

## U.S. COMMODITY FUTURES TRADING COMMISSION

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OPEN MEETING

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THURSDAY,  
MAY 28, 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.

COMMISSIONERS PRESENT:

HEATH P. TARBERT, Chairman  
ROSTIN "RUSS" BEHNAM  
DAN BERKOVITZ  
BRIAN QUINTENZ  
DAWN STUMP

CFTC STAFF PRESENT:

DAN DAVIS  
FRANK FISANICH  
WARREN GORLICK  
CARLENE KIM  
CHRIS KIRKPATRICK  
CARMEN MONCADA-TERRY  
CLARK OGILVIE  
AMANDA OLEAR  
DAVID REIFFEN  
PAUL SCHLICHTING  
JOSH STERLING

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

CHAIRMAN TARBERT: Good morning, everyone. This is Chairman Tarbert, and this meeting will come to order. This is a public meeting of the Commodity Futures Trading Commission. 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 via our website. I'd also like to welcome my fellow Commissioners who are also participating on the conference call: Commissioner Quintenz, Commissioner Behnam, Commissioner Stump, and Commissioner Berkovitz.

We assemble today to consider two matters. First, a Proposed Rule to Provide an Exemption from Registration for Foreign Persons Acting as Commodity Pool Operators on Behalf of Offshore Commodity Pools; and, second, an Interim Final Rule to Extend the Compliance Schedule for

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Initial Margin Requirements for Uncleared Swaps in Response to the COVID-19 Pandemic.

At the outset, I'd ask for the cooperation of those who are speaking during the meeting today in observing a few good practices for the benefit of our listeners and for those who may listen to this recording at a later time.

First, when you're about to speak, please ensure your phone line is unmuted. Second, as you begin speaking, please identify yourself. And, finally, when you're not speaking, please keep your phone line muted.

We'll now move on to opening statements. I'll go first, followed by my fellow Commissioners in order of seniority.

In my opening statement this morning, I simply wanted to highlight some of the things that the CFTC has done since the last time we held our public meeting. And, really, I wanted to focus on responding to the tremendous impact of the coronavirus on the markets we regulate. And we've really focused on a few things.

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First of all, we continue to monitor closely, and have prioritized, agriculture and energy markets. And these are the markets that have witnessed perhaps the most significant volatility in the wake of the coronavirus pandemic.

First, agriculture. While it's well-known among all of those who follow our agency that the CFTC traces its heritage back to the Grain Futures Act of 1922 where we regulated, our predecessor agency, various kinds of agricultural commodity contracts, which were among the nation's first derivative products. So given our roots in these markets, and the agriculture community more broadly, agricultural issues are always top of mind for me as the CFTC's Chairman and Chief Executive.

We are continuing to monitor these markets closely, particularly with respect to certain livestock contracts where there have been wide spreads between the cash and futures prices. And since our last open meeting, we've created a dedicated Livestock Markets Task Force consisting of staff of the Division of Enforcement and the

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Division of Market Oversight. And the Task Force is paying special attention to ensure that these markets are functioning properly and without misconduct.

We're also showing our commitment to American agriculture in other ways. For example, the CFTC has, for the first time in our 45-year history, appointed an official liaison with the U.S. Department of Agriculture. I'm pleased to announce that Christa Lachenmayr, a senior agricultural economist in the Division of Market Oversight, will be the first CFTC staff member to hold this position. And the timing of Christa's appointment couldn't be better because the CFTC and the USDA are working closely together to understand coronavirus-related factors that are having a direct impact on market fundamentals.

I'm also pleased to announce that Darryl Blakey has joined the CFTC from the National Cattlemen's Beef Association as associate director of the Office of Legislative and Intergovernmental Affairs. The deep agricultural backgrounds of

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Christa and Darryl will be critical to our efforts moving forward.

We are also focusing on the nation's energy markets. Last month, we saw a historic drop in the May futures contract for West Texas Intermediate crude, which briefly traded at negative prices for the first time ever.

Clearly, there were unique macroeconomic factors at play: historically, a high supply of oil; a fight between Saudi Arabia and Russia for market share; and a simultaneous drop in demand that was unprecedented in both speed and severity due to the coronavirus. The markets were digesting a lot of information and it happened to coincide with the expiration of the futures contract.

While the issue of negative prices was not really a surprise for the CFTC, because for weeks we had been in regular contact with the exchanges in anticipation of negative futures prices, we nevertheless issued a joint staff advisory to remind our designated contract markets

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-- which are our exchanges; our FCMs, which are our broker-dealers; and our clearinghouses -- of their responsibility to prepare for the prospect that certain contracts may continue to experience extreme market volatility, low liquidity, and possibly negative pricing.

The CFTC's also been in close contact with the U.S. Department of Energy to ensure that both of us have the most current information impacting these markets, including on-the-ground details that impact both the cash and futures markets in terms of crude and gas prices. Secretary Brouillette and I have discussed these markets, as well, and we're committed to working together in order to maintain orderly markets and a secure supply chain for these important sources of energy.

So that's the first area, prioritizing agricultural and energy. A few other things we're doing. Well, second, we continue to issue additional targeted, temporary relief to market participants. Third, we continue to bolster the CFTC's customer education efforts. And times like

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this, unfortunately, create new opportunities for fraud, and so we've increased our efforts to arm the public with information so they can detect and avoid potential illegal schemes. We've done that through a recent customer advisory since the last open meeting and we've also begun publishing a series of web articles that examine frauds and various scenarios so customers can be aware of them.

All of these materials, by the way, are on our official coronavirus website page, which can be found at [cftc.gov/coronavirus](https://cftc.gov/coronavirus).

And, lastly, with the help of all of my fellow Commissioners, our advisory committees have been hard at work enabling the Commission to gain valuable insight from external stakeholders.

Commissioner Stump earlier this month held a meeting of the Global Markets Advisory Committee meeting. I sponsor the Agricultural Advisory Committee meeting. We had a meeting last month where we focused on the impact of COVID-19 on farmers and ranchers, and we were delighted to

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have U.S. Secretary of Agriculture Sonny Purdue as our special guest.

Commissioner Behnam, who sponsors the Market Risk Advisory Committee, solicited public comment on topics and issues being addressed by its Climate-Related Market Risk Subcommittee. And Commissioner Berkovitz held an Energy and Environmental Markets Advisory Committee meeting where we discussed position limits and the proposal that the Commission put out in 2020.

So as pleased as I am with all these efforts by my fellow Commissioners and staff, I know that our work is not done in responding to coronavirus-related market disruptions. As we continue to address the impact of a pandemic on our markets we regulate, the main thing is that we're not going to lose sight of our broader mission. And our mission is to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation. We owe the American people, who are sacrificing so much during this time, nothing less.

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Before I move on to my fellow Commissioners for their opening statements, I'd also be remiss if I didn't mention another development that occurred between our last open meeting and today, and that's Commissioner Quintenz's recent announcement that he intends to leave the Commission at the end of this year.

Commissioner Quintenz has played a key role at the Commission during his tenure. In particular, he's ably sponsored the CFTC's Technology Advisory Committee, which deals with new and challenging issues like cryptocurrency futures and other technological developments. But, more than a colleague who's contributed to so much success to our Commission since joining the agency, Brian's also become a good friend.

So with that, I will go ahead and turn it over to you, Commissioner Quintenz, for your opening statement.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman. This is Commissioner Quintenz. That's so kind of you. I wasn't prepared for you to

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acknowledge my announcement, given the time that has passed, but I'm very grateful to have had the chance to work with you, and to see your leadership at the agency.

The list of action items and accomplishments that you have gone through just between this meeting and the last meeting is indicative of how much thought and effort and leadership you have put into this agency, and I've been proud to be here to see it, and hopefully played a positive role there.

This is an agency I love. This is work that I love. It's hard to leave, but I believe it's the right time. So thank you so much for those kind and generous words. And your feelings about our relationship are very reciprocal. I've had the chance to not only develop relationships, but friendships across the agency, as well as with our market participants. And none are as valuable as the one that I share with you. So thank you for that, Mr. Chairman.

I don't have any opening statement. I

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do have two statements that I will go through during the consideration of both of these rules. I'd just like to thank DSIO and Director Sterling, particularly, for the hard work that they have put into the agenda items in front of us today. The list of rulemakings that DSIO has put forward has been nothing short of incredibly impressive, and I'm very pleased that I'll be supporting both of these this morning. Thank you.

CHAIRMAN TARBERT: Thank you very much, Commissioner Quintenz.

COMMISSIONER BEHNAM?

COMMISSIONER BEHNAM: Good morning, Mr. Chairman. This is Commissioner Behnam. And good morning to everyone who's able to join us today. I don't have prepared opening remarks, but I do just want to acknowledge the important work that we're going to be discussing and voting on today. And, again, you know, thank, as Commissioner Quintenz noted, DSIO and all the staff that work at my office so that we could get here today. I'll be proudly supporting both proposals

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-- or the proposal and the interim final.

And, on the notes that you've highlighted, Mr. Chairman, I've certainly been very pleased to be a part of the Commission's efforts in the past two months as we've ably responded to the challenges that our markets have faced, our colleagues have faced, our staff has faced. And I think we've done a lot of great things and I think we'll continue to work through these issues as a part of a larger national movement to emerge from the COVID-19 pandemic.

So I appreciate all of your leadership, and my colleagues, as well, and, of course, would be remiss to not mention Commissioner Quintenz, and certainly we'll have more to say in the months ahead, but thank him for all his work and our friendship, as well. Thank you.

CHAIRMAN TARBERT: Thank you very much, Commissioner Behnam.

Commissioner Stump?

COMMISSIONER STUMP: Thank you, Mr. Chairman. I, too, will reserve most of my comments

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for the discussion specific to the various items on the agenda. But I did want to take the opportunity to acknowledge the list that you went through and how amazingly I believe the staff at the CFTC has performed in these unprecedented circumstances in assisting us to advance the things that we've been able to achieve, both in direct response to the pandemic and to our ongoing responsibilities and agenda.

It is really remarkable that while working from home or remotely, caring for children, and taking care of personal lives, that all of our staff has, I'm certain, seen challenges, and they've really stepped up. And so I just wanted to take the opportunity to thank them.

I, too, will have more to say about Commissioner Quintenz's departure and I look forward to the opportunity to do so at a later date. Thank you.

CHAIRMAN TARBERT: Thank you very much.

Commissioner Berkovitz?

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COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman, and good morning to my colleagues and CFTC staff and the public. I will have detailed -- more detailed comments on each of the rules as we proceed to consider them.

But I think, in the spirit that you've indicated, Mr. Chairman, I, too, would like to express my appreciation. And it's a little premature, so I'm not going to go into detail here, I'll leave that for another occasion, but appreciation to Commissioner Quintenz for being able to serve with him on the Commission.

And I think today's effort reflects, Commissioner -- the spirit that Commissioner Quintenz and my colleagues bring to the Commission today. People may look at today, and I don't want to prejudge how people are going to vote, but if my indications are correct, I think we might have two 5-to-nothing votes today. And so people may look at it and say, oh, they dealt with two noncontroversial items. Well, I think that's a little deceiving if you just look at the vote on

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something, how much work actually goes into rulemakings to get 5-to-nothing votes. And, in many respects, it's harder to get to 5-to-nothing than 3-to-2 or 4-to-1. I mean, if we just vote how we think and everybody sort of digs in, that's the easy thing to do. The difficult thing is the give and take, and on five people that's not necessarily simple and straightforward.

So I think the fact that we may get two 5-to-nothing votes really is a reflection of the hard work and the spirit that you, Mr. Chairman, have brought to the Commission, and that it's been a pleasure to work with my fellow Commissioners on these rules and other rules.

I know that I've had a lot of comments, and my staff has provided a lot of comments, on these rules and there's been a lot of give-and-take and changes and other Commissioners have had comments; and we've had a number of rounds and drafts of these, and I'm comfortable today, very comfortable, with the product before us today.

And I would just like to express my

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appreciation to you, Mr. Chairman, and my colleagues on the Commission, and for the staff, too -- Josh and Amanda and the entire DSIO staff that has been working on these have been extremely responsive to our comments and working with my staff in getting to a place where we can get to those 5-to-nothing votes.

So I think it's noteworthy and I don't want to -- people should not be under the impression that the 5-to-nothing is easy or, quote, noncontroversial. At this point, I don't think there's controversy on it, but I think that we're in a good place today.

I'd also just note for the record, you mentioned, Mr. Chairman, the activity that the advisory committees have been doing. Actually, I know it's easy to overlook because it seems like ages and ages ago, that we're in this time warp now where time seems short, events that didn't take place a long time ago, somehow, for some reason, seem like they actually took place a very long time ago. But we've actually had two meetings of the

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Energy and Environmental Markets Advisory Committee. We've had two EEMAC meetings. One we had, I think, about a couple weeks after we started working from home and it was a market update on events in the energy markets. And then, as you noted, we did have the meeting on position limits.

So the EEMAC has been extremely engaged, given the volatility in the energy markets, and has been following events in general, and the WTI situation in particular, at the same time. Even in light of those market events, EEMAC members felt strongly they wanted to provide their views and it was very worthwhile and I'm grateful for the EEMAC members who stepped up to the plate and took on the additional work of providing those views and preparing remarks and providing those to the Commission in the last EEMAC meeting.

So I think many of the -- or the ability of the Commission to accomplish its mission in this time is also partially due, or largely due, to the market participants that we interact with and regulate supporting the Commission's mission and

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being accessible to us for information and analysis of what's going on in the market. So I wanted to also thank our market participants for continuing their engagement with us in these times.

So I'll leave my comments on the specific rules to when we have those discussions. Thank you, Mr. Chairman.

CHAIRMAN TARBERT: Thank you very much.

COMMISSIONER QUINTENZ: Mr. Chairman?

CHAIRMAN TARBERT: Please, go right ahead.

COMMISSIONER QUINTENZ: Mr. Chairman, I'm sorry. This is Commissioner Quintenz. I just wanted to thank all of my colleagues for their very kind thoughts. And, yes, there's plenty of time left before I'm planning on leaving and there's more work to do. But I just want to acknowledge the relationships and the friendships that I've developed with each of them and to thank them for making the Commission a fun place to work and for their efforts in adding value to our work. So

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thank you.

CHAIRMAN TARBERT: Thank you very much, Commissioner Quintenz.

And let me just say, let me also acknowledge that Commissioner Berkovitz has had two EEMAC meetings. And the first of the EEMAC meetings was actually, I think, the Commission's first sort of virtual meeting. And by virtue of having that meeting, we were able to then have our first public open Commission meeting virtually, as well.

So not only did it provide valuable input on the market conditions at that time, but it paved the way for us to have that first open meeting last month, and now we're able to have yet another open meeting this month. So very grateful for that.

And then, also, I think it is really important to stress the point that, assuming we have two 5-0 votes today, that a lot of give-and-take did, in fact, go into these and that I have been enriched by the fact that I have

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colleagues, all of whom are experts, all of whom take an incredible amount of time with their very competent staffs to review these rules, to suggest changes to these rules, and ultimately fashion public policy in a way that's optimal for the American people and the markets we regulate.

And by virtue of that, having a Commission that's active; that's interested; and that each individual brings, I think, a unique set of talents and backgrounds, substantive background to the table, that enriches again the policymaking process and enables us to work with them and the staff to really reach, I think, optimum and, as we say in our mission statement, sound regulation. So I think it's really terrific.

So moving on, then, to our two items on the agenda, for each of them the staff will make presentations to the Commission. The Commission will then vote separately on each matter. After each staff presentation, the floor will open for questions from each Commissioner. Following the close of discussion on each matter, the Commission

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will vote on the recommendation. All final votes conducted in this public meeting will be recorded votes.

The results of the votes approving 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 now ask the Commission to grant unanimous consent for staff to make necessary technical corrections prior to submitting them to the Federal Register.

COMMISSIONER QUINTENZ: So moved.

COMMISSIONER BERKOVITZ: Moved.

CHAIRMAN TARBERT: Thank you.

Without objection, so ordered.

Okay, at this time I'd like to welcome the following staff for their presentation on the Proposed Rule Providing an Exemption From Registration for Foreign CPOs. From the Division of Swap Dealer and Intermediary Oversight, on the phone are Josh Sterling, the division's director; Amanda Olear, the deputy director; and Frank

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Fisanich, who is the chief counsel and also a deputy director.

Josh and Amanda and Frank, you have the floor.

MR. STERLING: Well, thank you, Mr. Chairman, and good morning to the Commissioners and the listening public. It's a pleasure to have my division, world-class division, in front of you yet again to further our goal of providing for smart, effective, and practical oversight of our registrants. And both rules we put before you today I think will further those goals in support of the Commission's values and core mission.

And so I'm usually not one for words, but I will be saying very little else today in recognition of just how impressed I am at how well the team here has been able to perform, and I can say the same agency-wide, during some very challenging circumstances.

And so Frank and Amanda have worked quite hard with (unintelligible), chief economist, general counsel's office on these rules. And so

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without further ado, I will hand the floor over to Amanda who really helped spearhead this rule alongside Frank. Thank you both. And, Amanda, over to you.

MS. OLEAR: Okay. Thank you, Josh.

Good morning, Mr. Chairman and Commissioners. As Josh noted, my name is Amanda Olear and I am a deputy director in DSIO.

Before I begin my substantive presentation, I would like to specifically thank the staff who contributed to the document that is under consideration today. Specifically, in DSIO: Lauren Bennett, Andrew Chapin, Elise Bruntel, Elizabeth Groover, and my colleague Frank Fisanich, who will be presenting today, as well. In the Office of the General Counsel: Carlene Kim, Clark Ogilvie, and Dan Davis. In the Office of the Chief Economist: Scott Mixon, Gloria Clement, and Alex Ferko. And then at the Commission level: Terry Arbit, Peter Kals, Laura Gardy, Erik Remmler, and Matt Daigler.

Now on to my substantive remarks. The

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proposal under consideration today would amend the exemption from registration set forth in Commission Regulation 3.10(c)(3) or what I will refer to in my remarks as the 3.10 exemption.

With respect to persons located outside the United States who are engaged in activities in the nature of commodity pool operators, or CPOs, specifically, the proposal would, one, amend the 3.10 exemption such that non-U.S. CPOs may rely on that exemption on a pool-by-pool basis to better reflect the current state of operations of CPOs;

Two, add a conditional safe harbor to enable non-U.S. CPOs to rely on the 3.10 exemption that, by virtue of the structure of their offshore pool, cannot with certainty represent that there are no U.S. participants in their operated pool;

Three, amend the revised 3.10 exemption so that it could be utilized concurrent with other exemptions or exclusions available to CPOs generally;

And, four, provide an exemption from the U.S. participant prohibition in the exemption

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for initial capital contributions received from a controlling affiliate of an offshore pool's non-U.S. CPO, subject to certain limitations intended to limit the possibility of evasion.

When the Commission initially adopted the 3.10 exemption in 2007, it cited its longstanding policy of focusing, quote, on customer protection activities with respect to domestic firms and upon firms soliciting or accepting orders from domestic users of the futures market. The Commission further stated that the protection of non-U.S. customers of non-U.S. firms may be best deferred to foreign regulators.

The increasingly global nature of the commodity pool space and the statutory and regulatory developments since 2007 appear to have caused an increasing misalignment between the Commission's stated policy purposes underlying the 3.10 exemption, which are to focus the Commission's resources on the protection of U.S. persons, and the provisions of the current exemption in Regulation 3.10(c)(3) as applied to CPOs.

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The amendments under consideration today are intended to provide much-needed regulatory flexibility for non-U.S. CPOs operating offshore commodity pools by taking into account the global nature of their operations without compromising the Commission's mission of protecting U.S. pool participants.

Moreover, staff expects that these amendments have the potential to result in increased competition and variation in commodity pools and their operators, which would further promote the vibrancy of the commodity interest markets in the United States.

For these reasons, staff recommends that the Commission approve the proposed amendments to Commission Regulation 3.10(c)(3) under consideration today.

I will now turn the presentation over to Frank Fisanich to discuss the reopening of the comment period with respect to the 2016 Notice of Proposed Rulemaking regarding further amendments to Commission Regulation 3.10.

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MR. FISANICH: Hi. Good morning. As Amanda said, this is Frank Fisanich.

In the summer of 2016, the Commission published the proposal to amend Commission Regulation 3.10(c) to amend the conditions under which the exemption from registration would apply to IBs, CPOs, and CTAs.

Generally, the proposed amendment would have codified two DSIO no-action letters. The first of which, Letter 15-37, provided registration relief to persons located outside the U.S. acting in the capacity of an IB or CTA on behalf of international financial institutions, such as the World Bank or the International Monetary Fund.

And the second letter, Letter 16-08, confirmed the availability of registration relief for foreign intermediaries when acting for persons located outside the U.S. in connection with transactions not required to be cleared under Commission regulation.

That second letter recognized that Commission Regulation 3.10 in its current form

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makes it a condition of the foreign intermediary exemption that its foreign-located customers' commodity interest transactions be cleared through a registered FCM. However, of course, not all commodity interest transactions are subject to a clearing requirement under the CEA or Commission regulation, and some are not available for clearing by any DCO registered with the Commission.

In response to the proposal, the Commission received a number of comments, almost all of which were supportive of the proposal. However, given the passage of time, staff recommends that the Commission reopen the comment period on the 2016 proposal to determine whether it would be appropriate to finalize the 2016 proposal along with the other amendments to Commission Regulation 3.10 being proposed today.

Staff recommends that the Commission reopen the comment period with respect to the 2016 proposal for 60 days.

I will turn it back over to Amanda.

Amanda?

MS. OLEAR: Thank you. So this concludes staff's presentation on the notice of proposed rulemaking under consideration today, and we are happy to answer any questions that you might have. Thank you.

CHAIRMAN TARBERT: This is Chairman Tarbert. Thanks so much, Josh, Amanda, and Frank, for that excellent and informative presentation.

To begin the Commission's discussion in consideration of this rulemaking, I'll entertain a motion to approve the proposed rule revising the exemption for foreign CPOs in Regulation 3.10(c)(3).

COMMISSIONER QUINTENZ: So moved.

COMMISSIONER BERKOVITZ: Second.

CHAIRMAN TARBERT: Thank you very much. I'd now like to open the floor for Commissioners to give any statements and ask questions. We'll do so in order of seniority, so I'll begin.

First of all, from my perspective one of my things that I've been trying to do as chairman

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is to do some tidying up, if you will, of our, of our docket. So this is an example of the thing that Frank spoke on. It was a proposal that was put out four years ago but has never been fully acted upon.

And so I think given that we're going to vote on something very similar today that touches on that, we wanted to reopen the comment period. So later this year if we decide to finalize this rule, we can also determine whether to finalize parts of that rule that, again, has been sitting out there for close to four years.

On the specific rule itself regarding the registration exemption for foreign CPOs, I look at this like sort of take a big picture view. And one of the things I think about as chairman of the agency is that we are, of course, a taxpayer-funded agency. And I'm reminded of that every, every three or four months when I go over budgeting decisions or submit documents to the Hill that ultimately Congress expects us to deploy our resources to serve the needs of American taxpayers.

And so where I see regulations where

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there doesn't appear necessarily to be a clear connection to furthering the interests of the United States or its citizens, especially attuned to sort of saying, you know, is that an area where we make tweaks?

And so, obviously, the CFTC framework for regulating foreign commodity pool operators is aimed at protecting U.S. investors who put their money in commodity investment funds run from outside the United States. And that, of course, has always been since the beginning the objective of this regime. And that has been our policy rationale for more than a decade.

But the actual text of our rules, if strictly construed, could leave one to basically believe that if a foreign CPO has a fund that has only non-U.S. investors, essentially that fund as well may need to be registered if it has another fund with just one U.S. investor.

So I'm not sure, basically this has led to a situation where there are two competing potential consequences here. And I think neither

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one makes for good regulatory policy.

First, if the CPO chooses to register all its funds, so let's say it has one fund with some U.S. investors and it has nine other funds with only foreign investors, then we have a situation where the CFTC ends up regulating a bunch of foreign-based funds without any U.S. investors. And query to my point earlier, does that really make sense?

The second possibility is that if the CPO refuses to register any of its funds, then U.S. investors are effectively denied liquidity and investment opportunities offered by foreign commodity pools.

And so I really applaud the division and I applaud my fellow Commissioners for working with me to sort of fix what I think has been a growing mismatch between statutory and regulatory developments and the underlying policy rationale here of, again, focusing on those funds with U.S. investors.

I'll also mention my support for the

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affiliate investment exemption. So here we have a situation where essentially a parent company or some other controlling entity of the foreign CPO is putting seed money into that CPO. And here, of course, we are talking about a U.S. investor, but the U.S. investor effectively controls, directly or indirectly, the fund that they're investing in.

And so here I think the point is that if we're going to focus on U.S. investors we also really need to focus on investors who are truly arms-length, third party investors. And so the limited exception that exists for seeding I think addresses that issue.

So those are my general comments. I'm fully supportive. And I guess I just had maybe one question for the team. And that's that the Notice of Proposed Rulemaking proposes two limitations on who may contribute initial capital to the offshore pool utilizing this U.S. controlling affiliate exemption.

The first is that the U.S. controlling affiliate can't be subject to statutory

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disqualification or a similar bar.

And the second is that the interests in the controlled affiliate are not marketed as providing access to trading in interest -- in commodity interest markets, investment markets in the United States.

So I guess if you could let me know kind of what the thought is about those two limitations and why they're there, that would be helpful.

MS. OLEAR: Of course. Thank you, Mr. Chairman.

So, you know, I'll turn my attention to the first where we were proposing to prohibit controlling persons who are otherwise subject to a ban or a bar related to participating in our market from using an offshore affiliated CPO and the pools operated by that offshore affiliated CPO to do an end run around that prohibition.

I think our concern is that, you know, they would be able to do indirectly through that offshore affiliate what they'd be prohibited from doing directly. And that ultimately would

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undermine both the market protection and the customer protection purposes behind the trading limitations or the registration prohibition that the Commissioners have already determined that that entity warrants having imposed upon them.

So we wanted to avoid creating a loophole for persons we've already determined to be inappropriate to participate in our market, or who pose undue risk with respect to, you know, well-functioning commodity interest markets.

With respect to the second, I think we were sensitive to the possibility that a controlling affiliate could essentially serve as a conduit for U.S. persons to gain access to offshore commodity pools that are not operated by a registered CPO or an otherwise exempt CPO under another provision. Again, it would result in a significant loophole where we could permit a controlling affiliate to offer ownership interest in itself as a mechanism for U.S. persons to gain exposure to U.S. commodity interest markets through an offshore vehicle.

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That, again, would undermine the Commission's ability to ensure that U.S. persons are receiving the full breadth of the customer protection provisions that are in place under both the CEA and the Commission's regulations promulgated thereunder.

CHAIRMAN TARBERT: Got it. And so the way that I look at it, I guess, at a high level is the second limitation really does go to the issue of protecting U.S. investors.

MS. OLEAR: Correct.

CHAIRMAN TARBERT: We don't want them getting siphoned into investments that should be registered with us but aren't because this exemption's been used to avoid exemption -- registration.

And then the first, I think, is really sort of our duty to foreign markets. As I said, I don't think we should be deploying our resources to necessarily protect foreign investors. But at the same time, if someone doesn't qualify and has violated our laws and is disqualified from offering

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stuff in our markets, I think it is incumbent upon us to say, well, we're not going to give you this exception so you can go overseas and do the same thing.

And so I do look at this as, while we're not necessarily going out and proactively protecting foreign investors, this provision is in there to essentially if someone has violated our rules and we don't think they're fit to offer these products in the U.S., we're not going to necessarily going to allow them to do the same thing abroad.

Is that right?

MS. OLEAR: Yes, Mr. Chairman, that's correct.

CHAIRMAN TARBERT: Excellent.

Okay. No further questions from me. Thank you, again, for the outstanding work.

I'll turn to Commissioner Quintenz.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman. This is Commissioner Quintenz speaking.

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I don't have any questions either. So let me just go through quickly my statement of support. But I am very pleased to support today's proposal.

Like the Commission's proposal from January addressing its jurisdiction over foreign swap dealing activities, I think this rulemaking sensibly marks the boundary of the Commission's reach into foreign derivative trading activities in light of market reality. At the same time, the proposal ensures that the Commodity Exchange Act continues to protect U.S. market participants.

And like the proposal from earlier this year amending the Commission's regulations governing commodity broker bankruptcies, in this rulemaking the Commission staff applied their experience to make the Commission's regulations more efficient and appropriately prioritize taxpayer resources of our agency's oversight.

I applaud the staff of the Commission for continuing our work despite the COVID-19 pandemic. I'm very grateful to them for

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incorporating some of our suggestions and technical modifications and clarifications into this proposal. And I very much look forward to reviewing the industry's comments.

And thank the staff again for their work.

Thank you, Mr. Chairman.

CHAIRMAN TARBERT: Thank you, Commission Quintenz.

COMMISSIONER BEHNAM.

COMMISSIONER BEHNAM: Thank you, Mr. Chairman. This is Commissioner Behnam.

Three quick questions. And I do have a statement that will be posted to the website shortly, so anyone who's interested can read more formal thoughts there on the decision. I will, as I said, be supporting the decision -- the proposal today.

Before I start my questions I do want to reiterate my thanks to DSIO, to Josh Sterling, to Amanda, and Frank for their great work. They engaged with my office on many occasions over the

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past few weeks. And we've all discussed, as Commissioner Berkovitz pointed out, this has been a long process but I think we've ended up in a really good place where we can have a unanimous vote in support of this proposal.

So thanks to everyone who participated and to all the individuals that Amanda identified as well.

So my questions were not too far off of what was said by Commissioner Quintenz and the Chairman, but I think more specifically if you will just indulge me for a second here, I can drill down on a few specific issues.

As was noted, you know, our mandate within the Commission is to protect U.S. customers. And I appreciate and understand how we have to balance that responsibility, which is difficult. But given the fact that what we are trying to do is allow this exemption to sort of not capture non-U.S. pools and non-U.S. participants, I'd just be interested to know from a DSIO perspective how do we sort of reconcile the fact that certainly the

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participants who are going to avail themselves of this exemption are non-U.S. for sure but they will be trading on U.S. markets. They will be trading on U.S. DCMs, on SEFs using U.S. clearinghouses.

And, you know, certainly I think -- and this might be a little philosophical but I'm sure DSIO has thought about this -- although participants are not in the U.S. they will be using markets that are U.S. markets and are registered with the CFTC.

And do you see any sort of tangential or otherwise relationship that could affect U.S. customers or U.S. markets in an adverse way?

MR. STERLING: Yes, Commissioner Behnam, this is Josh Sterling speaking. Thank you for that question, sir. I think it's absolutely a good point to raise.

From our perspective as the oversight division of this agency, we would say that we have to take some, some measure of comfort or understanding that, you know, a product offered in a foreign market to foreign investors in a foreign

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language, they have a regime that would apply customer protection requirements. And so we understand that; we respect that. You know, under the usage regimes in Europe or the regimes for retail investment in Japan, whatever it might be, those are well-based, longstanding regimes.

That might, of course, not capture every foreign participant in our market.

When we get to, you know, market integrity I think we sort of look at it as we would for any other trader in our markets that's not necessarily registered, where we have exchange level surveillance, we have the FCMs and their risk controls in case of futures trading or cleared swaps trading.

And then we have our own, you know, surveillance and market intelligence units and other divisions in the agency.

So I think we view the market impact of trading by foreign pools as really being looked at through those filters that apply to all traders. And then in terms of actual protection of the

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customers themselves, you know, I think it's incumbent upon a, you know, a foreign fund operator, if they're like our fund operators or something akin to it, they have responsibilities under laws to their own investors. And we sort of will, consistent with Commission policy, effectively defer to that.

COMMISSIONER BEHNAM: Thanks, Josh. That's very helpful, and points well taken.

The second question is in regards to the proposed safe harbor in the NPRM. And specifically to those who are listening, the safe harbor really sort of wants to ensure that the offshore pools really take specific action to prevent U.S. persons from participating in those offshore pools. And I think that was the, you know, right decision and it, I think, rings fences to an extent and protects and does reasonably cover that -- or a sense, a good sense that we're doing what we need to do to ensure that the non-U.S. pools are sort of meeting expectations that we have.

But I was curious if DSIO plans or

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anticipates any sort of ongoing monitoring of compliance with these conditions in the safe harbor?

MS. OLEAR: Thank you, Mr. Commissioner, for that question.

So the safe harbor we would anticipate that most of the collective investment vehicles that would be operated consistent with the terms of the safe harbor would also have their offering would be made pursuant to the SEC's Reg. S, which is their, their regulation that provides a safe harbor with respect to offshore offerings such that they may have some minimal US ownership, as long as they take certain steps to eliminate the possibility that U.S. persons could be purchasing shares in those offerings they would not have to be registered a special offering at the SEC.

And given that, you know, not only would our conditions apply with respect to the safe harbor but that the Reg. S conditions would be layered on top of that. We believe that we can work closely with our colleagues over at the SEC to

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address any issues that may arise, and to ensure that we're aware of how offshore persons are utilizing this safe harbor because our terms of our interest with the SEC is very much aligned in this space.

COMMISSIONER BEHNAM: That's great. Thanks, Amanda. And good to that as sort of an example I think, so folks understand and appreciate the sort of ongoing, very healthy relationship we have with our colleagues at the SEC to continue to do what I think we have a shared responsibility as U.S. market regulators.

Thanks.

And, finally, the U.S. control affiliate initiative that the chairman brought up, if you don't mind taking a little bit of a different perspective on it.

I know the proposal doesn't impose a time limit in terms of when the seed contribution sort of arrives vis-a-vis the pool inception. But the preamble seems to think that the Commission's going to at least preliminarily intend to limit the

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seed money contribution to the pool inception itself.

And I think we had some earlier conversations, and I know my staff did with you, but I think it would be helpful just to describe how that preliminary proposal and sort of what the Commission was thinking about doing in terms of limiting the seed contribution to the inception, how that, for lack of a better word, sort of jives with the controlled affiliated, controlled affiliates that are banking entities but are, you know, by virtue subject to the Volcker rule which do have seeding time limitations.

MS. OLEAR: Thank you, Mr. Commissioner.

So when you talk about inception of trading, that's commonly understood, at least at the staff level and I think more broadly within industry, that these would be contributions that would occur either before or close in time to after the vehicle launching and trading beginning.

And I understand, and admittedly I'm not an expert in the Volcker rule, and so I've been

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able to leverage off of some of the expertise of my colleagues, my understanding is under the Volcker rule there is a one-year limitation with the possibility of going up to three years.

And I would say, you know, the purpose of, you know, initial capital contributions or seed money is often to help a commodity pool or other trading vehicle establish a sufficient trading record such that they can attract external investors.

And typically, you know, that can take anywhere from a year up to three years.

You know, I think couching the discussion in terms of, you know, the inception of the pool and inception of trading we felt that that appropriately ring fenced, at least as an initial proposal, the ability for the onshore U.S. affiliates to continue to provide capital support to the commodity pool because if it's not going to be viable, you know, we don't -- it's not necessarily appropriate to continue to provide capital.

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So saying that it is about the initial contribution, we believe that that aligns with the limitations under the Volcker rule. And I would note that nothing in this rule is intended to or should be read as superseding any specific time limitations that are otherwise imposed by other regulations or other statutory obligations that a U.S. controlling affiliate may be subject to.

MR. STERLING: And I would add, Mr. Commissioner -- this is Josh Sterling -- there are certainly, based on this practical experience, a number of U.S. companies that do have seeding programs for offshore funds that could rely on this, that could have foreign affiliates that rely on this relief. And those U.S. parent companies themselves are not subject to Volcker.

You could think of an asset manager that's independent of a banking organization, or certainly an insurance company that's subject to, you know, state insurance commission regulations and not subject to Volcker.

So I think we have to, you have to

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respect that reality as well when we evaluate aligning with Volcker in the banking context.

COMMISSIONER BEHNAM: Sure. Thanks.

Well, again appreciate all those responses and all the work that went into this.

Mr. Chairman, you mentioned the sort of principles with which you operate as chair and how we're thinking, I think, within the context of the CFTC to obviously focus the bulk of our resources on domestic customers because that's our mandate, that's our mission, and that's what taxpayers expect from us. And I think that is paramount, and I support you in that 110 percent.

That said, you know, we should be mindful of past crises and what's affected the U.S. economy and financial markets over the past few decades and even further back. And often these crises are, to use the word, seeded overseas.

So we need to remain vigilant and make sure that we're doing our homework and ensuring we're checking all our boxes to protect U.S. customers and protect U.S. markets and ensure that

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these crises and these risks are not being born overseas. Because markets are global and they will certainly transpire very easily across borders, not thinking about geographic location of the limitation or reason to stop.

So we need to remain vigilant. And I know we do, all the staff do, and I know the Commission does as well. And look forward to the comments to ensure that as we move forward on this proposal we do it well, and we do it right, and we fulfill our responsibility of protecting Americans and U.S. investors.

Thank you.

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

COMMISSIONER STUMP: Thank you. I'm pleased to support the proposal before us today. The proposal is to clarify the registration requirement for offshore commodity pools by non-U.S. CPOs by specifically addressing an important issue that arose from comments received on a different proposed rulemaking issued in

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October of 2018.

I want to specifically thank Chairman Tarbert for giving us the opportunity to advance this proposal, given that he wasn't at the Commission in October of 2018, and so I doubt this issue was top of mind when he was confirmed as Chairman.

I also want to thank the staff of the Division of Swap Dealer and Intermediary Oversight, General Counsel's Office, and the Chief Economist's Office, for working so hard on both of today's agenda items, in addition to the many other important priorities that the Chairman has laid out for us to complete this year.

Today's proposal is in keeping with a couple of principles that I have discussed in relation to prior rulemakings. First, it reflects the benefits of acting to codify staff relief where appropriate and to periodically revisit our rules when necessary.

And, second, it carries on the Commission's long tradition of deference to our

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international colleagues to regulate individuals and activities in their own countries where their regulatory interest is paramount.

First, I want to discuss the benefits of acting to codify the staff relief where appropriate and to periodically revisit our rules.

Our staff often has an occasion to issue relief or take other action in the form of no action letters, interpretive letters or advisories, on various issues and in various circumstances. As I have previously noted, with the benefit of time and experience the Commission should consider whether codifying staff action into rules is appropriate in order to provide legal certainty for the marketplace.

Although it took quite a while, that is what's happened here. In 1996, Commission staff issued Advisory 18-96 which provided relief from certain regulatory requirements for registered CPOs with respect to their offshore commodity pools. Twenty-two years later, in October 2018, the Commission proposed to codify Advisory 18-96,

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a proposal that the four sitting Commissioners who were here at the time supported.

Although commenters generally favored that proposal, several of them disagreed sharply with statements in the release referencing a separate rule promulgated in 2007, Rule 3.10(c)(3), which addresses when non-U.S. CPOs operating offshore commodity pools must register in the first instance.

The 2018 proposed rulemaking stated the view that Rule 3.10(c)(3) applies on an "all-or-nothing" basis, so that a non-U.S. CPO that operates one or more commodity pools with U.S. participants and other pools without, can have to register as a CPO for all of its pools.

A number of commentators, by contrast, read the same rule to apply on a "pool-by-pool" basis such that non-U.S. CPOs are required to register with respect to their commodity pools with U.S. participants, but not with respect to their offshore commodity pools without U.S. participants.

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I do not to take sides in that debate. I was not here in 2007 when Rule 3.10(c)(3) was adopted. And all I can say is that I have read it many times since October 2018 when I voted to propose codifying Advisory 18-96. I can see how reasonable minds might interpret the words differently.

But what is important to me is that by initiating a codification of Advisory 18-96 we discovered the need to revisit Rule 3.10(c)(3), which we are doing today. As I have said before, "it is simply good government to revisit our rules and assess whether certain rules need to be updated; evaluate whether rules are achieving their objectives, and identify rules that are falling short and should be withdrawn or improved."

Accordingly, we are proposing to improve Rule 3.10(c)(3) to clearly and unequivocally embrace the pool-by-pool approach for registration with the CFTC for non-U.S. CPOs operating offshore commodity pools.

As I've mentioned, the proposal arose

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out of a different proposed rulemaking about a year and a half ago which would have codified a staff action known as Advisory 18-96. To help the public understand the context and background for what we are considering proposing today could you, Amanda, please describe Advisory 18-96?

MS. OLEAR: Of course. Thank you. Thank you, Commissioner.

So 18-96, as you noted, was a staff advisory that was issued in 1996 by the Division of Trading and Markets, which was a predecessor to DSIO. It provides relief to registered CPOs, regardless of whether they are located onshore or offshore. And to get relief from certain compliance obligations that are imposed as part of Part 4, and this includes disclosure reporting and some recordkeeping obligations.

And then -- so that's the first part. The second part of 18-96 provides relief for registered CPOs whose main office is located within the United States. Under the requirements they have to maintain their original books and records

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of the offshore commodity pool in the United States. So this relief enables them to maintain the books and records with respect to the offshore commodity pool offshore with the commodity pool.

And under for CPOs claiming either of, you know, either of the relief provided in the advisory they have to file a notice informing the Commission and NFA that they will be relying upon that relief.

COMMISSIONER STUMP: Thank you.

Could you outline the implications of today's proposal to amend 3.10(c)(3) on non-U.S. CPOs that are currently relying on Advisory 18-96 with respect to their offshore commodity pools?

MS. OLEAR: Yes. So if the pool by pool approach that is under consideration today were adopted as final, non-U.S. CPOs would no longer have to rely on Advisory 18-96. And so they would be able to delist their offshore commodity pools and instead rely on the new exemption in Regulation 3.10.

And they could either claim exemption

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with respect to, you know, another exemption with respect to their U.S.-basing commodity pools or maintain registration with respect to those U.S.-basing commodity pools.

COMMISSIONER STUMP: Thank you.

So non-U.S. CPOs would no longer have to rely on Advisory 18-96. But because it remains in effect, registered CPOs in the U.S. would still be able to rely on staff Advisory 18-96 with respect to their offshore commodity pools.

However, the Advisory only provides relief from requirements that were in effect when the Advisory was issued in 1996. So absent codification by the Commission, the Advisory does not apply to requirements adopted since then. One notable example might be Form CPO-PQR. Is that correct?

MS. OLEAR: That is correct.

COMMISSIONER STUMP: Thank you.

Shifting to a different topic within the rule, with respect to the safe harbor that many have mentioned I wanted to take the questioning in

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a little bit different direction.

We're proposing for non-U.S. CPOs that may not be absolutely sure that no U.S. persons are participating in an offshore commodity pool; one of the conditions to rely on the safe harbor is that the pool's offering materials in an underwriting or distribution agreement prohibit U.S. ownership of the pool's participation units. Is that right?

MS. OLEAR: Yes, Commissioner, that is also correct.

COMMISSIONER STUMP: And we're also separately proposing that a non-U.S. CPO is eligible for Rule 3.10(c)(3) exemption even if a control affiliate in the United States has contributed initial capital to an offshore commodity pool, subject to certain conditions. Is that also right?

MS. OLEAR: Yes, Commissioner, that is also correct.

COMMISSIONER STUMP: Could you please explain the interplay between these two parts of the proposal, specifically can a non-U.S. CPO

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operating an offshore commodity pool that has initial capital contributed by a U.S. control affiliate still rely on the safe harbor regarding inadvertent U.S. participation, even though the safe harbor requires that the offshore pool prohibits U.S. ownership or participation rights?

MR. STERLING: Commissioner Stump, this is Director Sterling. Thank you for that question. I'll take the liberty of chiming in here.

I think the intention of the rule on the safe harbor you've walked through with us -- and thank you for that -- you know, reflects the practical reality, which is essentially the pooling activity of the funds that we're talking under this exemption will necessarily occur outside the United States. And so the things that the safe harbor talks about are things that, at least in my experience as a funds lawyer, are altogether common for a bona fide non-U.S. offering.

A U.S. control affiliate can

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nonetheless invest in a fund that satisfied those requirements because it's a parent co. or, you know, controlled by the parent co. of the foreign operator.

And, you know, the way we look at that -- and the chairman alluded to this in his remarks -- is that that's not really, you know, a pooling of assets in the sense that, you know, I, the parent co., and in the chain of distribution where I'm buying, you know, interest in a bond on the market, public or private. Rather, you're making really a business decision to support a fund, usually as part of a broader program.

And so I think what we would say is that you often have, and let's call it a U.S. insurance company that has a foreign affiliate as an asset manager, they wanted to collate general account assets, let's say, to support, you know, this business line offshore by seeding over a number of years multiple funds subject to, you know, a foreign fund offering regime. So that offering in, you know, a foreign jurisdiction is very

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different from a U.S. parent co. making a, you know, a bottom line balance sheet decision to support, you know, a business line.

And so we think that that actually is very reflective of reality.

MS. OLEAR: Hi. This is Amanda. I'm going to chime in as well. Sorry.

And to that end, because of everything that Josh said, we've explicitly provided in the regulatory text that a U.S. controlling affiliate is not treated as a, quote, participant for purposes of either the pool by pool exemption under new paragraph (c) (3) (ii) or the safe harbor, the Commission's safe harbor that's set forth in (c) (3) (iv), as proposed.

COMMISSIONER STUMP: Thanks to both of you. I think that's an important point to make for the public's benefit. I'm certain that they will read it and have -- I hope there aren't any questions, but I just wanted to clarify at the onset before commenters have an opportunity to review it in detail.

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But the two are able to work in conjunction with one other. So thank you.

Those are all the questions I had. I just wanted to note some have, others have talked about deference. And in addition to providing much-needed clarity, I believe this proposal also reflects an appropriate deference to our international colleagues where they have the paramount regulatory interest.

When a commodity pool with a non-U.S. CPO has U.S. participants, or when a commodity pool's CPO is in the United States, we regulate accordingly.

But the Commission should not impose registration and regulatory requirements on non-U.S. CPOs with respect to their operation of offshore commodity pools for non-U.S. participants.

In such circumstances the protection of foreign pool participants is best left to international -- our international counterpart. The result makes sense, and would be achieved by

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the application of the pool-by-pool consideration of registration before us today.

This deference also reflects the shared goal of global authorities seeking to achieve the most effectively regulated markets through coordination, rather than duplication.

I therefore support today's proposal. Of necessity, the rulemaking release recounts some of the history regarding Rule 310(c)(3). But I would ask that those planning to comment, that we not relitigate the debates of the past, but rather focus on the future and the rule amendment that is being proposed.

I would also like to take the opportunity to acknowledge that we are not today advancing the remaining elements of the October 2018 proposal to codify Advisory 18-96.

It is my hope that we will be able to do so, such that that 22-year-old staff Advisory is updated to more completely provide legal certainties regarding current regulatory requirements.

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As with that proposal, we learned much from the comments received, and I look forward to reviewing the public's input on the proposed amendment under consideration today.

I again want to thank the staff for the time and effort that they have put into answering questions and addressing many comments about this rulemaking for me and my team.

And those from other Commissioners, which, as noted by the Chairman and Commissioner Berkovitz, were many. And it's been quite a balancing act.

So I very much appreciate the effort of the DSIO team and the Office of the General Counsel for their assistance. Thank you.

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

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman. This is Commissioner Berkovitz. I have a written statement which will be in the record and posted. And so I will just go over the highlights of that statement here, and then a few

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questions.

I am going to support the proposal to amend Regulation 3.10(c) to address the exemption from registration for foreign persons who operate commodity pools for customers located outside the U.S.

I agree, as has been stated previously, the Commission should focus its limited resources on commodity pools in which U.S. persons participate, as opposed to commodity pools located outside the U.S., in which only non-U.S. persons participate.

With respect to the proposal, one aspect of the proposal I have particular questions on, and there's some questions in the proposal relating to these, and I appreciate the staff's working with my office to include these questions for commenters to address.

And these concerns address the topic that there have been several questions on already about the controlling affiliates. These are U.S. entities with U.S. investors that provide capital

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to the non-U.S. pools.

Their ability to rely on the exemption --whether their ability to rely on the exemption, could be used by CPOs who take funds from U.S. persons to essentially do an end run around the CPO registration and regulatory requirements.

I know that's not the intent here. And I know the staff was included, and we have included, several provisions to reduce the possibility that that might happen. But, whether those are sufficient, we've got some additional questions on and I have some concerns on.

As Commissioner Stump and others have noted, the issue of when a non-U.S. CPO with non-U.S. participants is required to register has been subject to some debate over some time. And I'm fully supportive of today's effort to clarify that.

And not only has there been some legal uncertainty over time, but developments in the marketplace have increased the need for greater clarity in the rule.

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The inclusion of swaps regulation following the financial crisis has expanded the scope of activities subject to CPO registration. And the nature of the pools and the nature of the markets have become more global in nature.

So rather than just simply clarifying some legal uncertainty, that's actually -- we need to update our regulations to bring them in line with the expanded scope of the market.

Also, I want to note one thing in here, and more on the legal side of this. The proposal relies on the Commission's exemptive authority under Section 4(c) partially in this rule.

I think as a matter -- as a general matter, we should use the most direct authority there is. And the most on point authority for our regulations. And not use exemptive authority sort of as a catch all to, well, that's what the CEA says, but we don't necessarily have to do it.

I think that Section 4(c) should be used very carefully in the circumstances in which it delineates in the statute. I and my staff

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discussed this with the DSIO staff as we were -- as the Rule was being drafted. And I want to thank and commend the CFTC staff at DSIO and OGC, we had discussions with OGC as well, for their efforts to address these concerns, and fully explain in the proposal why the use of Section 4(c) authority is appropriate in this instance.

So let me ask a couple of questions. The first one, we've been talking about, and there's the Q & A. And you look at the drafting of the preamble and the drafting of the rule, and the provisions in there talk about, for example, prohibiting U.S. ownership of shares in the pool. Prohibiting marketing to U.S. participants, and then it also speaks in other instances of persons located offshore.

And so my question is, is the prohibition on U.S. participation, is that equivalent to -- when we talk about U.S. participation or U.S. persons, as the preamble refers in several places to U.S. persons -- does the prohibition on participation by U.S. persons

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attach to U.S. person? And I'm using that phrase in the legal context with how we've defined U.S. person in other contexts.

Or when we talk about U.S. participants, is it just simply somebody who has a U.S. -- has an address inside or outside the United States? What is the operative legal factor here? Whether it's a -- technically a U.S. person under the definition of U.S. person?

Or is it just a person who is physically located inside or outside the United States at some point in time, whether they're -- when they're making investment or whether they spend 183 days out of the year, or whatever it is, in some non-U.S. jurisdiction? Can you explain what the focus is on U.S. participants?

MS. OLEAR: Thank you for that question, Mr. Commissioner. So I engaged in some consultation with my colleagues in OGC, and looked at the predecessor regulation and everything that's led to the development of the 310(c)(3) exemption.

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And consistently the location that's used in exemption is generally understood to be the person's domicile.

So it is -- it's my understanding, you know, based on all the research I've done, that this is -- this exemption would not permit a U.S.-domiciled person to travel to, say, Luxembourg for a brief holiday, and during that time of that holiday invest in an offshore commodity pool that is operated by an exempt non-U.S. CPO.

Such a scenario could encourage evasion. Which you know, obviously we are very concerned about. And you know, we believe that this understanding is consistent with the historical staff view in this space, which primarily focused on domiciles.

COMMISSIONER BERKOVITZ: Okay. Well, I appreciate that clarification. And then I if there's -- look forward to comments on that, whether that, the appropriate way to go about it rather than the U.S. person ownership.

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Is it mostly, are we talking about these investors in these pools when we're talking about -- are we talking about natural persons? Or are we also talking about entities that would be pool participants?

So when you use the term domicile, that -- does that refer to natural persons, or could that be entities as well?

MS. OLEAR: Typically participants can be either. And we see both. Both natural persons and, you know, corporate entities.

COMMISSIONER BERKOVITZ: So they -- so these funds have corporate participants and -- funds invest in funds, correct?

MS. OLEAR: Correct.

COMMISSIONER BERKOVITZ: I mean you could have an account manager who invests in a commodity pool for whatever, you know, investment rationale they invest in, correct?

MS. OLEAR: Correct.

COMMISSIONER BERKOVITZ: So it would be the domicile -- or when we're talking about a

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fund, it would be the legal domicile of a non-natural person, right?

MS. OLEAR: Correct.

COMMISSIONER BERKOVITZ: Okay. Well, I appreciate that clarification. And then I wanted to further the discussion that several of my colleagues, Commissioners Behnam and Stump raised, and that's on the initial -- this initial contribution.

Is it -- as I gather from the previous questions and answers, the limitations that were referred to regarding time limitations, are those in the rules before us? Or are those in the Volcker Rules that you were describing, in terms of what a fee contribution is?

MS. OLEAR: Thank you for that question, Mr. Commissioner. So the specific time limitations, say of one year or three years, we've asked questions about imposing a specific time limitation. Those are mirroring the provisions of the Volcker Rule.

However, as proposed, we've not, you

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know, I think as Josh very thoroughly discussed earlier in response to a prior question, we have not explicitly proposed a particular time limitation.

You know, I think it's staff's view that the concept of initial capital contributions is a well-understood concept by members of the industry. And we believe that that provides, you know, sufficient limitations with respect to time for contributions from the U.S. controlling affiliate, at least with respect to a proposal at this point.

COMMISSIONER BERKOVITZ: Okay. Thank you for that clarification. I will just comment, and am looking forward to comments on this, but to the extent that it is consistent with -- that other rules have explicit limitations on what the initial capital contribution may be, and by the terms of -- by use of the term "initial," we're certainly leaning into the fact, or if not explicitly stating the fact, that there's something initial about it that it doesn't go on, and that there's some

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contribution. Also the word "contribution" suggests that it's not everything that you're initially putting in part.

And the other word that is used is "seed." This is a seeding, and presumably a seed grows into something else. And it's not -- the seed isn't a tree, so it becomes a tree. But, -- or a plant or whatever it is.

So the words that we're using to imply these limitations and certainly give the impression that this is something that starts at the beginning, but isn't the be all and end all. And there are limitations on it to the extent that there are mirror analogies and other regulations that may not be totally coextensive with our rules.

I'm not -- all these entities wouldn't necessarily be subject to the Volcker Rule. Some of them maybe, but others may not.

We should seriously consider being more explicit on that to really put -- really solidly enable this provision to achieve the ends for which we're intending it.

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And I do want to -- I do want to recognize in this light when I was speaking before about some of the give and take, and getting to the point where we are today. Where I think, this is a good rule that -- I think the provision before us, that we've had a good dialogue. And the provisions that are in there now, such as the prohibition on the statutory disqualification provision, have resulted from the dialogue that we've had. And I want to thank you and the -- for that dialogue, and my colleagues for the progress that we've made, to put some necessary limits on this thing.

So I think we're all in agreement, we don't want to create a loophole. And just to make sure that we achieve the right balance there.

So I do want to thank you for where we are now. And whether we have additional provisions in there, I look forward to comments on and working with you further on, as we receive those comments.

So those are the areas, those are

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essentially my questions on the proposal. And again, I thank everybody for their hard work. And I thank my staff as well, on this.

CHAIRMAN TARBERT: Thank you very much, Commissioner Berkovitz. Are the Commissioners prepared to vote? Or I should say is any Commissioner not prepared to vote?

Okay. Hearing nothing, I will ask our Secretary, Mr. Kirkpatrick to please call the roll for the proposed Amendments to Part Three 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 approval of the proposed rule revising the exemption for foreign CPOs in Regulation 3.10(c)(3).

COMMISSIONER BERKOVITZ?

COMMISSIONER BERKOVITZ: Commissioner Berkovitz votes aye.

MR. KIRKPATRICK: Commissioner

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Berkovitz votes aye. Commissioner Stump?

Commissioner Stump?

CHAIRMAN TARBERT: Perhaps Mr. Secretary, you could continue and we'll go back to Commissioner Stump?

MR. KIRKPATRICK: Yes. What --

CHAIRMAN TARBERT: She is indicating, by the way, that she is in fact voting yea. But, I guess we can't hear her.

MR. KIRKPATRICK: Okay. So with that we'll move on. And hopefully in a moment or two, we'll have her back vocally as well.

So with that, 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

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votes aye.

MR. KIRKPATRICK: Is Commissioner Stump back on the line?

COMMISSIONER STUMP: Can you hear me?

MR. KIRKPATRICK: Yes. Yes.

COMMISSIONER STUMP: Okay.

Commissioner Stump votes aye.

MR. KIRKPATRICK: Thank you.

Commissioner Stump votes aye. Mr. Chairman, with that, on this matter, the ayes have five, and the noes have zero.

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

At this time I'd like to invite a staff presentation on the interim final rule to extend the compliance schedule for initial margin requirements for uncleared swaps in response to the COVID-19 pandemic, our second and last item for the agenda.

From the Division of Swap Dealer and Intermediary Oversight are Josh Sterling, our

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Director, Warren Gorlick, Associate Director, and Carmen Moncada-Terry, Special Counsel.

Josh, Warren, and Carmen, I'll hand the floor to you now.

MR. STERLING: Thank you, Mr. Chairman. And thank you, Commissioners for your consideration of this interim final rule today.

Again, I would like to keep the spotlight on the team that's working so hard in such trying circumstances, and Warren and Carmen. And as I understand it, Carmen will be providing an overview for your benefit on this excellent rule.

MS. MONCADA-TERRY: Yes. Thank you, Mr. Chairman. Thank you, Josh. Good morning everyone. I am Carmen Moncada-Terry, Special Counsel in the Division of Swap Dealer and Intermediary Oversight, or DSIO.

In addition to Director Sterling, I am joined by my colleague, Warren Gorlick, Associate Director. I also want to recognize the invaluable assistance we received from the Office of the General Counsel, and the Office of the Chief

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Economist.

Today we are pleased to present an interim final rule amending the CFTC margin rule. The interim final rule will extend the compliance schedule for the initial margin requirements for uncleared swaps, by deferring the compliance date of September 1, 2020 to September 1, 2021.

The CFTC's interim margin rules require swap dealers and major swap participants to pose and collect initial margin in accordance with a compliance schedule set forth in Commission Regulation 23.51.

The schedule requires compliance on standard compliance dates. The last two compliance dates are September 1, 2020 and September 1, 2021.

On March 11, 2020, the World Health Organization declared the COVID-19 outbreak as a global pandemic. Shortly thereafter, on March 13, 2020, President Trump declared a national emergency due to the COVID-19 pandemic.

The COVID-19 outbreak has severely

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disrupted all aspects of the global economy. In the financial sector, firms have experienced a reduction in the capacity of their operations as a result of the displacement of entities from their normal business side due to measures needed to contain the spread of the virus.

Market participants who engage in uncleared swaps have expressed concern about diverting scarce resources from ongoing business continuity efforts to the substantial preparation needed for the exchange of regulatory initial margin ahead of the compliance deadline.

In recognition of these challenges, on April 3, 2020 the Basel Committee and IOSCO announced the extension of the implementation schedule for uncleared derivatives by one year, by deferring the implementation phase deadlines of September 1, 2020 and September 1, 2021 to September 1, 2021 and September 1, 2022.

While the Basel Committee and IOSCO extended both compliance deadlines, this interim final rule only extends the compliance deadline on

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September 1, 2020. Given that it is unclear what the impact of the COVID-19 pandemic will be on entities subject to the September 1, 2020 compliance deadlines, it would not be appropriate to extend that deadline through the interim final rule process.

Nevertheless, because the extension of the September 1, 2021 deadline is consistent with both the Basel Committee and IOSCO guidance, and the Commission's April 2020 final rule, the CFTC staff intends to submit to the Commission a notice of proposed rulemaking addressing the extension of such deadline in the near future.

Extension of the September 1, 2021 deadline by extending the last compliance date would achieve the intent of the April 2020 final rule to reduce the potential for congestion and market disruption that could result from a large number of entities coming into compliance with the initial margin requirements simultaneously, at the same time.

In conclusion, DSIO staff recommends

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that the Commission issue the interim rule to extend the compliance deadline of September 1, 2020 to September 1, 2021 to alleviate the immediate impact of the COVID-19 pandemic on entities that will be required to comply with initial margin requirements beginning on September 1, 2020.

Thank you for your attention. We will be happy to discuss any questions you may have.

CHAIRMAN TARBERT: This is Chairman Tarbert. Thank you so much, Carmen. And also to Warren and Josh for working on this, and Carmen for that excellent and straightforward presentation.

To begin the Commission's discussion and consideration of this rulemaking, I'll now entertain a motion to adopt the interim final rule to extend the compliance schedule for initial margin requirements for uncleared swaps in response to the COVID-19 pandemic.

COMMISSIONER BEHNAM: So moved.

COMMISSIONER BERKOVITZ: Second.

CHAIRMAN TARBERT: Thank you very much. I'd now like to open the floor for

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Commissioners to ask questions and give statements. And I'll go ahead and begin.

No questions from me. I think this is relatively straightforward.

Of course two months ago, our Commission voted to extend the compliance schedule by one year, based on what the rest of the international community was doing at that time. And we made that decision -- or we circulated that rule back in February.

Well, of course, the entire world and the economic landscape has changed since then. And as a result for that, as everyone listening is painfully aware, we're in the midst of a global pandemic.

And so in terms of the substance of why we need the extension, it's pretty clear that the extraordinary market conditions and operational shifts demand that financial firms, those that would be complying with phase five and phase six, but particularly phase five, need to devote an inordinate amount of time and resources to the day

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to day operational business continuity and risk management efforts brought on by COVID-19.

And the international community has recognized this. As Carmen stated, the Basel Committee on Banking Supervision, as well as IOSCO, the International Organization of Securities Commissions, have jointly extended their margin compliance schedules. So the steps taken today and in the months to come, will essentially bring us in line with what international regulators are doing.

The process of how we're doing it, as opposed to the substance, is we're going to go ahead, I hope, and vote to -- for this interim final rule today, which covers phase five.

And my longstanding preference is always for regular notice and comment rulemakings where possible. This gives the public a voice in the regulatory process and provides the agency with the benefit of commenters and expertise and experience.

But, in the case of phase five, we only

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have three months before the compliance date. And so by doing interim final, we give them the finality that they need, while the public can comment after the rule is passed.

Great discussions in particular with my Commissioners. And especially so, Commissioner Berkovitz, who rightly noted to me that phase five obviously is three months away, but phase six, the concurrent compliance date is not until September 2021.

So if we want to consider moving it to 2022, which of course, is what the international community is doing, for that one it's more appropriate to do a traditional notice and comment rulemaking. And I agree with that, and appreciate his having that conversation with me.

And so we will be getting that out shortly in the coming month or two, so we can deliberate on that and potentially also extend the phase six.

So no questions. Just wanted to briefly explain why I support this. And with that,

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I will turn it over to Commissioner Quintenz.

COMMISSIONER QUINTENZ: This is Commissioner Quintenz. Thank you so much, Mr. Chairman. And thank you, Josh and Carmen for your work on this interim final rule.

I myself don't have any questions. So let me go through my position, that I'm very pleased to support it.

You know, under these difficult circumstances I think it's absolutely appropriate to provide these phase five firms with additional time to comply, ensuring that their already strained resources are not diverted from ongoing business continuity efforts.

As the Chairman noted, phase six is not being addressed here. But let me say, I would also support a one year deferral for the phase six compliance date, in line with the BCBS/IOSCO recent amendments to the recommended margin framework to push that out by one year, respectively.

As I've noted previously, given the large number of firms brought into scope during

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phases five and six, given the estimated 7,000 initial margin relationships that need to be negotiated, as well as the tiny overall percentage of swap activity that these firms represent, not only is a sequenced one year deferral for these final phases appropriate, but I also believe we should take great care to think about tailoring these requirements to make them as workable and as least burdensome as possible for these groups. And I would support any consideration that the Commission gives to that recalibration.

In particular, during last week's GMAC meeting, sponsored by Commissioner Stump, I found the recommendations from the subcommittee on margin requirements for non-cleared swaps to improve our margin framework, I found those incredibly informative.

And I look forward to working with staff to review all of the subcommittee's recommendations, and appreciate the hard work, thoughtfulness, and dedication that went into producing the subcommittee's report. But in

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particular, to today's interim final rule. Thank you, Mr. Chairman.

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

COMMISSIONER BEHNAM: Thank you, Mr. Chairman. This is Commissioner Behnam. First off, thanks to Josh and more specifically Carmen and Warren for their hard work on this.

And again, like the previous NPRM that we just voted on, a lot of work went into this. And I appreciate their engagement with my office to improve it and get us to this point today, where I believe we'll be, you know, supporting it unanimously.

With that said, I'd like to just extend my support for this. There's a prepared statement that will be released shortly on the Commission's website. But, I do think this is the right decision. And specifically as you pointed out, Mr. Chairman, splitting up five and six is important, because the Commission will have time

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as the compliance date for phase six is not until 2021.

But, certainly with the phase five compliance date coming up in the next few months, and the firms that are subject to phase five, obviously dealing with the challenges of the pandemic, operationally, personally, and any number of business continuity standpoints, I think this is an important step that we take, and certainly falling in line with global bodies, including BCBS and IOSCO, as was mentioned.

That said, you know, I certainly personally am very committed to following through on this facet of financial reform that was initiated after the financial crisis in 2008. The margin requirements for uncleared swaps are one of the most important and one of the core reforms that were implemented by the G20 in 2009.

And as much as we are many, many years away, this was a tiered approach. And as we approach phase five and six, I think it's important we move forward and complete them in a sensible

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fashion, but with our eyes on getting to that finish line.

So I'll support this for sure, given the current circumstances. But, definitely will be an advocate for completion of compliance in the following years.

With that, I have one brief question before I pass it back to you, Mr. Chairman. Obviously, you know, delaying compliance with uncleared margin creates some level of risk that would not otherwise exist if we had margin requirements in place for the phase five.

And given the fact that markets are, you know, experiencing increased volatility and uncertainty because of COVID, I would ask the team, either Carmen or Warren, if there's any concern about the delay in the phase five and what sort of risks of contagion or counter-party credit risk might exist for these swaps that will not require margins for the next year? Thank you.

MS. MONCADA-TERRY: Thank you for the question, Commissioner. We did consider in

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crafting this interim final rule the potential of undermining the goals of the margin rule.

And we recognized that by giving this relief, we are basically delaying -- we are deferring compliance, which is resulting essentially in there not be collateral -- there will not be the collection of collateral that otherwise will occur if we wouldn't be deferring this too. And potentially putting at risk positions that are not collateralized during this period.

But we want to point out that this is applicable to entities that were recognized to engage in smaller amounts of trading in uncleared swaps.

We have the report that was issued by the Office of the Chief Economist that indicated that essentially these entities represent 8 percent of the swap notional activity across all phases.

And what that tells us that it's actually rather small. That even though there's

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going to be uncollateralized - there are going to be uncollateralized exposures, it's going to be relatively small.

The amount of uncollateralized exposure is going to be small, compared to if we had given any relief to entities in the prior -- in the prior phases.

So we did take that into account. But also we also recognized that we have to find -- we have to strike the right balance. And in this case, these entities are -- in part, it is the fact that they are, their capacity has diminished, because they have to accommodate many of the mitigating measures that have been imposed by the government.

Many entities have employees working offsite. They do not -- they cannot -- they don't have access to their staff. They don't have access to the facilities that would enable them to contact their counterparties-- to have a natural flow in their interactions with their counter-parties.

But most importantly, we believe that

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at this stage for these entities, we believe that it would be very risky to impose on them the need to prepare for initial margin while they're trying to deal with the pandemic.

They are trying to deal with the volatility of the market. And that's why we -- and we believe that this particular interim will allow best practice to adjust targets at this point to phase five entities and strike the right balance.

COMMISSIONER BEHNAM: Thank you, Carmen. I appreciate that. And that's important to know. I think it's great that the team thought about this. And I think it's something that's very important to consider.

But you're right, you know, everything that we do is a balance. And important, I think given what's going on, that we strike the right balance here to support the markets, protect customers, and ensure that we're fulfilling our responsibilities.

I certainly appreciate, like I said, the importance of this matter, and the timeliness

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of it, given the compliance date is coming up in a few short months. But, you know, I think we should remain flexible. And obviously this is at the tail end of the compliance period that this certain subgroup of market participants was working towards.

This has been going on for a number of years. And obviously the pandemic struck, you know, just six or so months before the compliance date. So I'm sure and hopeful that a lot of the operational steps that were needed to come into compliance in September, had been taken, or were ready to go.

So we have heard, I think, from a few market participants, but not all that, you know, certainly we need to do this as a matter of the challenges that folks are facing given the pandemic. And extending the compliance period to others, I think, who may have been more prepared or just ready to, you know, start the gun on this, were ready to go.

So even though this is an interim final

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rule, and it will be sort of in effect immediately, you know, if we do receive comments or thoughts or input from the market that demands action or at least consideration, I'm hopeful that the Commission will remain flexible in considering those thoughts and feedback from the public and our participants.

So thank you, Mr. Chairman. Thanks again to the team and the other divisions also that participated.

Obviously, Carmen, you mentioned the Chief Economist report and OGC, thanks for your support and the support of DSIO in producing this document. Thank you.

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

COMMISSIONER STUMP: Thank you. Well, I do not have any questions. I wanted to take the opportunity to discuss, just briefly, the various ongoing endeavors to effectively carry out this final implementation of the uncleared margin rule, and why each of these efforts warrants

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distinction.

In 2018 and 2019, I had the opportunity to participate in a number of discussions with the IOSCO Board related to the final phase of margin requirements for OTC swaps.

Unique considerations for this phase were evident and the global talk ultimately resulted in a recommendation by BCBS/IOSCO to extend and stagger the final implementation periods. These recommendations were agreed to in July 2019, and therefore, predate COVID-19.

In response, and unrelated to the current pandemic, the CFTC finalized in March of this year an amendment to its margin rule to extend the compliance schedule for initial margin by splitting phase five into two parts, and creating a new phase six.

Then, in light of the challenges presented by the COVID-19 pandemic, BCBS/IOSCO more recently, in April of 2020, amended its recommended margin framework to defer each of the phase five, and the new phase six, compliance dates

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by one year, for the reasons that the Chairman has laid out.

I support the interim final rule we are considering today, which would accomplish the extension for phase five, specifically in response to extraordinary current events. And I look forward to soon considering a proposal to extend the phase six compliance date as well.

I also hope that the Commission will soon consider addressing a number of recommendations included in the report recently prepared by the subcommittee on margin requirements for noncleared swaps, and adopted by the Global Markets Advisory Committee last week.

The subcommittee's charge was not pandemic related, and the issues discussed in the report remain, despite the extended phase five compliance date we are considering today.

Our objective must be to effectively implement this last phase -- these last phases-- to achieve the original G-20 intent, which was to mitigate systemic risk and encourage central

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clearing. Goals that, while still relevant today, pertain differently to the counterparties that are affected by phase five and phase six.

I very much appreciate the time and energy and efforts of Carmen Moncada-Terry and Warren Gorlick, and Director Sterling, both with regard to the implementation of the BCBS/IOSCO recommendations, as well as in assisting the GMAC subcommittee over the course of the past few months.

With that, I look forward to supporting the interim final rule. Thank you.

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

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman. This is Commissioner Berkovitz. First, let me thank you again, and my fellow colleagues.

On the point that you mentioned regarding -- we're doing the interim final rule today on phase five, which otherwise would be

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scheduled to begin, or they'd have to have the agreements in place in September. And then we're going to do a notice of proposed rulemaking for the further extension of phase six. That being more distant, we have sufficient time for notice and comment.

So although administratively it might have been simpler just to do one document and get it done with, I think procedurally, it's the right way to go; where we do the full notice and comment given the time, and we don't need to rely on any extraordinary exceptions to the Administrative Procedures Act for interim final rules for something that's a year and a half out.

So I appreciate the Commission's desire to basically do the right thing, and do this procedurally by the book.

I think that it's absolutely critical for public confidence in the agency. It's not just legal sufficiency, but it's public confidence in what we do.

And also considering the public

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comments. I think it helps us make better decisions. So I'm glad we're doing it the right way. And I think that bolsters confidence in us and in the result that we will achieve.

Having said that, let me turn to the rule -- the proposal before us. And I'm going to vote for it. But, I want to make a couple of points in that regard.

One could easily take from the preamble, and the reason that we're doing it is that the COVID pandemic has just totally disrupted this industry and they can't do anything; and they can't negotiate; they can't get agreements in place; and they can't sit at the table.

And I think fortunately experience has shown that that's actually not the case. And we have been -- fortunately the market -- I think our markets are stronger. Our market participants are stronger than they ever have been. There's been incredible resiliency and ingenuity to adapt to the crisis and to carry on. And to do functions that were normally -- that they were going prior to the

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crisis.

We've noted that our agency -- and we are carrying out our functions. We're proceeding with a very fulsome rulemaking schedule, and we're carrying out our oversight activities, and we're having public meetings. We've adapted to the circumstances and market participants look at the volumes -- look at the volumes on the futures' markets, on the swaps market clearing system seems so far, you know, I don't want to declare victory or mission accomplished or anything like that, but the system has been very robust and held up. And it has been due to the incredible investments of the market participant to the higher standards that we have in place. And to the commitment just of, you know, millions of Americans who work for all the various companies that make up the industry.

So I don't want to sell the industry short on its ability to do things. They can certainly trad;; they can comply with the regulations they need to comply with; they can provide comments on our rulemakings, and we're not

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providing very much extensions in that regard. So they're able to do a lot. And so I don't think it would be fair to conclude that they're absolutely paralyzed in coming into compliance with any of these phases.

Having said that, it is a burden. You know, working in this environment does strain, and I think there's strain on everyone. There's multiple responsibilities that you have when you're working at home. Some firms may feel the strain more than others.

And internationally there's been the determination to defer this compliance date. So I think although the industry as a whole has held up pretty well, I can't sit here and say confidently that everybody in the industry is in that position and everybody can work toward this shorter term deadline.

So in light of that, I am going to support the extension. But, I don't want to give the impression that we don't have confidence in the industry to actually do what's needed to be done,

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because I think the record of the financial industry has been really one of exemplary resilience in the face of some extreme challenges.

The other issue I want to -- point that I want to make, and it was addressed in the prior question and answer between Commissioner Behnam -- is the risk. And I appreciate the complete -- the answer that the staff gave. But, I just want to point something out here. And when we do go out, and for commenters, I would like comments on it.

And I want to read from the preamble here on this point. The Commission notes that the compliance delay provided by the interim final rule applies to entities whose uncleared swap portfolios tend to be smaller than the portfolios of entities that came into scope in earlier phases of the compliance schedule.

The CFTC's Office of Chief Economist has estimated that entities with such smaller uncleared swap portfolios represent only 8 percent of total AANA, aggregate notional -- I think its

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annual aggregate notional amount, across all phases. Eight percent of total AANA in this phase.

This modest share of notional amount spread across many small entities likely means that the uncollateralized swaps entered into by these entities, taking into account that no exchange of IM is required -- initial margin as required by the margin rule until the IM threshold amount has been exceeded, pose less risk to the financial markets than the risk posed by uncleared swaps entered into by entities that have already come into subsequent IM compliance.

So basically that says that these are 8 percent, and the 8 percent poses less risk than 92 percent. And that's obviously true.

I mean, 8 percent is less than 92 percent. But that doesn't mean that 8 percent is not a significant risk.

Ninety-two percent may or may not be a significant risk. I think 92 percent of the market poses a risk, and margin is designed to address that.

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But, 8 per -- while 8 percent is less than 92 percent, it does not mean that 8 percent is negligible risk. I think it indicates we've made progress and we're getting near the finish line.

But we have to get to the finish line because there was a determination made at a certain point that we would consider 100 percent of the swaps in the categories that are entities that severed by this rule.

So I don't think it's appropriate to conclude from this that while we can ignore this 8 percent -- or, it's not significant risk presented by it, we have to get there at some point. We're affording time appropriate delay in light of the extraordinary COVID pandemic, as I've mentioned, but this should not be bootstrapped, in my view, as a rationale for being able to say, well, this is not a significant risk, posed by this 8 percent. And all it's saying here is it's less than the 92 percent.

Also, I think as Commissioner Behnam

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noted, we're in an extraordinary time. There's heightened counter-party risk throughout the system, given the extraordinary economic conditions.

And the extent to which that is filtering up, or rolling up, to the financial intermediary and financial entities that maybe started in the commercial sector, but is it going to roll up into commercial entities, I think that's one of the questions that we need to keep aware of.

And I think we are very aware of it on many of our briefings. I know the staff is monitoring these types of risks very closely. And we should continue to do so.

But, I do think that this is -- there is risk out there. There's risk in doing this. But, under the circumstances, because of the strains imposed upon everybody, and everybody might not be able to meet these requirements in this manner, I'm willing to support this. So under those points, I'm going to vote in favor of the proposal today.

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So I guess I've made a statement, and I guess I don't have any further questions unless the staff, on my 8 percent versus 92 percent, if there's anything else, Carmen or Josh or Amanda, you want to add, certainly feel free to add anything to that, or respond as well.

MR. STERLING: Mr. Commissioner, this is Josh Sterling. We take your point and thank you for that explanation.

COMMISSIONER BERKOVITZ: Well, thank you. Mr. Chairman, that concludes my remarks, then.

CHAIRMAN TARBERT: Thank you very much, to all of you. So I will ask the question, is there any Commissioner who is not prepared to vote?

Okay. Hearing none, I'll ask the Commission Secretary, Mr. Kirkpatrick, to please call the roll for the interim final rule amending Part 23 of the Commission's Rules.

MR. KIRKPATRICK: Thank you, Mr. Chairman. This is the Commission Secretary

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speaking.

The motion now before the Commission is on the adoption of the interim final rule to extend the compliance schedule for initial margin requirements for uncleared swaps in response to the COVID-19 pandemic.

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

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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. As -- this is Chairman Tarbert and I am pleased to announce that the ayes have it, and the motion to adopt the interim final rule is hereby approved.

Before I move to closing statements, is there any other Commission business from my colleagues?

Okay. Hearing none, I would now like to give my fellow Commissioners an opportunity to make any closing statements.

We'll start with you, Commissioner Berkovitz.

COMMISSIONER BERKOVITZ: Well, thank you, Mr. Chairman. This is Commissioner Berkovitz.

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I would again, just like to thank you and my fellow Commissioners and the staff and my staff for all the work that was put into these rules to get us here today.

I think the product of the deliberative and collegial process is strengthened by the give and take that we've seen and had in getting here today. I look forward to the comments on the proposals and continuing the process. So thank you, again.

CHAIRMAN TARBERT: Thank you very much. Commissioner Stump?

COMMISSIONER STUMP: Thank you, Mr. Chairman. While I used my opening statement to commend the staff and speak to the tremendous work that they've done and the efforts that they've exerted with regard to the many things we've done in this unprecedented environment, I wanted to take this time to acknowledge that each time we meet -- meaning the five of us--each time we meet, I find myself agreeing with many of the comments made by each of the Commissioners. Sometimes to

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my surprise, even.

And it always is a challenge. It always challenges me to think about things a little bit differently and through a different lens. And so I wholeheartedly believe that I am able to do my job more effectively by engaging with the four of you, and I very much appreciate that we have the opportunities to do so, even while we're not in the office.

So thank you for providing the opportunity, Mr. Chairman. And thanks to all of the Commissioners for their time and their very thoughtful comments.

And I look forward to a day when we're all able to be in the same place to have these meetings. But, with that, I'll turn it back to you. Thank you.

CHAIRMAN TARBERT: Thank you very much. Commissioner Behnam?

COMMISSIONER BEHNAM: Thanks Mr. Chairman. I just want to thank all the staff again for their great work today in preparation.

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Obviously it took days and weeks and months and cases to get to where we are today. And I appreciate the deliberation that we've had amongst ourselves and the leadership, of course, and the division staff, and the General Counsel's office, and the Economist's office.

I'd also like to thank my staff. We're all dealing with our own challenges at home and kids and new working environments. So communicating among ourselves is, in a new way, it's a new challenge. But, we're figuring it out and coming up with new innovative ways to be more productive and to get the job done.

So thanks to Laura Gardy, John Dunfee, and Dave Gillers. And I look forward to future meetings in the coming weeks.

So thanks to you, and I hope everyone who's listening is doing well. Thank you.

CHAIRMAN TARBERT: Thank you very much. And Commissioner Quintenz.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman. No final closing statements. Just

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again, thanks to the staff for their hard work.

Thanks to you for your leadership and all the forms and accommodations and initiatives that you've brought before the Commission in light of not only market volatility, but also the environment in which we find ourselves.

And I'm very grateful to my staff who continues to work very effectively and efficiently despite all of those things, and been very helpful on these, but in all cases. Thank you.

CHAIRMAN TARBERT: This is Chairman Tarbert. Let me thank all of my fellow Commissioners. Commissioners Quintenz, Behnam, Stump, and Berkovitz, as well as your staffs, who have worked tremendously hard to get these rules to where they need to be today, as well as all the things I mentioned in my opening statement.

I'd obviously like to thank those that are in the Chairman's office; as well as everyone at the agency, including the staff that worked on these two rulemakings today; as well as the staff behind the scenes in our Office of Data and

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Technology; as well as the Office of the Executive Director, who helped make these open meetings possible, including our Secretary and his team.

There being no further business, I'll now entertain a motion to adjourn the meeting.

COMMISSIONER BEHNAM: So moved.

COMMISSIONER BERKOVITZ: 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 so grateful for the CFTC staff for their great work.

This meeting is hereby adjourned.  
Thank you all.

(Whereupon, the above-entitled matter went off the record.)

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