

U.S. COMMODITY FUTURES TRADING COMMISSION

+ + + + +

OPEN MEETING

+ + + + +

THURSDAY,
JUNE 4, 2020

+ + + + +

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

PRESENT:

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

CFTC STAFF PRESENT:

DAN DAVIS
ELIZABETH GROOVER
CHRIS KIRKPATRICK
AMANDA OLEAR
JOSH STERLING

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

C-O-N-T-E-N-T-S

1. Call to Order 3

2. Opening Statements

Chairman Heath P. Tarbert..... 3

Commissioner Brian D. Quintenz..... 4

Commissioner Rostin Behnam..... 5

Commissioner Dawn D. Stump..... 6

Commissioner Dan M. Berkovitz..... 9

3. Final Rule: Amendments to Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors: Prohibiting Exemptions under Regulation 4.13 on Behalf of Persons Subject to Certain Statutory Disqualifications

Staff Presentation

Joshua B. Sterling, DSIO..... 16

Elizabeth Groover, DSIO..... 17

Amanda Olear, DSIO..... 34

Motion

Commissioners' Questions and Discussion

Vote

4. Closing Remarks 69

5. Adjournment 77

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

CHAIRMAN TARBERT: Good morning, this is Chairman Heath Tarbert. 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 through our website.

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

This should be one of our shorter open meetings I suspect. We assemble today to consider a single item which is a final rule prohibiting certain statutory qualifications for commodity pool operators, which we call CPOs, who are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

claiming registration exemptions under our rule 4.13.

At the outset I'd asked for the cooperation of those who are speaking in the meeting to remember those few simple tips.

When you're about to speak, please ensure your line is unmuted, identify yourself when you are speaking, and then when you're not speaking, if you could keep your line muted.

We'll now move to opening statements in order of seniority. Commissioners are free to reserve their time to make a longer closing statement if they wish.

I'm going to actually reserve my remarks for the discussion of the rule itself, so I have no opening statement. I'll therefore go ahead and recognize Commissioner Quintenz.

COMMISSIONER QUINTENZ: Good morning, Mr. Chairman, thank you. This is Commissioner Quintenz.

I appreciate the hard work of the staff, and DSIO, in particular, with all the rules they've

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

been bringing before us recently, in particular this rule on statutory disqualification issues for exempt commodity pools.

As some may know, I had a registered commodity pool and ran that, and therefore, have a keen interest in ensuring that those that qualify for exemptions do so appropriately, so that we can ensure that the investment interests of the public that have those opportunities also have the protections that they rightfully deserve.

So with that, Mr. Chairman, I think I will also reserve the majority of my time to have a little bit of a further discussion during the rule consideration.

And thanks again to the team.

CHAIRMAN TARBERT: Thank you very much. Commissioner Behnam?

COMMISSIONER BEHNAM: Good morning. Thanks, Mr. Chairman.

This is Commissioner Behnam. Good morning to everyone at the Commission and my colleagues, as well as those in the public who are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

able to join us this morning.

I won't have much to say in my opening statement, and like Commissioner Quintenz and yourself, Mr. Chairman, I'll reserve comments for the Q&A period.

I do want to thank DISO staff, Josh Sterling, Elizabeth Groover, and Amanda Olear for their work on this, and I'm going to be pleased to support the final rule today. It's an important one that we did propose a while ago and sort of broke off from a larger proposal, but it's an important customer protection rule that's important for, sort of, our regulations, CPOs generally, and then the investing public to ensure that they know who they're investing with and where they're putting their money. So I look forward to today's meeting, and thanks again to everyone for their hard work.

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

COMMISSIONER STUMP: Thank you, Mr. Chairman. I too plan to reserve most of my comments and questions until after the staff has had an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

opportunity to present the rule before us today. But I did want to take the opportunity in my opening comments just to simply acknowledge the emotional toll that the recent events are having on our country and offer a sincere hope that we will emerge from this time with a greater resilience and a better communal understanding.

We are very fortunate to live in a true democracy. In the United States, we enjoy certain freedoms, and within that democracy, and as children, we are frequently taught that our First Amendment protects the freedom of speech.

Today, I'm reminded that to realize the intended benefit of our freedoms, there are also certain obligations required of us, the obligation to listen and the obligation to show respect. As citizens of a nation, we should fulfill our obligation to hear all views, and also to respect the property and the service of others.

At the CFTC, we are a body of vastly different views, and we receive input from each other and various stakeholders. But to fulfill our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

obligation to preserve our democratic system, we have to listen and respect one another.

I feel like we do a lot of that well here at the CFTC, but this is a time to recommit across all aspects of our lives to these obligations.

I am today reminded that we are stronger as an agency and as a country, when we not only listen but hear each other. And it's easier to hear one another through respectful dialogue.

We all must dedicate ourselves to being part of the solution. Racism, violence, and disrespect are at odds with our society and the obligation to preserve democracy.

With that, I'll turn it back to you, Mr. Chairman. Thank you.

CHAIRMAN TARBERT: Thank you very much, Commissioner Stump. And I'm sure we all agree with your sentiments.

Commissioner Berkovitz?

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

Mr. Chairman, shortly after becoming

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Chairman of the CFTC, you started a new practice where we begin our public meetings by saying the Pledge of Allegiance.

I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

We recite the pledge and then move on to consider the pending Commission business. Today, though, we should pause before we move to consider the pending business. Cries of anguish, anger, and protest ring out from cities across our country because, for too many Americans, particularly black Americans, there has been too little liberty and too little justice for far too long.

As a nation, we have not fully lived up to the words in the pledge. Today, we should consider this too. We should begin by asking ourselves why have we not achieved liberty and justice for all? How can we work together to achieve it? And then, we must renew our commitment

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

to achieve it.

Before we started saying the pledge at open Commission meetings, the last time I had said the Pledge of Allegiance was in Mrs. Farrell's sixth-grade class at my elementary school in West Lafayette, Indiana.

Every morning, Mr. Leap, the school principal, would read the pledge over the loudspeaker, and we would stand at our desks, hand over heart, facing the flag in front of the classroom, and say it along with him.

Back then, I said the pledge because I was told to, and everyone else was saying it, but I didn't fully understand it. The word indivisible confused me. I thought it had something to do with invisibility. We did not spend any time talking about the pledge or what it meant.

When I learned that we would be saying the pledge at our Commission meetings, I remembered elementary school and the words came right back to me. But, this time around I didn't want to say

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

those words just because an authority was prompting me to say them, or because it would look bad if I didn't.

I thought about what it means to say those words and what those words mean to say. We pledge allegiance not only to the flag as a symbol, but also to the republic for which it stands.

A defining feature of this republic, a unique experiment in the history of nations, is that we are just not one nation, as stated in the pledge, we are one nation of many people. Our national motto, E pluribus unum, means out of many, one.

No matter our race, religion, national origin, sex, or other orientation, we are all Americans. Our diversity makes us stronger. We must remain committed to advancing that diversity.

The pledge also embodies the fundamental principles of our republic of liberty and equality under the law. Francis Bellamy, the author of the original pledge, explained why he chose the words liberty and justice in the pledge,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

quote, liberty and justice were surely basic, were undebatable, unquote.

So, what does it mean to say those words? A pledge is defined as a binding promise or agreement to do something. Saying the pledge is not just a show of patriotism or of respect for the flag, but rather is a binding promise, a commitment to the underlying values of our republic.

When we say the pledge, we are promising to make the words in the pledge a reality. We are making a commitment to achieve liberty and justice for all.

Although we have been making this promise since we were schoolchildren, and generations of schoolchildren before us have made this promise as well, this promise has yet to be fulfilled for all people in this nation.

We are seeing yet again the tragic consequences of the failure to live up to this promise. This promise has gone unfulfilled for far too long.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

As Martin Luther King, Jr. wrote from the Birmingham Jail, justice too long delayed is justice denied. When we say the pledge, we cannot just say the words.

We must renew and strengthen our commitment to liberty and justice for all. Today, I renew my pledge of continued support and commitment to liberty and justice for all. Thank you.

CHAIRMAN TARBERT: Thank you so much, Commissioner Berkovitz. Before I move on, I would like to just say that I'm very grateful for those words, those passionate and inspiring words.

You know, I did start the pledge at our open meetings for precisely the reasons that you stated. And of course, I learned it also I think back in kindergarten, and then throughout my years as a Boy Scout, we said it at every meeting.

And I -- Because we weren't together physically and we didn't have a flag for these calls, I said well, I guess we'll move forward, and we'll reserve the pledge back for when we're all

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

together again.

But your inspiring words today have got me thinking maybe we should go ahead and continue to start with the pledge, even if we're working remotely, and we're doing these meetings via conference call.

So, I do thank you so much for those words, and I think it's incredibly important that you shared your views with us today. So, thank you so much.

I don't know if any other Commissioners would like to say anything before we move on to the agenda of the Commission's business today?

Okay, well, with that, staff will make a presentation on the Commission -- to the Commission on the final rule before us today. After the presentation, the floor will be open for questions and comments from each Commissioner.

The Commission will then vote on the matter. All final votes conducted in this public meeting will be recorded votes. The results of votes approving the issuance of rulemaking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

documents will be included with those documents in the Federal Register.

To facilitate the preparation of the 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: So moved.

COMMISSIONER: Second.

CHAIRMAN TARBERT: Without objection, so ordered. Okay, at this time, I'd like to welcome the following staff for their presentation on the final rule prohibiting certain statutory qualifications for CPOs claiming registration exemptions under CFTC Rule 4.13.

From the Division of Swap Dealer and Intermediary Oversight, we have Josh Sterling, Director; Amanda Olear, Deputy Director; and Elizabeth Groover, Special Counsel. I will now hand it over to the DSIO team for your presentation.

MR. STERLING: Well, good morning, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Chairman. Good morning, Commissioners. This is Joshua Sterling, the Director of the Division of Swap Dealer and Intermediary Oversight, DSIO.

It's a pleasure to be before you again, as we were last week, today to consider one rule. As we did last week, I will hand over the presentation to the excellent team here in our world class division, who was responsible for getting this rule done for us.

I think they've done a terrific job under challenging work circumstances. I think it will further our goal in the division of having a smart, effective, and practical approach to oversight of our registrants and in this case, firms that are not registered. So I think that that is very important, and I agree and share the sentiment that, as this rulemaking will demonstrate, indeed, the rule of law and the justice system is the greatest surety of liberty for all, and in this case, fostering investor protections in our markets.

So without further ado, I will hand this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

over to Elizabeth Groover, who was our point person on the rulemaking.

MS. GROOVER: Good morning, Mr. Chairman and Commissioners. Thank you, Josh, for that introduction.

Just to confirm, this is Elizabeth Groover, and I am a Special Counsel in the Division of Swap Dealer and Intermediary Oversight, or DSIIO.

Before we begin, I would like to recognize and thank for their efforts colleagues in my division, as well as in the Commission's Offices of the General Counsel and the Chief Economist.

Their support and assistance throughout this process has been integral to the development and completion of the final rule under consideration by the Commission today.

This final rule will, if adopted, amend the notice requirement currently housed in Commission Regulation 4.13, a provision which establishes multiple exemptions from registration as a commodity pool operator, or CPO, for qualifying

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

persons and the exempt commodity pools they operate.

Effectively, subject to very limited exceptions, the final rule will prohibit from claiming a CPO registration exemption any person who has, or whose principals have, in their background a statutory disqualification listed under Section 8a(2) of the Commodity Exchange Act, or CEA.

Specifically, the amendment by this final rule will require any person filing a notice claiming a 4.13 exemption to represent that neither the claimant nor any of its principals has in their background a statutory disqualification under CEA Section 8a(2) that would require disclosure, if the claimant sought registration with the Commission.

The Commission originally proposed this amendment in November 2018 along with several other Part 4 amendments, the majority of which were finalized by the Commission in late 2019.

Staff in the Commission's Division of Swap Dealer and Intermediary Oversight has since

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

reviewed and considered all public comments received in response to this proposed amendment.

In developing the final rule, DSIO staff thus targeted its efforts on producing a regulatory amendment that clarifies and ultimately narrows the scope of statutory disqualifications generally prohibited in exempt CPOs; that takes advantage of the existing regulatory structure by adding the prohibitive mechanisms as a new representation in the notice requirement already present in regulation 4.13(b)(1);

and that applies to the exempt CPO population in a manner that furthers the Commission's interest in providing some level of customer protection to exempt pool participants, while still recognizing the unique regulatory status and generally smaller commodity interest footprint of exempt CPOs and their exempt commodity pools.

With respect to implementation, DSIO staff further recommends that the Commission offer guidance in conjunction with the final rule that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

would provide persons currently claiming a 4.13 exemption with additional time to file a notice containing this new representation.

Under that guidance, such currently exempt CPOs would be required to first file the notice, as amended by the final rule, in March 2021, when they would otherwise have to annually affirm their continued qualification and reliance on their 4.13 exemption.

This approach was recommended by commenters, and DSIO staff agrees that such currently exempt CPOs should be permitted to continue operating their exempt pools in the interim, as they identify and investigate the background of the exemption claimant and/or its principals.

DSIO staff believes that providing this guidance will facilitate compliance with the new representation, thus furthering and supporting the Commission's customer protection interests, but also mitigating the costs or business interruptions potentially resulting from the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

amendment.

As a result of the final rule, persons claiming an exemption from CPO registration will now generally be required to meet substantively similar basic conduct standards as persons registered or required to be registered with the Commission as a CPO, i.e. that they are not statutorily disqualified under CEA Section 8a(2).

Correcting this regulatory inconsistency in the manner recommended here today may increase overall investor confidence because it will set a standard applicable to the vast majority of exempt CPOs operating exempt commodity pools.

Moreover, DSIO staff expects that once the new representation is fully implemented, those prospective and actual participants in exempt pools may experience enhanced customer protection, due to the removal of statutorily disqualified CPOs and/or their principals from the commodity interest market.

For these reasons, DSIO staff

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

recommends that the Commission approve the final rule and amend regulation 4.13 accordingly. I will now be happy to answer any questions regarding the final rule amendment from the Chairman or Commissioners.

Thank you very much.

CHAIRMAN TARBERT: Thank you very much. This is Chairman Tarbert.

I want to thank Josh, Amanda, and especially, you, Elizabeth, 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 final rule prohibiting certain statutory disqualifications for CPOs claiming registration exemptions under CFTC Rule 4.13.

COMMISSIONER: So moved.

COMMISSIONER: Second.

CHAIRMAN TARBERT: Thank you very much. I would now like to open the floor to Commissioners to give statements and ask

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

questions.

I'll start with my -- a couple of questions and then I'll just sort of briefly summarize why I'm going to be supporting the rule.

And I think I just had one question really, which is if a person seeking to operate a commodity pool under 4.13 does have a statutory disqualification in his or her background, is there any procedure for them, him or her to seek reconsideration of prohibition that we're voting on today, to go to a sort of process (telephonic interference) fairness?

MS. GROOVER: Yes, this is Elizabeth Groover again. So the Commission has the authority under regulation 4.12(a) to exempt any person or any class or classes of persons from any provision of Part 4, if it is found that such relief is not contrary to the public interest or the purposes of the provision from which that relief is sought. And the Commission has further by rule delegated that authority to the Director of DSIO.

So DSIO staff would expect persons

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

seeking reconsideration to request on an individual or firm-by-firm basis exemptive letter relief from the representation adopted by the final rule in reliance on that authority.

To do this successfully, such persons would be required to present facts and a legal analysis demonstrating that the requested relief would be neither contrary to the public interest, nor to the specific purposes of Regulation 4.13(b)(1), which is to provide customer protection to exempt pool participants.

This step -- process would be dictated by the staff letter relief processes currently found under Regulations 140.93 and 140.99.

And as a result, any responsive exemptive letter drafted by DSIO staff would be subject also to Commission review on an absent objection basis, consistent with other requests for exemptive letter relief.

CHAIRMAN TARBERT: Well, thank you very much, Elizabeth, really helpful. Again, this is Chairman Tarbert. I am very pleased to support

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

this final rule.

Why am I supporting it? Well, I think it's pretty straightforward. Robert Louis Stevenson once said everybody sooner or later sits down to a banquet of consequences.

And today, of course, we're focused on consequences of bad acts that result in statutory disqualification under the Commodity Exchange Act.

And so, obviously, if someone has committed the most serious types of financial crime, embezzlement, theft, extortion, fraud, misappropriation, you name it, they shouldn't have a right to necessarily register with the CFTC, and they don't under our statute.

But, it seems rather odd that we would have a situation where they're not allowed to register, but at the same time, they can become exempt and they can enjoy an exemption, and it puts investors potentially at risk.

So, what we're doing today at a high level, just to frame it, is we're basically closing a loophole for bad actors. And, I think that's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

entirely consistent with what I've said and one of our strategic goals at the CFTC was just to be tough on those who break the rules. So, my first point is that's why I'm voting for this.

I also want to take an opportunity to point out, wherever I can, how unique the CFTC system of regulation is, whether it's sort of our focus on principals-based regulations and the right blending on principals and rules.

One of the other aspects of our regime that I think is really important is the robust regime of self-regulation that underpins our federal framework.

And so, really, what we have is we have the CFTC that administers the CEA, that has a number of principals-based and rules-based regulations.

But, we also rely on self-regulatory organizations such as the exchanges, but also, most importantly, particularly when it comes to individuals and market participants, on the National Futures Association.

They're one of the pillars of our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

self-regulatory regime in the derivatives market, and this is a rule that the NFA has been advocating for, for quite some time.

And, this is just one of the countless actions that I think demonstrate the NFA's commitment to the integrity of the derivatives market. So, I would take an opportunity to thank the National Futures Association.

And then the third and final thing I want to mention is a few months back, we adopted a final rule that excluded family offices from sort of our registration regime as CPOs.

And, four out of the five Commissioners voted in support of that, in large part, because the Dodd-Frank Act excluded family offices from the definition of investment adviser. And our regime is essentially mirrored on that.

And the way I look at that is simply that if our regime is designed to protect third-party, arms-length investors, and if you're rich enough to have a family office, I'm not sure that working-class and middle-class taxpayers should

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

pay for the CFTC to try to protect you, when you don't want our protection and you're not seeking our protection.

So I look at it in a very practical standpoint. But that said, others on the Commission, my friend and colleague, Commissioner Berkovitz, disagreed with that and I think articulated very well his reasons for voting against it.

That said, in recent weeks Commissioner Berkovitz and I have had an opportunity to discuss this provision and our mutual support for this provision.

But he rightly pointed out that while family offices may be excluded from CPOs, we also need to understand are there family offices out there with bad actors who have violated the most serious types of financial laws, such that they would be disqualified, if they were in our regime.

And so, based on those various instructive conversations, I am announcing today

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

that I'm directing DSIO to undertake a special call for family offices to really understand whether we have bad actors out there.

And, the reason I'm doing that, and I think it's a very important one that Commissioner Berkovitz and I discussed, is that while we don't necessarily need to register, let's say, these family offices to protect them from managing their own money, if some of these bad actors -- if there are bad actors and they engage in, let's say, crimes and malfeasance against the market, spoofing, things like that, then they are out there and they have the potential to impact other third-party investors, who are not related to their family offices.

So we want to get a handle on that. I thank Commissioner Berkovitz for the robust discussion that he and I have had in recent weeks. And so that's the third thing that I'm announcing, a special call by DSIO.

With that, that concludes my remarks. Again, I really thank Elizabeth for her work on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

this, as well as everyone else on the DSIO team under the leadership of Josh and Amanda.

I'm pleased to support today's final rule, and with that, I will turn it over to you, Commissioner Quintenz.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman, this is Commissioner Quintenz. And thank you, Elizabeth, for the very solid presentation and to Amanda and Josh for their work on this rule.

I'm pleased to support today's final rule amending the procedures for certain CPOs to claim an exemption from registration. It's sound policy to prevent a firm from claiming a registration exemption, if the entity or its participants are statutorily disqualified under Section 8a(2) of the CEA, when those same disqualifications would prevent them from fully registering with the Commission.

The disqualification applicable under today's amendment covers some of the most serious offenses under the Act, including fraud. And,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

while an exempt CPO is more limited in its activities than a registered CPO, for example, no exempt pool can have more than 15 participants, or the CPO's commodity interest activity has to remain below a certain initial margin or a notional amount threshold.

An exempt CPO still manages money for investors. I, therefore, agree with today's amendment that the firm should be held to one of the most fundamental customer protection standards under the CEA.

And, I thank the Commission staff for their work on this rulemaking, in particular for their very thoughtful responses to issues that had been raised by commenters and my office. And I have no questions for the team.

Thank you very much, Mr. Chairman.

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

COMMISSIONER BEHNAM: Thanks, Mr. Chairman, and thanks again to the team for your work

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

on this. Thanks for working with my office, there's been a dialogue going back and forth and -- I think the things I requested and were accepted.

And I appreciate DSIO for that. I also want to recognize, Commissioner Berkovitz and Mr. Chairman, your work on the family office. (Telephonic interference) appreciate that. I support that wholeheartedly. I think that's an important sort of element of this rule ensuring that we have a comprehensive, inclusive rule set that does not leave anyone out, regardless of whether or not it's a family office or a regular CPO.

I just have two quick questions, and I do have a statement that will be posted to the website very shortly. So my full concurrence, as I said, I'll be supporting this final rule today, will be posted on the website.

But just to follow up, Mr. Chairman, your question about the 8a(2) statutory disqualification, essentially, not being an absolute bar to registration or availing oneself

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

of the exemption.

Elizabeth, if you don't mind, just a little bit of a follow-up because you very comprehensively explained the sort of process under 4.12.

If, in fact, an individual is able to avail themselves of the exemption, regardless of the fact that they have something on their record that's included in the 8a(2) statutory disqualification, will that fact or something in their record be posted?

And we mentioned the NFA, the National Futures Association. They do have a database that's available for folks to look up. Will that fact, specifically the individual having a statutory disqualification of their record, be made available to the public to sort of review and find out?

MS. OLEAR: Thank you, Mr. Commissioner. This is Amanda Olear. I'm going to take your question.

COMMISSIONER BEHNAM: Thanks.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Thanks, Amanda.

MS. OLEAR: Sure, no problem.

So, you know, because -- so if this is addressed via a letter that's submitted pursuant to the procedures under 140.99 and 140.93, both requests and the responses from the Division are made public on the Commission's website.

And we are - so, the public would be aware of any requests, including who submitted the request, and the division's response as to whether we denied that request and the grounds for doing so, or if that request was granted. So, all that information would be made available.

COMMISSIONER BEHNAM: Great, I appreciate that. Can we -- and quickly pivot and I know, so not discussed in the presentation for reasons that I'll say, it's not in the final rule, but 8a(3), obviously a sort of parallel provision to 8a(2), which is what the focus of final rule is.

But 8a(3) just, you now, for the public, and, Amanda, help me out if I miss something here, it's essentially a similar provision within the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Commodity Exchange Act regarding statutory disqualification, but it provides a hearing to the individual essentially to discuss the issue.

Can we talk a little bit about that, that was in the proposal, it's not in the final, which, you know, I'm comfortable with. But, if in fact there was an 8a(3) statutory disqualification, would a person claiming an exemption from registration under 4.13 needs to disclose whether the Commission had in fact barred the individual from registering pursuant to the hearing procedure under 8a(3)?

MS. OLEAR: So, again, thank you, Mr. Commissioner, for that question. So, we made the determination after the review of comments and internal discussions, both within DSIO and with, you know, our colleagues in other offices.

The bar is intended to be limited to 8a(2), and so because 8a(3), if there was a determination made pursuant to the procedures in 8a(3) that a person was barred from registration, that would not necessarily bar them from operating

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

an exempt commodity pool, in part, because we made the determination to really focus, I think as the Chairman appropriately characterized it, on those most fundamental offenses that are listed in 8a(2).

And so a person who has been found to have a violation under 8a(3) would in fact be able to continue to operate a 4.13 exempt commodity pool.

COMMISSIONER BEHNAM: Okay.

MR. STERLING: And, Mr. Commissioner, this is Director Sterling.

I will add, sir, that the judgment to which Amanda referred reflected essentially a balancing act of practical economy and sort of taking due notice of the comments, as well as the statutory distinction procedurally between 8a(2) and 8a(3).

To put it in vernacular, with 8a(2) you're clean out. With 8a(3), there is a process, and if we're talking about efficiently administering an exemption which permits a de minimis degree of trading in our markets, while we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

want to support investor protection, we decided to focus our, you know, undeniably limited resources on excluding from the market those people that is (telephonic interference) excuse me, are the worst of the worst. That's the decision I made.

COMMISSIONER BEHNAM: I appreciate that. Thanks to both of you for answering that question, and, you know, we do have to allocate our resources and to the extent we need to focus our energies on what's more important to protect customers.

You know, it's a reminder that we are extremely important agency that has a huge responsibility, and we have to meet these expectations, and we need to do whatever we can to fulfil them the best way we can.

Last question, and it's sort of -- it's a general question, and it kind of feeds into what I asked originally about disclosures, but I just kind of want to take a step back and have the very high-level question. You know, just very generally, if a customer or member of the public

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

looks up a CPO or one of the principals of the CPO in the NFA BASIC system, will the existence of an 8a(2) or 8a(3) statutory disqualification appear?

Because this kind of -- for me, this goes to the heart of our disclosure protocol in ensuring that the public as they are listening to this, or if they read about this meeting, will be able to identify these particular bad actors easily, so that they can make the best and most sound investment decisions.

MS. OLEAR: Thank you, Mr. Commissioner. This is Amanda Olear again.

So, currently on NFA's BASIC there are disclosures about proceedings that both NFA has brought, and that the Commission has brought against a particular entity or person. I believe there are also listings for actions that are taken by other DSROs.

We are -- we intend to engage in discussions with NFA as to including information, in particular when an exempt CPO has written in for relief and has received relief with respect to an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

8a(2) violation under 4.13 to include that information as well in BASIC.

MR. STERLING: One thing I would add too, as well, Mr. Commissioner, if we're talking about a commodity pool that would do a de minimis amount of trading, then it stands to reason, and we haven't researched this, so this is not a market survey, sir, that perhaps a significant portion of the trading by the fund would be in securities, and there we're buttressed by the bad actor prohibitions, so the firm might be clean out.

In addition, I would say just from experience, when you're talking about raising funds for a private investment fund, there are institutional investors that take exacting due diligence standards including looking at themselves and their backgrounds of the organizers of the fund, the CPO in our parlance.

And that can also be aggregators of smaller investors, that nonetheless qualify, including private wealth platforms sponsored by major banks that, for those more, you know,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

dispersed or smaller individual wealth investors, we'll run the traps and do due diligence as well. That's not a complete bulwark, but we are operating in a context that has established pathways and other rules that would be designed to make investors aware of bad actors.

COMMISSIONER BEHNAM: Thanks. Again, I appreciate that. I agree with you. But again, you know, that should not, and I know you don't believe -- or feel the this, Josh, but, you know, that shouldn't -- we can't rely on others, even though, whether it's the private sector institutions or our sister agencies are doing their share. We're all doing our share, but we have to focus on, give that, you know -- what today's effort is, in fact, and I think the Chairman said this, is an effort to close a loophole, something that I think we all agree -- I assume we're all going to support this effort here that this is a small loophole that we need to close. It's important for customer protection.

We need to make sure that, despite other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

private market participants or public sector agencies are doing their share, we have to be very laser-focused to ensure that every investor has the right level of disclosure, has the right level of access to information so that he or she can make the most informed decision.

So, again, I agree with your sentiment, and I think we need to continue to work with our colleagues, the NFA, the SEC, our registrants, to ensure that we're doing everything comprehensively to provide the most information to investors so that they can make the most sound decisions.

And that includes both these 8a(2) and 8a(3) statutory disqualifications, which are important bits of information, that has been said before earlier today, you know, that investors should know about, as they make their investment decisions.

So, thanks again to Josh, Amanda, and Elizabeth especially for your presentations, and, again, I look forward to supporting the rule. Thank you, Mr. Chairman.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

COMMISSIONER STUMP: Thank you, Mr. Chairman, and thanks to the team.

Elizabeth, Amanda, and Josh, I know this has been a long process, and I'm very grateful for all of the efforts you all have made to get this rule to its final form.

I will have a full statement posted on the website, but just a couple of points I'd like to make now. As you all know, I continue to believe that one of the great strengths of our derivatives markets is their dynamic nature.

These markets are constantly, and often rapidly, evolving in terms of the scope of products and the platforms on which these products are traded, and the participants that trade them.

As a result, "the one size fits all" rules often turn out not to be a good fit. Throughout its history, the Commission has utilized carefully crafted exemptions to smooth the sometimes rough edges of these regulatory

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

obligations, so that it fits the dynamics of the derivatives markets.

These exemptions help us to adapt our rules to the realities of the marketplace. But, being exempt from certain regulations does not necessarily mean being outside the Commission's regulatory framework altogether.

An exemption is a privilege, not a right. Our job as Commissioners is to see that the exemptions we provide are appropriately tailored to fulfil the specific purposes for which they are adopted, while not undermining the Agency's ability to fulfil its obligations under the Commodity Exchange Act. I believe that the final rule we are considering today strikes the right balance.

It provides that the serious statutory disqualifications that are listed in Section 8a(2) of the Commodity Exchange Act, and that can preclude a commodity pool operator from registering with the Commission, and similarly preclude the commodity pool operator from acting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

in an exempt capacity under Rule 4.13, too.

I was hoping that you guys could expand a bit on the types of offenses that are statutory disqualifications under Section 8a(2) of the Commodity Exchange Act, and that can prevent someone from being an exempt CPO, or principal thereof, under this final rule.

MS. GROOVER: Yeah, so this is Elizabeth. I can go ahead and give you a brief list real quick.

8a(2) offenses include any felony convictions in the last ten years that involve embezzlement, theft, extortion, fraud, and misappropriation of funds or securities, among other types of financial crime and misconduct.

And additionally, there are I think also permanent bars to registration or other major, let's say, offenses or investigations or findings against a person from an exchange or a different SRO or DSRO.

But importantly, it's the ones that involve embezzlement, theft, extortion, fraud, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

misappropriation of funds, that kind of thing, that we were really focused on trying to remove from the exempt CPO population.

COMMISSIONER STUMP: Thank you. So some very serious offenses is we're talking about here.

I just wanted to lay those out in a public forum for the benefit of the public. And I was also hoping you could walk through the rationale for not excluding registered investment advisers that are registered with the SEC from this rule.

I think some commenters asked us to do so, and I appreciate the dialogue I've had with all of you with regards to that request and the action you took. And, so I was hoping you might -- could walk though that as well.

MS. GROOVER: Sure, this is Elizabeth again. So, staff reviewed the statutory disqualification regime in the Investment Advisers Act of 1940, the Advisers Act, and we concluded that it differs materially from the corresponding

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

provisions in the CEA.

Of particular relevance to this final rule, the Advisers Act does not actually specify any statutory disqualifications that would serve as a bar to registration for investment advisers in a manner similar to that of 8a(2), meaning without a required procedural hearing or order.

That equivalent provision just does not exist in the Advisers Act. Additionally, DSIO staff consulted with our colleagues in the SEC's Division of Investment Management, and they also did not believe that requiring this representation would be problematic for registered investment advisers.

And, they further agreed that our harmonization efforts between our Commission would be most impactful, when they're spent addressing specific compliance burdens or requirements, rather than in determining the general fitness or conduct standards for a person to act as a CPO, whether registered or exempt, in our market.

So, for these reasons, staff recommends

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

preserving the Commission's independent authority to determine which persons should be permitted to operate commodity pools subject to a regulatory exemption, like Regulation 4.13.

This approach is consistent with that used by the Commission in performing an independent assessment of any registered investment adviser seeking CFTC registration. Under those circumstances, notwithstanding the investment adviser's registration status with the SEC, the Commission generally assesses the application of that investment adviser under the terms of the CEA and the regulations promulgated thereunder, which reflect the unique regulatory concerns presented by intermediaries acting in the commodity interest markets.

Although DSIO expects that most registered investment advisers would not at all really present any cause for reservation in our markets, we do believe that retaining the authority to independently regulate or determine a registered investment adviser's fitness to act as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

an exempt CPO best serves the customer protection interests of the Commission.

So, that's why we went in that direction for this recommendation, but we really did give it a lot of thought.

COMMISSIONER STUMP: Thank you, and I know you all did give a lot of thought, and you spent a lot of time talking with all of us about it, and I very much appreciate that. So, thank you for walking through it.

And just one final question, am I right that not all participants in exempt commodity pools necessarily meet the test of financial sophistication that are recognized in our rules, such as accredited investor or qualified eligible person, for example?

MS. GROOVER: Yes, that is correct.

Under the exemptions available both in Regulation 4.13(a)(1) and 4.13(a)(2), those exempt CPOs may solicit and admit retail persons as participants in their pools, because those exemptions have largely operational conditions,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

that do not speak to the financial sophistication of the investors.

But, they rather focus on the number of participants in the pool, or the amount of gross capital contribution, or how many pools you're operating. But, nothing in those two paragraphs speaks to financial sophistication. So, yes, you are correct.

COMMISSIONER STUMP: Thanks for walking through that as well, because it is my belief that the sophisticated market participants should be able to enter into prudent business arrangements that they view as most appropriate for their operations and business needs, but not all participants in exempt pools under Rule 4.13 will have that same degree of financial sophistication.

And for me, this is critically important in establishing the need for today's rule. In any event, drawing boundaries is at the core of our regulatory function, and I'm very comfortable drawing a boundary, such that persons or entities that have, for example, had prior

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

registrations revoked or been convicted in the past ten years of a felony involving fraud or misappropriation of funds, may not offer themselves as an exempt CPO's client.

Under our rules, a pool operator that believes its particular facts and circumstances make such a result unjust, may request relief on an individual basis.

I, therefore, support today's final rule, and I want to again thank the staff of the Division of Swap Dealer and Intermediary Oversight, the General Counsel's Office, and the Chief Economist's Office for working with my office to answer our questions and incorporate our suggestions. Thank you.

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

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman, this is Commissioner Berkovitz.

I also would like to start off by acknowledging the work of the staff and your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

leadership on this issue, Mr. Chairman, and the support of my fellow Commissioners for a rule, as has been noted, you noted in your opening statement and others Commissioners have noted too, really closes what could be considered a loophole in that persons that could not register or were prohibited from acting in a registered capacity, due to statutory disqualifications for serious offenses of various financial and market and other standards of conduct, very serious conduct, to do an end-run around that, and say, well I can't get registered, but I can operate an exempt pool.

And, this closes that loophole or that hole, and I think it's a very positive rule, very much in the public interest, and so I want to thank you, and thank the staff for drafting a good rule in that regard, and working with my office very constructively on our comments to make the rule robust and well-drafted.

I think, also, Mr. Chairman, you very adequately explained the issue that you and I have discussed on a number of occasions and the approach

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

forward on that issue, and that's the family pool, the family pool issue.

And, through our successive rulemakings on this, the family pool, for the reasons that you've noted, I think you accurately stated, the issue regarding family pools, is on the one hand there are these large, sophisticated investors.

They don't - perhaps, one view is that they don't need the same customer protection as the ordinary consumers, they're big persons, they can take care of themselves.

On the other hand, some of these offenses that what we're talking about are not just consumer protection offenses, but they involve really serious misconduct against the market. And, unleashing these people on the market through family pools could pose a risk to the market, so we don't necessarily want to give them free hand or free reign to do that as well. You outlined that issue pretty well, Mr. Chairman, and the approach that we're going to take, or that you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

determined to take, to issue a special call. I very much support that.

But, we're sort of here at this place on this rule--family offices through the prior rulemakings and the origination in the Dodd-Frank Act, so they would be treated differently in the SEC space, and then they we harmonized.

We're to a point now for family, offices with the passage of this rule, will be exempt from our regulations, exempt from providing notice of the exemptions, which is what I objected to in the last rule.

And, this rule gives them the third exemption, so to speak, in that their operators aren't subject to the same statutory disqualification provisions that all other pools are.

So, we really -- they're exempt, and we don't know who they are, and we don't know anything about their pool operators, and the same restrictions don't apply on them.

I don't want to condemn all family pools

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

or persons who operate that, or cast aspersions on them, but I -- first thing it's important to note that these are not -- when we talk about family offices, that name conjures up, like, mom-and-pop operations, that somebody, you know, maybe have an office to the side of their farmhouse, where they manage their commodity investments or whatever. But, that's not the case anymore.

That may at one point in time have been the proper characterization of family offices, just managing family money, but family money has grown considerably.

And, as I explained in more detail in the last rulemaking on the notice issue, these are really -- the guidebook of family offices says you really need about \$500 million to operate one of these things efficiently, and they're large, very large private wealth vehicles.

So, they can have a significant market presence. I don't think just because you're wealthy that the -- you're a sinner necessarily, you're not a saint. I think, you know, it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

inappropriate to classify people according to their wealth.

I think people are people, rich people, poor people, whatever, but I don't think they're necessarily worse, but I don't think they're necessarily better. I don't think they necessarily deserve less oversight in that regard.

But, we don't know. We don't know who's operating these pools, and so I think it makes sense, let's get some data on it.

Let's do a special call, find out who these CPOs are of these family pools. Do we have -- has this been a magnet for people who are statutorily disqualified, or maybe these pools have been doing a great job, maybe they've been really sophisticated.

They know, you know, we're -- we want to be upstanding citizens, and we're not going to take somebody with a taint in their background because we take our responsibility seriously.

We don't know. I think the assumption -- it's just, we can't make assumptions one way or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

the other. That would be unfair, and so I think it makes sense, let's get the data, let's get the special call, find out, do we have an issue of disqualified people in this space or not?

So, I just want to thank you, Mr. Chairman, for doing this special call, and the staff. I think we're -- we can -- although I -- we can debate the rationale for the way it is.

Going forward, this is the way I think to make progress and give us some confidence in the integrity of our markets. So, I just want to recognize that effort and thank you for that.

I just have a few questions, and some of them have been addressed in this regard, the additional procedure for getting -- the exemptive procedure that you've outlined, where you can send in a letter request for an exemption. I just want to clarify, right now people who are statutorily disqualified, in this space, in the exempt pool space, is it correct we may have two types of people who are -- I think the rule text speaks to the persons who -- with statutory disqualifications in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

their background--

And, is that somebody who actually has been disqualified by NFA under a proceeding? Or does it also include persons who have committed an 8a(2) offense, who would have to disclose that were they to apply for an NFA registration?

Does it include those types of persons, that this rule would encompass?

MS. OLEAR: Thank you for that question, Mr. Commissioner. This is Amanda. It would encompass both, both persons who have a finding in their background either from NFA or through a Commission process, and it would also encompass those persons who, should they apply for registration, they would be required to disclose such a violation.

COMMISSIONER BERKOVITZ: What is the instance, if you know -- so let's take in the space somebody who actually hasn't been denied registration, but is operating in the space, who have - they, if they were to apply would have to disclose it. Do people who disclose this, does NFA

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

ever allow them to operate, or is this something that's an automatic no, you can't do it?

Do you know what's the NFA's approach on this?

MS. OLEAR: This is Amanda again, thank you, Mr. Commissioner.

So, my understanding is based on a review of NFA's registration program that I was part of at least ten years ago at this point. My understanding is that the process remains the same, is NFA has a particular team of staff who when a registration application comes in on 7-R and 8-R that discloses statutory disqualifications, those disqualifications, those applications, are flagged for the staff. The staff then engage in an in-depth review, fitness review,

and it parallels what process the Commission would engage in, if the Commission had not delegated this authority to NFA. NFA does an in-depth review of all of the facts surrounding the statutory disqualification. If it is appropriate, they will deny the registration

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

application.

Otherwise, they also have the authority, commensurate with the authority that the Commission has, to impose any restrictions or limitations on that registration, in order to mitigate the risk posed by that statutory disqualification.

COMMISSIONER BERKOVITZ: So, when we established our procedure for applying for an exemption, let's say to a person, what case would be a person who is actually subject to an NFA-- who couldn't have -- the NFA's denied their registration because of statutory disqual, and then they get flagged in this rule, and then, they could apply to us to -- an exemption basically from that? That's what this would prevent?

MS. OLEAR: They could apply to us for an exemption, yes, this would prevent that. Precisely.

COMMISSIONER BERKOVITZ: For preventing?

(Simultaneous speaking.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

MS. OLEAR: -- prevent them from applying for a registration exemption, yes.

COMMISSIONER BERKOVITZ: Sorry, this permits or prevents them applying to us for registration exemption?

If they've already been denied by the NFA, the exemptive process that we're framing in this rule, does that permit them to then come to us for an exemption, after they've been denied or not?

MS. OLEAR: Okay, sorry, I just want to make sure I understand your question. So, we have a person who would like to operate a commodity pool.

They have applied for registration, they have gone through NFA's process, and they have determined they are not an appropriate registered CPO and have denied their application for registration. If they were to then attempt to operate an exempt -- as an exempt CPO, under the current rule, they would be able to do so.

This final rule would prohibit them from doing so, unless they were to again come in,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

submit a request for an exemptive relief consistent with 140.99 140.93, they would have to make the argument that it is in the public interest, and that it does not undermine the purposes of the prohibition on statutory disqualifications under 4.13 that we're been considering today.

To my mind that -- it seems an unlikely result that they would then get the exemptive relief, but and that would be the process.

(Simultaneous speaking.)

MR. STERLING: Mr. Commissioner, I just want to add as well that in my experience, NFA has a registration system and an exemption system, they administer both for us in a way that tracks our registration rule, as well as our exemption rules.

And so if through the registration process you are determined to be statutorily qualified, that would be on the record in the system for NFA, so to speak.

If that same person were to go and try and file an exemption then with NFA, that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

information would be there, would be ascertainable. And, I think would similarly stop them from what's essentially an effect on filing exemptions from going into effect. And then they would have to come to us to follow the process.

COMMISSIONER BERKOVITZ: Right, I thank you for that clarification. And then, coming to us, they would have to -- they would be disclosed.

If they want an exemption after that for this exemptive letter, they would have to -- have a factual basis why, despite this prior NFA action, they should nonetheless be allowed.

So it would be -- they would really have to overcome that prior determination and explain to us why, notwithstanding what the NFA has said, you should -- they should have the exemption they're applying for, correct?

MR. STERLING: That's right, sir, and they would go through a process identified in our rules, which is designed to provide them procedural protections. But, it would be plain in the record

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

the nature of the offense, the gravity of it, which could be embezzlement, theft, you name it.

And then, we'd have to assess as an agency -- complete record, and that could go either way I suppose, but yes, that's correct.

COMMISSIONER BERKOVITZ: That would not be a - not be lightly done on our part, I'm sure. Again, if somebody had a very serious track record, and the NFA has said no, we're disqualifying you. We respect the NFA's views on these things, I know. So, okay, I appreciate that.

And then, the other situation would be that they're subject to -- if they were to -- they haven't applied to the NFA, but they committed one of the these offenses that, were they to apply to NFA for registration they would have to disclose, and at that point, this rule will capture those people as well.

Those folks have two options. One is they could go to the NFA and apply for registration. They'd have to disclose this. Or they could apply, I guess, for an exemptive letter from us, in which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

case they would also have to disclose it. Correct?

MS. OLEAR: That is correct.

COMMISSIONER BERKOVITZ: So, and then our process is not -- the exemptive letter that we would issue, again, would be something like in that other case we were just describing where the NFA already had - obviously the NFA wouldn't have already have don't it.

But, we're not intending to have an end-run around the NFA registration process in that circumstance, where it could be easier to get a letter from the CFTC in order to go and get straight up registered from the NFA, correct?

MR. STERLING: That's right, sir. The way I think about it, the effect of this rule, if it's triggered by someone's history, will be to have fewer exempt CPOs rather than more. So yes.

COMMISSIONER BERKOVITZ: Right, okay, well I appreciate that. So that helps me understand the standard that we'll be using under the topical exemptive letter request. So I appreciate that very much.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

And then so let me -- that -- I appreciate your answer to my questions, and I'll just re-emphasize this is a good rule, and I'm very happy to support it.

And, thank you for working with me and my office on the rule and on the special call. I think that's a sound way to proceed at this point. So, thank you.

CHAIRMAN TARBERT: Thank you.

(Simultaneous speaking.)

CHAIRMAN TARBERT: No, go ahead, Director Sterling.

MR. STERLING: No, Mr. Chairman, I was done. I was just thanking the Commissioner for his questions, as well as his insights during our discussion. Thank you.

CHAIRMAN TARBERT: Thank you very much. Thank you all. So, with that, I think we've concluded our question period, so I will ask is there any Commissioner that is not prepared to vote?

Hearing none, it sounds like everyone

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

is prepared to vote, so, Mr. Kirkpatrick, our dutiful secretary, would you please call the roll for the final rule amending Part 4 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 final rule prohibiting certain statutory disqualifications for CPOs claiming registration exemptions under CFTC Rule 4.13.

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Behnam votes aye.

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

COMMISSIONER QUINTENZ: Commissioner Quintenz votes aye.

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

CHAIRMAN TARBERT: Chairman Tarbert votes aye.

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

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

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

Hearing none, I'd like to ask if any Commissioners would like to make any closing statements? We'll proceed in reverse order of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

seniority.

Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman.

I think we had a good -- pleased to support the rule today and again thank you from me and my office, and, Director Sterling and Amanda and team, thank you very much again.

CHAIRMAN TARBERT: Thank you very much. Commissioner Stump?

COMMISSIONER STUMP: Thank you, Mr. Chairman. I do not have any closing remarks.

I just want to take a really quick opportunity to thank the folks on my team, who have worked really hard over the past few weeks as they would, if we were in the office, but these circumstances make it all the more challenging.

So I want to thank Dan Bucsa, Libby Mastrogiacomo, and Terry Arbit for all of their help. Thank you.

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

COMMISSIONER BEHNAM: Thanks, Mr. Chairman. Again, thanks to the team, Josh, Elizabeth, and Amanda, for your work on this, for working with my office - very pleased to support the rule today.

It's an important element of our rule set, and I'm very glad we were able to do it well and do it unanimously. Also, I want to thank my team as well, John Dunfee, David Gillers, and especially Laura Gardy for her work on this.

And finally, Mr. Chairman, I just want to recognize and thank Commissioners Stump and Berkovitz for their statements at the beginning of the meeting.

I certainly appreciate the sentiment shared about the importance of the Pledge of Allegiance and in particular the focus on each of the words that make up the pledge. And I thank you, Mr. Chairman, for bringing that to this Agency. I think it's something that is very important in what we do, and I look forward to continuing to do it in the future.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

That said, we need collectively to address systemic racial inequality in this country. These are certainly unprecedented and painful times, but we have to work towards forming a more perfect union, and it's woefully incomplete until these inequalities are eliminated.

So, I recognize our work at the CFTC, although important, may appear to be removed from the challenges our country is facing today.

These issues affect us all, and we have a -- each of us has the responsibility to face these challenges and work towards addressing them in a very mindful and careful way.

So thanks, Mr. Chairman, for your support and for calling the meeting today.

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

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

First of all, thank you to Josh, Amanda, and Elizabeth for your work on this. I, too, am

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

very glad that this was another unanimous vote by the Commission, and recognizes the hard work that the staffs of all of the Commissioners, as well as the division and your staff, Mr. Chairman, put into this.

I would particularly like to thank Peter Kals on my team for going through this, and doing some work with the staff, as well as coordinating some issues between the NFA and the SEC to get some thoughtful consideration to some of the provisions that overlap jurisdictions, so I'm very grateful to all of the work that was put into this to get us here.

I would also like to echo the comments of Commissioner Behnam in thanking Commissioner Berkovitz and Commissioner Stump for their very thoughtful statements.

I think this is a time where we all need to reflect on our own commitments and values, and understand how we can continue to work to put ourselves in other people's shoes.

And make sure that we understand the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

challenges that they face in their daily lives, their perceptions of justice and of safety, while also ensuring that senses of justice and safety are preserved for the broader population in the expression of incredibly legitimate frustrations, and in some cases anger.

And, I'm pleased that at least the voices on this call can take a moment and reflect on the situation that we have, and while it is not part of the business agenda, I'm so appreciative to have such thoughtful colleagues that can make those statements at this point, and put things so into perspective in such a balanced and meaningful way.

So thank you to them and thank you for your leadership, Mr. Chairman.

CHAIRMAN TARBERT: This is Chairman Tarbert, thank you so much, Commissioners Quintenz, Behnam, Stump, and Berkovitz. I want to echo the points that you have all made.

The CFTC plays an important role in at least the economy of the United States and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

global financial system more generally.

Obviously, the area of our focus is very specialized, but my goal has always been that, while we have a very, some might say even arcane, area of expertise, it has a tremendous impact on the rest of the world and certainly on our economy.

But, at the very least getting to the larger point, if we can demonstrate that the five of us, and the more than 1000 people that collectively are part of the CFTC, both in terms of our 700 full time employees as well as our 300 contractors, many of whom have been at the agency for a number of years, if we can show the rest of the country that we can work together, we may not always agree on substantive issues, but we can treat each other in a civil way, we can respect one another, we can work to see if we can achieve the best solutions for the matters that are brought before us, in our small way, the CFTC can be an example.

And, I'm privileged to have the four of you as colleagues. I'm also privileged to have all

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

those who support your offices, as well as those in the agency more generally.

This has been one of the most trying times in American history, certainly recent American history, obviously with the pandemic and the economic turmoil that it created.

But, I think looking back on the 45 years of our agency, I think people may very well say that, in many ways, this was our finest hour, that the staff and everyone else rose to the occasion, provided temporary targeted relief, made sure our markets remain orderly and liquid, and in discussing sort of the higher-level policy issues, we've done so in a very professional, collegial, bipartisan, and respectful manner.

And, so I'm so very grateful to be here, and next meeting, which I hope we'll have another open meeting at the end of this month to continue to do the business of the country under the Commodity Exchange Act, we will certainly start with the Pledge of Allegiance, even though we're not necessarily together in person.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

So, with that, there being no further business, I would ask if we could go ahead and adjourn the meeting. Those in favor of adjourning the meeting will say aye?

COMMISSIONERS: (Chorus of aye.)

CHAIRMAN TARBERT: Those opposed, no?

The ayes have it, and once again, I'm grateful to everyone at the CFTC for their great work, and all of those who are in our markets or interested in our markets, who are watching or listening to this open meeting over the phone or via our webcast. Thank you all so very much.

This meeting is hereby adjourned.

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701