

1 U.S. COMMODITY FUTURES TRADING COMMISSION (CFTC)

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5

6 Commodity Futures Trading Commission - CFTC

7 Open Meeting

8

9 Three Lafayette Centre

10 Office of Secretariat

11 1155 21st Street, N.W.

12 Washington, DC 20581

13

14 BEFORE:

15 Heath P. Tarbert, Chairman

16 Brian D. Quintenz, Commissioner

17 Rostin Behnam, Commissioner

18 Dawn DeBerry Stump, Commissioner

19 Dan M. Berkovitz, Commissioner

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P R O C E E D I N G S

CHAIRMAN TARBERT: Good morning, everyone.

This meeting will come to order. It is a public meeting of the U.S. Futures Commodity Trading Commission. I think it will be a relatively short meeting. We have got three agenda items today. We have got a proposed amendment to our customer information and records rule. We have three foreign board of trade registration applications to decide. And, then, finally, we have a public charter signing ceremony to celebrate the establishment of the CFTC's first ever Veterans Affinity Group.

So I would like to welcome members of the public, market participants, as well as those of you joining on the phone or watching via webcast. I would also like to welcome my fellow commissioners: Commissioner Quintenz, Commissioner Behnam, Commissioner Stump, and Commissioner Berkovitz.

As we did during the last two public

1 meetings, I would like to start with the Pledge of
2 Allegiance. Veterans Day is just around the corner.
3 And today, the Commission celebrates the many
4 contributions of veterans to the important work of our
5 agency. As I noted a moment ago, we will be signing a
6 charter for the newly established Veterans Affinity
7 Group.

8 I would like to now invite Dustin Hicks to
9 come on up to lead us in the pledge. Dustin? So
10 Dustin is a former sergeant in the U.S. Marine Corps.
11 Dustin served in combat in Operation Iraqi Freedom.
12 And he is just one of the more than 50 veterans that
13 serves here at the CFTC. So thank you so much.

14 Everyone please stand if you would like to
15 join us.

16 [Pledge of Allegiance]

17 CHAIRMAN TARBERT: Thank you so much. Thank
18 you, Dustin, again for your service in our Nation's
19 military as well as here at the CFTC. Thank you.

20 We will now begin with opening statements. I
21 will start, followed by my fellow commissioners in

1 order of seniority.

2 We assemble today to consider two public
3 policy matters. First, we will consider an amendment
4 to Commission regulation 160.30, which requires certain
5 entities to establish policies and procedures for
6 customer records and information. This amendment will
7 formalize the requirements for those policies and
8 procedures consistent with the Gramm-Leach Bliley Act.
9 The amendment is important for those who trust CFTC-
10 registered entities with their sensitive and
11 confidential information. I want to thank staff in the
12 Division of Swap Dealer and Intermediary Oversight as
13 well as staff from the Offices of the Chief Economist
14 and the General Counsel for their work in preparing the
15 amendment.

16 Second, we will consider three foreign board
17 of trade applications submitted by Euronext Amsterdam,
18 Euronext Paris, and the European Energy Exchange.
19 Foreign board of trade registration is important as a
20 matter of comity with our European counterparts. As my
21 fellow commissioners and I said at the last open

1 meeting, comity is a two-way street. I want to thank
2 staff from the Division of Market Oversight, again from
3 the Office of the Chief Economist and the General
4 Counsel for ensuring that these applications were ready
5 for our deliberations today.

6 And now I would like to invite my fellow
7 commissioners to make their opening statements if you
8 have any.

9 Commissioner Quintenz?

10 COMMISSIONER QUINTENZ: Thank you, Mr.
11 Chairman. And thank you for calling today's open
12 meeting. I always appreciate the opportunity to
13 deliberate in a public forum with my fellow
14 commissioners and you.

15 We have a number of items before us today,
16 including what you described as the amendments to
17 160.30, which I am glad that we are taking an
18 opportunity to finally correct, and then the three
19 action items on foreign board of trade registrations
20 for three prominent European futures exchanges. I will
21 be delivering a statement at the consideration of those

1 that go to, really, the heart of our cross-border
2 relations with the EU at this moment in time.

3 And I am just very appreciative and would
4 like to recognize the veterans that serve here at the
5 Commission with us and so glad that we are forming an
6 affinity group to recognize your service. There are a
7 number of you that I know have served. A lot of you I
8 didn't know had served. And it is great to recognize
9 that. And let me just say I am honored to serve in
10 this capacity with you and recognize your service to
11 our country.

12 So thank you very much, Mr. Chairman.

13 CHAIRMAN TARBERT: Thank you very much.

14 Commissioner Behnam?

15 COMMISSIONER BEHNAM: Good morning. Thanks,
16 Mr. Chairman, for holding this meeting. I will be
17 brief. I welcome the opportunity to vote on these two
18 important rules today with a number of FBOT approvals
19 on the second matter.

20 Also, I want to thank you for the charter
21 signing for the Veteran Affairs group. I want to thank

1 Dustin and to note that in my time here, which has been
2 about two and a half years, I have had three interns
3 who are veterans. And they have all been a delight to
4 have in my office and demonstrated really keen
5 intelligence and discipline that I think all the
6 veterans in this agency and throughout the Federal
7 Government have demonstrated. So thank you for that
8 and look forward to today's agenda.

9 CHAIRMAN TARBERT: Thank you very much.

10 Commissioner Stump?

11 COMMISSIONER STUMP: I don't have a formal
12 statement. I just wanted to note that today is
13 actually one year ago since I participated in my first
14 open meeting. I am a little more settled, a lot more
15 jetlagged, and very, very appreciative for all of the
16 staff. So many of you are here today. So I just
17 wanted to say thank you for all you do.

18 It has been a really great year, a little bit
19 over a year, since I arrived. And I want to commend
20 the chairman. We have had a number of changes since I
21 have arrived, but I want to commend the chairman. I

1 think one of his first initiatives was to set up this
2 affinity group for veterans. And I think it was a
3 really great idea. So thank you to Chairman Tarbert
4 for doing that.

5 CHAIRMAN TARBERT: Well, thank you very much.
6 And thank you to all of my fellow commissioners for
7 your support on this and many other things that we are
8 doing.

9 Commissioner Berkovitz?

10 COMMISSIONER BERKOVITZ: Thank you, Mr.
11 Chairman. And thank you once again for conducting the
12 Commission's business in public. I have noted before
13 how I appreciate holding these open meetings to
14 consider the Commission's business. Even though the
15 rulemakings that we are considering today I think may
16 not rise to the level of controversy or extensive
17 discussion, I still think it is important to do this in
18 public.

19 One thing, when I was here my previous time,
20 we were doing a lot of Dodd-Frank rulemakings. It
21 seemed we were under a blizzard of paperwork and just

1 pouring out reams and reams of words. And then when I
2 was off the Commission and I was in private practice, a
3 lot of questions arise. And there wasn't anything.
4 There was a lot that wasn't addressed in those
5 rulemakings. And it just showed me the value of the
6 more the Commission can provide guidance, the more the
7 public can have insight into what the Commission is
8 thinking, I think the better for the industry.

9 So some day some issue may arise under one of
10 these rules when people say, "Well, what were they
11 thinking back then?" So I think it really helps to
12 have these discussions in public.

13 I would also like to note -- and I want to
14 thank all of my fellow commissioners for and the staff
15 of this agency for the hard work the Office of General
16 Counsel, the Division of Enforcement, and the
17 commissioners for all of their hard work in the recent
18 Seventh Circuit case, in the *Kraft* case, which affirmed
19 in connection with this very, very important principle
20 that commissioners have a right to speak and their
21 views be made public on matters before the Commission.

1 And that is now in a Seventh Circuit opinion, the law
2 of the land, and it has been in the statute but have
3 the U.S. Court of Appeals affirm our right to speak on
4 matters before the public and have those matters public
5 I think is critically important. I want to thank
6 everybody in the agency who worked on that case,
7 sometimes at personal peril, to achieve that result.
8 And it affirms the value of public debate and
9 discussion here at the CFTC. So I thank everybody for
10 that.

11 And I look forward to today's discussion.

12 Thank you.

13 CHAIRMAN TARBERT: Thank you very much,
14 Commissioner Berkovitz.

15 So for each of the items on today's agenda, I
16 will introduce the matter that the Commission will be
17 considering. After I introduce an item, I will share
18 my views. And then I will invite my fellow
19 commissioners here in public to make any remarks they
20 may have.

21 Following the close of discussion on each

1 matter, then the Commission will vote on the
2 recommendation. All final votes will be conducted in
3 this public meeting, will be recorded votes. And the
4 results of the votes approving the issuance of
5 rulemaking documents will be included with those
6 documents in the Federal Register.

7 To facilitate the preparation of approved
8 documents for publication in the Federal Register, I
9 now ask the Commission to grant unanimous consent for
10 staff to make any necessary technical corrections prior
11 to submitting them to the Federal Register.

12 COMMISSIONER QUINTENZ: So moved.

13 COMMISSIONER BEHNAM: Second.

14 CHAIRMAN TARBERT: Without objection, so
15 ordered.

16 So to begin the Commission's discussion and
17 consideration, I will now entertain a motion to approve
18 the issuance of the proposed amendment to the customer
19 information and records rule in regulation 160.30.

20 COMMISSIONER QUINTENZ: So moved.

21 COMMISSIONER BEHNAM: Second.

1 CHAIRMAN TARBERT: Thank you.

2 So at this time, I will briefly describe the
3 amendment to regulation 160.30. And I will share my
4 thoughts about the proposal. So we are proposing an
5 amendment to Section 160.30, which requires certain
6 entities to adopt policies and procedures to safeguard
7 customer information and records. The covered entities
8 include futures commission merchants, commodity trading
9 advisers, commodity pool operators, introducing
10 brokers, and swap dealers, pretty much all of our
11 registered entities except for, obviously, the
12 exchanges and the clearinghouses.

13 Regulation 160.30 provides that covered
14 entities must establish policies and procedures to
15 protect customer records and information with three
16 types of safeguards: administrative, technical, and
17 physical. The amendment fills in the details of those
18 policies and procedures by requiring that they be
19 reasonably designed to accomplish three things. What
20 are those three things? Number one, protect the
21 security and confidentiality of customer records and

1 information; number two, guard against threats or
2 hazards to customer records and information; and,
3 finally, to protect against unauthorized access to or
4 use of customer records or information that could
5 result in substantial harm or inconvenience to
6 customers. So, again, this is critical to one of our
7 foundational goals here, which is to protect the
8 customers that use our markets every day. And these
9 safeguards will help ensure that customers who trust
10 their sensitive data to CFTC-registered entities can
11 sleep well at night knowing that measures are being
12 taken to protect that information. Such measures are
13 especially critical as our derivatives markets become
14 increasingly data-driven.

15 So I would now like to invite my fellow
16 commissioners to add any remarks that they wish to
17 make. So let's start this time with Commissioner
18 Berkovitz.

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

21 We looked into like why are we doing this

1 rule, and we tried to look back at the regulatory
2 history of this. And the preamble to the 2011
3 amendment, which added swap dealers as a result of
4 Dodd-Frank, does not address why the text was deleted
5 back in in 2011. So it looks like we can gather, it
6 was an inadvertent deletion of the text that we are
7 adding back in today.

8 The text, as you have noted, provides
9 guidance and restores the guidance to registrants on
10 what to include in certain policies and procedures
11 consistent with the statutory requirements. Correcting
12 mistakes is good government. So I am going to support
13 this rule.

14 CHAIRMAN TARBERT: Thank you very much.

15 Commissioner Stump?

16 COMMISSIONER STUMP: I am supportive of
17 advancing the rule, and I have nothing else to add.
18 Thank you.

19 CHAIRMAN TARBERT: Thank you.

20 Commissioner Behnam?

21 COMMISSIONER BEHNAM: No comment.

1 CHAIRMAN TARBERT: And Commissioner Quintenz?

2 COMMISSIONER QUINTENZ: I would like to thank
3 you for your leadership, Mr. Chairman, and the staff
4 for their hard work on this issue and also just
5 recognize the ongoing efforts of both the Chairman and
6 Commissioner Stump in the data protection effort that
7 is ongoing. I think all of the incremental steps we
8 can take to ensure that our registrants' information is
9 secured are very vital. Thank you.

10 CHAIRMAN TARBERT: Terrific. Well, are the
11 commissioners prepared to vote? Everyone is nodding
12 their heads yes. So, Mr. Kirkpatrick, will you please
13 call the roll?

14 MR. KIRKPATRICK: Thank you, Mr. Chairman.

15 The motion now before the Commission is on
16 the approval of the issuance of the proposed amendment
17 to the customer information and records rule in
18 regulation 160.30. Commissioner Berkovitz?

19 COMMISSIONER BERKOVITZ: Aye.

20 MR. KIRKPATRICK: Commissioner Berkovitz
21 votes aye.

1 Commissioner Stump?

2 COMMISSIONER STUMP: Aye.

3 MR. KIRKPATRICK: Commissioner Stump votes
4 aye.

5 Commissioner Behnam?

6 COMMISSIONER BEHNAM: Aye.

7 MR. KIRKPATRICK: Commissioner Behnam votes
8 aye.

9 Commissioner Quintenz?

10 COMMISSIONER QUINTENZ: Aye.

11 MR. KIRKPATRICK: Commissioner Quintenz votes
12 aye.

13 Chairman Tarbert?

14 CHAIRMAN TARBERT: Aye.

15 MR. KIRKPATRICK: Chairman Tarbert votes aye.

16 Mr. Chairman, on this matter, the ayes have
17 five, the noes have zero.

18 CHAIRMAN TARBERT: Thank you very much. The
19 ayes have it, and the motion to issue the proposed rule
20 is hereby approved.

21 I will now entertain a motion to approve in

1 this case by a series of separate votes the proposed
2 orders of foreign board of trade registration for
3 Euronext Amsterdam, Euronext Paris, and the European
4 Energy Exchange, respectively.

5 COMMISSIONER QUINTENZ: So moved.

6 COMMISSIONER BEHNAM: Second.

7 CHAIRMAN TARBERT: Thank you very much.

8 So all of these applications are related. We
9 are going to discuss them together, but each
10 application will be subject to a separate vote by the
11 Commission.

12 I will begin by summarizing the issue and
13 sharing my views. And then, again, I will ask my
14 fellow commissioners to add any remarks they may have.

15 So Euronext Amsterdam, Euronext Paris, and
16 the European Energy Exchange have applied to become
17 registered foreign boards of trade pursuant to section
18 4(b)(1) of the Commodity Exchange Act and Part 48 of
19 our regulations. Registration status would allow the
20 applicants to offer direct access to their electronic
21 trading systems to members and participants located

1 here in the United States. It will also allow them to
2 make eligible derivatives contracts available for
3 trading from the United States.

4 Part 48 requires foreign boards of trade and
5 their clearing organizations to satisfy some very
6 important requirements. In particular, Part 48
7 requires a determination that the foreign board of
8 trade and its clearing organization are subject to
9 comprehensive supervision and regulation by appropriate
10 home country regulators that is comparable -- and that
11 is the key word -- comparable to the regulatory regime
12 for our designated contract markets.

13 All three applicants have worked diligently
14 with Commission staff to demonstrate regulatory
15 comparability. In addition, all three applicants have
16 credibly represented that the derivatives contracts
17 they offer are not readily susceptible to manipulation.
18 Each of the three applicants currently holds no action
19 relief that would actually be formalized upon approval
20 of their applications by the Commission.

21 So let me just briefly highlight the three

1 exchanges that have applied to us for the foreign board
2 of trade registrations. So first up is Euronext
3 Amsterdam. It is organized in the Netherlands. It
4 operates a market licensed by the Dutch Ministry of
5 Finance. And it is subject to the European Securities
6 and Markets Authority, ESMA, their technical standards.

7 One of the things that staff looked at was
8 that Euronext Amsterdam requires all members to meet
9 fitness and financial soundness requirements. The
10 exchange also employs a well-known trade matching
11 system that complies with the relevant IOSCO principles
12 that we have all agreed to at the international level.
13 And the exchange clears its trades through LCH, which
14 is actually a registered derivatives clearing
15 organization under CFTC rules.

16 The second exchange is Euronext Paris. That
17 is obviously organized in France. It is subject to
18 regulation by the French financial regulators, and it
19 is governed by France's monetary and financial code.
20 Like the previous clearinghouse, it is also subject to
21 ESMA technical standards. And when looking at this

1 application, we took note that, the staff took note
2 that, it also uses a well-known trade-matching system
3 that is compliant with the governing IOSCO principles.
4 It also maintains appropriate tools to detect,
5 investigate, and address regulatory violations. And
6 this clearinghouse also clears through LCH, which,
7 again, is registered and supervised by us.

8 The final clearinghouse is based in Germany,
9 and that is the European Energy Exchange, EEX. It
10 operates a trading platform for a wide variety of
11 energy and agricultural contracts. It is regulated by
12 German authorities, including the Saxon State Ministry
13 for Economic Affairs. And when the staff looked at its
14 application, staff took note that EEX clears trades
15 through the European Commodity Clearing. So this is
16 not a DCO, but it is a licensed central counterparty
17 under the German Banking Act.

18 The exchange is subject to internal fitness
19 and financial soundness requirements for it and its
20 members. And its automated trading system is provided
21 by Eurex Deutschland's trading platform, which also

1 incorporates those IOSCO principles that I had noted
2 before.

3 I am going to share my views now. I support
4 approving these applications for each of the three
5 applicants. I believe this promotes vibrant
6 derivatives markets and expands the liquidity available
7 for trading and hedging. The foreign board of trade
8 regulatory regime hinges on deference to home
9 regulators. And, as each member of this Commission
10 expressed during our last open meeting, on October
11 16th, comity is a two-way street. I support the
12 applications as a sign of our good faith and continuing
13 commitment to negotiate with the European Commission
14 and ESMA regarding EMIR 2.2.

15 I want to specifically point out that
16 language has been added to each registration order
17 clarifying the CFTC's ability to revoke registration
18 should we have concerns about material changes in the
19 applicable regulatory regimes. Material changes can
20 include developments related to international comity.
21 Now, it is my hope that such a revocation will never be

1 necessary. Comity is important because EMIR 2.2 could
2 result in one or more U.S. CCPs being designated as
3 systemically important to the European Union. And in
4 my view, such a designation could create systemic risk
5 for our own financial system. Signs of a lack of
6 comity or deference may prompt additional reviews of
7 exemptions and relief, similar to our review of margin
8 relief for the European Stability Mechanism last month.

9 So I can tell you that we are taking any
10 potential concerns about systemic risk to the European
11 Union very seriously, and we are looking at measures
12 that unilaterally the CFTC could potentially employ to
13 address such alleged instances of systemic risk. So I
14 can tell you one of those areas we are looking
15 carefully at right now is the practice of posting
16 European sovereign debt and Euro cash as collateral to
17 CCPs. So you may hear more about that in the weeks to
18 come.

19 But, nonetheless, I hope that recent positive
20 conversations and signs with our European counterparts
21 will continue, and I would now like to invite my fellow

1 commissioners to add any remarks they would like to
2 make. So we will start with Commissioner Quintenz
3 first. Thank you.

4 COMMISSIONER QUINTENZ: Thank you, Mr.
5 Chairman. And I would like to thank the staff for
6 their hard work on these registration applications as
7 well as the dialogue that these exchanges have had with
8 the agency to promote their applications. I do have a
9 statement I would like to read.

10 Today, the Commission is considering whether
11 to formally register as FBOTs three prominent European
12 futures exchanges, as the Chairman said, Euronext
13 Amsterdam, Euronext Paris, and the European Energy
14 Exchange. All of these exchanges have been permitted
15 to directly access the U.S. market for many years under
16 staff no-action relief.

17 Both the Commission's previous policy of
18 granting no-action relief and the current policy of
19 registering foreign exchanges as FBOTs are premised on
20 a policy of deference to foreign regulatory regimes.
21 The Commission assesses whether foreign exchanges are

1 regulated comparably to how the CFTC supervises U.S.-
2 designated contract markets, DCMs, and, if so, permits
3 the exchange to access U.S. markets without complying
4 with the Commission's DCM regulations or being subject
5 to regularly scheduled CFTC examinations. This policy
6 efficiently promotes cross-border markets and
7 rationally focuses the Commission's supervisory
8 resources on U.S. exchanges.

9 Let me say while I do not disagree with the
10 substance of granting these exchanges permanent status
11 as registered FBOTs, I do disagree with the timing of
12 today's move by the Commission to finalize and
13 formalize the status of these three European exchanges
14 as registered FBOTs.

15 Last month, in dissenting to the Commission's
16 proposed exclusion for the European Stability Mechanism
17 from the Commission's margin requirements for uncleared
18 swaps, I reiterated my approach to our current
19 regulatory relationship with our European counterparts
20 in light of their refusal to stand by or reaffirm their
21 2016 commitments in the CFTC's and European

1 Commission's CCPs equivalence agreement. Specifically,
2 in my opinion, the absence of that agreement's
3 reaffirmation during the discussion and passage of EMIR
4 2.2 directly implied the agreement's abrogation by that
5 legislation. While the possibility still exists for a
6 successful cross-border regulatory outcome to EMIR 2.2
7 that fully respects the CFTC's ultimate authority over
8 U.S. CCPs, still no assurance has been given to remove
9 that doubt.

10 However, unlike at our last open meeting,
11 today's vote is not on a proposal, but on multiple
12 final formal registrations. Let me say that while I
13 believe that the chairman and all of my fellow
14 commissioners are just as committed to a satisfactory
15 resolution to this cross-border discussion with the E.
16 U. as I am, I do question whether or not we should act
17 on these final registrations today and under what
18 conditions the decision will be made to reconsider that
19 status should our discussion with the E.U. not conclude
20 productively.

21 FBOT registrations depend on the CFTC's trust

1 in our foreign regulatory counterparts. Such trust in
2 my opinion continues to be misplaced until the E.U. can
3 provide us assurances that the CFTC-EC CCP agreement
4 will be upheld. I, therefore, am going to dissent from
5 all of today's actions to register these exchanges as
6 FBOTs.

7 And I thank the Chairman for his time.

8 CHAIRMAN TARBERT: Thank you very much,
9 Commissioner Quintenz.

10 Commission Behnam?

11 COMMISSIONER BEHNAM: Thank you, Mr.
12 Chairman. I appreciate you bringing up these matters
13 before us today.

14 I think I will be brief, but essentially
15 reiterating what I said and Commissioner Quintenz
16 brought up at last month's meeting regarding the
17 European Stability Mechanism. I think it is important
18 that we as a commission not individually, but as a
19 group demonstrate our willingness to work with our
20 foreign counterparts and work within the boundaries of
21 international comity to make our markets the most

1 liquid, the safest, and the most transparent possible.

2 I do think this is a good step forward in
3 demonstrating to our European counterparts that, as we
4 have in the past, we will continue to be willing to
5 work with our friends and our counterparts across the
6 globe and to demonstrate our trust in their abilities
7 and their requirements as regulators and the needed
8 respect of our jurisdiction and the constituents and
9 the market participants that we oversee.

10 With that, as you and I have discussed, my
11 understanding and my expectation is that if matters
12 don't proceed as we hope and plan, in Europe or
13 otherwise, we will take action as needed and as
14 necessary to make sure that folks understand that this
15 is, in fact, like you suggested, a two-way street, one
16 where reciprocity needs to be matched and appreciated
17 on both sides.

18 So I look forward to supporting the three
19 matters today, but certainly look forward to a
20 continued conversation on international comity and our
21 relationship with our foreign counterparts.

1 CHAIRMAN TARBERT: Thank you very much,
2 Commissioner Behnam.

3 Commissioner Stump?

4 COMMISSIONER STUMP: Thank you, Mr. Chairman.

5 I support the three orders of registration
6 before us today. And I wanted to thank the Division of
7 Market Oversight and the General Counsel's Office for
8 working with my team on incorporating some comments
9 that we had relative to these particular orders.

10 The CFTC's treatment of foreign boards of
11 trade is perhaps our greatest example of how we have
12 had a successful dialogue and working relationship with
13 foreign global jurisdictional regulators over the
14 course of a number of years. And I think that this
15 meeting provides a great opportunity for us to
16 highlight that.

17 Unfortunately, recent finger pointing as to
18 which jurisdiction is to blame for the less than
19 deferential treatment of global clearinghouses has
20 resulted in the overlooking of the fact that we have a
21 history of working across jurisdictions. The CFTC, in

1 particular, has a long history of being deferential.
2 For anyone who has come to these discussions more
3 recently, you might be left unaware that that is, in
4 fact, the case.

5 So I appreciate the opportunity to have this
6 discussion more publicly. I respect that we are all
7 struggling with how we move forward with regard to the
8 clearinghouses, but I didn't want the opportunity to
9 pass us by to highlight the successes of the foreign
10 board of trade regime that the CFTC has. So, if you
11 will bear with me, I think that it warrants a bit of a
12 history lesson. I will be as brief as possible because
13 it is a long history.

14 Beginning with our governing statute,
15 Congress in sections 4(a) and 4(b) of the Commodity
16 Exchange Act authorized the CFTC to adopt rules
17 governing foreign futures and options, but then
18 explicitly prohibited the CFTC from applying such rules
19 in a prescriptive manner. Later, as electronic trading
20 changed the futures market structure, FBOTs that had
21 developed the capability to provide electronic access

1 to U.S. participants asked the CFTC to clarify and
2 confirm that they could do so without having to submit
3 to regulations as designated contract markets in the
4 U.S.

5 Mindful of Congress' mandate not to interfere
6 in the operations of foreign trading platforms, the
7 CFTC responded in the mid 1990s with a series of no-
8 action letters. In further testament to the dynamic
9 nature of our market infrastructure, by the mid 2000s,
10 a foreign board of trade that had received no action
11 relief from the CFTC notified the CFTC that they
12 intended to list contracts whose settlement prices were
13 based upon contracts traded on CFTC-regulated DCMs.

14 This led the agency in 2006 to issue a policy
15 statement, observing -- and I quote -- "that in a
16 global market environment" that had developed for
17 derivatives contracts trading, "conduct that takes
18 place on markets, located outside the United States may
19 have an impact on U.S. futures and cash markets as well
20 as the members and users of those markets."

21 Nevertheless, the CFTC did not react to these

1 market developments by moving to impose U.S.
2 regulations on foreign boards of trade, and did not
3 abandon its historic deferential approach regarding
4 foreign boards of trade; rather, it took measures to
5 carefully calibrate to assure that the developments in
6 the foreign jurisdictions did not adversely affect the
7 CFTC's ability to carry out its own regulatory
8 responsibilities and noted that the no-action process
9 was -- and I quote again -- "based upon a review of and
10 ongoing reliance upon the foreign market's home
11 regulatory regime and was designed to maintain
12 regulatory protections while avoiding the imposition of
13 duplicative regulation."

14 After the financial crisis, the Dodd-Frank
15 Act further amended the Commodity Exchange Act to
16 permit the CFTC to require foreign boards of trade to
17 be registered. Congress did not, however, impose
18 prescriptive requirements but, rather, reiterated that
19 the CFTC shall consider whether any foreign board of
20 trade "is subject to comparable, comprehensive
21 supervision and regulation by the appropriate

1 governmental authorities in the FBOT's home country."
2 I would note that it is no accident that this verbiage
3 is similar to language included elsewhere in the Dodd-
4 Frank Act, permitting the CFTC to exempt comparably and
5 comprehensively regulated derivatives clearing
6 organizations and swap execution facilities, further
7 advancing the notion of international deference. So
8 this brings us to the CFTC's FBOT registration rules,
9 which apply to the three registration applications
10 before us today.

11 In keeping with our experience of recognizing
12 the benefit of comparable, comprehensively regulated
13 jurisdiction, the registration rules do not stray
14 terribly far from the agency's historical no-action
15 relief process and are wholly consistent with the
16 approach it has taken with regard to FBOTs throughout
17 history.

18 The deference that has historically
19 characterized (and that continues to characterize) the
20 CFTC's approach to foreign boards of trade is a
21 demonstration of international comity, an expression of

1 mutual respect for the important interests of foreign
2 sovereigns and for international regulatory colleagues
3 overseeing well-regulated trading platforms and
4 clearinghouses. This fact is often missing from the
5 current public debate, and I am pleased that today's
6 meeting provided the opportunity to remind our
7 colleagues abroad that the CFTC has long been a leader
8 in offering deference. And I hope that that would be
9 reciprocated as we move forward in our conversations
10 regarding global clearinghouses.

11 CHAIRMAN TARBERT: Thank you very much,
12 Commissioner Stump. That was really helpful, a lesson
13 in our history on the FBOT front. I really appreciate
14 that.

15 Commissioner Berkovitz?

16 COMMISSIONER BERKOVITZ: Thank you, Mr.
17 Chairman. I am not sure whether it is better to go
18 first or better to go last. I guess if I go first,
19 nobody has said what I am going to say. If I get to go
20 last, I am repeating what other people have said, but
21 then I get to add and respond. So I guess I will do

1 both. I will repeat some of what has been said and
2 then add.

3 I think all of my colleagues have expressed
4 very pertinent and relevant views as to how to proceed
5 with the situation that we are faced. And I agree with
6 virtually everything that has been said previously.

7 I have a prepared statement. I am going to
8 read that very briefly and then just add another couple
9 of remarks based on the discussion. I think that is
10 the purpose of the discussion, where hopefully we just
11 don't sit and read prepared statements, we actually
12 engage in discussion. So I am going to venture into
13 that territory and engaging in some discussion, but let
14 me read my prepared remarks first.

15 Mr. Chairman, you and others have explained
16 the background for the registration of these FBOTs. So
17 I won't repeat that. I will note once registered, an
18 FBOT can offer its products directly into the U.S.
19 markets without having to register as a designated
20 contract market and without having to clear through a
21 registered derivatives clearing organization. These

1 valuable commercial benefits, as my colleagues have
2 noted, are a direct result of the Commission's ability
3 to rely on the comparable and comprehensive regulation
4 of overseas exchanges and clearing organizations in
5 their home countries.

6 The orders of registration for EEX, Euronext
7 Amsterdam, and Euronext Paris include important
8 references to international comity. In each order, the
9 Commission reserves the right to, quote, "condition,
10 modify, suspend, terminate, or otherwise restrict,"
11 unquote, the order based on any material changes in the
12 applicable regulatory regimes, including developments
13 relating to international comity.

14 As the Commission discussed during its
15 consideration of a proposed rule to exclude the
16 European Stability Mechanism from the definition of
17 financial end-user in the Commission's margin
18 regulations, comity is a two-way street. Reciprocal
19 respect for the interests of other sovereigns is an
20 important factor in establishing comity and is a
21 critical feature in ensuring harmonious regulation of

1 entities operating across borders and jurisdictions. I
2 am pleased that the Commission has emphasized comity in
3 today's orders, and I encourage it to continue
4 conditioning future grants of regulatory benefits for
5 foreign entities on reciprocal treatment for U.S. firms
6 operating overseas.

7 The Commission's regulatory regime recognizes
8 the value of comity amongst regulators in the
9 successful operation of modern global derivatives
10 markets. In the case of FBOTs, the Commission
11 acknowledges the importance of comity through a
12 willingness to rely on comparable and comprehensive
13 regulation of overseas exchanges and clearing
14 organizations by foreign regulators. A lack of
15 reciprocity could call into question whether a foreign
16 regulatory regime is, in fact, comparable to the
17 Commission's framework for markets and market
18 participants in the United States. All stakeholders
19 should continue working to preserve comity and its role
20 in advancing well-regulated derivatives markets
21 throughout the world.

1 I thank my fellow commissioners and
2 particularly the staff of the Division of Market
3 Oversight and the Office of General Counsel in working
4 with my counsels to get this language exactly right. I
5 know it is a delicate issue, and I appreciate all of
6 the hard work.

7 I would just like to add we have this
8 controversy right now on the recognition of
9 clearinghouses. And we need to hopefully make progress
10 on that and uphold the 2016 agreement. We don't know
11 what the future holds in this regard. We don't know
12 the future reciprocal treatment of U.S. jurisdictions
13 and U.S. entities. Hopefully, it will go well,
14 hopefully, the long history this agency has had and our
15 regulators and the success over actually decades we
16 have had in developing a harmonious global framework.
17 Yes, there are glitches we have worked through.
18 Hopefully we will continue to work through these issues
19 and reach a satisfactory resolution. We just don't
20 know, though. So we need the optionality. To use a
21 term that we are familiar with over here, we need the

1 optionality to respond appropriately.

2 I view today's action and the action we did
3 on the European Stability Mechanism and hopefully
4 future actions as providing us with the optionality so
5 we may respond as appropriate.

6 Also, I appreciated Commissioner Stump's
7 excellent legislative history. And I want to add one
8 item to that in that I was here for the -- I was
9 working in the Senate at the time the FBOT issue came
10 up prior to Dodd-Frank, and then I was here while the
11 Congress considered the FBOT provision that is actually
12 in Dodd-Frank and present for some of the debates.
13 There is actually, a threshold question to this whole
14 thing, what is a foreign board of trade?

15 If you put a terminal in the United States --
16 and this is what the CFTC was grappling with in 2006-
17 2000 (sic.) timeframe, what is a foreign board of
18 trade? If somebody puts a terminal with direct access
19 in New York or any other city and you can click on your
20 screen and do a trade, is that a foreign board of trade
21 or is that a U.S. board of trade?

1 I mean, there was a view that was expressed
2 -- it didn't make it into the final legislation -- that
3 if somebody puts a terminal and you can complete a
4 trade from New York, you are a U.S.-designated contract
5 market. And, by the way, the exchange may be in
6 London, but what happens if its servers are somewhere
7 in the United States? Maybe it is just the corporate
8 thing is in some foreign jurisdiction.

9 So the language that is in the statute really
10 reflects competing considerations such as that. And if
11 we are going to have a workable global system, we could
12 have taken the maximal jurisdictional position and said
13 if you will put a terminal in the United States and a
14 trader in the U.S. can do a trade, you are a U.S.-
15 designated contract market and we could have had
16 territorial jurisdiction. But what we said is, "Look,
17 you know, we are a member, Congress, in its wisdom,
18 said we are a member, of the world community. And we
19 want to be able to have our exchanges put terminals in
20 Europe without them being necessarily European
21 exchanges. And so we are going to allow people to have

1 terminals in the United States without necessarily them
2 becoming U.S. exchanges. But we are going to be able
3 to recognize and rely on that foreign jurisdictional
4 regime to primarily regulate that entity as long as it
5 is comparable and comprehensive and there is no
6 additional risk to U.S. participants or U.S. markets by
7 doing that this way.

8 So, really, the comparable and comprehensive
9 aspect of this is critical to our being able to rely
10 and to establish this and not do an entire territorial
11 grab here or territorial jurisdictional assertion. If
12 it is not comparable, it is not comprehensive.

13 You know, one could very easily argue we
14 should have full regulatory authority if you are
15 putting a terminal in the United States with direct
16 access. We have crossed that bridge. We have made a
17 lot of progress. We don't need to go back there. But
18 if, on the other side, there is not reciprocal
19 recognition and if other jurisdictions are going to
20 say, "Well, just because you are in our jurisdiction,
21 we are exercising maximal jurisdiction of our own over

1 you," I think the whole system breaks down. So I think
2 looking at the legislative history and the history of
3 how we got where we are and how we have made all of the
4 progress that we have is critically important.

5 So I thank you. And that concludes my
6 remarks for the moment.

7 CHAIRMAN TARBERT: Thank you.

8 And I think that is -- I mean, I just want to
9 comment to sort of start a discussion that it needs to
10 be comparable and comprehensive as sort of an initial
11 threshold, but then after that, I think it is incumbent
12 upon this Commission to also recognize reciprocity. So
13 being comparable and comprehensive is the first step,
14 but if it is not a two-way street, then I am not sure
15 we should be in the business of granting that
16 deference.

17 Nor would we grant deference necessarily in a
18 situation where some foreign jurisdiction happily says,
19 "Well, we will grant deference in return," but they
20 don't have a comparable and comprehensive system
21 because then we can't necessarily trust that

1 jurisdiction. So both elements, both sets of elements
2 I think need to be there. I don't know what you guys
3 think, but I will --

4 COMMISSIONER BERKOVITZ: Absolutely.
5 Comparable and comprehensive. And I think that is the
6 significance of what we are doing, and I appreciate
7 your leadership and the staff's work to actually
8 implement that. Comparable and comprehensive isn't
9 just the technical regulations, but it includes this
10 concept of reciprocity that it is not comparable if
11 they are not operating under the same principles of
12 international comity and they are not providing
13 deference or recognition to our regulatory regime in
14 the same way we recognize theirs.

15 COMMISSIONER STUMP: I would just note - I
16 know I keep going back to this history thing. But
17 there was a conversation when Dodd-Frank was being
18 developed about just this. If the statute made it so
19 prescriptive that there was not a willingness to defer,
20 would there be retaliation from other jurisdictions?

21 This was a conversation that was being had in

1 2010 relative to the way the foreign board of trade
2 language ended up in Dodd-Frank. And so I think it is
3 only fitting that this conversation is now being had
4 relative to so many other things. We acknowledged 10
5 years ago that these were global markets. And we like
6 to have good relationships with our fellow regulators
7 and we don't necessarily want to have a situation that
8 results in retaliation. But, unfortunately, if left
9 only with retaliation because there is a lack of
10 willingness to reciprocate, that is something that we
11 have to consider.

12 CHAIRMAN TARBERT: Okay. Well, fantastic,
13 really appreciated that robust discussion.

14 So, on that note, I will now ask, are the
15 commissioners prepared to vote on each of the three
16 foreign board of trade registration applications?

17 [No audible response.]

18 CHAIRMAN TARBERT: Okay. So I would ask, Mr.
19 Kirkpatrick, will you call the roll for each of the
20 applications?

21 MR. KIRKPATRICK: Thank you, Mr. Chairman.

1 The first part of the motion now before the
2 Commission is on the approval of the order of foreign
3 board of trade registration for Euronext Amsterdam.
4 Commissioner Berkovitz?

5 COMMISSIONER BERKOVITZ: Aye.

6 MR. KIRKPATRICK: Commissioner Berkovitz
7 votes aye.

8 Commissioner Stump?

9 COMMISSIONER STUMP: Aye.

10 MR. KIRKPATRICK: Commissioner Stump votes
11 aye.

12 Commissioner Behnam?

13 COMMISSIONER BEHNAM: Aye.

14 MR. KIRKPATRICK: Commissioner Behnam votes
15 aye.

16 Commissioner Quintenz?

17 COMMISSIONER QUINTENZ: No.

18 MR. KIRKPATRICK: Commissioner Quintenz votes
19 no.

20 Chairman Tarbert?

21 CHAIRMAN TARBERT: Aye.

1 MR. KIRKPATRICK: Chairman Tarbert votes aye.

2 Mr. Chairman, on this part of the motion,
3 pertaining to Euronext Amsterdam, the ayes have four,
4 the noes have one.

5 CHAIRMAN TARBERT: Thank you very much. The
6 ayes have it, and the motion as to the approval of
7 Euronext Amsterdam is adopted by the Commission.

8 MR. KIRKPATRICK: The second part of the
9 motion now before the Commission is on the approval of
10 the order of foreign board of trade registration for
11 Euronext Paris. Commissioner Berkovitz?

12 COMMISSIONER BERKOVITZ: Aye.

13 MR. KIRKPATRICK: Commissioner Berkovitz
14 votes aye.

15 Commissioner Stump?

16 COMMISSIONER STUMP: Aye.

17 MR. KIRKPATRICK: Commissioner Stump votes
18 aye.

19 Commissioner Behnam?

20 COMMISSIONER BEHNAM: Aye.

21 MR. KIRKPATRICK: Commissioner Behnam votes

1 aye.

2 Commissioner Quintenz?

3 COMMISSIONER QUINTENZ: No.

4 MR. KIRKPATRICK: Commissioner Quintenz votes

5 no.

6 Chairman Tarbert?

7 CHAIRMAN TARBERT: Aye.

8 MR. KIRKPATRICK: Chairman Tarbert votes aye.

9 Mr. Chairman, on this part of the motion,

10 pertaining to Euronext Paris, the ayes have four, the

11 noes have one.

12 CHAIRMAN TARBERT: Thank you. The ayes have
13 it, and the motion as to Euronext Paris' application is
14 adopted by the Commission.

15 MR. KIRKPATRICK: The final part of the
16 motion now before the Commission is on the approval of
17 the order of foreign board of trade registration for
18 the European Energy Exchange. Commissioner Berkovitz?

19 COMMISSIONER BERKOVITZ: Aye.

20 MR. KIRKPATRICK: Commissioner Berkovitz

21 votes aye.

1 Commissioner Stump?

2 COMMISSIONER STUMP: Aye.

3 MR. KIRKPATRICK: Commissioner Stump votes
4 aye.

5 Commissioner Behnam?

6 COMMISSIONER BEHNAM: Aye.

7 MR. KIRKPATRICK: Commissioner Behnam votes
8 aye.

9 Commissioner Quintenz?

10 COMMISSIONER QUINTENZ: No.

11 MR. KIRKPATRICK: Commissioner Quintenz votes
12 no.

13 Chairman Tarbert?

14 CHAIRMAN TARBERT: Aye.

15 MR. KIRKPATRICK: Chairman Tarbert votes aye.

16 Mr. Chairman, on this part of the motion,
17 pertaining to the European Energy Exchange, the ayes
18 have four, the noes have one.

19 CHAIRMAN TARBERT: Thank you very much. The
20 ayes have it, and the motion as to the approval of the
21 application by the European Energy Exchange is hereby

1 adopted by the Commission.

2 Well, our sort of rulemaking and policy
3 business now behind us, now we will proceed to the
4 third agenda item, which is the signing of the Veterans
5 Affinity Group charter. So if members of the group
6 could please join Tony Thompson and Sarah Summerville
7 in the front of the dais, we will proceed to the
8 signing of the charter. Yes. Why don't you guys come
9 down, too? If my fellow commissioners could join me as
10 well? Come on, please. Maybe we could have the
11 commissioners on that side standing, I think.

12 Well, our Nation's veterans are an invaluable
13 part of the fabric of this great country. Since the
14 American Revolution, tens of millions of Americans have
15 served our country in uniform. As we approach Veterans
16 Day, we are reminded that we are all forever indebted
17 to them for their service and sacrifice.

18 Today, there are approximately 20 million
19 veterans living in the United States. Now, we at the
20 CFTC are proud to call more than 50 of them, a bunch of
21 them that are now standing before us, our fellow

1 colleagues. They serve at every level of our
2 organization, including as members of our executive
3 leadership team. I am proud that the CFTC will now
4 recognize their contributions by launching our first
5 ever Veterans Affinity Group.

6 The primary purpose of our CFTC affinity
7 groups is to assist the Commission in promoting and
8 fostering a diverse workforce. These groups are a
9 valuable mechanism to build an inclusive culture by
10 offering leadership and professional development
11 opportunities and access to programs and activities
12 aligned with the CFTC's shared vision of becoming the
13 global standard for sound derivatives regulation.

14 The inception of the agency's Veterans
15 Affinity Group is a salute to all who have served. I
16 want to extend my deepest thanks to the following
17 individuals for their hard work and offices for making
18 this a reality: first, my fellow Commissioners and
19 their staffs; Sarah Summerville the Office of Minority
20 and Women Inclusion, which oversees all six of our
21 affinity groups; and Executive Director Tony Thompson

1 and his team. Tony, in fact, is a retired Air Force
2 colonel. He served in uniform for 32 years, and I am
3 proud to say that Tony has been elected by the group's
4 members as the first Veterans Affinity Group chair. So
5 congratulations, Tony.

6 And now Tony and Sarah will sign the charter.
7 And maybe if I could have the Commission members, two
8 on this side, two on that side, together or maybe we
9 will all stand behind.

10 [Charter signing.]

11 CHAIRMAN TARBERT: Fantastic.

12 [Applause.]

13 CHAIRMAN TARBERT: Congratulations to all of
14 the members of the affinity group. And, again, thank
15 you very much for your service and dedication, not only
16 to our country during your service but also now to the
17 CFTC. So thank you all and congratulations, look
18 forward to meetings of the affinity group.

19 So if the commissioners could go back to the
20 dais? So we have made it through all three of our
21 agenda items in less than an hour. But I would like to

1 ask my fellow commissioners, is there any other
2 business?

3 [No audible response.]

4 CHAIRMAN TARBERT: Okay. There being no
5 further business, I would entertain a motion to adjourn
6 the meeting.

7 COMMISSIONER QUINTENZ: So moved.

8 COMMISSIONER BEHNAM: Second.

9 CHAIRMAN TARBERT: Okay. Those in favor of
10 adjourning the meeting will say aye.

11 [Chorus of ayes.]

12 CHAIRMAN TARBERT: Those opposed?

13 [No response.]

14 CHAIRMAN TARBERT: All right. The ayes have
15 it. And I am grateful to the CFTC staff once again for
16 your great work. I want to once again congratulate
17 everyone in the Veterans Affinity Group. And I want to
18 say the meeting is hereby adjourned. Thank you all
19 very much, appreciate it.

20 (Whereupon, at 10:53 a.m., the meeting was
21 adjourned.)