U.S. COMMODITY FUTURES TRADING COMMISSION

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OPEN MEETING

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TUESDAY,
APRIL 14, 2020

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The U.S. Commodity Futures Trading Commission met via Teleconference, at 10:00 a.m. EDT, Heath P. Tarbert, Chairman, presiding.

PRESENT
HEATH P. TARBERT, Chairman
ROSTIN BEHNAM, Commissioner
DAN M. BERKOVITZ, Commissioner
BRIAN D. QUINTENZ, Commissioner
DAWN DEBERRY STUMP, Commissioner

This transcript was produced from audio provided by the Commodity Futures Trading Commission.

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

CHAIRMAN TARBERT: Good morning. This meeting will come to order. This is a public meeting of the Commodity Futures Trading Commission, and this is Heath Tarbert, Chairman of the Commission, now speaking.

The meeting will be held via conference call in accordance with the Agency's implementation of social distancing due to the COVID-19 pandemic. I'd like to welcome members of the public and market participants who are on the phone or streaming this meeting through our website.

I'd also like to welcome my fellow Commissioners who are participating via conference call, Commissioner Quintenz, Commissioner Behnam, Commissioner Stump, and Commissioner Berkovitz.

Now, of course we normally begin as a sign of respect and patriotism with the Pledge of Allegiance. But we're not in the same room, and there's no flag. So instead, I'm going to ask

everyone to show your patriotism and respect by observing a few good practices for the benefit of our listeners, both those who are listening now, as well as those who may listen to a recording of this meeting at a later date.

Number one, when you're about to speak, please ensure your phone line is unmuted. Two, as you begin speaking, please identify yourself. So if I turn and say Commissioner X and then you start to speak, if you can remember, just go ahead and say good morning or this is Commissioner X, just in case my voice gets muffled and there's an issue with the audio. And number three, when you're not speaking, please keep your line muted. Thank you very much.

We assemble today to consider five matters, three proposed rules and two final rules. First, we're going to consider a proposed rule on the banking regulations in Part 190. Second, we'll consider a proposed rule on the compliance requirements for commodity pool operators on Form

CPO-PQR.

Third, we'll consider a proposed rule on the clearing requirements for central banks, sovereigns, international financial institutions, and smaller bank holding companies and community development financial institutions.

Fourth, we'll vote on a final rule on the margin requirements for the European Stability Mechanism. And then fifth and finally, we'll vote on a final rule on the Consumer Financial Information Privacy Protections.

We'll now move to opening statements. I'll go first, followed by my fellow Commissioners in order of seniority. Commissioners are free to reserve their time to make a longer closing statement if they wish. After opening statements, staff will present the proposals for the Commission's consideration. The Commission will then take five separate votes.

So I'd like to begin now with a very brief opening statement. The Commission of the

CTFC -- sorry, the mission of the CFTC is to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation. In the past weeks, we've been razor-focused on responding to the tremendous impact of the coronavirus on the markets we regulate.

Before we begin today's open meeting, I want to first highlight some of the important steps the CFTC has taken to help address the coronavirus pandemic and its unprecedented effect on our derivatives markets.

To begin with, we've been actively monitoring markets and their participants. We're in frequent contact with trading venues and are checking regularly on the financial resources and operational status of key market intermediaries. This has helped us take the pulse of the markets.

We're also maintaining clear and frequent communications with all relevant stakeholders, including Congress and our fellow regulators here in America and overseas. The

almost daily conversations that are happening between and among many of the agencies are vitally important at this time. These conversations have helped us coordinate our respective responses to COVID-19.

Most importantly, we're responding swiftly to changing conditions by granting practical targeted relief where appropriate. To date, we've issued 12 no-action letters that provide temporary relief from certain recordkeeping and operational requirements to address challenges raised by social distancing and other challenges.

We've also extended temporary margin relief for market participants with the smallest uncleared swaps portfolios. At the same time, while responding to coronavirus-related market disruptions, it's important that market participants, as well as the general public, know we're still doing the important policy work of the Commission.

Of course, the coronavirus has changed the way our agency does business. But it won't change the ultimate substance of that business. Just as we've pivoted to focus our resources first and foremost on the impact of COVID-19, we're going to use the rest of our resources at our disposal to pursue a simple strategy for the rest of 2020.

And that strategy is to finish what we've started. First, from now until the summer, we'll propose rules that have effectively been completed by Commission staff and are ready or soon be ready to be reviewed by the Commissioners.

And second, from now until the rest of the year, we'll finalize outstanding proposals arising during my tenure as Chairman or before. By simply finishing what we've started, we should be able to effectively address COVID-19 issues as they arise, while still carrying on the important policy work of the Commission, even if at a reduced level.

And that's exactly what we're doing today. Before I turn to my fellow Commissioners,

I want to say that my thoughts and prayers are with those who either have COVID-19 or have loved ones or friends who do. These are no doubt tough times, but working together, I think we're all going to get through this and be stronger because of it.

With that, I'll turn to Commissioner Quintenz.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman, this is Commissioner Quintenz. Can you hear me?

CHAIRMAN TARBERT: Yes.

COMMISSIONER QUINTENZ: Okay, great. First of all, thank you for your leadership and continuing to bring the policy agenda on very important rulemakings forward.

I know that these are challenging times in the markets and in society generally, but I'm very pleased to have seen the dedication of our agency in expeditiously processing requests for relief to ensure that the markets continue to function properly during this time where risk

management is absolutely critical.

So my compliments to you and to the Agency staff in terms of balancing both critical priorities of ensuring the Commission's work continues to get done, as well as recognize the lay of the land and ensure markets continue to function appropriately. I'm very pleased to see the sufficiency of the resources at the Agency to address all these challenges.

And let me echo your comments in saying that my thoughts and prayers are indeed with those who have suffered from this pandemic. And we are all mindful of the challenge this is posing to everyday life, as well as the uncertainty that exists and the difficulty that some are facing.

So thank you again for continuing to do the work that the people expect of us, and I'm very pleased to consider these rules today.

This is Commissioner Quintenz. That was all I had.

COMMISSIONER BEHNAM: This is

Commissioner Behnam. Can you hear me? I'm going to jump in here. I don't know if the Chairman fell off or he's having technical --

COMMISSIONER QUINTENZ: Yes, I can -- Russ, this is Brian, I can hear you.

COMMISSIONER BEHNAM: Okay, I'll just jump in right now. Good morning, everyone. I hope everyone's doing well. I will certainly echo the Chairman's comments, Commissioner Quintenz's comments about wishing my best to everyone, health to their families, to individuals who have suffered from the pandemic as we continue to endure those challenges and work through this.

We certainly will get through it, but it will take a bit of time. And I think we're all collectively working towards getting there sooner than later.

That said, I look forward to this morning's meeting. I will be brief in the sense that my number one priority obviously is giving a sense of thoughts and prayers to everyone in the

public. I do want to recognize CFTC staff, all the staff in all the offices.

Obviously we've been going through a lot, like many folks across the government and certainly across the country, in transitioning to a new work environment, both at home and in the workplace. So we certainly are doing our best to deal with the new realities and working hard and transitioning to the challenges of having kids at home and working all together in a place where things are difficult.

So I do want to recognize all the staff that's been working. This is a lot of work that's going into this. I look forward to today's rule sets. And like I've said a few times in the past couple weeks, as the private market sort of reads these comments and reads these rules, we certainly, I believe, need to be as flexible as possible. The Commission benefits greatly from public comment.

And as we continue to sort of endure the challenges of the pandemic, we need to be as

flexible as possible moving forward with our agenda sensibly, obviously, but also understanding that folks are dealing with several different fronts and several different challenges, both in the workplace and at home. And in order for us to do our job the best we can, we need to have the best comments and the best engagement with market participants.

So I would encourage all folks as we -- as you read these rules to be mindful of that and don't hesitate to request more time if necessary so that we can do our job the best we can.

Thanks, and look forward to this morning's meeting.

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

COMMISSIONER STUMP: Good morning, this is Commissioner Dawn Stump. Mr. Chairman, I really appreciate you calling this team meeting today. I've dubbed it a team meeting to reflect what I've come to miss and appreciate about our

normal open meeting format, where the rule-writing team sitting before us and the stakeholders in the audience all serve as reminders that while the five of us cast votes, policymaking is a team effort.

And today the COVID-19 pandemic prevents our face-to-face team demonstrations, but the circumstances cause me to be even more mindful that teamwork is a core value at the CFTC. We not only coordinate within the CFTC and within the federal government and within the international community of regulators, but also with market infrastructure providers and participants who are on the front lines of supporting well-functioning markets.

The past several weeks demonstrate both how essential that teamwork is and how well we have deployed it. While the CFTC's team mentality has been reinforced during recent events, it was built during a far less stressful time. Today we are considering several matters years in the making and only possible through the CFTC's tradition of

engagement with and respect for market participants and fellow regulators within the United States and abroad.

Beginning with the tremendous team effort that has gone into updating our Part 190 regulations, I thank Bob Wasserman, his team in the Division of Clearing and Risk, and the Part 190 Subcommittee of the Business Law Section of the American Bar Association for their expertise and insights, and for the countless hours they've dedicated to this endeavor.

I've long believed that a genuine spirit of cooperation between derivatives market participants and the CFTC is both unique and pragmatic. This proposal is an exemplary product of that engagement and cooperation.

This is the first comprehensive revision to the CFTC's bankruptcy regime in 37 years. As recent market events have demonstrated, futures commission merchants and derivatives clearing organizations are integral to

well-functioning derivatives markets. Throughout the recent market volatility to date, our clearing market infrastructure has functioned as intended, while facilitating massive amounts of risk transfer and extraordinary risk management efforts.

Today's proposed revisions to our bankruptcy rules are the culmination of an extensive undertaking that has been in the works for years, and should in no way be considered an expression of doubt regarding the integrity, stability, or resilience of FCMs or DCOs in today's market environment. Quite the contrary, these infrastructure providers have been team players performing their respective duties to sustain our markets.

Turning now to the proposed revisions of CFTC Form CPO-PQR, I want to note that the teamwork this proposal required exists within our own agency's operational divisions, and with other domestic regulatory partners. Today we are

proposing to refine this form by taking into consideration how various streams of information received here at the CFTC may be leveraged across our divisions.

At the same time, we must acknowledge that many market participants within our regulatory purview also operate in areas overseen by the Securities and Exchange Commission. There has been some confusion surrounding the intended utility of various reports and the forms that investment advisers supply to each regulator.

Since 2011, when the SEC and the CFTC adopted new rules for private-funded advisers that are also registered with the CFTC as commodity pool operators or commodity trading advisors, we have further developed each agency's data utility needs. Today's proposal reflects those lessons learned, and I'm interested to receive feedback from the public on the streamlined approach presented therein.

I wish to take this opportunity to

commend my colleague, Commissioner Quintenz, on his continued leadership in advancing our core value of teamwork even beyond the CFTC, and in particular with the SEC. It is because we have cultivated such a relationship with the SEC that we are able to more effectively regulate through information-sharing without the inefficiency of redundant data collection by both agencies.

Turning from domestic to global coordination, I want to briefly mention the critical need for teamwork among international regulatory bodies. We are today considering two matters that reflect the CFTC's commitment to working with and deferring, where appropriate, to fellow regulators in other jurisdictions.

As the current pandemic has demonstrated, our global derivatives markets face global risks, and we must continue to respect, nurture, and utilize our relationships with regulators in foreign jurisdictions to achieve the most effective regulatory structure.

And finally, I want to speak about teamwork between the regulators and the regulated as an essential defense when it comes to data protection. Much like the rule before us today, which strengthens the data privacy protections of FCMs, swap dealers, CPOs, CTAs, IBs, and retail foreign exchange dealers, the Data Protection Initiative that I announced last year reflects our commitment to robust data protection measures for the sensitive data in our own systems here at the CFTC.

When it comes to data security, the Commission, like those we regulate, must have policies and procedures that foster heightened vigilance against the ever-evolving threats that confront us all.

In concluding, I want to thank several teams from the Division of Swap Dealer and Intermediary Oversight and the Division of Clearing Risk that have carefully prepared the rulemaking documents presented today, patiently

answered our questions, and tirelessly worked to accommodate our comments and input.

Thank you, Mr. Chairman.

CHAIRMAN TARBERT: Thank you very much, Commissioner Stump. Commissioner Berkovitz.

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman, this is Dan Berkovitz. I'll reserve my statements on each of the agenda items for when we actually consider those items.

I just want to echo at this time many of the comments made by my colleagues on the Commission in terms of thoughts and prayers for the people who are immediately affected by this crisis both in terms of their health and in terms of their economic well-being. This really affects virtually everybody in this country.

With respect to the CFTC, I want to express my appreciation to CFTC staff for their continued hard work under these circumstances, both in terms of monitoring the markets to ensure

market integrity is preserved, and also, extremely importantly, to help ensure the continuity of the markets.

Our financial markets are a critical infrastructure for this country. They enable risk, risk management to continue under these very difficult circumstances of really heightened risk, which is actually when you need these markets just as much as at any other time in periods of extreme volatility and risk.

And we have a critical role in helping ensure continuity of operations under those circumstances. The staff has been working very hard with respect to analyzing what's necessary in terms of relief for market participants who are also operating under extraordinary conditions and social distancing. They can't be in their normal place of operations, and we've taken necessary steps to ensure the continuity of operations.

And also I want to express my appreciation to the CFTC staff and you, Mr.

Chairman, for being proactive and ensuring that all the CFTC employees themselves have a safe workplace, and that we have the necessary infrastructure to hold meetings like this remotely. So preserving and protecting the health of our CFTC employees is absolutely critical, and I'm pleased that we've been very aggressive in that manner.

I also, with respect to the continuity of market operations, want to recognize our market participants in the efforts that they have made to ensure that markets continue. As Commissioner Stump said, this is an effort of many people, not just the CFTC obviously, in continuing market operations. But recognizing that the markets have continued to operate and so far been able, at least the derivatives markets, what I can speak to, have been able to meet their intended functions during this period of intense crisis.

Obviously we need to be vigilant. The longer this goes on, in many aspects of the markets

the stress, certain stresses, not only continue but certain stresses we can expect to build. And so, we need to be extremely vigilant to ensure market integrity is preserved and functions continue; market participants are protected as those stresses continue. And I want to express my appreciation for the staff and everybody at the Agency who is working towards continued monitoring of our markets.

With respect to the agenda going forward, I agree, it's important for us to go forward. It's important for us to always consider the latest information, the latest data, as we go about our activity in that respect. I also think at the same time we have to recognize, just as we have with respect to relief for market participants, the extraordinary demands upon those market participants just as they are upon us in terms of social distancing, not being able to (telephonic interference) at their workplace.

Although we can continue to telework,

my experience at least has been yes, we can do the job and we are doing the job, but it's not quite the same as being all together. There's a certain synergy that is more difficult to keep up, and obviously market participants in periods of extreme volatility, many are watching, you know, by the minute, many hours around the clock, market activities and ensuring that they are complying with regulatory requirements and able to maintain appropriate risk tolerances and whatever.

So there's a lot going on for our market participants, and in that respect, I think it's important for us to keep in mind the various extraordinary demands on them as we go forward with our agenda and ensure that they have adequate opportunity to participate and comment on and evaluate our activities.

So with that, I will conclude these initial remarks and look forward to the staff presentations. Thank you.

CHAIRMAN TARBERT: Thank you,

Commissioner Berkovitz. This is Chairman Tarbert, and I agree with you that, you know, we need to be cognizant of the demands on market participants. And so we will be as flexible as we can balancing staff work versus market participants in the comment process.

And what I would say is, you know, we'll try to be flexible with the comment deadlines. But regardless of what the deadline actually is, if you're able to get it in by the deadline, that's great. If you end up getting it in after the deadline, you know, we'll still make an effort to read your comments as we're going through the process.

So we do want people commenting. And if feasible, we'll review those comments, even those that come in after the deadline.

COMMISSIONER BERKOVITZ: Mr. Chairman, this is Commissioner Berkovitz again. I just want to say I appreciate that, and I would add when I was at the Agency previously in the years

when we were implementing Dodd-Frank, there were many rulemakings going on at the same time, and the Agency was under a statutory deadline to complete many of those rulemakings, and at that point moving forward aggressively on a rulemaking schedule.

And we got -- at that time there were many concerns raised by market participants about comment period times and whether there was sufficient time to provide input on the various rulemakings and their interaction with each other. At the time, the Commission had a, I would say, an informal policy, it was stated by the Chairman just I think as you've articulated, of flexibility in terms of the comment deadlines.

There were comment deadlines, and obviously if you got your comments in by the deadline, you were ensured that your comments would be considered, and of course the Agency would be obligated to consider them under the Administrative Procedure Act. But there was some flexibility in terms of that late comments would

be considered if it was feasible to consider them.

There wasn't an automatic steel gate that closed down at the end of the comment period. And obviously market participants would come in and want to meet with the Commissioners and meet with the staff after the comment period was closed, and those were very valuable to the Agency, and so those were continued where feasible.

Obviously, you know, if you're on the eve of a rulemaking, a meeting to finalize a rule, somebody comes in and says, "I want a meeting on this," it may not have an impact at that point, or it may not even be feasible to meet.

But certainly there was somewhat of a flexible policy put in that if people wanted to come in and meet or they wanted to file written comments and it was still feasible for the Agency to consider them, they would be considered.

And I think it effectively -- but there was no guarantee, of course, unless you submitted it on time. But there was an effectively -- a good

balance between enabling people who couldn't exactly meet the deadline to have their comments considered if feasible.

So if we can do that, as you stated, I think that would go a substantial way towards balancing these considerations.

CHAIRMAN TARBERT: Thank you very much, Commissioner Berkovitz. Absolutely that's, I think, the approach we'll take consistent with what we've done in the past.

Terrific. Well, again, this is Chairman Heath Tarbert. We'll then proceed, now that opening statements have concluded. For most of the items on today's agenda, the staff will make presentations to the Commission. The exceptions are that the European Stability Mechanism rules on the margin relief as well as the clearing requirement, we will have a presentation on those rules, but we'll have those rules together.

So there'll be one presentation covering both the third and fourth agenda items.

There won't be a presentation for the Consumer Protection Rule. I'll briefly explain what it is, and if we have any Commissioner thoughts on it, then we'll hear those, and then we'll go ahead and proceed to a vote.

And then for each of the items, each of the five items, we will of course have a separate roll call vote.

For each staff presentation, where we have them, the floor will be open for questions from each Commissioner. Following the close of discussion on each matter, as I mentioned, the Commission will vote on the recommendation. All final votes conducted in this public meeting will be recorded votes.

The votes, the results of the votes approving the issuance of rulemaking documents will be included with those documents in the Federal Register. To facilitate the preparation of approved documents for publication in the Federal Register, I'd now ask the Commission to

grant unanimous consent for staff to make the necessary technical corrections prior to submitting them to the Federal Register.

Okay, without objection, so ordered.

Well, I am pleased then to move to our first agenda item, which is the proposed, long-awaited proposed rule updating Part 190, essentially after 37 years. So at this time, I'd like to welcome Bob Wasserman from the Division of Clearing and Risk, who is on the phone who will -- presenting.

Bob has been working on these bankruptcy regulations -- or bankruptcy regulations at the CFTC for over 20 years. It's no secret to many of you on the phone today that he is our resident expert. If Bob doesn't have an answer to a bankruptcy question, it's unlikely that anyone does.

In addition to Bob, I know there have been some other people that have been helpful in this process. There was a reference made earlier

to the American Bar Association, who had a lot of input in helping us with this proposal. I'd also like to thank Andree Goldsmith, Kirsten Robbins, Carmen Moncada-Terry, and others who brought this awaited proposal to fruition.

So with that, Bob, go ahead and please proceed.

MR. WASSERMAN: Okay, good morning, this is Bob Wasserman, Chief Counsel, the Division of Clearing and Risk. Just want to make sure my voice is good.

CHAIRMAN TARBERT: Absolutely.

MR. WASSERMAN: Well, thanks, Mr. Chairman and Commissioners, and thank you to everyone who has made this extraordinary audio meeting possible. For everyone on this call, I very much hope that you and yours are in good health and are weathering the COVID-19 storm as best as can be.

Today, I am honored to present to the Commission a proposal to amend comprehensively the

Commission's regulations governing bankruptcy proceedings for commodity brokers. That is, futures commission merchants and clearing organizations.

The basic structure of the Commission's bankruptcy regulations, Part 190 of Title 17 of the Code of Federal Regulations, was proposed in 1981 and finalized in 1983. While a number of rulemakings have amended Part 190 in light of very specific issues or statutory changes, this is the first comprehensive revision of Part 190. And as a number of Commissioners have noted, it is the result of years of work.

Before going into the details of this presentation, it is meet and fitting to express appreciation to the many colleagues, both inside and outside the Commission, whose contributions have made this complex, detailed, and intricate proposal possible.

First, I would like to express deep appreciation to my colleagues in the Commission.

In particular, Andree Goldsmith, formerly of DCR, now in DSIO, pulled the laboring oar on the majority of the drafting. Kirsten Robbins of DCR and Carmen Moncada-Terry of DSIO also provided very significant contributions in drafting and in ideas.

Colleagues in other areas of the Commission contributed astute, incisive, and otherwise essential ideas and drafting, including Mark Fajfar, Carlene Kim, Dhaval Patel, Anne Stukes, Martin White, and Rob Schwartz of the Office of General Counsel. Ayla Kayhan, David Reiffen, and Scott Mixon of the Office of Chief Economist. And very importantly, my friend and colleague Tom Smith of DSIO, who used his long experience and extensive knowledge to help avoid errors in, and otherwise fine-tune, the rule text.

I also want to express deep appreciation to colleagues in the offices of the Commissioners. In particular, Erik Remmler, Chelsea Pizzola, Libby Mastrogiacomo, Peter Kals,

and John Dunfee for significantly improving the document both through insightfully challenging ideas and through a lot of editorial assistance.

I have personally wanted to update Part 190 since the Griffin bankruptcy in 1998, but I've simply never had the bandwidth. Then, in February 2015, a Part 190 committee was formed as a joint subcommittee of the Derivatives and Futures Law Committee and the Business Bankruptcy Committee of the American Bar Association Business Law Section.

The Committee conducted a review of the Commission's Part 190 regulations to identify potential areas for improvement, with a plan to draft comprehensive revisions in the form of model rules that the Commission could consider for potential Agency rulemaking.

The Committee included participants who represented a broad cross-section of interested parties, in particular attorneys who worked extensively in the areas of derivatives law, bankruptcy law, or both. It included lawyers at

law firms, futures commission merchants, clearinghouses and exchanges, other government agencies, and industry associations.

The ABA committee also included attorneys for the trustees in the bankruptcy cases of MF Global and Peregrine Financial Group, as well as attorneys who were formerly staff at the Commission, including one of the drafters of the original rules. Each of the members devoted significant amounts of time to this project.

In September of 2017, the Part 190 Subcommittee submitted a set of model rules, a comprehensive revision of Part 190. The ABA submission represents an extraordinary effort pro bono publico. It is an impressive and meticulous piece of work.

I can also affirm, having personally reviewed the submission over the past two years, provision by provision, line by line, and word by word, that the submission set out a set of model Part 190 rules that were consistent with the

Commission's longstanding goals in addressing commodity broker bankruptcies, which goals I will be discussing below.

The drafting of today's Notice of Proposed Rulemaking has benefitted greatly from the ABA submission, and my work has benefitted greatly from both the submission and from conversations with members of the ABA committee, both individually and collectively, to understand their thinking with respect to various aspects of the submission.

I would like to express sincere and deep appreciation to the committee and to its members, and in particular to the co-chairs of the Committee, Katie Trkla and Vince Lazar.

Now, whenever we talk about commodity broker bankruptcies it is important, in light of the availability bias, to put the discussion in context. First, the FCM ecosystem is strong, given its stringent capital requirements, daily and often intra-day marks to market, continuous

intra-day risk management, and the requirement that FCMs have in segregation at all times sufficient funds to meet fully their obligations to customers.

These requirements are enforced closely by dedicated staff both within the Commission and at self-regulatory organizations, or SROs. Those stringent requirements have only been enhanced in recent years through the addition of requirements regarding residual interest and direct access by Commission and SRO staff to information about balances at depositories, as well as other improvements.

FCM bankruptcies have been quite rare. Indeed, over the more than 22 years I have been working on these issues at the Commission, we've only had five, Griffin Trading, Refco, Lehman, MF Global, and Peregrine. Even when we add two analogous cases, Klein Futures, whose customer losses were covered by the exchange, and Sentinel, an FCM that technically didn't have any commodity

customers, that is still an average of less than one every three years, and the most recent FCM bankruptcy happened nearly eight years ago. Similarly, DCOs are required to and do have both resources and arrangements to ensure their financial strength, including rigorous membership requirements, tested and reviewed margin models, continuous risk management, and strong default resources.

For systemically important DCOs and those that have opted in to Subpart C of Part 39, the requirements are even tougher, in particular with respect to default resources and recovery plans, to meet requirements that were designed to be consistent with stringent international standards in the Principles for Financial Market Infrastructures. No CFTC-regulated clearing organization has ever come close to insolvency.

I think it is fair to say that the smooth and steady way in which Commission-regulated FCMs and DCOs have weathered the recent extraordinary

market volatility is yet further evidence of their resilience.

Nevertheless, it is our responsibility to maintain constant vigilance. We must prepare and make arrangements not only for what we expect to happen, but for what might happen, however unlikely. And one important way in which we do this is through the Commission's bankruptcy rules, Part 190.

Let's turn to some commodity broker bankruptcy concepts. Well, what are the Commission's historical goals in case of a commodity broker bankruptcy? First, we want to get customer funds back to customers, as much as possible and as fast as possible.

Our stringent regulations concerning segregation of funds during business as usual, including LSOC in the context of swaps, are a key tool for achieving this, and the segregation regulations work hand in hand with the bankruptcy regulations.

Another key goal of the Commission is to transfer promptly the positions of the failing FCM's customers to one or more healthy FCMs. Doing so protects customers, who keep their hedges, rather than being forced to reestablish them through other positions.

It also protects markets, which avoid being roiled by liquidation of a large mass of customer positions. The time for this to happen is limited to a couple of days at most, both because there are practical limits to how long a DCO can hold open positions that are not supported by a clearing member in good standing, but also because of the limits for the protection of transfers of Section 764 of the Bankruptcy Code.

Historically, we've had a lot of success in transferring the positions of customers of FCMs that are direct clearing members, and significant portions of customer funds in the hours and days after bankruptcy, and in returning significant portions of the remainder of customer

funds in the following months.

Today's proposal is intended to foster continued and enhanced success, including by incorporating lessons learned from past work-arounds.

I should also note that the Commodity Exchange Act endows the Commission with a powerful tool to use with respect to bankruptcy. Section 20 of the CEA gives the Commission the power, notwithstanding Title 11, that is to say, notwithstanding the Bankruptcy Code, to provide, with respect to a commodity broker bankruptcy, what is to be included in or excluded from customer property, how net equity of a customer is to be determined, and the method by which the business of the commodity broker is to be conducted or liquidated. Section 20 is an important source of authority for Part 190.

Let's turn to the proposal itself. While it carries forward significant portions of existing Part 190, there are important changes that

are proposed. I will discuss ten major themes in changes to Part 190.

The first major theme is regulation 190.00. To enhance clarity and transparency, the proposal would add a new section, 190.00, that is designed to set out the statutory authority, organization, core concepts, scope, and rules of construction for Part 190.

This section explains the Commission's thinking and intent regarding Part 190 in order to benefit and to enhance the understanding of DCOs, FCMs, their customers, trustees, and the public at large.

In particular, it also is intended to further an original goal of Part 190, namely, to serve as a quick reference guide to rapidly spin up the expertise of a newly appointed trustee who may have little experience in the derivatives industry. Moreover, setting out interpretations in the notice and comment rulemaking is especially important in light of the Supreme Court's decision

last term in *Kisor v. Wilkie*.

By doing so, the Commission demonstrates, beyond peradventure, that the character and context of these interpretations are an authoritative statement of a fair and considered judgment. Moreover, and particularly in light of the Commission's authority under Section 20 of the CEA, they are well within the Commission's substantive expertise.

Among the core concepts are the distinctions between public customers and nonpublic customers; the account classes, namely futures, foreign futures, cleared swaps, and delivery; and the concept of pro rata distribution. I will be discussing other core concepts in a few minutes as part of other major themes.

As to customer classes, nonpublic customers are those related persons or affiliates that are part of the house or proprietary account, while public customers are all other customers. Pursuant to Section 766(h) of the Bankruptcy Code,

customer property is reserved for customers to the extent of their claims, and nonpublic customers cannot be paid from customer property until the claims of all public customers are paid in full.

As to account classes, these were created as a result of perceived differences in risk and differences in how segregation worked for futures contracts, foreign futures contracts, and cleared swaps. Each of these categories is treated as a separate account class. The positions and associated collateral in each account class are segregated separately, and each of these account classes is treated separately in bankruptcy as well.

As to pro rata distribution, in many jurisdictions, customer claims for customer property are treated individually where there is a shortfall, depending, for example, on which particular securities by CUSIP or ISIN have gone missing. In the U.S. by contrast, claims are treated on a pro rata basis. All customers within

an account class suffer the same cents-on-the-dollar loss consistent with the ratable distribution mandate in 766(h).

There are costs to this approach. For example, where particular customer securities within an account class have gone missing, a customer who has posted only cash margin or another customer whose specifically identifiable property remains in full may feel hard done by where they suffer a proportional loss.

However, pro rata distribution is essential to prompt transfer and distribution of customer assets since the alternative is a time-intensive individual analysis of who posted what and who lost what. Moreover, pro rata distribution spreads a shortfall across all public customers, none of whom is responsible for the loss.

Second major theme is to protect public customers. Some of the changes would further support the implementation of the requirements,

established consistent with Section 4d of the CEA that shortfalls in segregated property should be made up from the FCM's general assets.

For example, Section 190.09(a)(ii)(g) includes as customer property current assets of the debtor FCM that should have been set aside as part of the debtor's targeted residual interest, pursuant to Regulation 1.11. This helps address the so-called Griffin problem.

Other changes further the preferences that public customers are favored over nonpublic customers and for pro rata distribution. For example, Section 190.09(c)(2) sets rules for distribution of excess customer property favoring those account classes whose distribution percentage is the least.

A third major theme is transfers. Other changes would foster the policy preference, which was previously discussed, for transferring, as opposed to liquidating, positions of public customers and those customers' proportionate share

of associated collateral. For example, this is set out as one of the key concepts in proposed Section 190.00(c)(4).

Fourth major theme is a bespoke framework governing the bankruptcy of a clearing organizing, Subpart C of Part 190. And I should note, by the way, that Subpart C of Part 190 is different to Subpart C of Part 39.

In proposing Part 190 back in 1981, the Commission decided to take a case-by-case approach with respect to clearing organization bankruptcies.

This decision was based on the rationale that the bankruptcy of a clearing organization would be unique, that there would be significant potential for disruption of the markets, and of the nation's economy as a whole, in the case of a clearing organization bankruptcy, and that it would be desirable for the Commission to actively participate in developing a means of meeting such an emergency.

Much has changed in the intervening 38 years. Markets move much more quickly, and thus the importance of quick action in respect to the bankruptcy of a clearing organization has increased. DCOs were established as a separate registration category. CME and ICE Clear Credit have been designated as systemically important to the United States financial system, pursuant to Title 8 of Dodd-Frank.

If one of these clearing organizations were to approach insolvency, it is quite possible that they would be resolved pursuant to Title 2 of Dodd-Frank. The bankruptcy of a clearing organization would remain unique. It remains the case that no clearing organization registered with the Commission has ever entered bankruptcy or even approached it. And thus the need for significant flexibility remains.

However, the balance has shifted towards establishing ex ante the approach that would be taken in addressing a DCO bankruptcy in

order to foster prompt action in the event such a bankruptcy occurs and in order to assist in planning for the highly unlikely event of a Title II resolution by establishing a clear counterfactual. That is, what would creditors receive in a liquidation in bankruptcy.

The proposed approach for the DCO bankruptcy is characterized by three overarching concepts. First, the trustee should follow, to the extent practicable and appropriate, the DCO's preexisting default management rules and procedures and recovery and wind-down plans that have been submitted to the Commission.

These rules, procedures, and plans will in most cases have been developed pursuant to the Commission's regulations in Part 39, and subject to staff oversight. This approach relieves the trustee of the burden of developing, in the moment, models to address an extraordinarily complex situation. It would also enhance the clarity of the counterfactual for the purposes of resolution

under Title II.

That said, the proposal would explicitly give the trustee discretion to vary from those rules, procedures, and plans in order to account for what is and isn't practicable in the circumstances.

Second, resources that are intended to flow through to members as part of daily settlement should be devoted to that purpose rather than to the general estate. While this is arguably the case under current 190.08, new section 190.19 as proposed is intended to establish this explicitly, and in detail, in order to provide legal certainty.

Third, other provisions would draw, with appropriate adaptations, from provisions applicable to FCMs.

A fifth major theme is the applicability of Part 190 in other contexts. The proposal would note the applicability of Part 190 in the context of proceedings under the Securities Investors Protection Act, or SIPA, in the case of

FCMs subject to a SIPA proceeding, that is to say, entities that are both broker-dealers and FCMs, and Title II of Dodd-Frank in the case of a commodity broker where the Federal Deposit Insurance Corporation, or FDIC, is acting as a receiver.

The latter point applies both to the resolution of a DCO, as we've just discussed, and also to the resolution of, for example, an FCM that is part of a systemically important bank.

A sixth major theme concerns letters of credit. In light of lessons learned from the MF Global bankruptcy, the proposal would clarify how letters of credit could be used as collateral, both during business as usual and during bankruptcy in order to ensure that, consistent with the pro rata distribution principle, customers who post letters of credit as collateral are, in an economic sense, treated the same, no better and no worse, as customers who post other types of collateral.

Seventh major theme is clarifying trustee discretion. Based on both practical

necessity and positive experience, the proposal would clarify in a number of areas that the trustee has discretion. For instance, recent commodity broker bankruptcies have involved many thousands of customers, with as many as hundreds of thousands of commodity contracts.

Trustees must make decisions as to how to handle such customers and contracts in the days, in some cases the hours, after being appointed. Moreover, each commodity broker bankruptcy has unique characteristics, and the bankruptcy trustees need to adapt correspondingly quickly to those.

Thus, the proposal recognizes the difficulty in treating large numbers of customers on a bespoke basis and would instead permit the trustee to treat them on an aggregate basis.

For example, proposed Section 190.03(c)(2) would permit the trustee to treat accounts as specifically identifiable property, depending upon whether they are identified as

hedging accounts on the debtor's records, and only if the trustee finds it reasonably practicable to do so under the circumstances of the case.

These changes represent a move from a model where the trustee receives and complies with instructions from individual customers to a model reflecting actual practice in commodity broker bankruptcies in recent decades, where the trustee transfers en masse as many open commodity contracts as possible.

I should note that these grants of discretion are supported by the Commission's positive experience working in cooperation and consultation with bankruptcy and SIPA trustees and their counsel.

On a related note, both the current and proposed versions of Part 190 favor cost-effectiveness and promptness over precision in certain respects, particularly with respect to the concept of pro rata treatment.

Following the policy choice made by

Congress in Section 766(h) of the Bankruptcy Code, the Commission is proposing that it is more important to be cost-effective and prompt in the distribution of customer property, that is to say in terms of being able to treat customers as part of a class, than it is to value each customer's entitlements on an individual basis.

Doing so fosters transfer rather than liquidation of customer positions and return of most funds to customers in time periods of days or weeks, rather than months or years. Similarly, calculations of each customer's funded balance are directed in proposed Section 190.05 to be “as accurate as reasonably practicable under the circumstances, including the reliability and availability of information.”

This language would allow the trustee to avoid more precise calculations where such precision would not be cost-effective or could not reasonably be accomplished on a prompt basis, for example in a situation where price information for

particular assets or contracts at particular times was not readily available.

This approach would lead to, first, in general, a faster administration of the proceeding; second, customers receiving their share of the debtor's customer property more quickly; and, third, a decrease in administrative cost, and thus in case of a shortfall in customer property, a greater return to customers.

The eighth major theme is updating Part 190 in light of changes to the regulatory framework over the past three decades. These include correcting cross-references to other parts of Commission regulations. Some of these changes codify actual practice in prior bankruptcies, such as requirements in proposed Sections 190.03(b)(1) and 190.12(a)(2), that an FCM or DCO notify the Commission of its imminent intention to file for voluntary bankruptcy.

In another case, the Commission is addressing for the first time the interaction

between Part 190 and recent revisions to the Commission's customer protection rules, specifically provisions regarding the FCM's residual interest in customer funds.

The ninth major theme is recognizing changes to the technological ecosystem. The proposal would recognize changes from paper-based to electronic-based means of communications.

For example, the use of communication to customers' electronic addresses rather than by paper mail, the use of websites as a means for the trustee to communicate with customers on a regular basis, and the removal of requirements for publication in a newspaper of general circulation.

The proposal would also recognize the change from paper-based to electronic recording of documents of title. Many of these changes also recognize the actual practice in prior bankruptcies.

Finally, in the context of delivery accounts, the proposal would, in contrast to the

current regulations, recognize that commodities that are deliverable can be either tangible or intangible, including virtual currencies.

And the tenth and last major theme is clarification. Many of the changes are intended to clarify language in existing regulations.

While some of these changes will address ambiguities that have complicated past bankruptcies, this comprehensive revision of Part 190 has also provided opportunities to clarify language in order to avoid future ambiguities and to add provisions to address circumstances that have not yet arisen in order to accomplish better and more reliably the goals of promptly and cost-effectively resolving commodity broker bankruptcies while mitigating systemic risk and protecting the commodity broker's customers.

The proposal explicitly notes in many cases that these clarifications are not intended to change substantive results.

Thank you again for your attention,

particularly under these extraordinary circumstances, and I look forward to answering your questions.

CHAIRMAN TARBERT: This is Chairman Heath Tarbert. I want to thank you, Bob, for that excellent and informative presentation. I also want to thank again all of those you mentioned in your presentation for their work over this during the past few years.

To begin the Commission's discussion and consideration of this rulemaking, I'll entertain a motion to approve the proposed rule revising Part 190.

PARTICIPANT: So moved.

PARTICIPANT: Second.

CHAIRMAN TARBERT: Thank you very much. I'd now like to open the floor to Commissioners to give statements and ask questions, and I'll begin. I'll start with some questions, and then perhaps give sort of a brief summary of my views as to why I'm supporting this

piece of -- this rulemaking, and with a further written statement with more details to be released later.

Bob, just sort of at a very high level, when I think about our Part 190 regime, I think about it really as having two major goals: to protect customers and then also to protect our financial system.

And two key preferences and trends in our bankruptcy regime are, number one, the preference for porting rather than liquidating positions, and, two, the preference for pro rata distribution, which allows a customer to receive a portion of his or her claim almost immediately.

And you don't necessarily see these sorts of principles in other parts of the bankruptcy code or in other regimes that implement it in the financial sector. So I wanted to ask you your thoughts on how are these preferences helpful not only to customers, but also the financial system more generally?

MR. WASSERMAN: Thank you, Mr. Chairman. So by porting positions rather than liquidating them, we are indeed protecting both the customers and the markets.

We're protecting the customers because they do not have to, in quite possibly roiled markets, reestablish their hedges or other positions.

And we are protecting the markets, because, essentially, we are avoiding a mass unloading or liquidation of positions, which would affect, essentially, market prices and, perhaps, in very bad ways.

Pro rata distribution, frankly, is necessary to make this possible, because if you have to determine, okay, what is each customer entitled to, whose particular assets were lost, you simply can't do things in the timely manner that is necessary in order to make this possible.

This really does need to be done in hours or, at most, days, and it's just

impracticable to do things at an individualized level.

On the other hand, by treating all customers the same, within an account class, you can basically say okay, what is it that we owe to customers as a group? What are the assets that we have?

You would then, as we have in the past, establish a reasonable buffer, and that's what fosters the transfers that avoid liquidation of positions.

CHAIRMAN TARBERT: Got it. So if I could sort of sum up, if I'm thinking about this from the vantage point of a market participant, one of the reasons I use these markets is to hedge risk, particularly for our end-users that have exposure in the futures markets.

And if I have a situation where I have to liquidate, the positions are liquidated as opposed to ported, that can create just a complete mess, as far as people that are counterparties may

have to re-hedge, I mean, it just can create turmoil. It's much better to take those positions and port them over to another FCM, if possible.

And then, secondly, if I'm in a situation where I have an account at the FCM, it fails, even if I'm not the customer that, let's say, created the -- if the reason is because of a default of a customer, which then causes the default of the FCM, rather than waiting years to get sort of my money back, having the pro rata distribution allows me to get back a lot of money quicker, all things being equal, as the process works itself out, eventually, over the years. Am I getting that right?

MR. WASSERMAN: Absolutely.

CHAIRMAN TARBERT: Got you.

MR. WASSERMAN: And I should further note that this approach has helped with U.S. competitiveness, in that I think there's a lot of folks from around the world that come to U.S. markets and use U.S. FCMs because of this, that,

essentially, in the event of a problem with the intermediary, at least we have this bankruptcy treatment that works better here than the bankruptcy treatments elsewhere.

CHAIRMAN TARBERT: Excellent. Thank you. And I have noticed that. So I should begin by saying, one of my favorite quotes on the subject of bankruptcy is in the 1926 novel by Ernest Hemingway, The Sun Also Rises.

And I think he best chronicles the anatomy of a typical bankruptcy. In the novel, the character Mike Campbell is asked how he went bankrupt, and he answers, "[t]wo ways, gradually and then, suddenly."

And my view is that that really describes bankruptcy. There may be gradual issues, minor financial operational troubles, but then they can be exacerbated by a sudden crisis and before you know it, you find yourselves in insolvency.

And I had the -- and while I was a lawyer

in private practice, I actually worked with the firm and worked on the Lehman Brothers bankruptcy, the Washington Mutual bankruptcy, and then, some of the insolvency work related to MF Global in the U.K. And so that had left an impression upon me about insolvency and bankruptcy.

And then I've also, in my career, worked on the resolution plans, the Title I bankruptcy resolution plans for some of the large systemically important financial institutions, thinking about what would happen if there was an insolvency and how they would unwind themselves or resolve themselves, let's say, using the bankruptcy regime, as well as the other regimes that are relevant to it, the FDI Act for the depository institution, the Securities Investor Protection Act for broker-dealer subsidiary, and also our Part 190.

And so that really left an impression upon me. So when I came to the Commission and took up my office in July, and I saw that this was a work

in process, I really homed in on it, because I can't stress how important it is to make sure that our insolvency regime is up-to-date, because we never know when we may need to use it.

And so I'm very pleased to support this proposal. Again, a tremendous amount of work has gone into it. And when I really think about what stands out as why this proposal is so important, I think number one is clarity for customers and creditors.

Clarity is absolutely critical for an insolvency regime and the fact that we're now updating it systematically for the first time in 37 years is really important, so that members of the public, players in the financial markets, as well as regulators, really have an understanding of what would happen under our Part 190 if we had an insolvency of an FCM.

And also, of course, for the first time, a DCO, providing clarity there. As you mentioned, back in 1983, we essentially left it open and said,

look, there's no playbook for a DCO, we'll see what happens.

And now, I think, we have worked on default management of recovery systems in the 37 years, most DCOs have a, quote/unquote, playbook and just providing some legal certainty that that would be the case will really help as far as clarity and market expectations, et cetera.

I will also, the second point I would raise, and so clarity is one of our core values. Commissioner Stump spoke very eloquently earlier in our meeting about teamwork. But two of the other core values are clarity, which I just talked about, and another one is forward-thinking.

And here, I think, not only have we sort of looked back at the past and said, what do we need to do for the past 37 years and update it, but we've also looked forward to the future, for future insolvencies.

And so the fact that we have mentioned and provided for digital assets, for example, as

a physically deliverable asset class, I think is also forward-thinking.

So I would put that out there as well, as well as 21st century modes of publication, not just newspapers, but obviously, online and other things. So I think that's really helpful.

And then, finally, one of our strategic goals has been to promote the interests of all Americans in our derivatives markets. It's so important that while people look at these markets and think they're fairly arcane and obviously they're highly technical and complex, ultimately, most sectors of our real economy rely on our derivatives markets for price discovery, as well as for risk hedging.

And one of the things that we make very clear is this idea that we reinforce the bankruptcy priority of public broker customers over nonpublic customers.

So, basically, the broker's proprietary and affiliate accounts, so that

ultimately, if someone's going to take a hit, it's not members of the public, it's not the customers, but rather, it's the FCM itself and their affiliates, the firm that is actually potentially, the firm that is going insolvent. And I think that's really important.

And then, the point that you mentioned earlier per my question, I think it's just really important that people understand the importance of porting customer positions to a solvent broker, rather than liquidating them, and the preservation of value that that has, as well as this idea of the pro rata distribution, in getting people their money quicker than would normally be the case if we went through a long bankruptcy process.

So that's my view on this. I am very pleased to support it. And with that, I will turn to Commissioner Quintenz for any questions, comments, he may have.

COMMISSIONER QUINTENZ: Thank you very much, Mr. Chairman. This is Commissioner

Quintenz.

Let me echo a lot of the comments that you just made and Bob Wasserman made in wonderfully summarizing not only the proposal, but also the significance and importance and uniqueness of the bankruptcy regime that has developed for our space and for the derivatives markets.

As you, Mr. Chairman, and others have said, this is the first comprehensive change to these regulations since they were first issued all the way back in, I think, 1983.

And today's a good day, I think it marks another important step in your agenda, Mr. Chairman, to update and make more efficient several areas of our regulations.

I'd like to reiterate what Mr. Wasserman and my fellow Commissioners have noted, that today's proposal was not hastily prepared or in any way a response to the current market events surrounding the COVID-19 pandemic.

Commission staff has been considering

these amendments since at least 2017, when that ABA Subcommittee finalized its work that it began a few years before that, to request that the Commission update Part 190.

And I also think it's important to reiterate that the ABA provided its proposal to the CFTC in response to the Project KISS initiative, which generally requested input from the public on how the Commission's regulations could be simplified to reduce compliance burdens.

And I'd just like to take a minute to commend my former colleague and our former Chairman, Chris Giancarlo, for launching that project, for launching Project KISS.

Because of how critically important it is, I believe, for agencies to consistently and regularly engage with the public and periodically review the regulations, some of which, like this one, may have not been amended for many years, to ensure that they're targeted, rational, transparent, and take into account any new

developments in the market that they affect.

Lastly, let me just reiterate some of the comments made, especially by you, Mr. Chairman, and Commissioner Stump in her beautiful opening statement about teamwork.

Since joining this Commission in August of 2017, I've been so impressed with the intellectual and institutional knowledge that some of our staffers bring to this Agency.

And while there are a number of names I could bring forward, Bob Wasserman is certainly at the top of that list, having worked at the Agency for, I think, 23 years now, having lived multiple FCM bankruptcies over that time that he's described and taking and making calls in the middle of the night, the regulator's court-appointed trustees, to ensure that customer funds were being protected and that positions could be moved expeditiously.

So, Bob, let me thank you for your dedication to the Agency, to our markets, and, just more concretely, for bringing this important

rulemaking forward, that has much of your institutional expertise and experience embedded in it, and acknowledge all of your colleagues that you mentioned and thank them for their contributions.

So let me just ask two quick questions, Bob, if I could, one on policy and one on process. I'd just like to highlight what the Chairman had raised around virtual currency.

Could you just again maybe summarize the effect of amending the definition of physically delivered property to include intangible commodities, such as virtual currency?

MR. WASSERMAN: Certainly, and thank you for your kind remarks.

I think the issue is that under the current regulations, deliverable, the delivery account class was defined to include documents of title, for instance, warehouse receipts, and physical commodities.

And so, of course, a virtual currency is in some ways the antithesis of a physical

commodity.

And so what we're doing is, first, and I did not get into this much in the discussion, although it is in the proposal, the delivery account class is being subdivided into cash delivery property and physical delivery property, because of some differences in, essentially, how quickly those can be distributed.

And then, in defining physical delivery property, the proposal makes clear that that could include both tangible and intangible property. The question is simply is it deliverable, and makes explicit that that includes virtual currencies.

And so that is indeed a significant change from the current regulation to the proposed.

COMMISSIONER QUINTENZ: Okay, great. That's a fascinating insight into how this regime has evolved and how we are, as the Chairman said, I think, bringing it forward into the 21st century and highlighting the forward-thinking aspect of one of our core values. So thank you for

incorporating that.

And lastly, you, Bob, you had mentioned how other regulators can be involved in some of these processes, FDIC, for example, and SIPC. Could you just describe what other regulators were consulted on this proposal?

MR. WASSERMAN: So really those are the main folks who we consulted, because, of course, the FDIC has an interest, both in how this interacts with their resolution planning.

Which I should note, again, we do a lot of work in terms of resolution planning for DCOs with our colleagues at the FDIC. And, again, we do that not because we think it is likely to happen, but because it's our responsibility to address these things however unlikely.

And as well, we work very closely with colleagues at SIPC, who gave us some very good comments, and actually suggested certain changes, which have ultimately made their way into the proposal, so that, essentially, making sure that

we're coordinating with those folks who have this very close relationship with our bankruptcies.

COMMISSIONER QUINTENZ: Okay, wonderful. Thank you very much, very pleased to support this proposal. Thank you, Mr. Chairman.

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

COMMISSIONER BEHNAM: Thanks, Mr. Chairman. This is Commissioner Behnam. I will first make a note, ask a quick question, and then, I'll just roll right into a statement, which won't take too long.

A lot of the questions that I intended to ask have been asked by you, Mr. Chairman, and Commissioner Quintenz, so I won't take up too much time.

That all said, I do want to point out that Bob Wasserman and I first met in 2011, unfortunately under circumstances which I think we both would not have preferred, but it was the MF Global bankruptcy. I was working in the Senate and

part of the team that was doing an investigation after the bankruptcy, which occurred on Halloween in 2011.

So just to reiterate and validate some of the comments that have been made about Bob and his value to the Agency, he was a huge value to the Congress back then in sharing his expertise and knowledge about commodity broker bankruptcies and the situation that had occurred, I think, largely, Bob, over the weekend, going into that week, and then, going into the bankruptcy and for the many days and months following the actual bankruptcy and the proceedings that unfolded.

Unfortunately, for a lot of folks, there was money lost and I think we did a pretty good job in the end, as the years unfolded, but certainly, some dark days at the initial onset.

So I do want to recognize, again, like my colleagues have said, Bob's work, dedication, and service to the CFTC, we certainly could not do a lot of the work that we do without him.

And in that vein, Bob, I'll just ask one quick question about MF Global and Peregrine, which we dealt with a few months later as well. You mentioned letters of credit, you obviously mentioned porting and trustee discretion as some of the core principles, which were all huge issues in MF and Peregrine, to an extent.

Is there anything else from those events back in 2011 and 2012 that you can highlight, outside of what you already mentioned in your presentation, as lessons learned and things that you have embedded or incorporated into this revision?

MR. WASSERMAN: Well, thank you again for your kind remarks.

I think it is the discretion that is one of the most important things. MF Global, of course, was the first bankruptcy where we actually had a shortfall, because in prior bankruptcies, the customer property was fully funded.

And we just had to react very much in

the moment to whatever happened, including, for instance, certain things had to be done by close of business Friday of that week.

And, essentially, we found ourselves -- or I'll be honest, I found myself basically saying, well, close of business Friday occurs one moment before opening of business on Monday, so as to give us the weekend in order to get things done.

And indeed, now, the definition of business day explicitly says it lasts until the beginning of the next business day.

And so we did things -- that is one of the lessons learned, but I think the broader is the importance in dealing with these things of giving the trustee certain discretion, so that they can adapt to the particular circumstances of what's happening.

COMMISSIONER BEHNAM: Thank you, I appreciate that. And I'm going to roll right into my statement, but I do want to recognize the Bar Association, I know that has been mentioned by a

number of my colleagues, up until now and their contribution over many, many years in sort of pushing, I think, the Commission in the right direction and guiding us.

Certainly, this proposal is our own, but a lot, like I said in my opening remarks, is due to the contribution and engagement of the public and in this case, particularly this bankruptcy proposal, a lot has to do with the subcommittee and the Bar Association and the thoughts that many professionals contributed to. So I do want to recognize them.

And finally, in addition to Bob, I want to recognize all the staff in DCR, DSIO, and all CFTC staff who have worked on this proposal, or at least one element of it, over many years, certainly a huge task and an important one, but certainly a lot of people participated in this and I do want to recognize that hard work, specifically at this very unique time.

So with that, I respectfully support

the CFTC's issuance of a proposed rule to amend Part 190 of its regulations. First and foremost, again, I want to thank Commission staff for all of their hard work on this proposal.

If finalized, it will be the first major update of the CFTC's existing Part 190 since 1983, when it was originally implemented by the Commission.

The proposal is not a response to current market conditions, nor is it a proposal that has only recently been considered. It's the product of years of staff analysis and engagement with market participants.

Several Agency Chairs, going back many years, deserve recognition and thanks for pushing to update Part 190 and starting this long process.

Customer protections are at the heart of the Commodity Exchange Act and it's imperative that the Commission have clear rules that direct how proceedings occur during a commodity broker bankruptcy.

The Commission, market participants, customers, and the public will benefit greatly from this proposal and I am proud to have contributed to this effort.

The revision is designed to recognize the many changes in our industry over the past 27 years.

The Commission finalized the existing Part 190 the same year that the movie Trading Places debuted, when futures trading, so distinctly depicted in the film, occurred exclusively in oval trading pits and markets were less global, less complex, and less sophisticated.

To paraphrase former CFTC Chairman Giancarlo, Part 190 is an analog regulation applying to what has since become a digital world.

While, personally, I was a lead advisor during the U.S. Senate's investigation of the 2011 MF Global bankruptcy, the eighth largest corporate bankruptcy in American history.

During the Senate investigation, I

learned the intricate contours of Part 190, its relationship to the bankruptcy code, and how the larger puzzle of creditors, customers, and equity holders, among others, fits together.

It was during those frenzied days that I truly appreciated the regulatory principle that customer margin is sacrosanct property. As a Commissioner since 2017, I have made customer protection an absolute priority, in part because of my experience during those few months.

Having spoken with many market participants throughout the bankruptcy proceedings, including those whose money disappeared in the days immediately following, customer protection is my most pressing responsibility.

The strengths and weaknesses of the Commission's bankruptcy regime were further laid bare just a few months later, in early 2012, following the bankruptcy of Peregrine Financial Group, a second blow in short order.

Important lessons had been learned, both in terms of what works and what does not work, and I believe today's proposal is a positive step to addressing both.

There are a number of changes in today's proposal that are intended to further support provisions of Part 190 that have worked in prior bankruptcies.

One of the themes of this refresh is clarity. The goal is to be as clear as possible about the Commission's intentions regarding Part 190, in order to enhance the understanding of designated clearing organizations, futures commission merchants, their customers, trustees, and the public at large.

Changes in this proposal would foster the longstanding and continuing policy preference for transferring, as opposed to liquidating, the positions of public customers, an important customer protection.

Other changes further support existing

requirements, including that shortfalls in segregated property should be shored up from the FCM's general assets and that public customers are favored over nonpublic customers.

The proposal also grants trustees enhanced discretion based upon prior positive experience and codifies practices adopted in past bankruptcies by requiring FCMs to notify the Commission of their intent to file for voluntary bankruptcy.

Other changes address what has not worked or become outdated. In light of lessons learned from MF Global, the Commission is proposing changes to the treatment of letters of credit as collateral, both during business as usual and during bankruptcy, in order to ensure that customers who post letters of credit as collateral have the same proportional loss as customers who post other types of collateral.

The proposal also addresses a number of changes that have naturally occurred in our markets

since the original Part 190 finalization in 1983.

The Commission is proposing a new Subpart C to Part 190 specifically governing the bankruptcy of Clearing Organizations. As DCOs have grown in importance over time, including being designated systemically important by the Financial Stability Oversight Council following the financial crisis, the Commission believes that it is imperative to have a clear plan in place for exactly how a DCO bankruptcy would be resolved.

The proposal also addresses changes in technology over the past 37 years and the movement from paper-based to electronic-based means of communication, a stark reminder from the Peregrine Financial bankruptcy.

I am hopeful that the 90-day comment period will allow sufficient time for the public to digest this extensive proposal and provide fulsome comments.

There can be no higher demand of market participants and the general public than to assist

and guide the Commission in its duty, especially for one as important as this proposal. It's absolutely critical.

I'd like to close by again thanking staff for all of their hard work, specifically Bob Wasserman and his team, in producing this refresh of the Commission's Part 190 rules to provide important customer protections and I look forward to considering comments from the public as the Commission considers this critically important rule.

Thank you, Mr. Chairman.

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

COMMISSIONER STUMP: Thank you, Mr. Chairman. This is Dawn Stump.

And I, too, want to thank the team. I know there have been many mentions of how hard Bob and his entire team have worked for a number of years on very complicated and technical matters.

I also want to thank Libby

Mastrogiacomo on my team, who is very well-versed in these technical matters and helped me as we sorted through them.

And so today I want to focus my questions on how the DCOs are impacted or treated under the rule proposal. While DCOs have always been a part of Part 190, the proposal today acknowledges that they're unique and it creates an entirely new subsection that would govern their bankruptcy.

So I'd like to ask first about the relationship between the CFTC's bankruptcy regulations and resolution by the FDIC that was created under Title II of the Dodd-Frank Act.

First, I wanted to see if Bob could walk through the criteria that must be met for an entity to be resolved under Title II of Dodd-Frank.

MR. WASSERMAN: So under Section 203(b) of Dodd-Frank, there are a number of criteria. Perhaps the most important of these are that the entity be in default or in danger of

default.

And I should note that with respect to DCOs, I think we are looking towards an interpretation that would include an inability to maintain the required financial resources, those that are required by regulation, as something that would be included in "in danger of default."

There has to be no viable private sector alternative to prevent the circumstance. And very importantly, a determination must be made that the entity's bankruptcy would have serious adverse effects on the financial stability in the United States.

COMMISSIONER STUMP: Thank you. So given that resolution under Title II is an alternative to the bankruptcy proceedings, might we discuss how the additional clarity we're providing in the proposal today, and that we're providing for DCO bankruptcy proceedings specifically, enhances the ability of market participants to predict their exposures in the

event of a resolution of a DCO under Title 2?

MR. WASSERMAN: And so what this does is, essentially, it establishes the counterfactual for what we frequently refer to as "no creditor worse off."

That is to say, creditors, including the members of the DCO, would be entitled in Title II to be no worse off than they would be in a liquidation bankruptcy.

And so by clarifying how things work in the liquidation bankruptcy, we're essentially adding clarity and transparency for the benefit of those market participants, as well we are assisting with the planning that I mentioned our colleagues at FDIC and we are engaging in to address this highly unlikely situation.

COMMISSIONER STUMP: Right. And I appreciate the amount of time you spent with me on this particular point, Bob, with regard to "no creditor worse off," and the fact that it's essential to have both metrics available to you in

order to determine which one would result in no creditor worse off, meaning the DCO bankruptcy proceeding, as well as the Title II resolution proceeding.

And so I think that's a really important point that we need to have both metrics available to the decision makers in those circumstances. So thank you for that.

To what extent are we proposing that a trustee in a DCO bankruptcy proceeding adhere to a DCO's default rules, recovery plans, and wind-down plans?

MR. WASSERMAN: So what we're doing in 190.15 is essentially instructing the trustee to take actions in accordance with those default rules and procedures and the recovery and wind-down plans, to the extent practicable and subject to the trustee's discretion. And so there's a balance there.

COMMISSIONER STUMP: Great, thank you. And just one final question. The proposal

contemplates that under certain circumstances, the bankruptcy trustee could request permission of the CFTC to continue to operate a DCO for six calendar days after the order for relief. There are many considerations to consider, but can you explain the conditions under which this would be permitted?

MR. WASSERMAN: So, of course, what we're dealing with in a potential DCO bankruptcy is an entirely unprecedented situation, and we're trying to avoid completely mechanical action.

So this is essentially a possible discretionary pressure release valve, if the continued operation of the DCO would facilitate either prompt transfer of the clearing operations of the DCO to another DCO, in other words, essentially, there is a transfer that is in train and is possible, but you just simply run out of time, or similarly, moving the entity into resolution, that is to say, resolution pursuant to Title II.

As we were just discussing, there are

a number of preconditions to putting an entity into resolution under Title II, those take material time. And so, again, there's a possibility that you run out of time, but it is in the offing and so you just need, perhaps, a couple of more days.

Now, however, we also would need to, the Commission that is to say, would also need to find that doing this would be practicable. By that, we're talking about that the DCO rules permit it, that is to say they don't mandate liquidation of everything in bankruptcy right as the hammer falls.

And it would need to be the case that all or substantially all of the members are both willing and able to make their variation payments, because of course you can't keep the DCO going if the members are not willing to participate.

COMMISSIONER STUMP: Great. Thank you. That concludes my questions. Again, I really appreciate the efforts of the team and the market participants and the experts that contributed to this, and I look forward to the

public weighing in and helping us get this rule to a final form.

CHAIRMAN TARBERT: Thank you very much, Commissioner Stump. Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman. This is Dan Berkovitz speaking.

I'd like to pick up, Bob, on the point that the Chairman raised in his questions, and that's the underlying objectives of the bankruptcy provisions in the statute and our regulations implementing that.

And that's really the dual purposes, both for customer protection and protection of the individual market participants, as well as the systemic importance of these regulations. Can you just elaborate a little bit on the major, on those two major objectives for the bankruptcy provisions?

MR. WASSERMAN: I think it's fair to say that the two work hand-in-hand. And so as we

discussed, by doing things like getting as much money to the customers, along with their positions as part of a transfer as quickly as possible, we are protecting the customers, which is of course one of our most important jobs, we are protecting the system, by avoiding large-scale forced liquidation, and very importantly, we are protecting confidence in these markets, both in the immediate event and in the longer term.

And so essentially, by following these goals, we both protect customers and protect markets.

COMMISSIONER BERKOVITZ: And on that last point, on confidence in the market, that's just not necessarily in boosterism, but to the extent that people have confidence that the positions will be protected in the event of a bankruptcy of an FCM, for example, that will presumably avoid runs on the system and people heading for the hills when they say, uh-oh, I'm wondering about either my counterparty or my

clearing firm, they don't take preemptive action and start liquidating and then, other people get scared and they liquidate and we have what used to be called a panic, basically, or runs on the bank, essentially.

So that confidence helps avoid that type of systemic crisis, correct?

MR. WASSERMAN: Indeed.

COMMISSIONER BERKOVITZ: So let me go to some specific examples, and I think these are illustrative. It's not, we're not doing this because the bankruptcy current code and provisions are broken in any respect, are we?

MR. WASSERMAN: No. I mean, I think things have worked very well in the past. What we're doing, really, is updating them.

And in bankruptcy, we want to minimize ambiguity. And so while we've been successful in freely interpreting certain things in the past, it's a lot better to have them certain.

As I've often said, my nightmare is if

we are actually trying to do a transfer and someone objects and the judge says, well, that raises some interesting issues, let's set up a briefing schedule, which means, of course, that the transfer can't happen.

And so by updating these rules and by clarifying them, we are essentially sort of locking in the success of the past and hopefully enhancing the likelihood of success in the future.

COMMISSIONER BERKOVITZ: Great. So let me look at, let's just quickly look at a few of the ones that you mentioned.

One recent one that pops into mind is Lehman Brothers.

And of course, Lehman, really, the bankruptcy or the impending -- well, the bankruptcy of Lehman really was the, perhaps -- there were a number of events, obviously, that triggered the financial crisis in 2008, but the bankruptcy of Lehman really was a major event that almost froze the markets overnight and really was the apex, I

think, of that 2008 crisis.

But the Lehman bankruptcy and what did that was not in the clearing space or not in their respect as an FCM, is that correct?

MR. WASSERMAN: Oh, indeed. I mean, basically, the bankruptcy of Lehman, from the perspective of the derivatives industry, worked very, very well indeed, in that their positions at the clearing houses, their house positions were liquidated, at least at the U.S. DCOs, within margin.

And the, essentially, the Lehman, because they were able to arrange a transfer and because all of the funds in fact were there, essentially, they went into a SPRA proceeding at around 2:30 on a Friday afternoon, the transfer was approved by Judge Peck at 1:00 a.m. Saturday morning, and essentially, aside from a few hiccups, which inevitably there were and will be, the customers were able to have all of their positions and all of their funds once the markets opened

Sunday afternoon and Monday morning.

And so in that case, we were able to achieve, customers got what they were entitled to, which is all of their funds at all times.

COMMISSIONER BERKOVITZ: So if you had commodity interests, as defined then at the time with Lehman, from Friday to Monday, you've got basically everything, everything was preserved and transferred in that time over that weekend, is that what I understand?

MR. WASSERMAN: Yes. I mean, again, there were a few hiccups, but putting aside that, essentially, you just had people answering the phone on Monday, instead of Lehman, you got Barclays. But essentially, everything worked seamlessly.

COMMISSIONER BERKOVITZ: And if you were, if it wasn't a commodity interest, if you were just a general creditor for Lehman, but you had to wait ten years and over a billion dollars in fees later, people got some money, essentially. I

mean, the rest of that proceeding was a nightmare, correct?

MR. WASSERMAN: Oh, yes. I mean, there were -- I honestly don't know exactly when distributions happened, but yes, it did indeed takes -- that whole bankruptcy took a very, very long time.

And I do believe, yes, the administrative expenses, including attorneys' fees and especially accounting and bookkeeping and just all of that stuff, the figure I've heard is something on the order of $5 billion for that very, very complex bankruptcy.

COMMISSIONER BERKOVITZ: And I remember very vividly the weekend where you were, you and former Chairman Gary Gensler were on the phone with MF Global, trying to preserve their assets over that weekend, and then, the declaration of MF Global bankruptcy, I believe it was Monday morning at the opening of the SIPC proceeding.

And we deputized you to go into court,

I believe, either that afternoon or the next day, on MF Global. I remember those events very vividly.

How much did customers eventually get back in the MF Global proceeding?

MR. WASSERMAN: And so in the opening, literally the opening days, they got back 60 percent. In a couple of weeks, yes, or two months or so later, they were up to 72. Customer claims in MF Global were ultimately paid off at 100 cents on the dollar.

Now, again, I emphasized, what customers are entitled to is all of their money at all times. And so they did not get what they were entitled to. But for a bankruptcy, getting that much money that quickly and getting all of it in the fullness of time, is very good.

COMMISSIONER BERKOVITZ: So as I mentioned, we sent you up there, or we deputized you to represent the Agency in that proceeding, and you were in court, I don't know if it was that

afternoon or the next day, I guess you said.

What is -- so we're talking in this rule about the trustee and the powers of the trustee, but is the trustee an independent actor or what's our role with respect to the trustee and what would our role be under these amendments, in terms of protecting customer assets and being involved and providing guidance to the court and the trustee? What did you do up there?

MR. WASSERMAN: Well, basically, on the one hand, the trustee is independent. On the other hand, as a formal matter, we have the right to appear and be heard on any such bankruptcy or a SIPC proceeding would then quickly go into bankruptcy court.

But as a practical matter, we work very, very closely with the trustee and the consultation is constant. I mean, basically, yes, that week, two all-nighters in three days, for the first time since college, and basically, at the trustee's offices.

Because, again, it is in the interest both of the Commission, in protecting customers and markets, and the trustee, in doing their job, that, essentially, they are in fact working hand-in-hand in cooperation and that, essentially, when presentations are made to the bankruptcy court, that it's very clear that we are truly arm-in-arm on these things.

And so and that's true both, very much so in the initial days, but on an ongoing basis, as the trustee is making more significant decisions, there will be consultation between the trustee and their counsel on the one hand and the Commission and staff on the other.

COMMISSIONER BERKOVITZ: You mentioned the principle, in your statement, in your excellent statement, the pro rata distribution.

And so when you've been talking, we've been talking about Lehman and MF Global, the number 60 percent initially and then, 70 and then, finally, 100 percent.

And under pro rata, large customers, small customers, big bank, commercial Main Street people, firms, farmers, ranchers, banks, whatever, they're all treated equally. Have distributions in practice been pro rata or have larger participants gotten better deals out of the system?

MR. WASSERMAN: No, everyone gets the same pro rata distribution. Now, again, as a practical matter, smaller folks may have less liquidity and less ability to wait for distributions.

And so by getting more money out quickly and by fostering a maximum distribution, we basically help everyone, but in particular those who need the money fastest, by giving them more of that money.

And as well, to the extent that they end up selling their claims as part of a claims trading market, we enhance the value of those claims in the claims trading.

And so, again, all the claims get paid

off at exactly the same percentage within each account class, but different folks are going to have different needs and different abilities to wait.

COMMISSIONER BERKOVITZ: And how does that typically get -- does that get expressed in a proceeding? Or do you need, if you're a claimant, do you need a lawyer to get your money out of this proceeding? Or do people with lawyers do better than people without lawyers? Or how does the main -- who's looking out for the Main Street person in these proceedings?

MR. WASSERMAN: Basically, the aim of having the claim form is that, no, you don't need a lawyer. Certainly, if you're an ordinary customer, putting aside cases where there may be differences as to what should be in a particular customer's account; essentially, this is really a do-it-yourself thing.

And, obviously, one of the things that we're trying to do is, both in revising the proof

of claim form that we put in as sort of the notional proof of claim form and in giving the trustee the ability to adapt that to the circumstances of the particular bankruptcy, is to make this proof of claim form as user-friendly as practicable in the circumstances.

COMMISSIONER BERKOVITZ: So, and I'm going to ask the following question, with all due respect to all the folks involved at the ABA Committee.

I've got tremendous respect for that ABA Committee and they put a lot of work into it and it's really a significant endeavor, as you've noted. But the fact is, it's an ABA Committee and these are very experienced lawyers working for generally large institutions.

And then -- so how, was that proposal considered within the Agency to ensure that it considered the interests of all potentially affected parties?

I think it's probably, again, it's not

a criticism of the committee, it's just a reflection of the membership represented by ABA Committee lawyers, who represent generally large institutions, and so when we get that proposal, and it was an excellent proposal, how do we review it?

How did you review it to ensure that the product that we see today protects the interests of everyone, including some people who might not have been on that committee?

MR. WASSERMAN: I guess what I would say is this, to a certain extent, arguably the proposal was against the interest of a lot of the lawyers, particularly those in private practice on the committee.

I mean, it's been more than 20 years now since I myself was in private practice, but obviously the more complex things are and the more litigation there is and the more arguments there are, the better it is from a billing perspective.

And, essentially, a lot of these changes are basically intended to avoid ambiguity,

avoid complication, avoid the sorts of disputes, and from another perspective, avoid opportunities for billing it.

From an internal perspective, I think it's fair to say that I and the team, as I mentioned before, looked at this, we did not take any of this as given.

We really went through this provision by provision, line by line, word by word, to make sure that this was in fact achieving the goals that we have of treating everybody equally, at least among the public customers, and of doing the best that we can for the public customers and protecting the markets.

And so there was a very intense review of this that was -- and that's part of the reason why it took two years, now we're getting on two and a half, to get here.

COMMISSIONER BERKOVITZ: Yes, I appreciate that and I'm fully supportive of our effort to really look at that proposal.

And it was a significant proposal and I think the ABA did a service in doing that, but I think we have the obligation to go over that independently and look at it with our independent eyes, which I commend you and the other staff people who did that.

And I just note that if this proposal certainly were the genesis from Project KISS, in certain effects, it totally missed that mandate, because it's neither simple nor stupid. It's incredibly -- it's complex and it's very intelligent. And I think that's a reflection of all the work that's been put into it.

So I'm supportive of the proposal, for a number of reasons that have been already discussed. It's a needed update to these regulations.

These bankruptcy protections, the code, and the regulations are really two purposes. One is customer protection and the other is to avoid systemic risks. And I'm going to be supporting the

proposal today. I have a more lengthy statement on my statement of support.

One final question on this. Do we allow -- if market participants say, look, you may place emphasis on speed over accuracy, but I want accuracy over speed and I really want my last dollar, do we allow people to opt out of this or is there basically everybody in it?

MR. WASSERMAN: So two things. No, I mean, basically, pro rata distribution is a command of Congress in 766(h) of the bankruptcy code. And so there is no opting out.

And again, of course, if -- to be sure, folks can, and a number have, become direct clearing members and, thus, avoid intermediation at all.

That is a very heavy burden, though, particularly for nonfinancial firms, in the sense that first you have to, essentially, participate in mutualized default resources, which certain types of customers really can't, for instance,

pension funds and the like.

And as well, the need to be able to meet margin calls on a daily and intraday basis requires a very sophisticated treasury and liquidity function that most nonfinancial firms would find very difficult.

One point I should add, by the way, to my answer to your previous question, as I said, the proposal benefitted greatly from the ABA submission.

It is not identical. There are a number of significant changes. Those came as just basically more in the nature of technical differences and operational differences, in terms of how to get there.

And so this is not -- it very much benefitted from the ABA submission, but it is not the ABA submission. It is, indeed, a Commission product.

COMMISSIONER BERKOVITZ: Great. Well, thank you very much for that, Bob, and I

appreciate the work you and your team put into this over the years. Literally, it was years that you put into this, and not just reviewing the ABA proposal, but your many years of service to the Commission and expertise on bankruptcy.

As I said, I remember that weekend very vividly, when MF Global was going down the tubes and the meetings the following week and you going up to the court in New York immediately after that. So you've been clearly a great asset to the Commission.

And I also do want to express my appreciation to the ABA for providing us with that document to work off of, it's been a great benefit to us.

And I look forward to the public comments. And now it goes to the next phase, where we put this out to the wider audience and we'll get the comments from the entire range of market participants.

And I look forward to working with you

and my colleagues on the Commission to getting the much needed update to our bankruptcy regulations. These have really contributed to the soundness and success of our derivatives markets. And so I'm pleased to support the proposal today. So thank you, Mr. Chairman.

CHAIRMAN TARBERT: Thank you very much, Commissioner Berkovitz. Well, we've come to the end of our presentation and Q&A period. So I'll ask the following question. Are the Commissioners prepared to vote?

PARTICIPANT: Yes.

CHAIRMAN TARBERT: All right. Excellent. Mr. Kirkpatrick, our secretary, will you please call the roll for the proposed amendments to Part 190 of the Commission's rules?

MR. KIRKPATRICK: Thank you, Mr. Chairman. This is the Commission's secretary speaking.

The motion now before the Commission is on the approval of the proposed rule revising Part

190 of the Commission's regulations. Commissioner Berkovitz.

COMMISSIONER BERKOVITZ: Commissioner Berkovitz votes aye.

MR. KIRKPATRICK: Commissioner Berkovitz votes aye. Commissioner Stump.

COMMISSIONER STUMP: Commissioner Stump votes aye.

MR. KIRKPATRICK: Commissioner Stump votes aye. Commissioner Behnam.

COMMISSIONER BEHNAM: Commissioner Behnam votes aye.

MR. KIRKPATRICK: Commissioner Behnam votes aye. Commissioner Quintenz.

COMMISSIONER QUINTENZ: Commissioner Quintenz votes aye.

MR. KIRKPATRICK: Commissioner Quintenz votes aye. Chairman Tarbert.

CHAIRMAN TARBERT: Chairman Tarbert votes aye.

MR. KIRKPATRICK: Chairman Tarbert

votes aye. Mr. Chairman, on this matter, the ayes have five. The noes have zero.

CHAIRMAN TARBERT: Thank you. This is Chairman Tarbert. I am pleased to say that the ayes have it. And the motion on the proposed rule is hereby approved.

We will now turn to the second item on the agenda. Again, this is Chairman Tarbert. And that item is the proposed rule on the compliance requirements for commodity pool operators on Form CPO-PQR.

At this time, I'd like to invite a second staff presentation on the proposal of -- this is in rule, this is in Part 4 of our Commission's rules.

From the Division of Swap Dealer and Intermediary Oversight, we have on the phone Josh Sterling, our director, and Amanda Olear, our deputy director. I want to thank both of them for their outstanding work on this, and also Rafael Martinez for his contributions.

I also want to thank Commissioner Quintenz, who has been certainly a supporter of looking into Form CPO-PQR. Commissioner Quintenz actually happens to be I think the only member of the Commission who actually ran a commodity pool, who was a commodity pool operator. And that unique experience I think has been a tremendous help certainly to me as we look at these regulations.

During their presentations, Josh and Amanda will be referring to PowerPoint slides that are available on the CFTC website. So with that, I will go ahead and turn it over to you, Josh and Amanda.

MR. STERLING: Thank you, Mr. Chairman. This is Josh Sterling, the DSIO director, speaking. I'll begin the staff presentation.

Mr. Chairman and Commissioners, good day to you all. It's great to be speaking with you again at an open meeting. And like you I'm sure, I look forward to a time when we can all meet in

person together again.

And I must tell you all, as well as today's audience, that my heart is full with pride and admiration for my division. The simple truth is that they lead me by their steadfast example.

Well, we're here today to propose a significant refinement of the commodity pool reporting form known as Form CPO-PQR. In doing so Amanda and I will also share with you significant enhancements we, in DSIO, are undertaking to enhance registrant oversight through the use of current market-based data.

Our proposal and the corresponding changes and how DSIO will use market-based data both fit with our longstanding theme of taking a smart, effective, and practical approach to registrant oversight through our five building blocks program.

It's been said perhaps so many times it's now trite that a picture is worth a thousand words. Well, I think this koan must have emerged

before the advent of the 20th century phenomenon known as abstract impressionism, which puts paid to that ancient received wisdom.

If you were to look, figuratively in this case, at a Jackson Pollock painting, for example, you'd probably have no idea what that picture is supposed to be saying.

There's clear evidence of intent and certainly a lot of different colors and textures are on full display. But really there's no actual picture. Even the titles themselves say very little. They're called Number 5, Number 41, Convergence, and so forth.

As an artist, he suffered tremendously for his work. And we can be assured that Pollock meant to convey something profound. So equally brilliant and obscure, the full import of Jackson's work remains veiled, ideas both genius and ineffable having been lost in translation.

As the director of DSIO, I have to confess feeling the same way about our Form

CPO-PQR. Like a Pollock canvas, the form contains much but conveys considerably less than a full picture.

Here, however, the failure is one of design rather than obscurity of purpose. This design failure can be measured by the output; that is we can certainly see which pool reports what information, but we really don't understand what the CPO is trying to tell us about itself as the controller of an account that takes positions in our markets.

Nor do I think the form and the efforts registered firms undertake to complete it quarterly in many cases can be sustained by what some call the regulator's Ragu principle. The idea being just like that great staple of the American dinner table, because the form is so detailed, quote, it's in there most definitely, so let's just keep using it, while a vague antecedent assigned for mass marketing spaghetti sauce, but it makes a poor governing thesis for regulatory

reporting.

So whether or not it is in there, I can say with absolute conviction that Form CPO-PQR is quite like a Pollock painting in its effect, large and messy, requiring considerable effort to produce, yet resulting in a canvas that coheres into no clear picture and countless hours spent by the beholder, our staff in this case, pondering what it is all supposed to mean.

With these now exhausted metaphors as prologue, I will share with you key observations about my division's experience with the form.

First, CPO-PQR reporting is not suited for the CFTC's critical role as a market regulator. The degree of pool-specific insight it affords might create a sense of certainty, but it is by having the ability to know what's going on in each pool we, thus, understand what's going on in each CPO.

And to illustrate the complexity of the form and the volume of information at hand, I would

ask the secretary to please put on display our slides and pull up in particular slide 1.

If that's not possible, I will simply convey for the benefit of the listening audience that when you total it up, the number of questions, the number of pools involved, and how often they file, quarterly or annually, you're looking at, you know, well over a half a million responses we get to the 155 questions on the form.

So the degree of data reported is indeed significant. Excuse me. And a full data set can certainly inform policy decisions, rulemakings, and other regulatory actions.

Yet, paradoxically, even though we're getting over a half a million responses on the form every year, we would actually need even more pool-specific information if we really wanted to understand how CPOs affect our markets by taking the proverbial bottom-up perspective that the form uses.

More to the point, we'd need at least

a detailed summary of the operating terms of the governing document for each pool, along with a clear explanation of the pool's strategy and risk limits.

And that's to say nothing of side letter terms that can bear on things like investment exposure, redemption, and other key operational matters in the life of a fund.

Plainly, these additional steps, which I do not endorse, to be clear, would go well beyond the private fund reporting that Congress mandated in Sections 404 and 406 of the Dodd-Frank Act, reporting those actually captured by Form PF, our joint reporting form with the SEC.

So like all paradoxes, there is a greater truth to be revealed here. And it's simply this. We do not need all the data currently reported on Form CPO-PQR to understand how CPOs transmit liquidity and, therefore, necessarily risk in our markets.

As an agency, we have market-based data

available to help us understand how CPOs can affect our markets. We, in DSIO, are well on our way to taking this approach while the proposal undergoes public review and comment.

This better approach focuses directly on the control of investment decisions in our markets rather than some aggregate of how individual portfolios and their constituent pieces interact with each other, or more precisely, how all that would have worked some months ago at the pool level since PQR data are aged by a couple months when they arrive at our doorstep. And that's several lifetimes ago in market terms.

We, in DSIO, see no need to wait on aged data before we can start to understand how CPOs affect markets that the agency as a whole regulates. We can do a better job of oversight by using risk monitoring tools that do rely on existing and more centralized data streams about market activity.

It appears we're having a bit of a

technical issue in an otherwise flawless setup for today's open meeting by phone and Webex. So I will simply refer the Commissioners and the audience to the slides on the home page or the web page of the CFTC, excuse me, to indicate what's articulated in our last two slides very quickly.

Essentially, at the agency we have access to two very important buckets of data: swaps data from the swap data repositories, as well as information for futures and options, cleared products coming from the exchanges.

What we're working on and are committed to doing and the revised form will help us with by seeking legal entity identifier information, LEIs, will be to pull in this trade data in a way that's identified to specific market participants, including our registrants that are CPOs, CTAs, FCMs, and dealers.

And once you tie market transaction information under the auspices of our division to the actual registrants, you'll begin to understand

investment decision making and investment positions in a more dynamic way with much more current information that would be available from the PQR form.

You can understand the transmission of risk, and this would be the third slide on the website, both in a cleared context going from a CPO/CTA as a decision maker controlling accounts through an FCM into a clearinghouse and certainly bilaterally from a CPO to a swap dealer in the case of a swap contract.

So I think that that ability to focus on interconnections with market data is altogether the right approach that I would recommend the agency take and, indeed, it has taken.

And I should thank in that regard the efforts of Commissioner Stump with her data initiatives in sort of spurring our thinking about how we can make better use of the data we already have.

So having articulated just a little

bit, and it's in the slides, of what we propose to do alongside the proposal, and they are separate, I do note that there still is value in collecting more focused, census style information from CPOs on a quarterly basis much like the National Futures Association, or NFA, does.

That will help us augment our focus on the position information, the transaction information at the CPO level as the controller of accounts.

So to address how the proposal will take this more targeted approach with a streamlined form, I will now turn the presentation over to Deputy Director Amanda Olear.

MS. OLEAR: Thank you, Josh. Can everyone hear me okay?

CHAIRMAN TARBERT: Loud and clear.

MS. OLEAR: All right. Excellent.

Good afternoon, Mr. Chairman and Commissioners. I would like to, before I get into the substantive part of my presentation, take the

opportunity to thank the numerous colleagues who have made significant contributions to the document in front of you today.

From the Division of Swap Dealer and Intermediary Oversight, I would like to thank Chang Jung, Michael Ehrstein, Rafael Martinez, Owen Kopon, and Elise Bruntel.

From the Office of the General Counsel, I would like to thank Dan Davis, Carlene Kim, Paul Schlichting, Lee Ann Duffy, and Clark Ogilvie.

From the Office of the Chief Economist, Scott Mixon and Gloria Clement, and staff at the Commission level, Lucy Hynes, Dan Bucsa, Margo Bailey, Laura Gardy, and Matt Daigler.

Okay. So now turning to the substantive part of my presentation, the proposal under consideration today is comprised of amendments to Regulation 4.27 and Form CPO-PQR, which is the data collection form required to be filed by registered commodity pool operators, or CPOs.

Specifically, the proposal would eliminate the pool-specific reporting requirements in existing Schedules B and C of Form CPO-PQR other than the pool's schedule of investments and amend the information in existing Schedule A of the form to request legal entity identifiers, or LEIs, for CPOs and their operated pools that have them, and to eliminate questions regarding pool auditors and marketers.

All CPOs would be required to file the resulting revised Form CPO-PQR quarterly, but would also be allowed to file NFA Form PQR, which is a comparable form required by the National Futures Association, in lieu of filing the revised Form CPO-PQR.

Relatedly, under the proposal, Form PF would no longer be accepted in lieu of the revised Form CPO-PQR, as both portions of the current Form CPO-PQR, mainly Schedules B and C, which are most similar to Form PF, are proposed to be eliminated.

The amendments being considered today

would collectively result in a revised Form CPO-PQR comprised primarily of the information solicited in current Schedule A with some minor amendments, plus the pool's schedule of investments that's currently set forth in Schedule B.

Because Schedules B and C would otherwise be rescinded in their entirety, there would no longer be, quote, schedules as part of the revised form. And all CPOs would file the same form on a quarterly basis.

Staff is recommending three substantive changes to the information collected in what is currently Schedule A of Form CPO-PQR.

The proposal would add questions soliciting the LEIs from CPOs and their operated pools that have them currently to better integrate the information received from CPOs with the other swaps data collected by the Commission.

The proposal would also eliminate questions regarding the auditors and marketers for CPOs' operated pools because staff believes that

there are other sources for that information that are more readily available through other Commission regulations.

As noted previously, assuming that NFA revises its Form PQR to be substantively identical to the revised Form CPO-PQR under consideration today, staff is recommending that the Commission propose to allow CPOs to file NFA's Form PQR in lieu of the revised Form CPO-PQR to avoid duplication.

Staff believes that the proposed changes would result in a more streamlined and focused data collection regarding CPOs and their operated pools that would be better designed to be utilized in conjunction with the other data streams that the Commission and its staff have developed over the seven years since the adoption of Form CPO-PQR.

Therefore, staff recommends that the Commission approve the proposed amendments to Regulation 4.27 and Form CPO-PQR under consideration today.

Thank you for your attention. And we're happy to take any questions.

CHAIRMAN TARBERT: This is Chairman Tarbert. Thank you so much, Josh and Amanda, for those excellent presentations.

To begin the Commission's discussion and consideration of this rulemaking, I'll now entertain a motion to approve the proposed rules amending Part 4.

PARTICIPANT: So moved.

PARTICIPANT: Second.

CHAIRMAN TARBERT: Thank you very much. I'd now like to open the floor for Commissioners to give statements and ask questions in order of seniority. So I will go ahead and start.

First of all, I'm obviously going to support this proposal. I think it's very well thought out. A couple of questions I guess, was the CFTC required by statute to adopt Form CPO-PQR?

MR. STERLING: Mr. Chairman, this is

Director Sterling. The answer to that question is no. We were not required by statute to adopt the form.

CHAIRMAN TARBERT: Okay. But there is also the Form PF, which the SEC and us do jointly I believe.

MR. STERLING: Yes, sir. That's correct. And that was mandated under Sections 404 and 406 of the Dodd-Frank Act, which were put into the Investment Advisers Act of 1940.

CHAIRMAN TARBERT: Okay. So obviously, I think you guys have made the point that some of the, much of the information we've been collecting either is not particularly helpful because it's stale or it's not integratable with the other data that we are collecting.

But also at the same time, there's information that we're not collecting on Form CPO-PQR that would, in fact, be helpful, notably LEIs. Is that right?

MR. STERLING: Correct. Yes, sir.

CHAIRMAN TARBERT: And could you maybe talk a little bit about the -- the LEIs are very important. And I think it makes sense for sort of the public to understand what they are, how they work, and how asking for this information would give us greater insight into the financial markets.

MR. STERLING: Yes, absolutely. So this is again Director Sterling speaking.

Sir, the legal identity identifiers are required or necessary I should say for swap data reporting. And firms that enter into swaps certainly do have to have legal identity identifiers so that they can be associated with a particular transaction.

So previously, the form, which collected information from commodity pool operators and by extension their pools, did not include a requirement to include the LEI. If we have the LEI, then it better allows us to identify the CPOs and pools with respect to particular transactions.

And so we can basically take information coming to the agency anyway from swap data repositories wherein an LEI would be included, see that LEI for a CPO that's filled out the report with respect to its pools, and then understand or begin to understand then the transactions nearly in real time.

There will be a lag of some days, of course, where the transactions that CPOs are entering into are with different counterparties in the market.

And so we think that's an important key to help us decipher and better link the data we need to oversee registrants.

CHAIRMAN TARBERT: Great. And as part of this, you know, so in my role as Chairman of the Commission, I have a seat on the FSOC. And one of the non-voting members I believe of the FSOC is the Director of the Office of Financial Research, or OFR.

And OFR's job is essentially to advise

the FSOC on systemic risk issues and other trends in our financial markets that the FSOC should be aware of. And in so doing, they often rely on other agencies for data collection.

And I think my understanding is that they've been keen to get information on our CPOs. But to date, that hasn't been possible I guess for a variety of reasons, one being that the information that we collect isn't readily usable by OFR, but secondly, we don't have a memorandum of understanding in place.

And so maybe talk a little bit about if we do change this form and we finalize this, how would we interact with OFR going forward?

MR. STERLING: Yes. Thank you, Mr. Chairman. Again, it's Director Sterling.

If we do move forward with the change in the form as proposed, our expectation is they will have a, you know, a much better and cleaner data set on the form. And, of course, we'd be quite happy to share that with OFR.

I think that we are supportive of entering into a memorandum of understanding with them to better facilitate the sharing of information prospectively. So we're quite happy to do that.

And I would note that my understanding is that this information we provide prospectively would supplement information OFR gets from other regulators, including, as I understand it, from the Securities and Exchange Commission on our joint form, Form PF. And so we look forward to working with OFR on all these many fronts.

CHAIRMAN TARBERT: Now that's terrific. And again, I think it's really important that this agency work hand in hand, as we have been doing, with our fellow regulators and others in the financial regulatory community both here in the United States and abroad.

I don't have any further questions. I think this is pretty straightforward.

And again, I think it's important that,

particularly as we're asking for new data, that we also demonstrate our credibility, that, you know, if we're not using data we don't think that's particularly helpful, we, you know, we no longer collect that data.

And so we show that we can give as much as we take as well so that we are mindful for market participants and their reporting. We understand that these forms, you know, sometimes do cost a lot of time and effort and money.

We want to make sure we get the most of it, the most out of it. And so we're willing to streamline them, but also augment them as necessary to continually improve our data collection efforts.

And in this regard more generally, I want to thank Commissioner Stump and her team for their leadership on sort of our approach to data.

So I'm very grateful. And I appreciate your work on this again. And I'll be putting out a longer statement, but fully supportive of this

proposal. So thank you so very much.

With that, I'll go ahead and turn it over to Commissioner Quintenz.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman. This is Commissioner Quintenz. And thank you for your kind words in your opening remarks about my prior experience and my interest in fund reporting generally and in Form CPO-PQR specifically.

And I also wanted to thank Commissioner Stump for the kind words that she mentioned in her opening statement of my and my office's work with the SEC from a harmonization perspective.

That's critically important work and would like to echo your comments, Mr. Chairman, on the importance of the work that she is doing in leading on the data initiatives at the Commission and how this fits so well into that and how one of the best ways to protect data is to ensure that we're not requesting data that we can't use or don't need.

And I think that while we're preserving and enhancing a very good portion of Form CPO-PQR, this proposal successfully looks at what we can't use and have not been able to use.

And as the former head of a registered CPO who had to fill out Form CPO-PQR, as well as the NFA Form PQR, I have to say that when I was doing that, I did live in fear of the liability of filling it out incorrectly.

And once I got to the Commission, I was very keen to understand and realize, you know, what all my, you know, hard work and maybe sleepless nights contributed to the understanding of the fund management industry and how disappointed but maybe not surprised I was to realize that it's not as usable as it should be and very pleased that we're moving forward with this proposal.

You know, in fund reporting, the difficulty of answering what appear to be simple questions really increases exponentially as funds increase in their size and their complexity.

So while it may seem as though a question is simple, you know, there are teams of lawyers at large and complex funds that have to go through and understand what the best way to answer some of these questions may be. And they're all going to come up with different answers.

And so it's just no surprise to me that a lot of this information has not been able to be aggregated across the industry. And I think we need to have a high bar from both the usability and the aggregation of that data in terms of requesting it.

So I'd like to congratulate DSIO for bringing this forward. And I would just quickly like to ask for the indulgence of my fellow Commissioners and the Chairman with a little extra time for my questions given the, you know, the personal importance of this rulemaking to me and to my own set of experiences.

So, Mr. Chairman, you had already discussed the fact that Form CPO-PQR was not

required by statute. This was not done as a Dodd-Frank rulemaking. So it is completely outside of the requirements from, you know, that statute.

But I guess I would like to build on some of the points you made, Mr. Chairman, by, you know, focusing on, again, the usability of the data.

Many of the questions in the current Form CPO-PQR, especially in Schedules B and C, which the Commission are here proposing to eliminate almost in their entirety with the exception of the schedule of investments in Schedule B, a lot of those questions are impossible to aggregate across CPOs. And I'd like to just read a line from the proposal.

In an effort to take into account the different ways CPOs maintain information, the Commission allowed CPOs flexibility in how they calculated and presented certain of the data elements.

For example, Form CPO-PQR gives large

CPOs the option of reporting either the duration, the weighted average tenor, or the ten-year equivalent of fixed income portfolio holdings; understanding that large CPOs may use a wide variety of metrics to measure interest rate sensitivity.

As a result, the Commission's ability to identify trends across CPOs or pools using Form CPO-PQR data has been substantially challenged.

I guess my first question would be for either Josh or Amanda. I assume that is not a particular, you know, that question is not an isolated case, that there are others that we could point to and that the questions across Schedules B and C have, we've had similar experience with those.

MR. STERLING: Mr. Commissioner, sir, this is Director Sterling, Josh. That is correct. There is flexibility, though, in the form to report based on certain assumptions. The assumptions can be reported to us. And the assumptions tend to

vary.

So the more CPOs you have reporting and the more pools, the more you'll see those differences. And common questions have different answers that will never be, if they could ever be, apples to apples.

COMMISSIONER QUINTENZ: Thank you, Director. And I think this also builds on something you had described before.

But in addition to the difficulty in aggregating the data that's submitted, you know, one of the concerns that market participants first raised when the CFTC initially adopted Form CPO-PQR was that the form wasn't going to provide the Commission with real time data necessary to have an accurate and timely picture of a CPO's activities given that it is filed at most quarterly, and even then it comes in well after the quarter has ended.

So, you know, given the market events over the last month and, Director, your and your

division's work interacting with our market participants, I just wanted to explore that point a bit further.

First, the data that the CFTC receives on Form CPO-PQR from the largest CPOs is a snapshot in time. And they currently file Schedules A, B, and C quarterly. But by the time DSIO oversees that data it is stale by I think at least 60 days. Is that correct?

MR. STERLING: Yes, sir, it is.

COMMISSIONER QUINTENZ: Okay. So that means even if the data was reported to us in a way that was reconcilable across other CPOs and other market intermediaries, and even if we devoted a significant amount of resources to reprogramming databases and then the subsequent analysis of all that data, in the current environment like the one we've experienced over the last month, we'd still be looking at information that was, at the most recent was from December 31st of last year.

MR. STERLING: Yes, that's correct,

sir.

COMMISSIONER QUINTENZ: Okay. So given the staleness and the limited usefulness of the information reported on this form, regardless of our analytical capabilities, to monitor risk and activity in the current volatile market environment, could you give us an idea of what more real time data streams you and the Commission have been relying on? Has DSIO utilized this form as a resource to respond to recent market events?

MR. STERLING: Thank you for that question, Mr. Commissioner. The short answer is no. For the reasons you've highlighted, we have not used the form or its data to understand what's happening in the markets.

To do that, instead, we have worked with, you know, the intermediaries by doing daily or near daily calls with them in our markets to understand their exposures, including to their customers, a group that would include commodity pool operators and their CPOs.

And so the PQR data did not play a role in the market oversight the division has been doing a great job of, particularly Amanda's team, over the last six weeks.

COMMISSIONER QUINTENZ: Okay. Great. Thank you. I just, I wanted to ask again a point about something that the Chairman had said regarding FSOC.

You know, one of the stated policy reasons for originally adopting Form CPO-PQR, even though it was not required by the Dodd-Frank Act, was to provide the Commission with information about CPOs in the event the Commission received a request from another governmental agency or from FSOC specifically.

Are you aware about whether or not the CFTC has ever received an informational request from FSOC on a particular CPO to assess the level of risk that CPO may pose to the financial system?

MR. STERLING: Well, Commissioner Quintenz, thank you for that question. I have

asked the same of the staff. And in the living memory of the staff that we do have, no one does recall that.

COMMISSIONER QUINTENZ: Okay. I think that's another important point to keep in mind.

But I think it's also important to highlight, again, something that you and the Chairman have raised in that we're not just throwing up our hands here and saying since we haven't been able to use this form as it was originally designed and created, we're giving up.

The proposal does contain new ideas that could enhance the revised form's utility. You know, the revised CPO-PQR form will require CPOs and their operated pools to include their legal entity identifiers on the form to the extent that they already have one due to their swaps trading.

And it's my understanding that many of the largest firms are going to be, will have those

LEIs already because they will be involved in the swaps market.

Just give us, Director, another quick take. How do you anticipate being able to use that data in the future and tying it into other data streams?

MR. STERLING: Yes, absolutely. Thank you for that question. I think that including LEIs on the form will allow us to make better use of data we already have. It's really a leveraging effect.

So the SDR data will identify trade participants, that swap data repository, excuse me, will identify trade participants by their LEIs.

And so what I envision and, indeed, what our registration and compliance and risk analysis teams are working on in the division will be a system by which we're able to take swap trading data from the SDRs associated with specific CPOs and pools.

And if you think about it, the CPO is

really the decision maker if you will, per se, for positions put on by the funds that they oversee. And so we'll be able to understand then from that data what transactions and what the exposures are and what the flows are between any given CPO or group of CPOs and particular dealers.

And we can look at a classes of swapss. We can look at other ways of slicing that transaction information to understand where liquidity is being transmitted and where, as a result, risks might be flowing. And that will greatly enhance our oversight of the registrant population.

COMMISSIONER QUINTENZ: That's great. Thank you. Quickly, I'd just like to move on to the interaction of all the different forms that, you know, a CPO potentially or is required to fill out starting with the NFA Form PQR.

Currently, all CPOs, regardless of their size, are required to file NFA Form PQR quarterly. Is that correct?

MR. STERLING: Yes, it is.

COMMISSIONER QUINTENZ: Okay. So even though the proposal would require all CPOs to file the revised Form CPO-PQR on a quarterly basis, which, you know, increases the number of times and the number of firms that have to file on a quarterly basis, it's not actually an increase in the burden because those firms are already filing the NFA Form PQR, and they can file that form in lieu of filing Form CPO-PQR. Is that correct?

MR. STERLING: It is. And I'd like to invite Amanda, Deputy Director Olear, to illuminate that point just a bit further, please.

MS. OLEAR: So, you know, given that all CPOs are NFA members, they have to file on a quarterly basis.

And assuming that NFA makes the changes to their form to align with our form, we don't expect any CPO to actually experience any increase in filing burden. And we expect, actually, that this will result in a reduction of reporting

burden.

COMMISSIONER QUINTENZ: Okay, great. And I understand that the NFA is in the process of amending, or is thinking about amending, its Form PQR to require LEIs. When and if that process is finalized, are there going to be any substantive differences between our form and the NFA form?

MS. OLEAR: No, there will be no substantive differences between our proposed revised Form CPO-PQR and NFA's Form PQR as revised.

COMMISSIONER QUINTENZ: Okay. And then lastly, on the interplay between Form PF and Form CPO-PQR, I think, Amanda, as you -- I think as you said that this proposal is going to revise Rule 4.27(d) to eliminate the ability of dually registered CPOs to file Form PF in lieu of filing Form CPO-PQR and particularly Schedules B and C of CPO-PQR which, to me, make a lot of sense considering we're eliminating most of Schedule B and all of Schedule C. But the preamble does note that while we're moving the substituting

compliance option, nothing that we're doing changes the status of Form PF as a form that we have jointly adopted with the SEC. Is that correct?

MS. OLEAR: You are correct, Mr. Commissioner. The amendment under consideration today in no way impacts Form PF's status as the Commission's joint form with the SEC, nor does it change the Commission's ability to take any enforcement action based on fraud or a material misstatement of fact that's made on that form.

COMMISSIONER QUINTENZ: Okay. And when it was originally adopted, Form PF -- when Form PF was jointly adopted by both the SEC and CFTC -- can you just briefly describe why the CFTC decided to permit firms to solely file Form PF with the SEC? And is the CFTC getting all the information it needs from the SEC with regards to whatever information is on Form PF?

MS. OLEAR: Of course. So the Commission made the determination back in 2011 when Form PF and Form CPO-PQR were both promulgated to

permit dual registrants to file the Form PF with the SEC to satisfy their reporting requirements. And this was done in an effort to reduce burden on registrants so that duplicative filings were not being required by the Commission. And it was done with the understanding that should the CFTC need the information on Form PF, it would be able to obtain it from the SEC. Since that time, Commission staff has always been in a position to readily obtain that information, should they have need of it.

COMMISSIONER QUINTENZ: Okay. Thank you. And this is my last question. Thank you. Thank you, everyone, for the time. But given that the number of the questions on Schedule B and Schedule C have had significant overlap or are fairly duplicative of what's on Form PF and that we are proposing to eliminate those questions here, I just wanted to make sure that the NPRM has been shared with the staff at the SEC and ask whether or not their Division of Investment Management

expressed any concerns regarding our revisions to this form.

MS. OLEAR: Thank you, Mr. Commissioner. So I can confirm that, at the staff level, a draft was shared on a confidential basis with staff in the Division of Investment Management. And the Division of Investment Management did not express any concerns regarding the proposed revisions.

COMMISSIONER QUINTENZ: Okay. Thank you very much. Thank you, Josh and Amanda, for your hard work on this and to your team. Thank you, Mr. Chairman. I appreciate the time.

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

COMMISSIONER BEHNAM: Thanks, Mr. Chairman. First off, I want to thank Josh Sterling and Amanda Olear for their work, and specifically the Director for his leadership on these issues, and Mr. Chairman for bringing this up. I've said

many, many times in the past couple years that -- and I'll say this in a statement that will be published shortly after.

My question is that data is certainly a key element of the regulator's purview and responsibility, and it sheds light on market activity, market risk. But we need to be efficient. We need to be effective. We need to be cognizant, as my colleagues have said, of what information we collect, how we collect it, and definitely as always, as we report to Congress and the taxpayers, need to be able to explain thoroughly and effectively why we're collecting it. So I do think this proposal is a step in the right direction. I'm happy to support it. I certainly, as always, look forward to public comment and the responses we get so that we can better fine tune the current proposal as needed as we work towards a final rule.

So with that, just a couple overview questions. And I want to start at a very broad

level just to get a sense of what DSIO is doing. And some comments Josh and Amanda have made have shed light on that, but I think it's important to dig a little deeper.

It's been pointed that the Form CPO-PQR is not a product of Dodd-Frank, and that's fine. Not all our rules are, and I think it's important to know that I think back in 2011 and '12, CPO-PQR was well intentioned. And I think as a result of the financial crisis, although Congress did not require us to create the form, the purposes were clear in the sense of assessing market risk, obviously sharing more information of our registrants with other regulators, and just getting a sense of how these pooled investment vehicles are filling in and fitting in to the larger market and monitoring systemic risk.

And I think it certainly did not play out I think as planned and as intended, and that's why we're here today. I think that's why the Director and Mr. Chairman, you want to fix this,

and I think you have the support of the Commission to do it. But I'd be interested, I think, from Josh's perspective now that he's been at the Commission for a bit and has a grasp of what the division is doing and now this rule specifically, any sense of what were the hurdles, what were the challenges.

We get a sense of where your vision is for a better CPO-PQR form. But the efforts that were made over the past few years from DSIO, the hurdles and challenges, as I said, and sort of what is being done in terms of systemic risk monitoring from a DSIO perspective so that I think the public can get a sense that this is, in fact, an effort to better align our rules with congressional mandates. And it will allow you to do your job better and more effectively, protecting customers, overseeing the market, and also allowing the market to do its job in a more effective, less costly way.

MR. STERLING: Yes. Well, Commissioner Behnam, thank you both for those

remarks and the question. It is absolutely the right question to ask, and so I thank you for it. So I think that there were a number of technical challenges I came to understand with the manipulation or making use of the data that were coming in for the form. And those for reasons beyond my expertise, as an attorney anyway, not being an IT guru, were difficult to resolve.

And I think the question I therefore ask as a predicate, instead of saying, well, let's dig in -- immediately dig in with the form we have and with the data we have and figure out how we can get the zeros and ones to all be arrayed properly was, what are we really trying to understand from a broader market risk or a broader systemic risk perspective? And the way I've always thought about it is, you know, a commodity pool operator is an asset manager, and it sits atop large accounts of funds that are invested in various instruments or trade different instruments like derivatives.

And so what I would really like to

understand is the direction of those decisions. And if I want to understand the direction of the decisions, I need to understand what the CPO is doing. I need to understand less specifically what's going on inside the fund, qua the fund.

And so it's really routed the decision-making of a CPO that I believe is important to understanding broader risks. And I think we can begin to understand those broader risks if we can draw connections with our market data between sort of what I've called with the team: the outside of the market, meaning the end user, with the commodity pool, and the middle market, which is an FCM going into a clearinghouse, or across the market with, let's say, a swap dealer in the uncleared context.

And so what are the positions, the transactions flowing into the middle of the market or across the market? And if you understand those connections, then you can have a really good understanding of where risk is flowing in our

markets among the registrants. And if you do that, then I think you can sort of get two questions, Mr. Commissioner, of systemic risk, which I would say properly understood would be, what are the connections between our markets and the intermediaries and the broader financial systems and indeed the real economy?

And I think that comes through clearinghouse, on the one hand for cleared products, and in the uncleared space, the banks. And you have banks, and I would also say FCM entities, that are affiliated with large financial institutions, affiliated with banks, are themselves banks, and conduct lending, deposit taking, other activities if they're not in the real economy. So I think by understanding how commodity pool operators make decisions in our markets, we can understand linkages to the broader system through the FCM clearinghouse and dealer context.

COMMISSIONER BEHNAM: Thank you.

That's extremely helpful, and I look forward to more work being done in this space. I know it's a priority of yours. I specifically appreciate the fact, and this is pointed out by the Chairman and Commissioner Quintenz, that having -- where in my view, there's a couple elements of data collection. And I think what's been pointed out so far is that we want right data so that we can do our job effectively.

And I think what we're experiencing now, specifically what we experienced last month in terms of market volatility and turbulence, having fresh, ripe data allows us in our market -- from a market oversight perspective, both from DSIO's perspective, DMO's perspective, and DCR's perspective, to evaluate risk, to see how risk is being transferred, and to weigh in and engage if necessary. That said, I also think there's another face of data collection which I don't think should be lost. And even though a lot of the data that we collected was a quarter old or more, or a

few days or weeks less, there's a larger sort of user analogy painting that we're -- or larger canvas that we're painting when we collect data that rolls back far more than just a quarter or two quarters or even a year.

I think the Chairman mentioned OFR with an FSOC. And that tool, that vehicle which was created in Dodd-Frank I think can play a very valuable role in what all financial regulators are doing, in terms of collecting data from all different markets over a long period of time and patching together trends and movements that would help us sort of elucidate new patterns and new pockets of risk.

As we all know well, our registrants are not only exclusively CFTC registrants. A huge part of this rule is obviously the SEC. SEC has purview, but our dealers, our clearinghouses -- it is a patchwork of regulations. And we have to be focused on what we do, obviously, within the CFTC space. But we are one piece of a larger puzzle,

and I think it's important, of course, to have clean, effective, well needed data.

But we also have to think about, I think, data collection from that perspective of drawing that larger picture so that we can be more acutely aware of risk patterns that occur and be sort of premature in how we're identifying risks and also identifying entities that may pose larger risks in times of crises because of data we collected over a period of time.

So again, appreciate that answer. A couple other questions that I want to ask, and this is a pretty simple question. I think you sort of referenced it a little bit. But in your view as you are drafting this, either Amanda or Josh, any concern from a consumer standpoint or investor protection standpoint that you think these changes may have and anything that we need to be considering in the proposal process and the public comment process?

MR. STERLING: Commissioner, thank you

for that question. I personally did, and I think the staff did as well, give some thought to, is there an investor or consumer protection concern we would have here? And I feel that we can only do a better job of protecting consumers and investors if we have a better understanding of how their money is being deployed in the market.

And while I agree with you that trends over time are very important for FSOC, and certainly our own purposes and those other regulators, from this point of view, I don't think that the revisions have an adverse impact or really any impact on consumer or investor protection. I tend to think that the Part 4 requirements that the staff has administered so well over the many decades, do continue to exist and are not affected.

There's a requirement to provide account statements to commodity pool investors. Audited annual reports must be provided to commodity pool investors and must be filed and reviewed, in the first instance by the National

Futures Associations right on down the line.

So I think we feel good about the fact those bedrock pieces remaining in place. And I think transitioning to a better use of current data ought to enhance our ability to serve investors that do need the protections the Part 4 -- or, CPO rules, I should say, afford them.

COMMISSIONER BEHNAM: Thanks, Josh. That's super helpful, and I was glad to support the Part 4 changes as well and I agree with you. And I also appreciate the fact that you're thinking about this. Obviously, a primary, I think, concern and priority for all the Commissioners but also for the directors and all staff as we sort of do our job on a day-to-day basis.

Next question quickly is about LEIs. Commissioner Quintenz mentioned this. Amanda, you mentioned it in your presentation briefly. We're going to be relying on that. This is the transition towards a more digital, more sophisticated data ecosystem. This is the right

thing to do in my view.

It is a long process. It's been a slower process that I think everyone globally has wanted, but it is a challenging one. And I think as we get there, as we get closer to that more uniformed global data sort of ecosystem, it will be effective in the sense of risk management.

But you mentioned for entities that have LEIs, do we have any sense of how many entities have LEIs at this point? Will this be a challenge for certain entities, or do you feel comfortable with this new paradigm and this proposal and this change that the LEI requirement will be fulfilled appropriately and adequately by our registrants? If I'm asking that question the right way, but that's the kind of sense I got from you.

MS. OLEAR: Okay. Thank you, Mr. Commissioner. So with respect to LEIs, we are only -- I would just want to reiterate, we're only expecting CPOs to provide LEIs for the CPO and their operated pool to the extent that they are required

to have them because they're engaging in the swaps market. And so we currently do not require LEIs for those entities that are engaging just in managed futures or other types of derivatives beyond the swaps market.

And so if you're engaging in the swaps market, you are an ECP. And so we would expect that those pools would have the resources necessary to obtain LEIs. I did a little bit of research on this. It's difficult for us to say how many of our current population of CPOs and/or commodity pools have LEIs simply because we haven't been collecting that information from them.

We could go through the swap data to determine which entities are CPOs and then kind of mapping that back onto our population of CPOs. But that's exceedingly time intensive, and we started that process. But we haven't been able to complete it to date.

With respect to being able to obtain, LEIs, that was more challenging I think when that

was initially rolled out. But now they should be readily available to entities that are going to be engaging in swaps. So we don't foresee any significant challenges on that front.

COMMISSIONER BEHNAM: Thank you. That's extremely helpful. Second to last question here. Josh, you and your team have been very busy with no action relief, and deserve credit for that in the past month given the market turbulence. Any relationship or at least -- maybe let me reframe the question.

What relief has the Commission provided or the division provided in the past month to entities that might be directly impacted by today's proposal? And I know the timing between the relief granted and this just being a proposal, but I think that might be helpful to share with the listeners who have been following the Commission closely in the past month what relief we potentially granted on reporting requirements and how this might weave into that relief.

MR. STERLING: Yes, absolutely. So I think we've provided, per the Chairman's lead, Mr. Commissioner, temporary time-limited relief to give firms that are working in a socially distant environment more time to complete and file annual reports and other reports. And Amanda, if you would like to elaborate on that, please do.

MS. OLEAR: Sure. So for our large CPOs, their filing was due at the end of February. So we were not in a position to grant them relief with respect to the December 31 filing. But for our midsize and small CPOs whose filings were due at the end of March, they received an additional 45 days to complete that filing.

And large CPOs who have a quarterly filing that is due at the end of May also received an additional 45 days, again to recognize -- to make that filing, to recognize the fact that these really are extraordinary times and with everybody working remotely, they are facing additional logistical challenges.

COMMISSIONER BEHNAM: Thank you, Amanda, and thank you, Josh. And finally, just a quick note. Mr. Chairman, you mentioned obviously your role as a member of FSOC, as the Chairman of this agency, and the lack of an MOU, and some of the sort of growth that's evolved out of OFR in the past few years.

I would certainly encourage more communication. I would certainly encourage the drafting of an MOU with OFR and FSOC so that we could provide any needed data that I think our agency can add, in terms of risk management and data collection for the larger financial ecosystem and community.

A lot has been learned, I think, in the past decade since the crisis. And I think with going back to 2012 and '13 with the European sovereign debt crisis and the budget caps and then now this most recent crisis with COVID, we get distracted sometimes because of other priorities. But I think we all have our eye on the same goal,

and we continue to work towards getting there. So to the extent that you can advocate, I definitely support that going forward.

And lastly, just want to thank again Josh and Amanda for their work on this, their entire teams in DSIO. A lot of questions that have been answered very well. Obviously, as like I said, I look forward to supporting this and look forward to the comments if we need to make any changes in the final draft in the months ahead.

But we need to obviously put a priority on customer protections and customer money, which it seems like it is and I know there are different parts of our regulation which address that, and this is unique in the sense of what it addresses. But this is an effort towards efficiency and efficacy and cost management for our registrants and ensuring that we're collecting data that's needed that we can do our job well and effectively in the future. So thank you, Mr. Chairman.

CHAIRMAN TARBERT: Thank you very

much, Commissioner Behnam, and we're absolutely moving forward with OFR on the MOU. And perhaps one day we can have OFR as a guest at one of our open meetings or present to us. Commissioner Stump?

COMMISSIONER STUMP: Thank you, Mr. Chairman. This is Commissioner Stump, and I don't have a question, but I just wanted to provide brief remarks regarding how pleased I am that we're moving forward with this. While the subject of today's proposal is CFTC's Form CPO-PQR, I think it was very helpful to level-set the conversation with Amanda's excellent review of the different overlapping forms that these investment advisers are required to file with various regulatory authorities.

This demonstrates, I believe, why a correction is warranted to best achieve the distinct mission of the CFTC. And as has been mentioned, and I appreciate the comments on the Data Protection Initiative, but proving a use case

for the data is extremely important to me. And therefore, I want to further distinguish not only the content, but the utility of Form PF as compared to Form CPO-PQR.

To be clear, Form PF is filed with the SEC to assist the FSOC in assessing systemic risk. And while Dodd-Frank stipulated that the CFTC should join the SEC in consultation with the FSOC, to promulgate the content of these forms, I believe that the statute -- I know that the statute says that the report is to be provided to the FSOC by the SEC, not the CFTC.

So I say all of that just to sort of level-set why I think it is important that we have developed a more tailored form to help us do our job. And I think that CPO-PQR is rather -- we determined that the use case for CPO-PQR is to achieve a more well-defined purpose of increasing transparency of CPO activities and investment trends in the specific markets we are tasked with regulating. And I do believe that this will better

be achieved by the more tailored form that we're considering today, but I look forward to the public input in determining if we've gotten this to the point that we need to.

But I just want to commend everyone in DSIO who worked on this. I know it has been a tedious labor of love, and it is one that I am happy to support for many reasons, not the least of which is that I think it has a proven data use case. And I very much appreciate your willingness to take into consideration the views of mine and my staff. Thank you.

CHAIRMAN TARBERT: Thank you very much, Commissioner Stump. Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman. This is Commissioner Berkovitz speaking. So I'm in support of this proposal, and I have a statement -- a short statement in support of it, which I'll submit for writing and the website and the Federal Register. So I just have a few

questions on this.

And again, I feel somewhat -- it makes me feel old and probably boring to do this, but let me again talk about my prior experience because this is another one. I just worked with Bob on some of the previous bankruptcies. I recall working with Amanda on a number of these rules initially, and I was at the Commission at the time that the requirements that we're discussing today were promulgated.

And I certainly think that -- and I have no pride of authorship of them. I think experience has shown the data that we are proposing to eliminate has not been useful to us. I think it's appropriate if the data has not been useful and doesn't fulfill its intended purpose that we don't burden market participants with having to submit it. So it's pretty much as simple as that.

Recalling what happened at the time was, prior to the financial crisis, hedge funds -- neither agency really had a whole lot of

information on -- or comprehensive information on what hedge funds were doing. And Dodd-Frank hedge fund -- the private -- the advisors to hedge funds were required to register for the first time. And so the question arose is, well, what happens if these hedge funds -- they're also commodity pools. How do we get a handle on what the funds are doing, considering both what they may be doing in a security space and what they may be doing in a commodity space?

So all these requirements and integrating Form PF with the CPO-PQR was an attempt to get a handle on what were the risks posed by hedge funds. Some of the information has proven not to be helpful, and I'm supportive of eliminating those requirements. But it's difficult, and I think experience has shown it's difficult, for one agency that has jurisdiction over certain aspects of what these funds are doing and another agency has jurisdiction over other aspects to have an integrated view of what they're doing.

And FSOC was one place where possibly you can get an integrated view because it would be able to see across both agencies' jurisdictions. It's proven to be a lot more difficult in practice what was contemplated at the time, and we're still struggling with that. But to the extent that we're not getting useful information on this form, I'm supportive of elimination.

Let me ask Josh or Amanda. We're not eliminating all -- my understanding of this rule is we're not eliminating all of the information that's currently on Schedule B of Form CPO-PQR. Can you describe the information on this form that we're still going to be requiring to submit, although it wouldn't be technically on Schedule B, I guess, and how we're using that information?

MS. OLEAR: Of course.

MR. STERLING: Yes, Commissioner. Thank you. This is Director Sterling. I'm happy to answer that. And before I do, I just want to make sure that you know as well as all the

Commissioners know, and their staffs, that Amanda and I and the whole team at DSIO, we appreciate the work that you've done with us on the proposal. So thank you all for that, collectively.

But to your point, sir, we are going to be keeping the schedule of investment. That's what's proposed. This gives us a percentage breakdown of portfolio by general asset class. It is good inventory information to have about a CPO and they can elucidate things like strategy and so forth. It's also something the NFA has historically collected. And inasmuch as we would like the forms to be aligned that also suggests to us that we ought to keep that collection element going.

COMMISSIONER BERKOVITZ: And so what does that tell us? That tells us basically where their investments are. Like, are they in gold? Are they in financial products, are they -- something like that? Is that what that tells us? Are they long interest rates? Are they long gold

or short palladium or whatever? Is that what that information will tell us?

MR. STERLING: Yes, sir. That's correct, including even certificates of deposit. But yes, it does get into that.

COMMISSIONER BERKOVITZ: I'm looking at the slide that -- and I'm not sure whether the public can see it, but I've got a copy of one of the slides that we had difficulty putting up on the WebEx. This is the aggregated and synthesized assisting slide with a schematic that shows swaps data, repository data on one box and futures and options data from the exchange in another box coming to us, the CFTC. And we aggregate and synthesize that according to this and get registrant-specific position information.

Where in terms of realizing this -- actually, how would you describe the current state of our ability to actually operationalize what's on this slide? How effectively can we now take these two data flows from the swaps data,

repository, futures, and options data from the exchanges, integrate them, and turn out registrant-specific position information? Where are we in terms of our ability to make this actually happen?

MR. STERLING: Right. No, thank you for that. This is the goal, and I would say we've made substantial progress. But we're not, to my way of thinking, at the end yet. Working with clear data to do this, and by that I mean data coming from the exchange side, it's a little bit easier. It's a little bit more data rich, and it's something that for various paginations in computer systems, it seems more readily translatable to market participants that are registrants.

On the swap data side, I have seen a pilot trial of what it would look like to associate swap positions from a pool to a particular dealer. So it's a matter of making it operational and mirroring it, with what I loosely call front end in DSIO, that will allow us to queue this up. So

it is something we are doggedly pursuing, but we are by no means complete, sir.

COMMISSIONER BERKOVITZ: Right. And I think this is something that goes across more than just DSIO, correct? This is something that -- I guess you're focused on this. Is your focus on this with respect to both pools and swap dealers? It's theoretically -- well, all intermediaries, basically, and not just pools? Let me ask it that way.

MR. STERLING: That's correct. The goal would be to see a connection between a very large commodity pool operator, let's say, investing into several pools, and very large swap dealers, to start out. And so the idea would be to understand the exposure and the transmission of liquidity and risk to and from a commodity pool operator on one side, let's say, and a swap dealer or an FCM on the other side, let's say. So we would understand it from both sides, and that's why this use of the data is particularly of interest to DSIO,

because we have the registrants.

COMMISSIONER BERKOVITZ: Right. And so I think a number of the initiatives that we have underway now, and for example the swap data reporting rules that have been proposed, which was basically to clean up some of the swap data, will help us be able to use that data. Part of the problem -- we had to clean up the swap data or we proposed to clean it up -- is to make sure that it's uniform and that we can aggregate it and that we can roll it up.

So our fundamental building blocks, I think of those rulemakings show that those fundamental building blocks need to be there in a way that we can use them to be able to roll up, for example, the swap data.

Another fundamental aspect of it is if those traders have LEIs, to be able to match the pools with -- here's swaps data through the LEI. The LEIs will only get a matching up the swaps data on this side. The LEIs don't apply on the futures

options side, correct? We're not requiring LEIs on futures and options trades, correct?

MR. STERLING: That's right. We're looking, sir, we're looking to use LEIs only insofar as they're needed for other reporting, which would be swaps. So you have it exactly correct.

COMMISSIONER BERKOVITZ: And so at some point, we will -- to do this mirroring up and aggregating, we'll need to be able to track trading LEIs to a legal entity with how traders are tracked and identified for the exchanges, the Tag 50s, the other identifiers there, which that in itself is not an insignificant data aggregation task, to be able to cross reference traders and swaps market and on exchanges. That's something else that we need to be able to do.

I'm fully supportive of these efforts that you've been describing. And I think as a companion to what we're doing today, at the same time, we're realizing, okay, this data is not

useful. Let's focus on the data that is useful and let's really focus hard on making that data useful.

We, as I said, mention on the data -- swap data rules that we propose to clean up the swap data. Once we clean it up, we need to be able to use it effectively. So I want to support this rulemaking, and I want to support the effort that you've described, and across the divisions at the agency with DMO and DCR as well to be able to take the clearing data, to be able to take the exchange data, and to integrate it so we get registrant-specific information.

I'll describe that essentially as one of the absolutely critical components of the original Dodd-Frank vision, which is to have swap data repositories and to have some type of look-forward so we can anticipate risks, rather than always looking at them in the rearview mirror, or with the big brick wall in front of us.

But that still is something that we need to continually work towards. We're not there yet,

and I appreciate your efforts towards working to that goal. With that, I'm pleased to support this rule and our continuing efforts to improve our data collection and analysis. So thank you. That concludes my statement, Mr. Chairman.

CHAIRMAN TARBERT: Thank you very much, Commissioner Berkovitz. This is Chairman Heath Tarbert, so I'm pleased to ask the following question now that we've concluded our discussion. Are the Commissioners prepared to vote?

(Chorus of aye.)

CHAIRMAN TARBERT: Okay. Mr. Kirkpatrick, our Secretary, would you please call the roll for the proposed amendment to Part 4 of our Commission's rules?

MR. KIRKPATRICK: Thank you, Mr. Chairman. This is the Commission Secretary speaking. The motion now before the Commission is on the approval of the proposed rules, amending Part 4 of the Commission's regulations. Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: Commissioner Berkovitz votes aye.

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

COMMISSIONER STUMP: Commissioner Stump votes aye.

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

COMMISSIONER BEHNAM: Commissioner Behnam votes aye.

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

COMMISSIONER QUINTENZ: Commissioner Quintenz votes aye.

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

CHAIRMAN TARBERT: Chairman Tarbert votes aye.

MR. KIRKPATRICK: Chairman Tarbert votes aye. Mr. Chairman, on this matter, the ayes have five, the noes have zero.

CHAIRMAN TARBERT: Thank you very much, Mr. Secretary. I'm pleased to say that the ayes have it and the motion on the proposed rule is hereby approved.

We'll now move to the third and fourth items on our agenda. This is the final rule on the margin requirements for the European Stability Mechanism, Part 23, and our proposed rule on the clearing requirement for central banks, sovereigns, international financial institutions, as well as smaller bank holding companies and community development financial institutions under Part 50.

At this time, I'd like to invite a third staff presentation on these two rulemakings, which will be discussed together. First, the proposed rule regarding Part 50, and second, the final margin rule regarding Part 23. From the Division of Clearing and Risk on the phone is Clark Hutchison.

Although only Clark will be presenting

today, a number of other staff were involved in preparing these rulemakings. I want to single out in particular Warren Gorlick, Carmen Moncada-Terry, Sarah Josephson, Megan Wallace, Melissa D'Arcy, Carlene Kim, Paul Schlichting, Scott Mixon, Stephen Kane, and Ayla Kayhan for their hard work. I'm sorry that circumstances make it impossible for you to all be here today in a large table, sitting in front of the Commission. But we want you to know, I certainly do, but I'm sure my fellow Commissioners as well, how grateful we are for all of your hard work on these two rulemakings. So with that, I will hand it over to you, Clark, for your presentation.

MR. HUTCHISON: Can everyone hear me?

CHAIRMAN TARBERT: Yes, loud and clear.

MR. HUTCHISON: Good afternoon. This is Clark Hutchison, the Director of the Division of Clearing and Risk. Thank you, Mr. Chairman, Commissioners, and fellow staff. I come to you

this afternoon from New Jersey, where my family and I are safely in quarantine, and I wish to extend to all of you and our listeners wishes of good health and safekeeping during these challenging times.

In the next ten minutes or so, I would like to first turn to a proposal that would amend regulations related to exemptions from the swap clearing requirement. And following the description of that proposal, I will then turn to a final rule amending the margin rule for uncleared swaps.

As the Chairman said, before outlining the matters at hand today, I would also like to thank the Divisions of Swap Dealer and Intermediary Oversight and Clearing and Risk that have worked diligently to prepare the rulemakings under consideration today. In particular, staff members Warren Gorlick, Carmen Moncada-Terry, Sarah Josephson, Megan Wallace, and Melissa D'Arcy. In addition, I would like to thank our

colleagues in the Office of the General Counsel, Carlene Kim and Paul Schlichting, and the Office of the Chief Economist, Scott Mixon, Stephen Kane, and Ayla Kayhan for their time and effort in preparing these rulemakings.

Now let me begin with the Part 50 clearing requirement exemption proposal. This proposal would add new regulations to codify the Commission's current treatment of swaps entered into by central banks, sovereign entities, and international financial institutions. In addition, this proposal would make permanent current no-action relief for swaps entered into by certain international financial institutions.

This rule would re-propose, with minor changes, regulations published in August 2018 to exempt certain swaps entered into by bank holding companies, savings and loan holding companies, and community development financial institutions from the clearing requirement. Staff believes that the proposed revisions are consistent with the way the

clearing requirement is being administered today. It will provide legal certainty, and it will make Part 50 of the Commission's regulations easier to understand and apply.

First, this proposal would add a new regulation that codifies current practice to exempt swaps from the clearing requirement that are entered into by a central bank or sovereign entity, and to exempt swaps from the clearing requirement that are entered into by 22 named international financial institutions, as well as any other entity that provides financing for national or regional development in which the United States government is a shareholder or contributing member.

In the 2012 final rule adopting the end-user exemption to the swap clearing requirement, based on considerations of comity, and in keeping with the traditions of the international system, the Commission stated that swaps entered into by foreign central banks, sovereign entities, and international financial

institutions should not be subject to a swap clearing requirement. Since that time, the Division of Clearing and Risk has issued no-action relief to four entities, because they have similar characteristics to the entities named in the end-user exception final rule.

This rule change would align the entities defined as international financial institutions under the swap clearing requirement with the entities defined as multilateral development banks exempt from the uncleared margin requirements.

Second, the proposed rulemaking is a supplemental proposal of the 2018 notice of proposed rulemaking to exempt certain swaps with financial holding companies and community development financial institutions that currently have no-action relief from the Division of Clearing and Risk based on no-action letters issued in January 2016.

There are minor changes from the 2018

proposal, including changing a time period referenced from a number of months to an equivalent number of days.

There are a few additional proposed amendments to Part 50 of the Commission's regulations that are purely technical in nature that are intended to be clarifying. For example, the proposed rule would set forth a compliance date chart for each of the Commission's swap clearing requirements. Although the Commission has publicized the dates of its clearing requirements in prior rulemakings and press releases, this information is not available conveniently in a chart in one place for market participants to reference.

This concludes remarks for the Part 50 clearing requirement exemption proposal.

Now let me turn to the final rule, amending the uncleared margin rule in Part 23. This rulemaking codifies relief provided by DSIO no-action letters with respect to the European

Stability Mechanism.

The European Stability Mechanism is an intergovernmental international financial institution that provides financial assistance to Euro area member states that are in, or threatened by, severe financial distress or national or regional development, similar to the multilateral development banks listed in Commission Regulation 23.151, which include, for example, the International Bank for Reconstruction and Development, the Asian Development Bank, and the European Investment Bank.

This final rule adds the European Stability Mechanism to the list of entities that are excluded from the definition of financial end-user, under Commission Regulation 23.151, effectively exempting uncleared swaps entered into by a swap dealer with European Stability Mechanism from the uncleared margin rule. The final rule also corrects a typographical error in Commission Regulation 23.157.

Following the publication in the Federal Register of the notice of proposed rulemaking concerning this matter on October 24th, 2019, the Commission received three comments on the proposal, only one of which directly addressed the proposal. The Futures Industry Association indicated, among other things, that its members that are active in physical commodities generally supported this proposal.

Consistent with these comments, staff recommends that the Commission adopt the amendments to the uncleared margin rule. Staff believes that it is reasonable to treat the uncleared swaps entered into by a swap dealer with the European Stability Mechanism similarly to those entered into by a swap dealer with multilateral development banks, which are exempt from the uncleared margin rule.

The staff's recommendation to adopt the amendment to the uncleared margin rule also takes into account the fact that the activities conducted

by the European Stability Mechanism, like activities conducted by multilateral development banks, generally have a different purpose in the financial system.

These types of entities are established by governments and their financial activities are designed to further governmental purposes, posing less counterparty risk to swap dealers subject to the CFTC's uncleared margin rule, and less systemic risk to the financial system as a whole.

I hope that this information has been helpful, and my colleagues in the Division of Clearing and Risk and in the Division of Swap Dealer and Intermediary Oversight would be happy to answer any questions you have about the proposed rule or the final rule that you have this afternoon. Thank you.

CHAIRMAN TARBERT: Thank you very much, Clark, for that excellent presentation on both rulemakings. To begin the Commission's discussion and consideration of these rulemakings,

I'll now entertain a motion to adopt the final rule amending Part 23, and to approve the proposed amendment to Part 50.

PARTICIPANT: So moved.

PARTICIPANT: Second.

CHAIRMAN TARBERT: Thank you very much. I'd now like to open the floor for Commissioners to ask any questions and give statements. I'll go ahead and start. I don't have any questions, Clark. I think this is relatively straightforward, both rule sets. Just take them one after the other, Part 50, the clearing requirement.

Well, here, we're basically -- number one, we're essentially codifying existing relief. So we've already made this decision long ago, and we're codifying it.

Two groups of entities here, the first batch are certain central banks, sovereign entities, and IFIs. And so these are clearly institutions that don't really present, number

one, systemic risk. They're part of the international financial system. Indeed, they're part of the cornerstone of it, and they don't provide counter-party credit risk.

The second group of people that we're excluding from the clearing requirement are what I call sort of the smaller domestic lenders. So these are small bank savings associations, farm credit systems, and credit union units with total assets under 10 billion. So while these entities are small, they clearly don't present a systemic risk. But they do play an outsized role in supporting the U.S. economy.

These are not Wall Street banks but primarily local institutions that support American communities, businesses, and families. And so I think this very much aligns with the CFTC's strategic goal of regulating the derivatives market to promote the interests of all Americans.

And then finally, Part 23 which deals specifically with the European Stability

Mechanism, again, here it's pretty obvious that, as its name suggests, the European Stability Mechanism is an agent of stability as opposed to being a potential source of systemic risk. So codifying this relief makes total sense.

And furthermore, I just want to say that we continue to have ongoing relations with our counterparts in the European Union regarding cross-border derivatives regulation. Those conversations are constructive, and I think both of us have interest in ensuring that financial regulators don't force or don't try to force their foreign counterparts overseas to import each other's specific rules wholesale. And part of the reason we can do that now, which perhaps we couldn't do a decade or more ago is the fact that as a global community, the FSB and the various standard setting bodies have sort of established sets of principles.

So for example, in clearinghouses, we have the principles for financial market infrastructures that all of the G20 jurisdictions

have agreed to and implemented. And because we have that baseline, we're able to, I think, engage in a degree of comity and deference that perhaps we hadn't in the past. And so what I would just remind people of is just as the G20 and the Financial Stability Board and the other standard setting bodies were established to prevent a global race to the bottom, I think their work is also meant to prevent nations from forcing the complete strictures of their domestic regimes onto others.

So in that spirit of comity, goodwill, and continuing to improve our relationships overseas, I'm pleased to support in addition the Rule 23 finalization regarding the European Stability Mechanism. With that, I will go ahead and turn it over to Commissioner Quintenz.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman. This is Commissioner Quintenz. I don't have any questions. I'd like to thank Clark and DCR and the teams for putting these issues in front of us. I just do have a statement that I

would like to go through quickly given the conversations and the discussions and the history of our cross-border relationship with Europe regarding CCPs that you mentioned, Mr. Chairman.

About two years ago in March of 2018, I articulated my approach to that current regulatory relationship with our European counterparts in light of what I viewed their refusal to stand by or to reaffirm their 2016 commitment to the CFTC's and the European Commission's CCP agreement. Specifically, I believe that the absence of the agreement's reaffirmation in the discussion around and the drafting of EMIR 2.2 directly implied the agreement's abrogation. I therefore vowed that I would either object to or vote against any relief provided to or requested by European Union authorities until the agreement's clarity was restored.

Since that time, I've consistently voted against or objected to any regulation or

relief that provides special accommodations to European entities, including the proposed exemption for margin requirements for the European Stability Mechanism that the Commission seeks to finalize today. However, the unprecedented devastating economic and social impacts of COVID-19 across the globe warrant a temporary reprieve from that position.

In the United States, financial regulators have acted swiftly, decisively, and boldly to mitigate economic disruptions and support market liquidity, including providing regulatory relief where necessary. And I'm very proud of the CFTC's decisive response to the COVID-19 pandemic, which has promoted the full functioning of derivatives markets despite the extraordinary challenges facing exchanges, clearinghouses, and market intermediaries as a result of social distancing.

I know that the Commission under the strong leadership of Chairman Tarbert is committed

to providing any additional relief necessary to ensure that U.S. markets remain accessible.

Our European counterparts are engaged in the same epic struggle as we are to lessen the extraordinary economic and social harms of this pandemic. Although I remain committed to ensuring the terms of the CFTC-EC CCP agreement are upheld, ultimately, I also recognize that this issue is one facet of a much broader, deeper bond that we share with the European Union, a relationship that has been grounded on goodwill, trust, and partnership.

Many of the European institutions affected by the rules and no-action relief before the Commission today are likely to be central to the European Union's COVID-19 economic recovery efforts. As a result, I believe it is appropriate to support the items before the Commission today, which, by providing relief from CFTC clearing and margin requirements, may bolster the ability of EU institutions to provide critical financial assistance to their economies, their businesses,

and their citizens.

For example, the European Commission, the ESM, and the European Investment Bank are working in concert to take unprecedented actions at the European level to complement national measures to mitigate the impacts of COVID-19.

The ESM has many economic tools at its disposal, including making loans to Eurozone member states, purchasing the bonds of Eurozone members, providing precautionary credit lines that can be drawn upon if needed, and directly recapitalizing financial institutions. Similarly, the EIB, the leading arm of the European Union and the European Investment Fund, the EIF, which specializes in finance for small, medium-sized businesses, are also working together to respond to COVID-19. Together, the EIB and EIF have proposed a plan to provide immediate financing to combat the health and economic effects of the pandemic.

Each of these EU institutions may seek

to enter into swaps subject to the CFTC's clearing or uncleared margin requirements in order to hedge the risks associated with these lending and investment activities. Accordingly, I'm going to support today's measures that provide relief from those requirements, thereby freeing up additional capital that can be immediately deployed in the European economy.

With the present hardship caused by COVID-19 -- when the present hardship caused by COVID-19 abates, I look forward to re-engaging with our European counterparts and the critical issue of oversight of U.S. CCPs. I believe the possibility still exists for a successful implementation of EMIR 2.2 that fully respects the CFTC's ultimate authority over U.S. CCPs. I've been proud of the leadership of Chairman Tarbert on the issue and then encouraged by the discussions he's had, and I'm committed to doing everything in my power to achieve that successful outcome. Thank you very much, Mr. Chairman, and thank you

to Clark and DCR.

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

COMMISSIONER BEHNAM: Thanks, Mr. Chairman. I will be brief. No questions for Clark, but I do want to thank him and his entire team at DCR for their work on these issues. They're important. In my view, they are long overdue, and they are in line with what I've long advocated, at least in part for codifying no-action relief and really solidifying and validating our relationship with our European partners, specifically at this time where as much relief is needed as possible.

With that and to that end, the comments you made, Mr. Chairman, about the relief that's being granted and who it affects, multilateral banks obviously, community banks, and other government organizations. These are the types of institutions that we should be providing relief for

across the board and in a global manner. So I am happy to support the proposals and the codifications here as we move forward. And again, thank you to DCR and Clark for their efforts.

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

COMMISSIONER STUMP: Thank you, Chairman Tarbert. This is Commissioner Stump. I don't have any questions. I echo every accolade that's been provided thus far. The staff at the CFTC has done a tremendous job of helping us through this remarkable time and presenting the rulemakings that are before us today, and in receiving our input, even though we're all not in the office together.

So I very much appreciate all of the teams that have worked on these and in particular DCR. And I look forward to the work ahead on many more rulemakings. Thank you.

CHAIRMAN TARBERT: Thank you, Commissioner Stump. Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman. This is Commissioner Berkovitz. I'm supporting the proposed rule and the final rule before us today on the -- the final rule on the margin requirements and the proposed rule on amendments to Part 50.

I view both of these as basically confirming and codifying existing Commission policy regarding the application of clearing requirements and margin requirements to sovereign institutions. In many respects, in the Part 50 as Clark outlined, this really puts into the regulations something that was in the preamble and brings in European Stability Mechanism, which was granted no-action relief into codification. And I think it's timely that we update our regulations in this manner, but I view this as a continuation of longstanding Commission policy regarding how we treat sovereign banks and other international financial institutions and also recognition of the principles of international comity in terms of how

we regulate foreign sovereign institutions and banks.

But one thing that we do have now that I just want to ask one question about, Clark, and/or, of course, Sarah. We actually have some data on the amount of swaps that would be exempted from the clearing requirement under Part 50 by the proposed rule and so -- indicate how much risk and how many swaps we're really talking about. So Clark, can you or your team go over what the data actually tells us about what the amount, the notional value, the volume or the number of swaps that would actually be exempted by the proposal?

MR. HUTCHISON: Sure, Mr. Commissioner. I'm going to ask Sarah Josephson to answer your questions. She has the data in front of her, I think. Sarah?

COMMISSIONER BERKOVITZ: Great, great.

MS. JOSEPHSON: Yes, this is Sarah Josephson, Deputy Director in DCR, and thank you

for the question. For the calendar year 2018, the proposal includes data from DTCC's Data Repository. For this period, the 16 international financial institutions named in the proposal entered into approximately 2,500 uncleared interest rate swaps, with an estimated total notional value of $220 billion. For the same period, 8 community development financial institutions entered into 13 uncleared interest rate swaps, with an aggregate notional value of almost $84 million. Finally, during 2018, 11 bank holding companies executed 18 interest rate swaps, with an aggregate notional value of $152.5 million.

To provide some context for these numbers, in 2018 if you look at one weekly swaps report reflecting data from a week in September, you will see that there were over 22,000 fixed-to-floating interest rate swaps that were executed and cleared, with a notional value of approximately $2.6 trillion. Fewer than 3,000 fixed-to-floating interest rate swaps were

executed and not cleared during the same week, with a notional value of $480 billion. For all of 2018, the interest rate swap market for U.S. dollar fixed-to-floating interest rates was estimated to have included approximately more than half a million transactions worth over $68 trillion.

Overall, as you can see, these exempt transactions represent a very small portion of the uncleared swaps market and an even smaller portion of the overall swaps market that the Commission has subjected to the clearing requirement. It is also important to note that entities have been relying on these exemptions from the clearing requirement since around 2013. And so we have experience with the use of these exemptions. Nonetheless, staff will continue to monitor the use of these exemptions as we go forward.

COMMISSIONER BERKOVITZ: Sarah, with respect to our monitoring since 2013, we haven't had -- has there been a single instance of a problem in the seven years that we've had this exemption?

MS. JOSEPHSON: No, nothing that we are aware of.

COMMISSIONER BERKOVITZ: Okay. And I'd note that these numbers for the bank holding companies of $152 million and it was the community development financial institutions of $84 million, I think 13 for community development and 18 -- I mean, these are in the -- almost in the tens of transactions compared to tens of thousands of transactions. I didn't get quite the magnitude, but it's a rather small number of transactions that we're talking about here on an annual basis, correct -- for the bank holding companies and the community developments, right?

MS. JOSEPHSON: Exactly, yes.

COMMISSIONER BERKOVITZ: And then the other ones, the larger numbers, those would be for central banks and sovereigns which they're significantly reduced. I won't say zero, but significantly reduced counter-party credit risk on a sovereign or central bank, correct?

MS. JOSEPHSON: That's correct. We didn't provide specific numbers for the central banks or sovereigns. As noted in the proposal, there was concern that there's such a small number that it might reveal information. The other data I gave was for the 16 IFIs that have entered into swaps --

COMMISSIONER BERKOVITZ: Okay.

MS. JOSEPHSON: -- and that was approximately 2,500 total. So that's the most --

COMMISSIONER BERKOVITZ: Okay.

MS. JOSEPHSON: -- significant amount.

COMMISSIONER BERKOVITZ: Okay. Thank you for the clarification. And some of this data is in the preamble, and I think you provided some additional context, which is very helpful. So not only is this consistent with existing policy, not only does this codify current no-action relief, but we actually have the data to demonstrate that risk -- relative risk provided by the exempted classes is actually relatively small.

And our experience shows to date in the years that this has been operative, there have not been any problem with it. There actually has not been any actualized risk. So I think both from a policy perspective and an actual market impact perspective, these are sound initiatives and I support it. I do have a short statement in support of these that I will include for the record.

I thank the team. I thank you, Clark. I thank you, Sarah and the rest of the team, Clark, as you've acknowledged. And I appreciate your work on this, and I hope this will indeed advance considerations of international comity as well. So thank you for your work on it. I'm pleased to support it. Thank you, Mr. Chairman.

CHAIRMAN TARBERT: Thank you very much, Commissioner Berkovitz. This is Chairman Tarbert. Now that our questions period has been concluded, I'll ask, are the Commissioners prepared to vote on both the proposed rule and the final rule?

(Chorus of aye.)

CHAIRMAN TARBERT: Terrific. So Mr. Kirkpatrick, our Secretary, would you please call the roll first for the proposed rule on Part 50?

MR. KIRKPATRICK: Thank you, Mr. Chairman. This is the Commission Secretary speaking again. The part of the motion which is now before the Commission is on the approval of the proposed amendments to Part 50 of the Commission's regulations. Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: Commissioner Berkovitz votes aye.

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

COMMISSIONER STUMP: Commissioner Stump votes aye.

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

COMMISSIONER BEHNAM: Commissioner Behnam votes aye.

MR. KIRKPATRICK: Commissioner Behnam

votes aye. Commissioner Quintenz?

COMMISSIONER QUINTENZ: Commissioner Quintenz votes aye.

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

CHAIRMAN TARBERT: Chairman Tarbert votes aye.

MR. KIRKPATRICK: Chairman Tarbert votes aye. Mr. Chairman, on this matter, the approval of the proposed amendments to Part 50, the ayes have five, the noes have zero.

CHAIRMAN TARBERT: Thank you very much. The ayes have it, and the motion on the proposed rule is hereby approved.

Mr. Kirkpatrick, could you please call the roll for the final rule amending Part 23?

MR. KIRKPATRICK: Yes, thank you, Mr. Chairman. And again, the Commission Secretary speaking. The part of the motion which is now before the Commission is on the adoption of the final rules amending Part 23 of the Commission's

regulations. Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: Commissioner Berkovitz votes aye.

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

COMMISSIONER STUMP: Commissioner Stump votes aye.

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

COMMISSIONER BEHNAM: Commissioner Behnam votes aye.

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

COMMISSIONER QUINTENZ: Commissioner Quintenz votes aye.

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

CHAIRMAN TARBERT: Chairman Tarbert votes aye.

MR. KIRKPATRICK: Chairman Tarbert votes aye. Mr. Chairman, on this matter, the

adoption of the final rule amending Part 23, the ayes have five, noes have zero.

CHAIRMAN TARBERT: Thank you very much. This is Chairman Tarbert. And again, I'm pleased to announce that the ayes have it and the motion on the final rule is hereby approved.

So again, this is Chairman Tarbert. We now move to the fifth and final agenda item, and that is the final rule to amend consumer financial information privacy regulation contained in Part 160. Rather than have a staff presentation on this, I thought what I would do is I'll just move right into the Commission's discussion and consideration of these rulemakings. So as a result, to begin that discussion and consideration, I'll entertain a motion to adopt the final rule regarding -- amending Part 160.

PARTICIPANT: So moved.

PARTICIPANT: Second.

CHAIRMAN TARBERT: Thank you. I'll now describe the final amendment to 160.30, and

I'll share the reasons why I'm in favor of adopting it. Regulation 160.30 requires certain entities to adopt policies and procedures to safeguard customer information and records. These entities include futures commission merchants, commodity trading advisors, commodity pool operators introducing brokers, and swap dealers. Regulation 160 provides that covered entities must establish policies and procedures to protect customer records and information with three types of safeguards: administrative, technical, and physical.

Today's final rule requires these safeguards to be reasonably designed to achieve three things. Number one: protect the security and confidentiality of customer records and information. Number two: guard against threats or hazards to customer records and information. And number three: protect against unauthorized access to, or use of, customer records or information that could result in substantial harm

or inconvenience to customers. These safeguards help protect customers from the risk of data loss and intrusion. They're important to protecting the privacy of those who rely increasingly on our digital markets.

I want to thank the staff that worked on this. I really appreciate your assistance from a variety of both Frank Fisanich, I think, from DSIO, other people in DSIO. I really appreciate your work on this. I'd now like to invite my fellow Commissioners to add any remarks you may wish to make. I'll just go down the roll then. Commissioner Quintenz?

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman. No official remarks. I'm just very supportive of this proposal and very grateful to the staff and you for bringing it forward.

CHAIRMAN TARBERT: Thank you. Commissioner Behnam?

COMMISSIONER BEHNAM: No questions. Thank you, Mr. Chairman, for bringing it up,

important customer protection rule. And of course, as always, thanks to the staff for putting it together.

CHAIRMAN TARBERT: Terrific. Thank you. Commissioner Stump?

COMMISSIONER STUMP: No questions. Thanks to everyone who worked on this. The data privacy protections are very important, and I appreciate the attention that's being properly given to the topic. Thank you.

CHAIRMAN TARBERT: Thank you. Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: I'm pleased to support this final rule. I think it's the right thing to do, and I'm pleased to support it. Thanks to everybody who worked on it.

CHAIRMAN TARBERT: Terrific. Thank you, Commissioner Berkovitz. It sounds like the Commissioners are prepared to vote. So Mr. Kirkpatrick, our Secretary, could I ask you to please call the roll for the final rule on Part 160

of the Commission's rules?

MR. KIRKPATRICK: Thank you, Mr. Chairman. This is the Commission Secretary speaking. The motion now before the Commission is on the adoption of the final rule, amending Part 160 of the Commission's regulations. Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: Commissioner Berkovitz votes aye.

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

COMMISSIONER STUMP: Commissioner Stump votes aye.

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

COMMISSIONER BEHNAM: Commissioner Behnam votes aye.

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

COMMISSIONER QUINTENZ: Commissioner Quintenz votes aye.

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

CHAIRMAN TARBERT: Chairman Tarbert votes aye.

MR. KIRKPATRICK: Chairman Tarbert votes aye. Mr. Chairman, on this matter, the ayes have five, the noes have zero.

CHAIRMAN TARBERT: This is Chairman Tarbert. Thank you very much, Mr. Secretary. I'm pleased to announce that the ayes have it and the motion to adopt the final rule is hereby approved. Before we move to closing statements, is there any other Commission business from my colleagues?

Okay. Hearing none, I'd now like to give my fellow Commissioners an opportunity to make any closing statements or remarks. We'll go ahead and start with Commissioner Berkovitz.

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman. This is Commissioner Berkovitz. The statements -- I have statements on each of the rules that I've submitted for the record, so I won't

belabor the point.

I would just like to say that having a number of matters go unanimously today and I'm pleased that today went very smoothly. But it's very deceptive when we have a meeting like today and everything goes well and we reach consensus. I think the public doesn't quite see all the work that went into it and all the give and take that goes into these in getting to where we got today.

And I'd just like to express my appreciation to you, Mr. Chairman, to my fellow Commissioners, and to CFTC staff for the work that everybody has put into it to getting where we are today, where we could all be united going forward. And there was give and take in the process, and I speak on my behalf and my office's behalf. I appreciate everyone who worked with me and my office in getting where we are today where we can support all of the items on today's agenda.

I'd also like to say for the market participants and members of the public who may be

interested, we are open for business. I do miss going in every day and meeting with people. That's really the lifeblood. That's why I really love this agency and working in Washington, D.C. and interacting and hearing the views of market participants.

And I miss not being able to do that and meeting people and getting out. So I encourage people -- we are open. The phone lines are working. As I've said before, our staff has done a great job of facilitating our ability to telecommute. So I just encourage folks to comment on what we've done and let us know. Let us know what's going on in the market.

In this environment, it's extremely important to talk to market participants and get the stories. Yes, we can spend hours on screen time reading all the reports and all the news clips and doing all that. But there's no substitute for actually talking to market participants.

And we're spending a lot of time trying

to keep up with events, but we really need the firsthand communication with market participants. So I encourage people to let us know what the concerns are and what we should be doing to protect market integrity and keep these absolutely critical markets functioning. So I encourage you all to set up calls.

And hopefully one of these days -- not hopefully. One of these days, we will be back. Hopefully, it'll be in the not too distant future. But in the meantime, I look forward to talking to people on the phone. Thank you again, Mr. Chairman and my colleagues, very much.

CHAIRMAN TARBERT: Thank you very much, Commissioner Berkovitz. Commissioner Stump?

COMMISSIONER STUMP: Thank you, Mr. Chairman. This is Commissioner Stump. And I don't think I can say it any better than Commissioner Berkovitz. We are open for business, and we look forward to hearing from you. In my

opening comments, I mentioned the importance of teamwork, especially in these challenging times. And in fact, I think teamwork is on display in a remarkable form across the entire country right now.

On a personal note, I wanted to share that I take personal inspiration from my friend named Katie who's a nurse in Texas who recently left the comfort of her home and her family including her very young children to volunteer in New York City where she's working in a previously shuttered hospital to help those affected by the COVID-19 pandemic. And I'm amazed by her daily acts of selflessness and her contribution.

But it's a good reminder that while our impact at the CFTC is different from Katie's, we as public officials are called to serve in a way that only we can. And I want to commend the CFTC staff that has certainly risen to the occasion. Not only those who presented today but those who have worked tirelessly over the past month keeping

a watchful eye on the markets in these unprecedented times.

It's their recent efforts that illustrate that “teamwork” is not just a catchy buzzword we occasionally weave into our speeches at the CFTC, but something we're proud to have long established, and we have a commitment to continue in good times and in challenging times. Thank you, Mr. Chairman.

CHAIRMAN TARBERT: Thank you, Commissioner Stump. Commissioner Behnam?

COMMISSIONER BEHNAM: Thank you, Mr. Chairman. I just want to thank you for bringing up these rules today. I thank my colleagues for the important and helpful dialogue. And like I said in my opening statement, a big thanks to all CFTC staff who are engaged today and for the rest across the country in our four offices who are working hard and then dealing with the challenges of the pandemic at home and some of the challenges that we're facing in the workplace.

So a special thanks to all of them. I wish everyone, our market participants and public well, good health and safety. As has been said, we will get through this, and the Commission certainly looks forward to getting back to business as usual, sooner than later. And in the meantime, as has been said also, we are open and always willing to talk and share ideas so that we can ensure our markets run effectively and smoothly in these challenging times. So thanks again.

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

Commissioner Quintenz, we don't hear you at this time. I know he was dropped from the call. So not hearing from Commissioner Quintenz, who I think has been dropped from the call, he's obviously, along with all of us, put out public statements that I think are now on our website and have been distributed.

In closing, this is Chairman Tarbert,

I'll just simply say that -- and Commissioner Quintenz, by the way, is on the line, but his line won't open. So he is with us, he is listening, and I know he and I agree on many things. And on that I think is to thank everyone, members of our staff who, as others have said, have worked tirelessly over the last four to six weeks on our COVID-19 response.

It's required, I think, across the entire agency, those in our sort of Office of the Executive Director who run our administration, as well as our IT folks, have enabled this agency to work entirely remotely and to continue to work on behalf of the American people. There's a lot of stuff behind the scenes that they've been doing.

Our general counsel's office has been involved with everything. Our enforcement division has been continuing to push forward on cases to protect the American people. And our divisions of market oversight, clearing and risk, and swap dealer and intermediary oversight who you

heard from today, those divisions have been on the front lines talking with market participants getting things done and providing temporary targeted relief.

And to the point that Commissioner Berkovitz made earlier, much of what we do is behind the scenes. The Commissioners -- I'm talking with my fellow Commissioners regularly. In fact, I may be talking with them more now that we're not in the office, than when we are in the office and we have a bunch of other meetings and distractions.

And so we keep the lines of communication open. The level of collegiality and expertise at the Commission really makes it an honor for me to serve as the Chairman. And in fact, all of the no-action relief that we've granted, even the no-action letters, goes through a Commission process where there's a give and take in a no-objection process by all five of us Commissioners.

So everything that we do is sort of a

Commission effort, and I want to thank my colleagues and the staff for their distinguished work over the last four to six weeks. I think in many ways, this has been one of our finest moments as an agency as we celebrate our 45 years as an independent federal agency. There being no further business, I entertain a motion to adjourn the meeting.

COMMISSIONER STUMP: So moved.

PARTICIPANT: Second.

CHAIRMAN TARBERT: Thank you. Those in favor of adjourning the meeting will say aye.

(Chorus of aye.)

CHAIRMAN TARBERT: Those opposed, no.

Okay. The ayes have it. And again, I'm truly grateful for the CFTC staff for their great work, and I'm grateful for all the market participants who have contributed to the success of this meeting. This meeting is hereby adjourned.

(Whereupon, the above-entitled matter

went off the record.)