  
9 our local prudential regulators.

10 You have to be very careful when we make these  
11 arguments. It's understandable. You know, your whole  
12 idea of regulatory arbitrage is a point taken. It's  
13 something that we should pay attention to, but at the  
14 same time, we should also recognize that there are  
15 standards that have been established.

16 All we're talking about here is deference to the  
17 extent to jurisdictions that have comparable regulation  
18 that have achieved the same outcomes towards the  
19 standards rather than having arbitrary rules on a  
20 bilateral basis.

21 CHAIRWOMAN KARNA: Thank you. Mr. Yamada.

22 MR. YAMADA: So in the spirit of taking a step

1 back, it's been mentioned, that obviously, the results  
2 of all of this global regulation have clearly resulted  
3 in some fragmentation, but it's worth noting that I  
4 don't think anybody in the room would argue with the  
5 fact that the global financial system is much safer.  
6 Banks are much, much better capitalized. There's an  
7 incrementally and completely different regime in terms  
8 of regulatory insight into the activity that they're  
9 regulating now. So, you know, broadly speaking, I  
10 think this has been a quite successful exercise and I  
11 think that would be a very good starting point and  
12 where we tend to disagree -- everybody's intention  
13 globally, all of the different regulators, prudential  
14 and otherwise, are attempting to maximize and  
15 effectively regulate the pieces that they own.

16 Now everybody's going to come up with slightly  
17 different approaches. And I guess, the point being  
18 that to the extent we can keep our eye on the ball,  
19 maintain that connectivity, align our goals and not  
20 necessarily sweat the differences unless they're, you  
21 know, I mean, irreconcilable differences. I think  
22 injecting that sort of practicality and some sort of

1 measure of effectiveness versus unintended consequences  
2 might be a relevant metric to inject into some of those  
3 arguments.

4 CHAIRWOMAN KARNA: Thank you. Mr. Ramaswami.

5 MR. RAMASWAMI: You know, another perspective on  
6 this is if you start with the U.S. consumer or the U.S.  
7 end-user and if you agree that there are pools of  
8 liquidity or interest that they have around the world  
9 be it in markets or in commodities or in things which  
10 are somewhere outside of the U.S., then the issue  
11 becomes one of facilitating access with risks or  
12 processes that are comparable to the U.S. So maybe in  
13 some ways that's another way to look at the same  
14 problem, which is not so much about is -- it's less  
15 about taking markets from here or from Europe and  
16 operating them elsewhere. And it's more about getting  
17 access to markets around the world, which are of  
18 interest to a U.S. end-user.

19 So, and if you apply that principle, I think that  
20 the equivalence or deference becomes more logical in  
21 terms of how it's applied. You know, you want it to be  
22 equally safe, but you want the U.S. consumer to be able

1 to do business wherever they want to around the world.

2 CHAIRWOMAN KARNA: Thank you. We've talked a lot  
3 about trading and clearing specifically and that's what  
4 our panelists presented some materials on. So I'd like  
5 to take the conversation to just get a little bit more  
6 concrete further to some of the comments made earlier.

7 What are some of the specific trading and/or  
8 clearing challenges that your firms, your firms'  
9 clients, your members' organizations have had to deal  
10 with and what are some potential areas that you would  
11 suggest, again, to the Commission that's in front of  
12 you to focus on for change?

13 And just have to change it up from my perspective,  
14 I want to see if we have anybody on, I think we have a  
15 GMAC member who's called in on the phone. Do we have  
16 any comments from the phone before I turn it over to  
17 people in the room?

18 (No response.)

19 CHAIRWOMAN KARNA: All right. Let's go to  
20 Commissioner Berkovitz.

21 COMMISSIONER BERKOVITZ: Thank you Angie. So a  
22 very interesting discussion. I think the give and take

1 and the back and forth is very, very helpful and I  
2 appreciate all the comments.

3 I'd just like to follow-up on the question that  
4 the Chair asked and I'm looking at specifically, the  
5 ISDA presentations and the recommendations. The three  
6 recommendations are: One, adopt a holistic risk-  
7 centered outcomes-based approach in issuing  
8 comparability determinations. Two, achieve trading  
9 venue recognition and other non-U.S. jurisdictions.  
10 And three, allow de minimis trading activity in  
11 emerging market jurisdictions.

12 I'd just like the feedback on that is, are we not  
13 doing this? We've issued a number of these trading  
14 venue recognitions recently. Both the 2013 guidance,  
15 as well as the approach adopted by the successive  
16 Chairmen and including the current Chairman has been  
17 very risk-centered outcomes-based approach in our  
18 comparability determinations. We have a record now of  
19 a variety of comparability determinations. We just  
20 issued several within the last month or so.

21 I'd like to get the feedback on indeed whether  
22 people view what we've been doing is risk-centered

1 outcomes-based approach or not to the extent whether  
2 people believe we are currently following or the  
3 Commission's approach is consistent with these  
4 recommendations or not, I'd certainly be interested in  
5 that kind of feedback.

6 CHAIRWOMAN KARNA: Mr. Klein is your card perhaps  
7 up?

8 MR. KLEIN: It is perhaps up. Hiding behind the  
9 water --

10 CHAIRWOMAN KARNA: There is a water jug blocking.

11 MR. KLEIN: I'd like to respond to Commissioner  
12 Berkovitz's question. I think the answer is yes. I  
13 think, I think what the Commission is doing is  
14 consistent with those goals. I think what the ISDA  
15 paper is pointing out and what the SIFMA/FIA paper  
16 points out are areas where there's more to be done.  
17 There are areas where the Commission's approach hasn't  
18 gotten to some of the core issues. And I'll use one  
19 example and that's Footnote 88. Certainly the  
20 recognition of trading venues in the EU and in  
21 Singapore have done a lot to ameliorate some of the  
22 market fragmentation that we've seen where U.S. persons

1 were effectively disinvited from trading platforms in  
2 those jurisdictions.

3 But it hasn't eliminated the problem and it hasn't  
4 eliminated the problem in part because of emerging  
5 markets platforms largely in the FX space, where FX  
6 products are traded electronically in a local market.  
7 And because those products include FX options or NDFs  
8 they would be considered swaps.

9 A trading platform would potentially have to  
10 register with the CFTC as a SEF if it allowed U.S.  
11 persons to trade in the platform. And the response of  
12 many of those platforms has simply been to disinvite  
13 U.S. persons, including branches of U.S. banks from  
14 participating in the electronic trading of FX in those  
15 markets.

16 I think as, as others have pointed out, the  
17 trading venue recognition for the EU has eliminated  
18 most of the problem, but because there continue to be  
19 really minor technical disconnects in things like the  
20 trade reporting rules, some EU participants in those  
21 trading venues do not want to be matched with U.S.  
22 participants because they don't want their trades to be

1 reported in accordance with the U.S. rules because if  
2 they trade with a local participant that the reporting  
3 conventions might involve a longer delay or not  
4 reporting the trade under certain circumstances.

5 So it, it's the fine tuning that I think we're  
6 talking about.

7 CHAIRWOMAN KARNA: Thank you Mr. Klein. Mr.  
8 Müller.

9 MR. MÜLLER: Yes. Thank you very much Angie. I  
10 would like to add one element to what has been  
11 discussed in this panel. And this element is around,  
12 the way CCPs can access central bank accounts. Because  
13 when we talk about the regulatory environment that  
14 recognizes jurisdictions, it is designed to put these  
15 jurisdictions on equal footing.

16 And what we experience as an international CCP is  
17 that at certain times during the day, the U.S. dollar  
18 would be the only currency that is practical in terms  
19 of clients to post margin to a CCP. However, these  
20 amounts would accumulate then in the commercial bank  
21 system for a lack of access of foreign CCPs to a Fed  
22 account to deposit U.S. dollars. And that is something

1 that, I think, is unhealthy, to have a market structure  
2 where certain U.S. CCPs are allowed to do that and the  
3 non-U.S. CCPs can't have that type of access.

4 I realize it's not a point under the direct remedy  
5 of CFTC obviously, but as this Committee is about  
6 market structure and global market structure, I did  
7 want to raise this point as one that's important from a  
8 systemic risk point of view.

9 CHAIRWOMAN KARNA: Thank you very much. Any last  
10 thoughts about clearing or trading?

11 (No response.)

12 CHAIRWOMAN KARNA: Wonderful. Well, thank you  
13 very much to our panelists and our participants and we  
14 are going to shift now to talking about initial margin  
15 for non-centrally cleared derivatives contracts.

16 (Pause.)

17 CHAIRWOMAN KARNA: Thank you very much. I think  
18 we're ready now to start. We have two presentations,  
19 both from a esteemed colleagues from the CFTC. We're  
20 going to start off with Rafael Martinez, who is a  
21 Senior Financial Risk Analyst at the Division of Swap  
22 Dealer and Intermediary Oversight. And then we're

1 going to shift to the Chief Economist's office where  
2 Richard Haynes, a Supervisory Research Analyst from  
3 that office, will give a second presentation.

4 Mr. Martinez?

5 MR. MARTINEZ: Yes. Good afternoon. Thank you  
6 Angie, Commissioner Stump, Chairman Giancarlo,  
7 Commissioners, and Committee members.

8 So the two presentations are obviously very  
9 connected, so mine is more of a background on the  
10 working group on margin requirements that set the  
11 framework for the development of rules around the world  
12 on margin on uncleared swaps.

13 I'm going to go a little fast, but given the  
14 discussions we had earlier this morning, I think that  
15 you probably don't need the backgrounder and maybe what  
16 I should try to give more time to put the bullseye on  
17 me and open for when the questions come up.

18 So, first I need the disclaimer, which is the  
19 usual disclaimer. Any nonsense is just mine. Okay.

20 So in 2011, the G-20 added margin requirements for  
21 uncleared derivatives to the post-crisis reform agenda.  
22 The same year the BCBS and IOSCO jointly created the

1 working group on margin requirements that included  
2 representatives from 25 regulatory authorities. It was  
3 about, I think, like 14 or 15 countries. The U.S. was  
4 represented by CFTC, SEC, FDIC, Federal Reserve Board,  
5 the Office of Comptroller of the Currency, and the New  
6 York Fed. The co-chairs, there's one from the banking  
7 side and it is from the Federal Reserve Board of  
8 Governors. And there's one from the market regulators,  
9 and she is from originally was actually somebody from  
10 Singapore, I believe, and now is a representative from  
11 the Financial Conduct Authority in the UK.

12 In 2013, so two years after, the WGMR published  
13 standards, that covered product and entity scope,  
14 margin calculation, collateral that this allowed,  
15 timing of the changes or variation in initial margin, a  
16 compliance schedule, and briefly how to address cross-  
17 border issues. There were with different degrees of  
18 specificity, particularly the cross-border issues were  
19 not that specific, but there was the assumption. So  
20 now I'm going a little off script given the  
21 conversation we've had, which is that fragmentation was  
22 always a concern. Arbitrage, always a concern.

1           So in margin requirements we started with the G-20  
2   mandate, we continued with an international working  
3   group. You'd imagine that nowhere else should it be  
4   easier to try to avoid fragmentation. Right? So it  
5   should have been, you know, a consistent set of rules.  
6   An easy recognition of each other should have been, you  
7   know, expected from this, the outcome from this group.

8           Two years -- well, I think it's a little more than  
9   two years after the WGMR published standards, the U.S.  
10  regulators, the prudential regulators and the CFTC at  
11  the end of 2015 voted on final rules.

12           The implementation schedule was updated to  
13  actually be variation margin was implemented between  
14  March and September of 2017. There was a time period,  
15  a grace period for firms to reach compliance. For  
16  initial margin, there were actually five stages. The  
17  first one was in 2016 for the largest -- transactions  
18  between the largest entities, and then it's captured  
19  transactions that involve smaller entities in each of  
20  the five stages.

21           And looking backwards clearly we didn't calibrate  
22  it that well, because we had very few entities in the

1 second and third phases. The third phase just was in  
2 September of 2018. We have two more phases to go. And  
3 that's going to be topic of further -- in the  
4 presentation for the discussion.

5 Basically and, and again, I'm going off script  
6 given some of the discussion that has happened and also  
7 something that some of the papers that industry has  
8 published is that originally at the time of the initial  
9 framework, the scope was not which entities are  
10 systemic or not systemic. The idea was that all  
11 transactions that are uncleared would be margined.  
12 From there a couple of things happened. None of them  
13 were necessarily the discussion within the working  
14 group. One is that in the U.S. implementation, we  
15 obviously, the requirements by statute go to swap  
16 dealers. So the question of who are in scope for  
17 margin requirements is something that we import from  
18 the definition of who is a swap dealer.

19 And for counterparties, this also Congress,  
20 through the Congress in a subsequent act, also  
21 determined that commercial end-users should not be  
22 subject to margin requirements. And that's mostly a

1 question not of each individual entity, but of the type  
2 of risks that those firms face and how they're, at  
3 least that's my interpretation. How they're, those  
4 risks are not necessarily correlated to the risk of the  
5 financial system.

6       So it was again, that was not an entity  
7 discussion. So just bringing back -- to highlight,  
8 because apparently it's not something that's well  
9 known, but the initial, the variation and initial  
10 margin requirements, that discussion was never who is  
11 systemic and who is not. Okay.

12       Now, so initially there was -- I should have  
13 mentioned that there was in the development of the  
14 margin requirements of the framework, there was a  
15 quantitative impact statement that took place in 2012  
16 in which entities around the world, the largest  
17 entities were asked for an assessment of how many  
18 counterparties would be in scope, how much, you know,  
19 the kind of notionals and exposures that they had in  
20 those relationships. And the amount of margin that  
21 time that they would be collecting or exchanging if  
22 there were different levels of -- some threshold, so

1 that there was a certain amount that they could  
2 basically not collect for each relationship.

3 And, at that time, and also going back to some  
4 comments that happened, that took place this morning.  
5 This was all the data that we really had at the time.  
6 So there was a quantitative impact statement that  
7 included 39, I think there were 39 firms that  
8 contributed information. We had nine -- so global  
9 firms, the CFTC, we wanted to add some firms that were  
10 not banks and we adapted the survey for that. We chose  
11 nine entities that we asked to participate in the  
12 survey that will be representative of some were more  
13 commodity centric, other asset managers and hedge  
14 funds, and different entities.

15 So we chose nine and that was constrained by just  
16 the timeframe that we had, we couldn't really apply  
17 with the OMB to get a survey. So we are limited to  
18 nine and only one answered. Eight declined to  
19 contribute information. So I just wanted, you know,  
20 when people say that maybe we get it wrong, we would be  
21 less, I take no pride in making mistakes. So it would  
22 be much better if we had more information and I asked

1 industry to please consider contributing information.

2 We read through hundreds of comments, almost none  
3 that gave us information and we had the survey, eight  
4 chose not to answer. The one that did answer, it was  
5 so specific and so special that we felt -- we had the  
6 advice that we will probably be at risk of revealing  
7 commercially sensitive information if we had only one  
8 entity of a specific type. So actually no entity of  
9 the ones that CFTC requested information for got into  
10 the survey that was used to calibrate the requirements.

11 Well, at that time the quantitative impact  
12 statement estimated that there would be around 160,000  
13 relationships that would fall potentially into scope.  
14 From there, IM -- initial margin will eventually just  
15 cover around 12,000 of those. Of those only around 20  
16 percent will exceed the threshold. And these are all  
17 estimates based on information that we've gathered  
18 thanks to the Office of Chief Economist, the Financial  
19 Conduct Authority, and ISDA. And mostly the margin is  
20 from ISDA, given that we don't really have a margin  
21 calculator in house, but about only 20 percent of those  
22 12,000 are going to be exchanging margin. That's

1 around 1.5 percent roughly of the relationships that we  
2 had started with. Those are the ones that are in  
3 scope. That's not to say is there too many, is that  
4 too few? You know, the policymakers will make the  
5 decision.

6 But one thing that is definitely true is that we  
7 got at least the implementation schedule pretty, pretty  
8 badly. I mean we were just messed up.

9 So we ended up with the majority of those  
10 entities. And ISDA estimated that it's around 1,100  
11 entities that will be coming into scope and I should  
12 move this. Yes. So the majority of them will come  
13 into scope about the same time in phase five.

14 So there are several questions here, which is,  
15 well, first I should say the number, I will ad lib also  
16 here because it's important, that we have 1,100  
17 entities coming to scope. The vast majority of all  
18 entities that will be covered, they're coming to scope  
19 in phase five. That being said, we have the lion's  
20 share of IM that will ever be posted. The amounts, not  
21 entities, the amounts are already captured in the first  
22 three phases. We have the majority of the IM that will

1 be collected, well of the entities that contribute to  
2 IM are already in scope.

3       So there is a survey recently by ISDA that  
4 estimate -- that said that there were like \$160 billion  
5 already in initial margin. That includes some numbers  
6 that I would rather not mix with the ones that fall  
7 under the rule, include things that are not covered by  
8 a rule. So in the information that we track in my  
9 division is a little over \$120 billion in initial  
10 margin that this already come under the rule  
11 calculated, based on 2,300 portfolios that that are  
12 part of the Governance Committee of SIM. And so, they  
13 contribute information so that we have a quality  
14 assurance of the performance of the model.

15       But we think we have the lion's share of all the  
16 entities that will contribute margin.

17       Now that said, industry has developed, and this  
18 has just been amazing. Dozens of supporting practices,  
19 processes, infrastructures, services for calculating  
20 collateral requirements for handling the collateral,  
21 optimizing it, connecting firms to each other.

22 But we don't know if this will scale up to handle phase

1 five. We don't know if these entities will be ready to  
2 comply. If the 1,100 will be ready to comply.

3 This is the biggest challenge that we have in our  
4 horizon. There's obviously it's natural that the  
5 questions emerge now -- knowing now what we didn't know  
6 back then, whether we really calibrated correctly, that  
7 who comes into -- who has to change margin. And  
8 there's several parameters and it's a natural question  
9 and we welcome the discussion of those  
10 parametrizations.

11 And now I'm just pass it over to discuss a little  
12 more about the phase five. Oh, other challenges just  
13 to mention. There's many, but I'll just to mention  
14 Brexit, you know, adjusting for Brexit, LIBOR, and  
15 continuing seeking cross-border cooperation for  
16 adjustment that we're making to the rules.

17 And now Richard Haynes of the Office of the Chief  
18 Economist, will discuss more of phase five.

19 MR. HAYNES: So I'm going to move from the policy  
20 discussion that Rafael provided to some data analysis  
21 that we did in my office.

22 I will be speaking about a white paper -- data

1 analysis that was included in a white paper that we put  
2 out about six months ago. And this primarily focuses  
3 on phase five. Rafael talked a little bit about some  
4 of the concerns that have been expressed by market  
5 participants regarding phase five, the number and  
6 diversity of entities that are included in that which  
7 will be coming in September 2020. So we in our office  
8 and the agency as a whole, was quite interested in  
9 making use of the data that we collect in order to get  
10 a better sense of who might be captured in 2020 and  
11 what concerns might be associated with that phase.

12 Of course I have the exactly the same a  
13 disclaimer, the views I express are my own and not  
14 those of the agency.

15 I will go very quickly through this background  
16 slide because this is a background of policy which  
17 Rafael really went through, but I will say that phase  
18 five, again, goes all the way down from \$750 billion to  
19 \$8 billion. So it's quite a move. And not, just us,  
20 but a few people including ISDA, which Rafael didn't  
21 mention, have put out white papers, that really dig  
22 into the details of what may happen during phase five

1 implementation.

2           So what do we find? I wanted to kind of front  
3 load most of the kind of the high level things that we  
4 do discuss in our white paper before I dig into the  
5 details. And I'll go through the details relatively  
6 quickly. So really focus on this slide.

7           Our findings are, there are by our estimates and  
8 actually the estimates of ISDA, a significant number of  
9 individuals, I should say, entities, that are, would  
10 potentially be coming in phase five significantly more  
11 than those in the first three phases, certainly, which  
12 are those which we've had, which is a few dozen. So  
13 we're really going up, at least one order of magnitude  
14 larger, and that would also be around 7,000  
15 relationships. And when I talk about a relationship, I  
16 talk about a legal entity to a legal entity. So  
17 presumably the documentation that you would need to  
18 write.

19           So 7,000 new documents would have to be written or  
20 updated related to phase five implementation. And this  
21 is a similar magnitude to ISDA. Our numbers generally  
22 are a little bit lower than ISDA in part because we're

1     only -- we, the CFTC, can only look at U.S.-related  
2     entities. That's the reports that we get. ISDA was  
3     looking at the global scale. So we just don't see  
4     quite as much information.

5             In addition to that, we find two other main  
6     things. Phase five entities within that threshold  
7     between \$8 billion and \$750 billion -- the vast  
8     majority, the lion's share of entities come closer to  
9     the bottom end of that scale, the \$8 billion level,  
10    rather than the \$750 billion level. So it's very  
11    skewed to the lower end. And we did look at a couple  
12    of proposed exemptions, exemptions that the marketplace  
13    has put forward. One of those being the physical FX  
14    exemption and the second is a corporate exemption,  
15    which is already kind of partially in place. And we do  
16    find a significant reduction in numbers both for number  
17    of entities, and number of relationships under those  
18    two exemptions.

19            So I'll briefly go through, some of our -- I did  
20    mention the data that we, that we looked at. It is the  
21    data that we get from SDRs. It is generally very  
22    similar to the data that ISDA used in their study.

1 Again, U.S. versus global. The second difference is we  
2 do not currently collect margin data in SDRs. ISDA did  
3 report on some margin levels. So, so that is a little  
4 bit of a difference. But we did have a few details in  
5 our paper that we were able to do that ISDA was not  
6 able to do.

7 So, top line, top line -- and again, this was kind  
8 of my first bullet point on the findings slide and that  
9 is just the number of entities along with the size of  
10 entities that are captured in all of the five phases.

11 So as you can see for the three phases that have  
12 already been implemented, we have a few dozen total  
13 entities. So 23, by our estimate, by our estimate,  
14 internal data. So maybe not, not exactly correct, but  
15 we think roughly correct. And the average notional  
16 amounts per entity for those three phases was around  
17 \$13 trillion. Okay. If you aggregate across the data  
18 that gets reported to us.

19 In contrast in phase five, which will be coming in  
20 2020, we see 704 entities, so again, significantly  
21 higher. And yet, the average notional per entity in  
22 those 700 is just over \$50 billion. As I said,

1 somewhat closer to the \$8 billion threshold, than the  
2 \$750 billion threshold.

3 Digging a little bit more deeply, specifically  
4 into phase five. What we did is we cut phase five  
5 entities into five different buckets and our buckets  
6 are defined by the ANAs for each of the entities. And  
7 you can see it there. They're not equal buckets, which  
8 actually, emphasizes the lowest bucket, but we go from  
9 our largest bucket, which is 500 to 750, all the way  
10 down to the smallest bucket, which is eight to 50  
11 entities, which actually is over 500. The eight to 50  
12 bucket represents over 500 up our total of 704  
13 entities.

14 In fact, 75 percent that, that comes out to be  
15 about 75 percent of all of the phase five entities, but  
16 on a notional basis, it represents just about 30  
17 percent of the total notional within those buckets. So  
18 again, the vast majority of entities, but a much  
19 smaller, representative -- a much smaller percentage of  
20 the notional that would be captured.

21 Around 60 percent, actually, a slightly smaller  
22 number is, have notional amounts under the under \$25

1 billion. So if we moved it from 50 to 25, we would  
2 still have a significant number of the entities.

3 One thing that we were able to do, we put together  
4 a breakdown of entities by participant type. So we  
5 have, approximately 10, just under 10 participant types  
6 listed here. And you can see, I think pretty much what  
7 you would expect. The entity types are ordered by  
8 decreasing total ANA. So the participant type that  
9 would be contributing the largest amount of notional to  
10 phase five all the way down to the smallest.

11 I highlighted two categories here in the slide.  
12 Swap dealers and swap dealers by far have the largest  
13 average notional amount per entity. Of course, a lot  
14 of the swap dealers are captured in prior phases. But  
15 for those in phase five, they have an average notional  
16 of about \$200 billion. Corporates, which have partial  
17 exemptions at least, and in some cases, some of these  
18 corporates may fall under that exemption, but they have  
19 by far the smallest of the average notional amount,  
20 around 19 so just over that \$8 billion threshold.

21 So I will go through one last slide. I have a  
22 couple of other slides, but I think one is -- this next

1 one is the more interesting, which is looking  
2 specifically at one potential proposal that has been  
3 out there and that is exempting physical FX products  
4 from the aggregate notional amount.

5 The proposal has been made because physical FX  
6 products are exempted from the exchange of initial  
7 margin. So even if an entity is captured within one of  
8 the phases, they do not, they are not required to  
9 exchange initial margin even in the phase for the  
10 physical FX products. So we wanted to see what would  
11 happen if we said, okay, not only would they be  
12 exempted from initial margin exchange, but they would  
13 also be exempted from the average notional amount of  
14 calculation. If we do that, then our entity count  
15 drops from just over 700 to just over 500. So 200 of  
16 our entities fall out. And in fact it is 200 of these  
17 smaller entities.

18 For those 200 entities that would fall out, they  
19 have currently, if you added up everything, an average  
20 of \$19 billion of average of ANAs. So again, they are,  
21 they're at the smaller end of the scale. So that, that  
22 exemption would, likely exempt small entities generally

1 on average. Then also a fairly significant number of  
2 the 700 that we find.

3 So I will leave it there, and pass it over to  
4 questions.

5 CHAIRWOMAN KARNA: So thank you Mr. Martinez and  
6 Mr. Haynes. It's incredibly helpful to have the  
7 context in where we are in the development of the  
8 margin rules, as well as very important data to help  
9 drive more informed decision-making as well as  
10 policymaking.

11 So just to kick it off, you know, according to the  
12 presentations we've just heard many smaller entities  
13 will come into scope in the implementation of phase  
14 five. So I'd like to ask everybody around the table  
15 and on the phone, in your view, will these smaller  
16 entities face challenges in complying with phase five  
17 and if so, what types of challenges will they face?

18 And just to start off again, simply because I  
19 can't see anybody on the phone. Are there any comments  
20 from the phone around challenges with phase five before  
21 we turn it over to the room?

22 MS. VEDBRAT: Angie this is Supurna from

1 BlackRock. Can you hear me?

2 CHAIRWOMAN KARNA: Yes. Thank you Supurna, we can  
3 hear you.

4 MS. VEDBRAT: So, you know, to answer your  
5 question on the challenges that can be felt by the buy  
6 side or smaller entities, I think by including the  
7 physically settled FX, you know, we run the risk that  
8 there will be a burden of putting together  
9 relationships or agreements, you know, for small  
10 entities and the likelihood of actually, you know,  
11 reaching the \$50 million threshold, you know, is very,  
12 very low.

13 And just to put it in context for those in the  
14 room, you know, from an asset management perspective,  
15 in order for us to comply by best execution, it's  
16 imperative that we have multiple relationships with  
17 dealers or counterparties. And, you know, it is not  
18 uncommon to have close to about 24 for FX. So by  
19 including, physical, a physically settled FX we might  
20 be putting an unnecessary burden on the buy side.

21 And, if I may, can I just make a comment on two  
22 other topics that, impact the buy side from an

1     uncleared margin rules perspective?

2             CHAIRWOMAN KARNA:   Yes, please go ahead.

3             MS. VEDBRAT:   As I mentioned, it's important for  
4     us to be able to on the buy side, you know, have,  
5     multiple counterparties in order to accommodate best  
6     execution.  For larger clients such as pension funds  
7     and endowments, they may actually hire multiple asset  
8     managers in order to manage their funds, this allows  
9     them like diversity of investment risk and you know, it  
10    also minimizes risk from one strategy to another.

11            And an asset manager, in essence, has investment  
12    discretion on the portion of the client's assets that  
13    are under their management.  So, you know, under the  
14    UMR rules for the 50 million threshold, you know, there  
15    is an expectation that the threshold applies, you know,  
16    on a consolidated basis.  It's likely that many  
17    counterparties may actually have relationships with  
18    different asset managers for the same beneficial owner  
19    of the same client.

20            And this, essentially will cause, a very,  
21    difficult ability for the buy side to manage because  
22    like one asset manager doesn't know -- is completely

1     unaware of what the relationship is with another asset  
2     manager. So you might have actually heard this, you  
3     know, we make reference to them being contained in  
4     separately managed accounts.

5             But this is something that, you know, we'd really  
6     appreciate if there is potentially a working group or  
7     something set up where we can figure out a way in  
8     which, you know, either, we make a recommendation maybe  
9     similar to the minimum transfer amount that the CFTC  
10    gave for full margin. Or like, you know, we have to  
11    come up with a methodology by which asset managers  
12    would know how this would apply to them.

13            CHAIRWOMAN KARNA: Great, thank you.

14            Ms. Guest.

15            MS. GUEST: I think further to what Supurna was  
16    saying, going back to Mr. Martinez's comments around  
17    the administrative burden, even if you exempt the FX,  
18    you've still got a pretty significant number of  
19    participants and a pretty significant number of  
20    relationships. And I think that does lend credence to  
21    what a lot of people have talked about, which we call  
22    internally the custodial bottleneck that we expect is

1 going to happen. And we're very concerned about it.

2           You know, and I think Mr. Sexton's folks at the  
3 NFA have done a great job raising awareness among NFA  
4 members that, you know, winter is coming, we got to get  
5 ready for this. But when we go out to counterparties  
6 and we say, "Hey, can you self-identify, can you  
7 disclose to us and, and, and let's get started on  
8 this." They all look at us in, in horror and say,  
9 "Well, gee, we're not really ready to have that  
10 conversation yet." Right?

11           So it was disclosed to me or described to me as  
12 sort of a collective breath holding. People out there  
13 seem to be hoping that maybe one of the proposed  
14 solutions raising the threshold from 8 billion to  
15 something else seems very sensible, particularly in  
16 light of Chairman Giancarlo's characterization of  
17 notional -- I can't remember what you called it. I  
18 think you said it was a fairly meaningless number.  
19 Yeah. So I would tend to agree that, you know, it may  
20 make sense to, to look at what that threshold is and to  
21 rethink that. And that might then put us in a realm  
22 where we could actually implement phase five

1     successfully. Because I really do think that  
2     negotiating that number with a small number of  
3     custodians out there is going to be really challenging  
4     to do.

5             So that was the first sort of hurdle that we've  
6     been looking at and thinking about. You know, we've  
7     also been thinking about the fact that by definition,  
8     when you get to phase five, it's a very diverse group.  
9     We're not cookie cutter. We're not like the bigger  
10    institutions, we don't tend to have the same kind of  
11    infrastructure internally. And each institution is  
12    relatively unique and has a unique set of issues to the  
13    extent there are third party things. And you  
14    mentioned, some of the third parties that are out there  
15    with interesting sort of services that they can offer  
16    to help. Most of those from our perspective were built  
17    by the banks and for the banks and for sort of a  
18    specific set of needs. They don't necessarily adapt  
19    easily into our needs and what we're looking at.

20            So we've made a, we've created a situation in  
21    which we're making it even more difficult for those for  
22    whom it was always going to be the most difficult. And

1 I do think it's worth going back and saying, from a  
2 risk perspective, what are we achieving here? And does  
3 this really make sense?

4 And looking at, again, going back to the threshold  
5 and the notional, going back to sort of first  
6 principles. We talked about taking out FX. At the  
7 risk of sounding ridiculous, but I think some of my  
8 friends like BP might support this concept. Is it  
9 worth the Commission taking a look at the possibility  
10 of maybe taking some of the commodities out of this mix  
11 and for some of the, you know, we heard this morning  
12 from our friends from Japan that they are looking and  
13 very concerned about how to serve aging populations.

14 One of the things I think historically we've  
15 talked about in the context of pension funds and asset  
16 managers is that, they're looking to hedge against  
17 inflation and the pension funds for our aging  
18 population want to hedge against inflation.

19 How do they do that? Frequently they do that by  
20 entering into commodity swaps because in many cases  
21 they can't go directly into the futures markets  
22 depending on the structure. So they'll do a swap.

1 That swap, is one that now maybe they're going to have  
2 to margin, we're going to make it more expensive and  
3 more difficult to get that hedge against inflation.  
4 You know, thinking back to that discussion earlier this  
5 morning, I think that's also a relevant consideration  
6 here.

7 So I think there are a number of helpful solutions  
8 that the Chair has called us to talk about solutions.  
9 I mean, yes, a delay would be helpful and welcome  
10 relief. I don't think I'd call that a solution. I  
11 think it's kicking the can down the road. I would  
12 prefer to see, and simplifying compliance  
13 implementation also helpful, but would prefer to see us  
14 just take a quick step back and say, here's a huge  
15 challenge that we've brought upon ourselves. Can we  
16 make this easier and should we make this easier and  
17 should we take another look?

18 CHAIRWOMAN KARNA: Chairman.

19 CHAIRMAN GIANCARLO: Clearly the authors of this  
20 rule, back before my time, felt there was some parties,  
21 and perhaps some asset classes that didn't pose risk  
22 and therefore should be excluded and others that should

1 be, and the measures are the ones we have before us,  
2 which are not necessarily risk based measures. They  
3 are notional.

4 Is there some measures that could be recommended  
5 by market participants that might be more meaningful in  
6 terms of risk-weighting and really measuring whether,  
7 which parties and which asset classes should be subject  
8 to IM requirements and which should not? If we're  
9 going to move away from notional that it doesn't make  
10 as much difference, I think, perhaps to raise it or  
11 lower it. We're still working with a notional number.  
12 Are there some other measures that we might consider  
13 that might be more meaningful to really determine, what  
14 is the risk that we're trying to get at with IM and to  
15 what asset classes and to what parties should it apply?

16 MS. GUEST: I think there are, I'm not sure -- I  
17 really don't -- I'd want to have that discussion with a  
18 broader group of folks who are impacted because I think  
19 it's a real discussion that that's worth having.  
20 Because I do think there are, I don't know, I know the  
21 folks from BP have thought about it a bit and I don't  
22 know if you have any off the top of your head that

1 you'd like to propose.

2 CHAIRMAN GIANCARLO: I can assure you that we've  
3 been grappling with it internally at the agency  
4 ourselves and that's why I thought maybe industry might  
5 have some thoughts.

6 You know, that's one of the problems with the  
7 notional amounts we have, you know, they were set long  
8 time ago at a time, at a time, albeit, when the authors  
9 of a lot of these rules didn't have better  
10 measurements. And one of the reasons why we introduced  
11 ends is to try to get to better measurements and, over  
12 time, try to weave them into our policy making as a  
13 more effective way of getting at risk. But we're still  
14 left with a lot of policy choices that were made based  
15 upon notional and we don't want to chuck them out  
16 without something better, without something better that  
17 is risk-based.

18 And so, that's why earlier in my comments I  
19 invited the marketplace to start using ends so we'd  
20 start learning their limitations and also their  
21 possibilities. Because as we go into a future where I  
22 think we're all trying to be much more calibrated and

1 precise, and effective in our rule writing, we want to  
2 start using measurements that they themselves really do  
3 measure risk.

4 And so, is this one here an opportunity to do that  
5 or was it still to come, someday in the future we'll  
6 start getting to risk-based measurements? But at some  
7 point we do need to move away, I think. It's my own  
8 personal view from notional amounts which don't measure  
9 netting, don't measure margin, don't measure really the  
10 risk mitigation nature of these markets. Just simply  
11 look at you know, an un-netted exposures which in my  
12 mind in many cases are useless. In some cases they may  
13 have use, but in many cases are not.

14 CHAIRWOMAN KARNA: Mr. Christison, you were  
15 referred to several times.

16 MR. CHRISTISON: I didn't realize that. I mean,  
17 just add to the chairman's points in the, my colleague  
18 earlier who spoke, I mean I think there are -- I think  
19 we would welcome that conversation in a more broader  
20 industry group. And I think, EEMAC this week is going  
21 to touch on some of that. So then I think that  
22 conversation on Wednesday will be beneficial, I think

1 for this, this debate.

2 I mean, certainly, I think going down to the next  
3 level, you know, variation margin certainly I think  
4 covers quite a lot of the credit risk today. So just  
5 having a look at that data or that next level down to  
6 get a better feel for what's actually in place today  
7 and seems to be working well.

8 There's also other forms of non-cash collateral  
9 that's used in industry today between commercial end-  
10 users and the bank, such as letters of credit and  
11 guarantees that also protect you from a credit risk  
12 perspective. And I think they work very efficiently  
13 today in the market as well. So I think there are some  
14 mechanisms out there to consider. But certainly, I  
15 think, the industry to debate this would be useful.  
16 They are low-cost and they are accessible and they  
17 don't require cash being tied up that could be put  
18 elsewhere into the economic system.

19 CHAIRWOMAN KARNA: Thank you. Ms. Bradbury.

20 MS. BRADBURY: Yes. So I come at this, you know,  
21 as, from the hedge fund perspective where we post  
22 margin, it's called IA now. And I like how ISDA refers

1 to it as discretionary margin. I got to tell you, it  
2 doesn't feel real discretionary. Right? And I think  
3 the number was like \$60 billion. I don't even  
4 remember. It was a very big number. Right?

5 But even we are a little daunted at the idea of  
6 going through this with 7,000 of our brethren, you  
7 know, rushing through that same small door because  
8 we'll have to negotiate entirely different agreements.  
9 The agreements we have now, the custodial banks have  
10 told us that that's an entirely different system  
11 because it's one-way posting. It has particular  
12 approaches. Customized models, we'll now be switching  
13 over to this two-way -- it's a whole different system,  
14 different agreements and all of that to say nothing of  
15 what we would be doing on behalf of separately managed  
16 accounts.

17 But I also, you know -- so part of me says, okay,  
18 everybody jump in the pool with us. We post margin,  
19 we'd love to have you all posting margin, too. But my  
20 first swap that I ever did was when I was Deputy  
21 Comptroller of the City of New York in the early '90s,  
22 classic end-user. We were doing, some yen denominated

1 bonds for an interesting reason I won't bore you with,  
2 but we didn't really need yen. We kind of needed  
3 dollars being the City of New York. And so, we did a  
4 swap and we got competitive bids for it and we did a  
5 swap knowing that it was certainly more expensive than  
6 if we had done futures and yen dollar futures are very  
7 efficient, but Mabel in accounts payable was not really  
8 able to manage, you know, a futures contract and all of  
9 the things associated with that.

10 We understood that as part of our swap agreement  
11 with this bank, embedded in it was some services we  
12 were getting, you know, whether they were essentially a  
13 line of credit that was posting variation margin,  
14 whether it was credit exposure, being an A-rated city  
15 at the time, you know, all of those things. That, that  
16 was part of what we got by using a swap. It was  
17 convenient. It worked for us. It matched our bond  
18 payment dates, all those things.

19 So I think, one of the things to think about, and  
20 I think, the BP observations are there -- there's a lot  
21 of things that can be used to reduce risk to  
22 counterparties or risk in the system. And among the

1 very largest institutions, I think, IM is important. I  
2 personally think VM is one of the most important  
3 things. And you've done that, because if you're  
4 marking-to-market every day, it's hard for a problem to  
5 get away from you as quickly. I think AIG FP never  
6 would have gotten as big and as threatening as it did  
7 if they had to make a phone call to Connecticut every  
8 night saying, "Uh, could you wire a little more money  
9 to these 17 --?" You know?

10 So with all of that, but there are credit-based  
11 IMs, which is basically what hedge funds now post.  
12 There's CDS, you know, part of how we protected  
13 ourselves against Lehman was we had single name CDS,  
14 right? So it protected us on counterparty risk and  
15 there's literally just as I think we've faced in the  
16 City of New York, sort of built into the pricing of the  
17 swap was credit protection and a kind of service, in  
18 all of that.

19 So I think as the regulators consider reducing  
20 risk in the system, IM is a pretty blunt instrument to  
21 be using with so many different kinds and relatively  
22 small parties. And there may be other ways that major

1 counterparties can reduce credit risk and therefore  
2 reduce risks to the system that are not all just a one  
3 size fits all IM formula.

4 So it's not a very convenient answer but it's one  
5 way to think about it.

6 CHAIRWOMAN KARNA: Mr. Sexton.

7 MR. SEXTON: Thank you. And Mr. Chairman, I wish  
8 I had a solution to your question but I don't, but I do  
9 want to just express that we do have concern about one  
10 segment of those firms that were listed as the 20 or so  
11 dealers that I think were identified with the phase  
12 five September 1, 2020 implementation date. And I  
13 should note that phase one and phase two, we worked --  
14 NFA performs a unique role in helping the Commission  
15 review and approve IM models of covered swap entities  
16 and certainly working with Rafael and DSIO staff, I  
17 have to compliment them on working with us during those  
18 first two phases.

19 We have such a concern, I think, with the, as Alex  
20 said, the variety of firms in this kind of final mix,  
21 which we're hoping the number is actually going to be  
22 10 or less covered swap entities by the time it's, by

1 the time it all shakes out.

2 But we have such a concern that if we had eight  
3 months to work with the biggest 40 or so dealers on a  
4 model implementation back in 2016 or so, we are taking  
5 the full 18 months now to work with these 10 firms.

6 And we have questions as to whether or not they have  
7 the infrastructure to even use the model to begin with  
8 and third parties that they may rely upon that we  
9 haven't seen yet. As far as, we have experience with  
10 in vetting ourselves.

11 My only, I guess, encouragement is if there is  
12 some kind of rethinking of this and the date and all  
13 the rest of it that we do that sooner than later  
14 because I know these firms, we've asked to start  
15 spending resources working with us and it's going to  
16 get it -- it will get costly for them in doing so. So  
17 yes, we do have a concern and it's with those 10 or so  
18 dealers that we think are going to have that  
19 implementation date.

20 CHAIRWOMAN KARNA: Mr. Yamada.

21 MR. YAMADA: So there's a practical element to it,  
22 obviously, having gone through the first four phases,

1 it was managed by the banks and I think it ended up  
2 being much less of an issue than people initially  
3 thought.

4 The issue here is we're talking, as many people  
5 here have mentioned, about a set of customers who  
6 really do not have the model infrastructure, accounting  
7 infrastructure, Mabel in accounts payable, to really  
8 support it on their end. And frankly, there's also the  
9 element of it might not be worth it from the regulatory  
10 perspective to know all of this information because  
11 you're not going to be able to do that much with it.  
12 And frankly, it's probably not the huge source of  
13 systemic risk, even though it's a large volume of  
14 trades.

15 So we're kind of entering a little bit of  
16 diminishing marginal returns in terms of the  
17 effectiveness of what ends up being a multiple order of  
18 magnitude, larger endeavor. So it does feel like maybe  
19 perhaps re-cutting it to a more manageable population,  
20 which we do think is somewhat systemically important,  
21 might be the right approach to this act.

22 CHAIRWOMAN KARNA: Mr. Cisewski.

1           MR. CISEWSKI: So with respect to delay, I would  
2 just encourage the Commission to stick to its guns.  
3 And I just want to share an experience that I've had.  
4 You know, I spent the better part of the last four  
5 years doing Dodd-Frank implementation at one of the  
6 largest commercial banks in the world. I actually was  
7 on the project control committee for margin  
8 implementation.

9           So I have a lot of sympathy for the challenges and  
10 I've done many schematics similar to what Nikki  
11 presented earlier in terms of all the complexities of  
12 getting this done.

13           I do want to note though that, as far back as  
14 March of 2015, we were working on these issues. It's  
15 been four years since then. And the rules, of course,  
16 were published long before that. That was the  
17 compliance date as of September of 2015. So, you know,  
18 I understand the challenges and I am sympathetic, but I  
19 do have to note, you know, it's been five-ish years or  
20 so when all of these challenges and all of these  
21 concerns could have been getting addressed along the  
22 way.

1           And I hear, you know, Alex's concerns in terms of  
2 getting clients focused. I also worked on push out  
3 when that went live in July of 2015 and I remember  
4 daily getting metrics on the number of clients that we  
5 were chasing to try to migrate them over to our broker  
6 dealer at the time away from the bank. And, of course,  
7 the deadline had the -- it basically was the deadline  
8 that brought discipline to the whole process because  
9 until the deadline was approaching, none of the clients  
10 would focus on it.

11           So it's very, very important that you stick to the  
12 deadline to get all of these diverse market  
13 participants to come to the table to pay attention to  
14 the issues because otherwise they're very busy and  
15 they're engaged in daily triage and they're likely to  
16 just continue to kick the can down the road.

17           CHAIRWOMAN KARNA: Mr. Cutinho.

18           MR. CUTINHO: I come from a very different  
19 perspective. I'm a risk manager. Yeah. So, while the  
20 current rules definitely in some ways will benefit us,  
21 but I'd like to actually empathize with the firms. I  
22 don't understand the case for a notional-based

1 threshold. I think we already have a risk-based  
2 threshold, which is 50 million in IM. You know, we are  
3 no good fans of notional-based thresholds. We've seen  
4 that they over-inflate the risks. You see that  
5 throughout banking regulations as well as -- you know,  
6 in the mandates as we see right now, they don't truly  
7 represent the risks. These are derivatives. There's  
8 no exchange of principal amounts here.

9       So, I'm curious as to why the \$8 billion threshold  
10 really entered into the equation when there was a  
11 margin level threshold. Because if we are truly  
12 interested in risk management, then we should be  
13 interested in a risk-based threshold.

14       I also empathize with what Supurna pointed out.  
15 You know, one asset manager does not have visibility  
16 into another asset manager's mandate. So if things are  
17 done at the beneficial owner level, it'd be very  
18 difficult for an asset manager to actually administer  
19 that for these clients. And these are pension funds.  
20 They are, you know, they cannot track this on a day in  
21 and day out basis. They've given a mandate to a group  
22 of asset managers. Each one has a separate pool of

1 money and they have to manage risks within that. So it  
2 seems, overly burdensome, especially when you take into  
3 account a notional-based threshold. Thank you.

4 CHAIRWOMAN KARNA: Mr. Allen.

5 MR. ALLEN: Thanks. I don't want to repeat the  
6 comments that have already been made, but I would just  
7 like to reinforce the point about the relationship  
8 between the non-risk sensitive \$8 billion threshold and  
9 the risk sensitive \$50 million threshold. Partly  
10 because of the physical FX point is that the majority  
11 of clients that would potentially be in scope would  
12 have to go through the challenging exercise of agreeing  
13 the biological custody agreements, security agreements,  
14 account control agreements, et cetera, et cetera, would  
15 never actually post any IM.

16 And so, I think the question is one of a of cost  
17 benefit analysis. What is the saving in terms of risk  
18 to the system associated with taking clients through  
19 that process? If the vast majority of it's true, that  
20 it's the vast majority we believe it is, if the vast  
21 majority never actually ended up having to post any IM  
22 at all. We actually just as a reference point in

1 relation to phase four, see relatively small instances  
2 of clients actually hitting the 50 million threshold.  
3 So by extrapolation into phase five, our expectation is  
4 that that will be a very, very limited number of  
5 perhaps highly directional clients at most.

6 CHAIRWOMAN KARNA: Ms. Guest.

7 MS. GUEST: Yeah. I think just further to Mr.  
8 Allen's comments, it would be interesting if the  
9 Commission were able to look at how many clients might  
10 actually trigger the obligation. Because I share your  
11 view, that I think, in phase five it's going to be a  
12 very small number. So forcing smaller market  
13 participants to do all of the work so that they can  
14 have margin exchange with one or two clients from a  
15 risk-perspective, cost benefit analysis perspective  
16 really doesn't seem like, it makes a lot of sense. But  
17 you know, it would be interesting to know if you had  
18 any data or you could look at that at some point.

19 CHAIRWOMAN KARNA: Mr. Cisewski, do you have a  
20 comment?

21 MR. CISEWSKI: I think I should defer to Rafael.

22 CHAIRWOMAN KARNA: Mr. Martinez?

1           MR. MARTINEZ: I just want to clarify a couple of  
2 things that I should have mentioned that in the latest  
3 meeting of the BCBS and IOSCO parent committees in, I  
4 think it was late February, there was a clarification  
5 made that documentation was not required until that  
6 point in which entities crossed the 50 million  
7 threshold. It's dollar for us. It's euros in Europe  
8 and in other places is adjusted in local currency.

9           So in principle, the estimates from ISDA are of  
10 the 11 -- that only about 20 percent of the  
11 relationships, it's about 50 percent of the entities.  
12 So, 50 percent of the entities in phase five would end  
13 up exchanging margin with some counterparty with at  
14 least one, at some point. And that would represent 20  
15 percent of relationships.

16           Now, the trick here is of course people would say,  
17 "Whoa, you know, was is magic about 50?" So that's  
18 fair question. Second is what do people need to do as  
19 they are approaching 50 and what do they need to do if  
20 they'll never get close to 50 and that's something that  
21 we -- it's on us to make sure that we clarify our  
22 expectations.

1           If their sense is that their exposure is at 10 or  
2 15, what do we expect them to do? Because we  
3 definitely don't want to have to burden them with  
4 preparation for something that they're just not going  
5 to do.

6           And so, that's the first thing. Second, obviously  
7 the Chairman is right. But the notionals -- no -- what  
8 we, I think, tried to do --

9           CHAIRMAN GIANCARLO: I'm going to miss you Rafael.

10          MR. MARTINEZ: I'm going to miss you, too.

11          But the 8 billion came from our back of the  
12 envelope calculation. The original number, like the  
13 pivoting number is \$50 million of exposure. Then we'd  
14 realize that there will be the situation in which some  
15 people will prepare for compliance when they're not  
16 going to exchange anything. And based on the  
17 quantitative impact statement and some domestic  
18 assumptions, we worked back to say, "Well, I don't  
19 think that people under 8 billion of notional will ever  
20 cross the 50."

21          And of course, it turns out that recently the data  
22 has told us that we're absolutely wrong. There's

1 people well below eight that would exceed the 50.

2 There's people well over a hundred billion that will  
3 not exceed the 50. It depends on the portfolio they  
4 have and how they distribute it among dealers.

5 So, but we use notionals part. Why did we use  
6 notionals? Some of it is, you're discussing with 25  
7 other regulators in a room, you know, some things  
8 happen that are not the smartest. The other is that we  
9 wanted to have people be able to calculate it easily.  
10 We didn't want to put a demand for risk calculations on  
11 counterparties that might have minimal activity. So  
12 that's where the notionals came from. As for the asset  
13 managers is something that we are aware, we've had some  
14 no action relief on some measures.

15 We have requests for others. We realize that  
16 asset managers have the client of client's problem in  
17 which the calculations that we expected for required  
18 for compliance with the rule. You might have the asset  
19 manager knows how many derivatives and what the  
20 exposure is, but the client doesn't because they don't  
21 decide the investment. They don't have the investment  
22 decision. But the client is the one that might

1 potentially know the notionals that they have across  
2 multiple asset managers.

3 So we're aware of that and it's the topic of  
4 active discussions.

5 Then, on acceptable collateral is something that  
6 we actually, the original proposal had only treasuries  
7 and I think maybe even cash, though we've walked away  
8 from cash. But it was only treasuries and then we got  
9 (inaudible) the genesis of the \$50 million. We were  
10 advised by many people that we might start distorting  
11 the market for treasuries. Okay. So we decided to try  
12 to do two things.

13 One of them is to put the threshold under which  
14 people didn't have to post. And the other was to  
15 expand the set of acceptable collateral. And it seems  
16 to be pretty wide. It's any, I think, equities we have  
17 any ask any security part of the S&P 1500 and it's  
18 quite expansive. But, right now I don't think we have  
19 any discussions active involving widening that. But  
20 you know, if this Committee has ideas over that, we're  
21 here, of course, to listen.

22 CHAIRWOMAN KARNA: Thank you, Rafael. I'm glad

1 you mentioned the recent BCBS-IOSCO statement. I'm  
2 curious if members around the table have any views on  
3 whether that statement went far enough and, if not,  
4 what else could the BCBS-IOSCO consider, in this space?

5 Ms. Bradbury.

6 MS. BRADBURY: It certainly seemed like a good  
7 first step and we actually understand that the CFTC had  
8 some hand in making that happen. So we appreciate it  
9 but as I think we've just heard for it to be actionable  
10 by people, there are actual regulators who need to  
11 write rules or interpretive guidance or tell us how  
12 it's going to actually work. And the clock's ticking.  
13 Right?

14 So we are, what did we calculate? Eighteen months  
15 away. All the attorneys I talked to say we're going to  
16 need at least a year to get all this documentation  
17 done. So it'd be really good to get guidance out this  
18 summer about if you really believe that people with  
19 less than 50 million exposure don't need to go through  
20 all the rigmarole, tell them that and tell them exactly  
21 how to qualify and how to do the calculations and what  
22 counts and what doesn't count. You know, that's what I

1 would do.

2 Thank you.

3 CHAIRMAN GIANCARLO: We're very aware of that,

4 aren't we Rafael?

5 MR. MARTINEZ: (Nods yes.)

6 CHAIRWOMAN KARNA: Commissioner Stump, did you

7 want to add anything on this topic?

8 COMMISSIONER STUMP: I just wanted to bring it

9 full circle before we dispense with this topic.

10 There are certainly a number of operational

11 challenges and I know that there are many regulators

12 around the world and market participants thinking about

13 those. But you know, this meeting was to look back at

14 the original G-20 principals and I think it cannot be

15 overstated that this particular item was added in 2011.

16 It was not part of the original 2009. My recollection

17 is that it was added to insure against contagion and to

18 encourage clearing.

19 So if you think about it in that context, I would

20 be curious to know if anyone is concerned about

21 contagion in this phase five category, the universe of

22 participants that are left in phase five.

1           So again, I just think it's worthwhile to point  
2   out that setting aside all of the challenges, there was  
3   an objective and are we even in threat of missing the  
4   objective in this particular case?

5           (No response.)

6           COMMISSIONER STUMP: It can be a rhetorical.

7           CHAIRWOMAN KARNA: Rafael still has his sign up,  
8   so I'm sure he's about to answer.

9           MR. MARTINEZ: I don't know how much of this I can  
10   reveal, but we have discussions in the international  
11   working group. And the thing is that once you start  
12   the requirement in a certain form, it takes a dynamic  
13   of its own. And so we have, for example, some smaller  
14   countries that have told us that they want some of  
15   their entities to be captured as counterparties in the  
16   rules.

17           And it's interesting that some of their points are  
18   that they will post margin whether there's a capture by  
19   the rule or not, but they will not be collecting from  
20   the dealers if it wasn't for the rule. And that they  
21   actually see their collateral going cross-border to the  
22   centers who are the swap dealers are and they don't

1     feel the security and they don't feel they have the  
2     bargaining power to collect margin.  And therefore,  
3     they basically, when we have the requirements and every  
4     vote counts, we have some of these jurisdictions,  
5     objecting to the chain -- to reducing the scope of  
6     entities.

7             And they don't go back to the G-20, because I do  
8     have to tell them, "Well, I don't think that, you know,  
9     your entities in your country not having protection  
10    adds to systemic risk."  They say, "Well, it adds to my  
11    system."

12            So we have those discussions now.

13            CHAIRWOMAN KARNA:  Thank you Rafael.

14            Frankly, it's time for a break, but I must say, I  
15    hate taking a break when the last comment starts with  
16    I'm not sure I can say anything about this topic  
17    because it means we're going to get something really  
18    juicy.  But that being said, we've got 15 minutes for a  
19    break, so we'll start again with our next panel at  
20    3:15.

21            (Recess.)

22            CHAIRWOMAN KARNA:  So we've spent our day focusing

1 a lot on the initial G-20 initiatives and where we are  
2 and our last panel is going to be focused on OTC  
3 derivatives reporting to trade repositories. Again,  
4 one of the key initial G-20 initiatives that we're  
5 focused on for the day.

6 So we're going to start off with a presentation  
7 from David Aron, Special Counsel of the Division of  
8 Market Oversight at the CFTC and then we're going to  
9 transition to a presentation from Kate Delp, an  
10 Executive Director and General Manager of GTR Americas,  
11 DTCC.

12 Mr. Aron.

13 MR. ARON: Thanks Angie. And thanks to my DAR  
14 colleagues including our new lead attorney, Meghan  
15 Tente and our outstanding analysts, Kristin Liegel and  
16 to Greg Stovall for allowing me to present our work.

17 Before I begin, note that my presentation is my  
18 own and does not necessarily reflect the views of other  
19 staff, DMO or the Commission. Also, please hold your  
20 applause until the end.

21 (Laughter.)

22 MR. ARON: I'll start with an update on DMO's swap

1 data roadmap implementation. In 2017 DMO began  
2 reviewing the Commission's progress in implementing G-  
3 20 swap reporting standards codified in Dodd-Frank.  
4 DMO published the swap data roadmap in 2017. The  
5 roadmap laid out several priorities to review. Those  
6 were leveraging SDR validation processes to improve  
7 swap data's consistency, accuracy and completeness,  
8 harmonizing SDR data fields across SDRs and TRs where  
9 possible, keeping the fields that we think allow us to  
10 oversee our swap markets most effectively, streamlining  
11 reporting and increasing the utility of real-time swap  
12 data.

13 DMO is currently drafting three sets of proposed  
14 changes in response to the roadmap review. We expect  
15 the Commission to issue the first rule making which is  
16 run by Ben DeMaria and addresses SDR data verification  
17 at the April 23rd open meeting. This rulemaking mostly  
18 amends Part 49 but touches on some of the other parts  
19 as well.

20 Another rulemaking, led by me, would propose  
21 amendments to our part 43 real-time reporting  
22 requirements and we hope to publish that this summer.

1 The last rulemaking of the three is led by Tom Guerin  
2 and would propose amendments to our Part 45 regulatory  
3 reporting rules.

4 And we hope to publish this one in late summer, as  
5 well.

6 Today we use swap data for several things like  
7 identifying trends, tracking counterparty risk  
8 exposures, considering alternative risk and exposure  
9 measures like entity netted notionals, determining an  
10 appropriate swap dealer de minimis threshold, which I  
11 think some people are happy with. Analyzing potential  
12 impact of our policy choices and conducting holistic  
13 comparative analyses of futures and swap usage like the  
14 2016 paper published by several staff of OCE about the  
15 use of WTI futures and swaps by commercial end-users.

16 However, because the market participants still  
17 haven't coalesced around global standards for reporting  
18 swaps, we're involved in multiple international data  
19 harmonization work streams. In fact, Commissioner  
20 Stump's Chief of Staff, Dan Busca, who formerly headed  
21 DAR, co-chairs the CPMI-IOSCO HG, which is short for  
22 the Working Group for the Harmonization of Critical OTC

1 Derivative Data Elements or CDEs.

2 And if any group has ever cried out for an  
3 abbreviation, that's one.

4 Last April the HG published definitions, formats,  
5 and allowable values for the CDEs to give authorities a  
6 comprehensive view of OTC derivatives. As a result and  
7 as part of the roadmap review, we're now focusing on  
8 using the CDEs in our swap data fields.

9 To that end DMO and ODT are working to make sure  
10 the data fields required under forthcoming proposed  
11 Parts 43 and 45 will include only the data fields we  
12 think will allow us to best oversee our swap markets.

13 This effort includes evaluating use cases for swap  
14 data fields that will require it to be reported.  
15 Determining whether those required fields can be  
16 harmonized with the CDEs and creating definitions,  
17 allowable values, standard formats, and conditional  
18 validations for each data field.

19 In the Draft 43 and 45 rulemakings, staff is  
20 proposing to replace the existing required fields with  
21 a standardized streamlined set that's harmonized with  
22 the CDEs where possible and that can be issued and

1 updated by staff as needed.

2 Now I'd like to update you on three other aspects  
3 of DMO's global harmonization work; LEIs and UTIs, led  
4 by Richard Mo and UPIs led by Tom Guerin.

5 The global financial crisis showed the difficulty  
6 of identifying swap counterparties. To address this,  
7 the G-20 supported the creation of an LEI and asked the  
8 FSB to coordinate with international regulators to  
9 develop an appropriate LEI governance framework. G-20  
10 leaders endorsed the FSB's recommendations for a global  
11 LEI system resulting in the LEI Regulatory Oversight  
12 Committee or LEI ROC, and the CFTC is a member of the  
13 LEI ROC's Executive Committee.

14 Although the CFTC was the first to require LEIs to  
15 identify counterparties in all swap reporting to SDRs.  
16 The CDE technical guidance calls for using LEI is for  
17 that purpose as well. In addition, since last April,  
18 DMO Director Amir Zaidi has chaired an FSB review of  
19 LEI implementation and we expect to report on that  
20 later this year. That report will survey FSB members'  
21 approaches, examine LEI product coverage, highlight  
22 achievements and challenges to adoption, and identify

1 ways to address adoption challenges. We're also  
2 working with other regulators to harmonize the UTI,  
3 which is the identifier used to uniquely identify each  
4 swap transaction.

5 The HG published UTI technical guidance for  
6 regulators in 2017 covering UTI structure and format,  
7 who should generate UTIs and when UTI should be  
8 generated. Also in 2017, the FSB published UTI  
9 governance arrangements developed by its working Group  
10 on UTI and UPI Governance, aka the GUUG, co-chaired by  
11 OIA Director Eric Pan.

12 The governance arrangements recommend that  
13 regulators implement the technical guidance by the end  
14 of 2020.

15 Finally, UPIs. We've required swap reporting for  
16 years now and therefore have had access to a large  
17 amount of swap data. The absence of a global UPI  
18 system, however, is a hurdle to aggregating data and  
19 spotting trends and issues more broadly. Currently,  
20 reporting entities are not required to identify  
21 products in their reports in a standardized way across  
22 the industry. Instead, each SDR issues its own

1 identifier because the industry hasn't supported a  
2 specific common product identification system.

3 Using UPIs and reporting swaps to SDRs would help  
4 us aggregate reports for systemic risk analysis  
5 purposes and would help the public make better use of  
6 real-time data disseminated by SDRs.

7 Through our positions co-chairing the HG and the  
8 GUUG, we've been participating in a global regulatory  
9 initiative to develop a UPI system. We've ensured that  
10 development has been transparent and has allowed for  
11 industry participation.

12 As a result of this work CPMI and IOSCO issued  
13 technical guidance to authorities on the uniform global  
14 UPI in 2017. The FSB followed up on this by proposing  
15 a global UPI governance arrangement last year and  
16 invited prospective UPI service providers to submit  
17 applications.

18 The GUUG is currently evaluating applications and  
19 associated governance arrangements with a view to  
20 making related recommendations to the FSB and we expect  
21 that the FSB will select the UPI service provider and  
22 approve associated governance arrangements in the

1 coming months.

2 Thank you for your attention. And now I'll turn  
3 it over to Kate Delp.

4 CHAIRWOMAN KARNA: Please go ahead Kate.

5 MS. DELP: Thank you Angie. And bear with me for  
6 just two seconds please.

7 First, I'd like to thank Commissioner Stump for  
8 inviting DTCC to this meeting to speak on this  
9 important albeit not exactly glamorous topic. I'd also  
10 like to thank the Chairman, the other Commissioners, as  
11 well as, the Committee members for your time today. I  
12 should also mention that if I start to lose my voice  
13 through this, it's now lacrosse season. I'm a coach  
14 and so I now have raspy coach voice. I just wanted to  
15 let you know if I start going, I'll get it back.

16 First, looking at this expansive theme of  
17 derivatives reporting to trade repositories and  
18 deciding how to discuss our experiences as a trade  
19 repository in just eight minutes, I think it's  
20 important we take a look back at the basics. So today  
21 I'm just going to talk briefly about who DTCC is and  
22 then I'll go through a quick review of the history of

1 trade reporting, where we are now as an industry. And  
2 finally, where we believe OTC derivatives reporting is  
3 headed.

4 I should also mention that if this seems a little  
5 bit too high of a summary for everyone, we are more  
6 than happy to take questions at the end of this or I'm  
7 more than happy to take questions at the end. We're  
8 also happy to come back and answer more in-depth  
9 questions on other topics if you feel that necessary in  
10 the future. I just wanted to add that.

11 First, who we are and why do I think DTCC is well-  
12 positioned to speak about this?

13 Well, DTCC, a user-owned utility, operates trade  
14 repositories around the globe and provides reporting  
15 services across all five asset classes to over 6,000  
16 clients. We process over 1 billion messages on a  
17 monthly basis. We provide access to over 60 regulators  
18 globally and we now talk in terms of petabytes instead  
19 of terabytes when it comes to our data footprint. We  
20 interact closely with all segments of the market,  
21 including SEFs, clearinghouses, global dealers, and  
22 single jurisdictional reporting buy sides, as well as

1 industry associations, standard-setting bodies and  
2 regulators in the derivatives market space.

3 In other words, I feel DTCC is definitely well-  
4 suited to speak about trade reporting and the  
5 repository area.

6 When we consider how trade repositories were  
7 created, we have to think back to the September 2009 G-  
8 20 meeting in Pittsburgh, where the reporting of OTC  
9 derivatives transactions was first mandated.

10 The precedent for this type of reporting was  
11 actually already in place and DTCC thought that we had  
12 a good solution for the entire industry. As a bit of  
13 history for those who aren't aware, in 2006 DTCC  
14 established a trade information warehouse, which was  
15 the markets first life cycle processing infrastructure  
16 for credit default swaps and essentially a central  
17 warehouse of all relevant trade data. By 2008, an  
18 estimated 98 percent of all credit default swap  
19 contracts worldwide were being serviced by the  
20 warehouse using data and processing standards that had  
21 been defined in conjunction with industry participants.

22 The Trade Information Warehouse essentially built

1 the foundation for DTCC's creation of its of its global  
2 trade repository service in 2012. However, rather than  
3 follow this global approach to standardization,  
4 national legislators and regulators responded to the G-  
5 20 commitments by first prioritizing domestic  
6 compliance. New rules were developed in accordance  
7 with local market priorities and realities, building  
8 upon existing legal structures that varied across  
9 individual jurisdictions.

10         Additionally, multiple trade repositories were  
11 established, each having to be individually approved in  
12 each jurisdiction where they provided the services.  
13 The result: a fragmented global reporting environment  
14 in which a firm regulated in multiple jurisdictions  
15 might have to report the same OTC derivatives  
16 transaction to multiple trade repositories, each one  
17 then applying different identifiers, reporting rules,  
18 data fields, terms and formats.

19         So where are we now? While fragmentation, as I  
20 just mentioned, certainly exists, the current state of  
21 reporting and where the industry has come since the  
22 Pittsburgh summit is quite a success story and I

1 frankly don't think that we all give ourselves enough  
2 credit all of the time. Domestic compliance with the  
3 G-20 reporting mandate has been established. A wide  
4 range of reporting requirements have been met and new  
5 industry-wide processes and procedures have been  
6 implemented to ensure that transactions across the  
7 multi-asset class, OTC derivatives universe can be  
8 reported in an accurate and timely fashion.

9       Collaboration has continued to increase and trade  
10 repositories have acted as a valuable bridge between  
11 regulators, regulated firms and industry bodies to  
12 share experience, information, and perspectives. DTCC  
13 specifically uses its advocacy role to provide  
14 consistent input to regulators' consultations across  
15 all jurisdictions while also collaborating with the  
16 industry to develop more streamlined and cost-effective  
17 reporting mechanisms and workflows.

18       Key industry bodies are also establishing global  
19 data and processing standards for OTC derivatives, as  
20 Dave just mentioned, along with guidance for  
21 implementing these standards in ways that will help  
22 harmonize reporting practices across jurisdictions.

1 And finally, on the legal and regulatory front, work  
2 continues toward the removal of barriers to data  
3 sharing and third-party access to that data.

4 So what's in store for the future?

5 When we talk about the future, especially in  
6 relation to the work being done around data sharing.

7 The first point here on this side is what I consider to  
8 be the most important: increased coordination (and not  
9 the easiest of tasks, I realize).

10 Recent and planned actions by the industry players  
11 including the regulators, will narrow the differences  
12 across jurisdictions in reporting policies and  
13 practices for OTC derivatives transactions. This  
14 increase in standardization, we believe, will open new  
15 possibilities for users of the trade repository data to  
16 extract increasingly greater value from this  
17 information. Specifically recent FSB and IOSCO  
18 achievements on governance and technical standards are  
19 a big step in the right direction.

20 However, in order to continue moving forward, we  
21 need more regulators globally to follow in the CFTC's  
22 footsteps and take the next step of adoption. Until

1 this happens we will continue to have very basic  
2 jurisdictional differences like, USI versus UTI,  
3 preventing the global amalgamation of the data.

4 A common example we face today is trying to  
5 understand Bank A's global risk exposure. Using the  
6 data from DTCC's North American, European, and Asian  
7 trade repositories, it would be time consuming and  
8 extremely difficult to analyze this data given the  
9 differences in something as basic as the trade  
10 identifier. We believe though, that this particular  
11 fundamental issue can be solved with the adoption of  
12 the UTI governance and technical standards. Market  
13 participants and regulators in particular need to  
14 continue working together and they need to unite in a  
15 commitment to data standards, aggregation and access.

16 Collecting a concise dataset based on consistently  
17 defined terms paves the way for effective data  
18 aggregation and will allow for the reporting of a true  
19 single global gold record. A global reporting  
20 framework built through collaboration and potentially  
21 enhanced through new technologies such as the  
22 distributed ledger technology can enable trade

1 repositories to better achieve their fundamental  
2 purpose, which ultimately is to provide regulators with  
3 the data they need to quickly identify and analyze  
4 systemic risks in the financial system triggered by OTC  
5 derivatives trading activity.

6 That's it for my presentation, but again, I'm  
7 happy to answer questions and/or dive into these topics  
8 more deeply in the future. Thank you again for your  
9 time.

10 CHAIRWOMAN KARNA: Thank you both. We did hold  
11 our applause, but I do applaud both of you for  
12 distilling a very complex topic in a way that is  
13 digestible for those of us who are not as immersed in  
14 it as you two are on a day-to-day basis.

15 So with that, I'd like to start the discussion off  
16 with really asking the GMAC members around the table:  
17 how has transparency with respect to swap data impacted  
18 the business and trading strategies of the institutions  
19 you represent?

20 Mr. Nicosia.

21 MR. NICOSIA: Thank you. And thank you to the  
22 Commissioners and the Chairman for having us here

1 today.

2 And so, my question goes partly both to the  
3 Commission as well as to the two panelists that we have  
4 today. As we started before we went through Dodd-  
5 Frank, we had an issue of aggregation of positions,  
6 dark markets that existed extensively through the use  
7 of swaps that is there. Then we had the invention of  
8 other investment tools such as indexes, ETFs that have  
9 gone through there, where people are able to place  
10 positions through, again, darker opaque areas.

11 So my question is where or how or what  
12 requirements and data do you receive from overseas  
13 investors that trade with other overseas banks? Bank  
14 reporting from overseas banks whose overseas branches  
15 do trades with overseas traders, bank reporting on  
16 index positions from individual investors reporting of  
17 ETF positions from individual investors so that someone  
18 can have an aggregate position. Because from an end-  
19 user standpoint, we have to report everything and  
20 whether it's overseas -- whether it's not, whether it's  
21 positions, whether it's swaps -- we are continually,  
22 for people who are using the market, called upon to

1 expose everything that we have. So to what level do  
2 you get that from banks and overseas traders?

3 CHAIRWOMAN KARNA: Mr. Aron.

4 MR. ARON: Well, I think you had about 16  
5 different items on that list. So it kind of depends  
6 and it depends if they're considered a U.S. person  
7 there, I guess a bunch of factors. I mean, if they're  
8 subject to our regime and to some extent that's a self-  
9 determination then we'll be getting it -- if they're a  
10 bank it should be obvious in the name and the index  
11 provider -- what was the question about the indexing?

12 MR. NICOSIA: On indexes, do they report by  
13 investor for notional amounts? If someone has \$100  
14 million or \$1 billion in an index position, is that  
15 reported by the actual investors so as to aggregate  
16 total dollars invested from a position reporting system  
17 or from a position limit standpoint?

18 MR. ARON: I mean there's -- so we've got a bunch  
19 of different reporting regimes. I mean, you're talking  
20 about 43, 45, OCR, large trader, I'm not sure if you're  
21 talking specifically about what we're talking about  
22 today or the other ones -- position limits?

1           MR. NICOSIA: Well, even if we limit it just to  
2 the swap side. So if you have a large hedge fund that  
3 is in Geneva and they're transacting with European  
4 banks on U.S. products, what level of reporting do you  
5 receive from them?

6           MR. ARON: Well, like I was saying before, I mean,  
7 if you're caught in the regime then they'll be  
8 reporting -- it will be by the reporting counterparty  
9 and it will name the counterparty. So who was ever  
10 doing is the asset manager would report -- I guess, I  
11 mean it would be -- I guess the fund and sometimes it's  
12 allocated to multiple funds. So like the first report  
13 will be the IM or the IA, and then the allocations  
14 would be reported separately.

15           But the first question is just is it swept up in  
16 our regime and then we would get the actual parties to  
17 it -- if that answers all of the questions.

18           CHAIRWOMAN KARNA: Mr. Aron, I think from -- going  
19 back to some of our earlier conversation, I think it  
20 starts off with the classification, if I understand  
21 your regime correctly, of the actual counterparty. So  
22 in any hypothetical, you'd have to start off with the

1 cross-border analysis to see if it goes to the CFTC --  
2 if I'm not mistaken.

3 MR. ARON: Right. Thank you. And also, I guess  
4 we've issued some staff relief along the way. So  
5 there's like the letter that Richard Mo recently  
6 renewed, I think, even though it may otherwise be swept  
7 up in our regime we still gave certain relief in 45 and  
8 46, if I'm not mistaken.

9 So yeah, I guess like I was saying before, there  
10 are multiple factors determining whether we get all  
11 that. So there could be some that we get and some that  
12 we don't. But then the other rulemaking that I worked  
13 on, indemnification, even if we don't get it someday  
14 we'll be getting data from other regulators, trade  
15 repositories and then we'll have it all.

16 CHAIRWOMAN KARNA: So, as highlighted at the  
17 outset though, there is a lot of swap data currently  
18 being reported to the CFTC and other regulators. And  
19 I'm curious again, if that has impacted business or  
20 trading strategies of people around the globe. It's  
21 been implemented for a while, but there was quite a  
22 deal, quite a great deal of complexity as was

1 highlighted in the two presentations.

2 Has that impacted strategies? Has it impacted how  
3 you structure your businesses?

4 Miss Hong?

5 MS. HONG: Sure. I would start out by saying  
6 that transparency generally in the markets is helpful  
7 in instilling and fortifying market confidence in the  
8 products as well as the markets at hand. And so, you  
9 know, whether we're talking about the CFTC's public  
10 trade reporting regime or the similar regimes that have  
11 been put into place globally across other  
12 jurisdictions, I think that certainly market  
13 participants find that data to be useful especially  
14 when they're looking to trade and social size of the  
15 given products at hand.

16 I would say that there were certainly a lot of  
17 complexities at initial implementation with regards to  
18 things like U.S. person, non-U.S. person. You know,  
19 what are the implications once the trade is actually  
20 booked and sent to the SDR? I think that it's, you  
21 know, quite timely today now that the rules have been  
22 in place for a good six years, to revisit, and this is

1 where I think, you know, I would like to commend the  
2 CFTC's efforts around revisiting the swap data roadmap.

3 And looking at kind of the entirety of the  
4 framework spanning regulatory as well as public  
5 reporting to ensure that we're looking, we're taking a  
6 retrospective look at all of the data that has been  
7 reported to the CFTC to ensure that the rules are  
8 appropriately calibrated to the markets as well as the  
9 products at hand.

10 CHAIRWOMAN KARNA: Ms. Bradbury.

11 MS. BRADBURY: Just a small comment on the idea of  
12 making data more accessible across boundaries and all  
13 of that and, obviously to do your utmost to protect  
14 data and participants. We've had the experience where  
15 there have been inadvertent data breaches, not  
16 cybersecurity so much as human errors by regulators  
17 exposing market participants' positions. And we'd  
18 certainly think that needs to be, I didn't see it sort  
19 of referenced in your report and I'm all into data  
20 sharing and making things easier, but we need to really  
21 protect people's confidential information.

22 CHAIRWOMAN KARNA: Thank you. Ms. Guest.

1 MS. GUEST: Just to give a shout out to what Mr.  
2 Aron said, is one of the things that it looks like the  
3 Commission is trying to do. I think I may be the token  
4 compliance person in this room. So on behalf of  
5 compliance, I would just say anything the Commission  
6 can do to streamline and simplify would be enormously  
7 welcome. It's, you know, even today, and I know it's  
8 been a few years, but even today it's still a huge  
9 challenge and you know, a product changes every other  
10 day. You're looking at a unique bespoke product that  
11 you have to figure out how to report and there were  
12 reporting challenges every single day. So anything  
13 that can be done to simplify that and make it easier  
14 for the industry is really welcome.

15 CHAIRWOMAN KARNA: Ms. Guest, I would remind you  
16 that in the post Dodd-Frank world, we're all  
17 responsible for compliance.

18 MS. GUEST: Thank you very much.

19 CHAIRWOMAN KARNA: Mr. Aron, do you have a  
20 comment?

21 MR. ARON: Yes, thank you.

22 I just wanted to say to Alex's point well, part of

1 what we're doing and also to Ms. Hong's point, we did a  
2 lot of industry outreach, so hopefully it will be  
3 reflected in the proposals and the Commission's very  
4 responsive to comments. So if they're not, then we  
5 could easily course correct in the final. So Alex's  
6 point -- actually I lost my train of thought. Remind  
7 me again, you said I wanted to comment on --

8 MS. GUEST: We welcome all efforts to streamline  
9 and simplify --

10 MR. ARON: Right, the tech specs. I'm 50, I'm  
11 just kind of losing it.

12 The tech specs that we're going to implement. So  
13 it's kind of like going to make it easier for staff to  
14 adjust, with the Commission's oversight, but like  
15 instead of going through the whole rulemaking process  
16 for data fields, we're going to -- that's kind of,  
17 we're going to propose this to make it easier to  
18 adjust. So you're saying products change a lot, so it  
19 should make it easier to reflect that and maybe adjust  
20 it quicker than once every six years to be more  
21 responsive to the market.

22 And yeah, that's all I wanted to add. Thank you.

1 CHAIRWOMAN KARNA: Ms. Delp's presentation  
2 highlighted that it would be nice in a Kum-ba-yah world  
3 for there to be single global gold records and  
4 increased coordination in some of the reporting that  
5 institutions are doing. So I'm curious about how has  
6 global harmonization or the lack thereof among data  
7 fields affected different institutions around the  
8 table?

9 Ms. Belich.

10 MS. BELICH: Yeah, thank you.

11 So I think it's, you know, from a legal and  
12 compliance perspective, I think it has increased the  
13 amount of noncompliance that you see internally at a  
14 bank. I think when you're utilizing the same  
15 infrastructure to comply with multiple, you know, trade  
16 reporting obligations across multiple jurisdictions and  
17 in some cases the same personnel to do that -- you're  
18 kind of internally fragmented as a result of that. So  
19 I think that's definitely been a challenge, that  
20 increased noncompliance.

21 And then, I think, you know, different phases of  
22 trade reporting or the lack thereof of no action relief

1 in other jurisdictions whereas the CFTC, I agree with,  
2 has been very good about getting relief to market  
3 participants in that area, you know, should you have,  
4 you know, technical changes internally in one  
5 jurisdiction, again, when you're leveraging the same  
6 infrastructure, it could lead again to internal  
7 problems with your compliance and other jurisdictions  
8 as well. Which is a very hard -- to kind of put it  
9 very simply, you know, it's kind of hard to unwind the  
10 Christmas lights in that area when something has  
11 changed your trade reporting infrastructure that's  
12 compliant for one jurisdiction and really not for  
13 another.

14 The only thing I would add that, you know, I'd  
15 wanted to mention it at the last session as well, is  
16 one of the things I think that has been good about this  
17 and the fragmentation that you see has actually kind of  
18 forced, I think, a lot of market participants to  
19 increase internally their corporate governance  
20 structure. And I think that's a great thing that the  
21 CFTC has actually stressed and in their enforcement  
22 actions is stressing the idea that you have to have

1 effective governance in order to comply with  
2 regulations.

3 So in that regard I think we've been able to  
4 identify better areas where we are fragmented or where  
5 we where we need help from the G-20 regulators by kind  
6 of being reactive and then proactive from a governance  
7 perspective to figuring out where we have problems  
8 internally and then bringing them forward.

9 CHAIRWOMAN KARNA: Kate.

10 MS. DELP: Thank you. I just want to make a quick  
11 comment also in response to that question, what we see  
12 from a trade repository perspective. We've seen a lot  
13 of firms no longer or market participants, rather, no  
14 longer be able to send single messages to a trade  
15 repository and have that trade repository then take the  
16 resource and cost burden and take one message and send  
17 it to multiple regulators.

18 We've seen market participants have to now  
19 completely bifurcate their internal processes where  
20 they are now sending one message for CFTC reporting one  
21 message for Canada reporting, one message for ESMA  
22 reporting, and so on and so forth. And that I think

1 has just completely ballooned a lot of the cost burden  
2 that, that we're seeing and what someone else mentioned  
3 in a previous session this afternoon. So that is what  
4 we're also seeing from the trade repository side.

5 CHAIRWOMAN KARNA: Mr. Yamada.

6 MR. YAMADA: Thank you. There's also an element  
7 that we've seen. The duplication and fragmentation in  
8 the market has led us to effectively recreate systems  
9 that did the exact same thing multiple times, leads to  
10 huge inefficiencies and costs across the organization.  
11 Which in itself is problematic for a bank. But the  
12 flip side of that is a large bank can handle that. The  
13 small and medium banks cannot, and frankly,  
14 disproportionately penalizes the smaller and medium  
15 size banks, not the global banks.

16 So there does start to become on some level an  
17 unfair playing field, oddly in favor of the larger  
18 banks in this situation. So that's one thing to be  
19 mindful of.

20 CHAIRWOMAN KARNA: Thank you. Ms. Guest.

21 MS. GUEST: Yeah, just to reinforce that point,  
22 which is a good one that I don't want us to lose. The

1 larger banks, I was at the time part of a larger bank  
2 and had subsequently had this -- was at another bank,  
3 and they have huge infrastructure. They are part of  
4 industry working groups and conversations about the  
5 requirements, there's a lot of dialogue and a lot of  
6 help that's available. For the smaller market  
7 participants that's not there and so smaller market  
8 participants are often coming at this on their own.  
9 They're reading the rules, trying to understand what it  
10 means. They're, you know, they're really looking at  
11 it. They have fewer resources. They don't have the  
12 industry support and they don't have benefit of all of  
13 that dialogue and all of that work.

14 So I would say it's something to keep in mind that  
15 there is a real difference in the ability of the  
16 smaller and the larger institutions to know what they  
17 need to know to comply.

18 CHAIRWOMAN KARNA: Mr. Yamada.

19 MR. YAMADA: Sorry. Just to add one more point to  
20 that. I mean, that my point wasn't necessarily that we  
21 would want to remove something that's in the benefit of  
22 the large banks, which frankly, was not my point.

1           The point is that the market for it to operate  
2           efficiently and effectively and to keep liquidity high,  
3           it requires all of these participants and it's really  
4           not in our best interest to have a lot of the banks not  
5           on a level playing field. We do want a competitive  
6           marketplace and we do want to remove the barriers to a  
7           healthy marketplace and not have these concentrations  
8           which is very much counter to the intention of the  
9           regulations.

10           CHAIRWOMAN KARNA: Thank you very much.

11           We had some very helpful color from market  
12           participants as well as from DTCC. I have a sort of,  
13           one of my last questions is probably is for Mr. Aron,  
14           you had earlier talked about some of the complexities  
15           between UTI differences. So from the perspective of a  
16           regulator, and this also touches on an earlier  
17           question. Can you sort of provide us with an example  
18           of how UTI differences or other differences that you've  
19           highlighted impede your ability to get a global view of  
20           someone's risk exposure in a way that a regulator  
21           would, would like to have?

22           MR. ARON: Sure. I mean, I was talking Tom Guerin

1 about this last week preparing for this. I mean, I  
2 guess we can aggregate now, at least in the U.S.,  
3 across SDRs, different -- I think that might be the  
4 products, but I guess, I mean we would like to see  
5 everything. We'd like to see, you know, our swap  
6 dealers' affiliates risk and just the whole picture of  
7 the whole family.

8 But you know, we've also stood off to some extent  
9 because of comity reasons and in some cases and so  
10 we've, we feel that, I guess we've got, you know, a  
11 good enough handle given all the other considerations.  
12 But in an ideal world, we would get to see everything.

13 And that was the point of the indemnification  
14 rule. Other regulators weren't going to indemnify us  
15 for screw ups, like, you know, Darcy mentioned some  
16 regulators -- human error just slips out and it's just  
17 going to happen. You should have seen some of the  
18 things we were having for the protections in the Draft,  
19 but didn't make it in the final is a little heavy  
20 handed.

21 But you know, we tried to find a balanced approach  
22 and I think we did. But so, when we get deeper into

1 the post-indemnification working with other regulators  
2 to get their data and they get our data, I mean,  
3 they're not sharing with us. I mean, I think that  
4 there needed to be a treaty in place at one point for  
5 the EU to give us their data. I think that that went  
6 away, but there's still some hurdles.

7 So it's going to take some time, but at least we  
8 took this step on our side to get rid of the  
9 indemnification requirement and Congress told us to and  
10 we followed through on that with that rule last summer.

11 CHAIRWOMAN KARNA: Thank you. Chairman.

12 CHAIRMAN GIANCARLO: Just an observation on a week  
13 ago, last Wednesday in this very room, the FSB held a  
14 meeting of an industry group, the ARRC, which is  
15 working on a solution to the transition away from  
16 LIBOR. It's an enormous challenge. It's an enormous  
17 project and yet the ARRC was able to report that  
18 virtually every milestone that had been assigned to it  
19 and had either met or exceeded the progress is going  
20 well. There's a lot left to do.

21 But as we pivot from that to talking about another  
22 large project, which is international data field

1 harmonization, it's interesting to compare the two of  
2 them. That one is basically regulators sat back and  
3 just assigned to industry to come up with a solution to  
4 the problem. This is one where regulators basically  
5 said, we'll work it out, we'll come up with a solution  
6 to the problem.

7         And it is interesting to see the strengths and  
8 weaknesses of the two different approaches. One of the  
9 things that we do struggle with mightily in legal  
10 entity identifiers in the entire process of  
11 identifications is regional differences. And when you  
12 assign to national regulatory champions to come up with  
13 standards, they tend to come up with their own  
14 standards, and then we face the problem of trying to  
15 bring harmonization to the different standards across  
16 the board.

17         The other thing is that we haven't made as much  
18 progress and I've been pretty outspoken in my  
19 disappointment with some of these global bodies in the  
20 lack of progress that's been made.

21         So it's an area where we have to make progress.  
22 We're all committed to it. And we continue at the CFTC

1 to push the point. We are, as I think Mr. Aron's  
2 noted, the one regulator that has adopted our  
3 regulations in place. And, in fact, one of our  
4 frustrations with the global bodies is there are a  
5 number of key regulators involved in the process that  
6 themselves don't have a mandate to implement global  
7 standards the way we at the CFTC do. And we would like  
8 to see our ability to lead more of these efforts in  
9 that regard.

10 So it's interesting to compare and contrast.  
11 Don't take away from what I'm saying, any lack of  
12 commitment to the process, but the way to break through  
13 in the international standards is to bring more of  
14 institutions like many around the table that operate in  
15 a global environment that see it from a global point of  
16 view and not from purely a domestic point of view into  
17 this process. And we will continue to try to do as  
18 much of that as we can, including with meetings like  
19 this.

20 CHAIRWOMAN KARNA: Ms. Delp, I'm just noting that  
21 you're an institution that thinks a lot about this  
22 topic a lot from a global perspective. If you had the

1 key global regulators in the room, what would you tell  
2 them to start focusing on to get us to that Kum-ba-yah  
3 state?

4 MS. DELP: Wow. That's a loaded question.

5 CHAIRWOMAN KARNA: Two minutes.

6 MS. DELP: I would love for that opportunity.  
7 Honestly, it would be exactly what it would be -- and  
8 this isn't just because we're being hosted here by the  
9 CFTC, but it would be to follow in the CFTC's  
10 footsteps. Adopt CDE. Adopt CDE and don't make  
11 changes to what CDE has proposed, unless everyone is  
12 going to make the same changes. Adopt UTI. Adopt UPI.  
13 And adopt them in coordination.

14 Don't adopt -- don't have Regulator A adopt CDE  
15 this year, and Regulator B adopt CDE the following  
16 year. If we can keep the timeframes as coordinated, I  
17 know, you said Kum-ba-yah, I know we're never going to  
18 get to that, but I'd like to keep a positive attitude  
19 and I'd like to think that we can get some  
20 coordination. The closer we can all come together with  
21 the rule sets, the definitions, and the timelines is  
22 the closer all of you -- sorry -- I was pointing at the

1 Commissioners and the Chairman, is the closer or the  
2 sooner that all of the regulators globally can really  
3 get a handle on both global and local systemic risk in  
4 the market.

5       Until that happens, I just don't -- I have to be a  
6 little bit pessimistic and say we're -- it's going to  
7 take us that much longer to get there. And sorry, just  
8 to go back to that USI/UTI question that you had asked  
9 Dave. We believe that there is the same trade in  
10 DTCC's repositories in North America, Europe, and Asia,  
11 and in U.S. it has a USI 1, 2, 3 tag to it. In Europe  
12 it has UTI A, B, C, and in Asia it has Internal X, Y,  
13 Z.

14       Those look like even if I were to give the global  
15 data to all regulators, no one would be able to make  
16 heads or tails of it and it would look like three  
17 distinct trades when in actuality it's one. So until  
18 we get that common framework and that common dataset  
19 we're just not going to be able to provide you with the  
20 tools to do -- you, the regulators, the tools to do  
21 your jobs.

22       CHAIRWOMAN KARNA: Thank you.

1 MS. DELP: Thank you.

2 CHAIRWOMAN KARNA: So the Chairman noticed last  
3 week -- just to close our very productive day, the  
4 Chairman noticed last week that the CFTC has a strong  
5 tradition of bringing together people with disparate  
6 viewpoints to discuss important market issues. I  
7 commend Commissioner Stump and her colleagues at the  
8 CFTC for continuing this tradition with this  
9 reconstituted GMAC.

10 I think -- I thank and I think all of our  
11 panelists and committee members for actively  
12 participating in a robust discussion today and sharing  
13 your diverse perspectives on complex issues.

14 Andrée.

15 MS. GOLDSMITH: I just would like to turn it over  
16 to the Chairman and the other Commissioners for any  
17 closing remarks. So I'll start with Chairman  
18 Giancarlo.

19 CHAIRMAN GIANCARLO: Thank you very much. I thank  
20 all of you. These meetings take a lot of preparation  
21 time, a lot of thoughtfulness, and you bring your A-  
22 game to the meeting. So thank you all very much, for

1 those on the phone and those in the audience. I want  
2 to thank my fellow Commissioners. As you see, we're  
3 all here.

4 The commitment that we make as a Commission to  
5 these advisory committees is -- many agencies have  
6 them. I think this agency takes them very, very  
7 seriously and sees it as a key source of information  
8 and discussion for us. And I want to finally end with  
9 a compliment to Commissioner Stump. I mean, not only  
10 her commitment to this entire GMAC process and all the  
11 agenda items today, but her commitment to data.

12 About a month and a half ago she and her staff put  
13 out some very thoughtful views on -- as a Commission  
14 what we should be doing to better protect data, what we  
15 need to be looking at. And she's now with her staff  
16 engaged in the process of cataloging the information we  
17 take in the data, how we use it, how we protect it.  
18 And I know she's going to have more to say on that.

19 And I don't want to stump her own press releases  
20 on this going forward, but it's a really important  
21 project and I want all of you to know that she has the  
22 full support of myself and my staff and the Commission

1 in this and if she's engaged in outreach with all of  
2 you, we'd appreciate your support for this very  
3 important project. So, Commissioner Stump, thank you  
4 very much. Thank you for a great day today.

5 MS. GOLDSMITH: Commissioner Quintenz.

6 COMMISSIONER QUINTENZ: Thank you. And  
7 congratulations to Commissioner Stump and her staff and  
8 the very capable Chairwoman Karna for an excellent  
9 meeting today. I found it very helpful as I think we  
10 all tried to think about how or if we have regulations  
11 that are appropriately calibrated. And I think that's  
12 an important word.

13 You know, I personally I shun language that tries  
14 to describe regulations as strong or weak. To me those  
15 are political labels that are meaningless. I think an  
16 analysis of regulation is whether or not it's  
17 appropriate to the risks that are being mitigated  
18 compared to the costs that it imposes. And the  
19 feedback from this group I think is very important in  
20 trying to get that right.

21 And I share the Chairman's distaste of notional  
22 value, as many of you know, we had to start somewhere.

1 The Commission had to start somewhere. Global  
2 regulators had to start somewhere. But that was 10  
3 years ago and I think we've learned a lot since then  
4 and if we're still relying on deficient metrics to  
5 impose large costs and achieve substantial policy goals  
6 then shame on us and we should lead and we appreciate  
7 any of your thoughts and feedback as to what metrics to  
8 actually pick.

9 We do have to pick something. So help us try to  
10 pick something that is actually calibrated and  
11 appropriate to the risk being litigated.

12 Thank you.

13 MS. GOLDSMITH: Commissioner Behnam.

14 COMMISSIONER BEHNAM: Thank you. A few comments.  
15 First of all, Commissioner Stump thank you for your  
16 leadership on this. Angie, thank you. We're very  
17 lucky to have you. Andrée, as well, and to all the  
18 speakers.

19 A couple of comments were made about continually  
20 engaging as a regulator. I couldn't agree with you  
21 more. I don't think that's unique to this Chairman or  
22 this Commission. I think this agency has done a fairly

1 good job in the past and I hope we'll do so in the  
2 future with always, regardless of the issue of the day  
3 or certain identifiable problems.

4 In my mind, our job is to continually engage,  
5 continuing to work with both the industry, the public,  
6 the Congress, obviously, and to make sure we're doing  
7 our job.

8 As we move forward with this, I think we need to  
9 do the right thing. And Mr. Klein pointed out that in  
10 response to Commissioner Berkovitz's comment. I think  
11 as an agency we're heading in the right direction. I  
12 said this last week at the ISDA conference, things take  
13 time. I think we all can appreciate that.

14 Unlike post-crisis where I think there was a clear  
15 hard mandate and the global economy was a recovering,  
16 there had to be action and there had to be swift  
17 action. And that's why a lot of response was so quick  
18 and in my mind appropriate at the time as we sort of  
19 recalibrate things, it's going to take time. The  
20 system is set up and it's very cohesive. So as we pull  
21 one lever, it affects, I think, all others. So we have  
22 to be very careful of what we do and how we do it.

1           Mr. Hamill made a comment about being inclusive.

2           So I would hope as this Committee deliberates these  
3           issues in the future, you're inclusive of sort of the  
4           market participant viewpoints and make sure that we  
5           have -- providing important access transparency and  
6           sort of market integrity for all market participants.

7           And lastly, Mr. Cisewski mentioned some of the  
8           things that we learned from the financial crisis and I  
9           think we need, as we look forward, we have to  
10          recalibrate. We have to think about things. But we  
11          should let the past inform the future and we should not  
12          forget what happened 10 years ago.

13          And Commissioner Berkovitz and I made a statement  
14          after we -- after the agency determined sub-comp with  
15          Singapore and the statement in brief was just an  
16          emphasis that our relationship with our international  
17          counterparties is not static. We can make a  
18          determination that's risk-based and on an outcomes-  
19          based basis on any single day.

20          But that relationship and that agreement shouldn't  
21          stop on that one day. It's an ongoing deliberation.  
22          It's an ongoing conversation and if things change, as

1 they do, we have to be active and sort of mobile to  
2 ensure that we're upholding our responsibility as  
3 Commissioners and as a Commission and making sure that  
4 our counterparts are holding up their end of the water  
5 up, as well.

6 And lastly, I just want to mention that there's  
7 been a couple of comments about notional value.

8 I don't disagree with my colleagues about its  
9 relationship as a risk-based metric. But I do think  
10 there is value in the notional sort of metric. And if  
11 it's not working for smaller market participants then  
12 maybe we should rethink how or what the interaction is  
13 between a market participant and its regulator relative  
14 to notional.

15 I know there's been conversations in the past  
16 about our dealer regime and if it's too onerous on  
17 smaller market participants, I do still think there's  
18 value in a registration regime and a notional system as  
19 it relates to exposures. But perhaps we should just  
20 rethink what that relationship is like.

21 So that's all that was a lot. But again, thank  
22 you to everyone.

1 MS. GOLDSMITH: Commissioner Berkovitz.

2 COMMISSIONER BERKOVITZ: Thank you. I want to  
3 associate myself with the remarks of my fellow  
4 Commissioners in thanking, thanking Chairwoman Stump  
5 and Angie for your Chair. Commissioner Stump as  
6 sponsor and Angie as the Chair.

7 I found this to be extremely informative and  
8 educational meeting. I thank all the Committee  
9 participants for taking the time and spending your  
10 whole day with us here, helping educate us.

11 I would agree with just about everything  
12 Commissioner Benham said in terms of his comments on  
13 the proceedings. As someone who was here at the agency  
14 from 2009 to 2013, I had the privilege of working here  
15 in the development of much of the cross-border  
16 guidance.

17 I'm encouraged by the progress that we've made  
18 since then, that this agency has made since that time  
19 and actually implementing a global cross-border regime.  
20 And I'm particularly proud to have been back at the  
21 Commission since last fall and worked on some of the  
22 recent comparability determinations and recognition of

1 other trading facilities.

2 And in that spirit, Mr. Klein's -- Bob's comment  
3 in response to my earlier question about are we getting  
4 it right? How are we doing in terms of following -- in  
5 accordance with the, not following, but in accordance  
6 with the recommendations that have been put forth about  
7 how we should approach these issues?

8 And I would agree with that answer that in my view  
9 going forward, it's a matter of fine tuning on many of  
10 these things. And there's also, as Commissioner Behnam  
11 said, there's new challenges. This is not something  
12 that's static. We have now the challenge that we're  
13 facing on clearing recognition of foreign clearing  
14 houses and how to ensure that the whole global clearing  
15 system is working smoothly in the different mandates.  
16 How our market participants can access foreign markets,  
17 how foreign markets can access us. That's a challenge  
18 that we're facing now.

19 So with those principles in mind that we've laid  
20 down, we can address those problems and meetings like  
21 this are extremely helpful in terms of thinking about  
22 ways to accomplish that. And I look forward to

1 continuing to work with the members of this Committee  
2 so that we get it right and make the markets work and  
3 make sure that at the same time that the markets do not  
4 pose any undue risk for our financial system that we  
5 can have access to these global markets and ensure that  
6 the markets are safe for our economy and our treasury  
7 and our taxpayers.

8 Thank you.

9 MS. GOLDSMITH: And Commissioner Stump.

10 COMMISSIONER STUMP: I just wanted to say I could  
11 not be more pleased with the dialogue. I think that it  
12 is remarkable that while everyone has a bit of a  
13 different viewpoint and brings a different skill to the  
14 table, that we are far more aligned than we were in  
15 2009. There were vastly different views in 2009, but  
16 even with that said, as we were implementing the G-20  
17 directives, even in 2009, there was one consensus that  
18 remained that the solution had to be done in a global  
19 manner.

20 There's been a tremendous effort put in place by  
21 both the regulators and the market participants in the  
22 past decade. And to Mr. Cisewski's point, we've made

1 many positive changes, but unfortunately many  
2 unfortunate consequences are still persisting. These  
3 efforts, and frankly, all regulatory endeavors should  
4 be a constant progression.

5 I recall in 2007 that many considered the failure  
6 to be the result of policies that have been put in  
7 place as recently as the year 2000. That was only  
8 seven years.

9 So the reality is that we work in constantly  
10 evolving markets. We can't pretend that the market is  
11 stagnant. We're 10 years now past the onset of the  
12 reforms we were tasked with implementing and we  
13 shouldn't forget that everything has changed. That's  
14 not to suggest that while the crisis was an unsettling  
15 period for all of us, we are now simply far better to  
16 take stock in what has happened. We have the benefit  
17 of data and time. And rather than bemoan the  
18 challenges of enhancing our reforms where needed, we  
19 must constantly be looking at our rule subjectively.

20 What were we trying to achieve and have we been  
21 successful? Has the market evolved in such a way that  
22 the reforms are outdated? Have we created a system as

1 intended that lends to global application of common  
2 principles? That's the challenge I would like to leave  
3 with this Committee.

4 As you all consider those and you consider the  
5 conversation today, please think about how you would  
6 like to direct the work of this group. It's your  
7 committee. We want to set up working groups and  
8 subcommittees. And so, as you consider that we'll be  
9 reaching out and we'll try to come up with the path  
10 forward.

11 But I didn't want to have that conversation today  
12 until you've had some time to contemplate the  
13 conversations that have been had in this forum.

14 So that's the challenge to you all. The challenge  
15 to the regulators is that we recommit to ensuring that  
16 our global alliance remains strong and regulatory  
17 conflicts that may ultimately result in global market  
18 fragmentation are at odds with our shared mission and  
19 that envisioned by the G-20. And so, we are going to  
20 recommit to our shared objective with our global  
21 counterparts and we look forward to you all helping us  
22 with that.

1           I just want to close by saying thank you to all of  
2   you. To all of the Commissioners for being here for  
3   the majority of the day. To Angie for taking the time.  
4   And she's devoted a tremendous amount of time to  
5   helping us put together the program. And most,  
6   especially to Andrée for all of her efforts. We really  
7   could not have pulled this off without you.

8           I have been gone for quite a bit of time over the  
9   past few months. So Andrée has really been in charge  
10  of doing all of this. So I give all the credit to  
11  Andrée and Angie.

12           MS. GOLDSMITH: This meeting of the Global Markets  
13  Advisory Committee is now adjourned.        (Applause.)

14           (Whereupon, at 4:13 p.m., the meeting was  
15  adjourned.)

16

17

18

19

20

21

22