

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

OPEN COMMISSION MEETING

10:00 a.m.

Monday, November 25, 2019

CFTC Headquarters Lobby-level Conference Room
1155 21st Street, NW, Washington, D.C. 20581

1 COMMISSION MEMBERS

2 Chairman Heath P. Tarbert

3 Commissioner Brian D. Quintenz

4 Commissioner Rostin Behnam

5 Commissioner Dawn DeBerry Stump

6 Commissioner Dan M. Berkovitz

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

	A G E N D A	
		Page
1		
2		
3	Call to Order	5
4		
5	Opening Statements:	
6	Chairman Heath P. Tarbert	6
7	Commissioner Brian D. Quintenz	10
8	Commissioner Rostin Behnam	10
9	Commissioner Dawn D. Stump	11
10	Commissioner Dan Berkovitz	11
11		
12	Staff Presentation:	
13	Final Rules -- Amendments to Part 4: Registration	
14	and Compliance Requirements for Commodity Pool	
15	Operators and Commodity Trading Advisors	12
16		
17	Amendments to Rules 4.7, 4.13, and 4.14	
18	(Codification of Relief for Family Offices	
19	and Relief Related to the JOBS Act)	16
20		
21	Amendments to Rules 4.5 and 4.27 (Updating	
22	Exclusions and Adding Reporting Relief)	26

	A G E N D A	
		Page
1		
2		
3	Staff Presentation: (Continued)	
4		
5	Joshua B. Sterling, Division of Swap Dealer and	
6	Intermediary Oversight (DSIO)	14
7	Amanda Olear, DSIO	15/32
8	Elizabeth Groover, DSIO	16
9	Chang Jung, DSIO	21
10		
11	Motion	35
12	Commissioners' Questions and Discussion	35
13	Votes	67
14		
15	Closing Statements:	
16	Commissioner Dan Berkovitz	70
17	Commissioner Dawn D. Stump	72
18	Commissioner Rostin Behnam	73
19	Commissioner Brian D. Quintenz	74
20	Chairman Heath P. Tarbert	74
21	Adjournment	75
22		

P R O C E E D I N G S

(10:02 a.m.)

1
2
3 CHAIRMAN TARBERT: Good morning, everyone. This
4 meeting will come to order. This is a public meeting
5 of the U.S. Commodity Futures Trading Commission. I'd
6 like to welcome members of the public, market
7 participants, as well as those on the phone or
8 watching via webcast. I would like to welcome my
9 fellow Commissioners: Commissioner Quintenz,
10 Commissioner Behnam, Commissioner Stump, and
11 Commissioner Berkovitz.

12 Before we commence our official agenda, I'd like
13 to welcome everyone who would like to, to join us in
14 the Pledge of Allegiance. And today, we're pleased to
15 have with us a very special guest, Caroline Sterling,
16 a second grader, who would like to come up with her
17 father, Josh Sterling, our Division Director, to lead
18 us in the pledge.

19 (Pledge of Allegiance.)

20 CHAIRMAN TARBERT: Thank you very much. Let's
21 give a round of applause for Caroline. Thank you.

22 (Applause.)

1 CHAIRMAN TARBERT: We'll now begin with opening
2 statements. I'll go first, followed by my fellow
3 Commissioners in order of seniority.

4 We gather today to consider two important
5 measures that will improve the regulatory experience
6 for our market participants. In particular, today's
7 actions will enhance harmonization for entities that
8 are dually registered with the SEC and at the same
9 time with us, the CFTC. In particular, we're focused
10 on those entities and people that are registered as
11 CPOs, commodity pool operators, or CTAs, commodity
12 trading advisors.

13 Harmonization is important because it reduces
14 unnecessary regulatory burdens on our market
15 participants. I'm pleased to support both of today's
16 actions, and will address each in turn.

17 Before I do so, I want to thank staff in the
18 Division of Swap Dealer and Intermediary Oversight,
19 along with staff from the Offices of the Chief
20 Economist and the General Counsel for their hard work
21 in preparing both sets of Part 4 rulemakings.

22 Today's first set of Part 4 rules adopts CPO and

1 CTA registration exemptions for entities meeting the
2 definition of a Family Office. "Family Office" is a
3 term the SEC adopted in 2012 for the purpose of
4 excluding such entities from its investment adviser
5 regulations. A Family Office is basically a private
6 office dedicated to serving the financial interests of
7 a particular family and its members.

8 By definitions, Family Offices don't solicit the
9 public or the market themselves to the public as an
10 investment strategy or product, so they're not out
11 they're soliciting potential customers and consumers.
12 And therefore, they don't raise the same customer
13 protection concerns as do other types of CPOs and
14 commodity pools.

15 Requiring Family Offices to file exemption claims
16 with the Commission creates a paperwork burden for
17 them, as well as us, that does not provide any
18 meaningful customer protection benefit.

19 The first set of final Part 4 rules also amends
20 two exemptions to permit general solicitation in
21 certain dually-regulated private offerings and resales
22 under the SEC's Reg D and Rule 144A. Consistent with

1 the JOBS Act, these SEC rules allow issuers and
2 resellers to market securities without fear of
3 violating federal securities laws, as long as sales
4 are limited to sophisticated investors. Until today,
5 at the CFTC Part 4 rules didn't account for those SEC
6 regulations.

7 Today's final rule harmonizes two Part 4
8 exemptions with the SEC's regulations to finally
9 eliminate this inconsistency. That's the first set.

10 The second set of final amendments to Part 4
11 covers exclusions to the CPO definition for SEC-
12 registered investment companies. Today's amendments
13 provide that exclusions from CPO registration for SEC-
14 registered investment companies should be claimed by
15 the entity that solicits and operates the investment
16 company. That entity is usually an SEC-registered
17 investment adviser.

18 This change will harmonize the Commission's Part
19 4 registration requirements with the SEC's statutory
20 scheme for investment companies and investment
21 advisers. Making this change to Part 4 will eliminate
22 unnecessary burdens and improve the regulatory

1 experience for asset managers.

2 This second set of Part 4 amendments will also
3 exclude investment advisers of business development
4 companies from the CPO definition. Now, business
5 development companies are closed-end investment
6 companies that make capital available to small,
7 developing, and financially troubled businesses.
8 These businesses may otherwise have trouble accessing
9 the public capital markets.

10 Given their unique role, business development
11 companies, through their investment advisers, use
12 derivatives to hedge and manage risk related to the
13 companies in which they invest. They accordingly
14 create low-risk to the market, and our rules should
15 reflect that.

16 Finally, the second set of Part 4 amendments will
17 eliminate certain regulatory filings for classes of
18 CPOs and CTAs.

19 Among other things, the amendment removed filing
20 requirements for registered CTAs that do not direct
21 client accounts, and who are already required to
22 report similar information, due to being registered in

1 another capacity -- for example, if we have a CTA who
2 is also a CPO. Together, the Part 4 amendments will
3 reduce the burdens placed on our market participants
4 by removing certain requirements that are duplicative
5 of those of the SEC, or in other cases those of us,
6 the CFTC.

7 And now I'd like to recognize my fellow
8 Commissioners for their opening statements.
9 Commissioner Quintenz?

10 COMMISSIONER QUINTENZ: Thank you, Mr. Chairman.

11 I do not have an opening statement this morning.
12 But I would like to thank DSIO and the staff for all
13 of your hard work and for preparing for today, and I'm
14 very pleased to support today's rule. Thank you.

15 CHAIRMAN TARBERT: Thank you very much.
16 Commissioner Behnam?

17 COMMISSIONER BEHNAM: Good morning. Thank you,
18 Mr. Chairman, and thanks to the staff of DSIO.

19 I also don't have a formal opening statement,
20 I'll make some comments a bit later, but look forward
21 to discussing both of these rules and again, thanks to
22 you for convening the meeting, and thanks to the

1 staff.

2 CHAIRMAN TARBERT: Thank you very much.
3 Commissioner Stump?

4 COMMISSIONER STUMP: I would just echo what
5 everyone else has said. Thank you so much.

6 In my opinion, this is about providing regulatory
7 certainty, and I want to applaud you all, and the
8 Commission, for devoting time and attention to
9 regulatory certainty. I think it is just as important
10 as our regulatory development, supervisory, and
11 enforcement roles. So, sometimes it doesn't grab the
12 headlines that it should, but you all should be
13 commended for helping us advance regulatory certainty,
14 so thank you.

15 CHAIRMAN TARBERT: Terrific. Commissioner
16 Berkovitz?

17 COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman.

18 Again, I'm happy to be here in a public forum
19 where we can discuss these issues openly. I would
20 also like to thank the staff for their work with my
21 office incorporating a number of changes into the
22 rules.

1 Unfortunately, not all the changes we suggested
2 were incorporated, and I'm looking forward to
3 discussing those individually. I think while
4 harmonization, clarity and reducing burdens are
5 important considerations for us as we go, as we
6 proceed with our rulemakings, in and of themselves
7 they are not objectives, those are just secondary
8 factors. The primary objective in everything we do
9 here is whether this -- whether our action will
10 improve the regulation of the markets that we're
11 charged with regulating and meet the mandate under the
12 Commodity Exchange Act, not the Securities Exchange
13 Act.

14 We must be primarily concerned with the Commodity
15 Exchange Act, and I think that's what some of the
16 discussion I'm looking forward to will hopefully
17 elucidate. Thank you.

18 CHAIRMAN TARBERT: Thank you very much,
19 Commissioner Berkovitz.

20 Okay. So, the staff will present today's agenda
21 items to the Commission. Staff will present the two
22 sets of Part 4 final rules together, but the

1 Commission will vote separately on each of the rule
2 sets.

3 After the presentation, the floor will be open
4 for questions from each Commissioner. Following the
5 close of discussion, the Commission will vote on each
6 rule. All final votes conducted in this public
7 meeting will be recorded votes. The votes of
8 approving the issuance of rulemaking documents will be
9 included with those documents in the Federal Register.

10 To facilitate the preparation of approved
11 documents for publication in the Federal Register, I'd
12 now ask the Commission to grant unanimous consent for
13 staff to make necessary technical corrections, prior
14 to submitting them to the Federal Register.

15 COMMISSIONER QUINTENZ: So moved.

16 COMMISSIONER BEHNAM: Second.

17 CHAIRMAN TARBERT: Without objection, so ordered.

18 Okay. At this time, I'd like to welcome the
19 following staff members for their presentations on the
20 Part 4 Final Rules. From the Division of Swap Dealer
21 and Intermediary Oversight, we have our Director, Josh
22 Sterling; our Acting Deputy Director, Amanda Olear;

1 Special Counsel, Elizabeth Groover; and Special
2 Counsel, Chang Jung.

3 Thank you so much for being here. I will now
4 hand the floor over to you.

5 MR. STERLING: Thank you, Mr. Chairman. Mr.
6 Chairman and fellow Commissioners, good morning. It's
7 a pleasure as always to be here before you today,
8 along with members of the world class staff from DSIO.
9 I believe the Chairman's opening remarks were an
10 excellent summary of the rules we have before you
11 today, so we'll not give any remarks that would
12 replicate those.

13 I will say that these rules we put before you for
14 consideration for final vote are based on an October
15 2018 proposal we made, and we received approximately
16 30 letters from interested market participants and
17 members of the public. We took all those thoughts
18 into consideration. And, I have to thank as well each
19 of the Commissioners and the Chairman individually,
20 and their staffs for their input, as well, as we
21 formulated the rules. And, we believe that these
22 rules fully reflect a good balancing of the comments

1 received.

2 So, without further delay, I'll hand this over to
3 the expert members of my team, but I do wish in doing
4 so to thank them for the hard work that they did.

5 That includes Acting Deputy Director Amanda Olear,
6 Special Counsels Elizabeth Groover, Chang Jung and
7 Michael Ehrstein. Elizabeth and Chang are with us
8 here today.

9 I also wanted to note as always, the General
10 Counsel's office was vital to getting these rules
11 properly vetted. We'd like to thank Carlene Kim and
12 Mark Fajfar for their hard work with us, under Dan
13 Davis' leadership. And then finally, Scott Mixon and
14 Stephen Kane in the Office of Chief Economist for
15 their hard work, as well.

16 So I'll now hand it over to Acting Deputy
17 Director Olear.

18 MS. OLEAR: Thank you Josh. Good morning, Mr.
19 Chairman and Commissioners.

20 As the Chairman stated, staff is presenting two
21 final rules today for the Commission's consideration.
22 As we move into the substantive presentations,

1 Elizabeth Groover will be presenting the amendments to
2 regulations 4.13 and 4.14, which add exemptions for
3 Family Offices consistent with relief provided by the
4 Securities and Exchange Commission under the
5 Investment Advisers Act of 1940.

6 Then, Chang Jung will discuss the amendments to
7 Regulations 4.7 and 4.13, harmonizing the Commission's
8 regulations with the relief provided under the JOBS
9 Act. Chang will also be presenting the amendments to
10 Regulation 4.5, which clarify the appropriate entity,
11 claiming the exclusion with respect to registered
12 investment companies, and add an exclusion for
13 registered investment advisers of business development
14 companies.

15 Finally, I will be discussing the amendments to
16 Regulation 4.27, which provide relief from the
17 reporting requirements of Forms CPO-PQR and CTA-PR for
18 certain CPOs and CTAs, respectively.

19 I will turn it over to Elizabeth to begin the
20 substantive portion of our presentation.

21 MS. GROOVER: Mr. Chairman, Commissioners, good
22 morning. I am Elizabeth Groover, and I work as a

1 Special Counsel in DSIO on the CPO/CTA team. Thank
2 you, Josh and Amanda, for the kind introductions, and
3 for your ongoing support on this final rulemaking
4 project. I would like to thank my fellow team members
5 for their extensive assistance in completing these
6 final rule releases for the Commission's consideration
7 today.

8 As Amanda just mentioned, I will be discussing
9 the amendments that, if adopted this morning, will add
10 exemptions from CPO and CTA registration for
11 qualifying Family Offices to our Part 4 regulations.
12 I will start off with some background on Family
13 Offices, and describe the current regulatory landscape
14 applicable to them, before getting into the substance
15 of the final amendments you are considering today.

16 Family Offices are professional organizations
17 that are wholly-owned or controlled by clients in a
18 single family. They serve as a wealth management
19 mechanism for such families, providing a broad
20 spectrum of investment management, advisory, taxation,
21 and estate planning services to their family members.
22 The operations of a Family Office frequently involve

1 the management of pooled assets from a variety of
2 sources within the family.

3 Those sources may include natural persons or
4 family members, as well as entities controlled by the
5 family or an individual family member, such as a
6 charitable trust. These individuals and entities
7 receiving services from the Family Office are known as
8 Family Clients. Close familial and personal
9 relationships among the Family Clients are very
10 common, as are close relationships between the Family
11 Office staff itself and the participating Family
12 Clients. For these reasons, Commission staff has
13 historically viewed Family Offices as distinguishable
14 from the typical arms-length relationships found
15 between a CPO or CTA and its clients.

16 If a Family Office invests these pooled assets in
17 commodity interests or commodity pools or otherwise
18 provides commodity trading advice to its Family
19 Clients, then it is very likely that the Family Office
20 would be engaging in activities generally requiring
21 registration as a CPO or a CTA. Therefore, without an
22 exemption, exclusion, or other Commission staff letter

1 relief, Family Offices would be subject to the
2 registration and compliance requirements under the
3 Commodity Exchange Act and our regulations, with
4 respect to those CPO and CTA activities.

5 The Securities and Exchange Commission adopted
6 relief for Family Offices in 2011, in the form of a
7 regulatory exclusion from the investment adviser
8 definition. In providing that relief, the SEC defined
9 Family Offices as a company, including its staff, that
10 has no clients other than Family Clients, is wholly-
11 owned and exclusively controlled by one or more Family
12 Clients, and does not hold itself out to the public as
13 an investment adviser. Consequently, Family Offices
14 meeting that definition may provide investment
15 management and advisory services to persons and
16 entities considered to be Family Clients without being
17 regulated as investment advisers.

18 DSIO issued Staff Letters 12-37 and 14-143 to
19 provide no-action relief from CPO and CTA registration
20 to Family Offices remaining in compliance with the
21 terms of that SEC exclusion. Qualifying Family
22 Offices have been relying on that relief since 2012

1 and 2014, respectively.

2 In the 2018 proposal, the Commission proposed
3 amendments to add CPO and CTA registration exemptions
4 for Family Offices to Regulations 4.13 and 4.14. In
5 short, those proposed amendments, like the final
6 versions before you today, are consistent with those
7 staff letters.

8 Comments received were overall favorable and
9 supportive of the Commission's efforts to add these
10 exemptions specifically to Part 4. They also
11 responded to relevant questions from the proposal and
12 raised some of their own.

13 With respect to the proposed annual notice
14 requirement, staff recommends today foregoing that
15 filing, consistent with the reasons stated by multiple
16 commenters. Staff further believes requiring an
17 annual filing would neither provide meaningful
18 customer protection, nor advance the Commission's
19 regulatory mission, given the generally very stable
20 nature of Family Offices. Not requiring a notice also
21 harmonizes the conditions of relief between the SEC
22 exclusion, the CPO exemption, and its CTA counterpart

1 in Regulation 4.14.

2 Staff believes, for the reasons stated above,
3 that Family Offices possess unique characteristics
4 that justify not regulating them like registered CPOs
5 and CTAs, who unlike Family Offices, do routinely
6 solicit the public for investment.

7 Like all other CPOs exempt under Regulation 4.13,
8 pursuant to these final rules, Family Offices will
9 still be subject to identical recordkeeping
10 requirements, as well as the Commission's special call
11 authority. Therefore, staff believes that the
12 adoption of these exemptions will enhance the widely-
13 utilized no-action relief for Family Offices by
14 providing additional legal certainty in the form of
15 CPO and CTA exemptions in Part 4, without negatively
16 affecting the Commission's regulatory interests.

17 Therefore, staff recommends that the Commission
18 adopt the Family Office amendments in the final rules
19 before you today. Thank you for listening. I'll now
20 turn it over to Chang.

21 MR. JUNG: Thank you for your presentation,
22 Elizabeth.

1 Good morning, Mr. Chairman and Commissioners. My
2 name is Chang Jung, and I'm a Special Counsel in
3 DSIO's CPO-CTA team as well.

4 I'm here to first discuss amendments to two
5 regulations relating to the Jumpstart Our Business
6 Startups Act of 2012, which is more commonly known as
7 the JOBS Act.

8 The two regulations that are being amended are
9 Regulations 4.7 and 4.13(a)(3). Regulation 4.7 is an
10 exemption that provides some compliance relief to CPOs
11 of pools that have only sophisticated investors, whom
12 we call qualified eligible persons, or QEPs. The
13 second regulation, 4.13(a)(3), is an exemption that
14 provides registration relief to CPOs of certain pools
15 that, among other things, engage in a limited amount
16 of derivatives trading.

17 These regulations are being amended in response
18 to the changes caused by the JOBS Act that resulted in
19 a regulatory mismatch between our regulations and the
20 SEC's regulations.

21 By way of background, in 2012, Congress enacted
22 the JOBS Act for the stated purpose of increasing

1 American job creation and economic growth by improving
2 access to the public capital markets for emerging
3 growth companies.

4 Among the various things that the JOBS Act did,
5 was amend the Securities Act of 1933 and require the
6 SEC to revise its regulations, in order to loosen
7 marketing restrictions on certain types of securities.
8 To that end, the SEC created new Section 506(c) in
9 Regulation D that allowed issuers of privately offered
10 Regulation D securities to engage in general
11 solicitation and advertising.

12 The SEC also amended Rule 144A, which addresses
13 resales of securities to qualified institutional
14 buyers to eliminate its offering and marketing
15 restrictions.

16 This created a regulatory mismatch with our
17 regulations because our 4.7 and 4.13(a)(3) exemptions
18 explicitly forbid general solicitation. Prior to the
19 JOBS Act, Regulation D private offerings also forbid
20 general solicitations, but as noted after the JOBS
21 Act, newly created Section 506(c), which is deemed to
22 be a type of Regulation D private offering, allows

1 general solicitation.

2 The end result is that, if Regulation D, Section
3 506(c) commodity pools wish to operate pursuant to our
4 4.7 and 4.13(a)(3) exemptions, they cannot engage in
5 the general solicitation that was explicitly permitted
6 by Congress through the JOBS Act.

7 The public became aware of this issue, and market
8 participants raised this concern to DSIO, in part,
9 because Regulations 4.7 and 4.13(a)(3) exemptions are
10 some of the Commission's most widely used CPO
11 exemptions.

12 After considering this issue, DSIO issued CFTC
13 Letter 14-116, which is known within DSIO as the JOBS
14 Act Relief Letter, in September 2014. This granted
15 exemptive relief to CPOs of pools that, on the
16 securities side are relying on Section 506(c) of
17 Regulation D, so that if these CPOs engage in a type
18 of general solicitation that was permitted by the JOBS
19 Act in the offering, they may still be able to avail
20 themselves of the 4.13 and 4.7 exemptions.

21 The JOBS Act Relief Letter also allowed general
22 solicitation in the resales of interests in 4.7 pools,

1 in accordance with Rule 144A as amended by the JOBS
2 Act. The JOBS Act Relief Letter did not affect any
3 other provisions of 4.7 and 4.13(a)(3), so the ban on
4 general solicitation is still applicable with respect
5 to the offerings of all other types of securities
6 listed in 4.7. Also, with respect to 4.7 pools, which
7 are only for QEPs, even though a CPO could market
8 interest in these pools to non-QEPs, only QEPs may
9 actually purchase those interests.

10 In 2018, the Commission issued the proposal, part
11 of which amended 4.7 and 4.13(a)(3) in a manner
12 consistent with the JOBS Act Relief Letter. It also
13 made some technical amendments to 4.7, which
14 reorganize the regulation, so that it would be easier
15 for the public to understand.

16 The Commission received two comments on this part
17 of the proposal, both of which strongly supported the
18 amendments. After considering these comments, we are
19 not recommending any substantive changes between the
20 proposed rules and the final rules. However, we do
21 recommend further reorganization of Regulation 4.7, in
22 order to more precisely define the scope of the

1 amendments, which will ensure ease of understanding
2 for the public, and thereby improve registrants'
3 ability to comply with terms.

4 In conclusion, staff believes that this is an
5 appropriate effort at harmonization between CFTC and
6 SEC regulations. We believe that it will reduce
7 regulatory friction in a manner consistent with the
8 JOBS Act and provide legal certainty, while retaining
9 all of the existing protections for the general
10 public. Thus, given the foregoing, we recommend that
11 the Commission adopt the final rules relating to the
12 JOBS Act that are before you.

13 This concludes my part of the presentation
14 relating to these amendments, and I will now move on
15 to my presentation concerning the amendments to
16 Regulation 4.5.

17 Regulation 4.5 is a rule that provides an
18 exclusion from the definition of a CPO for certain
19 entities that are subject to oversight by other
20 regulatory bodies. There are two reasons why 4.5 is
21 being amended. First, it is to clarify within 4.5,
22 that the appropriate person that should be claiming

1 the exclusion from the definition of a CPO with
2 respect to a registered investment company, known as a
3 RIC, is the registered investment adviser for that
4 RIC.

5 This makes sense because the registered
6 investment adviser of a RIC is the operator of the RIC
7 because it is the person that solicits, manages its
8 assets, and otherwise oversees its operations. This
9 is a position that the Commission stated in its 2012
10 Part 4 rulemaking, and it is the position held by
11 staff, and generally understood by industry, as well.

12 The issue is, however, 4.5 is currently written
13 in such a way that the RIC itself, and not the
14 registered investment adviser, is the entity that can
15 claim the CPO exclusion in 4.5. So, this rulemaking
16 amends 4.5 to address this inconsistency by making the
17 registered investment adviser the person that may
18 claim the exclusion.

19 The second reason for amending 4.5 is to allow
20 registered investment advisers, who operate business
21 development companies, known as BDCs, to be able to
22 avail themselves of the exclusion from the definition

1 of CPO in 4.5 as well. As background, BDCs are
2 companies established by Congress for the purpose of
3 making capital more readily available to small,
4 developing, and financially troubled companies that
5 may not have access to public capital markets or other
6 forms of conventional financing.

7 BDCs are entities that are very similar to RICs.
8 For example, most BDCs like RICs are operated by
9 registered investment advisers. They also have to
10 file 10-Ks, 10-Qs, 8-Ks, and proxy solicitation
11 statements, as well as being subject to periodic
12 examinations by the SEC. In addition, because many
13 BDCs are also traded on national securities exchanges,
14 they are governed by those listing rules as well.
15 Furthermore, BDCs are also subject to certain portions
16 of the Sarbanes-Oxley Act, including the internal
17 control assessment requirement.

18 In short, BDCs are subject to substantial
19 regulatory oversight, that is similar to RICs, by the
20 SEC.

21 In terms of their use of derivatives, BDCs do not
22 engage in much derivatives trading, and if they do,

1 our understanding is that they just use derivatives to
2 hedge risk by using interest rate and currency swaps.
3 However, despite the similarities between BDCs and
4 RICs, under our current regulations, they are treated
5 differently in 4.5. A registered investment adviser
6 of a RIC that satisfies conditions in 4.5 is excluded
7 from the definition of a CPO, while a registered
8 investment adviser of a similarly situated BDC is not.
9 This means that the registered investment adviser of a
10 RIC does not have to be dually registered with the
11 CFTC and SEC, while the registered investment adviser
12 of a BDC does.

13 The public became aware of this issue, and market
14 participants raised this concern to DSIO. After
15 considering all the factors that I just discussed,
16 DSIO issued CFTC Letter Number 12-40, known within
17 DSIO as the BDC no-action letter, in December 2012.
18 This granted no-action relief from CPO registration to
19 the operators of BDCs, as long as they were being
20 operated similar to RICs that were complying with 4.5.

21 In 2018, the Commission issued a proposal, part
22 of which amended 4.5 to address this situation by

1 amending the rule in a manner consistent with the BDC
2 no-action letter. The proposal also, as discussed
3 earlier, amended 4.5 to make the registered investment
4 adviser the person that can claim the exclusion from
5 the definition of a CPO with respect to a RIC, and now
6 also a BDC.

7 The Commission received two comments on this part
8 of the proposal, both of which agreed with the
9 rationale behind it, but raised logistical concerns
10 regarding the implementation of the proposed changes -
11 - in particular, with respect to updating the current
12 notices that have the RIC as the excluded CPO.

13 We considered and addressed all the issues that
14 were raised, most importantly though, in an effort to
15 minimize costs and disruption to the affected parties,
16 the updated 4.5 notices for those that have the RIC as
17 the excluded CPO will be incorporated into the flow of
18 the existing notice framework. This means that there
19 will be no need to immediately update the 4.5 notice
20 filings to have the registered investment adviser as
21 the excluded CPO, and there will be no need to make
22 additional filings on top of what is already required

1 under 4.5.

2 As a result, the regulatory text for the final
3 rules are essentially identical to proposed rules. We
4 believe that it is appropriate to finalize these
5 amendments because one, given our understanding and
6 the public's understanding of how RICs and commodity
7 pools in general are organized, which is consistent
8 with prior Commission statements, it is appropriate to
9 have the registered investment adviser, which is the
10 CPO of a RIC, and a BDC as well, be the person that
11 can claim the exclusion from the definition of the
12 CPO. And two, given the similarities between BDCs and
13 RICS in terms of their oversight by SEC, it is
14 appropriate for BDCs and their registered investment
15 advisers to be treated the same as RICs and their
16 registered investment advisers, so that they can take
17 advantage of the exclusion from the definition of a
18 CPO in 4.5, like other entities that are subject to
19 significant oversight by other regulatory bodies.

20 We believe that this is another appropriate
21 effort at harmonization between CFTC and SEC
22 regulations that will reduce unnecessary regulatory

1 friction and provide legal certainty for the public.

2 In conclusion, given the foregoing, we recommend
3 that the Commission adopt the final rules relating to
4 4.5 that are before you. Thank you for listening.

5 This concludes my portion of the presentation.

6 I will now turn it over to Amanda Olear, who will
7 discuss amendments to Regulation 4.27.

8 MS. OLEAR: Thank you for your presentation
9 Chang.

10 As part of the final rulemaking under
11 consideration today, staff has prepared amendments to
12 Regulation 4.27, which requires CPOs and CTAs to file
13 Forms CPO-PQR and CTA-PR, respectively. The
14 amendments remove certain CPOs and CTAs from the
15 definition of "reporting person," thereby eliminating
16 such registrants' obligations to file the applicable
17 forms.

18 As background, the Commission adopted Regulation
19 4.27 in 2011, and Forms CPO-PQR and CTA-PR in 2012.
20 Forms CPO-PQR and CTA-PR collect periodic information
21 from registered CPOs and CTAs regarding their
22 operations and the assets managed by them.

1 Regulation 4.27 outlines the CPOs and CTAs that
2 required to file these forms by defining who is a
3 reporting person. Specifically, Regulation 4.27(b)
4 defines reporting persons as CPOs and CTAs that are
5 either registered or required to be registered with
6 the Commission under the CEA and Commission's
7 regulations promulgated there-under.

8 After several filing cycles of these forms, it
9 became clear that a number of entities were submitting
10 filings on both forms that were largely without usable
11 data. Subsequent consultation with the National
12 Futures Association revealed that these filers were
13 registered with the Commission, and as such, met
14 reporting person definition, but did not operate any
15 commodity pools or trade any client accounts. As such
16 these entities correctly populated their forms with
17 mostly zeroes, data which is neither of use to the
18 Commission, nor a productive, use of these
19 registrants' resources. To that end, DSI0 issued
20 several staff letters that exempted certain CPOs and
21 CTAs from filing Forms CPO-PQR and CTA-PR.

22 Specifically, these staff letters exempted from

1 filings CPOs that are registered, yet operate only
2 commodity pools for which they are excluded or
3 otherwise exempt from registration, and CTAs that are
4 registered, but do not direct any commodity interest
5 accounts.

6 The final rule under consideration today provides
7 relief that is consist consistent with those letters.

8 In 2018, the Commission proposed amending
9 Regulation 4.27 consistent with the prior staff
10 relief, and additionally, the proposed regulatory
11 amendments would exclude from the reporting person
12 definition CTAs that registered, despite meeting the
13 terms of the exemptions set forth in Regulations
14 4.14(a)(4) and 4.14(a)(5), which provide an exemption
15 from registration as a CTA, if that person is also
16 either a registered or exempt CPO, and their commodity
17 trading advice is directed solely to the pools for
18 which it serves as a CPO.

19 The Commission received two comments on these
20 provisions in the proposal, both of which were
21 favorable. This final rule under consideration today
22 would adopt the regulatory changes set forth in the

1 proposal without substantive change. Staff believes
2 that these amendments will remove non-productive
3 compliance costs from certain CPOs and CTAs, and will
4 increase the quality of the data collected by the
5 Commission on Forms CPO-PQR and CTA-PR.

6 Therefore, staff recommends that the Commission
7 approves the final rule amendments to Regulation 4.27
8 under consideration today. This concludes staff's
9 substantive presentation on these final rules. We're
10 happy to take any questions you might have, and thank
11 you for your attention.

12 CHAIRMAN TARBERT: Thank you very much, Josh,
13 Amanda, Elizabeth, and Chang for that very informative
14 presentation.

15 To begin the Commission's discussion and
16 consideration of these rulemakings, I'll now entertain
17 a motion to adopt -- again, via two separate votes,
18 the two final rules amending Part 4.

19 COMMISSIONER QUINTENZ: So moved.

20 COMMISSIONER BEHNAM: Second.

21 CHAIRMAN TARBERT: I would now like to open the
22 floor for Commissioners to ask any questions. And

1 since in your opening statement, Commissioner
2 Berkovitz, you indicated you had questions and
3 comments why don't you go ahead first.

4 COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman.
5 And I thank the staff again, and I think the staff
6 presentation today is a very excellent presentation
7 and demonstrated the complexity of some of the matters
8 that we're dealing with, and your mastery of that
9 complexity is quite impressive, and I think we're
10 fortunate to have such a talented staff. My objective
11 and my comments going forward on particularly the
12 Family Office rule is really designed to ensure that
13 our staff has the information to do its job, and to do
14 it well, and that's what is intended.

15 But, before I get into that, there's another
16 issue in the proposed rule that -- could you explain
17 what the final rule, what the approach is, with
18 respect to the aspects that were in the proposal
19 regarding the offshore pools and the treatment of
20 offshore pools? What is the final approach -- what is
21 the final approach the final rule is taking and our
22 intention going forward on that?

1 MR. STERLING: Yes, Mr. Commissioner. Thank you
2 for that question, and thank you for your remarks, as
3 well.

4 The final rule release indicates that the
5 proposed exemption for overseas commodity pools,
6 offshore commodity pools, is being withdrawn as
7 written, and it indicates further that that's an area
8 for further analysis by the staff. And, we are
9 undertaking an analysis to consider what further
10 actions might be appropriate for the Commission to
11 entertain.

12 COMMISSIONER BERKOVITZ: Okay, thank you. I
13 recognize that we did get significant comments that
14 require further consideration by the Commission on
15 that, and how to go forward with respect to the
16 situation regarding offshore pools. So, I look
17 forward to staff's recommendations, and working with
18 my colleagues on where to go forward on that issue.

19 Let me now turn to some of my concerns on the
20 Family Office rule. Again, as I noted, we did meet
21 earlier, and in your presentation you noted, Amanda, a
22 significant change that staff did make, and that was

1 to clarify in the final rule that the recordkeeping
2 requirement applies to exempt Family Office pools, and
3 that the Commission's special call authority applies.
4 So we do have that same recordkeeping authority for
5 these exempt pools, as for other types of exempt pools
6 in the regulations, correct?

7 MS. OLEAR: Yes. So, we removed, or we amended
8 4.13(c) to state that any person who is claiming an
9 exemption under 4.13 remains subject to recordkeeping
10 and the special call authority.

11 COMMISSIONER BERKOVITZ: Right. And
12 fundamentally, I think at this point I want to take a
13 step back. Again, the staff presentation was
14 excellent. It demonstrated some of the technical
15 complexity, but it's also important that we step back
16 and look at the bigger picture here in terms of what
17 we're talking about. We're talking about RICs, BDCs,
18 and CPO-PQR, and all the jargon. But, even in the
19 term "Family Office," I think there's some definition
20 and some clarity as to what these entities are.

21 I supported the proposal to exempt Family Offices
22 from -- exempt operators of commodity pools in Family

1 Offices from registration because I thought the
2 exemption and the proposal were balanced, that the
3 exemptive relief in the proposal was balanced with
4 checks and balances on that relief, and the checks and
5 balances in the relief were one, a significant check
6 and balance is notice, that we know who these exempt
7 pools are. The recordkeeping requirement is critical
8 too, but important to our surveillance is, if we have
9 exempt pools, I think we should know who those exempt
10 pools are.

11 The second check in the proposal was that persons
12 who were disqualified from registering as commodity
13 pool operators would be disqualified from being
14 exempt, being able to operate in an exempt manner.
15 Disqualified persons were disqualified, that part of
16 the proposal also is not being finalized. Is that
17 correct?

18 MR. STERLING: That is correct, Mr. Commissioner.
19 The disqualification point, commenters raised fair
20 issues around procedural protections for
21 disqualification, given how the statute's written.
22 We're inclined to agree that it's an important area,

1 and we're going to continue to work on it, so that the
2 Commission can consider further action in the future.

3 COMMISSIONER BERKOVITZ: Okay. Thank you. So,
4 the absence of those two provisions, the notice
5 provision and the disqualification of disqualified
6 persons, to me, make this final rule before us on the
7 Family Office exemption deficient.

8 Let me also start in explaining this issue, so
9 folks can really understand what's going on here about
10 describing exactly what a Family Office is.

11 The term "Family Office" is a somewhat benign
12 sounding term, but it's -- a Family Office is not
13 really maybe a farmer who has an office managing their
14 commodity interests. Looking at the SEC, who defines
15 Family Office, this is from the SEC's description of a
16 Family Office: "Family Offices are entities
17 established by wealthy families to manage their wealth
18 and provide other services to family members, such as
19 tax and estate planning services."

20 Family Offices basically are not for ordinary
21 families, who might decide that they are having some
22 commodity interests, these are for very wealthy

1 families. If you look at the history of Family
2 Offices, I won't go through the whole thing, but the
3 first Family Offices in the United States were
4 established by the House of Morgan and the
5 Rockefellers. And, the Rockefeller Family Office is
6 still in existence today, and it's at 30 Rockefeller
7 Plaza, and I think it has something like 1,100
8 employees.

9 These are mega-wealthy, mega-rich people, who
10 have these devices to measure their wealth.

11 Under the SEC's definition, Family Offices are
12 not limited to managing the wealth of the related
13 members of the family, but may also include Family
14 Clients, which includes: key employees of the Family
15 Office, and the non-profit or charitable organizations
16 funded exclusively by family members; certain Family
17 Client trusts; any company wholly-owned by and
18 operated for the sole benefit of Family Clients so
19 that it can include -- a Family Office can include
20 charitable trusts and companies owned by the family.

21 By any measure, if one looks at who has Family
22 Offices today, Family Offices are managing extremely

1 large amounts of wealth. The smallest ones in
2 existence today are managing tens of millions of
3 dollars, and even tens of -- a Family Office with tens
4 of millions of dollars is considered small today, and
5 those are increasingly becoming rare. The Global
6 Family Office Report for 2019 put out by UBS and
7 Campton Research states that about 30 percent of the
8 Family Offices have been established since 2010. The
9 *Wall Street Journal* has reported that since 2011,
10 three-dozen hedge funds have converted into Family
11 Offices. It's becoming increasingly popular since
12 2011, maybe coincidentally since the family office
13 exemption was put in law, I don't know -- that would
14 be speculation.

15 But, here is what's actually pretty interesting
16 about the Family Global Office Report 2019. According
17 to this report, the average family wealth of those
18 surveyed -- about 35 respondents -- the average family
19 wealth of those surveyed with a single Family Office -
20 - those are the types that are exempted today -- are
21 1.3 billion. These are billionaires. 1.3 billion in
22 family wealth, and 802 million in assets under

1 management. That's the type of entity that we're
2 talking about.

3 I did a little more research, and I found this
4 great resource. This great resource is The Complete
5 Family Office Handbook: A Guide for Affluent Families
6 and the Advisors Who Serve Them and this book looks to
7 be a pretty reputable resource. It's published by
8 Bloomberg, in conjunction with Wiley, an academic
9 publisher. All sorts of accolades on the back here.
10 "The Complete Family Office Handbook captures the
11 essence of today's Family Office and paves the way to
12 best practices for every family and advisor entrusted
13 with sustaining generational wealth. Kirby has
14 written what is sure to be an industry classic."
15 That's by Sara Hamilton, Founder and CEO of Family
16 Office Exchange, which is also prominent if you look
17 on the website. The Family Office Exchange has a lot
18 of information.

19 So this, I think, seems to be a pretty credible
20 source. According to this book, it is estimated,
21 "that the operating costs to build out a fully
22 functioning Family Office typically require a minimum

1 in the range of \$500 million to a billion." If you're
2 going to do a Family Office these days, due to
3 operating costs, there's also low interest rates --
4 you've got to get a return on your money, you have to
5 hire all of these employees to manage your wealth,
6 hire people to be CPOs and investment advisers and all
7 that. It's \$500 million to a billion is what it
8 really takes to establish a Family Office today.

9 In aggregate, the amount of wealth managed by
10 these Family Offices is staggering. By one estimate,
11 the total assets under management by Family Offices is
12 over \$4 trillion.

13 A recent Forbes article noted that, "Family
14 Offices are now capable of making transactions that
15 were traditionally reserved for big companies or
16 private equity firms, and therefore, are becoming a
17 disruptive force in the marketplace." Commodity pools
18 are one tool that mega millionaires and billionaires
19 use to manage their wealth in these Family Offices.
20 Due to the lack of transparency, we don't know what
21 else they are doing. But, a passage in here indicates
22 there may be some sign for concern.

1 In terms of reduction of tax exposure, UHNW
2 individuals, now this is "ultra-high net worth
3 individuals" presumably they're in Family Offices, not
4 all of them -- but these individuals seek locations
5 with favorable tax structures. This is particularly
6 desired as U.S. authorities ramp up the fight against
7 offshore tax havens and increase taxes. In response,
8 this is the Family Office Handbook, written by an
9 adviser to Family Offices. In response American UHNW
10 individuals are searching for new avenues to protect
11 wealth and reduce tax exposure. In particular, they
12 are searching for less visible markets that do not
13 have tax treaties with the United States. They're
14 searching for less visible markets that do not have
15 tax treaties. They don't want to pay taxes and they
16 don't want to be visible. Okay?

17 These very wealthy individuals do not want to pay
18 taxes, they do not want to be visible. And they are
19 looking for tax havens outside the United States to
20 accomplish that.

21 So, that's the background of what we're talking
22 about. I don't want to smear, you know, I'm sure

1 there are many individuals in these organizations that
2 pay their taxes, but this is the guide book, this is
3 the handbook about what the ultra-wealthy are doing
4 here. Okay?

5 Now, I understand and can support the exemption
6 and the rationale for CPO registration of the
7 operators of the commodity pools in these Family
8 Offices. I think the staff has stated the appropriate
9 rationale for this exemption from registration. We
10 don't have the same regulatory interests in the
11 commodity pool operator, who is operating the
12 commodity pools for these ultra-wealthy Family
13 Offices, whether the commodity pool operator and the
14 family members, their relationship is of less
15 regulatory concern than commodity pool operators that
16 solicit the general public.

17 So, if they want to -- whatever their relations
18 are, I agree we have less regulatory concern, but that
19 doesn't mean we have no regulatory concern in the
20 operation of these pools. These are extremely large
21 amounts of wealth. To date, and currently, prior to
22 the promulgation of this rule, there's always been a

1 notice requirement so that we knew who these CPOs were
2 of these pools and Family Offices.

3 Under the regulation that was repealed in 2012,
4 whose repeal necessitated the no-action relief that
5 we're operating under today, there was a notice
6 requirement. Under the current no-action relief,
7 there's a notice requirement. The Commission, to
8 date, has determined that it's important for us to
9 know who these entities are, who is operating these
10 pools. We have always known that information. The
11 notice requirement is simple. It's almost trivial.
12 The notice requirement that we're talking about that
13 imposes burdens on all of these people, is what?
14 Name, send us your name, address, telephone number, e-
15 mail address, and name of the pool.

16 I could fit it on a sticky and you can e-mail it
17 in. It's an absolutely trivial notice requirement,
18 but it provides us with valuable information about who
19 is operating these pools.

20 All other claims for exemption under 4.13, under
21 all the other pool registration exemptions, they have
22 to file notice. The CPOs of single pools. If you

1 operate a single pool and don't accept compensation
2 for it, if you're the operator of a single pool and
3 you don't accept compensation for it, you're exempt
4 from CPO registration, but you have to file a notice.
5 That's in our regulation. That they are being
6 exempted today.

7 If you operate a small pool with less than 15
8 participants in the pool to a maximum of \$400,000 in
9 capital contributions to that pool, you have to file
10 notice. \$400,000. If you have less than \$400,000 and
11 15 people in that pool, you have to file notice.

12 But, if you have a thousand times that amount in
13 your pool, \$400 million is a thousand times \$400,000.
14 If you have \$400,000 in your pool, you have to file a
15 notice, but if you have a thousand times that amount
16 of money in your pool, you don't file notice with us.
17 We're exempting you. That just doesn't make sense.
18 One-one thousandth of the pool size, there's a
19 regulatory interest in knowing about you. If you have
20 a thousand times that amount of money, in your pool or
21 your assets under management, you don't have to file
22 notice.

1 What's the rationale? It's a burden. Okay.

2 In the proposal, in the cost-benefit
3 considerations in the proposal, we estimated the cost
4 of the annual notice requirement. It seemed pretty
5 high to me, for filling out a sticky. But -- or
6 sending in the e-mail, which is what you can do. But,
7 our estimate of the cost of this notice per pool was
8 \$28.50 -- \$28.50 to provide this notice. And we're
9 claiming this is a burden? We're claiming this is a
10 burden on mega millionaires and billionaire funds?
11 That this is a paperwork burden for them? I don't get
12 it. I don't get it. I don't see -- I don't see that
13 this is a burden at all.

14 Our interest in these pools is not limited to
15 investor protection. There's also an interest in
16 activities of pool operators in our market. And
17 Congress has stated this. Section 41 of the Commodity
18 Exchange Act, "the activities of commodity trading
19 advisors and commodity pool operators are affected
20 with a national public interest, in that, among other
21 things . . . their operations are directed toward and
22 cause the purchase and sale of commodities for future

1 delivery. . . , and the forgoing transactions occur in
2 such volume as to affect substantially transactions on
3 contract markets. . . ." That's what Congress stated.

4 The Commission has a significant interest in
5 knowing who these persons are that are operating these
6 pools, including those that are exempt from
7 registration. And our interest is manifested in the
8 fact that we require notice from everybody else
9 claiming exemptions, only the mega millionaires and
10 billionaires are getting an exemption from that notice
11 requirement.

12 The Commission states that eliminating the notice
13 requirement will harmonize the regulations with the
14 SEC. Well, harmonization for harmonization's sake is
15 not a rationale. Okay? The question for us is not
16 whether the SEC has determined to do something and
17 we're going to just follow what they do, the question
18 is: is it the right thing to do? Is it the right
19 thing for us to do?

20 Instead of harmonizing the notice requirement
21 with the SEC's, we should harmonize this notice
22 requirement with all the other notice requirements

1 that we have for all other exempt pools. Why are we
2 harmonizing with them? Why don't they harmonize with
3 us? Be consistent here. Not make the 1/1000th file
4 and the 1,000 times not file.

5 My second concern is on the disqualification, or
6 failure to address that issue. As I mentioned, the
7 proposal would have prohibited any person who was
8 subject to a statutory disqualification from
9 registration from claiming an exemption from
10 registration. The logic is simple. A person who was
11 disqualified from operating a pool in a registered
12 capacity should also be disqualified from operating a
13 pool in an unregistered capacity. Disqualified
14 persons should be disqualified.

15 In the proposal the Commission stated, "The
16 Commission is concerned that it poses undue risk from
17 a customer protection standpoint for its regulations
18 in their current form to permit statutorily
19 disqualified persons or entities to legally operate
20 exempt commodity pools, especially when those same
21 persons would not be permitted to register with the
22 Commission."

1 A perfectly sensible statement by the Commission
2 in the proposal. I totally agree with it. The
3 National Futures Association also totally agreed with
4 it. They fully support the disqualification of
5 disqualified persons. NFA's comment letter said, "The
6 Commission aptly states in the Federal Register
7 release that the proposed prohibition would provide a
8 substantial customer protection benefit. In
9 particular, the proposed change addresses a
10 significant regulatory gap in the Commission's
11 exemption framework, and will certainly strengthen
12 customer protection by ensuring that a person who may
13 be prohibited from registering as a CPO is not able to
14 operate an exempt fund outside of the Commission's and
15 NFA's regulatory oversight."

16 In today's final rule, the Commission states,
17 "the commenters raised a number of issues regarding
18 the statutory disqualification provision that require
19 further consideration." I agree the commenters raised
20 issues that need further consideration, but the
21 Commission should have addressed those prior to giving
22 today's exemption.

1 Customer protection should be our first priority,
2 not deferred. The Commission should have addressed
3 these concerns, prior to granting today's exemption
4 for Family Offices. Customer protection should not
5 take a back-seat to exemptions from regulation for
6 billionaires.

7 And when you put the customer protection, the
8 lack of the statutory disqualification provision
9 together with absence of notice, we don't know whether
10 some bad guys are operating. We don't even know
11 whether a statutorily disqualified person would be
12 subject to the regulation if we had it. So we're
13 going totally blind. So the combination of those two
14 absences, those two approaches, in my view make the
15 current exemption for Family Offices not acceptable in
16 its current form.

17 And Mr. Chairman, I really think we need notice
18 and we need to prohibit statutorily disqualified
19 persons from operating exempt pools. Thank you.

20 CHAIRMAN TARBERT: Thank you. Thank you very
21 much, Commissioner Berkovitz. We'll put another --
22 why don't we put another 15 minutes on the clock.

1 We'll go now to Commissioner Stump.

2 COMMISSIONER STUMP: I have no questions. Thank
3 you all.

4 CHAIRMAN TARBERT: Commissioner Behnam?

5 COMMISSIONER BEHNAM: Thanks, Mr. Chairman. I
6 will pick up on the notice comments Commissioner
7 Berkovitz made. I thought it was interesting and
8 convenient that the commenters responded to a number
9 of our questions, but didn't respond to the sort of
10 time, the question about how long it would take to
11 make a notice filing. And without knowing the exact
12 time, but juxtaposing it against what points I believe
13 Elizabeth made about -- and potentially Amanda as
14 well, about preserving customer protections, being
15 consistent with the SEC, preserving our special call
16 authority, the record-keeping and what not.

17 I just want to take a step back because there are
18 multiple elements in the notice filing that are
19 important, both as a matter of customer protections,
20 but the way my mind thought about it initially was
21 market surveillance. And given the size of Family
22 Offices, what, if any, concerns do you have that may

1 exist, now that we don't know about who is going to be
2 participating in these offices.

3 Obviously, surveillance is a huge element of our
4 responsibility, knowing both participants, the size of
5 the participants, and what potentially market-moving
6 implications those participants could have on the
7 market, if something were to go wrong in their
8 portfolio or portfolios. So, I guess in your mind,
9 given this decision to not require notice, was there a
10 discussion about the balance between market
11 surveillance, market oversight, financial stability,
12 and providing this notice for the foregoing reasons;
13 consistency, preserving special call, and
14 recordkeeping?

15 MR. STERLING: Thank you for that, question Mr.
16 Commissioner. I think we gave consideration to a
17 great number of points, and my own view is that in
18 terms of market surveillance, that operates at several
19 levels including at the exchanges, and certainly
20 through our own market surveillance and DMO activities
21 here at the Commission.

22 I think those surveillance activities occur as a

1 result of being -- you know, somewhat trading
2 privileges on an exchange, of being active in the
3 market, being required to file a Form 440 report, or
4 anything like that. Those requirements apply
5 regardless of whether you're a registered or exempt
6 CPO. In my mind, being a commodity pool and a
7 commodity pool operator is an indication that the
8 relationships between the operator and the pool and
9 amongst the individuals in the pool are so attenuated
10 because of a public offering or a private offering,
11 that federal intervention is appropriate.

12 Where it is family, and key employees I suppose,
13 under the SEC guidance, we think that need is less
14 express. We think the SEC was right to say in terms
15 of a vehicle, quasi-vehicle and its management, the
16 right filter there would be estate law or family law
17 at the state level, and certainly contract laws
18 between the key employees and any investments they
19 might make in the same vehicles. And, so I tended to
20 view Part 4 in the CPO requirements very much apart
21 from the market surveillance activities. I don't
22 think an exemption here, notice or not, would affect

1 the ability to surveil people that trade on lid
2 exchanges.

3 COMMISSIONER BEHNAM: Could you talk a little bit
4 about -- to the extent you know, what type of
5 disclosures or information is provided to non-family
6 participants in a Family Office?

7 MR. STERLING: Well, Mr. Commissioner, I'm happy
8 to answer that. I will have to confess as to not
9 having perfect knowledge on that, but my understanding
10 is that we're talking about key employees in the
11 context of a Family Office. They are very much
12 involved in the business of the Family Office and its
13 investment activities, so I think the knowledge-base
14 there is quite different from even what you would
15 typically experience in a private offering to very
16 qualified institutions or ultra-high net worth
17 individuals that are professionally advised.

18 COMMISSIONER BEHNAM: Thanks. So, over the years
19 leading up to today, and these facts were articulated
20 in the presentations, we've issued a number of no-
21 action letters, interpretive letters, et cetera. How
22 will today's final rule impact those letters?

1 MS. OLEAR: So, thank you, Commissioner for your
2 question. Today's final rules will supersede the two
3 particular rules that, or the two particular letters
4 DSIO issued, Letter 12-37 for CPOs, and 14-143, thank
5 you Elizabeth, for CTAs. I know the CPO one much
6 better, I worked on that one.

7 So those two letters will be explicitly
8 superseded by these final rules today. However, over
9 the years, DSIO and its predecessor divisions has
10 issued a number of interpretative letters that are
11 specifically directed to individual entities. Those
12 individual entities are permitted to continue to rely
13 on those letters. This rule does not specifically
14 address or eliminate the relief that was previously
15 provided on a one-off basis.

16 COMMISSIONER BEHNAM: Thanks. I want to touch on
17 18-96 briefly, the portion that we're withdrawing.
18 Director, if you could just share or shed some light
19 on what this action -- how this action will affect
20 future action, and what is your sort of vision for the
21 future, and the idea of withdrawing it, are we going
22 to have to re-propose it? Is it going to be finalized

1 in some other matter or order? I think it's important
2 for those of us who -- for those individuals who don't
3 necessarily focus on the day-to-day of the Commission
4 to understand what the practical implications are for
5 that action, and what it might mean for the future.

6 MR. STERLING: Sure. Thank you for that
7 question, Mr. Commissioner. Happy to answer that.

8 I think the underlying concern with the proposal
9 was that it sort of articulated a viewpoint that was
10 inconsistent with how a number of our international
11 asset managers and non-U.S. managers were regarding
12 their non-U.S. funds as being exempt, on the basis
13 they might need an exemption.

14 So, the idea was to withdraw the exemption, sort
15 of go back to the way we were before it was proposed,
16 and as a proposal, it didn't have any legal affect, it
17 hadn't been final yet. So, I think we're where we
18 always have been and we will -- we continue to review
19 this area and are working on recommendations for the
20 Commission to take some action here, in the area of
21 sort of a non-U.S. manager of a non-U.S. commodity
22 pool, what relief, if any, could they have available

1 to them from registration as a CPO.

2 COMMISSIONER BEHNAM: Thanks. Mr. Chairman,
3 that's all for me for questions, but I will say that I
4 will support the rules today but I certainly
5 appreciate the work DSIO has done, all four of you and
6 the Division working with my staff, incorporating a
7 number of changes that I requested.

8 But, as Commissioner Berkovitz pointed out, and
9 as I pointed out in a few questions certainly, the one
10 thing that jumped out at me was the lack of a notice
11 filing. And, you know, notice filings are challenging
12 because I think, Amanda, you pointed this out with
13 your comment about the forms with the zeroes, you
14 know, we should only collect information that serves a
15 purpose to both the law and our rules. But certainly
16 given the use of Family Offices in today's investment
17 management space and the types of individuals and the
18 types of organizations, I was a little taken aback by
19 that. But, you know, given the changes that were made
20 and the effort to work with my office, I will support
21 these rules, but I do certainly hope maybe we can work
22 together in the future, as we sort of monitor what the

1 lack of a notice filing necessarily means for the
2 agency and how it will affect us and our ability to do
3 our job.

4 I think, as we've all agreed in the past, ongoing
5 oversight and improvements on our rules is paramount,
6 and as we move forward with this, which I know has
7 been a year's long effort, I think, by and large,
8 these proposals are solid and are positive, but I
9 certainly would hope that we can continue to work on
10 potential shortcomings and continuing the effort to
11 improve the rules, so that we strive for the best
12 possible transparency and market protection.

13 Obviously, customer protections are our number one
14 priority but market surveillance, financial stability
15 has become incredibly important as well. And if these
16 types of notice filings could be an element to provide
17 that level of information and detail I think we should
18 reconsider it in the future. Thank you, Mr. Chairman

19 CHAIRMAN TARBERT: I appreciate it very much,
20 Commissioner Behnam. Commissioner Quintenz?

21 COMMISSIONER QUINTENZ: Thank you, Mr. Chairman.
22 I formerly ran a CPO. My opinion is that the

1 registration regime for CPOs has never had anything to
2 do with how much wealth the individual owns, but
3 rather, to serve as a level of protection for the
4 outside investors of that CPO.

5 We do not require Principal Traders Group (PTG)
6 firms to register. We do not require Family Offices
7 to register. Just because certain individuals have a
8 certain amount of wealth, and therefore, can afford a
9 team of lawyers in case they fill out forms
10 incorrectly, in my mind, does not mean that they
11 deserve to have to undertake the entire registration
12 regime that is designed for the protection of outside
13 investors.

14 In terms of what is not in this rule, from the
15 disqualification issue, it's my assumption that that
16 does not preclude us from continuing to consider that;
17 it's also my understanding that there are ongoing
18 conversations the Division is having with the NFA
19 around this issue because it is somewhat tricky.

20 Is that understanding correct?

21 MR. STERLING: Yes, Mr. Commissioner, it is.

22 COMMISSIONER QUINTENZ: Secondly, I have some of

1 my own opinions about how to think about exemptions
2 broadly, in both 4.13, as well as 4.5, if we are going
3 to require firms to register with us when they are
4 already registered with the SEC, we need to have more
5 than just a small *de minimis* amount of activity in
6 those entities to substantiate that dual registration
7 and to force firms into our own registration scheme.

8 And I would note that this rule does not preclude
9 the consideration of those either.

10 So let me move on, and maybe ask a few specific
11 questions with regard to these particular proposals.
12 NFA has a Bylaw 1101 that prohibits an NFA member from
13 doing business with a non-member that should have
14 registered with the NFA. So, under the status quo,
15 where there's a Family Office that is not registered
16 pursuant to no-action relief, but should have
17 registered absent that no-action relief, how do NFA
18 members know that they can trade with those
19 unregistered Family Offices without violating that
20 bylaw?

21 MS. GROOVER: Thank you for that question,
22 Commissioner. Currently, we understand that those

1 Family Offices are essentially showing their effective
2 claims of the no-action relief under CFTC Letter 12-37
3 to those firms, to show that they have no-action
4 relief effective, making them not required to be
5 registered and therefore permissible to do business
6 with under Bylaw 1101.

7 COMMISSIONER QUINTENZ: Okay. Thank you. I had
8 a couple other questions, but I think two have already
9 been asked, but I'd like to go back to Staff Advisory
10 18-96 quickly.

11 Until the Commission takes further action, can
12 CPOs and offshore pools continue to rely on the
13 existing exemptive relief under Staff Advisory 18-96,
14 and Regulation 3.10, with respect to their offshore
15 pools?

16 MR. STERLING: Yes, that's correct. 18-96 is
17 available; it provides two different kinds of relief
18 for registered CPOs with offshore pools, that remains
19 available of course. And the Rule 3.10 exemption
20 itself, which is for offshore pools, that can be
21 exempt, because, among other things, they have an
22 offshore operator and they trade in the United States

1 on a cleared basis where required, that remains on the
2 books as well.

3 COMMISSIONER QUINTENZ: Okay. I'd like to thank
4 you all again for your work on these important issues,
5 and I'm very pleased to support it. Thank you.

6 CHAIRMAN TARBERT: Thank you very much. I just
7 have two questions. One is a big picture question.
8 One is a technical question. I'll go with the
9 technical question first.

10 I note that where we're on the Family Office
11 issue, we're providing relief through registration
12 exemptions, as opposed to registration exclusion. And
13 I think Elizabeth, you may have said that the SEC
14 actually created an exclusion from their rule, but
15 we're doing registration exemptions. Is there any
16 reason for that distinction?

17 MS. GROOVER: Thank you, Chairman. Yes, there
18 is.

19 You'll also note that Chang discussed Regulation
20 4.5, which provides an exclusion from the CPO
21 definition for the operators of certain pooled
22 vehicles, and the entire basis for 4.5 really is

1 because those entities are otherwise regulated. And,
2 in the context of Family Offices that's really not the
3 rationale for granting relief.

4 Our staff recommended rationale is basically that
5 Family Offices do not solicit the public, and so we
6 believe that a registration exemption under 4.13
7 matches that rationale better than an exclusion, which
8 is really intended for kind of heavily regulated
9 entities.

10 CHAIRMAN TARBERT: Great. Thank you. And then
11 the big picture question is simply pretty much
12 everything we are doing today derives from the JOBS
13 Act, which was a bipartisan piece of legislation
14 signed into law by President Obama, is that right?

15 MS. OLEAR: Thank you, Mr. Chairman. The JOBS
16 Act is clearly providing the statutory justification
17 for the amendments to 4.7 and 4.13, when it comes to
18 the modifications with respect to the ability to
19 solicit the public generally, provided that you only
20 sell to QEPs. However, the Family Offices exclusion
21 that the SEC adopted was pursuant to Dodd-Frank, and
22 so our incorporation really is being driven by Dodd-

1 Frank in that respect, and the CPO-PQR is just based
2 on our experience of our own forms.

3 CHAIRMAN TARBERT: Okay. That's very helpful
4 context. I appreciate that.

5 Are the Commissioners prepared to vote?

6 COMMISSIONER BERKOVITZ: I just had a follow-up
7 question on that answer.

8 CHAIRMAN TARBERT: Sure.

9 COMMISSIONER BERKOVITZ: Dodd-Frank didn't direct
10 the CFTC to exclude Family Offices.

11 MR. STERLING: No, it did not.

12 COMMISSIONER BERKOVITZ: Thank you.

13 CHAIRMAN TARBERT: But it directed the SEC, is
14 that right?

15 MR. STERLING: Yes, sir, it is.

16 CHAIRMAN TARBERT: All right. Now, with that,
17 are the Commissioners prepared to vote? Okay.

18 If so, Mr. Kirkpatrick, would you please call the
19 roll for the first set of Part 4 final amendments?

20 MR. KIRKPATRICK: Thank you, Mr. Chairman. The
21 part of the motion now before the Commission is on the
22 adoption of final amendments to Part 4, pertaining to

1 commodity pool operator and commodity trading advisor
2 registration exemptions from SEC-registered Family
3 Offices and JOBS Act entities.

4 Commissioner Berkovitz?

5 COMMISSIONER BERKOVITZ: No.

6 MR. KIRKPATRICK: Commissioner Berkovitz votes
7 no. Commissioner Stump?

8 COMMISSIONER STUMP: Aye.

9 MR. KIRKPATRICK: Commissioner Stump votes aye.
10 Commissioner Behnam?

11 COMMISSIONER BEHNAM: Aye.

12 MR. KIRKPATRICK: Commissioner Behnam votes aye.
13 Commissioner Quintenz?

14 COMMISSIONER QUINTENZ: Aye.

15 MR. KIRKPATRICK: Commissioner Quintenz votes
16 aye. Chairman Tarbert?

17 CHAIRMAN TARBERT: Aye.

18 MR. KIRKPATRICK: Chairman Tarbert votes aye.

19 Mr. Chairman, on this part of the motion, the
20 ayes have 4, the no's have one.

21 CHAIRMAN TARBERT: Thank you very much. The ayes
22 have it, and the motion to adopt first set of final

1 Part 4 amendments is hereby approved.

2 Mr. Kirkpatrick, will you please call the roll
3 for the second set of Part 4 final amendments?

4 MR. KIRKPATRICK: So, the part of the motion now
5 before the Commission is on the adoption of final
6 amendments to Part 4, pertaining to commodity pool
7 operator registration and reporting requirements for
8 SEC registered investment companies and business
9 development companies.

10 Commissioner Berkovitz?

11 COMMISSIONER BERKOVITZ: Aye.

12 MR. KIRKPATRICK: Commissioner Berkovitz votes
13 aye. Commissioner Stump?

14 COMMISSIONER STUMP: Aye.

15 MR. KIRKPATRICK: Commissioner Stump votes aye.
16 Commissioner Behnam?

17 COMMISSIONER BEHNAM: Aye.

18 MR. KIRKPATRICK: Commissioner Behnam votes aye.
19 Commissioner Quintenz?

20 COMMISSIONER QUINTENZ: Aye.

21 MR. KIRKPATRICK: Commissioner Quintenz votes
22 aye. Chairman Tarbert?

1 CHAIRMAN TARBERT: Aye.

2 MR. KIRKPATRICK: Chairman Tarbert votes aye.

3 Mr. Chairman, on the second part of the motion,
4 the ayes have 5, the no's have zero.

5 CHAIRMAN TARBERT: Thank you very much. Well,
6 here again the ayes have it, and the motion to adopt
7 the second part of Part 4 final amendment is hereby
8 adopted.

9 Before we move to closing statements, is there
10 any other Commission business?

11 (No response.)

12 CHAIRMAN TARBERT: Okay. I would like to note
13 that we had originally also planned to address some
14 proposal for Part 50 clearing requirements. We're
15 making some final tweaks among the Commissioners, and
16 so we would hope to produce that soon. I was afraid
17 that this would be just too slim of an agenda, but
18 I've been proven wrong. Obviously these Part 4 rules
19 have generated quite a bit of discussion, robust
20 discussion, and therefore, deserving their own
21 meeting.

22 Hearing no other official business, I'd now like

1 to give my fellow Commissioners an opportunity to make
2 closing statements.

3 We'll start with you, Commissioner Berkovitz.

4 COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman.
5 And I thank you again for providing the forum where we
6 can have these robust discussions. I believe they are
7 beneficial and serve to inform the public about the
8 important activities of this agency and provide
9 transparency to our markets.

10 In terms of -- you mentioned the agenda going
11 forward and other things that we will be doing in the
12 near future. I just want to reiterate the comment
13 that I made earlier that what we're trying to do in
14 terms of clarity, transparency, simplification, I
15 generally support those as objectives that we should
16 consider in our rulemakings and if there is a way to
17 simplify and make them more cost-effective for our
18 registrants, I think we should be doing that.

19 At the same time, those aren't the objectives in
20 and of themselves, just to make something simple is
21 not necessarily -- does not provide a benefit. It's
22 something that's beneficial, can we simplify it and

1 can we simplify it in a way that still retains the
2 benefits? I believe we have to consider the objective
3 of what we're doing, not just whether it's clear, or
4 simple, or harmonized with the SEC.

5 So that is going to be the lens through which I
6 look at all these rules going forward. Does it really
7 advance our mission to protect our markets and to
8 foster innovation and transparency, and benefit our
9 market participants and competition? Those are the
10 objectives. And if we can achieve those objectives in
11 a simpler way, I'm all for that, but just for
12 harmonization, for harmonization's sake -- the SEC
13 might do something -- doesn't necessarily mean we
14 should do the same thing. Thank you Mr. Chairman.

15 CHAIRMAN TARBERT: Thank you Commissioner
16 Berkovitz. Commissioner Stump?

17 COMMISSIONER STUMP: I just wanted to say again
18 thank you.

19 Simplicity is not the objective, but it is
20 certainly not the obstacle -- we don't want to put in
21 place obstacles that make it difficult for members of
22 the industry or participants in the market who in fact

1 find it more challenging to utilize these markets that
2 have a valid purpose. So I agree with Commissioner
3 Berkovitz, simplicity is something that I commend you
4 all for trying to achieve.

5 I may not agree with Commissioner Berkovitz on
6 the notion that the information we take in always, in
7 this case, when we talk about the notice requirement
8 has a utility. I talk about this often, the utility
9 of the data that we take in, I just want to ensure
10 that it is in fact useful to the staff and the
11 Commission. And I'm not certain in this case that I
12 find it to be particularly useful.

13 Contrary to that, or in contrast to that, we did
14 find utility in continuing to have notice filings with
15 regard to CPOs for BDCs, and so I also want to leave
16 everyone with the impression that I'm not opposed to
17 taking in information, but it has to have a real use
18 case behind it.

19 But again, I want to commend you all because for
20 me rules are about regulatory certainty and I think
21 that's how we develop a culture of compliance. If we
22 can make regulatory certainty first and foremost an

1 objective of everything we do, then the market
2 participants, by and large, want to comply. And so,
3 it makes a culture of compliance more achievable.

4 So thank you all very much.

5 CHAIRMAN TARBERT: Thank you very much,
6 Commissioner Stump. Commissioner Behnam?

7 COMMISSIONER BEHNAM: Thanks, Mr. Chairman.
8 Thanks a lot to all four of you, again great
9 presentations, great work.

10 Like I said, can't thank you enough for working
11 with my staff, and throughout these few weeks, as we
12 prepared for this morning, making what I thought were
13 smart changes to improve the document I think across
14 the board for all of us to sort of manifestation of
15 the benefits of commissions, right, having robust
16 discussion and thought build the best product on the
17 back-end.

18 With that said, not perfect, as I stated earlier,
19 and I certainly look forward to working with all of
20 you, and you of course, Mr. Chairman, in the future,
21 as we implement these new rules to ensure that they
22 are working appropriately, properly, fulfilling our

1 mandate under the Commodity Exchange Act, and ensuring
2 that the markets remain stable, safe, and transparent
3 for customers. If we do, in fact, need to make future
4 changes, I'm sure we can come to an agreement on what
5 would be a thoughtful, surgical, targeted improvement
6 as we move forward in the future. Thank you.

7 CHAIRMAN TARBERT: Thank you very much,
8 Commissioner Behnam. Commissioner Quintenz?

9 COMMISSIONER QUINTENZ: No closing statement, Mr.
10 Chairman. Just, again, to thank the staff for their
11 hard work on these particular issues, as well as
12 broader ongoing efforts to rethink Part 4. Generally,
13 I'm looking forward to a lot more conversations in the
14 future.

15 CHAIRMAN TARBERT: Thank you very much,
16 Commissioner Quintenz.

17 And let me also on behalf of the rest of the
18 agency, and as Chairman, thank DSIO in particular,
19 those four of you that have come today for your
20 outstanding work, and I also obviously want to thank
21 the General Counsel's Office and the Office of Chief
22 Economist for making this set of rules possible.

1 The only thing I want to say before I officially
2 adjourn the meeting is that I want to wish everyone
3 here at the CFTC, as well as those we regulate and
4 other market participants, a very Happy Thanksgiving.
5 With that, there being no further business, I would
6 entertain a motion to adjourn the meeting.

7 COMMISSIONER QUINTENZ: So moved.

8 CHAIRMAN TARBERT: Those in favor?

9 (Ayes.)

10 CHAIRMAN TARBERT: Opposed?

11 (None.)

12 CHAIRMAN TARBERT: The ayes have it, and the
13 meeting is hereby adjourned. Thank you.

14 (Whereupon, at 11:24 a.m., the Open Commission
15 meeting was adjourned.)